UN environment programme

Handbook for The Fifth Montevideo Programme on the Progressive Development and Implementation of Environmental Law

Foreword

I am pleased to present the new Handbook for the Fifth Montevideo Programme on the Progressive Development and Implementation of Environmental Law.

Since 1982, the United Nations Environment Programme (UNEP) has conducted its environmental law activities based on ten-year programmes known as the Montevideo Environmental Law Programme.

In March 2019, the United Nations Environment Assembly (UNEA) adopted the Fifth Montevideo Programme for the Development and Periodic Review of Environmental Law (Montevideo Environmental Law Programme). This ten-year programme spans from January 2020 to December 2029.

The fifth Montevideo Programme serves as a guiding framework for the identification of key environmental law areas at the international level and implementation of priority actions in environmental law at the national level. UNEP as the Secretariat coordinates the Programme with the strategic guidance of a global network of national focal points, and a Steering Committee for Implementation. Also important are strong partnerships with stakeholders including, inter alia, academia, civil society, the private sector, secretariats of Multilateral Environmental Agreements, UN agencies, and Intergovernmental Organizations. The digital backbone of the Programme is the Law and Environment Assistance Platform (UNEP-LEAP)

The main purpose of preparing the Handbook for the Fifth Montevideo Programme on the Progressive Development and Implementation of Environmental Law is to inform Montevideo national focal points and other stakeholders about the programme, its characteristics, governance structure and the process of identifying its priority areas. In addition, the handbook will analyze the current Montevideo Programme V priority areas and outline the process of accessing environmental law publications and applying for technical legal assistance through UNEP LEAP.

It is anticipated that the Handbook will be a valuable resource for Montevideo national focal points and other users assisting them to understand the Programme and to better fulfill their roles as they collaborate with UNEP in the development and implementation of the Montevideo Programme V.

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Purpose and Scope of the Handbook

By its resolution 4/20 of 15 March 2019, the UN Environment Assembly adopted the Fifth Montevideo Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V) for the decade 2020-2029. Serving as the foundational framework for UNEP's environmental law initiatives and activities since 1982, the Montevideo Programme has significantly shaped the development and implementation of environmental law at national, regional, and international levels through its four previous iterations. The Programme's primary objective is to promote the development and implementation of environmental rule of law and strengthen related capacities in countries, in coordination and collaboration with other relevant processes and activities. An important aspect of the Montevideo V Programme is that its implementation is designed to contribute to the environmental dimensions of the 2030 Agenda for Sustainable Development.

The Montevideo Programme V secretariat has developed this digital handbook that highlights the Programme's objectives, activities and outcomes in order to raise awareness and enhance understanding of the Programme by Governments and relevant stakeholders. This will create a strong and recognizable brand for the Programme and serve as a guide that strengthens the role of Government officials and other users in the further development and implementation of its priority areas. The handbook will be included on the UNEP Law and Environment Assistance Platform (UNEP-LEAP), the digital backbone of the Montevideo V Programme.

The handbook is divided into five parts. Part I provides a brief overview, history and achievements of the Montevideo Programme. It then outlines the key features of the Montevideo Programme V highlighting how it is different from previous iterations as well as its articulation with the 2030 Agenda for Sustainable Development. Part II of the handbook analyses and provides information on the existing legal responses at international and national levels to the three agreed thematic priority areas for implementation under the Montevideo Programme V, that is, the climate change crisis, the pollution crisis, and the biodiversity and nature loss crisis. It underlines the interconnectedness between the three thematic priorities areas and identifies the opportunities and potential contribution of the Programme in assisting Governments to respond to the crises. Part III provides information on how Governments can access support under the Programme, the types of support available, and resource requirements and sources of finance. Part IV addresses the critical issue of partnerships and stakeholder engagement. It highlights the significant emphasis the Programme places on the role of partners and major groups in the conception, delivery and implementation of activities. Part V provides information on existing resources on environmental law both within and outside UNEP with a view to enabling Governments and stakeholders to build and strengthen capacities in this field.

Acronyms

ABS	Access and Benefit Sharing
AR	Assessment Report
ASEAN	Association of Southeast Asian Nations
ASGM	Artisanal and Small-Scale Gold Mining
BAT	Best Available Techniques
BBNJ	Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
BEP	Best Environmental Practices
CBD	Convention on Biological Diversity
CBDR-RC	Common but Differentiated Responsibilities and Respective Capabilities
CDM	Clean Development Mechanism
CEPA	Capacity Building, Education, Participation, And Awareness
CEPA	Canadian Environmental Protection Act
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CIA	Cumulative Impact Assessment
CITES	Convention on International Trade of Endangered Species
CMA	Conference of the Parties serving as meeting of the Parties to the Paris Agreement
CMS	Convention on the Conservation of Migratory Species of Wild Animals
COP	Conference of the Parties
COPUOS	United Nations Committee on the Peaceful Uses of Outer Space
CRC	Chemical Review Committee
DART	Data Reporting Tool for Multilateral Environmental Agreements
DNA	Designated National Authorities
ECHR	European Court of Human Rights
EDI	Environmental Democracy Index
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EIT	Economies in Transition
ELI	Environmental Law Institute
EMEP	Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe
ERT	Expert Review Team
ESM	Environmentally Sound Management
FAO	Food and Agriculture Organization
FCMA	Forest Conservation and Management Act
GBF	Global Biodiversity Framework
GCF	Green Climate Fund
GEF	Global Environment Facility
GHG	Green House Gas Emissions
GST	Global Stock take
HFCs	Hydrofluorocarbons
HRBA	Human Rights Based Approach
HSM	Harmonized Systems Codes
IAEA	International Atomic Energy Agency
IAS	Invasive Alien Species
ICCM	International Conference on Chemicals Management

ILC	International Law Commission
IMDG	International Maritime Dangerous Goods
IMO	International Maritime Organization
INC	Intergovernmental Negotiating Committee
INTERPOL	International Criminal Police Organization
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPCC	Intergovernmental Panel on Climate Change
ISA	International Sea-Bed Authority
IUCN	International Union for Conservation of Nature and Natural Resources
LDCs	Least Developed Countries
LMOs	Living Modified Organisms
LRTAP	Convention on Long-Range Transboundary Air Pollution
MARPOL	International Convention for the Prevention of Pollution from Ships
MDGs	Millennium Development Goals
MEA	Multilateral Environmental Agreement
MGRs	Marine Genetic Resources
MOP	Meeting of the Parties
NAPs	National Action Plans
NASA	National Aeronautics and Space Administration
NBSAP	National Biodiversity Strategy and Action Plan
NDC	Nationally Determined Contribution
NEC	National Environment Commission (Bhutan)
NOU	National Ozone Unit (Bhutan)
OCHCR	Office of the United Nations High Commissioner for Human Rights
ODS	Ozone Depleting Substances
OECD	Organisation for Economic Co-operation and Development
PCBs	Polychlorinated biphenyls
PES	Payment for Ecosystem Services
PFOA	Perfluorooctanoic Acid
PIC	Prior Informed Consent
POPs	Persistent Organic Pollutants
PWP	Plastic Waste Partnership
SDGs	Sustainable Development Goals
SECA	Special Emissions Control Zones
SIDS	Small Island Developing States
STRP	Scientific and Technical Review Panel
TAI	Access Initiative
TK	Traditional Knowledge
TNA	Technical Needs Assessment
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNDB	United Nations Decade on Biodiversity
UNDP	United Nations Development Programme
UNEA	United Nations Environmental Assembly
UNEP	United Nations Environment Programme
UNEP - GC	United Nations Environment Programme Governing Council
UNEP-LEAP	United Nations Environment Programme Law and Environment Assistance Platform
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
VOC	Volatile Organic Compound
WMO	World Meteorological Organization
WRI	World Resources Institute

Part I: Introduction to the Montevideo Programme

Overview & History of the Montevideo Programme

The first Montevideo Programme for the Development and Periodic Review of Environmental Law was adopted by the UNEP Governing Council Decision 10/21 as a strategic guidance to UNEP's activities in the field of environmental law for the decade 1982 – 1992. It was the product of the recommendations of Senior Government Officials Expert in Environmental Law, convened in late 1981 in Montevideo, Uruguay, to establish a framework, methods and programme, including global regional and national efforts, for the development and periodic review of environmental law, and to contribute to the preparation and implementation of the environmental law component of the UNEP system-wide medium-term environment programme. Since then, UNEP's environmental law activities have been organized and coordinated through a series of sequential 10-year programmes adopted by the UNEP Governing Council/UNEA. To date, there have been five iterations of the Programme. The Montevideo Programme establishes the vision, strategy and activities for UNEP's engagement in the field of environmental law, providing a framework within which many international legal instruments, including major MEAs, have been negotiated and adopted and for support to countries in the development and implementation of environmental law.

The Montevideo Programme I focused on the development of guidelines, principles, standards or agreements in the areas of marine pollution from land-based sources; protection of the stratospheric ozone layer; and transport, handling and disposal of toxic and dangerous wastes. Its implementation led to the elaboration and adoption of a number of international legal instruments including the Vienna Convention on the Ozone Layer and its Montreal Protocol on Substances That Deplete the Ozone Layer, the Basel Convention on the Transboundary Movements of Hazardous Wastes and Their Disposal as well as guidelines and principles on marine pollution from land-based sources, hazardous wastes management, international information exchange on banned or severely restricted chemicals, and environmental impact assessment. It also served as a basis for the international community to negotiate and adopt the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change.

The Montevideo Programme II was adopted by the UNEP Governing Council in 1993 through its Decision 17/25 to provide a framework for UNEP's environmental law activities in the 1990s. It was based largely upon the imperatives outlined in Agenda 21, the programmatic document of the UNCED held in Rio De Janeiro in 1992. The Programme focused on, *inter alia*, enhancing the capacity of States to participate effectively in the development and implementation of environmental law; promoting the effective implementation of international legal instruments in the field of the environment; and developing further the mechanisms to facilitate the avoidance and settlement of environmental disputes. These thematic areas were at the core of Chapter 39 of Agenda 21 entitled "International Legal Instruments and Mechanisms" which outlined programme activities in this field including enhancing the broader participation of countries in treaty-making; the provision of technical assistance to countries to enhance national legislative capabilities; and the broadening and strengthening of mechanisms for the avoidance and settlement of international disputes in the field of sustainable development. As a direct result of the Programme, the 1990s witnessed a surge in the development of national environmental law – including the integration of environmental provisions in national constitutions; the development of framework environmental laws; and the adoption of national policies and legislation for the implementation of multilateral environmental agreements.

Key Outcomes of Montevideo Programme I

- Treaties & Soft-Law Instruments:
- Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-Based Sources (1985)
- Vienna Convention for the Protection of the Ozone Layer 1985
- Montreal Protocol on Substances that Deplete the Ozone Layer 1987
- The Cairo Guidelines 1987 and the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal
- Guidelines on mining and drilling carried out within the limits of national jurisdiction, adopted by UN General Assembly Resolution 37/217
- Regional Action Plans leading to conclusion of 8 regional conventions and 16 regional protocols on coastal zone management
- London Guidelines for the Exchange of Information on Chemicals in International Trade (amended in 1989)
- Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System (ZACPLAN) (1987)
- Goals and Principles of Environmental Impact Assessment (1987)
- The Convention on Biological Diversity (CBD) (1992)
- Technical Assistance & Programmes:
- Awareness and Preparedness for Emergencies at the Local Level (APELL Program)
- UN Centre for Urgent Environnemental Assistance
- Environmentally Sound Management of Inland Waters (EMINWA) Program
- Legal assistance to 48 States.

The Montevideo Programme III adopted by UNEP GC Decision 21/23 as a strategic guide for environmental law activities in the first decade of the twenty-first century represented a shift in focus towards implementation and effectiveness of environmental law and relationships with other fields such as trade and security. Thus, the first programme area addressed activities relating to the implementation of, compliance with and enforcement of environmental law as well as the strengthening of regulatory and institutional capacity of developing countries and countries with economies in transition to develop and implement environmental law. Significant emphasis was also placed on the catalytic and coordinating role of UNEP. Consequently, programme activities were to be implemented in coordination with States, the Conferences of the Parties and Secretariats of MEAs, other international organizations, and non-State actors.

The Montevideo Programme IV was adopted in 2009 by UNEP GC Decision 25/11 as a broad strategy for the international community and the UNEP in the formulation of activities in the field of environmental law for the decade beginning 2010. The Programme focused on implementation and effectiveness of environmental. Its first programmatic pillar titled “Effectiveness of Environmental Law”, and perhaps the most significant of its four pillars, focused on, inter alia, activities relating to implementation, compliance and enforcement of envi-

Key Outcomes of Montevideo Programme II

- Treaties & Soft-Law Instruments:
- Copenhagen Amendment to the Montreal Protocol (1992)
- Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal trade Wild Fauna and Flora (1994)
- 1995 Amendments to the Basel Convention on the Control of Transboundary
- Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal (1999)
- Action Plans under the Regional Seas Programmes
- UNEP International Technical Guidelines for the Safety in Biotechnology (1995)
- Global Program of Action for the Protection of the Marine Environment from Land-based Activities (1995)
- Code of Ethics on the International Trade in Chemicals (1994)
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1999)
- Stockholm Convention on Persistent Organic Pollutants (2001)
- Technical Assistance and Programmes:
- UNEP-UNDP Joint Project on environmental law and institutions in Africa
- Global training programmes on environmental law and policy for governments (1993, 1995, 1997)

Key Outcomes of Montevideo Programme III

- Treaties & Soft-Law Instruments:
- Johannesburg Principles on the Role of Law and the Sustainable Development (2002)
- Framework Convention for the Protection of the Marine Environment of the Caspian Sea (2003)
- ASEAN Agreement on Transboundary Haze Pollution (2002)
- The African Convention on the Conservation of Nature and Natural Resources 2003

- Technical Assistance and Programmes:
- UNEP Global Judges Programme;
- Fifth and Sixth Global Training on Environmental Law and Policy;
- Ad Hoc Joint Working Group on Enhancing Cooperation and Coordination among the Basel, Rotterdam, and Stockholm Conventions;
- PADELIA Project;
- ECOLEX Database launched.

ronmental law; strengthening national regulatory and institutional capacities; technical assistance, education and training; prevention, mitigation and compensation of environmental damage; avoidance and settlement of international environmental disputes; public participation and access to information; harmonisation, coordination and synergies; and governance. Its second pillar addressed issues relating to conservation, management and sustainable use of natural resources. In its third pillar the Programme addressed challenges for environmental law such as climate change, poverty (emphasizing the linkage with the MDGs), environmental emergencies and natural disasters, new technologies, and pollution prevention and control. The last pillar on relationships with other fields integrated an important new element - the articulation between human rights and the environment – whose significance increased throughout the decade.

The assessment of Montevideo Programme IV undertaken by the Evaluation Office concluded that UNEP's work on environmental rule of law under the first pillar "...has enabled many countries to open up new fron-

Key Outcomes of Montevideo Programme IV

- Treaties & Soft-Law Instruments:
- Regional Agreement on Access to Information, Public Participation & Justice in Environmental Matters in Latin America & The Caribbean (Escazù Agreement) 2018;
- Minamata Convention on Mercury 2013;
- Nagoya Protocol on Access & Benefit-sharing 2010
- The Nagoya-Kuala Lumpur Supplementary Protocol on Liability & Redress 2010;
- Kigali Amendment to the Montreal Protocol 2016;
- Bali Guidelines on the Implementation of Principle 10 (2010);
- UNEA Resolution 5/14 on Plastic Pollution
- UNEA Resolution 3/6 on Soil Pollution
- Sendai Framework for Disaster Risk Reduction 2015
- Technical Assistance and Programmes:
- Synergies between MEA Secretariats in the fields of biodiversity and chemicals and waste.
- International Forum for Basin Organizations
- UN REDD Program
- Collaboration with OHCHR and the UN Special Rapporteur on Human Rights and the Environment
- Collaboration with INTERPOL

tiers of adjudication of environmental rights, and to integrate environmental crime in national penal codes."[1] The assessment further notes that, through its capacity building efforts, UNEP has equipped law and policy-makers to implement MEAs, to develop national legislation, as well as to ensure the harmonisation of environmental law jurisprudence at national and international levels.

It should be noted that each preceding Programme has not only built on the previous one but also sought to broaden the scope of UNEP's engagement in this area. Thus, Montevideo Programmes III and IV have sought to address the relationship between environmental law and other areas of law such as trade, security and human rights. In addition, greater emphasis has been gradually placed on issues relating to implementation of, compliance with and enforcement of environmental law. The Programmes represent a continuum, each building on the achievements of the previous ones and therefore represent continuity in UNEP's work in this field. However, whereas some developments in the field of environmental law may be directly attributable to the implementation of the Programmes others are not. The report of the UNEP Evaluation Office with respect to Montevideo Programme IV underlines the difficulties in attributing specific outcomes to the implementation of the Montevideo Programme. Nevertheless, even in those areas where no direct attribution exists it is still possible to conclude that UNEP may have played a catalytic role in the international community's legal responses to specific global environmental challenges. A notable example is the negotiation and adoption of the UNFCCC under the auspices of the UNGA after initial joint scientific work by UNEP and WMO.

1 UNEP, Final Assessment of the Fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo IV): Report of the Executive Director. UNEP/EA.4/19, page 5.

The Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V): Delivering for People and the Planet

The Montevideo Programme V was adopted by UNEA on 15 March 2019 through its resolution 4/20 which reaffirmed the importance of environmental law as one of the key areas of UNEP' work and the potential contribution of Montevideo Programme V in that regard, in particular in strengthening related country level capacity and contributing to the implementation of the 2030 Agenda for Sustainable Development and the further development of international environmental law. Consequently, UNEA requested the Executive Director "to implement Montevideo Programme V through the programmes of work for the decade beginning 2020… in a manner that strengthens the related capacity of Member States and contributes to the environmental dimensions of the 2030 Agenda for Sustainable Development…."[2] The vision of the Programme is that it "promotes the development and implementation of environmental rule of law, strengthens the related capacity of countries and contributes to the environmental dimension of the 2030 Agenda"[3].

The development and implementation of environmental rule of law is indispensable in the global effort to achieve not only the 17 Sustainable Development Goals (SDGs) agreed to in the 2030 Agenda for Sustainable Development[4] but also other internationally agreed goals and targets such as the Paris Agreement's 1.5 degrees Celsius temperature goal and the Kunming-Montreal Global Biodiversity Framework's 2030 targets. Through the 2030 Agenda the international community seeks to:

- protect the planet from degradation, including through sustainable consumption and production patterns;
- sustainably manage its natural resources; and
- take urgent action on climate change.

The 2030 Agenda notes that natural resource depletion and adverse impacts of environmental degradation, including desertification, drought, land degradation, freshwater scarcity and loss of biodiversity add to and exacerbate the list of challenges which humanity faces. It characterizes climate change as one of the greatest challenges of our time and its adverse effects undermine the ability of countries to achieve sustainable development. Several SDGs address the environmental dimension of sustainable development:

- Goal 6: Ensure availability and sustainable management of water and sanitation for all;
- Goal 12: Ensure sustainable consumptions and production patterns, including sustainable management and efficient use of natural resources, environmentally sound management (ESM) of chemicals and wastes, reducing waste generation, etc.;
- Goal 13: Take urgent action to combat climate change and its impacts, including strengthening resilience and adaptive capacity and integrating climate change measures into national policies, strategies and planning;
- Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development; and
- Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss;

In addition, the 2030 Agenda emphasizes the need for institution-building for sustainable development at all levels as well as the promotion of the rule of law and ensuring access to justice (Goal 16). It calls for the strengthening of the means of implementation and the revitalization of the Global Partnership for Sustainable Development, including international support for implementing effective and targeted capacity-building in developing countries to support national plans to implement all the SDGs.

2 UNEP/EA.4/Res.20, para.3.
3 Op.cit., footnote 5, para. 2
4 UNGA A/RES/70/1: Transforming Our World: the 2030 Agenda for Sustainable Development. (documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf).

The Montevideo Programme V provides a platform for responding to the needs and priorities of countries in their implementation of the 2030 Agenda. The vision, objectives and strategic activities of the Programme are consistent with the SDGs of the 2030 Agenda. The development of legal frameworks and the strengthening of regulatory and institutional capacities under the Montevideo Programme V will ensure that Member States can translate sustainable development policies and goals into enforceable norms as well as guidance for action by State authorities and non-State actors. The Programme can make a number of contributions to the implementation of the 2030 Agenda:

- Assist countries to develop legislation and legal frameworks to address environmental issues;
- Support countries to strengthen institutional capacities and the integration of the environmental dimension of sustainable development in national policies, strategies and planning;
- Provide support to countries to enhance synergies, coherence and coordination in the implementation of MEAs at the national level;
- Build capacities of stakeholders through training, education and awareness-raising;
- Enhance information exchange through the development of guidance materials and model laws as well as the sharing of best practices and lessons-learned; and
- Support developing countries and build their capacities to participate effectively in multilateral negotiations for the development of international environmental law.

Although the Montevideo Programme V builds on the successes of the previous iterations of the programme, it also differs from them in several respects. First, whereas previous programmes outlined in detail the priority thematic areas for UNEP activities in the field of environmental law, Montevideo Programme V is designed to "guide the identification and implementation of priority actions in the field of environmental law to be undertaken by the United Nations Environment Programme, in collaboration with other relevant actors…."[5] This identification of the priority areas for the implementation of the programme is to be undertaken by national focal points for the Montevideo Programme through meetings organized by UNEP.

Secondly, the new Programme is more targeted and focused. It defines the vision and objectives of the Programme; outlines the strategic activities to be undertaken to achieve those objectives; establishes implementation guidelines; and puts in place the institutional arrangements for programme implementation and monitoring.

Thirdly, the Montevideo Programme V has significantly strengthened the governance structure of the programme. The Evaluation Office in its assessment of the Montevideo Programme IV identified the lack of a governance structure for the Programme as one of its major weaknesses[6]. It noted that such a structure, building on the designation of national focal points, introduced at a later phase of the Montevideo Programme IV through UNEA Resolution 2/19, would help overcome the shortcomings of Montevideo Programme IV; build a culture of accountability; better capture and respond to country needs and demands; increase the profile and impact of the Programme; and further elevate and build on the successes of the work undertaken under the previous iterations of the Programme. In its assessment, the national focal points provide an important platform for the exchange of information and capacity building which could assist in strengthening the implementation of Montevideo Programme V.

Objectives & Strategic Activities

The objectives of the programme include the development of legislation and legal frameworks; strengthening implementation of environmental law; enhanced capacity-building; support to national Governments in the development and implementation of environmental rule of law; promotion of the role of environmental law in the context of effective environmental governance; and enhancing the responsiveness and effectiveness of the Montevideo Programme.

5 Op.cit, footnote 5, para. 1
6 Op.cit, footnote 4, page 21.

MONTEVIDEO PROGRAMME V STRATEGIC ACTIVITIES

4. To achieve the objectives listed above, Montevideo Programme V will focus on the following strategic activities:

(a) Provide practical guidance, tools, innovative approaches and resources, including effective law models and approaches, as well as best practices and model indicators to countries for the effective and inclusive development and implementation of environmental law in a manner consistent with decision 27/9 of the Governing Council of the United Nations Environment Programme;

(b) Develop and promote information and data exchange among stakeholders involved in the development and implementation of environmental law;

(c) Promote public participation, access to information and access to justice in environmental matters;

(d) Promote recognition of the mutually reinforcing relationship between environmental law and the three pillars of the Charter of the United Nations;

(e) Support collaboration and promotion of partnerships across the United Nations and with other relevant entities, including civil society organizations, in the field of environmental law;

(f) Encourage and facilitate education on environmental law, with a view to empowering people and communities and strengthening institutional capacity of countries to address environmental issues;

(g) Support environmental law awareness-raising initiatives at different levels;

(h) Encourage research, including studies and reports, on emerging environmental issues and the relationship between environmental law and other, related fields;

(i) Promote training in the field of environmental law, especially for legal professionals such as judges and prosecutors and other enforcement officials.

In order to achieve its objectives, the Programme defines a number of strategic activities. These strategic activities are to be undertaken in the context of the priority thematic areas for the implementation of the Programme identified by the national focal points. There is significant national focus in the strategic activities. This would seem to suggest that Governments are transitioning from international law-making to national implementation – the development and implementation of national legislative and institutional frameworks to give effect to agreed global goals.

Implementation Guidelines

Due to the difficulties highlighted by the Evaluation Office regarding formal assessment of success and performance of the Programme at the outcome level, Montevideo Programme V innovates by establishing certain parameters to guide the formulation and implementation of activities. Lack of clearly defined implementation guidelines and performance indicators thus present significant constraints not only in evaluating success but also the effectiveness of the activities as a response to the identified challenge. The Programme now requires, inter alia, that the activities should be responsive to the needs and priorities of countries; be achievable, clearly defined, measurable, verifiable and results-oriented; and be grounded in science, best practices and available data.

MONTEVIDEO PROGRAMME V IMPLEMENTATION GUIDELINES

5. The implementation of Montevideo Programme V and its activities will:

(a) Respond to the needs and priorities of countries;

(b) Be achievable, clearly defined, measurable, verifiable and results-oriented;

(c) Be developed and implemented in cooperation, coordination or partnership, as appropriate, with relevant stakeholders, promoting public participation;

(d) Promote synergies and complementarity and avoid duplication with other initiatives and activities in the field of environmental law;

(e) Be grounded in science, best practices and available data;

(f) Be consistent with the environmental dimension of the 2030 Agenda for Sustainable Development and relevant resolutions and decisions of the United Nations Environment Assembly, as well as having due regard to nationally determined priorities and relevant resolutions and decisions of other United Nations bodies and other multilateral environmental processes, including regional ones;

(g) Promote gender equality and active engagement of youth, as well as intra-and intergenerational equity;

(h) Promote the application of environmental assessments for the sustainable management and use of natural resources and the protection of the environment.

Institutional Arrangements and Monitoring

The new institutional arrangements for priority setting, implementation and monitoring established by Montevideo Programme V consists of:

(a) The United Nations Environment Programme which is to serve, within its current mandate and within available resources, as the secretariat of the Montevideo Programme V. The functions of UNEP include cooperation with Member States in the implementation of the Programme; organizing and facilitating meetings of the national focal points (NFPs) and the Steering Committee for Implementation; fostering the participation of stakeholders; cooperating with the secretariats of MEAs; monitoring the implementation of the Programme; and reporting biennially on the implementation of the Programme.

(b) A strengthened network of national focal points designated pursuant to UNEA resolution 2/19 to ensure a more country-driven approach. The national focal points should preferably be senior government official experts in environmental law. Their functions include identifying priority areas for the implementation of the Programme; collaborating with and guiding the secretariat; reviewing and promoting implementation; providing strategic advice, guidance and direction to the secretariat; and contributing to catalysing action to address emerging environmental issues through law.

(c) A Steering Committee for Implementation designated by the national focal points at the global meetings, composed of 2 to 3 representatives nominated from each of the five United Nations regions. The Steering Committee works with the secretariat in the implementation of the Programme, based on recommendations and overall guidance by meetings of the national focal points. The committee also works with the secretariat to prepare for meetings of the national focal points.

(d) Montevideo Programme V also creates space for collaboration with non-State actors in its implementation mechanism through what is characterized as Assistance in Implementation. Through this facility, academics and eminent experts in the field of environmental law, relevant civil society organizations and the private sector may be invited to assist in the implementation mechanism of the Programme, as appropriate and feasible.

UNEP Law and Environment Assistance Platform

The UNEP Law and Environment Assistance Platform (UNEP-LEAP) provides a digital platform for the Montevideo Programme V. It consists of a technical assistance section, a knowledge hub and a country profiles section. Member States can directly request technical assistance support from UNEP and its partners through the clearing-house mechanism under the Platform. The knowledge hub and country profiles sections contain information resources such as relevant legislation, jurisprudence, model laws, case-studies and best practice examples, legislative toolkits, flagship environmental guidance products and resources and environmental news.

The platform has proved to be a useful tool since its launch ensuring timely submission and processing of requests for technical assistance and providing Member States with important source of information. The platform will also be used to streamline the submission of national legislation to better organize and enhance this collection. The platform now hosts more than 200,000 documents, including legislation and case law, toolkits, guidance materials and model laws, and also links to the e-learning resources of linked knowledge tools under the auspices of the Law Division, including InforMEA.

Part II: Priority Areas for Implementation Under Montevideo Programme V

Introduction

The Montevideo Programme V under paragraph 6(b)(i) mandates national focal points to identify priority areas for Programme implementation. The first global meeting of the national focal points identified the following three thematic areas for action[7]:

Thematic area 1: Legal responses to address the pollution crisis, including the following initial priority areas:

(a) Legal responses to address air pollution;

(b) Legal responses to address waste prevention and mismanagement, including to address plastic pollution;

(c) Legal responses to enhance compliance with and enforcement of legislation to address pollution.

Thematic area 2: Legal responses to combat the climate crisis, including the following priorities identified by national focal points:

Preparation of a report for the national focal points on options for clearly defined priority areas for legal responses to address climate change that would strengthen, develop or implement appropriate legal and institutional frameworks at the national or sub-national level and build the related capacity to mitigate and adapt to climate change, while avoiding duplication and ensuring mutual supportiveness of efforts with processes under the UNFCCC and the Paris Agreement.

Thematic area 3: Legal responses to combat the biodiversity crisis, including the following priority areas:

(a) Legal responses to enhance compliance with and enforcement of biodiversity related laws, including criminal laws; and

(b) Preparation of a report for national focal points on options for clearly defined priority areas to strengthen, develop or implement appropriate legal and institutional frameworks at the national or sub-national level to implement biodiversity-related goals and commitments.

The national focal points also identified cross-cutting activities for the implementation of the Programme within the context of integrated legal responses to address the planetary crises relating to climate change, biodiversity and nature loss, and pollution and waste. These are:

(a) Enhancing access to environmental information, public participation in environmental decision-making and access to justice in environmental matters;

(b) Strengthening education and capacity-building relating to environmental law, including legal and technical training for national focal points.

7 UNEP, Report of the resumed first global meeting of national focal points for the Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V): delivering for people and the planet. UNEP/Env.Law/MTV5/GNFP.1/6/Add.1, Appendix.

The identification of thematic and priority areas is an iterative process for the duration of the Montevideo Programme V. National focal points will regularly review and revise these areas every two years.

The choice of these three thematic areas by the national focal points is not fortuitous. Recent scientific assessments show that environmental challenges of climate change, biodiversity and nature loss, and pollution and waste now represent a planetary emergency.[8] Current and projected changes in climate, biodiversity and nature loss, and pollution pose significant threats to human well-being, planetary health and the achievement of the Sustainable Development Goals. Governments would need to significantly scale-up and accelerate action in these areas in accordance with the agreed global goals and targets in order to shift the current trajectory of environmental risks. For example, a realistic chance of achieving the Paris Agreement's goals of limiting global mean temperature increase to well below 2 degrees Celsius and pursuing efforts to hold temperature increase to 1.5 degrees Celsius, and to reach net-zero emissions by 2050, will require deep cuts in global emissions beyond the aggregate effect of current nationally-determined contributions (NDCs) submitted by Parties (UNEP Gap Reports). Urgent action addressing the direct drivers of biodiversity and nature loss – such as land-use, over-exploitation of resources?, climate change, pollution and invasive species – will need to be taken (IPBES Global Assessment Report on Biodiversity and Ecosystems). And substantial reduction in the use and generation of chemicals and wastes through the effective implementation of existing international legal frameworks will minimize the increasing adverse effects on human health and the environment.

It should be noted that the planetary crises of climate change, biodiversity and nature loss, and pollution and waste are interconnected and need to be addressed together. Legal and regulatory responses at national, regional and international levels need to be alive to their interlinkages and interactions. Moreover, implementation of measures at the national level, including the implementation of relevant multilateral environmental agreements, require coordination and the harnessing of synergies. Thus, States Parties to the Paris Agreement have underlined "the urgent need to address in a comprehensive and synergistic manner the interlinked global crises of climate change and biodiversity loss in the broader context of achieving the Sustainable Development Goals…."[9]

The following sections survey the existing international, regional and national legal responses to these planetary crises and tentatively identifies areas where the Montevideo Programme V could make a contribution.

Legal Responses to Address the Climate Change Crisis

The International Legal Framework

The international legal regime addressing climate change consists of three distinct but closely related international treaties – the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement – as well as the decisions adopted by their governing bodies. The Kyoto Protocol and the Paris Agreement were negotiated and adopted under the UNFCCC and build on and supplement its framework.

The UNFCCC is a non-prescriptive framework legal instrument and provides significant flexibility to States Parties in the choice of national policies and measures to mitigate and adapt to climate change. The following are its most important features:

(a) Defines its ultimate objective, and that of supplementary legal instruments adopted under it, as the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system...." (Article 2);

8 UNEP, Making Peace with Nature: A scientific blueprint to tackle climate change, biodiversity and pollution emergencies. (UNEP, 2021).

9 UNFCCC (2022): CMA Decision 1/CMA.4 (FCCC/PA/CMA/2022/10/Add.1).

(b) Establishes the core principles of precaution, equity, common but differentiated responsibilities and respective capabilities (CBDR RC), and the right to development to sustainable development to guide its further development and implementation;

(c) In application of the principles of equity and common but differentiated responsibilities and respective capabilities it establishes three types of commitments: commitments of all Parties; commitments of Annex I Parties; and commitments of Annex II Parties. All Parties have the obligations to, inter alia, develop national inventories of their GHG emissions by sources and removals by sinks; formulate and implement measures to mitigate and adapt to climate change; and communicate information relating to the implementation of their commitments to the COP (Article 4.1). Annex I Parties (industrialized countries that were OECD members in 1992 and EITS) are required to adopt policies and measures to mitigate climate change by limiting their GHG emissions and demonstrate that they are taking the lead in combating climate change (Article 4.2); and Annex II Parties (industrialized countries) are required to provide financial resources and to promote, facilitate, and finance technology transfer to developing countries in order to enable them to implement the Convention (Articles 4.3, 4.4, and 4.5).

(d) Puts in place an institutional framework to facilitate its implementation, the negotiation and adoption of supplementary legal instruments under it, and the adoption of decisions providing guidance to Parties regarding specific actions and activities.

(e) Establishes a financial mechanism for the provision of financial resources by developed country Parties to developing country Parties to enable them implement their obligations under the Convention.[10] This includes financial resources for the transfer of technologies. There are currently two operating entities of the financial mechanism - the Global Environment Facility (GEF) and the Green Climate Fund (GCF). Both operating entities support projects, programmes, and other activities in developing countries relating to the mitigation and adaptation to climate change. The financial mechanism of the Convention, including its operating entities, serves as the financial mechanism of the Kyoto Protocol and the Paris Agreement.[11]

The Kyoto Protocol is a prescriptive legal instrument imposing internationally legally binding emissions limitation and reduction targets on Annex I Parties over successive commitment periods (Annex B to the Protocol). The first commitment period was from 2008 – 2012, and the second commitment period from 2013 -2020. The Protocol also put in place three "flexibility mechanisms" to enable Annex I Parties to fulfil their commitments in a cost-effective manner. These are the Clean Development Mechanism (CDM), Joint Implementation, and Emissions Trading (Articles 6, 12 and 17). Further, Annex I Parties were allowed to receive credits from "sink activities", that is, the removal of carbon dioxide from the atmosphere through human-induced land-use change and forestry activities (Articles 3.3 and 3.4). The regime of the Kyoto Protocol established a rigorous process of monitoring, review and verification of national implementation through the submission of regular national reports and communications which are subject to an independent third-party review by Expert Review Teams (ERT).[12] The Protocol also put in place a robust non-compliance procedure to promote, facilitate and enforce compliance with Parties' commitments.[13]

With time, the Kyoto Protocol proved highly inadequate as an international legal response to the climate change crisis. This was not only in terms of the number of countries subject to its regime of timetables and targets, but also in terms of its coverage of total global GHG emissions. At inception, the first commitment period comprised 37 industrialized countries and covered 60% of total global GHG emissions. The USA which was the largest emitter of GHGs at the time did not become a Party to the Protocol. China and India were outside its framework because they were non-Annex I Parties. At the end of the first commitment period in 2012, the Protocol covered only 25% of total global emissions. Moreover, the second commitment period established through the Doha Amendment covered only 15% of such emissions following the decision of the Russian Federation, Japan and New Zealand not to assume any further commitments and the withdrawal of Canada from the Protocol. Thus, by 2013, the major emitters of GHGs and many of the world's leading economies outside Europe were not subject to the Protocol's regulatory framework. Parties to the UNFCCC decided that a more broad-based and inclusive approach was imperative. This realization led to the negotia-

10 UNFCCC, Article 11.1.
11 KP, Article 11; PA, Article 9.8, UNFCCC COP Decision 1/CP. 21.
12 UNFCCC (2005). Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its first session. Decision 22/CMP.1: https://unfccc.int/resource/2005/cmp1/eng/08a03.pdf
13 UNFCCC (2005). Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its first session. Decision 27/CMP.1: https://unfccc.int/resource/2005/cmp1/eng/08a03.pdf

tion and adoption of the Paris Agreement in 2015.

The Paris Agreement was adopted on 12 December 2015 at the UNFCCC COP 21. It entered into force on 4 November 2016 and currently has 195 Parties. The Paris Agreement is applicable to all Parties and thus brings all nations together under one international legally binding framework in order to strengthen the global response to the climate change crisis.

The Agreement establishes a global goal of holding the increase in global average temperature to well below 2 degrees Celsius above pre-industrial levels and pursuing efforts to limit the increase to 1.5 degrees (Article 2). In order to realize this global goal, Parties aim to reach global peaking of GHG emissions as soon as possible so as to achieve net-zero emissions by the second half of this century (Article 4.1). However, recent scientific assessments indicate that to limit global warming to 1.5 degrees Celsius would require GHG emissions to peak by 2025 at the latest and decline 43% by 2030.[14]

The core obligation under the Agreement is for each Party to "*prepare, communicate and maintain*" successive nationally determined contributions (NDCs) that it intends to achieve (Article 4.1). This represents the Party's contribution to the global effort to combat climate change. The regime operates on a five-year cycle and the first NDCs were submitted in 2020 and successive NDCs are to represent a progression beyond a Party's current NDC (The Paris Agreement and NDCs). Both the IPCC's Sixth Assessment Report 2023 (AR6) and UNEP's Emissions Gap Report 2022 note that there is a significant gap between the current NDCs and what is required for a pathway towards the realization of the Paris Agreement's global temperature goal. The IPCC's AR6 states that "A substantial 'emissions gap' exists between global GHG emissions in 2030 associated with the implementation of NDCs announced prior to COP26 and those associated with modelled mitigation pathways that limit warming to 1.5 degrees Celsius with no or limited overshoot or limit warming to 2 degrees Celsius assuming immediate action".[15] For its part the UNEP Emissions Gap Report shows that updated national pledges since COP26 make a negligible difference to 2030 emissions and concludes that policies currently in place point to a 2.8 degrees Celsius temperature rise by the end of the century. At its fourth session in 2022, the COP serving as the meeting of the Parties to the Paris Agreement recognized that limiting global warming to 1.5 degrees Celsius requires rapid, deep and sustained reductions in GHG emissions of 43% by 2030 relative to 2019 levels and emphasized the need for increased efforts to collectively reduce emissions through accelerated action and implementation of domestic mitigation measures, including the submission of new or updated NDCs by the fifth meeting of the Parties in 2023.[16]

Parties self-differentiate through NDCs, in light of different national circumstances. Submitted NDCs reflect a range of measures:

- Absolute economy-wide emission reduction targets;
- Emission reduction targets relative to business-as-usual scenarios;
- Sectoral emission reduction targets – transport, industry, agriculture, energy, etc.;
- Emissions intensity of GDP;
- Long-term plans and strategies;
- Energy intensity targets;
- Enhancement of renewables;
- Enhancement of forest stocks, etc.

Developed countries are to continue to undertake economy-wide absolute emission reduction targets while developing countries are to continue to enhance their mitigation efforts but move over time to economy-wide absolute targets (Art. 4.4). Least developed countries (LDCs) and small island developing States (SIDS)

14 https://unfccc.int/process-and-meetings/the-paris-agreement.
15 IPCC, Climate Change 2023, Synthesis Report: https://ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf, para. A.4.3
16 CMA Decision 1/CMA. 4, paragraphs 15, 21 and 22. (FCCC/PA/CMA/2022/10/Add.1)

may prepare and communicate strategies, plans and actions for low GHG emissions development reflecting special circumstances (Art. 4.7).

NDCs are recorded in a public registry maintained by the UNFCCC secretariat. A Party may at any time adjust its NDC with a view to enhancing its national ambition. Parties are required to implement domestic mitigation measures in order to achieve the objectives of their NDCs.

In addition to NDCs, the Paris Agreement also provides that Parties should strive to formulate and communicate long-term low GHG emission development strategies taking into account the CBDR RC principle and in light of different national circumstances. Although not mandatory, the long-term low GHG development strategies place the NDCs into the context of a country's long-term planning and its development priorities, providing a vision and trajectory for national development.

The Paris Agreement also addresses the following issues: adaptation to the adverse effects of climate change; loss and damage associated with the adverse effects of climate change; an enhanced transparency framework; and means of implementation – financial resources, technology development and transfer, and capacity-building.

The Paris Agreement establishes a global goal on adaptation of enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change (Article 7.1). This goal is to be realized through, inter alia, the following activities and processes: significantly strengthening national adaptation actions and efforts, including through increased support and international cooperation; the development and implementation of national adaptation plans and the preparation and submission of "adaptation communications" outlining priorities, support needs, plans and actions; sharing information, good practices, experiences and lessons learned; national assessment of climate change impacts and vulnerability and the identification of priority actions; enhancing support to developing countries; and strengthening scientific knowledge on climate change. The Glasgow-Sharm el Sheikh Work Programme on the global goal on adaptation launched in 2021 by Decision 7/CMA.3 maps out how the global community can enhance adaptive capacity, strengthen resilience and reduce vulnerabilities associated with climate change.[17] The fifth session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA5) which took place in Dubai in November – December 2023, in conjunction with COP28, adopted the framework for the global goal on adaptation with specific targets to be achieved by 2030.[18] (More information on #Adaptation).

The Agreement establishes a framework for the international community to address the issue of loss and damage associated with the adverse effects of climate change (Article 8). The regime of loss and damage does not however contemplate liability or compensation for damage. These were expressly excluded by the COP decision that adopted the Paris Agreement.[19] It provides for international cooperation and facilitation to enhance action in the following key areas: early warning systems, emergency preparedness, slow onset events, risk assessment and management, and risk insurance. The Warsaw International Mechanism for Loss and Damage Associated with Climate Change was established at COP 19 with the mandate of enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage; strengthening dialogue, coordination, coherence and synergies among relevant stakeholders; and enhancing action and support, including finance, technology and capacity building. UNFCCC COP27 and Paris Agreement CMA4 established new funding arrangements and a fund for assisting developing countries that are particularly vulnerable to the adverse effects of climate change in responding to loss and damage.[20] At COP28 and CMA5 which took place in Dubai in November – December 2023, both the COP and the CMA adopted decisions regarding the operationalization of the funding arrangements for responding to loss and

17 FCCC/PA/CMA/2021/10/Add.3
18 FCCC/PA/CMA/2023/L.18
19 Decision 1/CP.21, para. 51: see Report of the Conference of the Parties on its twenty-first session:https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf.
20 COP Decision 2/COP.27, paras. 2 & 3 – Doc. FCCC/COP/2022/10/Add.1; CMA Decision 2/CMA.4, paras. 2 & 3 – Doc. FCCC/CMA/2022/10/Add.1

damage, including a fund, and several countries announced financial pledges to the fund.[21]

The Paris Agreement strengthens the existing framework under the Convention relating to the provision of financial resources, technology development and transfer, and capacity building for developing countries. On finance, the Agreement reaffirms the obligations of developed countries under the UNFCCC but also innovates in several respects (Article 9). It strengthens the reporting and verification of the provision of financial resources by requiring developed countries to submit biennial reports on support provided and the projected levels of public finance to be provided. It also encourages voluntary contributions from other Parties. At COP 16 held in Cancun in 2010, developed countries committed, in the context of meaningful mitigation actions and transparency on implementation, to the goal of mobilizing jointly USD 100 billion per year by 2020 to address the needs of developing countries.[22] This goal was re-affirmed in 2015 by COP Decision 1/CP.21 that adopted the Paris Agreement. In the same decision, Parties agreed that prior to 2025 the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) shall establish a new collective quantified finance goal from a floor of USD 100 billion per year.[23]Through its decision 9/CMA.3, the CMA initiated a process and an ad hoc work programme for setting a new collective quantified goal on climate finance by 2025.[24]

On technology development and transfer, the Paris Agreement establishes a technology framework to provide overarching guidance to the work of the Convention's Technology Mechanism in promoting and facilitating enhanced action on technology development and transfer (Article 10.4). CMA decision 15/CMA.1 elaborated and adopted the technology framework under the Agreement. The key themes of the framework are: innovation, implementation, enabling environment and capacity building, collaboration and stakeholder engagement, and support. Contemplated actions and activities include supporting countries in incentivizing innovation; promoting development, deployment and dissemination of climate technologies; facilitating the preparation of technology needs assessments (TNAs); assisting countries to create enabling policy environments to incentivize technology development and transfer; and enabling collaboration between the Technology Mechanism and the Financial Mechanism for enhanced support for technology development and transfer.[25]

Capacity building is critical to the realization of the goals of the Paris Agreement. Many developing countries' NDCs have identified capacity-building as a priority issue. These countries require capacity-building at the individual, institutional and systemic levels. The Paris Agreement seeks to enhance the capacity and ability of developing countries, in particular LDCs and SIDS, to take effective climate change action (Article 11). It requires that capacity-building should, inter alia, be country-driven; be responsive to national needs; foster country ownership; be guided by lessons-learned; and be participatory, cross-cutting and gender-responsive. Developed countries are enjoined to enhance support for capacity-building actions in developing countries. Developing countries are required to communicate regularly the progress made on implementing capacity-building plans, policies, actions and measures. Capacity-building activities are to be enhanced through institutional arrangements established under the Agreement. COP Decision 1/CP. 21 established the Paris Committee on Capacity Building (paragraph 71) with the aim to address gaps and needs in implementation of capacity building in developing countries and further enhancing capacity building efforts, including with regard to coherence and coordination of activities under the Convention. The Paris Committee on Capacity Building also serves the Paris Agreement pursuant to Decision 3/CMA.2 (paragraph 3).

Reporting, review and verification of national implementation is undertaken through an enhanced transparency framework applicable to all Parties (Article 13 and Decision 18/CMA.1). Regular reporting of information by Parties on the implementation of their commitments enables the assessment of individual and collective progress towards the achievement of national objectives and global goals. The enhanced transparency

21 See FCCC/CP/2023/L.1 & FCCC/PA/CMA/2023/L.1
22 Decision 1/CP.16, The Cancun Agreements: (FCCC/CP/2010/7/Add.1), para. 98.
23 Decision 1/CP.21, para. 53: (FCCC/CP/2015/10/Add.1): https://unfccc.int/resource/docs/cop21/eng/10a01.pdf.
24 See Doc. FCCC/PA/CMA/2021/10/Add.1, para. 1-3
25 Decision 15/CMA.1, Annex. (Doc. FCCC/PA/CMA/2018/3/Add.2)

framework under the Paris Agreement consists of the provision of information by Parties through their biennial transparency reports (BTRs); review of the information by a technical expert review team; and a political peer review process known as "facilitative multilateral consideration of progress". The latter is an interactive dialogue between the Party under review and other Parties regarding its progress towards achieving its commitments under the Paris Agreement.

A mechanism to facilitate implementation and promote compliance is established under Article 15 of the Agreement and consists of an expert-based committee. It is conceived as facilitative in nature and is required to function in a manner that is transparent, non-adversarial and non-punitive. The overall objective is to assist Parties to come back to a state of compliance with their obligations. Thus, the modalities and procedures for the effective operation of the Committee adopted by decision 20/CMA.1 are markedly less robust than the compliance regime under the Kyoto Protocol. There is no Party-to-Party trigger, no technical expert review team trigger, and the Committee cannot impose sanctions and penalties in cases of non-compliance.[26] The Committee is mandated to take the following measures with a view to facilitating implementation and promoting compliance:

- engage in dialogue with the Party concerned with a view to identifying challenges, making recommendations and sharing information;
- assist the Party in the engagement with the appropriate finance, technology and capacity-building bodies and arrangements;
- make recommendations to the Party concerned with regard to challenges and solutions;
- recommend the development of an action plan; and
- issue findings of fact in relation to matters of implementation and compliance.27

As regards systemic issues of implementation and compliance faced by a number of Parties under the Paris Agreement, the Committee is mandated to identify these and bring them and any recommendations to the attention of the CMA.

The Paris Agreement also establishes a novel process called "the global stocktake" (GST) to periodically assess the collective progress towards achieving its purpose and long-term goals (Article 14). The process is to be comprehensive, covering mitigation, adaptation and means of implementation. Its outcomes are to inform global efforts to address climate change, including by enhancing international cooperation, and to enable individual Parties to review and update their NDCs with a view to strengthening international response to climate change. The first global stocktake took place at COP28/CMA5 in November – December 2023 and subsequent GSTs will take place every five years thereafter. While acknowledging that significant collective progress towards the Paris Agreement temperature goal has been made, the CMA5 decision on the GST (FCCC/PA/CMA/2023/L.17) notes with significant concern that, despite progress, GHG emissions trajectories are not yet in line with the temperature goal of the Agreement. The decision consequently establishes specific targets for Parties with regard to both mitigation and adaptation actions, including transitioning away from fossil fuels in energy systems.

National Policy and Legislative Frameworks

Significant policy and legislative developments to address the climate change crisis have taken place in many countries in the past decade. The adoption of the Paris Agreement in 2015 gave new impetus to these developments. Many countries have adopted either comprehensive climate change policies and laws or adopted legislation and policies focused on specific sectors or issues. Pakistan, Sweden, Ireland, Mexico, Paraguay, Kenya and Finland, amongst others, have adopted such legislation. Such comprehensive/framework climate change legislation address, more or less, the following themes:

- National climate goals and objectives;
- Carbon budgets and targets for specific economic sectors;

26 Decision 20/CMA. 1, Annex, para. 4.
27 Decision 20/CMA. 1, Annex, para. 30.

- Operation of carbon markets;
- Institutional arrangements;
- National and sub-national action plans and strategies for mitigation and adaptation;
- Climate risk assessments and monitoring;
- Climate funds;
- Mainstreaming climate change into national planning and decision-making;
- Public participation and access to justice;
- Education, training and public awareness.

Other countries such as Argentina, USA, Australia, Fiji and Egypt also have laws that address specific sectors or issues such as transport, renewable energy, energy efficiency, adaptation and disaster risk reduction, climate funds, and stationary sources of emissions, etc.

Many developing countries will require technical assistance and advisory services either to develop new climate change legislation or to revise existing laws as well as to strengthen institutional arrangements in light of the demands of the Paris Agreement. The Law and Climate Change Toolkit developed by the UNFCCC secretariat, UNEP and the Commonwealth Secretariat is a global resource to assist countries establish legal frameworks necessary for effective national implementation of the Agreement. The online platform allows countries to access climate-related legislation from many countries; to assess, through the interactive online tools, their own legislative needs and priorities; and to see how other countries have addressed similar issues. This Toolkit is currently being refined and updated, and the new enhanced version will soon be available on UNEP-LEAP.

Further, UNEP, UNDP, and the UNFCCC have developed a Practical Toolbox on Building Circularity into Nationally Determined Contributions to support countries to assess, prioritize, integrate, and. implement circular economy interventions in their updated NDCs to enhance ambition and accelerate implementation, while supporting a just and inclusive transition. The project includes the development of a digital toolbox and user guide, national piloting of the toolbox, and the organization of regional capacity building workshops in 2023.

The UNFCCC secretariat does not engage in technical assistance and capacity-building activities at the national level. However, the constituted bodies and a number of work programmes established under the UNFCCC provide space and opportunity for UN entities, IGOs and other interested stakeholders to collaborate in the identification of country needs and priorities and the provision of technical assistance, capacity-building and advisory services where required. These constituted bodies include the Paris Committee on Capacity Building, the Adaptation Committee, the Technology Executive Committee, the Executive Committee of the Warsaw International Mechanism for Loss and Damage, and the Climate Technology Centre and Network. International organizations such as UNEP, the World Bank Group, FAO, UNDP, GEF and GCF undertake activities or provide financial support to promote climate action and strengthen national capacities and legal frameworks.

Possible areas of intervention under Montevideo Programme V could include:

- Assisting Governments to develop new legislation establishing national climate change goals and objectives; defining domestic measures to implement NDCs; providing for mitigation and adaptation planning and the mainstreaming of climate change into national and sectoral policies; establishing a framework for climate risk assessment and addressing loss and damage; and establishing frameworks for the operation of carbon markets and non-market approaches;
- Capacity-building for effective implementation of climate change laws and strengthening institutions;
- Developing studies and tools on climate change laws and their implementation with a view to providing guidance to Governments and stakeholders;
- Information sharing and awareness-raising;
- Education and training.

Climate Change Litigation

The IPCC Working Group III in its contribution to the Sixth Assessment Report 2022 (AR6) concluded that climate-related litigation is growing and has, in some cases, influenced the outcome and ambition of climate governance in a number of countries.[28] J. Setzer and C. Higham note that globally the cumulative number of climate change-related litigation cases has more than doubled since 2015 and that in the last eight years alone some 1200 cases have been filed. Litigation is increasingly becoming an instrument of choice of public interest groups or individuals to enforce or enhance climate change commitments made by Governments within the framework of the international climate change treaties. Several cases have resulted in Governments being required to take measures consistent with global climate change goals and objectives. In the 2015 Dutch case of *Urgenda Foundation v. State of the Netherlands* the Urgenda Foundation sued the Government to require it to do more to prevent global climate change. The lower Court ordered that the State limits GHG emissions to 25% below 1990 levels by 2020 and that the Government's existing pledge of 17% reduction was insufficient to meet The Netherland's fair contribution toward the global temperature goal under the climate change treaties. This decision was upheld by the Supreme Court in December 2019. In the 2020 case of *Neubauer, et al. v. Germany* the Federal Constitutional Court set aside parts of the Federal Climate Protection Act 2019 as being incompatible with fundamental rights for failing to set sufficient provisions for emission reductions beyond 2030. Underlining that the legislature must follow a carbon budget approach to limit warming in accordance with the global temperature goal and finding that the legislature had not proportionally distributed the budget between current and future generations, the Court affirmed that "one generation must not be allowed to consume large portions of the CO_2 budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom." Similarly, in *Notre Affaire a Tous & Others v. France* (2021) the Administrative Court of Paris ordered the State to take immediate and concrete action to comply with its commitments on cutting carbon emissions. Lastly, in the 2016 India case of *Mahendra Pandey v. Union of India*[29], the National Green Tribunal on a finding that the Delhi government had failed to formulate and implement an Action Plan on Climate Change in accordance with the requirements of the National Action Plan on Climate Change, issued notices to the Delhi government to prepare and submit to the Ministry of Environment, Forest and Climate Change for approval its Action Plan on Climate Change.

In several other instances, cases are brought against governments or companies in order to enforce climate standards. For example, in the 2019 Netherlands case of *Milieudefensie et al v. Royal Dutch Shell plc* the plaintiffs sought a ruling that Shell must reduce its CO2 emissions by 45% by 2030 compared to 2010 levels and achieve net zero by 2050, in line with the Paris Agreement. The Hague District Court ordered Shell to reduce its emissions by 45% by 2030, relative to 2019, across all activities including both its own emissions and end-use emissions. The Court based its decision on the standard of care contained in the Dutch Civil Code that obligated Shell to prevent dangerous climate change through its policies, emissions, and the con-

28 IPCC, Climate Change 2022: Mitigation of Climate Change, Summary Report for Policy-makers, WG III Contribution to IPCC AR6, para. E3.3

29 https://climatecasechart.com/non-us-case/mahendra-pandey-union-of-india

Additional Resources on Climate Change-related Litigation

- https://climate-laws.org
- https://leap.unep.org/knowledge/legislation-and-case-law
- https://judicialportal.informea.org/jurisprudence
- Introductory Course on Climate Rights Litigation

sequences of its emissions, as well as on its human rights and international and regional obligations.

Many of the climate-related cases have been based on the interface between climate change and human rights. The adverse effects of climate change impact on the enjoyment of several fundamental human rights such the rights to a healthy environment, to life, to health, to property, and to culture. In its 2023 *Opinion,* the Korean National Human Rights Commission stated that the State should recognize the protection and promotion of the human rights of all peoples in the context of the climate crisis as a fundamental obligation of the State and recognized that the individual fundamental rights violated by the climate crisis are all human rights. The *Milieudenfensie Case,* the *Notre Affaire a Tous Case,* the *Urgenda Foundation Case,* the 2022 Brazilian *PSB et al v. Brazil (on Climate Fund)* case are all partly based on a violation of some fundamental human rights.

At the international level there are two significant developments. In March 2023, the UN General Assembly, through its resolution A/RES/77/276 and based on Article 96 of the UN Charter, requested the International Court of Justice (ICJ) for an advisory opinion on the obligations of States with respect to climate change. The advisory opinion is to address the obligations of States under international law to ensure the protection of the climate system and parts of the environment as well as the legal consequences under those obligations where significant harm is caused with respect to other States and peoples and individuals of present and future generations. Secondly, in December 2022 the Commission of Small Island States on Climate Change and International Law requested an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS) regarding the obligations of States Parties to the United Nations Convention on the Law of the Sea (UNCLOS): (a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects of climate change; and, (b) to protect and preserve the marine environment in relation to climate change impacts[30]. UNEP was among the international organizations that submitted legal briefs to inform decision-making at the ICJ and ITLOS on these requests. The anticipated advisory opinions are likely to reinforce existing international climate change legal regime and significantly influence the behaviour of States going forward.

Legal Responses to Address the Pollution Crisis

The International Legal Framework

The global community has recognized the urgent need to combat pollution in its various forms ranging from air and marine pollution to the regulation of hazardous wastes and substances. This recognition has led to the establishment of a network of MEAs, buttressed by the principles of international environmental law. These agreements represent a collective commitment to tackle pollution comprehensively.

30 ITLOS, Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law: https://www.itlos.org/fileadmin/itlos/documents/cases/31/written statements/2/C31-WS-2-2IUCN.pdf.

Chemicals, Waste and Hazardous Substances

1. Stockholm Convention on Persistent Organic Pollutants

The principle of prevention is at the core of the global commitment in tackling pollution. It is particularly crucial in addressing hazardous substances, including industrial chemicals and pesticides. This principle aligns with MEAs that focus on accident prevention, preparedness and response, emphasizing the control of production, use and risk assessment. The Stockholm Convention (POPs Convention) is a notable example of the application of the prevention principle. It addresses industrial POPs, pesticide POPs and unintentional POPs that persist in the environment for extended periods, disperse widely, accumulate in the adipose tissue of living beings, and pose detrimental effects on human health and ecosystems.

Signatory States are under a binding duty to implement measures aimed at mitigating or eradicating the release of POPs into the environment, with the primary objective of preventing adverse ecological and human health impacts (Article 3). It is incumbent upon States to institute and enforce regulatory measures to reduce or eliminate stockpiles and wastes (Article 6). Parties are further encouraged to use Best Available Techniques (BAT) and Best Environmental Practices (BEP) set forth in the national action plans in the handling of POPs in order to reduce or eliminate releases from unintentional production (Article 5). Specific exemptions related to the production and utilization for acceptable purposes is a latitude granted to Parties but are subject to the rigorous criteria set forth in the Convention (Article 4). Parties are further encouraged to propose the inclusion or listing of chemicals in accordance with the screening criteria in Annex D of the Convention (Article 8).

A fundamental obligation under the Convention lies in the exchange of information through national focal points concerning their respective POPs-related measures and undertakings among the Parties, the Secretariat and pertinent international entities (Article 9). Parties to the Convention are also entrusted with the responsibility of fostering public awareness and disseminating knowledge on the hazards associated with POPs (Article 10). To further address the issue of POPs particularly in developing countries, the Convention urges developed Parties to extend technical assistance (Article 12) and financial resources (Article 13) to assist developing nations and those undergoing economic transitions in meeting their obligations.

Article 15 of the Convention lays down the obligation for each Party to report on various aspects of implementation. These reports serve several essential purposes by providing for transparency and accountability; information sharing; assessment of effectiveness (Article 16); and data for decision-making.

Other recent developments made by the Stockholm Convention COP through Decision SC-10/7 and Decision SC-10/9 have significant implications for the management and reductions of POPs. Decision SC-10/7 urges Parties to expedite their efforts in eliminating the use of PCBs in equipment by 2025. This decision places a

STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (POPs) AND PLASTICS POLLUTION

Although the Stockholm Convention is largely focused on persistent organic pollutants (POPs), it also contains provisions relating to specific plastics that include POPs, such as some plasticizers and flame retardants that may be slowly released into the ocean. POPs including PCB, DDT, and dioxins can be absorbed by plastics, and these POPs are regularly found in marine plastic waste. This is a crucial part of the emerging area of plastics governance since it focuses on plastic items that pose serious threats to the environment and human health.

clear and accelerated timeline on the phase-out of PCBs. The implication is that Parties must take immediate action to transition away from PCB use. The decision also emphasizes the need to achieve ESM as waste of liquids containing PCBs and equipment contaminated with PCBs having content above 0.005% by 2028. Parties to the Convention are thus required to develop and implement strategies for the proper disposal and management of PCB containing waste materials, ensuring that they do not pose environmental or health risks. Decision SC-10/9 welcomes guidelines and guidance on BAT and BEP. The implication is that Parties are encouraged to adopt and implement BAT and BEP as effective strategies for mitigating the impact of POPs. BAT and BEP provide a framework for minimizing the environmental footprint of POPs throughout their lifecycle.

2. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

The Rotterdam Convention, was adopted in 1998 and entered into force in February 2004. It plays a pivotal role in governing the international trade in hazardous chemicals. Its objectives revolve around promoting shared responsibility among its Parties for managing hazardous chemicals to protect human health and the environment from potential harm. The Convention achieves these goals through facilitating the exchange of information about these chemicals and establishing a national decision-making process for their import and export, with subsequent dissemination of these decisions among Parties. It creates legally binding obligations for implementing the Prior Informed Consent (PIC) procedure, transitioning from a voluntary initiative launched in 1989 by UNEP and FAO to a binding international framework. Under the PIC procedure, chemicals are added to Annex III of the Convention (Article 7) based on notifications from different specified regions, leading to the circulation of decision guidance documents to all Parties. Importing Parties are granted nine months to make decisions concerning the future import of these chemicals, ensuring that these decisions remain trade-neutral, applying equally to domestic production and imports (Article 10). Exporting country Parties are responsible for ensuring that their exporters comply with these decisions (Article 11). Article 12 and Annex V of the Convention outline the requirements for export notifications involving banned or restricted chemicals. Exporting Parties must notify importing Parties, who, in turn, must acknowledge receipt within 30 days. To facilitate compliance, a standardized export notification form has been developed by the Secretariat. While Parties are encouraged to use this form, they can also employ existing national-level forms meeting Annex V criteria. Article 13 supplements this by specifying information accompanying chemical exports, encompassing Harmonized Systems Codes (HSM), labelling, and safety data sheets.

The Convention encourages the exchange of information on a broad spectrum of chemicals, mandating Parties to inform others about domestic bans or restrictions on chemicals and facilitating the reporting of issues caused by hazardous pesticide formulations in developing countries or nations in transition (Articles 15 and 16). This multifaceted approach underscores the importance of informed decision-making, transparency, and cooperation among Parties in the international trade of hazardous chemicals.

The effective operation of the Convention involves various players, including Parties and their Designated National Authorities (DNAs), which are designated contact points responsible for administering the Convention (Article 4). The Rotterdam Convention's COP oversees the Convention's implementation, including taking decisions on amendments and the addition of chemicals to Annex III. The Chemical Review Committee (CRC), a subsidiary body of the COP, comprises government-designated chemical management experts who review notifications and proposals, providing recommendations to the COP on adding chemicals to Annex III. The Secretariat plays a vital role in making administrative arrangements, verifying information, and disseminating import responses. Furthermore, the Rotterdam Convention Compliance Committee handles compliance matters, addressing general compliance issues and submissions from Parties, thereby ensuring that the Convention's provisions are effectively enforced.

The COP has taken pivotal decisions to address chemical pollution issues, including upon the recommendation of the Chemical Review Committee, Decision RC-10/7 on the listing of perfluorooctanoic acid (PFOA),

its salts and PFOA-related compounds in Annex III to the Rotterdam Convention. This decision signifies that these chemicals are subject to the PIC Procedure under the Convention, implying that countries importing these chemicals must obtain prior consent from the exporting country, ensuring that importing countries are aware of the associated risks and take appropriate measures for safe handling and use. The decision supports the need for rigorous regulation and information exchange to mitigate the risks associated with PFOA and related compounds. Decision RC-10/13 underscores the importance of cooperation and coordination with other international conventions addressing specific pollutants such as mercury under the Minamata Convention. The decision promotes synergies between conventions to address the pollution crisis comprehensively. This decision further reflects a shared commitment to safeguarding human health and the environment, implying that Parties to the Convention understand that environmental protection requires a multi-dimensional strategy.

Emphasizing public awareness and outreach is a key element in the ongoing efforts to enhance synergies between the Basel, Rotterdam, and Stockholm Conventions, aimed at ensuring the sound management of chemicals across their lifecycles. This approach not only contributes to sustainable development but also plays a pivotal role in safeguarding human health and the environment. At its core, the Convention focuses on promoting the "Right to Know," underscoring individuals' rights to access information and other resources regarding the risks associated with exposure to hazardous chemicals as well as assisting stakeholders in the implementation process. This commitment to public awareness is integral to the PIC Procedure, as outlined in various articles of the Convention (articles 5, 6, 10, 11, 12 and 13) and further facilitated through collaboration with partner organizations and the innovative Safe Planet Campaign. The Convention's multifaceted approach is a vital step toward fostering informed decision-making and strengthening the responsible management of chemicals on a global scale.

3. Basel Convention on the Transboundary Movements of Hazardous Wastes

The polluter pays principle is yet another vital element that places the responsibility on States to not only reduce environmental pollution but also to collaborate in the establishment of liability mechanisms. It is encapsulated in various agreements including the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal which places a strong emphasis on controlling transboundary waste movements and aims to minimize waste generation, ensuring its ESM. Article 4 of the Basel Convention imposes comprehensive obligations on its Parties regarding the transboundary movement of hazardous wastes and their disposal. These obligations encompass notification, prohibition of certain exports, measures to minimize transboundary movement, and the prevention of illegal waste traffic. It emphasizes the need for environmentally sound waste management, legally enforced by Parties, with technical guidelines to be established. Furthermore, the article requires specific actions to phase out hazardous waste exports to non-Annex VII Parties. Notably, it reaffirms that waste management obligations cannot be shifted from waste-generating States to other States. It also recognizes the sovereignty of States over their territorial seas, exclusive economic zones, and continental shelves and encourages periodic reviews to reduce exported hazardous wastes' impacts, particularly on developing countries.

Articles 6, 7, and 8 of the Convention establish a comprehensive framework governing the transboundary movement of hazardous wastes. They emphasize the need for detailed notifications, written consents, and rigorous documentation when shipping waste materials. Article 6 delineates the responsibilities among Parties, emphasizing the requirement for consents from both importing and transit countries. It also introduces provisions for general notifications under specific circumstances and stipulates a duty to re-import in cases where an agreed-upon movement cannot be completed. Article 7 extends the principles outlined in Article 6 to transboundary movements that traverse non-Party States. These articles feature the Convention's core principle of informed and consent-based waste transfers, with a strong emphasis on the responsibility of the State of export should a movement fail to proceed as contracted. Moreover, Article 11 recognizes that Parties may engage in bilateral, multilateral, or regional agreements and arrangements concerning the transboundary movement of hazardous wastes, even with non-Parties. These agreements should align with

the ESM standards mandated by the Convention, with particular consideration for the interests of developing countries. Parties are required to notify the Secretariat of such agreements, past and future, that exclusively involve Parties and control the transboundary movement of hazardous wastes. Importantly, the provisions of the Convention do not impede movements conducted under these agreements, provided they adhere to the Convention's environmental management standards. This emphasizes the flexibility within the Convention to accommodate regional and bilateral initiatives while maintaining its core objectives.

Illegal traffic is defined as any transboundary movement that occurs without adequate notification, consent, or through fraudulent means, or that results in intentional unlawful disposal (Article 9). When illicit transportation happens as a result of the exporter's or generator's acts, the exporting state is obligated to ensure the return or correct disposal of the trash, fostering accountability and environmental responsibility. Similarly, when the importer or disposer causes illicit traffic, the state of import is responsible for ensuring environmentally sound disposal. If accountability cannot be assigned, the interested parties work together to correctly manage the waste. Emphasis is placed on the need for national legislation in preventing and penalising illicit transportation, as well as international collaboration in attaining the Convention's goals, highlighting the importance of tackling illegal waste transfers comprehensively and in a timely manner. The need for international collaboration in attaining environmentally sound hazardous waste management is therefore critical (Article 10). Parties agree to share information, harmonise technical standards, and monitor the effects of waste management on health and the environment. They are actively involved in the development and transfer of technology, with a focus on capacity building through the provision of technical assistance. Parties also collaborate to develop technical norms and raise public awareness. This Article acknowledges the needs of poor nations, encouraging cooperative support for their implementation of Convention provisions and promoting sustainable waste management practises globally.

Article 14 of the Basel Convention addresses critical financial issues, focusing on the establishment of regional training and technology transfer centres adapted to the diverse needs of various regions. To support these centres, the Convention emphasises voluntary funding options. Furthermore, it proposes the establishment of a revolving fund to give temporary assistance during situations caused by transboundary waste transfers or waste disposal. These monetary provisions are intended to improve the Convention's efficacy in managing hazardous wastes and minimising their environmental impact, particularly in the event of an unexpected emergency.

The Basel Protocol on Liability and Compensation is a significant development in establishing liability for damage caused by hazardous waste movements. The Protocol's scope of applicability is defined in Article 3 as damage resulting from incidents during the transboundary movement and disposal of hazardous wastes and other wastes, including unlawful traffic. It enables Contracting Parties to exclude specified transboundary movements that take place inside their national jurisdiction. Except when the importing State is the only Contracting Party, the Protocol covers damage in areas within national jurisdiction. It applies in this scenario after the disposer obtains ownership of the waste. Furthermore, the Protocol does not apply to harm caused by movements commenced prior to the Protocol's entry into force or waste movements that were not notified in conformity with the Convention. Additionally, it does not apply if damage is covered by a bilateral, multilateral, or regional agreement with a liability and compensation regime that meets or exceeds the Protocol's objectives. In this situation, the Parties must declare the non-application of the Protocol. The exclusion provided under this Article does not affect the rights and obligations of Contracting Parties under the Protocol. The provisions outlined in Articles 4 to 11 establish a comprehensive framework for liability and compensation related to transboundary movements of hazardous wastes and other wastes. Article 4 introduces the concept of strict liability, placing responsibility for damage initially on the notifying Party or the exporter until the disposer takes possession of the waste, with exceptions for specific situations, and clarifying that multiple parties can be held liable for the same damage. Article 5 introduces fault-based liability, holding individuals liable for damage resulting from non-compliance with the Convention's provisions or due to their intentional, reckless, or negligent actions.

Article 6 highlights the obligation of anyone in operational control of hazardous wastes to take reasonable steps to minimise damage during an incident, and Article 7 deals with situations in which damage is caused by both Protocol-covered and non-covered wastes, assigning liability based on the proportionate contribution of Protocol-covered wastes in the damage. According to Article 8, those who are held accountable have the right of redress, which enables them to pursue damages from other Parties holding them accountable or through contractual agreements. Contributory fault is also addressed, which states that if the individual who was harmed or a person for whom they are accountable for caused the damage, then compensation may be reduced or denied (Article 9).

Parties are required to adopt measures to implement the Protocol, ensuring non-discrimination based on nationality or residence (Article 10). The Protocol however does not apply in circumstances where other liability and compensation agreements apply to the same transboundary movement (Article 11). Article 15 addresses financial mechanisms for compensation when Protocol coverage is insufficient, allowing for supplementary measures. The Protocol does not affect the general international law principles regarding State responsibility (Article 16). Together, these provisions create a robust legal framework for addressing liability, compensation, and preventive measures in the context of hazardous waste transboundary movements, promoting ESM and protecting against damage caused by such activities.

The Basel Convention's COP decisions have been instrumental in addressing the transboundary movement of hazardous wastes and their ESM. Key decisions have included the "Ban Amendment" of 1995. Following the ratification of Saint Kitts and Nevis and Croatia, the Ban Amendment which restricts the export of hazardous wastes for final disposal to non-OECD countries finally entered into force in December 2019. Other Amendments to address issues like e-waste movement and partnerships further highlight the importance of international cooperation.

Aiming to improve the control of transboundary movements of plastic waste and clarify the scope of the Convention as it relates to such waste, the 14th meeting of the COP to the Basel Convention adopted amendments to Annexes II, VIII, and IX to the Convention.

In addition to the amendments addressing plastic waste, the Basel Convention has established the Plastic Waste Partnership (PWP) to mobilize resources, interests, and expertise from business, government, academia, and civil society to improve and promote ESM of plastic waste at the international, regional, and national levels as well as to prevent and reduce its generation.

THE "BAN AMENDMENT" TO THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

The Basel Convention in its updated form (the Ban Amendment) entered into force in 5 December 2019. The "Ban Amendment" is binding on all Parties to the Basel Convention that have expressed their consent to be bound by it. The "Ban Amendment" prohibits all transboundary movements to States not included in Annex VII of hazardous wastes covered by the Convention that are intended for final disposal and of all transboundary movements to States not included in Annex VII of hazardous wastes covered by paragraph 1(a) of Article 1 of the Convention by each Party included in the proposed new Annex VII (Parties and other States that are members of the OECD, EC, and Liechtenstein).

PLASTIC WASTE AMENDMENTS TO THE BASEL CONVENTION (2021)

The Plastic Waste Amendments to the Basel Convention which entered into force in 2021, classify certain plastic waste streams as hazardous and subject to strict controls on international trade, aiming to curb the dumping of plastic waste in developing countries.

In 2023, recognizing this emerging issue, the Secretariats of the Basel, Rotterdam, and Stockholm Conventions commissioned an independent study which was produced by the University of Wollongong in Australia on Global governance of plastics and associated chemicals. Governments, universities, non-governmental organizations, secretariats of MEAs, UN agencies, and the corporate sector have all contributed invaluable expert input to it. The Norwegian Government generously provided support that made the report possible.

4. The Minamata Convention on Mercury

The precautionary principle embodies the essence of proactive environmental protection. It acknowledges that even in the absence of irrefutable scientific evidence, States must exercise caution when addressing potential risks associated with hazardous substances. This principle finds practical application not only in the Stockholm Convention but also in the Minamata Convention on Mercury. The Minamata Convention is a global treaty aimed at protecting human health and the environment from the adverse effects of mercury. It was adopted on October 10, 2013, and entered into force on August 16, 2017.

Article 3 governs the supply of and trade in mercury. It imposes restrictions on primary mercury mining, allowing existing operations for a limited time under strict conditions. This provision also regulates the export and import of mercury. An essential feature is the emphasis on written consent and certification. Transparency takes centre stage, with detailed reporting requirements. The Article sets up a framework for ongoing evaluation, aligning mercury supply and trade with the Convention's environmental and health protection objectives.

As a pivotal regulatory tool for controlling the use of mercury-added products, Article 4 compels Parties to reduce production, import, and export of such products after specified phase-out dates. Parties who have proactively reduced their usage can adopt alternative measures, promoting early action for mercury reduction. The Article also highlights the importance of managing these products in Part II of Annex A. The Secretariat is enjoined to collect and share information on these products and their alternatives. Periodic reviews ensure the Convention adapts to the availability of mercury-free alternatives. A crucial framework for regulating the use of mercury in manufacturing processes, with the exclusion of processes involving mercury-added products, is established under Article 5 which requires Parties to phase out mercury use in specified manufacturing processes. The Secretariat's role in collecting and sharing information on these processes and their alternatives fosters transparency. Parties are encouraged to address emissions and share technological advancements. The Convention's flexibility is demonstrated through periodic reviews, ensuring continual adaptation, consideration of alternatives, and assessment of environmental and health impacts.

Article 7 of the Convention deals with artisanal and small-scale gold mining (ASGM), particularly where mercury amalgamation is used. Parties involved in ASGM are mandated to reduce mercury use and emissions, with an option to notify the Secretariat if activity exceeds an insignificant level and create a national action plan. This Article encourages cooperation among Parties and organizations to prevent mercury diversion, promote sustainable practices, and explore non-mercury alternatives. It further highlights the importance of sustainable approaches and technology dissemination. Decision MC-4/6 adopted by the Minamata Convention COP carries significant implications for addressing mercury pollution in the context of ASGM. This decision clarifies and refines certain aspects of the Convention's implementation. One of the key implications of this decision is the acknowledgement that there is no acceptable threshold for the management of tailings from ASGM involving mercury amalgamation. This implies that all tailings generated through this mining process, regardless of the volume or mercury content, should be managed in an environmentally sound manner. The decision further emphasizes that all ASGM-generated tailings must be managed in accordance with Article 7. Parties are thus required to develop and implement robust national action plans that address the specific challenges posed by ASGM-related mercury pollution. The decision further provides definitions for "two-tier thresholds" above which tailings from mining are not excluded from the definition of mercury waste under Article 11. Overall the COP decision recognizes the profound risks associated with mercury use in this context and underscores the importance of ESM. It seeks to enhance the Convention's effectiveness and

aligns with the broader objectives of the Montevideo Programme V by providing clear guidance on comprehensive legal frameworks for addressing pollution-related challenges.

The Convention also places critical obligations on Parties to control and reduce emissions of mercury and mercury compounds, particularly from specified point sources (Article 8). It differentiates between new and existing sources, requiring swift adoption of best practices for new sources and the implementation of diverse measures, including emission limits and reduction goals, for existing sources within specific timeframes. Emission inventories and national plans are key elements to ensure transparency and accountability. The guidance from the COP supports Parties in fulfilling these obligations. This Article emphasizes the importance of technical guidance and transparent reporting, and distinguishes between new and existing emission sources for effective regulation.

The Convention focuses on addressing the issue of contaminated sites resulting from mercury and mercury compound pollution placing a strong emphasis on the Parties' commitment to developing strategies for identifying and assessing these sites while underscoring the importance of conducting risk reduction activities in an environmentally sound manner (Article 12). Decision COP3 MC-3/6 has therefore adopted guidance that covers contaminated site management, including risk assessment, public engagement, and cost-benefit analysis. This comprehensive approach reflects the Convention's dedication to managing the historical and ongoing impacts of mercury contamination. Furthermore, the Article encourages international cooperation among Parties to tackle this global environmental challenge effectively.

Financial resources are critical in realizing the Convention's objectives (Article 13). Parties are called upon to provide resources, leveraging domestic and international funding sources, including the private sector. For effective implementation, particularly for developing countries, a Mechanism, incorporating the Global Environment Facility Trust Fund and an international Program has been established. This Mechanism operates under the guidance of the COP, with a clear focus on cost-effectiveness and the reduction of mercury emissions. The regular review of funding levels and mechanisms by the COP are to ensure the Convention's responsiveness to evolving needs.

Furthermore, Article 14 provides for assistance to developing countries by promoting cooperation, technology transfer, and capacity-building, emphasizing the importance of sharing environmentally sound technologies for effective mercury control. These articles collectively reflect the Convention's multifaceted strategy to address mercury pollution by combining financial and technical support, underlining the global community's commitment to sustainable practices and equitable participation in the pursuit of the Convention's goals.

Air Pollution and the Protection of the Ozone Layer

1. The Vienna Convention on the Protection of the Ozone Layer and the Montreal Protocol

The 1985 Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer adopted in 1987 were designed to reduce the production and consumption of substances that deplete the ozone layer in order to reduce their abundance in the atmosphere. The regime regulates the production and consumption of nearly 100 ozone depleting substances (ODS) whose release into the atmosphere impacts the environment and human health. The Protocol provides for the gradual phase-out of these substances with different timetables for developed and developing countries. The substances controlled under the Protocol are listed in Annexes A, B and C. The obligations of States Parties relate to, inter alia:

- Phase-out of listed groups of ODS;
- Control of trade in ODS;
- Establishment of national licensing systems to control exports and imports;

- Reporting requirements;
- International cooperation in research, systematic observations and monitoring;
- Exchange of scientific, technical and socio-economic data.

Article 2 of the Montreal Protocol establishes a series of control measures relating to ODS and Article 6 provides for periodic assessment and review of such control measures. On the basis of such assessments, adjustments with respect to both ozone depleting and global warming potentials of substances may be made by the Parties and decisions taken regarding further adjustments and reductions of production or consumption of specific substances. Articles 2A to 2J introduce a series of phased approaches to manage specific ODSs, reflecting the Parties' commitment to gradual elimination. These articles systematically decrease the calculated levels of consumption and production over time while acknowledging essential needs. They underscore the complexity of balancing environmental protection with societal needs. Consequently, significant flexibilities have been built into the regime in particular for Parties operating under paragraph 1 of Article 5 (developing country Parties). Annexes A, B, C, E and F provide for summaries for control measures under the Montreal Protocol.

THE KIGALI AMENDMENT TO THE MONTREAL PROTOCOL

The 2016 Kigali Amendment to the Montreal Protocol holds profound significance in the context of precautionary principles and the broader crisis of pollution and climate change. This amendment is instrumental in addressing the phase-down of HFC refrigerants which are not only potent GHGs contributing to the climate crisis, but also have a detrimental effect on the ozone layer, emblematic of the pollution crisis. Its significance lies in several aspects. It exemplifies international cooperation, with 197 countries ratifying the agreement, emphasising the global consensus on the need to tackle HFCs as a multifaceted pollutant. The Kigali Amendment also plays a pivotal role in advancing the objectives outlined in the Paris Agreement's Article 2 by striving to limit global temperature increases to 1.5 degrees C and bolstering near-term mitigation efforts. Parties to this Amendment, both developed and developing countries, have entered into binding commitments for a phase-down of HFC consumption and production. The pace and scale of HFC reductions are contingent upon their respective Global Warming Potentials (GWPs). While most developing countries opt for a gradual phase-down starting in 2024, some countries, such as Belarus, Kazakhstan, the Russian Federation, Tajikistan, and Uzbekistan, deferred their initial reductions to 2020. Developed nations, on the other hand, embark on more rapid reductions. China, the largest HFC consumer and producer globally, as well as other significant HFC-consuming nations, have chosen to follow the accelerated schedule. Although there are divergent baselines and reduction timelines, the majority of HFC consumption and production in developing nations will align with the accelerated schedule, contributing to the overarching goal of curbing climate change. This Amendment demonstrates the adaptability of international frameworks like the Montreal Protocol in responding to evolving environmental challenges, reaffirming the relevance of such agreements in addressing the pollution crisis. By bridging the gap between climate and ozone protection, the Amendment aligns efforts to combat two interconnected crises.

2. Convention on Long-Range Transboundary Air Pollution

The cooperation principle underlines the essential interdependence of States in safeguarding the Earth's ecosystem. It mandates States to collaborate in good faith. In Article 3 of the 2001 International Law Commission (ILC) Articles on Prevention of Transboundary Harm from Hazardous Activities, The State of origin of the activities that carry a risk of causing transboundary harm "shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof". The ILC in its Commentary[31] provides that the State of origin has a duty to exercise due diligence in taking preventive or minimizing measures. Whether or not the State of origin has fulfilled its obligations under the current articles will depend on its actions. Nonetheless, where it is not practicable to completely avert severe injury, the obligation of due diligence involved is not meant to ensure that it does not occur. Should such situation arise, the country of origin must make every effort to reduce the danger. It does not, therefore, ensure that the harm will not materialize. Further the ICJ acknowledges in its 1996 *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons States'* general obligations to guarantee "activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."[32]

This principle is found in several MEAs, including the 1979 Convention on Long-Range Transboundary Air Pollution (LRTAP) which specifically addresses the problem of air pollution's transboundary effects and requires Parties to prevent and control long-distance transboundary air pollution to the greatest extent possible. This legal framework emphasizes fundamental principles (Article 2) aimed at protecting human health and the environment by reducing air pollution. Contracting Parties are urged to develop policies and strategies through information exchange, consultation, research, and monitoring (Article 3), facilitating the reduction of air pollutants and transboundary pollution. Articles 4 and 5 require information exchange and consultation between affected and emitting Parties, while Article 6 emphasizes air quality management and control measures. Research and development (Article 7) play a crucial role in reducing emissions and understanding their environmental consequences. Article 8 underscores information exchange, and additionally, Parties engage in monitoring pollution through the cooperative program known as the Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe (Article 9) which provides valuable data and scientific insights (EMEP Protocol). These provisions collectively create a comprehensive framework for international cooperation in mitigating long-range transboundary air pollution, thereby safeguarding both human health and the environment.

In addition to the EMEP Protocol, the Parties adopted several other protocols, each designed to address specific air pollutants and related emission reduction targets (Helsinki Protocol, Sofia Protocol, the 1991 protocol on the control of emissions of VOCs or their Transboundary Fluxes, Oslo Protocol, the 1998 protocol on persistent organic pollutants, and the Gothenburg Protocol). These protocols have been instrumental in advancing policies and actions for emission reductions, encouraging technological innovation, and promoting scientific cooperation amongst Parties, with a view to safeguarding air quality and minimizing environmental harm.

Over the years, the Convention has evolved to address emerging challenges, as exemplified by the adoption of and amendments to protocols and the inclusion of emission-reduction commitments, as well as the recognition of black carbon's impact on air quality and climate change. In essence, LRTAP and its associated protocols underscore the international community's commitment to addressing the complex and transboundary issue of air pollution, promoting sustainability, and protecting the well-being of both people and the environment (Handbook for the 1979 Convention on Long-range Transboundary Air Pollution and its Protocols).

31 2001 ILC Draft Articles at paragraph 7.
32 Paragraph 29 of the Judgment in ICJ Reports 1996, p. 225.

Marine Pollution

1. Convention for the Prevention of Pollution from Ships

Marine pollution poses a significant threat to the health of oceans and coastal ecosystems. One of the major factors contributing to the degradation of the world's oceans arises from international trade and maritime activities, in particular maritime shipping. The issue of marine pollution was discussed during the 1972 UN Conference on the Human Environment. The 1973 Convention for the Prevention of Pollution from Ships (MARPOL) is a landmark international treaty designed to mitigate marine pollution caused by ships. Following a series of tanker incidents between 1976– 1977, the 1978 MARPOL Protocol which incorporated the parent Convention was adopted given that the 1973 MARPOL Convention was yet to come into effect. On October 2, 1983, the amalgamated instrument became operative. A new Annex VI was added to the Convention in 1997, and on May 19, 2005, the Protocol amending the Convention came into effect. Over time, MARPOL has been modified. There are currently 6 technical Annexes to the Convention, which contain laws aimed at preventing and minimizing pollution from ships, both accidental and from routine operations.

- Annex I Oil Pollution Prevention Regulations (1983): primarily focuses on preventing pollution from operational measures and accidental releases. In 1992, significant amendments were made, introducing a phase-in schedule for the conversion of existing single-hull oil tankers to double hulls which was aimed at enhancing oil spill prevention. The initial 1992 phase-in schedule was later revised in 2001 and 2003. The requirement for double hulls applies to new tankers meaning that they must be constructed in such a manner to prevent oil spills.
- Annex II Bulk Noxious Liquid Substance Pollution Control Regulations (1983): provides for the discharge criteria and controls for noxious liquid substances carried in bulk. Approximately 250 substances have been assessed and listed in the Convention. Ships are only permitted to discharge residues from these substances into receiving facilities once specific requirements, which vary depending on the categorization, have been met. Notably, within 12 miles of the closest land, no discharge of residues containing toxins is permitted. This is a crucial provision to protect coastal waters and the marine environment.
- Annex III Prevention of Pollution by Hazardous Substances Carried by Sea in Packaged Forms or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons Regulations (1992): includes detailed specifications covering various aspects such as stowage, packing, labelling, marking, documentation, quantity restrictions, exceptions and notifications. It defines "harmful substances" as chemicals that meet specific requirements in Appendix III or are listed as pollutants in the International Maritime Dangerous Goods Code (IMDG Code).
- Annex IV Prevention of Shipboard Sewage Pollution (2003): includes detailed specifications to prevent sewage pollution of the sea. It strictly prohibits the discharge of sewage unless the ship is equipped with an authorized sewage treatment plant or discharges comminuted and disinfected sewage using an authorized system at a distance of more than 4 nautical miles from the closest land. Untreated sewage must be discharged more than 12 nautical miles from shore emphasizing the need for responsible sewage management at sea (Regulation 8(1)(a)).
- Annex V Prevention of Pollution by Garbage from Ships (1988): comprehensively addresses various types of shipboard waste and outlines specific disposal methods and minimum distances from land, aiming to protect marine environments. Notably, the Annex introduces a significant prohibition: a comprehensive ban on disposing of all forms of plastics into the sea. This restriction reflects the growing global concern for plastic pollution in oceans and highlights the International Maritime Organization's (IMO) commitment to mitigating the adverse impacts of maritime activities on marine ecosystems.
- Annex VI Prevention of Air Pollution from Ships (2005): it sets strict limits on nitrogen oxide (NOx) and sulphur oxide (SOx) emissions and prohibits the release of ozone-depleting compounds. Notably, it designates Special Emission Control Zones (SECAs) with even more stringent regulations in sensitive areas. Furthermore, the introduction of mandatory operational and technological energy efficiency measures in 2011 emphasizes its commitment to reducing GHGs and aligning with global climate goals, reflecting a comprehensive and evolving approach to environmental protection within the maritime industry.

Violations of MARPOL regulations can result in penalties and sanctions against ship operators and owners (Article 4 & 6), reinforcing its role as a critical legal framework for safeguarding the marine environment. Additionally, the Convention promotes technical cooperation, in consultation with the IMO and other international bodies, with assistance and coordination by the Executive Director of UNEP (Article 17).

Notably, UNEA has adopted four key resolutions addressing Marine plastic debris and microplastics. These resolutions not only highlight the urgency of addressing plastic pollution but also stress the imperative need for comprehensive actions to reduce marine plastic debris. Such actions include reducing plastic production, improving waste management systems and circular economy practices. Considering this persistent issue, the global community is called upon to promote international cooperation, aligning seamlessly with the overarching goals of Montevideo Programme V. This decision has already been implemented at the national level in some jurisdictions.

2. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

Another international agreement that addresses marine pollution is the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, often referred to as the "London Convention" and entered into force in 1975. Notably, the fact that 87 States are Parties to this Convention underscores its global importance and the collective commitment to addressing marine pollution through a cooperative and coordinated approach. It prohibits the dumping at sea of wastes that are on its Annex I (black list), Annex II (grey list), or all other wastes without first obtaining a general permit or a specific permit. National governments bear significant responsibilities under the Convention including the implementation of measures to minimize the ecological footprint of waste disposal activities and adherence to stringent conditions when seeking authorization for dumping waste at sea. Each Contracting Party is required to apply the London Convention to any vessels and aircraft that are: a) registered in its territory or flying its flag; b) loading in its territorial sea material intended for dumping; c) under its jurisdiction and thought to be engaged in dumping. In addition, Article 210, paragraph 5, of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), provides that "dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate or control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby".

The "London Protocol" was agreed upon in 1996 in an effort to modernize the Convention and eventually replace it. The Protocol outlines a comprehensive framework to prevent, reduce, and potentially eliminate pollution from dumping and incineration at sea. It obligates Contracting Parties, under Article 2, to protect the marine environment both collectively and individually. The Convention introduces a precautionary approach (Article 3(1)) to pollution control and further emphasizes the "polluter pays" principle (Article 3(2)). With the exception of potentially permissible wastes included on the so-called "reverse list" (Annex 1) requiring permits and environmentally preferable alternatives, all dumping is forbidden under the Protocol (Article 4). Article 5 unequivocally forbids incineration at sea, and Article 6 restricts waste export for such purposes. The Protocol's application in internal waters is addressed in Article 7. However, there are exceptions to dumping in the Protocol for safety reasons and environmental emergencies (Article 8). Articles 9-15 address permitting, reporting, compliance, regional cooperation, technical assistance, scientific research, and liability procedures. International cooperation is also promoted under the Protocol (Article 17). The London Protocol's provisions create a robust legal framework for addressing marine pollution, focusing on prevention, collaboration, and scientific research.

There are currently 53 signatories as of the Protocol's entry into force on 24th March 2006. Enforcement of the Convention lies at the core of its efficacy. National focal points as envisioned under the Montevideo Programme V, assume a central role in translating the London Convention and its Protocol's principles into actionable strategies at the state level.

In addition to the aforementioned Conventions, the International Maritime Organization (IMO) has overseen the negotiation and adoption of various international treaties focused on distinct aspects of marine pollution. These agreements include the 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties; the 1990 International Convention on Oil Pollution Preparedness, Response

and Co-operation; the 2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances; the 2001 International Convention on the Control of Harmful Anti-Fouling Systems on Ships; the 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments; the 2007 Nairobi International Convention on the Removal of Wrecks; the 2009 Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships. These treaties collectively address a broad spectrum of issues related to maritime pollution, reinforcing the commitment of the international community and IMO to safeguarding the marine environment through comprehensive and specialized regulations.

Emerging Issues in the Pollution Crisis

1. An International Legally Binding Instrument on Plastic Pollution

In order to prevent harm to ecosystems and human activities that depend on them, as well as to take immediate action towards the long-term elimination of plastic pollution in marine and other environments, the UNEA resolutions, 1/6, 2/11, 3/7, 4/6, 4/7 and 4/9 have affirmed the urgent need to strengthen global coordination, cooperation, and governance. UNEA took a significant step in March 2022 when it adopted resolution 5/14, "End plastic pollution: towards an international legally binding instrument." This resolution marked a significant turning point in the global effort to reduce plastic pollution. It instructed the UNEP Executive Director to establish an intergovernmental negotiating committee (INC) with the aim of adopting a global legally binding instrument to address the plastic pollution challenge. The resolution emphasized the importance of cooperation and coordination amongst multiple regional and international agreements in order to minimize plastic pollution, safeguard human health, and protect the environment. The historic resolution also addresses plastic pollution in the marine environment. While negotiations are ongoing, the push for such a treaty reflects the growing consensus on the need for comprehensive, legally binding measures to regulate plastic production, use and disposal. This approach promotes a secure and long-lasting global circular economy for plastics.

2. Global Framework on Chemicals – For a planet free of harm from chemicals and waste

The management of hazardous chemicals and waste continues to be problematic with new concerns emerging. Issues of concern include:

- Lead in paint
- Chemicals in products
- Hazardous substance within the life cycle of electrical and electronic products
- Nanotechnology and manufactured nanomaterials
- Endocrine-disrupting chemicals
- Environmentally persistent pharmaceutical pollutants
- Perfluorinated chemicals and the transition to safer alternatives
- Highly hazardous pesticides

The UNEP/EA.5/Res.7 adopted in 2022, which focuses on the sound management of chemicals and waste, recognizes that environmental risks, including those related to chemicals and waste, together with climate change, biodiversity loss, and pollution, are interlinked and mutually reinforcing. The resolution emphasizes the integrated management of chemicals and waste to mitigate these risks and advance the SDGs. It acknowledges the unmet 2020 target for sound chemical and waste management and calls for renewed commitment to achieve it. The resolution stresses global coordination, efficient financing, support for developing nations and international cooperation among relevant organizations. A comprehensive list of UNEA resolutions related to hazardous waste can be accessed here. UNEP-LEAP also contains a broader list of

UNEA decisions on waste management.

One of the major achievements of the Fifth International Conference on Chemicals Management (ICCM5) held in Bonn in September 2023 was the acceptance of the "Global Framework on Chemicals – For a planet free of harm from chemicals and waste." This ground-breaking framework represents a comprehensive commitment to address the full lifecycle of chemicals and was crafted through an inclusive international negotiation process involving participation from governments, the private sector, non-governmental organisations, intergovernmental organisations, youth, and academia.[33] It establishes a road map for cooperative efforts between nations and interested parties to address chemical-related problems, including waste and products.[34] It seeks to prevent the illicit trade and trafficking of waste and chemicals, to put national legal frameworks into place, to phase out highly hazardous pesticides from agriculture by 2035, to transition to safer chemical alternatives, to manage chemicals responsibly across sectors, and to improve the transparency and accessibility of information related to chemicals.[35] Furthermore, a funding mechanism, the Global Framework on Chemicals Fund, overseen by UNEP, is planned to help implement the framework with Germany contributing EUR 20 million initially.[36] The Global Framework on Chemicals, adopted by ICCM5, places pollution and waste, in terms of planetary crises, on the same level as climate change and biodiversity loss, highlighting the need for coordinated action.

3. Space Pollution

Space pollution, often referred to as space debris or space junk, has become an emerging concern in the field of environmental law, and there have been notable legal and policy developments. Space pollution arises from activities undertaken by States and non-State actors in outer space. According to NASA, even in the absence of new objects being launched, collisions would still occur due to the increasing amount of debris present in low Earth orbit, increasing the environment's instability and satellite operational risk. This was the case as early as 2005 (Our Common Agenda Policy Brief: For All Humanity – the Future of Outer Space Governance).

In 2021 at the 75th session of UNGA, the Report of the UN Secretary General "Our Common Agenda" (A/75/982) called for a "*Summit of the Future*" that is intended to forge international consensus on what the 'future should look like'. One of the main items discussed in the report is the "peaceful, secure and sustainable use of outer space". According to the report, the use of outer space, a global common resource, holds immense potential for peaceful, secure, and sustainable advancement.[37] Historically, governance structures focused on state-driven space activities, but the current era sees a resurgence of exploration and utilization, with ambitious projects like returning to the Moon, deploying satellites, and harnessing space assets for global problem-solving.[38] Private sector entities are driving this activity, introducing new security, safety, and sustainability challenges.[39] Future generations' fair access to space is under risk due to growing competitiveness and congestion. The governance structures therefore need to change to reflect this changing environment in order to maintain space as a global resource.[40] In 2019, the United Nations adopted guidelines to address long-term sustainability of outer space activities.

Although there are still gaps, recent achievements like the UN Guidelines indicate progress. A comprehensive strategy involving all space stakeholders and combining binding and non-binding regulations is required.[41] An international system for coordinating space traffic and fresh initiatives to stop space weaponization are

33 https://www.unep.org/news-and-stories/press-release/global-framework-agreed-bonn-sets-targets-address-harm-chemicals-and
34 Ibid.
35 Ibid.
36 Ibid.
37 Our Common Agenda at para. 90.
38 Ibid.
39 Ibid
40 Ibid.
41 Ibid at paragraph 91.

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UNITED NATIONS GUIDELINES FOR THE LONG-TERM SUSTAINABILITY OF OUTER SPACE ACTIVITIES

The United Nations Guidelines for the Long-Term Sustainability of Outer Space Activities, adopted in 2019 by the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS), are a crucial framework for promoting the responsible and sustainable use of outer space. These guidelines are designed to combat the escalating problem of space debris, offering recommendations and best practices to mitigate its impact. They stress the prevention of space debris generation, safe behavior in space activities, and effective collision avoidance measures. Transparency, information sharing, and international cooperation are key components. The guidelines aim to secure the long-term sustainability of space activities by preserving outer space for future generations. In an era of increasing space activity, these guidelines provide essential principles and practical guidance for the preservation of outer space and the promotion of peaceful and responsible conduct in space exploration and utilization.

examples of immediate efforts.[42] In order to ensure high-level consensus on the peaceful, secure, and sustainable use of outer space and establish the groundwork for future governance principles, a multi-stakeholder dialogue is suggested in the report.[43] This acknowledges the expanding role of the private sector and the necessity of international cooperation in tackling emerging challenges.

4. Nitrogen Management

UNEA resolutions 4/14 and 5/2 on Sustainable Nitrogen Management reflects a growing concern regarding human-induced reactive nitrogen emissions. These emissions have adverse effects on terrestrial, freshwater and marine ecosystems, contributing to air pollution and GHGs while impacting human health. The resolutions underline the need to coordinate policy at the national, regional and global levels, improve efficiencies in nitrogen use and develop an integrated nitrogen policy. They seek to promote the management of the global nitrogen cycle to benefit food and energy production, environmental quality, climate change mitigation and biodiversity protection and call for better data collection, knowledge and information sharing, training of policy makers and efforts to align multiple policy domains. Member States are encouraged to significantly reduce nitrogen waste globally by 2030 through the improvement of sustainable nitrogen management. A UNEP Working Group on Nitrogen has been constituted by the Executive Director to facilitate the implementation of the resolutions and to strengthen the engagement and ownership of the implementation process by Governments and stakeholders.

National Policies and Legislative Frameworks

National implementation of international legal frameworks and decisions from the COPs/MOPs, is a critical step in addressing the pollution crisis. It involves translating global and regional agreements and decisions of these crucial forums into actionable measures at the national level. This typically involves the development and enforcement of national legal frameworks that align with international commitments.

As global concerns have increased over the enormity and severity of marine pollution, Governments have responded with efforts to identify and implement solutions at the national level. In fact, a general obligation of States to enact laws, regulations, and other measures to reduce marine pollution from various sources is provided by the 1982 UNCLOS (Part XII). MARPOL requires Parties to incorporate its provisions into national legislation, establish enforcement mechanisms, and conduct vessel inspections to ensure compliance. For example, Australia adopted Marine Order 95 (Marine pollution prevention – garbage) 2018 to gives effect to Annex V MARPOL.

Marine plastics pollution has also been addressed in a number of ways including the establishment of regu-

42 Ibid.
43 Ibid.

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latory frameworks to provide incentives, in the form of State aid, for investments in measures aimed at protecting marine and inland waters from microplastics and other pollutants. Sweden for example has adopted Regulation (2018: 496) on state subsidies to reduce emissions of microplastics to the aquatic environment which establishes a framework for incentivizing investments in the protection of marine and inland waters from microplastics and other pollutants. It complies with relevant EU Regulations and allows the Swedish Environmental Protection Agency to provide State aid in the form of grants to be used for technology and measures to clean or prevent the spread of microplastics and pollutants in surface waters, as well as for preparatory studies.

Many jurisdictions have taken steps to combat plastic pollution by implementing bans or restrictions on single-use plastics, such as plastic bags, straws and Styrofoam. In Mauritius the Environmental Protection (Control of single use plastic products) Regulations 2020 introduced regulatory amendments to the 2001 Environmental Act, aiming to enforce a ban on the usage of single-use plastic products. Several countries and international organizations are promoting the concept of circular economy, where plastics are designed for reuse and recycling. This approach minimizes waste generation and environmental harm. Major corporations and industries are making voluntary commitments to reduce plastic use, improve recyclability, and promote circular economies. These voluntary initiatives play a role in shaping international best practices.

The proper treatment, transportation, and disposal of waste are all covered by various laws and regulations at the national level that deal with hazardous waste management. These regulations address issues such as the classification of hazardous waste, waste minimization, secure storage and transit of hazardous waste materials, and environmentally sound waste management techniques in accordance with the Basel Convention. The obligations of waste producers, transporters, and disposal facilities may be outlined in the legislation. Furthermore, such legislation may set obligations for reporting and record-keeping, as well as accountability and enforcement procedures, to hold parties responsible for any harm brought on by inappropriate waste management. Jordan's Waste Management Framework Law No.16 of 2020 focuses on pollution reduction, safeguarding the environment, public health, and sustainable development. It establishes institutional arrangements for implementation and requires permits for various waste activities, ensuring comprehensive regulatory control.

National legislation related to pollutants affecting the ozone layer primarily address issues related to the phase-down of HFC emissions. These laws are designed to implement the obligations set forth in the Kigali Amendment to the Montreal Protocol. These national laws have established rules and regulations for the management, production, and use of HFCs, specifying permissible levels, reporting requirements, and control measures. Other possible measures include the adoption of alternative, low-global warming potential substances and technologies. Bhutan's Regulations on Substances that Deplete the Ozone Layer and Hydrofluorocarbons, 2021, aims to safeguard human health and the environment by regulating ODS and HFCs, including ODS-containing products. The National Environment Commission (NEC) is tasked with formulating policies, strategies, and regulations concerning controlled substances and related products. Bhutan prohibits the production of substances listed in Annex A and Annex B, import of Annex A substances (except for permitted essential uses), and import of products containing ozone-depleting substances. Import of controlled substances, as per Tables A, B, and C, requires an import permit from the National Ozone Unit (NOU). The Regulation additionally covers import registration, record-keeping, disposal, and outlines penalties for violations.

There are a number of tools and resources developed within the context of the Basel, Rotterdam and Stockholm Conventions These include:

- Introductory Manual on the Stockholm Convention
- Guide for the implementation of the Stockholm Convention
- Case Studies on Implementing the Stockholm Convention: Canada, United Republic of Tanzania and Thailand
- Case Studies on Implementing the Rotterdam Convention: Ethiopia, Ghana and Jamaica

- Guide for the Development of National Legal Frameworks to Implement the Rotterdam Convention
- Guide for the Development of National Legal Frameworks to Implement the Stockholm Convention
- Guide for the Development of National Legal Frameworks to Implement the Basel Convention
- Manual for the Implementation of the Basel Convention

National implementation of commitments under international legal frameworks relating to pollution control as well as of decisions/resolutions of relevant international bodies such as UNEA and COPs of MEAs is a process entailing several key steps including:

- Integration of principles and obligations of MEAs: domestication of international principles and norms often requires the development and enactment of new laws and regulations.
- Capacity-building: building capacity within government agencies and amongst relevant stakeholders, including training and awareness raising;
- Budgeting: resource allocation is essential for effective implementation.
- National Action Plans (NAPs): development of NAPs is often required, outlining the national strategy and actions for pollution control.
- Regular data collection and reporting mechanisms: these are vital for monitoring progress and compliance with international obligations.
- Public participation and access to information: as stipulated in numerous MEAs participatory processes and access to information and to justice should also be included in national legislative frameworks.
- Compliance and enforcement mechanisms as well as liability and redress mechanisms for damage are necessary components for an effective implementation regime.
- Coordination with sub-national authorities: given the need to address local pollution sources, effective coordination with local authorities is crucial.
- Periodic reviews and adaptations of national legal frameworks are essential to align with evolving international standards and scientific knowledge.

Litigation and the Pollution Crisis

The current global pollution crisis represents a complex and urgent environmental challenge that impacts the universally recognised right to a clean and heathy environment. Numerous legal instruments and judicial decisions have underscored the significance of safeguarding this fundamental right. Notably, the European Court of Human Rights (ECHR) has added to the body of law governing the right to a clean and healthy environment. In the case of *Lopez Ostra v. Spain*, the ECHR determined that the right to be protected from risks resulting from hazardous industrial activities is included in the right to life, as guaranteed by Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This pivotal decision has set a precedent, reinforcing the interconnection between the right to life and a clean and healthy environment. The ECHR further reiterated this position in *Öneryildiz v. Turkey*. These cases demonstrate the evolving recognition within international jurisprudence of the profound and intrinsic link between human rights and environmental well-being.

Additional Resources for Pollution Policies and Laws

- Marine Litter and Plastic Pollution Legal Toolkit on UNEP-LEAP
- Marine Litter and Plastic Pollution – Legal Frameworks e-learning course
- The Global Partnership on Plastic Pollution and Marine Litter (GPML) Digital Platform
- Lead in Paint Toolkit on UNEP-LEAP
- Law and Cases | InforMEA
- Air Pollution Toolkit on UNEP-LEAP (from early 2024) based on the recent UNEP Guide on Ambient Air Quality Legislation
- InforMEA e-learning course on Plastic Waste and the Basel Convention

Legal systems need to provide access to legal remedies for individuals, public interest groups and communities when the right is violated. Regional frameworks such as the Aarhus Convention and the Escazú Agreement have established and entrench access rights across the European and Latin American and Caribbean regions, respectively. These rights empower citizens to access relevant information and data, participate in public consultations and challenge decisions that may harm their environment and health. Access rights foster transparency, accountability and inclusivity in pollution management processes. The case of Great Lakes United v. Canada (Minister of the Environment) revolved around the interpretation and application of the Canadian Environmental Protection Act (CEPA) vis-à-vis reporting by mining facilities on the release and transfer of pollutants to waste rock and tailings disposal areas. This decision sets an important precedent, demonstrating that government agencies must strictly adhere to their statutory obligations under environmental protection laws, leaving no room for discretionary practices that could compromise vital environmental reporting.

EIA plays a pivotal role in addressing the pollution crisis by providing a structured framework to evaluate the potential environmental consequences of proposed projects or activities. Public participation is another fundamental component of EIAs. These assessments are vital in preventing and mitigating pollution incidents. Jurisprudence underscores the significance of EIAs by recognizing the right to a clean and healthy environment. Courts in various jurisdictions have ruled in favor of stringent EIA requirements to safeguard this fundamental right while also emphasizing the importance of effective public participation in the process. The Save Lamu et al. vs. National Environmental Management Authority and Amu Power Co., Ltd. case in Kenya highlights the importance of comprehensive EIAs in addressing pollution and protecting access rights. The court emphasizes the need for scientifically sound assessments, particularly in environmentally sensitive projects like coal-fired power plants, and the role of public participation in environmental decision-making. Similarly, in the Indian case of T. Muruganandam v. Ministry of Environment & Forests plaintiffs sought a new cumulative impact assessment (CIA) before the approval of a new environmental clearance for a coal-fired power plant. They argued that the initial decision lacked a comprehensive CIA, revealing the project's broader environmental ramifications. The National Green Tribunal ruled that the EIA was insufficient, covering only one season and omitting cumulative effects. The environmental clearance was invalidated and the court mandated a new order contingent on a comprehensive CIA. This case emphasizes the weight of a holistic environmental assessment in complex projects that could lead to pollution.

Enforcement and compliance mechanisms are critical in the fight against pollution. These legal aspects ensure that environmental standards and regulations are not merely paper documents but are actively adhered to by industries, governments and individuals. Enforcement and compliance include:

- regulatory authorities conducting inspections and monitoring, and audits to verify compliance; and
- when violations are detected, penalties and sanctions are imposed.

However, such mechanisms need to be reinforced by proactive measures such as:

- public awareness campaigns;
- incentives for adopting cleaner technologies; and
- capacity-building programs.

These legal tools are vital in creating a culture of responsibility and accountability thereby minimizing pollution and its adverse impacts.

Related to enforcement and compliance in pollution control are liability mechanisms. These mechanisms establish legal responsibility for pollution and its consequences and determine the compensation and remedies owed to affected parties. Liability mechanisms are vital legal instruments to prevent and address pollution effectively, discouraging harmful activities and practices by holding polluters financially responsible. In cases of transboundary pollution, international liability frameworks and treaties play a crucial role in resolving disputes between States, ensuring fair and equitable distribution of responsibility for environmental harm.

The All-China Environment Federation vs. Dezhou Jinghua Group Zhenhua Decoration Glass Co., Ltd. case illustrates the importance of enforcement, compliance, and liability for environmental damage. It notably highlights the role of specialized organizations like ACEF in holding entities accountable for maintaining pollution standards. The allocation of environmental cleanup costs is also an important consideration in the application of the 'polluter pays' principle. An interesting case is Yankee Gas Services v. UGI Utilities in which the court ruled that UGI Utilities (the past operator) should share liability with Yankee Gas Services (the current owner) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The court assigned Yankee Gas a 25% share based on their future use of the property, highlighting the importance of post-contamination plans in cost allocation.

In short, robust enforcement and compliance mechanisms, effective liability frameworks, and environmental organizations' involvement in pushing for stricter pollution standards are imperative in addressing the pollution crisis. Pollution standards are a critical legal aspect of dealing with pollution, ensuring that industries and activities adhere to established limits for pollutant emissions and waste management. By setting specific benchmarks and guidelines for pollution control, they not only limit harmful emissions but also promote the adoption of cleaner technologies and best practices.

International cooperation is essential to address the global pollution crisis effectively. Pollution is transboundary in nature and its consequences affect communities globally. Collaborative efforts at both regional and global levels are critical to establish common standards, share best practices and implement joint efforts in combating pollution. An early but crucial step in the regulation of transboundary air pollution and the emphasis on the balance between environmental protection and international principles, particularly the freedom of the seas, the Trail smelter case (United States, Canada) established the principle that States have a continuous obligation to prevent environmental harm arising from activities within their jurisdictions, emphasizing that no state should use its territory in a manner that causes injury to another state or its properties and persons, and underscoring the importance of international cooperation in addressing cross-border environmental issues. Similarly, the MOX Plan (Ireland v United Kingdom) case highlighted the duty of States to consult and cooperate in environmental matters. Ireland's objections to the UK's plans for a mixed oxide fuel plant led to a dispute over violations of UNCLOS, which call for cooperation between States sharing enclosed sea. The case required provisional measures including collaboration and information exchange between both countries to prevent environmental pollution. Additionally, collaboration could also entail the recognition of foreign judgments that recognize liability of industries. In the 2012 case of Chevron Corp. v. Naranjo the Lago Agrio Plaintiffs in Ecuador sued Chevron for environmental damage from 1964 to 1992. The Ecuadorian trial court issued a $17.2 billion judgment, which Chevron contested, claiming fraud and political interference. Chevron sought to block the judgment's recognition in New York, relying on New York's Recognition Act. The district court granted an injunction, but the Second Circuit reversed it, stating that the Recognition Act does not allow pre-emptive global anti-enforcement injunctions. This case highlights the complexities of enforcing foreign judgments and the importance of procedural safeguards and international collaboration in cases of liability for environmental damage.

Furthermore, organizations such as UNEP provide a platform for nations to come together and discuss strategies, share research and work towards the common goal of reducing pollution. Initiatives like Montevideo Programme V highlight the international community's commitment to addressing the pollution crisis holistically and underscore the need for a coordinated, global approach to protect the environment and public health.

Education is a central pillar of Montevideo Programme V, aimed at addressing the global pollution crisis comprehensively. The program recognizes that effective pollution control starts with informed and empowered individuals and communities. To this end, it provides practical guidance, tools, innovative approaches, and resources to countries, ensuring that they can develop and implement environmental education initiatives. Environmental education equips people with the knowledge and understanding needed to identify, mitigate, and prevent pollution effectively. It also fosters a sense of responsibility and stewardship toward the

environment. By integrating education into its objectives, Montevideo Programme V empowers individuals and communities to take an active role in addressing pollution and contributes to building a more environmentally conscious and responsible global society. This approach aligns with the Sustainable Development Goals (SDGs) and the broader commitment to safeguarding the right to a clean and healthy environment for present and future generations.

Capacity building is another crucial component of Montevideo Programme V. The program acknowledges that merely having strong environmental laws and regulations is insufficient without the capacity to implement and enforce them. It offers guidance and support to countries, enhancing their institutional capabilities and expertise in environmental management. Capacity building helps governments, institutions, and local communities develop the skills and infrastructure needed to address pollution challenges at all levels. By strengthening the capacity to monitor, regulate, and respond to pollution effectively, the Programme would contribute to the realization of the right to a clean and healthy environment as a fundamental human right. Moreover, strengthening the capacity of countries to combat pollution will enable Governments to comply with their international commitments in this area.

Legal Responses to Address Biodiversity Loss

One of the most critical environmental concerns facing our planet pertains to the loss of biodiversity. Biodiversity, encompassing species diversity, genetic diversity within species, and diversity at the ecosystem level, is diminishing at an alarming pace. This development has profound implications for the environment, human well-being, and the global economy.

Critical drivers of biodiversity loss include climate change, pollution from chemicals and waste, land use and land use change, invasive alien species, and over-exploitation of nature's resources. Global average temperatures have risen by 0.7 degrees Celsius due to doubled greenhouse gas emissions since 1980 (UNEP - Nature's Dangerous Decline), causing significant climate change effects on ecosystems and species (CBD - Biodiversity Loss and Climate Change). The Arctic and mountains are most vulnerable, and forests, peatlands, and wetlands are crucial carbon sinks. Cooperation with nature can reduce emissions by over 40% by 2030 (UNEP - Facts About Climate Emergency).

Pollution from chemicals and waste significantly impacts biodiversity and ecosystems, particularly in freshwater and marine habitats (IPBES - Models for Drivers of Biodiversity and Ecosystem Change). Chronic use of non-selective pesticides leads to dwindling plant and insect populations (SAICM Knowledge Platform - Safer Use of Chemicals). Marine plastic pollution has tenfold increased since 1980, impacting marine mammals, seabirds, and turtles(UNEP - Roadmap Toward a Circular Plastics Economy). Atmospheric nitrogen deposition threatens global biodiversity, leading to rising air and soil pollution (IPBES - Models for Drivers of Biodiversity and Ecosystem Change). Addressing biodiversity loss requires reducing pollution and safely managing chemicals and waste.

Invasive alien species (CBD - Invasive Alien Species) are causing a significant decrease in biodiversity (CBD - UNDB Factsheet), disrupting local flora and fauna, and potentially leading to the extinction of native species (IPBES - IAS Media Release). The global economy, reliant on trade and travel, has accelerated the invasions, causing environmental damage exceeding $100 billion annually. International cooperation is crucial to curb these species' translocation (CBD - Invasive Alien Species).

Biodiversity loss is primarily driven by the destruction of forests, wetlands, and natural habitats due to agricultural and urban development. Since 1990, 420 million hectares of forests have been lost (FAO - State of the World's Forests). Agriculture threatens over 85% of species at risk of extinction (UNEP - Facts About Nature Crisis). Re-evaluating farming methods and recovering degraded farmlands can promote ecosystem restoration (UNEP - Beginner's Guide to Ecosystem Restoration).

Unsustainable use of plants and animals threatens billions of people's livelihoods and endangered species and just restoring 15% of priority ecosystems can lower extinction rates (IPBES - Sustainable Use Assessment Published). Halting and reversing land and ocean degradation can have salutary effect on biodiversity and nature loss (UNEP - Ecosystem Restoration).

The International Legal Framework

While international environmental law traditionally focused on single species or general terms like "nature" and "wildlife", the recognition of biodiversity as a distinct and critical concept in legal frameworks is relatively recent. International cooperation is essential in addressing the biodiversity crisis. Many threats transcend national boundaries or occur in areas beyond national jurisdiction and thus call for a global response. Scientific knowledge and information on important drivers of biodiversity loss is incomplete. Cooperation in research and exchange of information and knowledge is therefore essential. Moreover, many biodiversity rich countries lack capacity and resources to address the crisis. Technical and scientific cooperation, capacity building and provision of financial resources are critical enablers in effective implementation of biodiversity policies and laws.

1. The Convention on Biological Diversity

The Convention on Biological Diversity (CBD) represents the central international legal framework for biodiversity conservation. Unlike earlier nature conservation instruments, the CBD adopts a holistic approach that seeks to address both direct and indirect causes of biodiversity loss. It aims to "mainstream" biodiversity considerations into various policy areas. The CBD establishes a comprehensive framework with a three-fold objective: the conservation of biodiversity, the sustainable use of its components, and the equitable sharing of benefits arising from the utilization of genetic resources (Article 1). The treaty promotes cooperation among its States Parties to address biodiversity concerns, both within their national boundaries and in areas beyond national jurisdiction (Article 5). It requires the development of national biodiversity strategies and plans as well as their integration into sectoral policies and plans, calls for the establishment of protected areas, and enjoins Parties to ensure the sustainable use and management of biological resources (Article 6 & 8). Additionally, it encourages ex-situ conservation measures and the cooperation between governments and the private sector for sustainable resource use (Article 9). The CBD underscores public education and awareness (Article 13), as well as scientific and technical cooperation (Article 18). It highlights the importance of equitable access to genetic resources (Article 15), access to and transfer of technology (Article 16), and exchange of information (Article 17) as well as technical and scientific cooperation (Article 18). Financial support and funding mechanisms are central to the treaty, with developed countries committed to providing resources for developing nations, considering specific needs, especially in regions with unique biodiversity characteristics (Article 20).

At the CBD COP 15 in 2022, Parties adopted decision 15/4 the Kunming-Montreal Global Biodiversity Framework (GBF). This pivotal framework, aligned with the SDGs and building upon preceding Strategic Plans established by the Convention, delineates an ambitious roadmap toward achieving the aspirational global vision of a world harmoniously co-existing with nature by 2050. Integral components of this framework encompass four overarching goals for 2050 (Section G) and twenty-three specific targets to be met by 2030 (Section H). The execution of the GBF will be facilitated through a comprehensive body of decisions also adopted at COP 15. These decisions include a monitoring framework for assessing GBF progress (decision 15/5), an enhanced mechanism to strategize, oversee, report on, and evaluate implementation (decision 15/6), financial provisions for carrying out the framework (decision 15/7), strategic blueprints for enhancing capacity development, scientific and technical collaboration (decision 15/8), and an accord regarding digital sequence information linked to genetic resources (decision 15/9). Communication, education, and public awareness play a vital role, promoting biodiversity's values and the Framework's uptake across all sectors (Section K). Continuous reviews and recommendations by the Parties are critical in realizing the GBF's objectives.

The Cartagena Protocol on Biosafety is a supplementary protocol to the CBD which establishes its objective within the context of the precautionary approach enshrined in Principle 15 of the Rio Declaration (Article 1). This objective is to contribute to maintaining an adequate level of protection concerning the safe transfer, handling, and use of living modified organisms (LMOs) resulting from modern biotechnology. These organisms may pose adverse effects on conservation and sustainable use of biological diversity, taking also into account risks to human health. The focus is primarily on transboundary movements. Article 4 outlines the broad scope of the Protocol, applying to all transboundary movements, transit, handling, and use of living modified organisms that may impact biological diversity and human health. An exception is established for pharmaceuticals addressed by other international agreements (Article 5). There are also specific exemptions for transit and contained use (Article 6). Article 7 sets out the application of the advance informed agreement procedure for the first intentional transboundary movement. The notification process, obligates the exporting Party to inform the competent authority of the importing Party, while ensuring the accuracy of information (Article 8). LMOs intended for food, feed, or processing requires the Party making the decision to inform the Parties through the Biosafety Clearing-House established under Article 20, emphasizing the accuracy of information and additional requests for data (Article 11). The importance of scientifically sound risk assessments, based on provided information and recognized techniques (Article 15) is critical for effective risk management. Parties are required to establish and maintain appropriate risk management mechanisms, measures, and strategies to manage, regulate and control risks associated with LMOs (Article 16). Article 17 of the Protocol provides detailed procedures for unintentional transboundary movements and emergency measures. The Biosafety Clearing-House facilitates information exchange and assist Parties in implementing the Protocol, with a focus on sharing scientific, technical, environmental, and legal information while, accommodating the special needs of developing countries and countries with economies in transition. Each Party is required to make relevant information available to the Biosafety Clearing-House, including laws, regulations, guidelines, summaries of risk assessments, and final decisions regarding the import or release of living modified organisms. Capacity-building in biosafety for developing countries, in particular SIDS and LDCs, as well as Parties with economies in transition is an important component of the Protocol (Article 22). Public awareness, education, and participation regarding the safe transfer, handling, and use of living modified organisms are also addressed (Article 23). Parties are enjoined to promote such measures, consult the public in decision-making processes, and provide information to the public about accessing the Biosafety Clearing-House. The Capacity-Building Action Plan for the Cartagena Protocol on Biosafety, which extends until 2030, adopted by the COP-MOP in decision CP-10/4, identifies important areas for capacity-building relevant to the Implementation Plan, including partners and donors. It is in line with the Long-Term Strategic Framework for Development and Capacity-Building that the COP endorsed. During its ninth meeting, the COP-MOP prioritized operational goals pertaining to risk assessment, public awareness, national biosafety laws, and detection of modified organisms (Framework and Action Plan for Capacity-Building). It also acknowledged the need for a detailed action plan in line with the goals of the Cartagena Protocol and the long-term strategic framework.

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization sets specific requirements for access to genetic resources and equitable benefit-sharing. Crucial to its execution is the Access and Benefit-sharing Clearing-House (ABS Clearing-House), established by and operating under its Article 14. The platform enhances transparency by delineating access procedures and facilitating the tracing of genetic resource utilization, ensuring fairness in benefit-sharing. COP-MOP decisions have made provision for publication of mandatory national ABS information (decision NP-3/3), enhanced operational modalities and the creation of joint mechanisms for the Convention, Biosafety, and ABS Clearing-Houses (decision NP-1/2). Additionally, advisory committees (decision 14/25) and global capacity-building workshops have refined the ABS Clearing-House's functionality and promoted internationally recognized compliance certificates. Periodic assessments, as mandated in Article 31, provide insights into Protocol implementation progress, the effectiveness of policy measures, and areas needing further development. Article 21 highlights the need for awareness regarding genetic resources and access and benefit-sharing. Awareness raising (Article 21 and Awareness-raising Strategy for the Nagoya Protocol), international cooperation in capacity building (Article 22 and the strategic framework for capacity-building

and development) and provision of financial resources to developing countries are important considerations under the Protocol. Recent developments emphasize prioritizing ABS projects in GEF country allocations, the importance of the sixth review of the financial mechanism's effectiveness, and the timely provision of GEF financial support for Protocol-related reporting obligations (decision NP-4/8). These reflect ongoing collaboration between the Nagoya Protocol and the GEF, supporting access and benefit-sharing initiatives aligned with broader biodiversity and Sustainable Development Goals (SDGs).

2. Convention on International Trade of Wild Fauna and Flora

International trade in wildlife, an economic activity of considerable value involving vast quantities of plant and animal specimens, is estimated to be worth billions. To address this trade's potential adverse impacts on species' survival, the Convention on International Trade of Wild Fauna and Flora (CITES) was adopted in 1973 to regulate such trade. CITES operates based on a permitting system (Article VI & VII) differentiated according to the level of risk posed by international trade to the species in question. Its primary objective is to exercise control over the international trade in wild animals and plants, with a specific focus on those species that are currently or prospectively imperiled due to such trade. The regime ensures, through international oversight, that trade does not imperil the continued existence of plant and animal species while at the same time promoting sustainable international trade.

Appendix-I encompasses species at imminent risk of extinction and, therefore, restricts their trade for primarily commercial purposes (Article III). Trade of such species for scientific, captive breeding, and other limited purposes is admissible under stringent conditions. Species in Appendix-II are those that are presently not at immediate risk but could be if their trade is inadequately monitored (Article IV). Trade is allowed for these species provided that appropriate CITES documentation accompanies the specimens. Appendix-III comprises species subject to management regimes within individual countries, necessitating cooperation with other nations to oversee their trade activities (Article V).

Article VIII of the Convention outlines the steps that the Parties must take to guarantee that the Convention's obligations are enforced and that the illegal trade in specimens is prevented. The Parties may choose to designate particular ports for specimen clearance and are encouraged to accelerate the procedures necessary for trade. Parties are required to keep records of trade in listed species and submit reports on their efforts to implement the Convention on an annual and biennial basis. This data should be accessible to the public, unless it violates any domestic laws of the Party.

Concerns related to species included in Appendices I or II and non-compliance with the Convention's provisions can be addressed using the procedure outlined in Article XIII. The Secretariat notifies the appropriate Party's authorized Management Authority of any information it receives that it believes trade negatively impacts a listed species or that the Convention's provisions are not being properly implemented. As soon as the Party receives such communication, it is required to promptly inform the Secretariat of relevant facts and suggest corrective actions that fall within the purview of its legal framework. An investigation may be carried out with by the Party's express approval. The results of any investigation and the information submitted by the Party are subject to examination by the next COP, which has the authority to make appropriate recommendations.

At its 19th meeting in November 2022, the COP adopted Resolution Conf. 19.2 on Capacity Building. This resolution, building upon the CITES Strategic Vision recognizes the crucial importance of capacity-building for the effective implementation and enforcement of the Convention. It emphasizes the need for an integrated and comprehensive approach to capacity-building, taking into account the diverse needs of Parties, particularly developing countries, and encourages cooperation among Parties, international partners, and financial mechanisms. It underscores the value of sharing information, providing financial support for training, and enhancing capacity through the CITES Virtual College. The Secretariat is directed to seek external funding and support Parties in addressing their capacity needs, with priority given to specific groups of countries. It also

COP Decisions on Capacity-Building in effect after the 19th meeting

- Capacity-building (decision 19.40, 19.41, 19.42, 19.43)
- Compliance Assistance Programme (decision 19.44, 19.45 19.46)
- Country-wide Review of Significant Trade (decision 19.47 & 19.48)
- CITES Tree Species Programme (decision 19.49 & 19.50)

plays a role in collecting and disseminating capacity-building resources. The Animals and Plants Committees are invited to contribute to capacity-building efforts, including identifying needs and recommending improvements, while Parties, organizations, and stakeholders are encouraged to provide funding and materials to support capacity-building initiatives.

The COP also adopted Resolution Conf. 19.3, which emphasizes the value of gender equality and mainstreaming in the framework of international trade in wild species of flora and fauna as well as global sustainable development. It recognizes the contribution that international agreements, UN initiatives, and gender-focused UN programmes make to the advancement of women's involvement and empowerment. Notably, it acknowledges the important but frequently disregarded influence that gender dynamics have on the worldwide wildlife trade, both legal and illicit, as well as the responses to it. While they participate in initiatives to conserve and safeguard biodiversity, women and girls frequently experience marginalization and discrimination. Approaches to combating the wildlife trade that are gender-blind can lead to knowledge gaps and worsen inequality. The resolution encourages gender-aware research, monitoring, and data gathering and calls on Parties to take gender into account when addressing the international wildlife trade. It suggests increasing the participation of people of all genders, but especially women, in decision-making processes related to wildlife trade and conservation. Parties are invited to offer opportunities for capacity-building and to increase public awareness of gender problems. In order to accomplish these goals, the resolution also requests financial support from donors and the global community. It draws attention to how gender dynamics might be better understood and addressed to promote social equality, governance, and conservation (CITES Gender Action Plan – decision 19.51, 19.52 19.53)

Regarding compliance, the 19th Conference passed a number of key decisions that collectively address national laws for the implementation of the Convention. Decision 19.58 requires Parties that have enacted legislation in categories 2 or 3 under the National Legislation Project to submit to the Secretariat details of the measures that have adopted for the effective implementation of the convention. Parties in category 1 under the Project are encouraged by Decision 19.59 to notify the Secretariat of any legislative developments and to provide technical or financial assistance to Parties affected by Decision 19.58. In Decision 19.60, the Standing Committee is responsible with assessing the Parties' progress, establishing priorities, and, where necessary, enforcing compliance. Potential suspension of trade is described in Decision 19.61 as a compliance measure. In accordance with Decision 19.62, the Secretariat is tasked with gathering and evaluating data, giving legal support, and delivering advice on a range of legislative implementation-related issues. It is required to provide the Standing Committee with updates on the Parties' progress, suggest compliance measures where needed, and track the execution of these recommendations. These decisions demonstrate CITES' commitment to improving adherence to national legal frameworks that are necessary for the implementation of the goals and provisions implementation.

3. Convention on Wetlands of International Importance 1971

The "Ramsar Convention", officially known as the Convention on Wetlands of International Importance, is aimed at conserving and promoting the sustainable use of wetlands, which are vital to ecosystems for biodiversity. The preamble of this Convention highlights the recognition of the interdependence between humans and their environment. It underscores the ecological significance of wetlands as water regulators and vital habitats for flora and fauna, especially waterfowl (Article 1). These wetlands are valued for their economic, cultural, scientific, and recreational importance, and the Convention aims to prevent their continued loss

and degradation. Acknowledging the international importance of wetlands and the transboundary nature of waterfowl, the Convention stresses the need for international cooperation to ensure the conservation of wetlands and their associated biodiversity. It signifies the intention to create a List of Wetlands of International Importance, "Ramsar Sites" (Article 2).

The Convention also emphasizes that listing a wetland does not compromise a Contracting Party's sovereignty over its natural resources (Article 2.3). The subsequent articles outline specific provisions, including the obligation for Contracting Parties to designate wetlands for inclusion in the List, promote wetland conservation and wise use, establish nature reserves (Article 4.1), facilitate research (Article 4.3 & 4.5), and engage in international cooperation for wetland conservation (Article 5). The International Union for Conservation of Nature and Natural Resources (IUCN) is designated to perform the Bureau duties of the Convention (Article 8). These duties encompass maintaining the List, notifying Parties of changes in listed wetlands, and organizing conferences. The Convention's detailed articles provide a comprehensive framework for the conservation of wetlands and their sustainable use while recognizing their vital role in the broader ecosystem.

A number of resolutions were adopted by the COP at its 14th meeting held in November 2022. Among them is the resolution addressing the inclusion of wetland education in the formal education sector (Resolution XIV.11). This resolution underscores the Convention's historical commitment to education in promoting wetland conservation. It acknowledges the evolving landscape of environmental education but notes the prior lack of specific guidance for formal education. It stresses the importance of integrating wetland education into formal curricula and fostering partnerships with educational authorities and stakeholders. The resolution highlights the role of teachers and capacity building, encourages diverse partnerships, and endorses on-line education platforms. Lastly, it seeks alignment with UNESCO's ESD for 2030 roadmap, emphasizing the Convention's dedication to engaging youth, enhancing environmental literacy, and fostering wetland understanding while promoting synergy within the capacity building, education, participation, and awareness (CEPA) programs.

The future implementation of scientific and technical aspects within the Convention on Wetlands for the 2023-2025 period is addressed by Resolution XIV.14. It acknowledges prior resolutions, the contributions of various stakeholders, and the importance of using and promoting the Scientific and Technical Review Panel's (STRP) products. The resolution approves priority work areas and encourages Contracting Parties to nominate STRP representatives promptly. It also highlights the need for user-friendly, inclusive, and streamlined outputs that incorporate traditional knowledge (TK). Additionally, it suggests exploring virtual meetings and online tools for the STRP's work and emphasizes the importance of financial support. This resolution underscores the critical role of scientific and technical support while promoting efficiency and accessibility in the STRP's endeavors.

Additional Resources on the Ramsar Convention

- The 4th Strategic Plan 2016-2024: 2022 update
- List of Wetlands of International Importance Included in the Montreux Record
- The List of Wetlands of International Importance: the Ramsar List
- List of Transboundary Ramsar Sites
- List of Resolutions and Recommendations of the COP to the Convention on Wetlands
- Introductory Course to the Ramsar Convention on Wetlands

4. Convention on the Conservation of Migratory Species of Wild Animals 1979

The Convention on the Conservation of Migratory Species of Wild Animals (CMS) is a comprehensive treaty that addresses the intricate relationship between humans and the Earth's diverse wildlife. The Convention acknowledges the invaluable role of wild animals in the planet's natural systems, emphasizing the intergenerational responsibility to safeguard these resources (Preamble). CMS recognizes the multifaceted value of wild animals, encompassing environmental, scientific, and socio-economic dimensions (Preamble). Of particular concern are those migratory species that traverse national borders, highlighting the necessity of collective action within the countries these species inhabit or pass through (Preamble). The Convention categorizes species into Appendices based on their conservation status, differentiating between "favorable" and "unfavorable" statuses, and designating "endangered" species (Articles II, III & IV). It places responsibility on Range States to conserve and protect these species' habitats and mitigate adverse impacts (Articles III, IV & VI). Moreover, CMS encourages international agreements, scientific research, and coordinated conservation efforts (Article V). The Convention's COP plays a pivotal role in reviewing the status of migratory species and recommending actions to enhance conservation (Article VII). The Scientific Council advises on scientific matters and species categorization, emphasizing research and ecological considerations (Article VIII). Finally, the Secretariat, provided by UNEP, serves as the administrative backbone, maintaining liaison with and promoting liaison between the Parties, the standing bodies and other relevant international organizations (Article IX).

A number of resolutions adopted by the COP in recent years have significant implications for the operation of the Convention. For example, in 2017, COP 12 adopted the Manila Declaration on Sustainable Development and Migratory Species (Resolution 12.03). The Declaration acknowledges the close connection between sustainable development and the preservation of migratory species. This declaration, which has its roots in international agreements such as Agenda 2030 and the SDGs, addresses the relationship between the welfare of migratory species and economic activities including trade, tourism, and agriculture. It urges increased political awareness of the significance of migratory species conservation and calls on Parties to harmonize their national frameworks with the SDGs. The Declaration also highlights the importance of private sector participation, cooperation amongst government agencies, and the critical role that local and indigenous populations play in the management of natural resources. It also emphasizes the prospects for economic development and community well-being that ecotourism and sustainable wildlife activities provide.

More recently at COP 13 in February 2020, the Gandhinagar Declaration on CMS and the Post-2020 Global Biodiversity Framework was adopted highlighting the CMS's vital role in global efforts to safeguard migratory species and their habitats. It acknowledges the alarming conclusions of the IPBES Global Assessment Report on Biodiversity and Ecosystem Services, which affirm that the benefits of nature to humans are significantly declining and that about a million plant and animal species are in danger of extinction. The statement emphasizes how important ecological connectedness is and how important the CMS Family is to the post-2020 GBF (Kunming-Montreal GBF). It advocates for stepping up international collaboration, attending to endangered species' conservation needs, and addressing the factors that contribute to the challenges facing migratory species. The Declaration underlines the centrality of indicators to track advancement, highlights the relationship between species and their ecosystems, and supports synergies between biodiversity agreements. It also draws attention to the need for strict adherence to the treaties and close collaboration with other international initiatives, including the UN Decade on Ecosystem Restoration and the 2030 Agenda for Sustainable Development.

Resolution 13.4 of COP 13 further established the Joint CITES-CMS African Carnivores Initiative, acknowledging the profound cultural, ecological, and biological significance of African Wild Dogs, Cheetahs, Leopards, and Lions. These species represent an integral part of Africa's heritage and identity, demanding collective conservation efforts to ensure their survival for future generations. The initiative is a response to troubling findings by the IUCN, indicating declines in these carnivores' populations across Africa due to various shared challenges, such as habitat loss and human-wildlife conflicts. It underscores the importance

of synergy between CMS and CITES, highlighting the value of cooperation among biodiversity-related multilateral environmental agreements. This initiative emphasizes the role of partnerships involving Range States, CITES, CMS, and IUCN in addressing the conservation needs of these carnivores, stressing the necessity for both immediate action and sustained, long-term commitment from the international community.

5. Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (High Seas Treaty or BBNJ)

By its resolution 72/249 of 2017, the UNGA decided to convene an Intergovernmental Conference to consider the recommendations of the Preparatory Committee, which was established by resolution 69/292 in 2015, on the elements and to elaborate a text of an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. In the intervening period between April 2018 and June 2023, the Conference held five sessions. On June 20, 2023, the Conference unanimously adopted the Agreement under UNCLOS on the conservation and sustainable use of marine biological diversity of areas outside state jurisdiction (A/CONF.232/2023/4).

The primary objective of the High Seas Treaty or the "BBNJ Treaty" is to ensure the conservation and sustainable utilization of marine biodiversity in areas beyond national jurisdiction, both in the short and long-term, through the effective implementation of relevant and further international cooperation and coordination (Article 2). The Agreement applies exclusively to areas beyond national jurisdiction (Article 3). However, the Agreement provides for some exceptions, in particular exempting warships, military aircraft, and government-operated vessels or aircraft from its reach, albeit with the proviso that such vessels or aircraft act in a manner consistent, so far reasonable and practicable, with the Agreement (Article 4). The Agreement seeks to align with the UNCLOS and other legal frameworks, acknowledging the hierarchical position of UNCLOS within the Exclusive Economic Zone (EEZ) and the continental shelf (Article 5). Parties' implementation is to be guided by a number of principles and approaches including the polluter pays principle, the common heritage of mankind principle, the precautionary principle or approach, the ecosystem approach and the integrated ocean management approach (Article 5). The Agreement underlines the pivotal role of international cooperation: requiring Parties to strengthen and enhance cooperation among relevant legal instruments and frameworks and relevant global, regional, sub-regional and sectoral bodies; and to promote international cooperation in marine scientific research and in the development and transfer of marine technology (Article 6).

The governance of marine genetic resources (MGRs) and the fair distribution of benefits, including digital sequence information, are covered in detail in Part II of the Agreement. With an emphasis on assisting developing States, its goals include equitable benefit-sharing, capacity building, the generation of scientific knowledge, and technology transfer (Article 9). It promotes inclusive MGR operations and collaboration while upholding the rights of coastal and other States (Article 11). Notification of MGR operations is required in order to promote cooperation and ensure transparency. Detailed arrangements have been established regarding benefit-sharing from MGR activities (Article 14). These include both monetary and non-monetary benefits. An access and benefit-sharing committee is established to put in place guidelines for benefit-sharing, thereby providing transparency and ensuring a fair and equitable sharing of benefits.

The establishment and administration of area-based instruments, especially marine protected areas (MPAs), in regions outside of national borders are covered in Part III. The broad objectives are outlined in Article 17, which emphasizes the significance of food security, resilience to stressors including pollution and climate change, cooperation among governments and relevant institutions, conservation and sustainable use, and assistance to developing countries. These goals show a comprehensive approach to managing maritime resources, acknowledging the interaction of ecological, social, and geopolitical variables.

The Agreement provides for both emergency measures to prevent harm to marine biodiversity where prompt action is required (Article 24) and a detailed EIA framework for areas beyond national jurisdiction (Part IV).

The Agreement (Part V) puts emphasis on cooperation amongst Parties including assistance to developing countries, capacity enhancement, technology transfer, research collaboration, knowledge dissemination, and strengthening of regulatory frameworks. It also underscores the need for equity and inclusion, the fostering partnerships among stakeholders, and the promotion of synergy with other legal instruments and bodies. Its capacity-building initiatives aim to empower developing States in their efforts to conserve marine biodiversity. Regular monitoring and reviews enable the assessment of evolving needs and the mobilization of essential support to keep these initiatives effective.

Promoting Ratification of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ)

The BBNJ Agreement is an implementing agreement under the United Nations Convention on the Law of the Sea (UNCLOS) which was adopted on 19 June 2023 by the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction. The Agreement is open for signature from 20 September 2023 until 20 September 2025. The Secretary-General of the United Nations was designated as the depositary by article 75 of the Agreement. In its resolution 77/321 of 1 August 2023, the General Assembly approved the assumption by the Secretary-General of the functions assigned to him under the Agreement, including the depositary functions, and the performance of the secretariat functions under the Agreement until such time as the secretariat to be established under article 50 of the Agreement commences its functions.

The main objective of the Agreement is the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The agreement specifically addresses issues relating to marine genetic resources, including the fair and equitable sharing of benefits; Area based management tools including marine protected areas; Environmental Impact Assessment and Capacity building and transfer of marine Technology.

The agreement shall enter into force 120 days after the date of deposit of the sixtieth instrument of ratification, approval, acceptance, or accession44. As of March2024 two (2) instruments of ratification have been deposited with the Secretary-General of the United Nations. There is still a requirement of fifty-eight (58) instruments of ratification, acceptance, approval, or accession to be deposited with the Secretary-General for the Agreement to enter into force. It is therefore important for Montevideo Programme V to support efforts of the Interim Secretariat to promote the ratification, acceptance, approval of the Agreement or accession to it.

A Summary of the Process of a State Expressing its Consent to be bound by a Multilateral Treaty by Signature, Ratification, Approval, Acceptance or Accession.

There are several processes a State needs to follow when it wants to become a party to a multilateral treaty. It must express its consent to be bound by the treaty in accordance with the final clauses of that treaty. Most multilateral treaties of a global nature provide for a process of becoming a party to a multilateral treaty by signature followed by ratification, acceptance or approval, as well as directly by accession.

Appending a Signature in a Multilateral Treaty

When a multilateral treaty is adopted, it is opened for signature for a specific period which is stipulated in the final clauses of the multilateral treaty. Apart from the Head of State or Government or the Minister for Foreign Affairs who do not need to be properly authorized with an instrument of full powers to sign a treaty, all other Government representatives who wish to sign a multilateral treaty on behalf of their country must be properly authorized with an instrument of full powers signed by the Head of State or Government or the

44 Article 68 of the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction Agreement.

Minister for Foreign Affairs. In this regard, States append a signature to a multilateral treaty, subject to ratification, approval or acceptance. Once the time period set for signatures closes, States who wish to become parties to such a multilateral treaty can express their consent to be bound by the treaty in a single step through accession of the treaty.

Article 65 of the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction is on ‘”Signature” it provides *“This Agreement shall be open for signature by all States and regional economic integration organizations from 20 September 2023 and shall remain open for signature at United Nations Headquarters in New York until 20 September 2025.*

Signing a multilateral treaty in itself does not make a State legally bound to that multilateral treaty. It is therefore important for a State to pursue the required domestic national processes for ratification, acceptance or approval according to its constitutional requirements to enable it to deposit an instrument of ratification, acceptance or approval with the Depositary of the multilateral treaty so that it can become a party to this treaty.

The process of ratification of a multilateral treaty

According to article 2 of the Vienna Convention on the Law of Treaties “*ratification", "acceptance", "approval" and "accession" is an international act whereby a State establishes on the international plane its consent to be bound by a treaty.*

The required processes and practices of States at the national level to obtain approval to become a Party of a multilateral treaty at the national level differ from State to State according to their constitutional requirements. In some countries for example the requirement is a cabinet approval, while in others it is a Parliamentary approval or another practice where the Executive approves. This requires the relevant Ministry or Department in such State to prepare the required documents to convince the relevant authority on the importance and benefits of the State becoming a Party to the multilateral treaty before approval is granted.

After getting the approval from the competent authority, an instrument of ratification, acceptance approval or accession has to be signed by the Head of State or Government or the Minister for Foreign Affairs. The instrument must be submitted by the State to the depositary of the treaty as indicated in the multilateral treaty.

Most multilateral treaties of a global nature which have been negotiated under the auspices of the United Nations designate the Secretary-General as Depositary, such as article 75 of the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

A good example of ratification, approval, acceptance or accession is found in Article 66 of the 2023 Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction which in relation to the process of ratification, approval, acceptance and accession provides the following:-

“*This Agreement shall be subject to ratification, approval or acceptance by States and regional economic integration organizations. It shall be open for accession by States and regional economic integration organizations from the day after the date on which the Agreement is closed for signature. Instruments of ratification, approval, acceptance and accession shall be deposited with the Secretary-General of the United Nations.*

As soon as a State is ready to deposit the instrument of ratification, acceptance or approval, arrangements

Additional Resources on the UNEA Decisions on Biodiversity Loss

- UNEA-2 adopted 25 resolutions, including resolutions affecting biodiversity loss in oceans and seas (Res. 2/10), combatting illegal trade in wildlife and wildlife products (Res. 2/14), the sustainable management of reefs (Res.2/19), mainstreaming of biodiversity for well-being (Res. 2/16), protection of the environment in areas affected by armed conflict (Res. 2/15), combatting desertification, land degradation and drought and promoting sustainable pastoralism and rangelands (Res. 2/24) among others (For further information see: https://www.unep.org/events/unea/unea-2)
- UNEA-3 further adopted various resolutions aimed at addressing the biodiversity crisis. For further information on resolutions adopted during the third session see:

https://www.unep.org/environmentassembly/proceedings-report-ministerial-declaration-resolutions-and-decisions-unea-3

can be made by the Permanent Mission of the State with the Treaty Section of the United Nations Office of Legal Affairs in New York to deposit the instrument of ratification, acceptance, or approval.

The process of accession is the same as that of ratification, acceptance and approval the only difference being that the State joins the treaty directly in one step when the treaty is no longer open for signature.

For better insight on the process of signature, ratification, approval or accession and models of the relevant instruments read:

The Treaty Handbook, prepared by the Treaty Section of the Office of Legal Affairs https://treaties.un.org/doc/source/publications/thb/english.pdf,

Final Clauses of Multilateral Treaties Handbook of the United Nations https://treaties.un.org/doc/source/publications/FC/English.pdf,

Model instruments are available on the United Nations Treaty Collection website at https://treaties.un.org

National Policies and Legislative Frameworks

National policies and legal instruments focusing on the biodiversity crisis address several interconnected themes, reflecting the intricate nature of preserving and managing biodiversity. These themes include:

- Conservation
- Sustainable Use
- Protected Areas and Ecological Reserves
- Invasive Alien Species Management
- Habitat Protection and Restoration
- Endangered and Threatened Species
- Sustainable Agriculture and Land Use
- Marine and Coastal Biodiversity
- Indigenous and Local Community Knowledge and Rights
- Trade in Endangered Species
- Ecosystem-Based Management
- Biodiversity Research and Monitoring
- Public Awareness and Education
- Public Participation and Access to Justice
- Climate Change and Biodiversity

Additional Resources for National Biodiversity Policies and Laws

- https://leap.unep.org/knowledge/legislation-and-case-law
- https://www.informea.org/en/search?f%5B0%5D=type%3Alegislation&text=biodiversity
- https://www.ecolex.org/result/?q=biodiversity&type=legislation

Several institutions and international bodies have developed toolkits to assist developing countries, businesses and other entities in their biodiversity conservation efforts. For example, the integration of businesses into the CBD framework is a pivotal step in addressing the biodiversity crisis. It encourages businesses to adopt strategies that contribute to CBD objectives, emphasizing biodiversity mainstreaming in operations, responsible investment, and impact reporting. Collaborative activities like the Global Partnership for Business and Biodiversity further promote awareness and tool-sharing. Overall, this approach recognizes the private sector as a crucial partner in biodiversity conservation, fostering a comprehensive and adaptive strategy to tackle this global challenge. The CBD has developed a list of tools and mechanisms as guidance for companies under the Business Engagement Programme. Additionally, the Kunming-Montreal GBF contains targets that will have a significant impact on how corporations contribute to biodiversity conservation.

Many of the biodiversity-related agreements put significant emphasis on capacity building, technical assistance, strengthening of legislative frameworks, research and information-sharing, education and public awareness, technology transfer, and international cooperation in implementation. The Montevideo Programme V could contribute to addressing the biodiversity crisis through a number of activities, including:

- Strengthening national legislative and regulatory frameworks.
- Enhancing the capacity within countries to effectively implement and enforce biodiversity laws and regulations.
- Promoting public engagement and involvement in decision-making processes related to biodiversity conservation.
- Ensuring that relevant information and data related to biodiversity are accessible to the public and stakeholders.
- Fostering awareness and education programs to inform the public about the importance of biodiversity and conservation efforts.
- Supporting research and monitoring initiatives and activities to gather data on biodiversity, species inventories, and ecological processes.
- Facilitating international cooperation and collaboration to address biodiversity issues that transcend national boundaries.
- Promoting synergistic implementation of biodiversity related MEAs at the national level.

Litigation related to the Biodiversity Crisis

Litigation in the context of the biodiversity crisis plays a crucial role in addressing the complex challenges associated with the conservation of ecosystems, species, and genetic diversity. Biodiversity-related litigation, often involving environmental and public interest litigation (PIL), serves as a legal mechanism to enforce and strengthen national and international laws and agreements.

Environmental laws in many countries provide avenues for individuals, NGOs, and communities to bring claims against governments and corporations with respect to acts or omissions that impact the conservation of biodiversity. This access empowers stakeholders to hold decision-makers accountable and participate in legal processes, fostering a more democratic approach to environmental protection. In 2014, the Kenyan court in the case of *Friends of Lake Turkana Trust v Attorney General and others* ordered the Kenyan government to disclose hydroelectric dam agreements with Ethiopia, citing concerns about impact on the ecosystem of Lake Turkana. The court stressed the importance of right of access to information and EIAs in

development projects affecting communities and ecosystems.

Biodiversity litigation can have profound implications for indigenous and local communities. In many cases, these communities rely on their traditional knowledge and practices for sustainable resource management. Legal disputes often involve questions of indigenous land rights, access to genetic resources, and the protection of traditional knowledge. The intersection of indigenous rights with biodiversity litigation adds layers of complexity and sensitivity. The case of *Canadian Forest Products Inc. v. Sam* case involved a dispute over logging operations in Wet'suwet'en Chief's House territory, affected by a mountain pine beetle epidemic. The plaintiffs sought an injunction to prevent timber harvesting in the Redtop area, a culturally significant part of their territory. The court recognized the connection between the indigenous people and their land, emphasizing the importance of protecting cultural heritage and biodiversity conservation.

Many biodiversity-related cases involve the interpretation and application of international and regional agreements and conventions. In 2014, the Belgian Criminal Court of First Instance in East Flanders found four individuals guilty of illegally trafficking endangered bird species, comparing their scope and financial gain to international drug and weapons trafficking. The ruling, based on the EU-CITES Regulation 338/97, which implements the CITES within the EU, highlights the global threat of these activities to biodiversity. *T.N. Godavarman Thirumulpad vs Union of India & Ors* is a case that addressed the implementation of the Ramsar Convention and the protection of Kolleru Lake, a significant freshwater ecosystem in Andhra Pradesh. The lake was encroached upon for aquaculture, leading to pollution and drinking water scarcity. The Central Empowered Committee (CEC) recommended the demolition of fish tanks and prohibition of pisciculture inputs within the sanctuary. The court ruled in favor of enforcing the 1999 notification, emphasizing the need to balance sustainable development with ecological preservation. The decision upheld recommendations to protect the Lake's identity and local farmers' rights.

Biodiversity knows no borders, and many species and ecosystems cross national boundaries. Transboundary issues often lead to international litigation, where disputes arise between countries over shared resources, migratory species, and cross-border environmental harm. International tribunals and courts may need to address jurisdictional issues, making these cases even more intricate. The 2015 case *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* involved disputes over sovereignty, environmental impacts including damage to Costa Rican territory, such as wetlands and national wildlife protected areas, and construction activities by Nicaragua in a border area. The ICJ affirmed Costa Rica's sovereignty and ordered compensation for damages. Nicaragua's claims about environmental impacts were however dismissed, underlining the challenges of enforcing such claims in a transboundary context.

Biodiversity litigation can be either preventative or remedial. Remedial litigation deals with rectifying damage already done to biodiversity. The choice between these approaches depends on the timing of legal action and the specific goals of the litigants. Preventative litigation focuses on stopping potentially harmful activities before they occur, such as challenging EIAs for development projects. In a groundbreaking example of preventative public interest litigation in China, the Kunming Intermediate People's Court and Yunnan High People's Court suspended a dam project on the Jiasa River, pending an EIA, to protect green peacock habitats and Cycas chenii plant species. The decision demonstrates China's commitment to environmental protection and biodiversity conservation, emphasizing prevention over waiting for harm to occur.

As corporations play a significant role in biodiversity loss, litigation also targets businesses involved in activities detrimental to the environment. This might include cases related to deforestation, pollution, overfishing, or habitat destruction. The consequences of such litigation can extend to corporate responsibility, financial penalties, and changes in business practices, forcing companies to adopt more environmentally sustainable operations. In a significant decision, the UK's Court of Appeal in *Municipio de Mariana v BHP Group (UK) Ltd* has allowed the prosecution of a class action lawsuit filed by over 200,000 Brazilian plaintiffs against BHP Group (UK) Ltd., arising from the 2015 Fundão Dam collapse. The decision overturned an earlier High Court decision, emphasizing the importance of claimants' access to justice. The ruling builds on the trend

of extending corporate tortious liability, emphasizing the accountability of corporations for environmental catastrophes and the need for strict ESG standards.

Biodiversity litigation is a complex legal process and involves establishing a direct causal link between specific actions and biodiversity loss. It relies on scientific evidence and expert testimony to establish the negative impacts of human activities on biodiversity. This process often involves lengthy and complex legal proceedings. The objective of litigation is to secure redress for biodiversity loss and to impress upon governments and businesses to align with internationally recognized environmental standards and processes, and refrain from activities that cause harm to biodiversity. Successful outcomes can lead to substantial changes in national policy and legislation. This translates into strengthened environmental laws and regulations as well as policy reform, ultimately enhancing biodiversity conservation and protection.

Additional Resources on Biodiversity-related Litigation

- https://leap.unep.org/knowledge/legislation-and-case-law
- https://www.informea.org/en/search?f%5B0%5D=type%3Acourt_decision&text=biodiversity
- https://www.ecolex.org/result/?q=biodiversity&type=court_decision&xdate_min=&xdate_max =

Part III: Accessing Support Under Montevideo Programme V

UNEP has been providing support to developing countries and countries with economies in transition in the development and implementation of national environmental law and the strengthening of environmental institutions since Montevideo Programme I. This support has been provided through technical assistance and advisory services based on expressed country needs. Previously, Governments made formal requests directly to UNEP for assistance and support. In other instances, requests for assistance have been submitted through UN Resident Coordinators, UNEP Regional Offices, or by Ministers directly engaging the UNEP Executive Director.

Currently under Montevideo Programme V, Governments can access support either through submission of a formal request to UNEP for technical assistance or through the clearing house mechanism of the UNEP-LEAP online platform. Under the latter procedure national focal points of Member States submit requests through the submission tab of the platform. An online submission form is provided in the system. The request is then reviewed and processed through the Standard Operating Procedures. An activity tracker has been incorporated in the technical assistance system in order to ensure accountability and allow the requesting focal point to track progress. Since the start of the Montevideo Programme V, the secretariat has received requests for technical assistance from approximately 20 countries, ten of these through the UNEP-LEAP platform.

Types of support provided to Member States include:

- Provision of technical assistance and/or advisory services to develop legislative and institutional frameworks or to strengthen institutional arrangements;
- Developing model laws and legislative guidance materials to support countries in developing national legislation;
- Building capacity of Government officials through advisory services, training programs, and incorporating environmental law in relevant curricula;
- Providing technical assistance and advisory services to Governments in the development of regional legal frameworks;
- Enhancing implementation, enforcement and compliance through training, strengthening institutional capacities, and the development of regulations and implementation guidelines.

In accordance with paragraph 6 (a) (xi) of the Montevideo Programme V, in September 2021, the secretariat established the Montevideo Trust Fund for the core activities of the Programme. The Trust Fund has received the generous contributions from the United Kingdom of Great Britain and Northern Ireland, Germany, the Netherlands, Norway, and the Commonwealth Secretariat.The most recent funding assessment of the priority areas for implementation and the related cross-cutting activities, places indicative programmatic and secretariat costs of implementing the Montevideo Programme V at USD 38,108,652.[45] This figure includes the estimated cost of implementing the 2023-2026 implementation roadmaps, as well as the governance and secretariat costs.46 There is a clear deficit in the resources available for implementation of the Programme.

To supplement the trust fund allocations and fill the financial gap, the secretariat continues to rely on resources allocated to the UNEP Law Division for Montevideo Programme V activities that contribute to the environmental governance sub-programme of UNEP's programme of work. These resources comprise allocations from the Environment Fund, including the thematic funds, and extra-budgetary resources from bilateral donors for ear-marked purposes, such as from the European Commission and the United Nations Development Account. Also, the secretariat continues to encourage and welcome additional voluntary contributions from governments, the private sector, foundations, and other organizations.

45 The estimate may vary depending on country requests for assistance and activities related to the governance arrangements for the Programme (e.g., regional meetings of national focal points). The estimate includes programmatic costs (e.g., technical assistance, guidance materials.) anticipated based on the priorities for implementation to be identified during the global meetings of national focal points under Montevideo Programme V and, activities related to the governance arrangements for the Programme.

46 United Nations Environment Programme (2021), Resource Mobilization Strategy 2021, available at https://wedocs.unep.org/20.500.11822/36793.

Part IV: Partnerships and Stakeholder Engagement

Partnerships and stakeholder engagements are important components of the Montevideo Programme V. The success of the Programme will depend on the effective coordination, collaboration and cooperation with all relevant actors in the implementation of the Programme and its activities. One of the strategic activities of the Programme is to support collaboration and promotion of partnerships across the United Nations and with other relevant entities, including civil society organizations, in the field of environmental law[47]. Many UN system organizations participate in international environmental governance, including the development of international environmental law and the implementation of environmental law activities at the national and regional levels. These include UN funds and programmes such as UNEP, UNDP, and UN-Habitat; the specialized agencies such as FAO, IMO and the World Bank; and related organizations such as the International Atomic Energy Agency (IAEA) and ISA. In addition, the secretariats of a number of MEAs as well as implementing entities of their financial mechanisms such as the GEF and the GCF support Governments in the development of legislative and regulatory frameworks as well as capacity-building and institutional strengthening. The Implementation Guidelines thus provides that the implementation of the Montevideo Programme V and its activities will promote synergies and complementarity and avoid duplication with other initiatives and activities in the field of environmental law.[48] Previous iterations of the Montevideo Programme have been implemented in collaboration and cooperation with relevant international organizations, especially secretariats of MEAs, but such cooperation and collaboration need to be strengthened and up-scaled. Examples include:

- The National Legislation Project implemented with CITES;
- National Legislation Programme implemented with CMS;
- The Law & Climate Change Tool Kit, developed in collaboration with the UNFCCC secretariat and the Commonwealth Secretariat;
- The Partnership for the Development of Environmental Law & Institutions in Africa (PADELIA).

The Implementation Guidelines also provide that the Programme and its activities will be developed and implemented in cooperation, coordination or partnership, as appropriate, with relevant stakeholders, promoting public participation[49]. Stakeholders such as civil society organizations, the private sector and academia can provide valuable insights and expertise in the development of environmental law. Engendering stakeholder ownership through effective involvement in the development of policies, laws and institutional frameworks provides an important safeguard against public officials' dereliction of duty and ensures public participation in implementation.

There is need to map out activities and to identify key stakeholders and potential partners for the delivery of such activities. There are a number of benefits that can accrue for the Programme, partners and stakeholders from partnership arrangements and stakeholder engagements. These include:

- Creating synergies through joint efforts.
- Avoiding the duplication of effort and wastage of resources.
- Achieving strong outcomes through leveraging expertise and resources.
- Creating ownership and effective implementation through the participation of major groups in decision-making and implementation.
- Empowerment of civil society organizations and the general public by creating awareness and enhanced

47 Montevideo Programme V, para. 4(e).
48 Montevideo Programme V, paragraph 5(d).
49 Ibid, paragraph 5(c).

understanding of substantive issues and policy options to address them.

Several initiatives have already been undertaken by UNEP to develop and foster partnerships and stakeholder engagement for the Programme. Such initiatives will need to be enhanced through UNEP's convening power as the global environmental authority within the UN system and the authoritative advocate for the global environment. Previous initiatives include:

- The inter-agency dialogue entitled "Advancing Environmental Rule of Law Together" which took place in Geneva in 2019;
- The establishment of the inter-agency legal officers' network, which includes secretariats of MEAs;
- Regular briefings to stakeholders on the Programme;
- The launch of the "Partner of the Programme" initiative through which relevant organizations have been invited to become partners;
- The holding of a series of side-events on the margins of first global meeting of national focal points involving major groups and other stakeholders - faith-based organizations, indigenous and local communities, legal experts, women and youth.
- The organization of regional consultations involving partners and stakeholders on legal responses to address the biodiversity and the climate change crises for the Asia-Pacific, West Asia and Central Asia, Africa, and Latin America and the Caribbean.

Part V: Resources On Environmental Law

Environmental law has evolved from a focus on pollution control and resource management to a multidisciplinary field addressing global environmental crises. It provides the legal framework and regulatory mechanisms to mitigate and manage climate change, biodiversity loss, deforestation, habitat destruction, pollution, resource depletion, and threats to human health and the planet's ecological balance. To navigate the complex landscape of environmental law effectively, it is crucial to categorize and organize resources thematically, aligning with priority areas outlined in the Montevideo Programme V. Online platforms and tools have become indispensable in the study and practice of environmental law, democratizing access to knowledge and facilitating global collaboration. Aligning resources with the Programme's priority areas ensures legal scholars, practitioners, policymakers, and other stakeholders have access to relevant and up-to-date resources, enhancing their capacity to address critical issues.

General Resources

The resources listed below provide information on Multilateral Environmental Agreements (MEAs), national environmental laws, publications, model laws, and online courses, among others:

- UNEP-LEAP, the digital hub of Montevideo Programme V, is a vital tool for sharing knowledge and expertise on environmental rule of law. It provides nations with direct access to UNEP for technical assistance and contains a vast knowledge base of over 20,000 documents, including flagship publications e-learning courses, model laws, toolkits, advice products, national environmental legislation, and a variety of other resources. This platform bridges the gap between legal theory and real-world application, supporting efficient environmental governance.
- InforMEA, is a platform that provides access to the texts of multilateral environmental agreements, the status of each treaty, national reports, and decisions made under them. It is indispensable for researchers seeking primary legal documents, policymakers navigating international negotiations, and legal practitioners interpreting and implementing MEAs. InforMEA's role in centralizing a vast web of international agreements promotes transparency, accessibility, and informed decision-making. The platform's e-learning section contains introductory courses on most major MEAs, produced in collaboration with the MEA Secretariats.
- The specialized database FAOLEX focuses on the intersection of environmental regulation, agriculture, natural resources including land and soil, minerals, fisheries etc. as well as food security. As these issues are fundamental to the well-being of communities and the planet, FAOLEX offers access to a comprehensive array of legal documents and agreements that underpin regulatory frameworks in these critical sectors. Researchers, policymakers, and legal professionals dealing with the complex interplay of environmental law in these contexts find FAOLEX an indispensable resource.
- The joint FAO, UNEP, and IUCN database ECOLEX is a worldwide source of information on environmental legislation. It contains data on international soft-law instruments, national laws, court rulings, treaties, and legal and policy literature. Accessible via state-of-the-art technology, the database seeks to augment global capability by offering the most extensive global resource for environmental legal data. ECOLEX has broadened its scope and is working to preserve, improve, and develop its environmental law databank and related resources with the help of the Dutch government. More than 100,000 references to important documents are stored in the database, opening the door for responsible legislation, informed decision-making, and global environmental stewardship.
- ELAW, renowned for its advocacy of environmental justice, is an important information resource hub. ELAW's repository navigates the practical dimensions of key principles such as the Polluter Pays Principle, Sustainable Development, and the Precautionary Principle. By providing real-world applications, legal analyses, and policy insights, ELAW empowers scholars, legal practitioners, and researchers to

Additional Resources on ELAW

- Climate Litigation Strategies
- Coal Litigation Strategies
- EIA Law Matrix
- Notable Cases
- ELAW Publications
- Legal & Scientific Resources
- Mangrove Science Database
- Plastic Law Resource

bridge the gap between theory and practice. In essence, ELAW's dedication to these principles reinforces the moral and legal pillars of environmental law and equips advocates with the knowledge and tools to uphold environmental justice and ecological integrity in an increasingly complex world.

Resources on Legislation, Enforcement and Compliance

In the realm of environmental law, the bridge between policy and practice is enforcement and compliance. A number of tools have been developed to strengthen environmental legislation and governance:

- The UNEP Law and Climate Change Toolkit is a digital resource designed to help nations develop legal frameworks for climate change. It offers a Legal Assessment functionality, allowing users to evaluate their domestic climate law regime and identify areas for review. The tool also provides a comprehensive library of climate change-related legislation, allowing users to explore through free text searches and a taxonomy. This tool is essential in climate governance, enabling nations to navigate the complex web of climate law, identify areas for improvement, and access a diverse array of legal provisions for tailored solutions. The Toolkit is currently being updated and the new enhanced version will be available on UN-EP-LEAP in 2024.
- The UNEP Secretariat has developed the Marine Litter and Plastics Pollution Toolkit, a digital repository containing legislation, filterable against a glossary of plastics-specific terms aligned with the preparatory work of the INC; a legislative development guide; case studies; and other guidance material. The toolkit is a dynamic instrument designed to empower nations and facilitate meaningful change, underlining the pivotal role of law in protecting ecosystems and marine life. The United Nations Environment Assembly has adopted significant resolutions in this area, signaling the urgency of the plastic pollution problem.
- Article 5 countries under the Montreal Protocol rely on UNEP-CAP for compliance assistance. UNEP-CAP collaborates with the. Secretariat of the Protocol, Multilateral Fund, and other partners to provide assistance to countries facing compliance issues. Post-conflict States are given special attention. CAP connects global environmental commitments with practical implementation, highlighting compliance programs' critical role in achieving MEA goals.
- The UNEP Data Reporting Tool for Multilateral Environmental Agreements (DaRT), is a private, secure environment for country reporting on biodiversity-related conventions. It helps Parties collect, arrange, and preserve information; aligns knowledge with convention goals; promotes communication; supports changes in strategy; speeds up report preparation; and enhances report quality.
- The Green Customs Initiative, established in 2004, aims to combat illegal trade in environmentally-sensitive commodities and substances while facilitating legal trade. It strengthens customs and border control officers' capacity to monitor and prevent illegal trade in commodities governed by conventions and multilateral environmental agreements. The initiative offers comprehensive awareness-raising, tools, and assistance to customs officers and border control officials, bridging the gap between legal frameworks and practical enforcement. It leverages the strengths of multiple organizations, ensuring customs administrations are well-equipped to preserve the environment and promote implementation of relevant environmental agreements.

Environmental Law Education and Raising Awareness

Environmental law education and awareness are critical components of addressing global environmental challenges. Numerous educational resources and institutions play a vital role in disseminating knowledge and promoting environmental consciousness.

Universities and institutions worldwide offer environmental law programs, providing extensive resources such as research papers, publications, and educational materials. Environmental NGOs and civil society groups, such as the World Resources Institute (WRI) and the Environmental Law Institute (ELI), also play a crucial role in raising awareness and fostering informed discussions on environmental issues. WRI's work on cities, climate, energy, and food, aligns with Montevideo Programme V's emphasis on collaboration for environmental solutions. ELI's mission is to make law work for people, places, and the planet, fostering innovative, just, and practical solutions. Both organizations represent pillars of environmental law education and awareness, aligning with Montevideo Programme V's goals of education, awareness, and informed action.

Access to Environmental Information

The WRI is the Secretariat of the Access Initiative (TAI), a global network advocating for environmental transparency, participatory decision-making, and access to justice. Its mission is to create a world where decisions impacting the environment are made transparently, equitably, and with active stakeholder participation. TAI's international network includes CSOs dedicated to advancing access rights, the right to information, and access to justice. The organization's bi-annual Global Gatherings foster knowledge exchange and capacity building, while the Environmental Democracy Index (EDI) assesses nations' laws and practices on transparency, participation, and access to justice in environmental decision-making. TAI also promotes open and inclusive climate policy dialogues, ensuring climate decisions align with sustainable development goals and the needs of affected communities. TAI has successfully supported natural resource commitments through the Open Government Partnership, and its regional focus extends to building standards for access rights in Latin America, the Caribbean, Asia, and Africa.