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**International environmental policy and governance
issues: environmental law**

**Final assessment of the Fourth Programme for the Development
and Periodic Review of Environmental Law (Montevideo
Programme IV) and proposals for a future programme**

Report of the Executive Director

Summary

The Governing Council of the United Nations Environment Programme, in paragraph 1 of section I of decision 25/11 of 20 February 2009, adopted the Fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV) as a broad strategy in the area of environmental law for the decade beginning in 2010. At its second session, held in 2016, the United Nations Environment Assembly adopted resolution 2/19 on the midterm review of Montevideo Programme IV. The present report, submitted pursuant to resolution 2/19, provides a proposal, developed in close consultation with the designated national focal points for the Montevideo Programme, for the work by the United Nations Environment Programme in the area of environmental law for the decade beginning in 2020, for consideration by the United Nations Environment Assembly, as well as information on an assessment of the implementation, effectiveness and impact of Montevideo Programme IV.

* UNEP/EA.4/1.

I. Introduction

1. Since 1982, the environmental law activities of the United Nations Environment Programme have been organized and coordinated through a series of 10-year programmes, adopted by the Governing Council of the United Nations Environment Programme (UNEP), for the development and periodic review of environmental law. The Programme for the Development and Periodic Review of Environmental Law (the Montevideo Programme) has consistently set the strategy for UNEP engagement in the field of environmental law. The current fourth Montevideo Programme (Montevideo Programme IV) was adopted in 2009 by the Governing Council in its decision 25/11 as a broad strategy for the international law community and UNEP in the field of environmental law for the decade beginning in 2010.

2. In its resolution 2/19, the United Nations Environment Assembly, inter alia, invited member States to designate national focal points for the Montevideo Programme with a view to collaborating with and guiding UNEP in strengthening the application of the Montevideo Programme and monitoring and evaluating its implementation. It also requested the Executive Director of UNEP to prepare, in close coordination with the aforementioned focal points and with input and comments from relevant actors, including major groups and relevant stakeholders, (i) an assessment of the implementation, effectiveness and impact of Montevideo Programme IV and (ii) proposals for the work by UNEP in the area of environmental law for a specific period beginning in 2020, for consideration by the United Nations Environment Assembly at its session to be held before the end of 2019.

II. Assessment of the implementation, effectiveness and impact of Montevideo Programme IV

3. In response to the request in resolution 2/19 to assess the implementation, effectiveness and impact of Montevideo Programme IV, the UNEP Evaluation Office conducted an independent assessment and evaluation of the Programme.

4. Member States, through the national focal points, as well as major groups and other relevant stakeholders, were given the opportunity to contribute to assessing the effectiveness of Montevideo Programme IV activities in their countries and regions. The assessment was an open and inclusive process, where Governments, United Nations organizations, other relevant intergovernmental bodies and organizations, secretariats of the relevant multilateral environmental agreements, expert institutions, academia and civil society were invited to submit relevant information on the implementation of Montevideo Programme IV, including their perspectives and relevant experiences related to its strengths, weaknesses and challenges and their views concerning important and emerging issues in the field of environmental law, as well as regarding the direction of a possible future programme.

5. The steps taken by the Evaluation Office in the assessment included: (i) an electronic survey circulated to all national focal points of the Montevideo Programme, secretariats of the relevant multilateral environmental agreements, United Nations organizations and environmental law experts; (ii) collection and analysis of information from a series of regional consultative meetings of the national focal points of the Montevideo Programme (in Nairobi from 4 to 6 June 2018, Panama from 20 to 22 June 2018, Amman on 9 and 10 July 2018 and Bangkok from 24 to 26 July 2018),¹ as well as a global meeting of national focal points held from 12 to 14 September 2018 in Geneva; (iii) bilateral interviews with national focal points of the Montevideo Programme; (iv) a review of key projects and reports produced by UNEP; (v) regular consultations and in-depth interviews with relevant UNEP staff; (vi) a broad literature review of publications written by leading environmental law experts; (vii) regular consultations with the Director of the UNEP Evaluation Office; (viii) interviews and webinars with environmental law experts; and (ix) online circulation of the draft assessment with a view to soliciting comments and views from relevant stakeholders. The assessment was also informed by the midterm review of Montevideo Programme IV, conducted in 2015, and the relevant resolutions adopted by the United Nations Environment Assembly, as well as goals and commitments contained in relevant multilateral environmental agreements and the Sustainable Development Goals.

¹ Reports of the four regional consultative meetings can be accessed at <https://www.unenvironment.org/explore-topics/environmental-governance/what-we-do/strengthening-institutions-0>.

6. The final assessment report by the Evaluation Office concluded that Montevideo Programme IV, which was designed to be a broad strategy for formulating environmental law activities, does indeed provide a very comprehensive framework for activities that address the whole spectrum of environmental law challenges and the specific functional challenges that countries face in the actual development, implementation and enforcement of environmental law. The assessment also revealed an overall positive picture of UNEP efforts to support countries in the development and implementation of environmental law. The following achievements were highlighted by the national focal points and other stakeholders:

- (a) The development of framework and sectoral environmental laws in several countries, as well as of model laws such as the Model Lead Paint Law;
- (b) Strengthened environmental institutions, including ministries of environment and environmental protection authorities in several countries;
- (c) Improved capacity of various legal stakeholders, in particular the judiciary, including through the development of information tools, guidance material and effective models for the development and implementation of environmental law and through the sharing of good practices and lessons learned;
- (d) The development and advancement of new norms and concepts, such as environmental constitutionalism and the environmental rule of law, in many countries;
- (e) The recognition and elaboration of linkages between human rights and the environment at both the international and national levels;
- (f) Enhanced synergies in the implementation of multilateral environmental agreements;
- (g) The development, ratification and implementation of several agreements, such as the Minamata Convention on Mercury, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization and the Kigali Amendment to the Montreal Protocol; and
- (h) Enhanced inter-agency collaboration and the establishment of partnerships on important environmental issues, such as regarding crimes that have serious impacts on the environment and environmental rights, in accordance with the catalytic role of UNEP.

7. With regard to the shortcomings of Montevideo Programme IV, national focal points and other stakeholders highlighted, for example:

- (a) Difficulties in attributing achievements in the development of environmental law at the national, regional or global levels to Montevideo Programme IV due to its breadth, lack of focus and multiple, overlapping activity areas, absence of clearly defined indicators to measure impact and results and lack of any programmatic structure for developing and taking action;
- (b) The lack of an effective governance, accountability and monitoring structure to oversee implementation;
- (c) The low profile of Montevideo Programme IV.

8. These shortcomings are reflected in the final assessment report for Montevideo Programme IV,² in which the Evaluation Office concludes that, because Montevideo Programme IV was not designed as a programme in the conventional sense, it lacks many of the attributes that would allow a formal evaluation. The Montevideo Programme is characterized by a noticeable lack of a clear results framework. It does not specify a discrete set of activities to be implemented and outputs to be delivered, nor does it have a defined resource envelope. The lack of these key attributes makes it difficult to measure performance at the outcome level, discern intended impacts, or even track the attribution of any observed impacts to Montevideo Programme IV. The Evaluation Office also highlights the lack of a governance structure for the Montevideo Programme and points out that such a structure, building on the designation of national focal points for the Montevideo Programme, would help in overcoming the shortcomings of Montevideo Programme IV, build a culture of accountability, better capture and respond to needs and demands by countries, increase the profile and impact of the

² Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/26696/Final_Montevideo_IV%20.pdf?isAllowed=y&sequence=1.

programme, and further elevate and build on the successes of past work under the Montevideo Programme.

III. Proposals for the work by the United Nations Environment Programme in the area of environmental law for a specific period beginning in 2020 for consideration by the United Nations Environment Assembly

9. As was mentioned above, in response to United Nations Environment Assembly resolution 2/19, UNEP organized a series of global and regional consultations involving a growing network of national focal points,³ as well as other actors, major groups and relevant stakeholders.

10. With a view to developing proposals for future work under the Montevideo Programme for a specific period beginning in 2020, participants at the global meeting of national focal points for the Montevideo Programme held from 12 to 14 September 2018 in Geneva,⁴ stressed that a future programme should:

- (a) Focus on strategic priorities and areas where environmental law, through the implementation of the Montevideo Programme, can make a difference for people and the planet;
- (b) Be aligned with the relevant goals and targets of the 2030 Agenda for Sustainable Development;
- (c) Be goal-oriented and results-based;
- (d) Promote and implement sustainable capacity-building programmes for the implementation and development of environmental law;
- (e) Build on the successes of Montevideo Programme IV and continue to enhance the capacity of relevant legal stakeholders to implement and develop environmental law;
- (f) Further develop innovative approaches or models to address environmental issues through the law, for example building on approaches used under the implementation of Montevideo Programme IV to eliminate and regulate the use of lead paint;
- (g) Provide a platform for experience and information sharing on environmental law, including on good practices and approaches;
- (h) Promote and develop initiatives that recognize and celebrate good and innovative practices in the implementation of environmental law;
- (i) Avoid duplication with existing multilateral and bilateral agreements, as well as with other environmental initiatives;
- (j) Promote synergies with other environmental initiatives, where appropriate;
- (k) Include a clear governance structure, building on the opportunities provided by the establishment of national focal points, to increase the visibility of and support for the Montevideo Programme at the national, regional and international levels;
- (l) Look at ways and means to integrate shorter programming cycles within a longer-term framework Montevideo Programme; and
- (m) Promote and build effective partnerships with the private sector, academia, non-governmental organizations and intergovernmental bodies and organizations.

11. Participants at the Geneva meeting also agreed to establish a group of friends of the co-chairs to further review, continue work on and finalize, at a meeting of the group of friends of the co-chairs in November 2018 in Nairobi, a proposal for the work by UNEP in the area of environmental law for a

³ As at 30 November 2018, 103 Member States had designated national focal points for the Montevideo Programme.

⁴ The co-chairs' summary of the First Global Meeting of National Focal Points for the Montevideo Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV), held in Geneva from 12 to 14 September 2018 (UNEP/ENV.LAW/MTV.4/FP.4), is available at https://wedocs.unep.org/bitstream/handle/20.500.11822/26692/Co_Chairs%27_Summary.pdf?isAllowed=y&sequence=1.

specific period beginning in 2020. The group would comprise representation from Bhutan, Cameroon, Chile, China, Ethiopia, the European Union, the Islamic Republic of Iran, Jamaica, Japan, Jordan, Kenya, Mexico, Suriname, Switzerland, the Syrian Arab Republic, Uganda, the United Kingdom of Great Britain and Northern Ireland, the United States of America (co-chair), Uruguay (co-chair) and Zambia. Participants also decided that throughout the drafting process input would be solicited from all focal points, civil society and other relevant stakeholders to ensure a transparent and inclusive process.

12. On 12 November 2018, UNEP circulated a draft proposal for work by UNEP in the area of environmental law for the decade beginning in 2020 to all national focal points, as well as major groups and other relevant stakeholders, for input. The input received was compiled and made available online⁵ ahead of the meeting of the group of friends of the co-chairs in Nairobi. On 28 November 2018, the group finalized its work and agreed on a final proposal to be submitted for consideration by the United Nations Environment Assembly at its fourth session, along with a summary of the meeting by the co-chairs (set out in annex II to the present report).

IV. Way forward

13. The United Nations Environment Assembly is invited to (i) consider noting the assessment⁶ of the implementation, effectiveness and impact of Montevideo Programme IV, including progress made and challenges encountered in the implementation of the programme; and (ii) consider adopting the proposal for work by UNEP in the area of environmental law for the decade beginning in 2020 as set out in annex I to the present report.

⁵ https://wedocs.unep.org/bitstream/handle/20.500.11822/26864/Comments_on_MonteV.pdf?isAllowed=y&sequence=1.

⁶ The final assessment of Montevideo Programme IV is available at https://wedocs.unep.org/bitstream/handle/20.500.11822/26696/Final_Montevideo_IV%20.pdf?isAllowed=y&sequence=1.

Annex I

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

Proposal for work by the United Nations Environment Programme in the area of environmental law for a specific period beginning in 2020, as agreed on during the meeting of the group of friends of the co-chairs held in Nairobi from 26 to 28 November 2018

1. The Fifth Montevideo Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V) is an intergovernmental programme 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 for the decade beginning in 2020. Montevideo Programme V builds on the successes of the past Montevideo programmes and supports the United Nations Environment Programme in the field of environmental law to fulfil its core mandate⁷ and meet the environmental objectives found in United Nations resolutions, in particular those adopted by the United Nations Environment Assembly and, as appropriate, reflected in obligations contained in multilateral environmental agreements.

Vision

2. Montevideo Programme V promotes the development and implementation of environmental rule of law, strengthens the related capacity in countries and contributes to the environmental dimension of the 2030 Agenda.

Objectives

3. Montevideo Programme V will aim to:
- (a) Support the development of adequate and effective environmental legislation and legal frameworks at all levels to address environmental issues;
 - (b) Strengthen the effective implementation of environmental law at the national level;
 - (c) Support enhanced capacity-building for increased effectiveness of environmental law for all stakeholders at all levels;
 - (d) Support national Governments, upon their request, in the development and implementation of environmental rule of law, consistent with decision 27/9 of the Governing Council of the United Nations Environment Programme;
 - (e) Promote the role of environmental law in the context of effective environmental governance;
 - (f) Enhance the responsiveness and effectiveness of the Montevideo Programme.

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 legal stakeholders involved in the development and implementation of environmental law;

⁷ Paragraph 3 of the 1997 Nairobi Declaration on the Role and Mandate of UNEP, as reaffirmed in paragraph 88 of the United Nations Conference on Sustainable Development outcome document, "The Future We Want".

- (c) Promote public participation, access to information and access to justice in environmental matters;
- (d) Promote the 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 legal fields;
- (i) Promote training in the field of environmental law, especially for legal professionals such as judges and prosecutors and other enforcement officials.

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

6. The institutional arrangements and monitoring for Montevideo Programme V will include the following:

- (a) The United Nations Environment Programme is to serve, within its current mandate and within available resources, as the secretariat for Montevideo Programme V and fulfil the following functions:
 - (i) To implement activities under the Montevideo Programme and contribute to the fulfilment of the Montevideo Programme's vision and objectives at the direction of member States through the national focal point.
 - (ii) To cooperate with, respond to, liaise closely with and follow the direction of member States, through the national focal points for the Montevideo Programme, in the implementation of the Programme;
 - (iii) To organize and facilitate meetings of the national focal points and the steering committee under the Montevideo Programme;
 - (iv) To promote the exchange of information, experiences and best practices, as well as the building of capacity, including among the national focal points for the Montevideo Programme.
 - (v) To prepare progress and other relevant reports for the effective implementation of the Montevideo Programme.

- (vi) To foster the active participation of the relevant stakeholders in the implementation of the Montevideo Programme.
- (vii) To cooperate, as appropriate, with the secretariats of multilateral environmental agreements to ensure the mutual supportiveness of efforts.
- (viii) To monitor the implementation of the Montevideo Programme.
- (ix) To maintain a current list of the national focal points for the Montevideo Programme, activities, projects and requests for support by member States made under the Programme.
- (x) To report on the implementation, activities and funding of the Montevideo Programme on a biennial basis.
- (xi) To seek to procure appropriate funding for the implementation of activities under the Montevideo Programme and consider establishing a trust fund for management of designated funds, as appropriate, in accordance with relevant Environmental Assembly decisions, and including through other sources of funding such as voluntary contributions from Governments, the private sector, foundations and other organizations.
- (xii) To ensure measurability, accountability, transparency and results-oriented management of the funds allocated to the Montevideo Programme, as appropriate, and inform the national focal points.

(b) **National focal points:** Pursuant to Environmental Assembly resolution 2/19, Governments are invited to designate national focal points for the Montevideo Programme. The national focal points should preferably be senior government officials expert in environmental law. The focal points will:

- (i) Identify the priority areas for the implementation of Montevideo Programme V;
- (ii) Collaborate with and guide the secretariat in the implementation of Montevideo Programme V;
- (iii) Review, as appropriate, Montevideo Programme V, including progress reports prepared by the secretariat, and promote its implementation, with the support of the secretariat;
- (iv) Provide the secretariat with available national data in the field of environmental law development and implementation to fulfil its tasks and identify needs and priorities at all relevant levels;
- (v) Support efforts to liaise and collaborate among other government officials and key stakeholders at all relevant levels appropriate to the implementation of activities under the Montevideo Programme;
- (vi) Participate in the biennial global and other relevant meetings of the national focal points, which will be held face to face or remotely, as appropriate;
- (vii) Provide strategic advice, guidance and direction to the secretariat in the delivery of the Montevideo Programme;
- (viii) Contribute to catalysing action to address emerging environmental issues through the law.

(c) **Steering committee for implementation:** The national focal points for the Montevideo Programme will, at the global meetings, designate a steering committee for implementation composed of two to three representatives nominated from each United Nations region, ensuring gender balance to the extent possible. The steering committee for implementation will work with the secretariat in the implementation of the Montevideo Programme, based on recommendations and overall guidance from the meetings of the national focal points. The steering committee for implementation will also work with the secretariat and the other national focal points to prepare for meetings of the national focal points. The secretariat will develop the draft modalities of work for the steering committee for implementation to be presented at the first global meeting for consideration and adoption.

(d) **Assistance in implementation:** 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 Montevideo Programme V, as appropriate and feasible.

Annex II

Co-chairs' summary of the Meeting of the Group of Friends of the Co-chairs for the Montevideo Programme for the Development and Periodic Review of Environmental Law held in Nairobi from 26 to 28 November 2018

Co-Chairs' Summary

I. Opening and organizational matters

1. The meeting was opened at 9 a.m. on 26 November 2018 by Ms. Elizabeth Maruma Mrema, Director of the Law Division of the United Nations Environment Programme (UNEP). Mr. Timothy R. Epp of the United States of America and Mr. Marcelo Cousillas of Uruguay co-chaired the meeting. Ms. Kunzang of Bhutan served as rapporteur.
2. The purpose of the meeting was to discuss and endorse the secretariat's proposal for the work of UNEP in the area of environmental law for a specific period beginning in 2020, to be submitted for consideration by the United Nations Environment Assembly at its fourth session, to be held in March 2019.
3. As had been determined at the First Global Meeting of National Focal Points for the Montevideo Programme for the Development and Periodic Review of Environmental Law, held in Geneva in September 2018, the group of friends of the co-chairs included Bhutan, Cameroon, Chile, China, Ethiopia, the European Union, the Islamic Republic of Iran, Jamaica, Japan, Jordan, Kenya, Mexico, Suriname, Switzerland, the Syrian Arab Republic, Uganda, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay and Zambia. Jordan and the United Kingdom were not able to be present at the meeting. Canada participated in the meeting together with representatives from civil society and academia.

II. Presentation and discussion of a draft proposal for the work of the United Nations Environment Programme in the area of environmental law for a specific period beginning in 2020

4. A representative of the secretariat introduced the draft proposal for the work of UNEP in the area of environmental law for a specific period beginning in 2020. The proposed 10-year intergovernmental programme, to be referred to as Montevideo Programme V, was designed to guide the identification and implementation of priority actions in the field of environmental law. It included a strengthened focus on supporting member States at the national level in the development and implementation of environmental law, along with proposals for strengthening the governance of the Montevideo Programme, including through a strengthened network of national focal points to ensure a more country-driven approach.
5. Participants welcomed the draft and gave detailed comments and suggestions for refining and strengthening the proposal. Key messages included, among others, that Montevideo Programme V should have:
 - (a) A *vision* promoting the development and implementation of environmental rule of law, strengthening the related capacity in countries and contributing to the environmental dimension of the 2030 Agenda for Sustainable Development;
 - (b) Clearly defined *objectives*, including support for capacity-building and support for the development and implementation of environmental law at all levels;
 - (c) Clear *strategic activity areas*, including the provision of practical guidance tools, information exchange, promotion of the recognition of the mutually reinforcing relationship between environmental law and the three pillars of the Charter of the United Nations, collaboration, promotion of partnerships, and educational and awareness-raising initiatives, among others;

(d) Clear *implementation guidelines*: the Programme should respond to country needs and priorities, be results-oriented, promote synergies and partnerships, be grounded in science and best practices and available data, and be consistent with the 2030 Agenda and relevant resolutions and decisions of the United Nations Environment Assembly, as well as having due regard for nationally determined priorities, for relevant resolutions and decisions of other United Nations bodies, and for other multilateral processes, including regional environmental processes;

(e) Clear *institutional arrangements*, including a mandate for UNEP to undertake key activities and effectively implement Montevideo Programme V, a clearer and stronger system of national focal points, a steering committee for implementation, and assistance for implementation.

6. Some participants suggested that an explicit reference to the establishment of a trust fund to support implementation be included in a proposed resolution for consideration by the fourth session of the Environment Assembly.

III. Outcome of the meeting

7. At the end of the meeting, participants agreed on a revised version of the secretariat's proposal, to be submitted for consideration by the United Nations Environment Assembly at its fourth session. It was agreed that the revised version would be circulated to participants after formatting and editing by the secretariat. The revised proposal is annexed to the present summary.

8. The meeting ended at 9:25 p.m. on 28 November 2018.
