

REPORT

Regional Meeting of National Focal Points for East Asia and the Pacific on the Montevideo Programme IV for the Development and Periodic Review of Environmental Law

Bangkok, Thailand, 24-26 July 2018

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Background

Since the establishment of the United Nations Environment Programme (UN Environment), environmental law has constituted one of the key areas of its work. From 1982 to the present day, the environmental law activities of UN Environment have been organized and coordinated through a series of 10-year programmes adopted by the Governing Council of UN Environment and generally referred to as the Montevideo Programme for the Development and Periodic Review of Environmental Law. The Montevideo Programme has been instrumental in steering the efforts of the international community to develop environmental law, which will transform science-based policies into action-oriented rules and standards of conduct.

The current Programme – Montevideo Programme IV – was adopted by the Governing Council decision 25/11 as a broad strategy enabling the international law community and UN Environment to formulate activities in the field of environmental law for the decade beginning in 2010. Since its commencement in 2010, Montevideo Programme IV has formed an integral part of the UN Environment programmes of work and has provided UN Environment with the strategic guidance needed to respond to evolving needs in countries and the international community in the field of environmental law and undertake necessary action, consistent with each biennial programme of work, in collaboration with a range of partners at the national, regional and global levels.

In May 2016, the United Nations Environment Assembly adopted resolution 2/19 inviting Member States to designate national focal points to collaborate with and guide UN Environment in strengthening the application of the Montevideo Programme and to monitor and evaluate its implementation. Following the designation of national focal points, UN Environment lined up a series of regional consultations to evaluate implementation of the programme and to identify key elements for a future programme.

The present report concerns the fourth among the series of regional consultations for national focal points, amongst others, from East Asia and the Pacific took place from 24 to 26 July 2018 in Bangkok, Thailand. It should be noted that the first consultations for national focal points from Africa took place from 4 to 6 June 2018 in Nairobi, Kenya, at the United Nations Office in Nairobi, the second consultations for national focal points from Latin America and the Caribbean took place from 20 to 22 June 2018 in Panama City, Panama and the third regional consultations for national focal points from West Asia took place from 9 to 10 July 2018 in Amman, Jordan.

The objectives of the meeting were to provide a forum for Montevideo Focal Points from East Asia and the Pacific to:

- (a) Share and exchange information on latest developments, trends, and good practices in the development and enforcement of environmental law in their countries, as well as regionally and globally;
- (b) Contribute to UN Environment's preparation of the assessment of the Montevideo Programme IV, including through sharing information on the status of implementation of the Montevideo Programme IV in their countries; and
- (c) identify priorities from the region and proposals for the work of UN Environment in environmental law for the Fifth Montevideo Programme ten-year period commencing from 2020.

The meeting also provided an important platform to increase partnerships and networks in the region for Montevideo Focal Points and other stakeholders working on environmental law issues.

Representation

The focal points who attended the meeting represented Bhutan, Cambodia, China, Indonesia, Iran, Japan, Maldives, Mongolia, Myanmar, Pakistan, Solomon Islands, Thailand, Timor-Leste, and Vietnam. Subject-matter experts who added this meeting represented Chiang Mai University, Earthrights International, ELI, Environmental Counsel, IGES, Kasem Bundit University, National University of Singapore, Sea Camp, SPREP, SPRFMO, the School for Field Studies, Wuhan University and University of Sydney, OHCHR, and UN Environment.

Organization of work

The meeting provided a forum for discussion and was organized in three one-day segments as follows:

- The first day was dedicated to a sharing of regional and national developments and trends, focusing on the intersection between environment and human rights, the growing problem of marine litter and single-use plastics, environmental and social safeguards, and the role of national legal frameworks in implementing the Paris Agreement.
- The second day focused on trends and emerging issues in environmental law, specifically the regulation of air pollution and the combating of illegal wildlife trade. In the afternoon, an open space was convened to facilitate the sharing of knowledge, finding solutions, and building coherence on future actions. The day finished with a presentation on changing the narrative in environmental law.
- The third day focused on the Montevideo Programme IV assessment. The discussion was divided into three areas: domestic challenges in the development of environmental law;

achievements in the domestic development of environmental law; and concrete needs for a new UN programme on environmental law.

DAY 1: TUESDAY, 24 JULY 2018

Welcome Remarks

The meeting was opened by Isabelle Louis, Deputy Director of Asia and Pacific Office, UN Environment. She just returned from a mission in Palau, a country that made a decision years ago to stop unsustainable fishing practices and boost tourism. It was an example of a nation that had used good regulatory frameworks and environmental policies. The Deputy Director then introduced the Montevideo IV, explaining how the programme was meant to work in coordination with regional level agreements and domestic laws. She noted that the discussion today would centre around critical emerging issues such as marine litter and plastic waste management.

Setting the Scene

Andy Raine, Regional Coordinator for Environmental Law and Governance at UN Environment, shared his passion for the environment and sustainability. He described innovations in environmental law and how they related to Montevideo-IV. He then explained the four objectives for the meetings: (i) sharing and exchanging information on latest developments, trends, and good practices; (ii) identifying priorities from the region(s); (iii) regional inputs to the Montevideo Programme IV; and (iv) increasing regional partnerships and networks. To achieve these four priorities, the discussion would be centered around the regional and national developments and trends as well as challenges and priorities.

Andy Raine then explained the role and function of UN Environment. UN Environment's mandate is to provide leadership and encourage partnership in caring for the environment by inspiring, informing and enabling nations and people to improve their quality of life, without compromising that of future generations. UN Environment's priority areas include: climate change; ecosystem health; chemicals; resource efficiency; environmental governance; disasters and conflict, and environment under review. While UN Environment supports strong laws and institutions for a healthy planet and people, UN Environment Assembly (UNEA) functions as a parliament of nations presiding around the environment.

And finally, Andy Raine focused on the work of UN Environment Regional Office for Asia and Pacific. After providing an overview of Asia Pacific's Flagship initiatives, he noted that this UN Environment Regional Office geographically serves 41 countries across the region. UN Environment also has country and sub-regional offices in Apia, Beijing, and New Delhi, as well as strategic presence in Hanoi and Osaka. Within UN Environment, there are seven divisions. And within the environmental law division, there are two branches: the Environmental Law Branch and the Environmental Governance and Conventions branch.

He then introduced Johannah Bernstein, a Senior International Environmental Law Consultant working with UN Environment who is leading the assessment of Montevideo-IV and to help develop proposals for Montevideo-V (or whatever successor programme may be agreed). As the facilitator of Day 3's discussion, she briefly explained the schedule for Day 3 and provided an overview of the evolution of the Montevideo programmes and the four pillars under Montevideo IV. Montevideo I marked the understanding to a new generation of global environmental challenges. Montevideo II added the economic and human dimensions while Montevideo III helped catalyse a new generation of Multilateral Environmental Agreements (MEAs). Building on the previous programmes, Montevideo IV has four programme areas including: (i) the effectiveness of environmental law; (ii) conservation, management and sustainable use of natural resources (iii) challenges for environmental law; and (iv) relationship with other fields.

Introductions Exercise

Jost Wagner, the facilitator for the first two days of the meeting, provided an overview of the workshop process. He explained that after the formal presentations, participants would engage in table conversations and reflections, talk show style panels, interactive group work, open space, and storytelling.

He then asked the participants to introduce their region, focus, professional affiliation, and Montevideo experience. In this regional consultation, the participants are from Pacific Area, South Asia (including Iran), East Asia, ASEAN (including Timor Leste), and US. Eight of them specialize in climate change issues, five in environmental and social safeguards, seven in environment and human rights, and seven in marine litter. In terms of their professional affiliation, there were thirteen government officials, eighteen people from civil society organizations, and three from development agencies. Only five people had direct knowledge of the Montevideo Programme and four have been actively involved in some dimension of the Montevideo processes.

Thematic dialogue one: Environment and human rights – developments and trends, challenges and priorities in Asia and the Pacific

Ben Boer, Emeritus Professor at the University of Sydney and Visiting Professor at Wuhan University, explained the linkage between the environment and human rights. The history of the right to a clean and safe environment stems from Stockholm Declaration 1972. Despite the fact that the distinction of the right to a quality environment has been implicit in many international environmental instruments since Stockholm, the progressive trend in environmental law has been towards increasing the specificity and explicitness of the linkage in recent instruments.

The most recent recognition of environmental human rights is enshrined in the Ecazu Convention on Access to Information, Participation and Access to Justice: “guarantee the full and effective implementation...of rights to...every person to live in a healthy environment.”

Another important development is the Framework Principles proposed by former Special Rapporteur on Environment and Human Rights, Professor John Knox. These include sixteen basic obligations of states under human rights law as they relate to a sustainable healthy [sic] environment.

Another important development is the proposed Global Pact for the Environment that was the subject of a UN General Assembly resolution 72/277 in May 2018 entitled “Towards a Global Pact for the Environment.” The Global Pact would aim to provide an overarching framework for international environmental law, consolidating as well as advancing important principles and norms.

As regards the contribution of the Montevideo IV Programme, it has been essential to the process of ensuring a human right to a healthy environment and enhancing the effectiveness of the environmental rule of law. Pillar 4 of the Programme devotes an entire programme area on the topic of environment and human rights. It recognises that environmental democracy, including substantive and procedural rights, needs to be advanced at international, regional, national, and sub-national levels. However, recognition is not enough - countries need to strengthen their implementation. China, for example, passed the Environmental Protection Tax Law 2018 to protect the environment and reduce pollutant discharges.

For many Asia Pacific countries, the priority is to now develop and adopt agreements related to environmental rule of law and environmental human rights. They need to confront challenging environmental issues such as the rights of the future generation, and to implement principles of sustainability.

During the Table Discussions, focal points and other participants shared their experiences in embedding environmental human rights in national constitutions. Iran has a long history of embedding the appreciation and protection of environmental human rights in their laws and religious decrees. Article 50 of the Iranian Constitution states that “In the Islamic Republic it is considered a public duty to preserve the environment where the present and the future generations may have an improved social life. Consequently, any activity, economic or other, that leads to the pollution of the environment or its irreparable damage will be forbidden.”

In Vietnam, Article 43 of the Constitution stipulates that “Everyone has the right to live in a clean environment and has the duty to protect the environment.” The Vietnam focal point asserted that the key to achieving environmental human right at the national level is to raise and sustain public awareness. In 2008, the Cambodian National Assembly passed the Natural Resources Protection and Management Law. Environmental human rights are also integrated into the Cambodian Environment Code. The Cambodia focal point recommended that countries should include

pollution fines, establish environment courts, and dedicate special funds under the ambit of their national environment codes.

Timor-Leste's 2002 Constitution recognises the right of everybody for a healthy environment, protection for the future generation, and the sustainable use of natural resources. To create a right to a safe environment, according to Montira Pongsiri from Cornell University, governments need to connect a healthy environment to human wellbeing. They must also include the public in the development and implementation of environmental human rights. This will help to build ownership and buy-in for this new generation of rights.

The representative from the Thai Pollution Control Department (PCD) explained that many official avenues for submitting environmental complains have empowered the general public. They can send complaints by emails or call any related departments. They can also visit provincial offices and send their complaints directly to the PCD. Moreover, the Thai culture is particularly conducive to the linkage of environment and human rights. Indeed, in people's' minds, they are correlated. However, the recent phenomenon of immigration has led to a growing segment in the population who do not recognize the direct linkage. Therefore, it is important to promote the understanding of value of linking environment and human rights. Nonetheless, if a legal framework is too strongly imposed, citizens will be resistant to comply. Pakistan faces the same problem as does Thailand, but at a slower pace.

Thematic dialogue two - marine pollution: What will it take to effectively regulate marine litter and single-use plastics in Asia and the Pacific?

The second thematic dialogue was chaired by Andy Raine, Regional Coordinator for Environmental Law and Governance at UN Environment Regional Office for Asia Pacific. The dialogue addressed the effective regulation of marine litter and single-use plastics on international, regional, and domestic levels. Panelists included Jerker Tamelander, Head of Coral Reefs Unit, UN Environment, Clark Peteru, Legal Advisor, Secretariat of the Pacific Regional Environment Programme, Lye-Lin Huang, Former Director of Asia-Pacific Centre for Environmental Law, Shirley Malielegaoi, ACEO and Head of Legal Division, Ministry of Natural Resources and Environment, Government of Samoa, and Xiao Recio-Blanco, Director of the Ocean Program Environmental Law Institute.

The discussion first addressed the topic of what Asia Pacific countries are doing to regulate marine pollution. For example, Thailand has banned cigarette butts on beaches, the Philippines has regulated the production and disposal of certain plastics while China has banned the import of plastic waste. These examples evidenced increasingly ambitious regulatory targets within the

region. The representative from Samoa raised key topics that should be addressed, which included limiting/banning the production of single-use items, as well as phasing out open dumps.

The Secretariat of the Pacific Regional Environment Programme detailed the key challenges faced by countries when drafting their legal instruments. Two particular avenues to streamline implementation in particular were proposed. Firstly, countries could adopt overarching legislation to deal with marine litter, including prevention, reduction and management. Secondly, an umbrella organization, comprising all of the relevant states could be established to improve coordination. This organization could serve as a mechanism for fostering stakeholder engagement with the private sector and civil society organisations.

The topic of the circular economy was then raised by the Head of the Coral Reefs Unit from UN Environment. He noted that the Three 3Rs - “Reduce, Reuse, Recycle” - underpin many new initiatives within the private sector. Participants agreed that the private sector must be more ambitious in reducing its own unsustainable production and consumption patterns.

Intervention and success stories were then shared by Lye Lin-Heng, the former Director of the Asia-Pacific Centre for Environmental Law. She began by noting how 80% of her country’s marine litter came from land-based sources, and thus this source must be tackled first. She acknowledged that the situation is different for each country. Nevertheless, the institutions responsible for the enforcement of litter laws must be improved and strengthened. In addition, the processes by which marine litter is disposed of, for example, by using landfills and incinerators, must be retrofitted to diminish ecological footprint. Others suggested that more resources had to be allocated in developing new waste disposal processes. Lin-Heng closed the discussion by reiterating that respect for the rule of law was a necessity for corporations planning to invest in countries.

Participants then focused on the growing and dangerous levels of marine litter. An ASEAN framework regarding marine litter was proposed by the Secretariat of the Pacific Regional Environmental Programme. It could serve to connect the different existing mechanisms, improving the efficiency and scope of regulation at the regional level. The panel moderator summarized that because of the risk of overlap among country initiatives, it was important to improve overall communication.

The panel discussion was then opened to audience members. Dr. Boer, Professor Emeritus of the University of Sydney, proposed that a more holistic approach towards implementing the SDGs and other policy instruments are needed. Indeed, both consumers and producers have to be targeted. The Samoa focal point suggested that laws were not as effective as grassroots social change. He asserted that laws and regulations could certainly mitigate large scale producer-side sources of pollution. Matthew Baird, an independent environmental counsel, stressed the need to

address problems within existing systems. He especially noted the importance of unregulated fish trawling, which contributed to almost half of all marine litter. The Director of the Ocean Programme Environmental Law Institute suggested that regulatory efforts should be targeted toward the manufacturers of products that end up becoming marine litter. Efforts to date were primarily focused on the consumer side.

Thematic dialogue three: Environmental and social safeguards – what are the key challenges and opportunities for ensuring fit for purpose safeguards in Asia and the Pacific?

The third thematic dialogue addressed the environmental and social safeguards. It was chaired by Matthew Baird, Environmental Counsel.

Mr. Baird stressed above all the importance of China within Asia. As a significant investor in infrastructure with large amount of human and capital resources, China can implement policies that will transform Asia and with it, the world, as it currently does with the Belt and Road Initiative. Consequently, international policies initiatives in the Asia Pacific region should be developed bearing this phenomenon in mind. The aforementioned Belt and Road Initiative is a massive project spanning several decades that attempts to center China geographically and economically within Asia by facilitating routes to Europe via the New Eurasian Landbridge, to Russia via the China-Mongolia-Russia Corridor, to Central Asia and Europe via the China-Central Asia-West Asia Corridor, to Pakistan and Southern Asia, and to Africa via sea routes. Such development initiatives will only grow in number, and must be conducted in accordance with rigorous environmental impact assessment (EIA)

There will be an increasing number of public-private partnerships in the near future, raising concerns about whether the private sector (and particularly foreign multinational companies) will be informed about changes in national environmental law. Consideration of the environment is multifaceted and should also include, among others, questions of climate change and impact on local communities.

Mr. Baird noted a range of international agreements on EIA such as the Espoo Convention and the SEA Protocol, which ensures signatories integrate EIA into their plans and programmes at the earliest stages; the Aarhus Convention, which guarantees access of information to the public and encourages public participation in decision making; the Roadmap for a Transboundary Haze-Free ASEAN by 2020; and the Heart of Borneo Declaration. There are significant commonalities that underpin these safeguards, among them the importance of EIA policies that address transboundary projects.

Another theme related to social and environmental safeguards is the integration between environmental matters and human rights issues, as many countries referred to human rights violations of environmental rights activists. In this respect, John Knox, former United Nations Special Rapporteur on Human Rights and the Environment has issued a report on Framework Principles on Human Rights and the Environment, stressing particularly that environmental rights activists must be duly protected in order to express their opinions and should not be accused of treason. An observation made by Matthew Baird was that government officials are often hesitant to promote access to justice in their own countries, but are often more amenable to implementing grievance redress mechanisms.

In the ensuing discussion, the focal point from Thailand stressed that EIA initiatives can be more effective where they result from a process that involves public participation rather than from top-down command and control approaches. For example, it is feasible to implement a smartphone application by which citizens can take photos of and report sites of pollution. Xiao Recio-Blanco, Director of the Ocean Program Environmental Law Institute, reflected that social impact assessments are sometimes conducted and completed in as little as 3 days in order to face the pressure of other pressing tasks.

It became clear that there was a significant range in EIA implementation in the region. For example, in Indonesia and Vietnam, EIA is complemented with landscape analysis and law enforcement, while in Bhutan and the Solomon Islands, EIA is not effectively enforced due to resource constraints. The focal point from Thailand noted that environmental courts have been effectively implemented in Thailand, where both civil and criminal law courts have green benches. The focal point from China reported that EIA has been established in China since at least 1979, albeit with some constraints. EIA law in China was mandated in 2016, but in regions with many projects, EIA alone was not enough to deter significant adverse cumulative impact on the environment.

The focal point from the Maldives reflected that regional EIAs are often insufficient in addressing transboundary environmental issues. These issues are often asymmetrical. For example, in issues surrounding rivers, downstream countries face the brunt of decisions made by upstream countries, who have nothing to gain from a legally binding instrument and thus feel no obligation to cooperate. Typically, countries will expect neighboring countries to sign transboundary treaties but will be reluctant to sign on themselves. This has resulted in a growth of bilateral treaties and a decrease in regional instruments. A possible solution is to create a standard template of environmental/social impact assessment so that countries' efforts in regulating EIA is more effectively harmonized.

Thematic dialogue four: climate change – what is the role of national legal frameworks to implement the Paris Agreement?

Mr. Priyalal Kurukulasuriya, Former Chief of Environmental Law at UN Environment, addressed issues revolving around climate change. He explained the three dimensions that underpinned the evolving body of climate legislation. First, the increasing recognition of the environmental rule of law. Second, the crucial role played by the rapidly growing body of scientific research. Third, the fact that around the world, the judiciary is increasingly cognizant of the evolving climate jurisprudence. He explained that the effective implementation of climate policy thus requires implementable legislation, institutional effectiveness and efficiency, institutional collaboration, public participation and empowerment, and an independent and informed judiciary.

Kurukulasuriya also explained the three pillars of the Paris Agreement. The first is to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels. Second, to increase the ability of countries to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development. Third, to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

In the group discussion, Matthew Baird raised the issue that since most countries are only passing climate change policies, not laws, the enforceability of climate change strategies would not be strictly enforced. Kurukulasuriya's answer was that most of the countries who have developed national climate legislation have also created institutional frameworks that help to ensure the implementation and enforcement of climate legislation. Developing countries are still in the stage of creating new institutions to address climate change. Nonetheless, there are a growing number of countries have also developed renewable energy legislation.

DAY 2: WEDNESDAY, 25 JULY 2018

Trends and Emerging Issues in Environmental Law

Air pollution

Wanhua Yang, Former Legal Officer, UN Environment, addressed the regulation of air pollution. She first defined the scope of air pollution issues. Air pollution is the single greatest environmental risk to human health and the environment and is the main cause of death and disease globally. This is particularly important to this Asia Pacific regional consultation because out of the 6.5 million air pollution-related death in the Asia Pacific, 70% occurs in Asia Pacific regions. Without intervention, the instances of premature death will increase by 20% in 2050. The issue of air

pollution is of particular importance because many other factors, including reaction to sunlight, chemical transformations, different pollutants, the impact of weather, impact of topography, can all easily worsen air pollution with their secondary effects.

There are multiple levels of impacts. Besides the public health impact, the environmental impact includes acidification, eutrophication and crop damage. Air pollution mostly affects the most vulnerable in societies including women, children, and the disabled. The loss in productivity of women in particular, often results in significant economic loss.

In recent years, there have been important developments in the regulation of air pollution. Most countries have enacted legislation such as national framework environmental laws, as well as laws focusing on pollution control in general, and laws focusing on air pollution along with national regulations, not to mention, local legislation, and ambient air quality standards and guidelines.

Despite these important legislative developments, several key challenges remain to the development of effective air quality regulation.

- Knowledge gaps (inadequate understanding of pollution sources, pathways of exposure, and impacts and solutions);
- Political gaps (lack of political will),
- Governance and institutional gaps (MEAs often address single issue);
- Lack of adequate legal means to address multi pollutants and cross-region air pollution
- Lack of multi-agency cooperation and the lack of regional and international cooperation),
- Implementation gaps (inadequate administrative financial institutional and technical capacity),
- and public participation and supervision gaps.

It was also noted that in some countries who have not updated their air quality legislation, some key pollutants are left out, including fine particulate matter, which has especially significant health impacts. Moreover, regulatory agencies tend to focus on single air pollutant rather than dealing with multiple pollutants comprehensively. They also tend to focus more on emission control and pay less attention to the nature of long-distance transport of air pollutants.

Despite the challenges facing air quality regulation, there are a few success stories in the region. For example, in South Korea, the Clear Air Conservation Act 2007/2016 defines clean air as the objective of the law to protect public health. It also provides for the conduct of regular assessments and evaluations, expands the scope of previous laws, establishes air quality management districts, provides for the creation of a Master Plan, initiates total emission control programmes, and carries out targeted emission control and reduction. The Act also strengthens monitoring and reporting, provides economic incentives and disincentives, and strengthens inspection and legal

responsibilities and penalties. Besides the Clear Air Conservation Act 2007/2016, the South Korea Government also passed the Enforcement Decree of the Clean air Conservation act 2007/2016, Special Act on the Improvement of Air Quality in Seoul Metropolitan Area 2003/2015, Act on Promotion of Development and Distribution of Environment Friendly Motor Vehicles 04/11, Master Plan for Seoul Metropolitan Air Quality Management, Measures for Stationary Sources (Cap and Trading program), Measures for Mobile Sources (replace zero-emission vehicles, adopt stricter standards for vehicles).

Another example is China's Air Pollution Prevention and Control Law, which was first adopted 1987 and revised in 2000. Initially it was felt that the scope, scale and effectiveness of the law was limited. Key gaps include: health impacts and ambient air quality, which are yet to be linked to concrete control measures, more emphasis on emission-drive control without air quality-driver control, and no clear consequences for non-compliance. In response to the 2013 Air Pollution Control Action Plan, China revised its air pollution law in 2015. To implement the newly revised law, many provinces and municipalities have now also adopted their regulations. The achievements are documented in a recent enforcement inspection report by the Standing Committee of the National People's Congress.

In the years to come, there are many opportunities for action that countries can take to address air quality challenges:

- Improve environmental governance at the global, regional and national levels;
- Strengthen national regulatory regimes for air pollution control and air quality improvement;
- Effectively share available regulatory innovations with countries that need to improve their air quality law;
- Strengthen compliance, enforcement and judicial capacity.
- Create integrated control/management and targeted interventions;
- Create a culture of compliance supported by information disclosure and access; and
- Maximize public participation and supervision with strong judicial safeguards.

The facilitator then opened the floor to questions and comments. Dr. Ben Boer, Professor Emeritus of the University of Sydney, enquired about existing regional initiatives in North East Asia. Ms. Yang explained that there were three in total: an intergovernmental mechanism dealing with acid rain, a clear air partnership programme, and an ASEAN haze programme. The Representative from Bhutan shared how her country did not yet have a separate Air Pollution Control Act, although it did pass an Environmental Protection Act in 2017. She detailed the challenges which her country faced in dealing with air pollution, which included point source and ambient pollution. She also stressed that legal-technical interfaces had to be strengthened in environmental governance regimes.

The Professor from Chiang Mai University asked how UN Environment engaged with ASEAN frameworks. Ms. Yang explained that UN Environment provided assistance in the drafting of the frameworks. However, everything apart from that was governed by the ASEAN Secretariat. UN Environment generally works in response to government requests. If it does not receive a request for intervention, it is left to ASEAN's own intergovernmental processes.

The UNICEF Representative commented that under the ambit of air quality laws there are important equity issues in terms of responsibility and exposure. Different population groups, for example adults and children, have different exposure levels and varying capacities to respond. Differentiated approaches are therefore important.

Japan's Representative questioned what his country could do in assessing the efficacy of integrated collaboration between countries. Finally, Singapore proposed that technology for pollution prevention must be greatly strengthened.

Illegal trade in wildlife

Jenny Feltham, Wildlife and Forest Crime Advisor from UNODC discussed the legal innovations to combat illegal trade in wildlife. Wildlife is usually exported from their origin region, transmitted and imported into the destination country. Illegal activities occur at any point in the supply chain of poaching, processing, export/import/re-export, selling, and buying. Those activities include but are not limited to cybercrime, murder, document fraud, corruption, money laundering.

One illustration is the South Africa rhino poaching crisis, which has increased significantly from 13 rhinos poached in 2007 to 1215 in 2014. Ivory and Pangolins are also trafficked, but there is an increasing shift from Africa to South East Asia, making illegal wildlife trade a key issue of concern for the region.

Nevertheless, there have been a few important legal, regulatory, and policy developments in recent years. Within the UN, there have been many instruments that have been adopted from the early generation Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to the most recently adopted target 15.6 of the SDGs, which calls on governments to: "take urgent action to end poaching and trafficking of protected species of flora and fauna, and address both demand and supply of illegal wildlife products." Countries such as China, HK, Taiwan, US, UK, France have already imposed a ban on domestic wildlife trade. There is also an increasing number of wildlife farms for commercial or conservation purposes. While eleven Asia Pacific countries, on average, impose a maximum eight years imprisonment and \$182,675 in sanction, thirteen African nations on average impose a 13 years maximum imprisonment and \$112,600 in sanctions.

There are some challenges. Detection of illegal trade is difficult as it is embedded in legal wildlife trade. Moreover, wildlife legality relies on a system of permits and paperwork can be undermined. Resolutions are non-binding and only apply to international trade between countries. There is also an illegality risk of inadequately-managed farms. International cooperation remains weak and slow.

Feltham went on to note the current trends and issues revolving around illegal wildlife trade. A cross-cutting is that countries need to develop laws and regulations that address all elements of the illegal wildlife trade and those regulations must not contradict the laws and regulations of another country. Countries need to establish commensurate penalties to create a sufficient deterrent effect and apply other tools to target offences against the environment. Law enforcement needs to be more flexible so that it can better adapt to the rapidly changing modus operandi, trafficking routes, and shifting species demand. At the heart of discussion lies the issues of sustainable use of wildlife, human rights issues in targeting the law, and wildlife conflict issues.

Against that backdrop, it was agreed that in the Asia Pacific region, there is a growing movement to strengthen wildlife laws and provisions, especially in Cambodia, China, Lao PDR, Myanmar, and Vietnam. Thailand is the only country in the world that has removed legal obstacles by enabling the use of advanced investigation techniques for wildlife crimes and seizing assets and illicit proceeds of wildlife crime.

Moving forward, the key is the harmonisation of laws. Domestic legal frameworks need to cover endangered alien species. Legal loopholes in countries can undermine efforts in other countries. If legal provisions are similar, cooperation among countries will be easier. Feltham proposed the solution to prohibit the import/export/re-export of wildlife that has been taken illegally from another country (according to the law of that country).

Feltham opened the floor for questions. Johannah Bernstein questioned whether strict fines and penalties are sufficient deterrents to illegal wildlife trade. Feltham responded with the example of Kenya which revisited their laws a few years ago and made it possible to impose life imprisonment on serious offenders. Since then, there has been a reduction in poaching. Lye Lin Heng raised two concerns. First, the laws are targeting the traffickers, not consumers. Second, the legislation has not taken into account cultural sensitivity. In the Asia Pacific, it is prevalent that people use wildlife for medical purposes. Matthew Baird remarked that “If you know something came from an illegal source in your country, it should be recognised as such, even if the crime itself was not committed in your country.”

Open Space: Sharing knowledge, finding solutions, building coherence on future actions

Round 1. Table A: Harmonizing transboundary law

The question that was addressed by this table was the importance of harmonizing regulations for transboundary issues, such as migratory marine animals. One initial step is the creation of informal networks, but there should be an institutionalized body. Model laws are important - often lawyers have minimal experience and should be provided with best practices in legislative approaches. Many governments do not like model laws because they are often produced by external actors who may have limited understanding of the domestic situation. As well countries often have different legal frameworks, making it rather more difficult to use model laws. UN Environment currently does provide model laws in some fields, e.g. renewable energy, which compiles laws from all over the world. Other regional institutions, such as RFMO can also help by providing model laws. The role of private institutions should also be sought - instead of trying to harmonise regulatory frameworks, it is possible to make ISO rules adhere to environmental standards. This has already been done in Indonesia.

Round 1. Table B: Legislating for success

Patti Lloyd chaired this table that addressed the success factors in environmental law making. The representative from the Secretariat of the Pacific Regional Environment Programme (SPREP) supported the use of model laws. After a given country decides on the elements and principles of an environmental issue, a model law should be provided for rational and relevant parties to craft something appropriate for the context in this country. The Bhutan focal point believed that model laws have ramifications. When countries are too dependent on the model laws, they may just duplicate that model law without adapting it to national context. Kinna from Earth Rights International provided the alternative of providing guidelines and frameworks as the basis for discussion. The SPREP representative concurs with him.

Lloyd put forth the problem of the comprehension and capacity gap between national level law drafters and sub-national level law enforcers. Andy Raines commented that a better model for lawmaking is one that integrates the public and key stakeholders at all key phases. Some suggested that UN Environment should also publish Drafting Guidance for those countries who request support. The Maldives focal point presented a good practice. In her context, it is mandatory to have stakeholder consultations. When the enforcers feel they do not have the capacity to carry out the implementation, they can tell the Ministry of Environment. They also consult line ministries so that when laws come into effect, officials will be more willing to cooperate. In Bhutan, as soon as a presentable draft of new law is available, there will be a grassroots to national consultation process.

The Cambodia focal point raised the issue of the political will behind law making and implementation. The SPREP representative argued that without model laws, it is hard for a country to have integrated laws across environmental issues and departments. The Cambodia focal point and Andy Raine emphasised that, ownership and buy-in are key elements of the solution to the regionalisation of environmental laws. Professor Ben Boer summarised that model laws have limited value. Legislation should be drafted in conjunction with local context to foster a sense of ownership.

Round 1. Table C: Right to Development

The topic was tabled by the Iranian Focal Point to the Montevideo Programme. He provided an example of Iran at the Minamata Convention negotiations. The country was denied access to others' technologies, even though such a technology transfer would have helped reduce mercury use in the Iranian petrochemical industry. The Iranian Representative noted that, in the past, developed countries degraded the environment at the expense of developing countries. He went on to state that "it's a right for developing countries to develop; they have the right to develop, but not at the expense of environments. We should have our needs met by those who have already developed". Representatives from the Philippines, Timor-Leste, and the Solomon Islands all concurred that their countries needed more support in terms of capacity building and technology transfer.

Round 1. Table D: How to make the links between human rights, culture rights, community rights, children's rights and environmental law?

Patti Moore brought up the question of how to harmonise laws and bring rights into the environment at the national level. The problem of harmonisation is that some countries do not want to harmonize laws within their territories. The proposed recommendation is that agencies and organizations need to change the narratives. Children's rights are also the rights of future generations and include long-term perspective. It is important to stress the linkage between children's rights and the environment (i.e. respiratory issues, lung infection). The group further recommended that Montevideo V actively take up this issue, look for opportunities into existing conventions, and find new entry points (cultural issues). The Japan focal point thought of migration and air pollution as an entry point. In conclusion, Montevideo V needs to include an action area to restart the program on human rights and environment, by bringing in new issues that haven't been part of the dialogue up to the present, specifically children's rights, migration, health and pollution issues. It could be useful to start with an issue everyone generally agrees on, notably the rights of the child, rather than the concept of human rights, which may be politically sensitive for some countries.

Round 2. Table A: Strengthen regional environmental law in each sub-region

The discussion chair Professor Ben Boer started with the example of his work in the Pacific region. In ASEAN countries, Andy Raine stressed the importance of political buy-in and the respect for the process of generating political support to enhance regionalisation. Building upon their comments, Priyalal Kurukulasuriya suggested that Montevideo V Programme should have a separate section on regional approaches to strengthen national capacity. The Cambodia focal point recommended that countries look into existing programmes and mechanisms to resolve inconsistency.

The representative from Chiang Mai University asserted that small ASEAN countries need to coordinate their negotiation positions. UN Environment's role should be to provide a system where those countries can negotiate more effectively together at the regional level. Boer used this as a segway into a discussion on cross-border conflict, for examples, conflicts arisen from the Belt and Road project and the Japan and China's air pollution dispute. The China focal point believed that in addition to multilateral negotiations, bilateral ones are also needed. Boer agreed with him.

Round 2. Table B: Stronger legal protections for environmental & human rights defenders

This table addressed the need for stronger protections for Environment and Human Rights Defenders (EHRDs). There needs to be different avenues to be able to integrate the human rights angle with environmental issues in countries where political will to advance human rights is limited. Countries should look for common points of agreement. In national laws, environmental and human rights often concern basic citizen rights. For example, the Indonesia Environmental Law Art 66 states that "Everybody struggling for a right to the proper and healthy environment may not be charged with criminal or civil offence." People need to have the ability to protest and act on behalf of public good in upholding environmental laws, especially those connected to human rights. Nations should also improve constitutional protections for EHRDs as related to upholding basic rights, and protection from imprisonment and prosecution for seeking to uphold environmental and human rights in the name of public good.

Given the increasing criminalisation of EHRDs, countries need to build information sharing platforms and make information readily available within countries and provides to enhance the enforcement of environmental human rights. At the very least, resources must be translated into national languages. However, it is also necessary to translate resources into ethnic and/or indigenous languages.

Legal defense for environmental and human rights defenders must be strengthened. The establishment of interconnected lawyers at the local, national, regional, or global level, for instance, will make it possible for lawyers to be called upon in each jurisdiction to defend EHRDs

in emergencies. These networks would need to be confidential and independent in order to adequately protect the privacy and security of EHRDs given the closing political and civil society spaces (e.g. of such a network is Mekong Legal Network of public interest lawyers in Mekong nations). The drawback of this is its reactionary approach. Nevertheless, still much is needed as EHRDs increasingly require legal advice/assistance/representation regarding charges and imprisonment related to their actions.

Regional declaration or guidelines on rights of EHRDs were also discussed. UN Environment needs to provide regional guidance on best practice for constitutional or statutory legal protections for EHRDs and environmental and human rights to then develop and include provisions within national laws. LAC10 is an example of specific statutory protections of EHRDs in a treaty. The UN Special Rapporteur Principles on Environmental and Human Rights is another example of a framework for guidance.

Round 2. Environmental lawyers forum in the region

The Bhutan Focal Point chaired the discussion. She tabled the topic of creating an environmental lawyers' forum in the region. Such a meeting would allow lawyers to share topics, guidelines, best practices, and more. It could also act as a compendium for information draft legislation and MEA observation. This would preempt the problem of having to start from scratch when drafting a law. The Bhutanese representative also proposed that UN Environment facilitate and support the forum.

The Iran Focal Point cautioned that a similar organization - the IUCN - already exists. Moreover, it is not just a big commission, as it also has sub-groups that each specialize on thematic areas. However, it does not have regional forums, and hence such a format could be experimented with. In such a scenario, overlaps and duplication should be avoided where possible.

The representative from Bhutan maintained that regional forum could still serve a valuable purpose, especially because organizing a meeting wouldn't necessarily be resource intensive. The representative from Singapore concurred, as best practices from on the ground information sources could be shared at such forums. Other members of the discussion suggested that, for the sake of receiving a diverse range of relevant input, it was important to carefully target who was invited to the forum. This required a carefully drafted, specific, and targeted mandate. Additionally, the regional forum could be hosted on the internet, further reducing resource requirements. The Focal Point from the Maldives suggested that the UNEP could act as a mediating party, bringing all the existing resources together.

The Bhutan focal point added that UN Environment should organise a forum where lawyers could share model laws. While Andy Raine questioned whether it would be different from existing forums such as International Union for Conservation of Nature (IUCN), he acknowledged that a targeted network for the region does not yet exist. Lin-heng, agreeing that a targeted a network is

needed, proposed that the network needs to be holistic and focused, it also needs to be diverse in its composition.

Round 2. Table D: Interactions between fisheries and environment

Xiao Recio-Blanco with the Environmental Law Institute addressed fisheries management. In many cases the most successful management or resource in the fisheries industry occur when people are working concurrently on environmental protection. Jenny Feltham shared that in her country there are different ministries for fisheries and the environment. There needs to be some form of coordination at the national level. Indonesia has a presidential task force that involves all the relevant agencies and ministries. Professor Takamura Yukari remarked that the Japanese situation is quite specific. The Ministry of Fisheries dominates the policy space. Hence, even though people recognise that coordination at the high level is important, it is hard to create such a level. At the international level, there are few leaders for this issue: FAO, UNCLOS. Much remains to be done to integrate those leaders in UNEP's work.

Wanhua Yang shared an example from Canada, whereby under the Sustainable Development Act, the regulatory bodies and federal departments are all audited by an independent auditor-general who reports to the Parliament. This is similar to the role of an ombudsman. Each ministry has to comply to this high level decision making. It is the role of UN Environment to disseminate these good practices of institutional innovation. Each ministry has to develop their own strategy regarding sustainable development.

The group recognized there is a gap in the relationship between environment and fisheries management, which can be observed in terms of policy, regulation and enforcement. At the domestic level, there was an agreement that a closer interaction should be promoted between the public authorities and institutions in charge of regulating fisheries and the environment (e.g, ministries of fisheries and the environment). Some experts agreed there were options to improve that cooperation/interaction including a sort of ombudsman tasked with overseeing policy coherence, regulatory consistency and cooperation and coordination in enforcement. At the international level, there was an agreement that the system is fragmented and the UNEP could play a role albeit limited, in addressing some of the more pressing environmental problems related to fishing activities.

Round 3. Table D: Climate change

The issue at the heart of discussion is how to address climate change displacement. What are the ramifications, economically, socially, and culturally? How are all these different facets reflected in existing mechanisms.

The China focal point highlighted the shifting global recognition of climate change issues. President Trump's efforts to remove the United States from the Paris Accord is also prompting

other industrialised nations to reflect on their future role. The big challenge of course is how to ensure that countries fulfill the commitments they have stated in their national climate strategies and pledges.

Professor Ben Boer examined the direct human rights implication of climate change. A recent example would be Australia, which rejected the claim of refugee visas based on the climate change issue. But, how do we get international support to the nations and regions that are affected?

Patti Lloyd noted that there is no platform for nations to come together to find a solution for climate change immigration. The SPREP representative suggested affected population to self-help and to use the neighborhood principles. Climate change refugees can relocate to another country and contribute to their economy.

Professor Boer rejected this line of thinking by arguing that the focus should be legal, not political or moral. Lloyd agreed that there needs to be a legal basis for climate refugees, since international laws do not address environmental migration. Countries can make their own immigration commitments and strive to reach the targets. Professor Boer insisted that there should be a legal solution, preferably under the ambit of Montevideo V. Lloyd proposed that Montevideo V provides capacity building and support to countries in their INDCs. She also pointed out the fact that climate migration is still missing from the INDCs. Something equally important is the loss of culture due to climate migration.

The SPREP representative facilitated the conversation on the human right to a healthy environment. When a person is forced to move out of his or her original island, does he or she have access to a remedy? Lloyd suggested using existing human rights under different jurisdictions to understand climate migration in a way that could address the right to a healthy environment. Professor Boer, on the other hand, asserted that since environmental rights are not established around the world, affected population should not use it as the basis to remedy claims. Instead, they should base their arguments on the Universal Declaration of Human Rights which stipulates people's right to shelter. In countries that do not honor human rights, migrants should make their claims using other means.

Lloyd summarized the discussion into four points. First, Montevideo V needs to find further opportunities for regional solutions for climate migration. Second, UN Environment and relevant stakeholders should support countries to interpret existing legislation to address potential climate migration in the future. Third, regional solutions need to be found. Last, people need to examine the other implications of climate migration including cultural loss and regional securities.

Round 3. Table B: Environment Impact Assessment

The IGES representative proposed that EIA compendiums be considered and that different countries send information regarding their individual programmes.

Mr. Matthew Baird discussed EIA in the Mekong Region. EarthRights International (ERI), alongside its partners in the Mekong Legal Network (MLN), is working directly to build the capacity of communities, campaigners and lawyers to engage in Environmental Impact Assessment (EIA) processes in the Mekong region. Consequently, ERI and the MLN have collaborated to produce an original manual for EIA practitioners in the six Mekong countries which specifically targets government decision-makers, investors, lawyers and other professionals working on the implementation of EIA. EIA is an international system, but regional laws are different. The manual could be updated to Thailand's new act. Cambodia may have a new law. AECEN developed a manual for public participation, but ERI developed a manual for EIA. Nonetheless, there were no books on EIA in this specific region.

The Bhutan focal point shared the example of restoration bonds. Legally, companies are supposed to do progressive restoration for mining. When they apply for environmental clearance when the EIA is finished, one requirement is a restoration bond, wherein 2% of the capital invested in the entire project is required as a deposit, just in case progressive restoration is not completed by the polluting corporation. Mr. Baird agreed that restoration requirement and insurance is important for ensuring that environmental damage is mitigated.

The Bhutan focal point challenged whether government officials have the expertise to conduct proper EIAs. When assessing environmental evolution, a multitude of different issues need to be addressed to tackle implementation and enforcement. Mr. Remy Kinna further pointed out that EIA laws advance so quickly that updated manuals are probably in need of being drafted. In conclusion, Mr. Baird asserted that unlike researchers and academics, people conducting EIAs are too busy to look at other best practices. Even if a compendium was to be prepared, it needs to be short and practical.

Round 3: Effective forestry

The discussion facilitated by Indonesian focal point centered around how to make forestry more effective. Indonesia is quite a complex system; thus it is important to find interconnectivity and synergy between governmental functions.

The UNDCC representative raised the question of how to change the perception of countries. Xiao Recio-Blanco, Director of the Ocean Program Environmental Law Institute, responded that "Clarifying competences is a must when determining which departments are good at what and who should be responsible for what jurisdiction. Training officials in charge of environmental enforcement is critical."

Round 3: Kigali Amendment: How are countries implementing it?

One key obligation of the Parties under the Kigali Amendment is to establish enforceable licensing

system to control import and export of HFCs to phase-down HFCs. In the past, even the countries have licensing system in place, there have been incidents of illegal trade/movement of controlled substances, which is expected to be the same for HFC control.

Enforcement officers might not have sufficient knowledge on this important development. To phase-down, countries need to consider not only environmental perspectives, but also other aspects that might have the linkage e.g. safety aspect, which is implications from the introduction of alternatives that are flammable/toxic. There is need to involve wider national stakeholders. In countries with limited human resources, there might be a number of similar projects/programme with different agencies. This poses challenges to the government to manage and implement these projects.

In conclusion, implementation of environmental law requires holistic approaches and must always be implemented to ensure sustainability. These approaches includes:

- Enforceable laws and regulation.
- Support and sharing experiences to developing countries in enforcing laws and regulations.
- Capacity building to enforcement authority and environment officers.
- Awareness to both enforcement officers, local stakeholders and general public.
- Bilateral / regional collaboration can strengthen the implementation of environmental laws. There is need to develop the mechanism to ensure bilateral / regional collaboration after reaching agreement.
- There is a need for strengthening partnership with other stakeholders to minimize other implications from the implementation of environmental law.
- Depending on capacity of countries, synergizing/streamlining projects might reduce the workload of environmental officers.

New frontiers in enforcement – Changing the narrative

Mr. Oposa, Environmentalist and Recipient of the UNEP Global 500 Roll of Honor and the 2009 Ramon Magsaysay Award, opened his session with a story. He conveyed how the environment is comprised of life sources of land, air and water. He argued that the word development has been abused and misused. He explained that current country development follows a model of extraction-consumption economics. To counter such a paradigm, he proposed the economic model of environmental Conservation, Protection and Restoration (CPR): “We need to restore the lost connection with nature and with each other, and restore the experience of happiness”.

He closed his presentation with two insights. Firstly, “anything that is worth doing cannot be done

in one lifetime...In this lifetime, we can only plant seeds of hope”, and secondly, that “the best form of law enforcement is when the law does not need to be enforced”. He stressed that the time had come to change the narrative of climate protection, that we had to move on to a model of positive reinforcement, inspiration and hope.

DAY 3: THURSDAY, 26 JULY 2018

The Impact of Montevideo Programme IV

The third day of the Asia Pacific regional consultation focused on the assessment of the Montevideo IV Programme. Discussion was divided into 3 main categories: domestic challenges in the development of environment law; domestic achievements in the development of environmental law; the specific needs of countries for a new programme in environmental law.

Domestic challenges with the development of environmental law

Countries are faced with a new generation of environmental problems that are increasingly transnational in nature and transversal in solution. The central problem for 21st century environmental lawmakers and more specifically in the Asia Pacific region is how to develop new legislative and regulatory responses for new environmental problems and how to improve responses for solving existing problems.

Many of the problems raised by the Asia-Pacific participations focused on issues that are widely shared in other regions: lack of harmonisation between government ministries; low ranking of environment ministries and undeveloped capacity of policy and lawmakers; lack of public access to information and participation; limited coordination between the judiciary, lawmakers, and law enforcement officers; inadequate civil and criminal administrative processes; insufficient transboundary cooperation; and poor transboundary mechanism. Several country focal points and environmental law experts agreed that in general, MEAs are not adequately implemented at the national level in the Asia-Pacific region.

Environmental law making everywhere is becoming a policy arena of experimentation, uncertain results, complex relationships and an inescapable mandate for improvement. But there is a window of opportunity now for governments in this region to introduce ambitious policy and law changes to implement the new generation of commitments, that are enshrined in time-bound commitments in the SDGs, the Aichi targets, the Paris Agreement, Sendai Framework, all of which establish important milestones that must be met in the decade between 2020 and 2030.

At the same time, decision-making at the national level in the region is changing. Increasingly, countries are recognizing that most environmental problems can only be solved by whole-of-government approaches and partnership with the private sector and civil society.

A growing number of government departments are also collaborating in new ways to develop laws that address the linkages between environment and human rights, trade, industry, energy, transport,

agriculture and health. As well, the new generation of law-making challenges are motivating governments to engage in new forms of partnership between state actors, the private sector and civil society. Where these partnerships have succeeded, it is in large part due to strengthened decision making processes that are grounded in the principles of accountability, transparency and genuine participation.

That said, one of the key obstacles to the development and strengthening of domestic environmental law is the misperception that environmental regulation puts brakes on economic growth and competitiveness. This is precisely why law-makers must work closely with key stakeholders to find the most effective and low-cost solutions to the most pressing environmental problems. Similarly, working closely with other stakeholders will enable law-makers to combine robust regulatory frameworks with other instruments, such as strong pricing mechanisms and voluntary performance improvement instruments.

Against the backdrop of this introduction, the following provides a summary of the specific points that were raised by participants in terms of the challenges of developing environmental law.

MEA ratification

The Maldives focal point first shared her experience with ratification in her country. In her opinion, the process is time-consuming as the consensus from all sectors is needed. The lack of legal expertise is also a major impediment.

The Bhutan focal point concurred, explaining that Bhutan's 2016 treaty-making rules detailed the procedures for MEA ratification. Despite their usefulness, the mandatory national impact analysis as required by the treaty-making rules, prolongs the ratification process.

The Iran focal point noted that MEA ratification in his country is also a long process. In Iran, agencies take a series of sequential steps including presenting their proposals to the Cabinet, the Parliament, and the Guardian Council. The Expediency Council is also engaged in the process in the event that the Guardian Council and the Parliament disagree over the constitutionality of the ratification proposal.

The representative from Timor-Leste highlighted their need for technical assistance from UN Environment for the development of environmental laws. In 2009, officials from UN Environment met with the President, key parliamentarians, as well as the Environment Minister to discuss the ratification of the Montreal Protocol. The engagement of UN Environment was well received. The facilitator reiterated that the role of parliamentarians is increasingly important in the ratification of international environmental agreements and that UN Environment had an important role to play in working with that branch of government. She also pointed out that there is no one-size-fits-all

solution, and that where resources allowed, that UN Environment should ensure that its support is as tailored to country needs as possible.

Another issue raised by Matthew Baird was the difficulty of translating global policies into actual obligations at the national level. Despite efforts to integrate global policies into national law, it is clear that countries need the support of UN Environment to ensure systematic implementation.

Low political ranking of Environment Ministries

Many focal points also expressed concern that the environment ministries in their countries continue to rank rather low in the government hierarchy. Lin-Heng explained that in Singapore, the Ministry of Environment focuses entirely on pollution while the Ministry of Development is the one that focuses on climate change. This creates potential conflicts of interest. Another problem is that many environment ministry officials tend to be engineers, who identify important functional solutions, which may not always be best for the overall goal of environmental protection.

Lin-Heng also emphasised that environmental decision-making processes continue to be very siloed. This is another problem that continues to undermine the effectiveness of environmental law and policy. She further asserted that UN Environment should support more harmonised and coordinated approaches, which draw on the expertise from different line ministries. She added that environment ministries must be empowered to more effectively enforce the polluter pays principle and hold polluting actors to account. She suggested that the burden of proof should be shifted to polluting actors. At the same time, it is important for UN Environment to raise awareness within the private sector regarding the most pressing environmental challenges and the responsibilities that they have under national environmental legislation.

Expanding scope of UN Environment's role

Wanhua Yang noted that the changing attitudes of government bodies in countries provided an opportunity for UN Environment to expand its scope of engagement. In the past, UN Environment interacted primarily with environment ministries. Increasingly, UN Environment engages with other actors beyond environment ministries in the promotion of cross-sectoral initiatives such as the Green Economy and Poverty and Environment Initiatives. The facilitator also highlighted that through UN Environment's work on the Financial Inquiry, it had succeeded in forging important new relationships with international financial institutions.

Need for capacity building

The Bhutan focal point suggested that UN Environment should increase its capacity building support for both government officials and environmental law professionals who are engaged in the development and implementation of environmental law, and who are also engaged in the delivery of concrete projects on the ground.

Means of implementation

Most participants agreed that the means of implementation to support the development of environmental law is lacking. Issues highlighted include the need for increased technical and financial capacities, and the transfer of technology. Many participants noted that there is a low level of awareness amongst environmental officials. This further hampers the means of implementation.

Domestic achievements with the development of environmental law

Developments in environmental law

There has certainly been a positive trend in terms of the volume of new environmental laws that have been adopted throughout the region. The following are but a few notable examples:

A growing number of countries in the region are embedding environmental human rights in their national constitutions. Iran was one of the first with its Article 50 of the Constitution stating that “In the Islamic Republic it is considered a public duty to preserve the environment where the present and the future generations may have an improved social life. Consequently, any activity, economic or other, that leads to the pollution of the environment or its irreparable damage will be forbidden.”

In Vietnam, Article 43 of the Constitution stipulates that “Everyone has the right to live in a clean environment and has the duty to protect the environment.”

In 2008, the Cambodian National Assembly passed the Natural Resources Protection and Management Law. Environmental human rights are also integrated into the Cambodian Environment Code.

Timor-Leste’s 2002 Constitution recognises the right of everybody to a healthy environment, protection for the future generation, and the sustainable use of natural resources. To create a right to a safe environment.

For the Pacific countries, the priority is to now develop and adopt agreements related to environmental rule of law and environmental human rights.

The emergence of EIA legislation is also growing. In Indonesia and Vietnam, EIA is complemented with landscape analysis and law enforcement. Civil society organisations including Earth Rights International and the Mekong Legal Network are working to build the capacity of communities, campaigners and lawyers to engage in EIA processes in the Mekong region. The MLN have collaborated to produce an original manual for EIA practitioners in the six Mekong

countries that specifically targets government decision-makers, investors, lawyers and other professionals working on the implementation of EIA. Public consultation is also growing. In this regard, in Bhutan, as soon as a presentable draft of a new law is available, the government will initiate a public consultation process.

As discussed on Day One and Two, there are a few important success stories in the development of air quality law and regulations. In South Korea, the Clear Air Conservation Act 2007/2016 defines clean air as the objective of the law to protect public health. It also provides for the conduct of regular assessments and evaluations, expands the scope of previous laws, establishes air quality management districts, provides for the creation of a Master Plan, initiates total emission control programmes, and carries out targeted emission control and reduction. The Act also strengthens monitoring and reporting, provides economic incentives and disincentives, and strengthens inspection, legal responsibilities and penalties.

Besides the Clear Air Conservation Act 2007/2016, the South Korea Government also passed a series of important laws on clean air. In response to the 2013 Air Pollution Control Action Plan, China revised its air pollution law in 2015. To implement the newly revised law, many provinces and municipalities have also adopted their regulations. The achievements are documented in a recent enforcement inspection report by the Standing Committee of the National People's Congress.

On the growing problem of illegal trade in wildlife, this is another area where countries are making good progress. In the Asia-Pacific region, there is a movement to strengthen wildlife laws and provisions; such initiatives are evidenced in Cambodia, China, Lao PDR, Myanmar, Vietnam, amongst others. Thailand is the only country in the world that has removed legal obstacles by enabling the use of advanced investigation techniques for wildlife crimes and seizing assets and illicit proceeds of wildlife crime.

Other regional developments in lawmaking include the constitutional provision of community standing in bringing environmental cases to court in Thailand. In China, reformed environmental laws provide more advanced standing for NGOs. Environmental taxation laws and environmental information laws have also been bolstered.

It was suggested that efforts should be focused on developing more consultative process for law-making. This would help to engage stakeholders and provide them with a sense of ownership, and hopefully a greater sense of responsibility for upholding the law. The Maldives focal point presented a good practice. In her context, it is mandatory to have stakeholder consultations. When the law enforcement officers do not have sufficient enforcement capacity, they will communicate to the Environment Ministry and consult with line ministries. This level of cooperation between official actors will enable implementation challenges to be resolved more effectively.

Development of institutions

One interesting trend in terms of institutions is the proliferation of green benches and courts proliferating throughout the region. This has resulted in increased awareness of courts requiring the restoration of environmental damages. Examples include the Mongolian government establishing the Ministry of Court that hears cases on environmental protection, and the Green Bench within the highest courts of Bhutan and Thailand. In China, over 900 courts hear environmental cases.

Some of the over examples of innovative institutions that were highlighted during the day:

- Bhutan: the Environmental Commission is chaired by the Prime Minister, who sits above the line ministries
- Cambodia: National Council on Sustainable Development has members of line ministries. This council is under the Ministry of Environment but sits above other thematic divisions in this ministry
- Iran: Department of Environment is headed by the President; A broad range of stakeholders are represented in the Head Council
- China: new Ministry of Natural Resources; Central Environmental Inspection through which the central government takes more responsibilities to supervise local level environmental issues
- Vietnam: recent creation of a Ministry of Environment; its tasks had previously been assigned to various other ministerial agencies
- Indonesia: Use administrative mechanisms to impose regulatory responsibilities; concession when trying to contain forest fires

Important elements for the future programme in environmental law

A fundamental rethink

Although environmental law developed considerably over the past 10 years, participants agreed that there are significant challenges regarding the actual implementation and enforcement of environmental law. The time has come for a fundamental rethinking of the nature of support that should be provided to countries to accelerate and improve implementation of environmental law.

The new programme on environmental law must address the major challenges and constraints that are impeding implementation of environmental law at the regional, national and local levels.

Setting general and specific goals

At present, the program is set out in terms of objectives, strategies, and actions. These represent a list of all of the important issues. However, there are no overarching goals or targets in Montevideo IV. The future programme for environmental law will have to be grounded in clear, measurable targets and goals. This is particularly important since 2010, the development of international environmental law has become much more time-bound targeted. MEAs increasingly articulate desired results and outcomes and identify specific solutions for strengthening environmental law at an international, regional and national level. Important examples include the new UN goals to halt deforestation by 2030, the 2020 Aichi Targets for biodiversity and the 2030 Agenda for Sustainable Development Goals, and of course the Paris Agreement with its 2 degree Celsius goal.

Against that backdrop, it was recommended that the future programme in environmental law could include the following overarching goals:

- To be the vehicle that assists countries in implementing all of the environmental aspects of the SDGs
- To assist countries to incorporate the Aichi Targets for biodiversity conservation, and the aspirations of the Paris Agreement
- By 2030, to ensure nations have effective law as judged by specific criteria
- Ratification of all MEAs by all (or a % of all) nations
- To ensure that there is institutional support for implementation of environmental laws in all nations

Principles

Montevideo should also incorporate or at least refer to specific principles, both emerging and accepted, to be considered by legal drafters when environmental law is being written or reformed. The environmental rule of law as developed by UN Environment in 2012, by the IUCN Commission on Environmental Law, and the Global Pact for the Environment, should be considered in this respect.

Regional annexes for Montevideo

Each UN Environment region could generate a regional annex to set out regional goals and targets. The UN Convention to Combat Desertification is a source of guidance in the development of regional annexes to an international environmental convention.

Reconsideration of priority areas

There is a need to examine the emerging environmental priorities both at the global and regional scales. These must help to frame the new programme on environmental law. Framing regional

priorities will require Montevideo focal points to provide detailed feedback and to use their regional platforms as a basis for exchanging and crystalising ideas.

Measure progress

Under the new Montevideo programme, there needs to be clear short-term, medium-term, and long-term objectives. There should also be clear evaluation criteria to assess whether those objectives have been fulfilled.

Participation and awareness

Different segments of the society can be more engaged in the Montevideo programme. Community participator approaches can also assist in the enforcement of environmental law. To increase public and stakeholder awareness of the new program, there needs to be interactive and multimedia tools or platforms. Many countries in the region acknowledge the importance of public participation, and in this regard the new programme could assist them in developing more participatory forms of decision-making.

The Iranian representative noted that a big issue his country faced was how to attract stakeholders and mobilize them around critical situations, citing sand and dust storms as an example. As he explained, “we know the challenge, we know the stakeholders, we know how to target a problem and solve it, but we don’t know how to get the stakeholders all around the table”.

Access to information

Effective law-making requires that information is widely accessible to all actors, including the public. UN Environment already has a mandate to disseminate all types of best practices on legislative and regulatory developments, new law making processes, and of course examples of new environmental case law that has also helped to shape environmental law. These efforts need to be stepped up and new strategies for broadening dissemination should be considered.

It was suggested that Montevideo V could be designed using the best available information technology, to provide users with more opportunities for interfacing with the material, which should be presented in a far more user friendly fashion. Patti Moore, one of the environmental law experts present, emphasised in response that what people seemed to value about UN Environment was the interactive and integrative approach to its world. She urged that this faculty continue to be strengthened in the future.

Mr. Takahashi, the Japanese Focal Point, urged that the future Montevideo Programme distinguish between the international, regional, and national needs. Only focusing on national needs would diminish the importance of law making processes at the international level. Ms. Kunzang reiterated the importance of effective enforcement and educating people on developing trends in environmental laws, both at the regional and national level. The Iranian Representative emphasised

that each of the international, regional, and national levels' needs had its own principles. Accordingly, principles at one level may not be applicable to another one.

Framing implementation support at all scales

Mr. Yu, the Chinese Representative, suggested that the future Montevideo Programme needed to be completely reformed. He noted that the strengths and advantages of the UN Environment lay in its network, knowledge, and expertise. However, UN Environment's support for implementation really did need to be scaled up. It was suggested that UN Environment could turn Montevideo V into a forum for knowledge sharing and capacity building at both the national and international level. For the member states that need help in lawmaking, they can learn from this forum. UN Environment should also provide support countries who are in need of capacity training and expert advice. He went on to suggest that the Montevideo Programme's duration be shortened to 5 years instead of the current 10, explaining that the world changed significantly in the past 10 years. The Japanese Focal Point stated that the Montevideo Programme needs a clear framework that distinguishes between the international, regional, and national levels.

Ms. Takamura, a Professor in International Law at Nagoya University, added that there needed to be increased coordination at the international level. She cited unsustainable fishing practices and air pollution as examples. She suggested that UN Environment's role in tackling transboundary issues would be to create synergies in the international regime. She enjoined the other Focal Points present at the meeting to do their homework prior to the next global meeting of focal points in September. She suggested that focal points familiarise themselves on the key innovations at country level and to come prepared to discuss the key elements that they would like to see in the future programme on environmental law.

Design ideas for the future programme on environmental law

First and foremost, the future programme should be designed to improve law-making at the national, regional and environmental levels to empower countries to meet the new environmental milestones that are scheduled for realisation between 2020 and 2030. These include the 2030 Agenda for Sustainable Development, and specifically the environmental targets therein, the Paris Agreement, the Aichi Biodiversity Targets, the Sendai Framework, not to mention the new generation of MEAs, as well as priorities set out in UN Environment's Mid-Term Strategy and Programme of Work.

At the national level, Montevideo V should provide systematic support for countries along the entire spectrum of law-making. The spectrum starts with understanding and framing environmental problems, public consultation, consultation with experts, legislative drafting updating and review, cross-sectorial institutional collaboration, oversight of executive branch decision-making, accountability mechanisms including scrutiny and enforcement by the judiciary,

alternative dispute settlement, monitoring, reporting and assessment, new partnerships and public awareness raising.

At the international level, the future programme should enable UN Environment to continue to take the lead in advancing the environmental rule of law within the UN system. This will require new forms of inter-agency collaboration especially with the secretariats of the multilateral environmental agreements and other international organisations. The aim of collaboration at this level should of course be to enrich the capacity of countries to engage in international decision-making processes more effectively. This in turn will help to ensure higher levels of MEA implementation at the domestic level.

At the regional level, the future programme should continue to enhance the capacity of countries to engage in the ministerial forums. These bodies are growing in importance and are creating a platform for countries to crystallize regional consensus on issues that are addressed in international decision making forums. In many cases the work of the ministerial forums has helped to strengthen coherence in international decision-making. Therefore, UN Environment could play an important role in strengthening these regional processes and the capacity of countries to participate therein.