



**United Nations
Environment
Programme**

Distr.: General
UNEP/ENV.LAW/MTV.4/FP.3

3 September 2018

Original: English



First Global Meeting of National Focal Points for the Montevideo Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV)
Geneva, Switzerland, 12-14 September 2018

Possible elements for a programme in the area of environmental law for a specific period beginning in 2020

Introduction

This document is intended to facilitate discussions on possible elements for work on environmental law by the United Nations Environment Programme in the context of a future programme on environmental law for a specific period beyond 2020. These elements build on the draft final assessment of the implementation, effectiveness and impact of the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo IV), as well as the outcomes of four regional consultations of national focal points for the Programme, which took place between the months of June and July 2018 in Africa, Latin America and the Caribbean, West Asia, and Asia-Pacific. The midterm review of Montevideo IV, conducted in 2015, relevant Resolutions adopted by the UN Environment Assembly and international, as well as goals and commitments contained in relevant multilateral environmental agreements and the Sustainable Development Goals have also informed the content of this document.

I. SUBSTANTIVE ELEMENTS

The following considerations are put forward in terms of the substantive aspects of a future programme on environmental law.

1.1 Building capacity for increased effectiveness of environmental law at the national level

The draft final assessment of Montevideo IV highlighted the need for continued support to countries and stakeholders to further increase the effectiveness of environmental law and develop environmental rule of law¹. This includes tools, knowledge material and resources that can help improve the overall effectiveness of environmental law at the national level, both in support of domestic environmental legislation that governments adopt to address country specific challenges as well as national efforts that aim at the realization of internationally agreed goals and targets, such as those enshrined in multilateral environmental agreements and Sustainable Development Goals.

Many countries also expressed the need for the United Nations Environment Programme to continue its work supporting governments in strengthening national institutions involved in ensuring the effectiveness of environmental law.

In all the regional consultations on Montevideo IV, countries expressed the benefits of the United Nations Environment Programme's training activities and requested increased efforts aimed at the institutionalisation of these efforts for the judiciary to ensure that, wherever there is turnover among judges, the institutional memory is indeed preserved. This is essential to ensure that legislative review challenges are adjudicated with the most informed decisions.

It is suggested therefore that any new programme should build on the successful outcomes and results in this area achieved under Montevideo IV and further increase the ambitions and targets in this critical aspect. Developing indicators, criteria and methodological approaches towards assessing the state and the effectiveness of environmental law and the rule of law in the field of the environment appear a useful consideration in this context and could aid in more targeted capacity building efforts under a new programme.

1.2 Supporting legislative developments to address pressing environmental issues

The draft final assessment of Montevideo IV highlighted the need for increased support to countries and stakeholders in developing legislative and regulatory developments to address pressing environmental issues. While the United Nations Environment Programme provided a range of programmes in this regard under Montevideo IV, it is suggested that a new programme

¹ See Decision 27/9 of UNEP's Governing Council.

should further develop coordinated and prioritized action in this area, in particular in the context of achieving the Sustainable Development Goals.

For example, a new programme could further assist countries in the implementation of legislation aimed at good environmental governance, such as the enhanced implementation of Rio principle 10 on public participation, access to information and justice in environmental matters, and compliance with the obligations under selected multilateral environmental agreements.

Informed by the substantive list of possible future priorities already identified during the mid-term review of Montevideo IV (see Annex 1) and through a targeted and coordinated approach, a new programme could also develop clear indicators, guidelines and approaches to support developments in terms of laws and regulations. Key areas of work could include: prevention and control of different forms of pollution, including air pollution and the regulation of relevant pollutants, as well as regulatory needs identified in Resolutions adopted by the UN Environment Assembly, the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.

A new programme could also include opportunities for Governments to deliberate on legislative responses to emerging environmental issues, including through international cooperation, such as for example marine plastic pollution, in an effort to strengthen legal frameworks at all levels to address such emerging issues.

1.3 Relationship with other legal fields and participation

The draft final assessment of Montevideo IV has shown to date that a critical area of success over the past decade has been the increasing linkages between environmental law and other legal disciplines and the pillars of the UN charter as a whole: peace and security, human rights, development – and, as a fourth pillar, rule of law.

In designing a new programme for the period beyond 2020, the further development of these linkages appears especially important considering that the upcoming decade from 2020 – 2030 also coincides with the final decade of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.

There has been considerable progress in promoting public participation in decision-making, access to information and justice in environmental matters, especially through the recent adoption of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

Furthermore, the linkages between human rights and the environment, both procedural and substantive, are among the central aspects that help in balancing the three dimensions of sustainable development across the Sustainable Development Goals. In this context, more

efforts are needed to support countries in developing and adopting policies, laws and regulations that prevent negative impacts on human rights or the environment.

Through interventions that further emphasize linkages of environmental law with other fields, a new programme would contribute to the achievement of the Sustainable Development Goals and the respective targets by underscoring the interconnectedness of environmental law with sustainable development as well as the pillars that are at the foundation of the work of the UN.

Furthermore, the legal foundation for upholding the nexus of “People-Planet-Prosperity-Peace-Partnership” emphasized in the preamble of “The 2030 Agenda for Sustainable Development” guiding the implementation of Sustainable Development Goals, including a human-rights based approach, the promotion of environmental rule of law and good governance, should also guide the development of a new programme on environmental law beyond 2020.

A new programme could also enhance actions and involvement by non-state actors in the field of environmental law, and in particular the private sector through voluntary instruments to supplement and reinforce legal obligations.

II. IMPLEMENTATION AND STRUCTURAL ELEMENTS

The following considerations are put forward in terms of the implementation aspects of a future programme on environmental law.

Montevideo Programme IV does not provide for an implementation structure that can adequately support the implementation, monitoring and evaluation of the actions mandated under its 27 programme areas. Furthermore, in the absence of an adequate implementation structure the final assessment of Montevideo IV also points to a lack of ownership and accountability in the implementation of the programme. These issues appear therefore to be the most important aspects to be addressed in the formulation of a new programme on environmental law beyond 2020.

2.1 Ownership and accountability

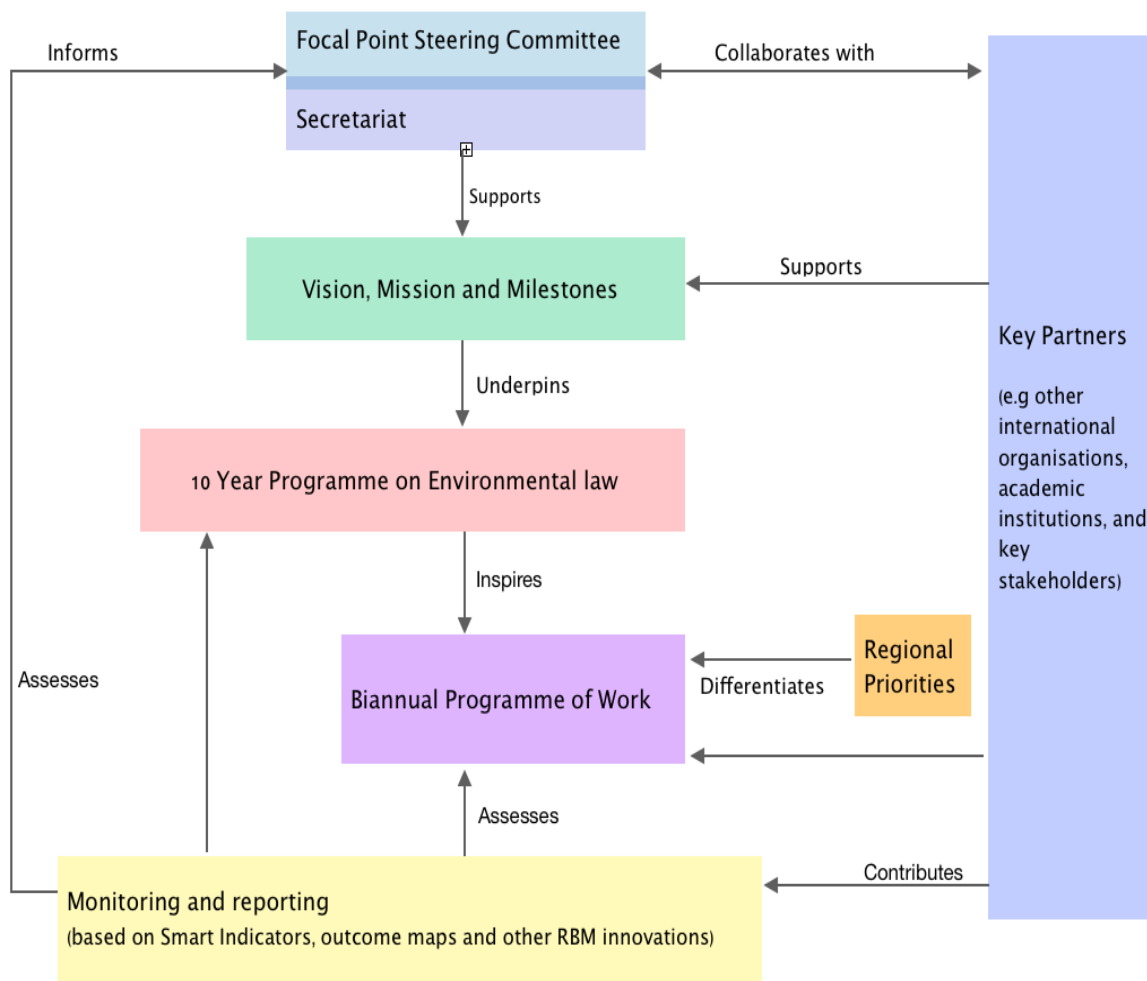
The establishment of a network of, to date, over 90 designated national focal points for exchanging information and building capacities in order to collaborate with and guide the United Nations Environment Programme in strengthening the application of the Montevideo Programme offers an opportunity to ensuring that the Programme addresses countries’ needs and priorities. Further support from countries and other stakeholders is need, however, to enhance accountability and ownership of the Programme throughout its implementation.

To achieve this, a clear governance structure for the programme could be established involving regular meetings of the designated national focal points and the establishment of a geographically-balanced steering committee composed of selected national focal points, along with the United Nations Environment Programme as the programme’s secretariat.

Building on such a governance structure, a new programme could consider the establishment of shorter programming cycles, combined with regular reporting cycles, and further alignment with the biennial programming cycle of the United Nations Environment Programme² and its medium-term strategy. The longer-term objectives and targets set by a new programme would covers the entire decade from 2020 – 2030 in line with the ten-year timeframe of previous Montevideo Programmes as well as of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.

Finally, a new programme for environmental law should offer the opportunity for engagement by civil society, the business sector, academia and other non-state actors in the field of environmental law and encourage the creation of partnerships between the United Nations Environment Programme and other entities and bodies in the implementation of the programme.

Figure 1: Possible implementation structure



² Currently, the United Nations Environment Programme is implementing its 2018 – 2019 Programme of Work.

2.2 Needs-driven and results-based

A new programme on environmental law should as best as possible capture and respond to needs and demands by countries expressed through the designated national focal points and other stakeholders, rather than apply a 'shopping list' approach.

Montevideo IV does not employ a results-based approach that would enable outcomes and desired longer-term results to be properly monitored and assessed. This shortcoming limits any meaningful evaluation of the Programme, its impact, results and outcomes, due to a lack of baselines, performance targets, indicators and means of verification for outputs, outcomes, expected accomplishments, and higher-level results.

Equally important is the fact that Montevideo IV is not underpinned by a Theory of Change or Logical Framework analysis clearly articulating the pathways of change, examining ideas and assumptions of how change is expected to happen, and providing a rigorous basis for tracking progress towards outcomes and final intended impacts. This would provide an essential framework for expressing the intervention logic of the new programme. Such a theory of change would also facilitate the early identification of the inevitable problems within a new programme and move forward with sound adaptive management.

A new programme could define realistic results that can be verified by robust monitoring processes, which would enable the realisation of the concrete outputs, outcomes as well as higher-level goals and impacts.

Managing for results requires robust evidence and lessons learned from continuous monitoring and periodic evaluation to ensure: progress towards results; the validity of the results chain and causal assumptions; and the contribution of the organisation towards long-term goals. This evidence and key lessons learned could inform adaptive management and decision-making with a view to improving results.

A new programme could align its results-based management approach with the one used by the United Nations Environment Programme. For example, in its current medium-term strategy, the United Nations Environment Programme uses outcome maps for each of the thematic sub-programmes. These maps outline the logical chain of results that move from the current situation to outcomes and desired impacts until 2030 and beyond. Impact indicators within the outcome maps explain how environmental change would be measured until 2030 and beyond. Similarly, relevant Sustainable Development Goals' targets and indicators could be integrated in a new programme on environmental law to ensure alignment with the 2030 Agenda for Sustainable Development.

A new programme for environmental law should be grounded in clear, measurable targets and goals. This is particularly important because, since 2010, the development of international environmental law has become much more time-bound and targeted. Multilateral environmental agreements, for example, increasingly articulate desired results and outcomes and identify

specific solutions for strengthening environmental law at an international, regional and national levels using quantitative and qualitative targets, such as in the area of biodiversity and climate change.

Annex 1:

Recommendations of the meeting of senior government officials expert in environmental law on the midterm review of Montevideo Programme IV held in Montevideo from 7 to 11 September 2015 (UNEA/E.A.2/13)

- 1 The further implementation of Montevideo Programme IV, in addition to addressing emerging issues, should be undertaken against the backdrop of recent developments in the international community to advance sustainable development, in particular the outcomes of the United Nations Conference on Sustainable Development, the expected adoption of the draft outcome document “Transforming our world: the 2030 Agenda for Sustainable Development” by the United Nations summit for the adoption of the post-2015 development agenda and the further development of international environmental law, including multilateral environmental agreements, since 2010, as well as relevant resolutions and decisions of the United Nations Environment Assembly of the United Nations Environment Programme (UNEP) and the UNEP Governing Council, including specifically Governing Council decision 27/9 and United Nations Environment Assembly resolution 1/7.
- 2 In particular, without prejudice to the ongoing multilateral negotiations with regard to relevant international instruments, the international law community and UNEP, in formulating and undertaking activities in the field of environmental law, should contribute to achieving the Sustainable Development Goals and their targets insofar as they relate to environmental sustainability, guided by the rule of law and good governance and considering a holistic approach.
- 3 This statement of priority areas of action reflects views and broad perspectives expressed by the senior government officials expert in environmental law who participated in the meeting of senior government officials expert in environmental law on the midterm review of the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV) held in Montevideo from 7 to 11 September 2015 and who noted with appreciation the efforts by UNEP and the international law community in implementing Montevideo Programme IV since its commencement. Bearing in mind that the representatives participating in the meeting were not to negotiate or agree on State positions and that the present recommendations will be submitted to the United Nations Environment Assembly for further consideration by Member States, the representatives recommended for consideration, in no particular order and maybe for the international law community and, subject to available resources and within its mandate, UNEP, possible areas of priority for action during the remaining period of Montevideo Programme IV and towards 2020 as follows:
 - a) Addressing as a priority enforcement in respect of environmental offences and developing a holistic approach to environmental offences from prevention and detection

- to sanctions and remediation through developing and strengthening laws to provide administrative, civil and criminal sanctions for environmentally harmful activities;
- b) Addressing the drivers of environmental offences and crime, considering the ways in which the topic may be dealt with holistically and focusing on appropriate levels of enforcement, taking into account their relationship with money laundering, the financing of drug trafficking, terrorism, human trafficking and corruption;
 - c) Initiating a Member-State-driven process to assist States in:
 - i. Developing more effective environmental legislation and, in that context, developing such legislation (both general legislation and that required to implement particular treaties);
 - ii. Developing a major in education in and public access to information, participation and justice in environmental matters and the sharing of environmental information between different implementation institutions to enable the quick and effective assessment and management of environmental risks;
 - iii. Developing criteria to assist States in assessing the effectiveness of environmental law;
 - iv. Developing incentives to move towards sustainable development through economic approaches including environmentally sustainable economy, green economy, or others, as tools for achieving sustainable development without prejudice to the right of every country to choose an appropriate approach in accordance with its national sustainable development plans, strategies and priorities;
 - v. Developing guidelines to help States establish mechanisms for the conservation of soil, addressing soil erosion, mitigating contamination and preserving the quality of native soil;
 - vi. Developing incentives for more effective implementation and enforcement of environmental law;
 - d) Initiating a Member-State-driven process to assist States in strengthening environmental law, including in strengthening the implementation of, compliance with and the enforcement of environmental law, by:
 - i. Establishing networks of environmental law experts for the sharing of experience and lessons learned, for the creation of models and for the sharing of best practices;
 - ii. The strengthening of all relevant institutions and establishing focal points for the coordination of their actions at the national, regional and global levels, thus ensuring complementarity;
 - e) Assessing the role of litigation, including public interest litigation (where applicable), alternative dispute resolution, prosecution and its relationship with the enforcement of national environmental law and updating the compendium and databases of relevant cases as part of efforts to strengthen public access to justice in environmental matters;
 - f) Considering follow-up mechanisms to review compliance and political commitment and to raise the level of ambition of international instruments in the field of the environment,

- including through the adequate use of non-binding instruments to achieve environmental protection;
- g) Developing frameworks to help evaluate the effectiveness and success of environmental treaties and encourage the widest possible participation in multilateral environmental agreements with a view to increasing their effectiveness;
 - h) Translating the Sustainable Development Goals into national law, seeking to make connections and dialogue with existing standards;
 - i) Encouraging action by all non-State actors, including when engaged in environmental activities, to become more environmentally responsible and, with regard to the private sector, exploring the effectiveness of voluntary instruments to supplement corporate and social responsibility mechanisms for implementing environmental and sustainable development goals;
 - j) Recommending that environmental law courses should be mandatory for all universities that have law schools, with minimum content to be suggested by UNEP;
 - k) Enhancing water security in the face of climate change and other environmental pressures, strengthening environmental legal frameworks for ensuring the preservation of ecosystem health and managing conflicting uses and equitable and adequate access to safe water and water supplies;
 - l) Under the auspices of the General Assembly of the United Nations, studying and, if appropriate, developing more effective means for the protection of oceans, fisheries and biodiversity in areas beyond national jurisdictions and supporting the development of international legally binding instruments in accordance with the United Nations Convention on the Law of the Sea;
 - m) Having regard to existing instruments in the area of pollution, establishing a mechanism to enable States and relevant organizations to adopt a more holistic and coordinated approach to preventing and controlling pollution of global significance, including the prevention of further ocean acidification, increasing the resilience of marine ecosystems, the regulation of transboundary air pollution of intercontinental scale, such as tropospheric ozone pollution, and the regulation of air pollutants by addressing all channels of emission and for the protection of the atmosphere;
 - n) Developing, under the provisions of relevant instruments, international standards and procedures for extractive industries, including marine mining, to address the impact of those industries on the environment and on local communities, taking into account links with associated liability and damage compensation regimes;
 - o) Compiling a list of best practices in combating noise pollution, taking into account national and regional provisions, and proposing ways of addressing the issue at the local and national levels, taking into account, in particular, considerations raised in the context of spatial planning and transport policy, the effect of noise pollution on fauna and flora, energy policy and human rights;
 - p) Continuing to emphasize the importance of and further refining guidelines on environmental impact assessments and strategic environmental assessments, including their transboundary aspects, improving their effectiveness by taking into account social, cumulative and recently discovered impacts, such as the location of wind turbines or radiation from power lines, providing an integrated approach that leads to a full

assessment of the impact of the subjects concerned on humans and the physical environment;

- q) Facilitating the promotion of laws that encourage the use of renewable energy, including possible synergies and the coordination of trade and investment laws and ways of collecting and sharing good practices and studying legal issues surrounding the deployment and application of energy-relevant technologies, including energy extraction technologies;
- r) Considering appropriate legal responses to environmental emergencies, climate change and environmental stresses, including as a priority to protect the most vulnerable;
- s) Analysing legal gaps and needs for and benefits of global legal instruments and other approaches to addressing the environmental threats caused by the global problem of waste plastics and marine debris, considering coordination of the current applicable legal instruments and policies, the promotion of a holistic and lifecycle approach to the control of plastic waste and the development of further instruments;
- t) Assessing the use of relevant legal tools for addressing issues related to the reduction of poverty, including the environmental harm caused by poverty and environmental conditions that contribute to poverty;
- u) Supporting the Global Alliance to Eliminate Lead Paint to achieve the goal that all countries adopt national legislation to ban lead in paint;
- v) Assessing cost effective means of improving communication between institutions and joint activities in the field of international environmental law pursuant to section III, programme area F (f), of Montevideo Programme IV;
- w) Strengthening and supporting countries in developing and updating environmental policies, laws and regulations and relevant international instruments that prevent negative impacts on human rights or the environment, including in particular with regard to indigenous peoples and disadvantaged and vulnerable groups; gender and the environment; the effects of climate change on human rights; transparency in dispute settlement; the interface of human rights and the environment with Principle 10 of the Rio Declaration on Environment and Development; and access to essential ecosystem services;
- x) Cooperating in an expeditious and more determined manner to secure environmental protection objectives in international trade, investment and financial laws and policies in order to achieve sustainable development and an appropriate balance between the objectives in those fields in accordance with programme area B of section IV of Montevideo Programme IV;
- y) Furthering the understanding of the linkage between environment, security and peace and promoting further application of environmental norms to military establishments and their activities and the protection of the environment in the context of armed conflict pursuant to areas C and D of section IV of Montevideo Programme IV through appropriate institutions.

- 4 To strengthen the application of the Montevideo Programme and to monitor and evaluate its implementation, as well as to support UNEP in its activities in the sphere of environmental law, it is equally recommended to undertake appropriate measures, which

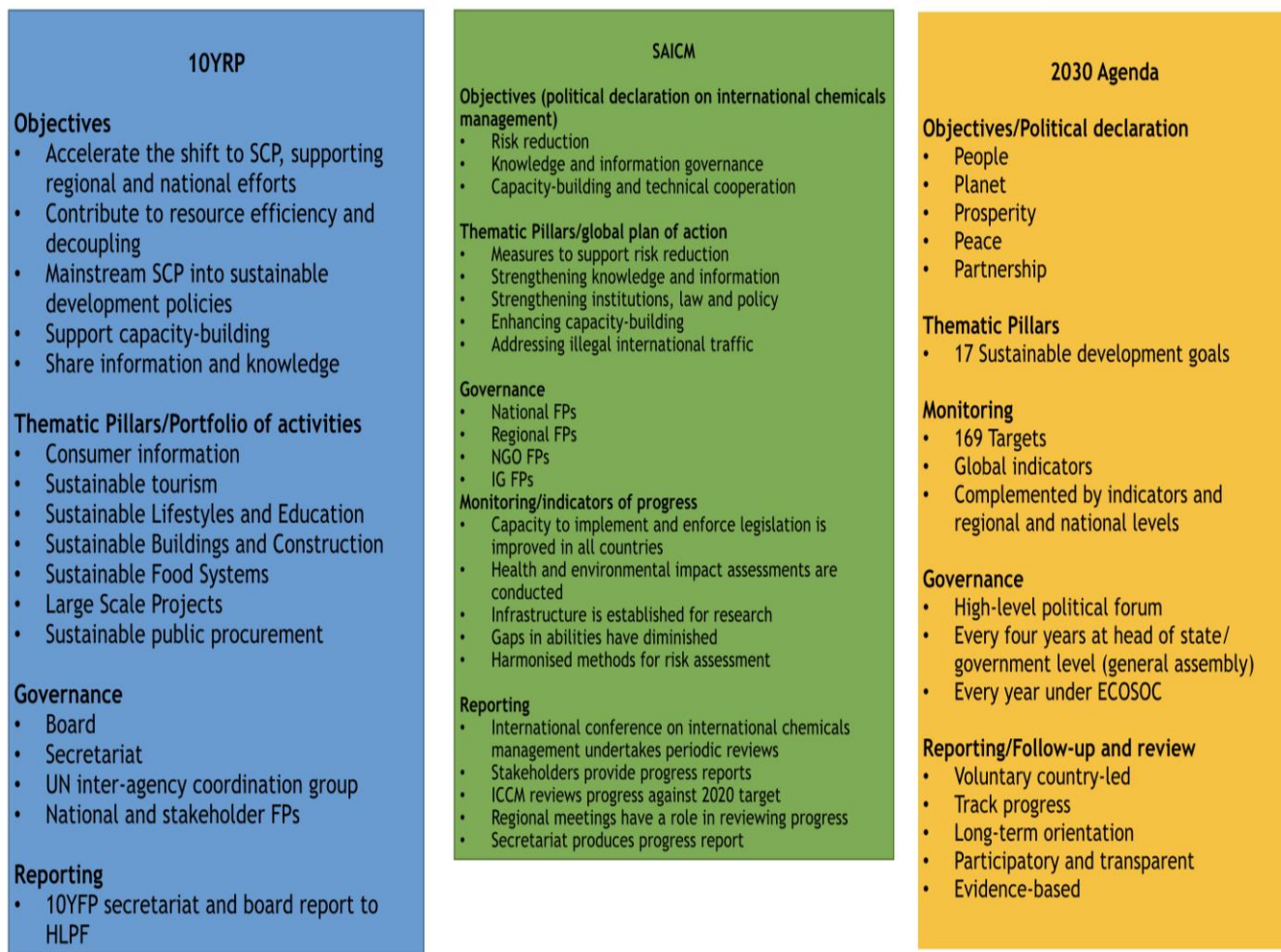
might include inviting Member States to establish a network of national focal points for exchanging and building capacities in the various fields of the Programme and to establish a regionally balanced mechanism, such as a steering committee supported by eminent legal experts in environmental law, to facilitate the application, monitoring and evaluation of the Montevideo Programme.

Annex 2:

Selected examples from other longer-term thematic programmes that could be informative in the design of a new programme for environmental law

Other UN Programmes provide governance arrangements which are designed to allow for the full and effective participation of countries and stakeholders, whilst at the same time ensuring decision-making that is efficient and transparent.

The following visual provides a comparative snapshot of the over-arching architecture of the Strategic Approach to International Chemicals Management (SAICM), the 10 Year Framework of Programmes on Sustainable Consumption and Production (10 YFP) and the 2030 Agenda.



These programmes often combine a universal governing body comprised of all member states, which meets either on an annual or bi-annual basis, with the establishment of a steering committee or executive board, which is empowered to provide guidance and direction.

Traditionally, these bodies are composed of representatives from member states only. However, increasingly they are including the representation of major groups and stakeholders.

For example, the 10-YFP organisational structure includes: the ten-member 10-YFP Board (2 countries per region); the 10-YFP Secretariat, administered by the United Nations Environment Programme; the 10-YFP Inter-Agency Coordination Group; national focal points; stakeholder focal points; the global SCP Clearinghouse; and the 10-YFP Trust Fund. The 10-YFP is implemented by the One Planet network, which is a multi-stakeholder partnership for sustainable development, generating collective impact through the 10-YFP's six programmes.

SAICM is unique in its ambition as an inclusive multi-stakeholder, multi-sector voluntary global policy framework. Its governance arrangements reflect this commitment. The SAICM bureau to the International Conference on Chemicals Management (ICCM), which is elected by and among the representatives of the governmental participants present at each session, also includes four non-governmental organizations' (NGOs) representatives. SAICM's other institutional arrangements include: national focal points, regional focal points, intergovernmental organizations' focal points and NGO focal points. Another relevant feature is that its intersessional work is promoted through regional meetings. SAICM's Secretariat facilitates the meetings and intersessional work of the ICCM. It also maintains the network of SAICM stakeholders, prepares guidance material, provides information on clearing house services; promotes the exchange of scientific and technical information; and ensures that ICCM recommendations are conveyed to key actors.

The UN-REDD Programme 2016-2020 governance arrangements include an Executive Board, which has general oversight for the Programme, taking decisions on the allocation of the UN-REDD Programme fund resources. The Executive Board meets bi-annually, or more frequently as required to efficiently carry out its roles and responsibilities. Another important governance structure is the UN-REDD Programme Assembly, which is a broad multi-stakeholder forum with the role of fostering consultation, dialogue and knowledge exchange among UN-REDD Programme stakeholders. National steering committees (NSC) have also been established to facilitate country programme oversight. The NSCs apply the standards of the UN-REDD Programme and include representatives of civil society organisations and indigenous peoples.