

**USA Intervention**  
**73/333 Consultations July 22, 2020**  
**Environmental Law**

USA General Remarks:

- Regarding Recommendation 8, the United States does not support suggestions that Member States should reaffirm, reopen, or otherwise renegotiate environmental principles such as the 1992 Rio Principles.
- The existing 1992 Rio Principles provide a set of common, aspirational principles that States have used as a guide in implementing policies at the national level or negotiating subsequent sectoral instruments where they saw fit to do so. Those principles (including principle 7 on CBDR) have not been universally applied in the same way in every sector, and that was an intentional decision by States in developing each of the existing MEA regimes. States retain the prerogative to implement principles as they deem appropriate.
- In the U.S. view, reopening discussions on the formulation, interpretation, and implementation of such principles is not needed in this forum. Indeed, such an effort could undermine continuing implementation of existing international environmental agreements without delivering any actual environmental benefits.
- Separately, we recognize the work that the International Law Commission has undertaken with respect to general principles of law, and that the most recent report from the Special Rapporteur, issued on June 26, 2020, includes a brief discussion of principles international environmental law. We do not see a role for UNEP assistance in this project. States are able to engage directly as specified by the ILC and the UN's Office of Legal Affairs.
- We are studying the Special Rapporteur's most recent report with interest and will comment on it at the appropriate time. We reiterate the point we made at the Sixth Committee meeting on November 6, 2019, questioning the Special Rapporteur's methodology in respect of the identification of certain general principles of law, including those that may relate to international environmental law. Despite certain statements in the Special Rapporteur's second report, identification of specific principles is not the purpose of the project as understood by the United States. Moreover, at this preliminary stage in the ILC's work, the ILC has not endorsed any specific conclusions concerning the identification of general principles of law. Therefore we do not believe that this is the appropriate time to engage on this topic. We look forward to

continuing that discussion in due course through the channels specified by the ILC and the UN's Office of Legal Affairs.

### 73/333 Recommendation

(17) Encourage the exploration of further ways for States Members of the United Nations and all members of the specialized agencies to support and make full use of the fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V), adopted at the fourth session of the United Nations Environment Assembly, in order to foster environmental rule of law and advance the implementation of environmental law at all levels.

### Co-facilitator Questions

(a) How can Member States and members of the Specialized Agencies support the implementation of Montevideo Programme V and its efforts to promote the development and implementation of environmental rule of law, strengthen national-level capacity, advance the implementation of environmental law at all levels and contribute to the implementation of the 2030 Agenda for Sustainable Development?

(b) How can the network of national focal points designated by Member States, pursuant to UNEA resolution 2/19, be supported and extended for exchanging information and building capacity in order to strengthen the application of Montevideo Programme V?

### USA Reply:

- Regarding Recommendation 17 and Montevideo Programme V, we were disappointed to not be able to go to Brazil in March and look forward to when it will be rescheduled. We note that the new Montevideo Programme V does not define the substantive topics for UNEP's action; instead, it focuses on creating a structure for member states to direct UNEP's actions and for UNEP to provide support for member states. In just a few pages, it defines a vision, objectives, strategic activities, and guiding principles, and calls upon UNEP to take specific actions.
- As the programme starts the new decade it is important we focus our efforts on activities that can generate early success to build momentum. In particular, we should focus on identifying initial areas of focus for strategic activity (a) "provide practical guidance, tools, innovative approaches and resources..."

- In this regard, there are several examples of effective model legislation to build from. At past Montevideo meetings we have reviewed the example of the Lead Paint Model Law UNEP developed through the Alliance to End Lead Paint.
- We should identify a short list of topics that are conducive to model legislation that build in UNEP's existing work and can leverage expertise from member states. These topics should also have the potential to leverage additional member-state funding.
- Focusing on too many issues at this early stage of the programme could dilute the Programme's efforts and make it more difficult to find external support.
- Just to highlight a few potential topics for model laws that have been raised: developing wastewater pollutant discharge control, air quality monitoring, access to environmental information and public participation and marine plastics and debris.
- As the Montevideo Programme V unfolds, we should use a step-wise approach that allows the program time to build and mobilize resources while potential models are developed in sequence.

### 73/333 Recommendation

(14) Encourage States Members of the United Nations and all members of the specialized agencies to strengthen, where needed, environmental laws, policies and regulatory frameworks at the national level, as well as capacities across all sectors for the effective implementation of international environmental law, including in the administrative and justice sectors in accordance with national legal systems, while acknowledging the importance of international cooperation in supporting and complementing national actions.

### Co-facilitator Questions

(a) How can UNEP support Member States in this effort and promote quality information and data exchange, improve education, capacity-building and technical assistance, including with the aim of strengthening effective national environmental governance systems and improving environmental rule of law?

### USA Reply:

- Regarding Recommendation 14, UNEP's environmental law program should be designed to bring real change in the world, to improve lives and human health, and to protect the environment.

- It will be at its strongest when focused on the role that law plays to achieve member-state consensus policy decisions.
- Because environmentally harmful activities most often take place within national jurisdictions, action to strengthen environmental law and ensure implementation at the national level should be the program's first and primary focus.
- To this end, the United States supports:
  - Member-state leadership and guidance to UNEP in implementing the Montevideo Programme;
  - Providing direction for UNEP's future action on law development that is clearly defined, cost-effective and achievable with verifiable, measurable results; and
  - Focusing on effective model environmental legislation and implementation of environmental law primarily at the national level.