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Item **XXXX** of the provisional agenda*

**A process for the midterm review of the Fourth Programme for the Development
and Periodic Review of Environmental Law (Montevideo Programme IV), and
developments in the implementation of Governing Council decision 27/9 on
advancing justice, governance and law for environmental sustainability**

Report of the Executive Director

Summary

This report provides information on an overall environment in which the Fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV) is implemented, including recent developments concerning the implementation of Governing Council decision 27/9 on advancing justice, governance and law for environmental sustainability. It presents a proposed one-year, system-wide process to undertake an in-depth midterm review of the Montevideo Programme IV pursuant to Governing Council decision 25/11(I). It contains suggested action by the United Nations Environment Assembly of the United Nations Environment Programme on such process, as well as the issues of environmental rule of law, human rights and the environment, and violation of environmental law arising from implementation of Governing Council decision 27/9.

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* UNEP/EA.1/1.

I. SUGGESTED ACTION BY THE UNITED NATIONS ENVIRONMENT ASSEMBLY OF THE UNITED NATIONS ENVIRONMENT PROGRAMME

1. The United Nations Environment Assembly may wish to consider the adoption of a decision along the lines suggested below:

The United Nations Environment Assembly,

Recalling Governing Council decision 25/11(I) concerning the Fourth Programme for the Development and Periodic Review of Environmental Law,

Also recalling Governing Council decision 27/9 on Advancing Justice, Governance and Law for Environmental Sustainability,

Noting the outcome document of the United Nations Conference on Sustainable Development "The Future we want", endorsed by the General Assembly in its resolution 66/288 of 27 July 2012,

Having considered the report of the Executive Director,

1. *Notes* the recent developments in the field of environmental law and the role of the Montevideo Programme and UNEP in this context;
2. *Reaffirms* the importance of environmental law as a foundation for environmental sustainability;
3. *Recognizes* that violations of environmental law undermine the achievement of all dimensions of sustainable development and environmental sustainability, and *emphasizes* that such violations, in particular those of transnational nature, should be tackled by concerted efforts of countries including through the strengthening of the entire chain of enforcement involving all relevant sectors;
4. *Welcomes* the outcomes of the first International Environmental Compliance and Enforcement Conference held in Nairobi on 6 November 2013;
5. *Recognizes* the importance of the linkages between human rights and the environment in the context of sustainable development and the benefits that can derive from practices that integrate both human rights and environmental standards and therefore advance both environmental and human rights objectives;
6. *Welcomes* the cooperation between UNEP and the Office of High Commissioner for Human Rights on the nexus between human rights and the environment, and UNEP's collaboration with the independent expert, appointed by the Human Rights Council, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;
7. *Emphasizes* that the rule of law, including environmental rule of law, provides a foundation of achieving sustainable development and fairness to present and future generations, and therefore should be duly recognized in relevant international policies and goals aiming at sustainable development;
8. *Requests* the Executive Director, pursuant to Governing Council decision 25/11 (I), to undertake a system-wide in-depth midterm review of the implementation and effectiveness of the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo programme IV), which should include an evaluation of its contribution to achieving internationally agreed environmental goals, including through the following manner:

(a) Invites Governments, United Nations bodies, funds, programmes and specialized agencies, other relevant intergovernmental bodies and organizations, secretariats of the relevant multilateral environmental agreements, expert institutions, academia and other relevant institutions and organizations to submit to the UNEP secretariat, by 30 November 2014, the information on experiences, achievements and challenges in the progressive development and implementation of environmental law and environment-related law in particular in the programme areas and issues covered under the Montevideo Programme IV;

(b) Consult with those listed above as required, including, as appropriate, through meetings or expert workshops on specific programme areas or issues under the Montevideo Programme IV;

(c) Prepare an in-depth analytical report on the basis of the above process by 28 February 2015;

(d) Convene an open-ended meeting of senior government officials expert in environmental law to consider the above-mentioned report, to identify important and emerging issues in the field of environmental law, and to recommend a way forward for the further implementation of the Montevideo Programme IV up to 2019 and a means to measure impact of the Programme, as well as perspectives beyond the year 2020 in the field of environmental law, by 30 June 2015, subject to the availability of resources;

(e) Distribute the outcome of the above meeting to all Governments and relevant organizations, and make it available to the public.

9. *Recommends* to the General Assembly at its seventieth session as well as to the Economic and Social Council at its 2015 session to consider the outcome of the above meeting when they each addresses the nexus of the rule of law, sustainable development and environmental sustainability and relevant coordination and collaboration within the United Nations system, and to that end *authorizes* the Executive Director to transmit, on its behalf, the outcome of the above meeting to the General Assembly and to the Economic and Social Council;

10. *Requests* the Executive Director to report the implementation of the present decision to it at its next session.

II. INTRODUCTION

2. Since the establishment of UNEP, environmental law has been one of its key areas of work. From 1982 to date, UNEP's environmental law activities have been organized and coordinated through a series of 10-year programmes, adopted by the Governing Council of UNEP, for the development and periodic review of environmental law, widely known as the Montevideo Programme for the Development and Periodic Review of Environmental Law.¹

3. The Montevideo Programme has been instrumental in steering efforts of the international community to develop environmental law which transform science-based policies into action-oriented rules and standards of conduct. A number of multilateral environmental agreements were conceived under the Montevideo Programme and negotiated under the auspices of UNEP. UNEP's mandate in this area has been recognized in Agenda 21, the Programme for the Further Implementation of Agenda 21, the Nairobi

¹ The first programme (Montevideo Programme I) and the programme for the 1990s (Montevideo Programme II), adopted by the Governing Council at its tenth session, in 1982, and its seventeenth session, in 1993, respectively, were instrumental in providing UNEP with strategic guidance in this field. Since 2001, the third programme (Montevideo Programme III) has provided UNEP with strategic guidance for the progressive development of environmental law and support for the implementation of environmental law in member States. The report on the implementation of Montevideo Programme III is set out in document UNEP/GC.25/INF.15/Add.1.

Declaration on the Role and Mandate of the United Nations Environment Programme and the Malmö Ministerial Declaration, among others.

4. The current fourth Programme - Montevideo Programme IV - was adopted by the Governing Council of UNEP in its decision 25/11 (I) of 20 February 2009 as a broad strategy for the international law community and UNEP in formulating activities in the field of environmental law for the decade beginning in 2010.

5. The Montevideo Programme IV covers twenty-seven programme areas, and each of them consists of its objective, strategy and a set of actions. Those programme areas are clustered into four parts. The first part relates to the effectiveness of environmental law, focusing on cross cutting issues that have an impact on the effectiveness of environmental law, including issues related to implementation, compliance and enforcement, capacity building, synergies, as well as a general strengthening and development of environmental law. The second part of the Programme covers the conservation, management and sustainable use of natural resources, such as fresh and marine water, aquatic living resources, forests, biological diversity and sustainable production and consumption patterns. The third part of the Programme addresses the challenges for environmental law, such as climate change, poverty, pollution prevention and control and new technology, while the fourth part of the Programme focuses on the relationship between environmental law and other fields, including human rights, trade, security and military activities. The full list of those programme areas is contained in the annex to the present report.

6. Those programme areas, together with the respective objectives, strategies and actions, are a non-exhaustive list of elements for the Programme. UNEP, in accordance with its catalytic role, takes action in these areas in coordination with States, conferences of the parties and secretariats of multilateral environmental agreements, other international organizations, non-State actors, experts and relevant stakeholders. For UNEP, the implementation of these activities is consistent with the UNEP biennial programmes of work.

7. The Montevideo Programme, as action-oriented broad strategy and agenda for the world in the field of environmental law, has become synonymous with the evolution of environmental law, from a field that was primarily concerned with legal responses to constantly improving knowledge and science about the natural environment to a field that has become more robust, more comprehensive and one that is more far-reaching to catalyze actions to promote changes in laws and institutions to enable countries to meet environmental challenges they face. The Montevideo Programme has ensured that, in 2014, environmental law is integral part of the rule of law across the world, both at the national and international levels, governing norms and setting standards relevant to various aspects of interface between human society and the environment.

8. The Montevideo Programme has also been a powerful driver for exemplifying increasing linkages² between environmental law and other areas, most notably the three pillars of the United Nations, namely peace and security, human rights, and development. It assisted the international community to highlight areas of concern, gaps and challenges, and provided a comprehensive framework for the progressive development of legal principles and obligations in the field of the environment. Some of these evolutionary developments are highlighted below.

9. It should be noted that the present report provides information on an overall environment in which the Montevideo Programme IV is implemented, together with some highlights of relevant recent developments. However, it is not intended to provide comprehensive information on the midterm review of the Montevideo Programme IV as such. Since the Montevideo Programme IV is a broad guidance to the international law community as well as to UNEP in undertaking environmental law activities, the midterm review should be undertaken not only by UNEP but also by the international law community a whole involving Governments, relevant bodies and agencies of the United Nations system and all other relevant organizations and entities, both governmental and nongovernmental, national or international, active in the

² See on these linkages also: Edith Brown Weiss, *Japanese Yearbook of International Law*, Vol. 54 (2011), pp. 1-27.

field of environmental law. The midterm review will be commenced in 2014 with a view to reporting in 2015, pursuant to Governing Council decision 25/11(I). Section VII below presents a proposed one-year process for a system-wide in-depth midterm review of the Montevideo Programme IV.

III. LINKAGES TO THE THREE PILLARS OF THE UNITED NATIONS – PEACE AND SECURITY, HUMAN RIGHTS AND DEVELOPMENT

10. As underscored by principle 25 of the Rio Declaration on Environment and Development, peace, development and environmental protection are interdependent and indivisible. The report of the UN High-level Panel on Threats, Challenges and Change “A More Secure World: Our Shared Responsibility”³ stated that “any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security”, and in that context, identified six clusters of threats with which the world must be concerned now and in the decades ahead. Among others, “economic and social threats, including poverty, infectious disease and environmental degradation” was identified by the Panel as one of such major threats. At least 40 percent of internal conflicts over the last 60 years have a link to natural resources, and the risks of violent conflict are elevated when the exploitation of natural resources causes environmental damage and loss of livelihoods or when their benefits are unequally distributed. Natural resources that are managed sustainably, transparently, and on the basis of the rule of law can be the engine for economic well-being as well as a platform for peace.

11. The rule of law enables the sustainable management and use of the environment by enshrining environmental norms in constitutions and legislation; enforcing regulations; requiring protections such as environmental impact assessments; and defining rules for natural resource exploitation and governance.⁴ Justice, including participatory decision-making, access to information and judicial and administrative proceedings as well as the protection of vulnerable groups from disproportionate adverse environmental impacts, should be seen as an intrinsic element of sustainability.⁵

12. Within the above context, the role of UNEP in the progressive development of international environmental law and building and strengthening national environmental legislation and institutions, as guided through four iterations of the Montevideo Programme, has contributed, and will continue to contribute to efforts of the international community for building stable institutional structures for peace and preventing threats to international security, in particular in efforts for achieving sustainable development. The Montevideo Programme IV, especially from the perspectives of its contribution to the rule of law, supports efforts of the international community build environment more conducive to strengthen the foundation of peace and security. In particular, its programme areas concerning “avoidance and settlement of international dispute relating to the environment”, “environment and security”, “environment and military activities” and “human rights and the environment”, have bearing with respect to issues in the field of peace and security as defined in a broader sense.

13. The protection of the environment and the promotion of human rights are increasingly recognized as intertwined and complementary goals, and founding elements of sustainable development. Ecosystems and the services that they provide, including food, water, disease management, climate regulation, spiritual fulfilment and aesthetic enjoyment, are the foundations of the full enjoyment of human rights such as the right to life, health, food and safe drinking water. At the same time, human rights and the legal and institutional instruments developed for their protection can be instrumental in fostering sustainable development and environmental objectives. Montevideo IV identifies human rights and the environment as one of the areas of focus for environmental law, particularly in the area of “rights-based approaches to environmental issues”.

³ A/59/565.

⁴ UNDP Issues Brief, Rule of Law and Development, New York, 2013; UNEP Governing Council, Decision 27/9: Advancing justice, governance and law for environmental sustainability.

⁵ As noted in UNEP Governing Council Decision 27/9, para. 3

14. The fact that these two fields share a core of common interests and objectives has been evident since early years of international cooperation on the environment,⁶ but appreciation of the full extent of the mutually supportive nature of pursuing human rights and environmental objectives has increased in recent years.⁷ Various efforts have been undertaken by UNEP with the Office of High Commissioner for Human Rights (OHCHR) and other partners to assess the linkages and promote the advancement of mutually supportive practices. OHCHR and UNEP issued a joint report on human rights and the environment in 2012 and presented it at the Rio+20 Conference, which provides an in depth analysis of the interrelationship between human rights and the environment as they both form integral and indivisible parts of sustainable development.⁸ A joint project is currently being implemented with OHCHR and the Independent Expert on Human Rights and the Environment on good practices in human rights and the environment, which will collect and disseminate “good practices” which will in turn contribute to better understanding and appreciation of the practical applications of the human rights and environment nexus.

15. UNEP is also working on this theme with other partners, especially UN bodies and agencies, centres of excellence on environmental law and universities, networks and associations to further expand the outreach possibilities in terms of knowledge dissemination and in order to lay strong foundations for policy-oriented work that can be undertaken in the future to further strengthen the practical applications of the human rights and environment linkages. The work being undertaken on further clarifying the linkages, and identifying and promoting good practices will provide a good knowledge basis for further promoting a more integrated approach at various levels to these traditionally distinct areas of law and policy.

16. Crimes and other violations of environmental law, including multilateral environmental agreements, undermine the achievement of environmental sustainability and sustainable development overall. The outcome document of Rio+20 states in paragraph 10 that “democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger.” This statement is repeated in paragraph 252 under ‘means of implementation’, highlighting the essential role accorded to law and governance in the implementation of the Rio+20 outcomes and the pursuit of sustainable development overall.

17. Using a rights-based approach to guide decision-making will ultimately lead to better results in implementing development objectives, the outcomes of Rio+20, in shaping the post 2015 developing agenda, and in addressing the impact of environmental degradation generally, in particular its impact on the world’s poorest and most vulnerable populations, and in encouraging a greener economy that recognizes that healthy ecosystems are a precondition for poverty reduction and an opportunity for development and economic growth. In this context, the Governing Council, in decision 27/9 on advancing justice, governance and law for environmental sustainability, welcomed the important contributions made to sustainable development by constitutional provisions and rights related to nature and the environment.

18. Another important evolutionary strand of environmental law concerns its role vis-à-vis economic law and trade related regimes. Legal tools including environmental impact assessment and strategic environmental assessment play an increasing role in planning and authorization of economic activities worldwide. UNEP’s green economy law work also shows that standards which enhance energy efficiency or set targets for emission reductions can be effective tools for achieving environmental objectives and for enabling markets in sustainable goods and services. Law can further change the behaviour of individuals

⁶ Principle 1 of the 1972 Stockholm Declaration on the Human Environment already established 40 years ago that humanity is entitled to “the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being (...).”

⁷ Governments at Rio+20 reaffirmed that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development. The Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability, adopted at the World Congress on Justice, Governance and Law for Environmental Sustainability also affirms that environmental sustainability can only be achieved in the context of fair, effective and transparent national governance arrangements and the rule of law, to be predicated on, among other things: the recognition of the relationship between human rights and the environment.

⁸ <http://www.unep.org/delc/Portals/119/JointReportOHCHRandUNEPonHumanRightsandtheEnvironment.pdf>

and companies by establishing incentives for environmentally-friendly behaviour or production, including through changes in fiscal legislation.

19. Increasingly, the Montevideo Programme has become also a platform for non-State actors to engage in matters related to environmental law driving towards new developments and better implementation of existing regimes. Nongovernmental organizations active in the field of environmental law continue to be an important ally in the implementation and further development of environmental law. Multilateral development banks equally have increased their role in the development and implementation of environmental law through the development of safeguards and specific programmes on environmental law, based on the directives enshrined in the Montevideo Programme. For example, UNEP cooperates closely with the Asian Development Bank in building the capacity of the judiciary in Asia through the ADB's dedicated capacity building programme for judges in the field of the environment. The World Bank's safeguard policies have set a trend across many other institutions and UNEP partners with the World Bank in the Global Forum on Law, Justice and Development.

20. Also the private sector has increasingly taken on a role in the implementation of environmental law through initiatives such as the Global Compact, public-private partnerships or sustainability reports. UNEP's Finance Initiative equally promotes links between sustainability and financial performance. The ownership and participation of the private sector in the implementation of environmental law is an essential condition for more effective legal regimes and particularly for environmental law's growing role in transforming economies towards greener economies.

IV. PROGRESSIVE DEVELOPMENT OF PRINCIPLES AND RULES

21. In the context of the United Nations Conference on Human Environment in Stockholm in 1972 and the United Nations Conference on Environment and Development in Rio de Janeiro in 1992, various principles of environmental law have been developed and since then widely applied in policies and legal instruments at the national and international levels, including their references in the text of the selected multilateral environmental agreements.

22. Among those principles, principle 10 of the Rio Declaration on Environment and Development on "access to information, participation in decision-making and access to justice in environmental matter" derives from the foundation of the essential norms that underpin sustainable development, namely democracy, good governance and the rule of law, and has been increasing its relevance and importance of its application, including in the context of UNEP with regard to enhancing stakeholders participation in its governance process. Under the auspices of the Economic Commission for Europe of the United Nations, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted in Aarhus, Denmark on 25 June 1998. However, it remains non-legally binding principle for a large number of countries in different regions. In this context, UNEP, working with Governments and relevant UN bodies and other partner organizations, has been promoting this principle, including through the promotion of application of the Guidelines for the Development of National Legislation on Access to information, Public Participation and Access to Justice in Environmental Matters developed under the Montevideo Programme and adopted by the UNEP Governing Council in its decision SS.XI/5 (A) of 26 February 2010.

23. It should be noted, however, that those principles are not necessarily exhaustive, and may be complemented and reinforced by additional principles. One example for a principle which could expand the frontiers of environmental law is the principle of non-regression. More common in the field of human rights law, this principle is understood as requiring that norms which have already been adopted by states may not be revised in ways which would imply going backwards on the previous standard of protection.⁹

⁹ Given the power of parliaments as legislators and the implied notion that legal norms can generally be modified or revoked at any later time, this raises the question how the existence of irreversible norms can be justified. Proponents argue that the purpose of environmental law implies the prohibition of regressive measures. They point to the fact that environmental law, as demonstrated by key principles such as prevention, public participation, inter-generational equity, and precaution, is not only intended to regulate, but also to constantly improve

24. The integrity of the environment and of natural and genetic resources in areas beyond national jurisdiction is increasingly under threat. Taking the oceanic environment as an example, urgent threats include acidification, land and marine-based pollution, introduction of invasive species, overfishing and the use of its genetic resources. The proportion of fully exploited and of overexploited fish stocks, which has increased by 13% and 33% respectively since 1992, gives reason for both environmental and social concerns given that over 500 million people globally rely on fisheries and aquaculture for their livelihoods and fish help feed three thousand million people. In this regard, the adequacy of the existing norms and rules in this area might be examined with a view to identifying appropriate policy or legal responses, along the lines of the Montevideo Programme IV programme areas on "fresh, coastal and marine water and ecosystems" and "aquatic living resources, including marine living resources".

25. The atmosphere is another example of an area beyond national jurisdiction which requires global attention and cooperation in order to maintain its vital role for our planet and for people's well-being. While several aspects of pollution of the atmosphere are already addressed, this has been done through a sectorial approach, such as the ozone layer protection or climate change regimes, and there remains gaps in rules and standards in important areas of transboundary air pollution. It might require a more integrated approach for the protection of atmosphere, which might be spelled out in the form of guiding principles, standards of conduct or rules. Relevant work has been initiated by International Law Commission of the United Nations, for which UNEP has provided initial technical inputs and support, as envisaged in the Montevideo Programme IV under programme area on "pollution prevention and control".

26. Since the Montevideo Programme IV was adopted, there has been further progressive development of international environmental law, in particular in the form of multilateral treaties. In accordance with UNEP Governing Council decision 25/5 of 20 February 2009, the Executive Director convened the intergovernmental negotiating committee with a mandate to prepare an international legally binding instrument on mercury. In accordance with that mandate, five sessions of the intergovernmental negotiating committee were held between June 2010 and January 2013 in Stockholm, Chiba in Japan, Nairobi, Punta del Este in Uruguay, and Geneva, respectively, through which the negotiation of the text of the new treaty was concluded. Subsequently, the Minamata Convention on Mercury was adopted by the conference of plenipotentiaries convened by the Executive Director in Kumamoto, Japan on 10 October 2013, where it was opened for signature. The Convention is currently open for signature at the United Nations Headquarters in New York until 9 October 2014.

27. In the field of biological diversity, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity was adopted on 29 October 2010 at Nagoya, Japan, during the tenth meeting of the Parties to the Convention on Biological Diversity. Also, the Nagoya - Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety was adopted on 15 October 2010 at Nagoya, Japan, during the fifth meeting of the Parties to the Cartagena Protocol on Biosafety.

V. A FOCUS ON IMPLEMENTATION AND COMPLIANCE

28. The gap between commitments – in the form of treaties, internationally agreed goals and objectives set out in the outcomes of UN conferences and summits, national policies and laws – and their implementation remains a major challenge facing most of the countries around the world. The fifth Global Environmental Outlook report (GEO-5),¹⁰ launched by UNEP on the eve of the Rio+20 Summit, assessed

the environment. (See Michel Prieur, *De L'urgente Nécessité De Reconnaître Le Principe De "Non Régression" En Droit De L'Environnement*, IUCN Academy of Environmental Law e-Journal Issue 2011 (1). The principle of non-regression is already reflected to some extent in environmental law, as in the case of norms in multilateral environmental agreements which prohibit its parties to enter into other agreements with lower levels of protection (for example, see Article 11 (1) of the Basel Convention) and in the case of constitutional rules such as the commitment in the constitution of Bhutan to maintain a minimum of sixty percent of Bhutan's total land under forest cover for all time (see Article . 5 (3) of the Constitution of Bhutan).

¹⁰ <http://www.unep.org/geo/geo5.asp>

ninety of the most-important environmental goals and objectives and found that significant progress had only been made in four. The report cautions that if humanity does not urgently change its ways, several critical thresholds may be exceeded, beyond which abrupt and generally irreversible changes to the life-support functions of the planet could occur.

29. During the implementation of Montevideo Programme IV, a main focus has been placed on the implementation and compliance of the existing environmental law at the national and international levels. This include intensified efforts to promote and develop legal and practical means to increase transparency, strengthen access to information and enhance public participation in environmental decision-making processes, including through the implementation of existing mechanisms. In continuation of the previous iterations of the Montevideo Programme, including the UNEP global judges programme carried out since the mid-1990s, further efforts are made also to support enhancing the capacity of the judiciary, in particular courts and other tribunals, enforcement agencies, auditing institutions and other relevant stakeholders to implement and promote the rule of law in the field of the environment at the national, sub-regional and regional levels, to address emerging and growing issues such as environmental crime, promote progress in key areas such as the human rights and environment nexus and to further strengthen the implementation of key environmental law principles and the use of existing mechanisms to support sustainable development.

30. Effective implementation of multilateral environmental agreements is a key element in the enhancement of the rule of law as it pertains to environmental matters. UNEP provides substantive support to the parties and secretariats of these agreements to enhance their implementation of those agreements, including such areas as the identification of priority regional and sub-regional issues, provision of a platform for problem identification and solving and policy analysis and the development of regional and sub-regional action plans for improved and synergistic implementation.

31. For example, the capacity of States to implement their environmental obligations has been enhanced through targeted capacity-building training and awareness-raising programmes at the national and regional levels in African, Caribbean and Pacific (ACP) countries through a project funded by the European Union, including such areas as the development of multi-stakeholder collaboration strategies on multilateral environmental agreements in selected African countries and the development of integrated environmental impact assessment guidelines in selected Pacific countries. UNEP also executed the second phase of the UNEP-Global Environment Facility Biosafety Clearing-House project, focusing on capacity-building for national focal points of the Biosafety Clearing-House, a mechanism set up under the Cartagena Protocol on Biosafety to facilitate the exchange of information on living modified organisms and assist the parties to the Protocol in better complying with their obligations. As a result of the training-of-trainers component of the project, 46 out of 50 participating countries independently and successfully organized national training workshops on the issue. In addition, 12 of the 50 countries have incorporated UNEP training materials into their national academic curricula.

32. To assist Governments to implement and enforce the obligations under multilateral environmental agreements and to comply with the political commitments enshrined in internationally agreed environmental goals set out in the outcomes of United Nations conferences and summits or other intergovernmental forums at the national and regional levels, UNEP, under the Montevideo Programme IV, has continued to provide legal technical assistance to developing countries to further develop and strengthen national environmental legislation upon their request. UNEP, often working together with Governments and relevant partner organizations, provides global, regional, sub-regional and national training workshops and seminars to enhance capacities of government officials and relevant stakeholders in the relevant areas of environmental law or to effectively participate in multilateral environmental negotiations. The provision of such capacity-building activities is consistent with the Bali Strategic Plan for Technology Support and Capacity-building.

33. In this context, UNEP has also developed and promoted the implementation of a number of guidelines for the development on national legislation on various environmental issues. These include: the

UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justices and related guide to implementing the Access Guidelines and training materials for legal practitioners; the UNEP Guidelines for the Development of Domestic Legislation on Liability, Response Action and Compensation for Damage caused by Activities Dangerous to the Environment; and the UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements.

34. With the objective of supporting the implementation of relevant multilateral environmental agreements as envisaged in the Montevideo Programme IV, UNEP, including through its regional multilateral environmental agreements focal points, has been assisting countries to fill the implementation gap by providing technical and advisory services to develop national approaches for a synergistic implementation of multilateral environmental agreements. As part of a UN system wide contribution to the implementation of the Biodiversity Strategic Plan 2011-2020, UNEP, particularly through the above mentioned regional focal points and working in close collaboration with the secretariats of the relevant multilateral environmental agreements, has provided technical and advisory support to Governments in such areas as National Biodiversity Strategy and Action Plans update and revision processes, coordinating training workshops and implementing Global Environment Fund related projects.

35. Enhancing synergy among certain multilateral environmental agreements has been called for by Governments for more than a decade in order to facilitate effective implementation of those agreements, especially in the context of strengthening international environmental governance. It is addressed also in the Montevideo Programme IV under programme area on "harmonization, coordination and synergies". In the field of chemicals and wastes, the Conferences of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the Stockholm Convention on Persistent Organic Pollutants, at their simultaneous extraordinary meetings held in Bali, Indonesia in February 2010, adopted concurrent decisions to enhance cooperation and coordination among them. Following their respective meetings held separately in the course of 2011 and their extraordinary and ordinary meetings held within a sequence of two weeks in May 2013, institutional arrangements for enhancing cooperation and coordination among the three conventions have been confirmed, including the arrangements for the joint management and joint services at the secretariats of the Basel and Stockholm Conventions and the UNEP part of the Rotterdam Convention secretariat.¹¹

36. The international community has over the past decade become increasingly concerned about many issues involving oceans and coastal areas. As underscored in the Rio+20 Outcome document, it calls for immediate actions on issues such as the sustainable management of depleting fish stocks, destruction of natural marine and coastal habitats, alien invasive species, conserving marine biodiversity in areas beyond national jurisdiction, ocean acidification and the impacts of climate change. In this sense, the eighteen Regional Seas Conventions and Action Plans fulfil an important role in implementing the international agenda on marine and coastal issues and contribute to globally agreed targets, including the Aichi Targets and the International Coral Reef Initiative Call to Action. In bringing together governments, the scientific community, intergovernmental organizations, and other stakeholders, the various regional seas conventions and action plans provide valuable regional frameworks for assessing the state of the marine environment; addressing key developments (e.g. socio-economic activities, coastal settlements, land-based activities) that interact with the marine environment; and agreeing on appropriate responses in terms of strategies, policies, management tools and protocols.

¹¹ The secretariat function of the Rotterdam Convention is provided jointly by the Executive Director of UNEP and the Director-General of FAO.

VI. ENVIRONMENTAL RULE OF LAW - IMPLEMENTATION OF GOVERNING COUNCIL DECISION 27/9

37. The rule of law in the field of the environment, “environmental rule of law”, can make a significant contribution toward the realization of sustainable development founded on open, transparent, accountable, just, as well as dependable legal orders and governance systems.¹² In February 2013 UNEP’s Governing Council adopted Decision 27/9 on advancing justice, governance and law for environmental sustainability, the first internationally negotiated document to establish the term ‘environmental rule of law’.

38. Following the adoption of Decision 27/9, UNEP has embarked on a number of initiatives to lead the development and promotion of environmental rule of law. Since 2013 UNEP is a member of the United Nations Rule of Law Coordination and Resource Group and has contributed towards the mainstreaming of environmental rule of law across the UN’s rule of law activities through this group as well as through direct cooperation with the Rule of Law Unit in the Executive Office of the Secretary-General. First results of this work are very encouraging and should lead to greater integration of environmental law into the UN’s rule of law work: The Secretary-General’s 2013 Report to the General Assembly on “strengthening and coordinating United Nations rule of law activities” for example makes over 20 references to the environment and UNEP’s work, including references to Governing Council decision 27/9, and holds that environmental sustainability and protection cannot be achieved without a strong system based on human rights and the rule of law.¹³ UNEP also provided its expertise to the Secretary-General’s Report to the General Assembly on the rule of law and its linkages with peace and security, human rights and development as well as to several issue briefs for the post 2015 development process in cooperation with the UN’s Rule of Law Unit and others.

39. The Asian Development Bank, in partnership with the Supreme Court of the Philippines, UNEP and others, convened the Asian Judges Symposium on Environment (‘Natural Capital and the Rule of Law’) from 3-5 December 2013 to discuss the state and trends of ecosystem change in the region, the laws that govern the ecosystems and challenges facing the laws, and the role of the judiciary in environmental jurisprudence. An Asian network of judges was launched at that symposium. On 11 and 12 December 2013, UNEP and the Chief Justice of Malaysia convened the first Asia and Pacific International Colloquium on Environmental Rule of Law in Putrajaya, Malaysia. The Colloquium, the first in a series of regional colloquia in implementing Governing Council decision 27/9, was organized to enhance the capacity of the legal and auditing communities in the region to develop and implement environmental rule of law. It resulted in recommendations on areas and priorities for action to promote the development and implementation of environmental rule of law in the Asia Pacific Region. The Statement identifies the constituent elements of environmental rule of law to include, *inter alia*, adequate and implementable laws, access to justice and information, public participation, accountability, transparency, liability for environmental damage, fair and just enforcement, and human rights. The ‘Putrajaya Statement’ also emphasizes that the rule of law, including environmental rule of law, must be an important consideration in the UN’s development agenda for it supports the realization of all related goals and fairness to future generations.

40. In Africa, UNEP is involved in a partnership for progressive development of environmental law in Africa with the African Union Commission on International Law and its Special Rapporteur on International Environmental Law. In the Latin American Region, UNEP cooperates for example with the Iberoamerican Judicial Summit, an organisation that supports the cooperation and coordination of the judiciaries of the twenty three countries that comprise the Iberoamerican Community of Nations, bringing together the highest courts of the region. In Europe, UNEP cooperates with the European Union Forum of Judges for the Environment.

¹² Outcome statement of the 1st Asia and Pacific International Colloquium on Environmental Rule of Law, Putrajaya, Malaysia, 12 December 2013.

¹³ Strengthening and coordinating United Nations rule of law activities (A/68/213).

41. In September 2013, UNEP signed a memorandum of understanding with the International Organization of Supreme Audit Institutions (INTOSAI - Working Group on Environmental Auditing, WGEA). Audits from national Supreme Audit Institutions (SAIs) can provide reliable information for elected officials about their government's performance in meeting environmental targets. In turn, this can assist elected officials in reviewing successes, and identifying priority areas for action. INTOSAI - WGEA figures show that since UNEP first began working with INTOSAI - WGEA six years ago, the number of environmental audits has grown significantly. The number of multilateral environmental agreements-related audits carried out between 2009 and 2011 grew by roughly one third. The memorandum of understanding paves the way for even closer cooperation between UNEP and auditing institutions worldwide to evaluate whether government actions to tackle environmental challenges have produced the intended results, how gaps can be bridged, and whether environmental policies are being implemented in full compliance with international standards.

42. As one of the partner institutions under the Global Forum on Law, Justice and Development, UNEP co-organized events with the World Bank in November 2013 on the topic of sustainable and equitable development in environmental and natural resources governance: Violations of Environmental Law – Perspectives and Solutions and Making National Environmental Legal and Governance Systems Work Better – Challenges and Opportunities for Putting Law, Justice and Development in Action. The events sought to highlight innovative legal practices integrating equity and sustainability into policies, laws and institutions that govern environment and natural resources; examine the causes and factors contributing to violations of environmental crime and the implications of these violations to the rule of law and; focus on the importance of transparent, effective governance systems based on law and the necessary systems of social and other safeguards that will ensure a balanced and just approach to achieving developmental and environmental objectives.

43. In addition, UNEP has included a mandatory evaluation and analysis of its activities in terms of their impact on environmental rule of law as part of its project format/development. This mainstreaming exercise, it is hoped, will provide valuable input and lessons learned to other UN entities, the United Nations Rule of Law Coordination and Resource Group and related processes.

44. In its decision 27/9, the Governing Council noted that offenses against the environment, in particular trafficking in hazardous waste, wildlife and illegal timber, are increasingly committed by organized criminal groups and recalled that international cooperation at all levels in accordance with international law while respecting national jurisdictions contributes to combating those offenses more effectively. Crimes and other violations of environmental law result in economic loss; threaten food security and livelihoods in severely affected regions; as well as good governance, security and peace, particularly in developing countries. The illegal exploitation of wildlife and wildlife products is an especially noteworthy example in this context. It has reached crisis proportions in several African countries threatening the survival of elephants and rhinos in particular – if the trend is not halted and/or reversed in the next few years.

45. Transnational environmental crime and other violations of environmental law are currently not only among the most profitable forms of criminal activity but have also been linked to financing terrorism and conflicts, particularly in Africa. The UN Security Council recently recognised this fact and specifically extended sanctions to those 'providing support for armed groups and criminal networks through the illicit exploitation of natural resources, including diamonds and wildlife and wildlife products' in Resolution S/RES/2134 concerning the conflict in the Central African Republic. The Security Council adopted similar language in Resolution S/RES/2136 on the Democratic Republic of Congo.

46. The Economic and Social Council, in its resolution 2013/40, on crime prevention and criminal justice responses to illicit trafficking in protected species of wild fauna and flora, recalled UNEP Governing Council Decision 27/9 and also emphasized that illicit trafficking in protected species of wild fauna and flora can have a destabilizing effect on national economies and local communities, including through the

destruction of natural habitats and diminished revenues from ecotourism and legal trade in species, as well as the loss of human life.

47. UNEP has therefore intensified its efforts to help lead the promotion and implementation of the rule of law through involvement of judges, prosecutors, auditors and other related authorities to combat these illegal activities, in close cooperation with the International Criminal Police Organization (INTERPOL), the United Nations Office on Drugs and Crime (UNODC) and other relevant UN and non-UN bodies. On 6 November 2013, UNEP and INTERPOL jointly organized the first International Environmental Compliance and Enforcement Conference in Nairobi. Over 500 high-level national enforcement officials, high-level government representatives, relevant organizations and representatives from civil society participated in this unique forum to debate key issues regarding environmental law enforcement and compliance, and agreed on several action points going forward for UNEP and INTERPOL, such as concrete work in cooperation with other relevant entities in terms of assessments of the impact of environmental crimes and capacity building to enhance environmental rule of law at all levels, among others. The outcome document also includes an invitation to the United Nations Environment Assembly and the INTERPOL General Assembly in 2014 to debate on the issue, given the serious implications of these illegal activities for environmental sustainability, sustainable development, and security overall.

48. The year 2014 also marks the tenth anniversary of the Green Customs Initiative. It is a partnership of a number of international organizations and entities cooperating to prevent the illegal trade in environmentally-sensitive commodities and facilitation of the legal trade in these. This initiative specifically focuses on raising the awareness and building the capacities of customs officers. Its partners include UNEP, the secretariats of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, INTERPOL, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Organization for the Prohibition of Chemical Weapons, UNODC and the World Customs Organization.

VII. PROCESS FOR AN SYSTEM-WIDE IN-DEPTH MIDTERM REVIEW OF THE MONTEVIDEO PROGRAMME IV

49. The UNEP Governing Council, in paragraph 4 of decision 25/11(I) of 20 February 2009, requested the Executive Director to undertake a midterm review of the implementation and effectiveness of the Montevideo Programme IV "no later than at the twenty eighth session of the Governing Council in 2015 and to report at the thirtieth session in 2019 on the impact of the Programme."

50. Since the Montevideo Programme IV is a broad strategy for the international law community and UNEP in formulating the activities in the field of environmental law for the decade 2010-2019, and also because the Executive Director is requested to implement the Programme in close collaboration with States, conferences of the Parties to and secretariats of multilateral environmental agreements, other international organizations, non-State stakeholders and individuals, the mid-term review of the implementation of the Programme and its effectiveness will be carried out in close collaboration with all those concerned.

51. With the above background, the UNEP secretariat will undertake an open and inclusive process for the midterm review of the Montevideo Programme IV. In this process, Governments, United Nations bodies, funds, programmes and specialized agencies, other relevant intergovernmental bodies and organizations, secretariats of the relevant multilateral environmental agreements, expert institutions, academia and other relevant institutions and organizations will be invited to submit to the UNEP secretariat, by 30 November 2014, the information relevant to the implementation of the Programme, including their relevant experiences, progresses or challenges in one or more of the specific programme areas of the Montevideo Programme IV, and views concerning important and emerging issues in the field of environmental law.

52. Also during the same period, as appropriate, the UNEP secretariat will consult with Governments and all relevant organizations and entities referred to above, and where necessary, also eminent individual experts in environmental law or related areas. Such consultation might take the form of meeting of expert workshop focusing of the specific programme areas or issues of the Montevideo Programme IV.

53. The UNEP secretariat will subsequently compile the information received from the above processes, and prepare an analytical report on the implementation on the Montevideo Programme IV by 28 February 2015, and distribute it to all Governments and relevant organizations and entities and also make it available to the public.

54. In order to consider the above-mentioned report and evaluate the effectiveness of the Programme, the UNEP secretariat intends to convene an open-ended meeting of senior government officials experts in environmental law (i.e. a meeting similar to the one that negotiated and prepared the Montevideo Programme IV) by 30 June 2015, subject to the availability of resources. This meeting might recommend a way forward for the further implementation of the Montevideo Programme IV up to 2019, including priority areas in the field of environmental law which might be critical to support efforts of the international community to implement the obligations and commitments under the existing internationally agreed environmental objectives and goals, and to identify emerging environmental issues of global significance that would require legal or institutional response, as well as perspectives beyond the year 2020 in the field of environmental law after the conclusion of the Montevideo Programme IV. The meeting might also recommend a practical means to measure the impact of the Programme.

55. The above process of the midterm review of the Montevideo Programme IV will highlight, among other things, coherence of policies and actions across the bodies, funds, programmes and specialized agencies of the United Nations system in the field of environment law, and it is expected to provide a useful platform for sharing relevant experiences and for eventually facilitating a coordinated approach and collaboration among the relevant bodies and organizations to address the relevant issues of common interest in the field of environmental law in a more coordinated manner. Recommendations and other outcomes from this process, in particular the outcomes of the above-mentioned open-ended meeting of senior government officials expert in environmental law may therefore be shared widely within the UN system, including through the General Assembly and the Economic and Social Council during consideration of the nexus among the rule of law, sustainable development and environmental sustainability and relevant coordination and collaboration within the United Nations system.

ANNEX

The programme areas of the Fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV)

I. Effectiveness of environmental law

- A. Implementation, compliance and enforcement
- B. Capacity-building
- C. Prevention, mitigation and compensation of environmental damage
- D. Avoidance and settlement of international disputes relating to the environment
- E. Strengthening and development of international environmental law
- F. Harmonization, coordination and synergies
- G. Public participation and access to information
- H. Information technology
- I. Other means to increase the effectiveness of environmental law
- J. Governance

II. Conservation, management and sustainable use of natural resources

- A. Fresh, coastal and marine water and ecosystems
- B. Aquatic living resources, including marine living resources
- C. Soils
- D. Forests
- E. Biological diversity
- F. Sustainable production and consumption patterns

III. Challenges for environmental law

- A. Climate change
- B. Poverty
- C. Access to drinking water and sanitation
- D. Ecosystem conservation and protection
- E. Environmental emergencies and natural disasters
- F. Pollution prevention and control
- G. New technologies

IV. Relationships with other fields

- A. Human rights and the environment
- B. Trade and the environment
- C. Environment and security
- D. Environment and military activities