

**Nusa Dua Declaration and Governing Council decisions adopted by  
the Governing Council/Global Ministerial Environment Forum at its  
eleventh special session**

*Advance copy*

The secretariat of the United Nations Environment Programme submits herewith the advance copy of Nusa Dua Declaration and Governing Council decisions adopted by the Governing Council/Global Ministerial Environment Forum at its eleventh special session held in Bali from 24 to 26 February 2010.

## **Nusa Dua Declaration**

1. We, the ministers and heads of delegation of the United Nations Environment Programme Global Ministerial Environment Forum, met in Bali, Indonesia, from 24 to 26 February 2010, for the eleventh special session of the Global Ministerial Environment Forum, celebrating 10 years since the Malmö Ministerial Declaration of 2000.<sup>1</sup>

2. We are deeply concerned that our planet is confronted by climate change and other environmental and development crises. Current environmental challenges depend on global partnerships for solutions and represent opportunities for individuals, local communities and businesses and for international cooperation.

3. We remain committed to strengthening the role of the United Nations Environment Programme as the leading global environmental authority that sets the global environmental agenda, that promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system, and that serves as an authoritative advocate for the global environment, as set out in the Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme of 1997.<sup>2</sup>

### **A. Climate change**

4. We recognize the scientific view as documented by the Intergovernmental Panel on Climate Change in its fourth assessment report that deep cuts in global emissions are required to hold increase in global temperatures below 2° C and in this regard we reaffirm the importance of tackling climate change issues in accordance with the principle of common but differentiated responsibilities and respective capabilities and our determination to engage in efforts towards the resolution of such issues through enhanced international cooperation.

5. In this context, we welcome the decisions taken at the fifteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change and of the fifth Meeting of the Parties to the Kyoto Protocol to extend the mandate on the Ad Hoc Working Group on Long-term Cooperative Action, and in which the Ad Hoc Working Group on Further Commitments under the Kyoto Protocol was requested to continue its work and in which the parties also took note of the Copenhagen Accord.

6. We reaffirm our commitment to the United Nations Framework Convention on Climate Change process and our commitment to work constructively towards a comprehensive agreed outcome within this process by the end of 2010.

### **B. Sustainable development**

7. We welcome the decision to organize the United Nations Conference on Sustainable Development in 2012. We support and encourage the active and effective participation of the United Nations Environment Programme in the preparatory process for the Conference on Sustainable Development as called for in General Assembly resolution 64/236 of 24 December 2009, and the full and effective contribution of the United Nations Environment Programme to the programme of work outlined for the eighteenth and nineteenth sessions of the Commission on Sustainable Development.

### **C. International environmental governance and sustainable development**

8. We note that the current international environmental governance architecture has many institutions and instruments and has become complex and fragmented. It is therefore sometimes not as effective and efficient as it should be. We commit ourselves to further efforts to make it more effective.

9. We appreciate the work of the consultative group of ministers or high-level representatives in presenting a set of options for improving international environmental governance and welcome the establishment of a process to be led by ministers or their high-level representatives to address international environmental governance reforms further. In this regard, we will send the

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1 Governing Council decision SS.VI/I, annex.

2 Governing Council decision 19/1, annex. Adoption by the General Assembly: Official Records of the General Assembly, Fiftieth Session, Supplement No. 25 (A/50/25), chap. IV, annex.

outcomes of this work to the President of the General Assembly and as a contribution to the preparatory committee of the Conference on Sustainable Development.

10. We welcome the activities undertaken by the United Nations Environment Programme and the secretariats of the multilateral environmental agreements, at the behest of the parties to those agreements, in particular 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, to enhance cooperation and coordination between the three conventions and to support Governments in their efforts to implement, comply with and enforce the multilateral environmental agreements.

11. We also welcome the outcome of the simultaneous extraordinary meetings of the conferences of the parties to the Basel, Rotterdam and Stockholm conventions and we appreciate the consultative process on financing options for chemicals and wastes and support further efforts through the United Nations Environment Programme to continue these discussions.

12. We recognize the importance of enhancing synergies between the biodiversity-related conventions, without prejudice to their specific objectives, and encourage the conferences of the parties to the biodiversity-related multilateral environmental agreements to consider strengthening efforts in this regard, taking into account relevant experiences.

#### **D. Green economy**

13. We acknowledge that the advancement of the concept of a green economy in the context of sustainable development and poverty eradication can significantly address current challenges and deliver economic development opportunities and multiple benefits for all nations. We also acknowledge the important leading role of the United Nations Environment Programme in discussions on further defining and promoting the concept of a green economy. We encourage the Executive Director to contribute this work to the preparatory committee for the Conference on Sustainable Development and to convey the lessons already learned by the United Nations Environment Programme in this effort.

14. We urge the Executive Director to implement fully the Bali Strategic Plan for Technology Support and Capacity-building and invite all other relevant organizations to mainstream the plan in their overall activities, to enable developing countries and countries with economies in transition to benefit fully from the achievements of its objectives and the advancement of the concept of a green economy.

#### **E. Biodiversity and ecosystems**

15. We acknowledge that biodiversity is at the core of human existence; it is threatened by rapid global change and is under pressure from ecosystem degradation and change.

16. We recognize that the International Year of Biodiversity in 2010 presents a unique opportunity to tackle biodiversity loss and to raise public awareness for achieving the three objectives of the Convention on Biological Diversity and the 2010 biodiversity target, and also to reinforce the importance of promoting actions at national, regional and international levels for achieving the three objectives and the target.

17. We are committed in 2010 to finalizing deliberations on improving the science-policy interface for biodiversity and ecosystem services and in so doing negotiating and reaching agreement on whether to establish an intergovernmental science-policy platform on biodiversity and ecosystem services. We also welcome the commitment made by the parties to the Convention on Biological Diversity to finalize an international regime on access and benefit sharing in 2010 in accordance with decision IX/12 of the Conference of the Parties to the Convention.

18. We also encourage the United Nations Environment Programme to continue to play a leadership role in advancing understanding of the economics of biodiversity and ecosystems services and its policy implications, through the study "The economics of ecosystems and biodiversity".

19. We encourage and support efforts by the United Nations Environment Programme to contribute to the high-level meeting on biodiversity at the sixty-fifth session of the General Assembly in 2010, as a contribution to the International Year of Biodiversity, and to the high-level plenary meeting of the sixty-fifth session of the General Assembly in 2010 to review progress towards attaining the Millennium Development Goals, in particular in relation to environmental goals and targets, and in ensuring environmental sustainability in poverty eradication.

## **SS.XI/1: International environmental governance**

*The Governing Council,*

*Recalling* its decision 25/4 of 20 February 2009, in which it decided to establish a consultative group of ministers or high-level representatives, which was requested to conclude its work and present a set of options of improving international environmental governance to the Governing Council/Global Ministerial Environment Forum at the current session, with a view to providing inputs to the General Assembly,

*Expressing* thanks to the Governments of Serbia and Italy for hosting the meetings of the consultative group in Belgrade and Rome, respectively, and gratitude to the Minister of Environment, Land and Sea of Italy and the Minister of Environment and Mineral Resources of Kenya for co-chairing the consultative group and appreciation to the Executive Director for serving as adviser to the group,

1. *Welcomes with appreciation* the result of the process requested in the above-mentioned decision;

2. *Takes note* of the set of options for improving international environmental governance identified by the consultative group, which is set out in the annex to the present decision;

3. *Requests* the Executive Director to identify, in full consultation with all Governments through the Committee of Permanent Representatives, the incremental changes in the set of options, within the mandate of the United Nations Environment Programme, that can be immediately implemented during the biennium 2010–2011 and those to be integrated into the development of the programme of work for the period 2012–2013, and to present a report on the matter to the Governing Council/Global Ministerial Environment Forum at its twenty-sixth session;

4. *Invites* the President of the Governing Council to transmit the set of options to the General Assembly at its sixty-fourth session as an input to the continuing process of improving international environmental governance;

5. *Decides* to establish a regionally representative, consultative group of ministers or high-level representatives, inviting each United Nations region to propose between four and six Governments to participate, while remaining open to participation by other interested Governments, and in this regard requests the Executive Director to seek additional extrabudgetary resources to facilitate the further participation of representatives of developing countries in addition to the nominated regional representatives;

6. *Also decides* that the group will have two co-chairs, one from a developing country and one from a developed country, and requests the Executive Director to participate as an adviser to the group, which will also comprise high-level representatives of relevant United Nations agencies, designated through the Environment Management Group;

7. *Requests* the Executive Director, in his capacity as Chair of the Environment Management Group, to invite the United Nations system to provide input to the group, including by assessing gaps, needs and considerations related to how the system is currently achieving the identified objectives and functions for international environmental governance;

8. *Decides* that the group will consider the broader reform of the international environmental governance system, building on the set of options but remaining open to new ideas;

9. *Invites* the consultative group, through the United Nations Environment Programme secretariat, to seek relevant inputs from civil society groups from each region in the process of further strengthening international environmental governance;

10. *Decides* that the group will conclude its work in a timely fashion and present a final report to the Governing Council at its twenty-sixth session in anticipation of the Council's contribution in time for the second meeting of the open-ended preparatory committee of United Nations Conference on Sustainable Development and the sixty-fifth session of the General Assembly;

11. *Requests* the Executive Director to seek extrabudgetary resources to facilitate the participation of representatives of developing countries in the group's meetings;

12. *Requests* countries in a position to do so to provide financial support for the participation of representatives of developing countries.

## Annex to decision SS.XI/1

### Set of options for improving international environmental governance

[to be inserted]

### SS.XI/2: Enhanced coordination across the United Nations system, including the Environment Management Group

*The Governing Council,*

*Recalling* section VI of its decision 25/1 of 20 February 2009, on enhanced coordination across the United Nations system, including the Environment Management Group,

*Taking note* of the report of the Executive Director on enhanced coordination across the United Nations system,<sup>1</sup>

*Welcoming* the progress in the implementation of the memorandum of understanding between the United Nations Development Programme and the United Nations Environment Programme and the contribution by the United Nations Environment Programme towards enhanced coordination across the United Nations system at the country level, as presented in the above-mentioned report,

*Welcoming also* the progress by the Environment Management Group in facilitating cooperation across the United Nations system to assist Member States in implementing the environmental agenda, as presented in the above-mentioned report,

1. *Encourages* the Executive Director to take further action to expedite the implementation of the said memorandum of understanding, in particular through the immediate establishment of the joint working group provided for under that memorandum and requests an annual report to be submitted to the Governing Council/Global Ministerial Environment Forum on progress in the implementation of that memorandum;

2. *Requests* the Executive Director to strengthen further the regional offices to enhance their capacity to participate effectively in the processes at the regional and country levels to mainstream environmental sustainability in common country assessments and United Nations Development Assistance Frameworks, using when appropriate planning instruments at the regional and national levels;

3. *Encourages* the Environment Management Group to continue its cooperation, including by working with the United Nations System Chief Executives Board for Coordination and its subsidiary bodies in enhancing:

(a) The promotion of sustainable management practices in the United Nations system, including by making further progress towards climate neutrality and sustainable procurement;

(b) Cooperation in programming environmental activities in the United Nations system in the areas of biodiversity, land degradation and green economy, including by supporting the implementation of the strategic plans of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa,<sup>2</sup> and the Convention on Biological Diversity, including the post-2010 biodiversity targets, and by assessing how the United Nations system could more coherently assist countries in making the transition to a green economy;

(c) Coherence in mainstreaming environmental considerations in United Nations operational activities at the country level, in particular by identifying options for the development of a possible United Nations system-wide approach to environmental aspects.

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1 UNEP/GCSS.XI/3.

2 ICCD/COP(8)/16/Add.1.

### **SS.XI/3: Intergovernmental science-policy platform on biodiversity and ecosystem services**

*The Governing Council,*

*Recalling* its main functions and responsibilities set out in General Assembly resolution 2997 (XXVII) of 15 December 1972, under which the Governing Council is, among other things, to promote the contribution of the relevant international scientific and other professional communities to the acquisition, assessment and exchange of environmental knowledge and information and, as appropriate, to the technical aspects of the formation and implementation of environmental programmes within the United Nations system,

*Taking note* of the Millennium Ecosystem Assessment and its follow-up process, the consultative process towards an international mechanism of scientific expertise on biodiversity and decision IX/15 of the Conference of the Parties to the Convention on Biological Diversity,

*Recalling* its decision 25/10 of 20 February 2009,

*Noting* the outcomes of the second ad hoc intergovernmental and multi-stakeholder meeting on an intergovernmental science-policy platform on biodiversity and ecosystem services, held in Nairobi from 5 to 9 October 2009,

*Recognizing* the need to strengthen and improve the science-policy interface for biodiversity and ecosystem services,

*Having considered* the report of the Executive Director on an intergovernmental science-policy platform on biodiversity and ecosystem services,<sup>1</sup>

1. *Invites* Governments and relevant organizations to finalize in 2010 their deliberations on improving the science-policy interface for biodiversity and ecosystem services for the conservation and sustainable use of biodiversity, long-term human well-being and sustainable development;

2. *Requests* the Executive Director to support efforts by Governments and relevant organizations to finalize the above-mentioned deliberations and, in so doing:

(a) To convene, in June 2010, a third and final ad hoc intergovernmental and multi-stakeholder meeting to negotiate and reach agreement on whether to establish an intergovernmental science-policy platform on biodiversity and ecosystem services, subject to the availability of extrabudgetary resources;

(b) To make available to all parties concerned, including participants in the third meeting, the information requested at the second meeting<sup>2</sup> in good time for the third meeting;

(c) To transmit, on behalf of the Governing Council, the outcomes of and necessary documentation from the third and final meeting to the General Assembly at its sixty-fifth session for consideration during the high-level segment on biological diversity in September 2010 and thereafter;

3. *Invites* Governments and organizations in a position to do so to provide extrabudgetary resources for the above-mentioned process;

4. *Requests* the Executive Director to cooperate closely with the relevant secretariats of the biodiversity-related multilateral environmental agreements and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, multilateral financial institutions and relevant international organizations, in particular the Food and Agriculture Organization of the United Nations, the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organization and the International Union for Conservation of Nature and Natural Resources, to ensure the full involvement of key stakeholders in the preparation of the third meeting.

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1 UNEP/GCSS.XI/7.

2 UNEP/IPBES/2/4/Rev.1, annex, para. 29.

**Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters**

*The Governing Council,*

*Recalling* Principle 10 of the Rio Declaration on Environment and Development,<sup>1</sup> the Malmö Ministerial Declaration<sup>2</sup> and its decisions 20/4 of 4 February 1999, 20/6 of 5 February 1999, 21/24 of 9 February 2001, 22/17 of 7 February 2003 and 25/11 of 20 February 2009,

*Recalling also* that, as recognized by the Governing Council in its above-mentioned decision 25/11, access to environmental information enhances the transparency of environmental governance and that it is a prerequisite for effective public participation in environmental decision-making, that public participation in environmental decision-making generally improves decision-making and enhances its legitimacy and that access to justice in environmental matters provides a means for affected parties to gain redress and to assist in the implementation and enforcement of legislation related to the environment,

*Recognizing* that national legislation on access to environmental information, public participation and access to justice in environmental matters contributes to the achievement of environmental sustainability and to the legal empowerment of citizens, including the poor and marginalized,

*Noting with appreciation* the further work carried out by the secretariat on the guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters,

*Noting also with appreciation* the outcome of the intergovernmental meeting to review and further develop draft guidelines for national legislation on access to information, public participation and access to justice in environmental matters, held in Nairobi on 12 and 13 November 2009,

1. *Adopts* the guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, as set out in the annex to the present decision, noting that these guidelines are voluntary;
2. *Decides* that the secretariat shall disseminate the guidelines to all countries, and that the commentary on the guidelines<sup>3</sup> shall also be distributed to all countries for further comments to enhance its quality;
3. *Invites* countries to take the guidelines into consideration in the development or amendment of their national legislation related to the subject matters covered by the guidelines;
4. *Requests* the Executive Director to assist countries, upon their request, subject to the availability of resources and through the programme of work and budget, and, if appropriate, in collaboration with other relevant international and regional organizations, with the development or amendment of national legislation, policies and strategies on access to information, public participation and access to justice in environmental matters;
5. *Also requests* the Executive Director to provide updates on progress through regular reporting on the implementation of the programme of work and budget.

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1 *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex I.

2 Governing Council decision SS.VI/I, annex.

3 The commentary has been prepared by the secretariat in consultation with the Senior Advisors Group of the United Nations Environment Programme and has been annexed to the guidelines as indicative reference material. The text of the commentary has not been negotiated by Governments.

## **Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters**

The purpose of these voluntary guidelines is to provide general guidance, if so requested, to States, primarily developing countries, on promoting the effective implementation of their commitments to Principle 10 of the 1992 Rio Declaration on Environment and Development within the framework of their national legislation and processes. In doing so, the guidelines seek to assist such countries in filling possible gaps in their respective legal norms and regulations as relevant and appropriate to facilitate broad access to information, public participation and access to justice in environmental matters.

The guidelines should not be perceived as recommendations to amend national legislation or practice in cases where existing legislation or practice provides for broader access to information, more extensive public participation or wider access to justice in environmental matters than follows from these guidelines.

### **I. Access to information**

#### **Guideline 1**

Any natural or legal person should have affordable, effective and timely access to environmental information held by public authorities upon request (subject to guideline 3), without having to prove a legal or other interest.

#### **Guideline 2**

Environmental information in the public domain should include, among other things, information about environmental quality, environmental impacts on health and factors that influence them, in addition to information about legislation and policy, and advice about how to obtain information.

#### **Guideline 3**

States should clearly define in their law the specific grounds on which a request for environmental information can be refused. The grounds for refusal are to be interpreted narrowly, taking into account the public interest served by disclosure.

#### **Guideline 4**

States should ensure that their competent public authorities regularly collect and update relevant environmental information, including information on environmental performance and compliance by operators of activities potentially affecting the environment. To that end, States should establish relevant systems to ensure an adequate flow of information about proposed and existing activities that may significantly affect the environment.

#### **Guideline 5**

States should periodically prepare and disseminate at reasonable intervals up-to-date information on the state of the environment, including information on its quality and on pressures on the environment.

## **Guideline 6**

In the event of an imminent threat of harm to human health or the environment, States should ensure that all information that would enable the public<sup>4</sup> to take measures to prevent such harm is disseminated immediately.

## **Guideline 7**

States should provide means for and encourage effective capacity-building, both among public authorities and the public, to facilitate effective access to environmental information.

# **II. Public participation**

## **Guideline 8**

States should ensure opportunities for early and effective public participation in decision-making related to the environment. To that end, members of the public concerned<sup>5</sup> should be informed of their opportunities to participate at an early stage in the decision-making process.

## **Guideline 9**

States should, as far as possible, make efforts to seek proactively public participation in a transparent and consultative manner, including efforts to ensure that members of the public concerned are given an adequate opportunity to express their views.

## **Guideline 10**

States should ensure that all information relevant for decision-making related to the environment is made available, in an objective, understandable, timely and effective manner, to the members of the public concerned.

## **Guideline 11**

States should ensure that due account is taken of the comments of the public in the decision-making process and that the decisions are made public.

## **Guideline 12**

States should ensure that when a review process is carried out where previously unconsidered environmentally significant issues or circumstances have arisen, the public should be able to participate in any such review process to the extent that circumstances permit.

## **Guideline 13**

States should consider appropriate ways of ensuring, at an appropriate stage, public input into the preparation of legally binding rules that might have a significant effect on the environment and into the preparation of policies, plans and programmes relating to the environment.

## **Guideline 14**

States should provide means for capacity-building, including environmental education and awareness-raising, to promote public participation in decision-making related to the environment.

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4 “The public” may be defined as one or more natural or legal persons and their associations, organizations or groups.

5 “The public concerned” may be defined as the public affected or likely to be affected by, or having an interest in, the environmental decision-making. For the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law should be deemed to have an interest.

### **III. Access to justice**

#### **Guideline 15**

States should ensure that any natural or legal person who considers that his or her request for environmental information has been unreasonably refused, in part or in full, inadequately answered or ignored, or in any other way not handled in accordance with applicable law, has access to a review procedure before a court of law or other independent and impartial body to challenge such a decision, act or omission by the public authority in question.

#### **Guideline 16**

States should ensure that the members of the public concerned have access to a court of law or other independent and impartial body to challenge the substantive and procedural legality of any decision, act or omission relating to public participation in decision-making in environmental matters.

#### **Guideline 17**

States should ensure that the members of the public concerned have access to a court of law or other independent and impartial body or administrative procedures to challenge any decision, act or omission by public authorities or private actors that affects the environment or allegedly violates the substantive or procedural legal norms of the State related to the environment.

#### **Guideline 18**

States should provide broad interpretation of standing in proceedings concerned with environmental matters with a view to achieving effective access to justice.

#### **Guideline 19**

States should provide effective procedures for timely review by courts of law or other independent and impartial bodies, or administrative procedures, of issues relating to the implementation and enforcement of laws and decisions pertaining to the environment. States should ensure that proceedings are fair, open, transparent and equitable.

#### **Guideline 20**

States should ensure that the access of members of the public concerned to review procedures relating to the environment is not prohibitively expensive and should consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

#### **Guideline 21**

States should provide a framework for prompt, adequate and effective remedies in cases relating to the environment, such as interim and final injunctive relief. States should also consider the use of compensation and restitution and other appropriate measures.

#### **Guideline 22**

States should ensure the timely and effective enforcement of decisions in environmental matters taken by courts of law, and by administrative and other relevant bodies.

#### **Guideline 23**

States should provide adequate information to the public about the procedures operated by courts of law and other relevant bodies in relation to environmental issues.

#### **Guideline 24**

States should ensure that decisions relating to the environment taken by a court of law, other independent and impartial or administrative body, are publicly available, as appropriate and in accordance with national law.

#### **Guideline 25**

States should promote appropriate capacity-building programmes, on a regular basis, in environmental law for judicial officers, other legal professionals and other relevant stakeholders.

## **Guideline 26**

States should encourage the development and use of alternative dispute resolution mechanisms where these are appropriate.

## **II**

### **Guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment**

*The Governing Council,*

*Recalling* Principle 13 of the Rio Declaration on Environment and Development,<sup>6</sup> which stipulates that States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage,

*Recognizing* that the existence of national legislation on liability and compensation for environmental damages resulting from human activities has been largely recognized as a significant element for the protection of the environment,

*Recalling* section III of its decision 25/11 of 20 February 2009, entitled “Draft guidelines for the development of national legislation on liability, response action and compensation for damage caused by activities dangerous to the environment”, in which it took note of the draft guidelines and requested the secretariat to carry out further work on the guidelines with a view to their adoption at its next special session,

*Noting with appreciation* the outcome of the intergovernmental meeting to review and further develop draft guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment, held in Nairobi from 9 to 11 November 2009,

1. *Adopts* the guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment, as set out in the annex to the present decision and affirms that these guidelines are voluntary and do not set a precedent for the development of international law;

2. *Requests* the Executive Director to disseminate the guidelines to all countries;

3. *Invites* countries to provide comments on the draft commentary and annexes as contained in the note by the Executive Director on the result of further consultations between Governments following the intergovernmental meeting on the draft guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment,<sup>7</sup> to enhance the quality of the draft commentary and annexes, with a view to their subsequent distribution;

4. *Also invites* countries to take the guidelines into consideration in the development or amendment of their national legislation related to liability, response action and compensation for activities dangerous to the environment;

5. *Requests* the Executive Director to assist countries, upon their request and subject to the availability of resources, with the development or amendment of national legislation, policies and strategies on liability, response action and compensation for damage caused by activities dangerous to the environment;

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<sup>6</sup> *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex I.

<sup>7</sup> UNEP/GCSS.XI/INF/6/Add.2.

6. *Also requests* the Executive Director to report on progress, including on the draft commentary and annexes as referred to above, through regular reporting on the implementation of the programme of work and budget.

## **Annex to decision SS.XI/4 II**

### **Guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment<sup>8</sup>**

The purpose of the present guidelines is to highlight core issues that States will have to resolve should they choose to draft domestic laws and regulations on liability, response action and compensation for damage caused by activities dangerous to the environment. The guidelines discuss key elements for possible inclusion in any such domestic legislation and offer specific textual formulations for possible adoption by legislative drafters. It is envisaged that they will be of assistance to, in particular, developing countries and countries with economies in transition, in devising, as they deem appropriate, domestic legislation or policy on liability, response action and compensation.

#### **Guideline 1: Objective**

The objective of the present guidelines is to provide guidance to States regarding domestic rules on liability, response action and compensation for damage caused by activities dangerous to the environment, taking into account the polluter pays principle.

#### **Guideline 2: Scope of application**

1. The present guidelines apply to liability, response action and compensation for damage caused by activities dangerous to the environment.

2. They are not intended to apply to damage caused by activities dangerous to the environment that are covered by other domestic laws establishing special liability regimes or that principally relate to national defence, international security or natural disaster management.

#### **Guideline 3: Definitions**

1. The term “activity dangerous to the environment” means an activity or installation specifically defined under domestic law.

2. The term “damage” means:

- (a) Loss of life or personal injury arising from environmental damage;
- (b) Loss of or damage to property arising from environmental damage;
- (c) Pure economic loss;
- (d) Costs of reinstatement measures, limited to the costs of measures actually taken or to be undertaken;
- (e) Costs of preventive measures, including any loss or damage caused by such measures;
- (f) Environmental damage.

3. The term “environmental damage” means an adverse or negative effect on the environment that:

- (a) Is measurable taking into account scientifically established baselines recognized by a public authority that take into account any other human-induced variation and natural variation;

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<sup>8</sup> The present guidelines have been amended and revised on the basis of the discussions at the intergovernmental meeting to review and further develop draft guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment, held in Nairobi from 9 to 11 November 2009.

- (b) Is significant, which is to be determined on the basis of factors such as:
  - (i) Long-term or permanent change, to be understood as change that may not be redressed through natural recovery within a reasonable period of time;
  - (ii) Extent of the qualitative or quantitative changes that adversely or negatively affect the environment;
  - (iii) Reduction or loss of the ability of the environment to provide goods and services, either of a permanent nature or on a temporary basis;
  - (iv) Extent of any adverse or negative effect or impact on human health;
  - (v) Aesthetic, scientific and recreational value of parks, wilderness areas and other lands.

4. The term “operator” means any person or persons, entity or entities in command or control of the activity, or any part thereof at the time of the incident.

5. The term “incident” means any occurrence or series of occurrences having the same origin that cause damage or create a grave and imminent threat of damage.

6. The term “preventive measures” means any reasonable measures taken by any person in response to an incident, to prevent, minimize or mitigate loss or damage, or to undertake environmental clean-up.

7. The term “pure economic loss” means loss of income, unaccompanied by personal injury or damage to property, directly deriving from an economic interest in any use of the environment and incurred as a result of environmental damage.

8. The term “reinstatement measures” means any reasonable measures aiming to assess, reinstate, remediate or restore damaged or destroyed components of the environment.

9. The term “response action” means preventive measures and reinstatement measures.

#### **Guideline 4: Response action**

1. Should an incident arise during an activity dangerous to the environment, the operator should take prompt and effective response action.

2. The operator should promptly notify the competent public authority of the incident and the response action planned or taken and its effectiveness or expected effectiveness.

3. The competent public authority should be entitled to obtain from the operator all relevant information related to the incident. It may also order the operator to take specific response action that it deems necessary.

4. If the operator fails to take response action or such action is unlikely to be effective or timely, the competent public authority may take such action itself or authorize a third party to take such action and recover the costs from the operator.

#### **Guideline 5: Liability**

1. The operator should be strictly liable for damage caused by activities dangerous to the environment.

2. Without prejudice to paragraph 1, any person should be liable for damage caused or contributed to by not complying with applicable statutory or regulatory requirements or through wrongful, intentional, reckless or negligent acts or omissions. A violation of a specific statutory obligation should be considered fault per se.

#### **Guideline 6: Exoneration from liability**

1. Without prejudice to additional exonérations provided for in domestic law, the operator should not be liable, or in the case of (c) below not liable to the degree not apportioned to him or her, if the operator proves that the damage was caused:

- (a) By an act of God/force majeure (caused by natural phenomena of an exceptional, inevitable and uncontrollable nature);
- (b) By armed conflict, hostilities, civil war, insurrections or terrorist attacks;

(c) Wholly or in part by an act or omission by a third party, notwithstanding safety measures appropriate to the type of activity concerned but in the case of claims for compensation, only if the damage caused was wholly the result of wrongful intentional conduct of a third party, including the person who suffered the damage;

(d) As a result of compliance with compulsory measures imposed by a competent public authority.

2. In relation to paragraph 4 of guideline 4, exonerations additional to those referenced in subparagraphs 1 (a)–(d) above or mitigating factors may include:

(a) That the activity was expressly authorized and fully in conformity with an authorization given under domestic law, that allows the effect on the environment;

(b) That the damage was caused by an activity which was not likely to cause damage according to the state of scientific and technical knowledge at the time that the activity was carried out.

3. The operator may be exonerated wholly or in part towards a claimant if the operator proves that the damage resulted from the claimant's act or omission done with intent to cause damage, or that the damage resulted wholly or in part from the claimant's negligence.

### **Guideline 7: Joint and several liability**

In the event of multiple operators their liability should be joint and several, or apportioned, as appropriate.

### **Guideline 8: Claims for compensation**

1. Any person or group of persons, including public authorities, should be entitled to claim compensation for loss of life or personal injury, loss of or damage to property and pure economic loss in consequence of the occurrence of damage caused by activities dangerous to the environment in addition to, where appropriate, the reimbursement of the costs of preventive measures and reinstatement measures.

2. Domestic law may allow claims for compensation for environmental damage.

### **Guideline 9: Other claims**

1. Any person or group of persons should be entitled to seek response action by competent public authorities if neither the operator nor the competent public authorities concerned are taking prompt and effective measures to redress environmental damage, provided that the person or group of persons has a sufficient interest or suffers the impairment of a right if so required by domestic law.

2. Any person or group of persons within the meaning of paragraph 1 above should have the right to challenge in administrative or judicial proceedings the legality of any act or omission by private persons or public authorities that contravenes domestic laws or regulations relating to damage caused by activities dangerous to the environment.

3. Any person or group of persons sustaining damage should be entitled to any information directly relevant to the presentation of a claim for compensation from the operator or the competent public authority in possession of such information, unless such disclosure is specifically prohibited by law or violates the legally protected interests of third parties.

### **Guideline 10: Financial limits**

1. Liability pursuant to guideline 5, paragraph 1, may be limited in accordance with criteria established under any applicable domestic classification scheme for activities dangerous to the environment.

2. Given that the operator might be unable to meet his or her liability or that actual damages might exceed the operator's limit of liability, domestic law may provide for closure of potential compensation gaps by way of special funding or collective compensation mechanisms.

3. There should be no financial limit on liability arising under guideline 5, paragraph 2.

## **Guideline 11: Financial guarantees**

1. The operator should, taking into account the availability of financial guarantees, be encouraged or required to cover liability under guideline 5, paragraph 1, for amounts not less than the minimum specified by law for the type of activity dangerous to the environment concerned and should continue to cover such liability, during the period of the time limit of liability, by way of insurance, bonds or other financial guarantees.

2. The competent public authority should periodically review the availability of and the minimum limits for financial guarantees, taking into account the views of relevant stakeholders, including the specialized and general insurance industry.

## **Guideline 12: Time limits for presentation of claims**

1. Domestic law should establish that claims for compensation are inadmissible unless they are brought within a certain period of time from the date the claimant knew or ought to have known of the damage and the identity of the operator. In addition, claims should be inadmissible unless they are brought within a certain period of time following the occurrence of the damage.

2. Where the damage-causing incident is a series of occurrences having the same origin, the time limits established under the present guideline should run from the last of such occurrences. Where the damage-causing incident consists of a continuous occurrence, such time limits should run from the end of that continuous occurrence.

## **Guideline 13: Claims with foreign elements: applicable law**

1. Subject to domestic laws on jurisdiction and in the absence of special rules established by contract or international agreement, any claim for compensation that raises a choice-of-law issue should be decided in accordance with the law of the place in which the damage occurred, unless the claimant chooses to base the claim on the law of the country in which the event giving rise to the damage occurred.

2. The timing of the claimant's choice pursuant to paragraph 1 should be determined by the law of the forum.

## **Guideline 14: Classification of hazardous substances and activities or installations**

1. Domestic law should provide for lists of hazardous substances and their threshold quantities, activities or installations dangerous to the environment, to make apparent the nature and scope of operators' risk of environmental liability and thereby strengthen the insurability of the risk of damage.

2. To enhance their effectiveness, such lists should be exhaustive rather than indicative and give due recognition to domestic priorities, in particular social and economic needs, environmental and public health sensitivities or other special circumstances.

## **SS.XI/5: Follow-up report on the environmental situation in the Gaza Strip**

*The Governing Council,*

*Recalling* decision GCSS.VII/7 of 15 February 2002, on the environmental situation in the occupied Palestinian territories, and decision 25/12 of 20 February 2009, on the environmental situation in the Gaza Strip,

*Having considered* the report of the Executive Director on the environmental situation in the Gaza Strip,<sup>1</sup>

*Requests* the Executive Director to take the necessary measures, within the organization's mandate and available resources and in coordination with the relevant United Nations country team, to assist in the implementation of the recommendations of the report entitled "Environmental Assessment of the Gaza Strip following the escalation of hostilities in December 2008" –January 2009;

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1 UNEP/GCSS.XI/9.

*Invites* Governments, United Nations system entities and international financial institutions to provide financial, technical and logistical support and assistance to ensure the success of the further work of the United Nations Environment Programme in the Gaza Strip.

## **SS.XI/6: Oceans**

*The Governing Council,*

*Recognizing* that oceans and coasts provide valuable resources and services to support human populations, particularly coastal communities that depend heavily thereon, and that the sustainable use of marine and coastal resources will enhance global food security and contribute towards poverty reduction for present and future generations,

*Concerned* about marine and coastal ecosystems being affected by sea-level rise, increased water temperatures, ocean acidification, changing weather patterns, and other variations that may result from climate change, in addition to the decrease in fish stocks, and about how these changes may aggravate the existing pressures of marine and coastal environmental degradation and increase risks to global food security and human well-being, thereby affecting the attainment of the Millennium Development Goals and other internationally agreed development goals,

*Expressing concern* at the degradation of marine and coastal ecosystems, in particular the loss of their biodiversity and the continued threats to that biodiversity from land-based and sea-based pollution, the increase of hypoxic zones, the growth of harmful algal blooms and invasive alien species, the unsustainable use of marine and coastal resources, including the over-exploitation of fish stocks, the physical alteration of ecosystems, poor land-use planning and social and economic pressures,

*Recalling* the United Nations Convention on the Law of the Sea as the instrument that sets out the legal framework within which all activities pertaining to the oceans and seas must be carried out, the United Nations Framework Convention on Climate Change and its Kyoto Protocol, the Convention on Biological Diversity and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and its 1996 Protocol,

*Taking note* of the work undertaken by the United Nations Environment Programme on oceans, especially through its regional seas programme and the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities,

*Recalling* the commitment made at the World Summit on Sustainable Development to encourage the application by 2010 of the ecosystem approach for the sustainable development of the oceans,

*Welcoming* the successful outcome of the World Ocean Conference, held in Manado, Indonesia, in May 2009, at which participants took up the issue of threats to the oceans, the adverse effects of climate change on the oceans and the role of oceans in climate change, and adopted the Manado Ocean Declaration,

*Acknowledging* the importance of achieving an overall long-term vision that ensures prosperous and healthy ocean and coastal environments providing for conservation, productivity and sustainable resource use,

1. *Requests* the Executive Director to strengthen the work of the United Nations Environment Programme regarding the protection and sustainable management of marine and coastal ecosystems further and to mainstream the United Nations Environment Programme marine and coastal strategy into the implementation of the programme of work and the medium-term strategy for the period 2010–2013, subject to availability of resources;

2. *Also requests* the Executive Director to extend United Nations Environment Programme cooperation and engagement with other relevant United Nations agencies to support the implementation of the Manado Ocean Declaration, in tackling the current state of the world's oceans while contributing to improving human well-being, including promoting diversified sustainable livelihood options for coastal communities;

3. *Further requests* the Executive Director to support and enhance developing countries' capacity to manage marine and coastal ecosystems sustainably in the context of the Bali Strategic Plan for Technology Support and Capacity-building, and in line with the programme of work and budget;

4. *Urges* Governments to achieve the long-term conservation, management and sustainable use of marine resources and coastal habitats through the appropriate application of the precautionary

and ecosystem approaches, and to implement long-term strategies in meeting internationally agreed sustainable development goals, including those contained in the United Nations Millennium Declaration<sup>1</sup> and those in the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States<sup>2</sup> that are related to the marine environment, and in so doing will strengthen global partnerships for development;

5. *Invites* Governments to develop and implement national strategies for the sustainable management of marine and coastal ecosystems, in line with national adaptation and sustainable development strategies, in particular for mangroves, coastal wetlands, seagrasses, estuaries and coral reefs, which deliver valuable ecosystem goods and services, as protective and productive buffer zones that have significant potential to combat the adverse effects of climate change;

6. *Calls upon* Governments to reduce the land-based and sea-based pollution of ocean and coastal areas, including marine waste, and to promote the sustainable management of fisheries, in accordance with relevant international agreements and codes of conduct to enhance the health and resilience of marine and coastal ecosystems;

7. *Calls upon* Governments, international organizations and oceanographic institutions and other research and development agencies to enhance and promote research, systematic observation, knowledge management, capacity-building, information and data exchange related to vulnerability and risk assessment of climate change impacts on marine ecosystems, communities, fisheries and other marine-related industries; emergency preparedness, monitoring and forecasting climate change and ocean variability; and improving public awareness on early-warning system capacity;

8. *Invites* Governments and international and regional financial institutions to make coordinated efforts to support developing countries in implementing marine and coastal initiatives, including within the United Nations Environment Programme, at the national, regional and global levels;

9. *Requests* the Executive Director to report within the available resources on the activities of the United Nations Environment Programme in implementing the present decision to the Governing Council/Global Ministerial Environment Forum at its twenty-sixth session.

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1 General Assembly resolution 55/2 of 8 September 2000.

2 *Report of the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, Port Louis, Mauritius, 10–14 January 2005* (United Nations publication, Sales No. E.05.II.A.4 and corrigendum), chap. I, resolution 1, annex II.

## SS.XI/7: Consultative process on financing options for chemicals and wastes

*The Governing Council,*

*Recognizing* the need for heightened efforts to increase the political priority accorded to the sound management of chemicals and wastes and the increased need for sustainable, predictable, adequate and accessible financing for the chemicals and wastes agenda,

*Also recognizing* the need to look at the sound management of chemicals and wastes not only as a financial burden but also as a possible pathway to the generation of economic growth,

*Recalling* the proposal by the Executive Director that a consultative meeting of Governments and other stakeholders should be held prior to and in preparation for the eleventh special session of the United Nations Environment Programme Governing Council/Global Ministerial Environment Forum and the planned simultaneous extraordinary meetings of 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 with the purpose of analysing the current state of affairs and to devise strategic, synergistic proposals on financing chemicals management,<sup>1</sup>

*Highlighting* the positive effects of synergistic initiatives among the conventions related to chemicals and wastes, the Strategic Approach to International Chemicals Management and the United Nations Environment Programme,

*Stressing* the relevance for the development of capacities and the transfer of technology on chemicals and wastes-related issues of the regional and subregional centres of the Basel and Stockholm conventions and the regional offices of the United Nations Environment Programme,

*Recalling* the need to address the chemicals and wastes agendas in the broader context of sustainable development and the achievement of the Millennium Development Goals, including by linking them to public health, poverty reduction and creation of economic opportunities,

1. *Welcomes* the establishment of a consultative process on financing options for chemicals and wastes and the work carried out by the United Nations Environment Programme to date in this regard;
2. *Reminds* the Secretariat, to enhance the effective participation of invited parties and stakeholders in the discussions, to distribute all necessary documents relevant to the consultative process in a reasonable time and in any event no less than five weeks prior to any future meeting related to this process held under the auspices of the United Nations Environment Programme;
3. *Takes note* of the preliminary findings set out in the desk study on financing options for chemicals and wastes;<sup>2</sup>
4. *Requests* the Executive Director to continue leading the consultative process and suggests drawing more on the experience of the multilateral environmental agreements and the work of the International Conference on Chemicals Management, the Global Environment Facility, the United Nations Development Programme, the World Bank and other relevant organizations;
5. *Also requests* the Executive Director, in preparing documents for the next stage of the consultative process, to ensure that the comments and the contributions of Governments, in particular participating invited parties and stakeholders at the second meeting of the consultative process on financing options for chemicals and wastes, held in 2009 in Bangkok, are incorporated into a revised version of the note by the Executive Director on financing the chemicals and wastes agenda<sup>3</sup> and into the action-oriented summary of policy options for financing chemicals and wastes;<sup>4</sup>
4. *Recommends* that the consultative process should consider, among other things, the financial challenges faced by developing countries and countries with economies in transition to implement their chemicals and wastes agendas effectively;

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1 UNEP/POPS/COP.4/38, para. 193.

2 UNEP/GCSS.XI/INF/8.

3 Ibid.

4 UNEP/GCSS.XI/INF/8/Add.1.

5. *Requests* the Executive Director to report on the progress made and the direction of the consultative process on financing options for chemicals and wastes to relevant intergovernmental processes, including to the conferences of the parties to the Basel, Rotterdam and Stockholm conventions at their meetings in 2011, to the Commission on Sustainable Development at its nineteenth session, in 2011, at the preparatory meetings for the third session of the International Conference on Chemicals Management and to the governing bodies of the Global Environment Facility, with the aim of providing a final report for consideration by the Governing Council/Global Ministerial Environment Forum at its twelfth special session, in 2012, and of achieving possible decisions at the third session of the International Conference on Chemicals Management, in 2012, and at the twenty-seventh session of the Governing Council, in 2013;

6. *Also requests* the Executive Director, in collaboration with relevant partners, to launch initiatives to raise awareness of the importance of the sound management of chemicals and wastes, using various avenues, including the media and key international opportunities such as intergovernmental meetings and public events at both the national and international levels;

7. *Invites* Governments and other interested parties, including the private sector, to provide financial and in-kind support to this process and to awareness-raising initiatives;

8. *Requests* the Executive Director to report to the Governing Council/Global Ministerial Environment Forum at its twenty-sixth session on the implementation of the present decision.

## **SS.XI/8: United Nations Environment Programme support for Haiti: strengthening environmental response in Haiti**

*The Governing Council,*

*Noting with deep concern* the devastating impact of the earthquake of 12 January 2010 on the people, economy and environment of Haiti, and in particular the suffering of Haiti's people,

*Recognizing* the primacy of the Haitian people in the reconstruction and development of their country and the key coordinating role given to the United Nations under the leadership of the country's Government,

*Expressing concern* regarding the disaster's medium-term and long-term social, economic and environmental impacts,

*Noting with concern* the extent to which limitations in capacities for emergency prevention, preparedness, assessment response and mitigation of natural and human-induced disasters in Haiti could further jeopardize progress towards attaining internationally agreed development goals, including those set out in the Millennium Declaration,<sup>1</sup>

*Pursuing* its functions and responsibilities as outlined in General Assembly resolution 2997 (XXVII) of 15 December 1972 to keep under review the world environmental situation,

*Recalling* General Assembly resolution 64/250 of 20 January 2010 and the appeals to all Member States and all relevant organs and bodies of the United Nations system, in addition to international financial institutions and development agencies, to provide speedy, sustainable and adequate support for the relief, early recovery, rehabilitation, reconstruction and development efforts of Haiti,

*Taking into account* the special vulnerabilities of small island developing States in achieving sustainable development and recalling General Assembly resolution 59/311 of 14 July 2005, by which the General Assembly endorsed the Mauritius Declaration for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, adopted on 14 January 2005,

*Recalling* its decisions 21/17 of 9 February 2001 and 22/8 of 7 February 2003 on further improvement of environmental emergency prevention, preparedness, assessment, response and mitigation and its decisions 22/13 of 7 February 2003, 23/5 of 25 February 2005 and 24/6 of 9 February 2007 requesting the Executive Director to continue strengthening the support of the United Nations Environment Programme to small island developing States and efforts to mainstream the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States into the work of the United Nations Environment Programme,

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1 General Assembly resolution 55/2 of 8 September 2000.

1. *Welcomes with appreciation* the generous response and strong commitment by Governments, the United Nations system, international financial institutions and the international community to support Haiti and to tackle the broad range of challenges posed by the rehabilitation and reconstruction efforts;
  2. *Welcomes* in particular the efforts to date by the United Nations Environment Programme in Haiti to address urgent environmental and post-disaster matters;
  3. *Urges* the United Nations Environment Programme to assist actively the people of Haiti and the United Nations country team during the emergency recovery phase, by incorporating environmental needs into the humanitarian flash appeal and environmental considerations into the rehabilitation and reconstruction phases, and underlines the need to structure an environmental agenda for the reconstruction of affected areas in a participatory manner;
  4. *Requests* the Executive Director to make every effort to ensure that the United Nations Environment Programme performs its key role in addressing environmental restoration and management, under the overall coordination of the United Nations country team and by taking part in relevant clusters, in particular with regard to human vulnerability and poverty eradication, taking into account the role of integrated coastal-zone management, land-use planning and ecosystems management.
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