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**International environmental policy and governance
issues: environmental law**

**Midterm review of the Fourth Programme for the Development
and Periodic Review of Environmental Law (Montevideo
Programme IV)**

Report of the Executive Director

Summary

By paragraph 1 of section I of decision 25/11 of 20 February 2009, the Governing Council of the United Nations Environment Programme (UNEP) adopted the Fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV) as a broad strategy for the international law community and UNEP in formulating activities in the field of environmental law for the decade 2010–2019. The present report, submitted pursuant to the above-mentioned decision, provides an analysis of the implementation of Montevideo Programme IV since its commencement in 2010. In accordance with Governing Council decision 27/9 of 22 February 2013, it provides information on the progress made in the implementation of that decision. It also transmits the recommendations of the meeting of senior government officials expert in environmental law on the midterm review of Montevideo Programme IV held in Montevideo from 7 to 11 September 2015.

* UNEP/EA.2.1

I. Introduction

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

2. The current Programme – Montevideo Programme IV – was adopted by the Governing Council by section I of its decision 25/11 as a broad strategy enabling the international law community and UNEP to formulate activities in the field of environmental law for the decade beginning in 2010. In accordance with its role as a catalyst in this process, UNEP implements Montevideo Programme IV in close collaboration with States, conferences of the parties to relevant multilateral environmental agreements and the secretariats of those agreements, other international organizations, non-State stakeholders and individuals.

3. Since its commencement in 2010, Montevideo Programme IV has formed an integral part of the UNEP programmes of work and has provided UNEP with the strategic guidance needed to respond to evolving needs in countries and the international community in the field of environmental law and undertake necessary action, consistent with each biennial programme of work, in collaboration with a range of partners at the national, regional and global levels.

II. Analysis of the implementation of Montevideo Programme IV

4. Montevideo Programme IV covers 27 programme areas, which 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 and the general strengthening and development of environmental law. The second part covers the conservation, management and sustainable use of natural resources, such as freshwater and marine water, aquatic living resources, forests, biological diversity and sustainable production and consumption patterns. The third part addresses the challenges facing environmental law, including those relating to climate change, poverty, pollution prevention and control and new technology. The fourth part focuses on the relationship between environmental law and other fields, including human rights, trade, security and military activities. The present analysis covers all four parts of the Programme.

A. Effectiveness of environmental law

5. The implementation and enforcement of environmental law as a key element of effective environmental governance remain a priority for action at the national and international levels. Governments and relevant international organizations, including UNEP, continue to provide technical assistance to developing countries in updating their legislation, or developing new legislation, to implement environmental policy or in complying with their obligations under selected multilateral environmental agreements. There is, however, a continued need for countries to develop their national environmental legislation further in order to respond to emerging environmental challenges in the context of sustainable development and to enhance the implementation of such legislation.

6. A broad range of capacity-building activities have also been undertaken in the field of environmental law through international cooperation between Governments and relevant organizations, including the provision of technical assistance to develop national legislation or to facilitate the implementation of multilateral environmental agreements and other international instruments. As requests for legal assistance must be initiated by the States concerned and directed to specific international organizations, however, various organizations involved in the provision of such assistance often provide it in isolation from similar activities by other organizations. There is thus a need for more systematic and better coordinated efforts in the provision of such technical assistance and capacity-building activities.

7. Networking and capacity-building activities in the field of environmental law for judges, prosecutors and criminal and civil law enforcement officials, lawyers and other stakeholders, promoted initially by the UNEP Global Judges Programme, which commenced in 1995, and further

developed through the World Congress on Justice, Governance and Law for Environmental Sustainability, held in Rio de Janeiro, Brazil, in June 2012 in conjunction with the United Nations Conference on Sustainable Development, and through the first session of the United Nations Environment Assembly, held in June 2014, should be further enhanced to support the efforts of countries to develop and promote environmental rule of law, including through the International Advisory Council for the Advancement of Justice, Governance and Law for Environmental Sustainability established by UNEP.

8. Of the many challenges facing the enforcement of national and international environmental law, the increase in violations of national and international environmental law, in particular the illegal trade in wildlife and related acts, has become a source of grave concern for the international community over recent years. In addition, illegal traffic in hazardous wastes and certain hazardous chemicals in violation of international treaties continues to be a matter of international disquiet. Transnational organized criminals who are engaged in serious criminal activities are often also involved in such environmental offences and crimes. The ongoing collaboration among Governments and international organizations to strengthen international cooperation throughout the entire chain of enforcement should be further promoted.

9. With regard to support for the implementation of multilateral environmental agreements, where there are stable multilateral funds, such as those under the Global Environment Facility and the Multilateral Fund of the Montreal Protocol on Substances that Deplete the Ozone Layer, or other sources of donor funding, systematic efforts have been made by the relevant bodies of the respective agreements, Governments and organizations concerned with a view to enhancing the capacity of developing countries and countries with economies in transition to strengthen their national legislation for the implementation of international conventions and protocols. A case in point is the special programme to support institutional strengthening at the national level for implementation 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 Minamata Convention on Mercury and the Strategic Approach to International Chemicals Management, which was established by the United Nations Environment Assembly at its first session in its decision 1/5.

10. With regard to the prevention and mitigation of environmental damage and provision of compensation for such damage, the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety was adopted in October 2010 and its entry into force is awaited. The Guidelines for the Development of Domestic Legislation on Liability, Response Action and Compensation for Damage Caused by Activities Dangerous to the Environment were adopted by the Governing Council in February 2010 and their application by Governments should be promoted.

11. With regard to the settlement of international disputes relating to the environment, the International Court of Justice has adjudicated a number of international disputes and, in the process, handed down authoritative legal opinions addressing certain aspects of ecosystem management. The Court is scheduled to consider additional cases submitted to it in the field of the environment.¹

12. In order to enhance the implementation of multilateral environmental agreements with similar or complementary obligations, a synergistic approach to enhancing cooperation and coordination has been promoted in recent years. In the field of chemicals and wastes, the conferences of the parties to the Basel, Rotterdam and Stockholm conventions, building upon the work started in the previous decade, made significant progress in that area at their simultaneous extraordinary meetings in February 2010 and through a range of actions undertaken thereafter, including at their meetings in May 2015. With a view to enhancing the implementation of those conventions, such efforts should be further strengthened and supported. Work is also under way to enhance cooperation and coordination among multilateral environmental agreements in the field of biological diversity,² which should be further encouraged. Building on efforts in the field of chemicals and wastes, a more coordinated and holistic approach should be promoted for other multilateral environmental agreements. The existing

¹ By its judgments on environmental law issues, such as those of the pulp mills on the River Uruguay (Argentina v. Uruguay, 2010) and whaling in the Antarctic (Australia v. Japan, 2014), the International Court of Justice contributed to ecosystem management in law and practice. The Court will soon hear the following two cases, which raise related questions (namely, obligations to notify and consult and the obligation to conduct environmental impact assessments): Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).

² See the report of the Executive Director on enhancing synergies among the biodiversity-related multilateral environmental agreements (UNEP/EA.2/12).

agreements have each been developed to address specific environmental problems, yet the scope of some agreements is much wider than that of others. In that context, it may be advisable to examine the feasibility of developing an overarching international legal framework on relevant subjects.

13. Progress has been made in the use of information technology to enhance synergy and promote cooperation and coordination through a common internet-based database for managing information on selected multilateral environmental agreements, such as the United Nations information portals on multilateral environmental agreements (InforMEA),³ on law and environment ontology (LEO)⁴ and on environmental law information service (ECOLEX)⁵. Online e-learning courses offered by InforMEA and certain organizations provide an additional opportunity to raise awareness and understanding of those agreements.

14. Progress has also been made in promoting public participation in decision-making and access to information on environmental matters, in particular through the adoption of the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines) by the Governing Council in February 2010, their implementation guide and its follow-up resulting from collaborative efforts of UNEP, the United Nations Institute for Training and Research and the World Resources Institute to build capacity in countries to apply the Guidelines, along with the further promotion of Principle 10 of the Rio Declaration on Environment and Development by the Governments of Latin American and Caribbean countries aimed at developing a regional legal instrument.

15. With regard to the effectiveness of environmental law, with the exception of a limited number of cases, such as the Stockholm Convention, there is a general lack of processes or procedures to assess the effectiveness of multilateral environmental agreements. To remedy that lack, the use of environmental auditing, promoted through the collaboration between UNEP and the International Organization of Supreme Audit Institutions, should be further encouraged in countries. That area should be further explored with a view to identifying ways to increase the effectiveness of such agreements.

16. With the aim of strengthening environmental governance, the further development and implementation of environmental rule of law should be pursued. Environmental governance is a common aim pursued by a broad range of United Nations bodies and other intergovernmental organizations that are active in the promotion of the rule of law, human rights and good governance for enhanced collaboration, integrating the environment in the pursuit of those overarching objectives. In addition, advancing the collaborative efforts of various United Nations system bodies in selected areas of Montevideo Programme IV will provide a practical way forward towards the definition of a strategic and holistic approach to the attainment of the internationally agreed goals and targets set out in the 2030 Agenda for Sustainable Development.

B. Conservation, management and sustainable use of natural resources

17. With regard to fresh water, coastal and marine water and ecosystems, a number of international partnerships and other international collaborative frameworks have been developed under the auspices of the existing regional seas conventions and action plans and related regional seas programmes, the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities and other international initiatives. These are focused on issues of international concern such as marine litter and debris and the release of pollutants and nutrients from land into the marine environment. At the same time, however, there is no overarching international legal framework to address such emerging issues, with the exception of very general frameworks of international cooperation to control marine pollution under the United Nations Convention on the Law of the Sea.

18. Oceans, seas and coastal areas form an integrated and essential component of the Earth's ecosystem and are critical to sustaining it. Growing international concern is being caused, however, by a number of areas related to marine pollution – including marine debris (in particular, plastic), persistent organic pollutants, heavy metals and nitrogen-based compounds – from a range of marine and land-based sources, including shipping and land run-off. Furthermore, there is a need for collective action to prevent further ocean acidification and to enhance the resilience of marine ecosystems.

19. To counter the growing effects of climate change and other environmental pressures, there is an increasingly urgent need to strengthen the environmental legal frameworks that underpin governance

³ [http:// www.informea.org](http://www.informea.org).

⁴ [http:// leo.informea.org](http://leo.informea.org).

⁵ [http:// www.ecolex.org](http://www.ecolex.org).

to ensure ecosystem health, manage conflicting uses and provide adequate and equitable access to safe water and water supply.

20. Regarding the environmentally sound management of international freshwater resources, the International Environmental Forum for Basin Organizations, organized by UNEP, the International Network of Basin Organizations and relevant partner organizations should be more strongly supported, in particular with a view to addressing issues common to transboundary basins and related ecosystems. In addition, following the entry into force in 2014 of the Convention on the Law of the Non-Navigational Uses of International Watercourses, more concerted efforts should be made to apply the principles and procedures set out in the Convention and to harness its linkages and synergies with other multilateral environmental agreements.

22. In the area of aquatic living resources, including marine living resources, key issues that require further international cooperation include illegal, unregulated and unreported fishing, the introduction of alien species, and biodiversity beyond areas of national jurisdiction. Such strengthened cooperation should be pursued under the auspices of the relevant multilateral environmental agreements, together with international treaties and other instruments that govern those areas.

23. With regard to the conservation, restoration and sustainable use of soils, through its collaboration in drylands-related issues with the secretariat of the United Nations Convention to Combat Desertification, UNEP has provided support for the implementation of the Convention and the achievement of its objectives. Given the importance of the sustainable and environmentally sound management of soils for ensuring food security and sustaining livelihoods, further and strengthened international efforts should be made in this area.

24. In the area of forests, efforts have been undertaken to achieve environmental sustainability, in the context both of climate change adaptation, including through international collaborative partnerships such as the United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, known as the UN-REDD Programme, and of the conservation and sustainable management of biological diversity. In recent years, the spotlight has turned on illegal logging as an emerging challenge to law enforcement efforts. In addition, the issue of access to and the use of forests by indigenous peoples to sustain their livelihood has been highlighted in the context of a human rights-based approach to development planning.

25. In the field of biological diversity, the adoption in October 2010 of 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 and its entry into force in October 2014 represented a major breakthrough for the international community. Countries are being encouraged to develop adequate national legislation for the implementation of the Protocol and efforts to this end should be further promoted. The entry into force of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety should be further pursued. In addition, UNEP, together with other partners, has been providing support for the Aichi Biodiversity Targets, which serve as a common policy platform for a number of biodiversity-related multilateral environmental agreements and help enhance synergies between them, supported by national biodiversity strategies and action plans. Further processes for enhancing synergies among those agreements should be pursued, including through the implementation of strategies, action plans and the above-mentioned targets.

26. In April 2012, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services was established, following an intergovernmental process convened under the auspices of UNEP, in partnership with the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The operationalization of the Platform over the subsequent years has opened up another practical avenue for the facilitation of synergies among biodiversity-related multilateral environmental agreements and other relevant intergovernmental processes, building upon its functions in such areas as knowledge generation, assessments, policy support tools and capacity-building.

27. There are many significant threats to biodiversity in areas beyond national jurisdiction, including the growth of commercial fishing and increased interest in mineral exploitation in such areas, rising volumes of shipping traffic and land-based sources of pollution. By its resolution 69/292 of 19 June 2015, the General Assembly decided to develop an international legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Under current arrangements, a range of different legal regimes apply to such areas, in which several sectoral organizations have competence, and there is no overall cross-sectoral

coordinating mechanism for management. As a consequence, the international law community should undertake a coordinated process to address biodiversity in areas beyond national jurisdiction.

28. With regard to sustainable production and consumption patterns, in addition to providing support for the implementation of the 10-year framework of programmes on sustainable consumption and production patterns, work has been undertaken to strengthen laws and regulations to promote an environmentally sustainable economy (also referred to as a “green” economy), including by collecting and disseminating information on good practices in national legislation.⁶ Where sustainable production and consumption patterns are concerned, a holistic approach must also be followed to the integrated management of waste, and this will be considered further under the programme area of pollution prevention and control.

C. Challenges for environmental law

29. In the domain of climate change, a broad range of collaborative efforts have been undertaken by the international community to support efforts by the parties to the United Nations Framework Convention on Climate Change and the Kyoto Protocol to develop the Convention’s regimes relating to the mitigation of and adaptation to climate change. These include the ongoing negotiations to prepare a new international legal framework under the Convention. A particular issue of interest for the international law community is the need to enhance synergies and seek co-benefits between the climate change treaties regime and other multilateral environmental agreements, such as the potential synergy between the Convention and the Montreal Protocol relating to the management of hydrofluorocarbons and the control of other air pollutants regulated under different international treaties.

30. From the perspective of environmental law, the nexus between poverty and the environment calls, among other things, for efforts to enable all people to lead decent lives with dignity. This requires access to clean drinking water, to sanitation and to a healthy environment that enables the poor to gain access to natural resources as the basis for sustaining their basic needs. To achieve sustainable development which also helps to eradicate poverty, further efforts must be made to support countries’ efforts to develop national legislation designed to empower poor communities in the area of natural resource management.

31. The question of access to clean drinking water and sanitation should also be considered from the perspective of a human rights-based approach. Accordingly, the right to drinking water of adequate quality must be upheld through commensurate provisions under national and international law to control pollution and manage water resources in an environmentally sound manner. Further work by UNEP is required to develop and strengthen laws to promote the environmentally sound management of water resources, as highlighted in its publication *The Greening of Water Law: Managing Freshwater Resources for People and the Environment*, which also relates to the promotion of sustainable consumption and production patterns.

32. To take appropriate legal measures for ecosystem conservation and protection, the valuation of ecosystem services helps to internalize the externalities of such services and facilitate the conservation and protection of ecosystems. Some progress has already been achieved in the development of such valuations and the process is expected to be further enhanced with the additional information obtained through existing international arrangements such as the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. Measures to protect certain marine protected areas have been undertaken by Governments within their respective jurisdictions and have been implemented under the regional seas programmes.

33. In responding to environmental emergencies and natural disasters, UNEP, in collaboration with other relevant organizations, has provided assistance to countries to assess post-crisis situations and to develop environmental recovery programmes, including national environmental legislation. In the case of post-conflict countries, UNEP assistance will be provided as part of the overall involvement of United Nations bodies in the peacebuilding process, and a particular effort should be made to ensure the provision of appropriate legal assistance for the development and implementation of national environmental law.

34. Under the same subject area, the legal status of people displaced as a consequence of environmental or climate change should be further clarified in collaboration with other relevant organizations, as stipulated in section III, programme area (E), of Montevideo Programme IV.

⁶ The UNEP compendium of innovative laws promoting green economy for sustainable development will be published in February 2016.

35. With regard to pollution prevention and control, there are a number of issues that require further international attention. These include the following:
- (a) The regulation of transboundary air pollution of intercontinental scale, such as tropospheric ozone pollution, which is a hemispheric problem and one that cannot be solved regionally because ozone and its precursors move between continents;
 - (b) The need to step up regional cooperation to deal with atmospheric pollution, in particular where it has a transboundary dimension, and to share knowledge of how to deal with similar problems;
 - (c) The need to ensure the enhanced and systematic coordination of atmospheric pollution laws at the national and international levels;
 - (d) The need for a coordinated approach, such as that set out in annex VI to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, which addresses air pollution from ocean-going ships, to protect the atmosphere and other environmental media from other pollutants;
 - (e) The need to harness potential synergies between the climate change treaties and other international treaties in the field of the environment and to explore co-benefits;
 - (f) The need for a holistic approach to the regulation of air pollutants by addressing all emission channels. To that end, steps should be taken to ensure effective coordination between those existing international treaties that deal with emissions of certain air pollutants, since, at present, there is no such coordinating mechanism at the international level.
36. In addition, given that there is no international legal framework for the protection of the atmosphere of the planet in its entirety, the current work by the International Law Commission to develop guidelines for the protection of the atmosphere should be further supported by the international law community and UNEP.
37. Where marine pollution is concerned, in particular that caused by plastic debris and microplastics, there is no international regime – legally binding or non-legally binding – that simultaneously addresses both the causes and impacts of such debris, despite the threats which they pose to biodiversity and economic activity. Nor have any effective international efforts been mounted to create economic incentives to avoid marine debris. The resulting ecological damage is difficult to tackle at the national level alone: debris migrates from the jurisdiction of one State to another and to areas beyond any national jurisdiction.
38. The international regulation of marine pollution in areas beyond national jurisdiction is fragmented, with a number of international instruments covering different regions and sources of pollution; a more holistic approach might provide new and better tools for tackling marine pollution. Although a regulatory regime is provided under part XI of the United Nations Convention on the Law of the Sea, controlling deep seabed mining in areas beyond national jurisdiction, the regime is based on legal instruments that were negotiated some time ago and is primarily focused on exploration, and there may therefore be scope for further work.
39. Waste plastics pose serious environmental threats and, when they become marine debris, cause transboundary pollution. Current laws and policies are too fragmented to address this problem in a holistic fashion. There is a need for better coordination of existing legal instruments and policies and for the promotion of a holistic and lifecycle approach to the control of plastic waste.
40. Noise pollution can have serious health impacts and violates the right to the enjoyment of a healthy life, well-being and a healthy environment, but the problem has often been neglected under countries' laws and regulations, as the resulting damage to human health is not as visible as that caused by other types of pollution. In addition, there have been reports of noise negatively affecting fauna, including underwater noise disturbing marine mammals. Particular considerations are required in the context of spatial planning and transport policy, and a review of the relevant legislation may be necessary.
41. Given the changes in countries over recent decades in the patterns of development and the introduction of new technologies, there is a need further to refine the guidelines on environmental impact assessment, including transboundary aspects. Efforts should also be made to improve the effectiveness of the impact assessment process, by taking into account social, cumulative and recently discovered impacts, such as the location of wind turbines or radiation from power lines, and providing an integrated approach that leads to a full assessment of the impact on humans and the physical environment.

42. As advances are made in technologies to extract oil, gas, minerals and other non-living natural resources and to locate the deposits of those resources, even in remote locations on the planet, an increasing number of extractive industrial activities are being pursued elsewhere in the world and this number is expected to grow further in the future. While such extractive industry activities provide important opportunities for economic growth, they could also pose serious threats to the environment and human health, in particular where laws to regulate extractive activities are not sufficiently developed to respond to relevant environmental issues or where the enforcement of existing legislation is weak.

43. On land, such activities may cause environmental problems, such as the pollution of air and water (including groundwater), or soil contamination that may cause health problems and negatively affect indigenous people or the local population, as it could deprive them of the basis for their livelihood. In coastal areas and at sea, marine pollution from extractive activities could spread beyond borders and become a transboundary issue. In addition, new technologies are expected to make it possible to exploit, after the exploration stage, minerals deposited on the deep-seabed in areas beyond national jurisdiction. Such exploitation and the oversight of environmental protection is to be governed by the regime established under the United Nations Convention on the Law of the Sea. The details of such environmental protection measures for deep-sea mining activities have yet to be determined, however. Furthermore, the relocation of extractive industries from countries where there are stringent pollution control laws to other countries with less developed laws regulating the environmental aspects of extractive activities remains a matter of concern. There is a need to establish an internationally recognized standard for extractive activities and to set international benchmarks for the protection of the environment. Lastly, among new technologies, further attention should be given to nanotechnology and its possible benefits and risks to human health and the environment, with a view to studying appropriate regulatory frameworks.

D. Relationship with other fields

44. The linkages between human rights and the environment need to be respected in balancing the three dimensions of sustainable development across the Sustainable Development Goals. Implementation of the 2030 Agenda for Sustainable Development will require States and other relevant actors to adopt policies and mobilize resources to advance development that is equitable, human rights-based and sustainable. In this context, greater efforts are needed to support countries in developing and adopting policies, laws and regulations that prevent negative impacts on human rights and the environment. At the interagency level, UNEP and relevant partners, such as the Special Rapporteur on human rights and the environment and the Office of the United Nations High Commissioner for Human Rights (OHCHR), should further coordinate their efforts in order to promote a rights-based approach to environmental protection and sustainable development. Issues meriting attention in this process include indigenous peoples, disadvantaged and vulnerable groups, gender and the environment, the effects of climate change on human rights, access to drinking water and sanitation, pollution and its impact on the right to a healthy life and environment, transparency in dispute settlement, the interface with Principle 10 of the Rio Declaration on Environment and Development and access to essential ecosystem services.

45. Where the issue of trade and the environment is concerned, efforts should be stepped up to ensure complementarity and mutual support between the international environmental law regimes and the international trade regimes, including trade aspects of the implementation of certain requirements under the relevant multilateral environmental agreements. Consideration should also be given to the legal implications of the linkages between the green economy, trade and foreign direct investment maybe studied.

46. The issue of environment and security should be examined further in conjunction with the security implications of significant emerging issues, such as the displacement of people as a consequence of environmental or climate change, or the use of natural resources for financing the supply of arms for conflict or terrorism.

47. In the area of environment and military activities, further support should be given to the development of international law in such matters as protecting the environment during armed conflict under international humanitarian law, and supporting the work of the International Law Commission in codifying the relevant principles of international law. In this context, work should be launched on the survey envisaged in Montevideo Programme IV, building upon existing processes for the collection of existing information, with a view to updating the status of the application of environmental norms by military establishments.

III. Leading the United Nations system and supporting national Governments in promoting environmental rule of law: implementation of Governing Council decision 27/9

48. Following the adoption of Governing Council decision 27/9 on advancing justice, governance and law for environmental sustainability, UNEP has played a leading role within the United Nations Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General, in promoting the development and implementation of environmental rule of law. The input provided by UNEP into this coordination mechanism is reflected in the Group's recognition – following its annual retreat in May 2014 – that environmental rule of law was an important dimension in combating transnational threats to the rule of law and that the expertise of UNEP could be more extensively and effectively engaged in this area. As a result, UNEP was invited to join the United Nations system Task Force on Transnational Organized Crime and Drug Trafficking and has participated in the Task Force since then. The contributions made by UNEP relating to environmental rule of law within the United Nations system have also been recognized and reflected in the Secretary-General's annual rule of law reports to the General Assembly.

49. UNEP has worked in partnership with OHCHR on the issue of human rights and the environment as a critical element in advancing environmental rule of law and has worked to identify and promote good practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking. These good practices have been assembled in a published compendium⁷ and provide specific and practical examples of how States and other actors have implemented a human rights-based approach to environmental protection and management.

50. At its twenty-eighth session, in March 2015, the Human Rights Council welcomed the work of the independent expert on human rights and the environment and noted with appreciation the efforts undertaken by UNEP in support of his mandate. The Council decided to extend for a period of three years the mandate of the current mandate holder as a special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. UNEP will continue to support the mandate of the special rapporteur in partnership with OHCHR.

51. At its first session, the United Nations Environment Assembly reiterated and further consolidated the mandate of UNEP in the area of environmental rule of law, in particular concerning illegal wildlife trade and access to justice in environmental matters, through its resolutions 1/3 and 1/13, respectively. In response to resolution 1/3, UNEP has provided its expertise in environmental rule of law to the Secretary-General's policy committee on illegal wildlife trade and has contributed technical inputs to General Assembly resolution 69/314 of 30 July 2015 on tackling illicit trafficking in wildlife.

52. UNEP and the International Criminal Police Organization (INTERPOL) organized the first International Environmental Compliance and Enforcement Conference, held in Nairobi in November 2013, to help build capacities and promote the sharing of expertise among vital stakeholders in the enforcement of environmental law. The second such Conference was held in Singapore in November 2015.

53. UNEP also supports the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in its efforts to enhance national legislation in selected countries to help bring them into compliance.

54. In a related endeavour, UNEP also organized the Sixteenth Asia Regional Partners Forum on Combating Environmental Crime, held in Bangkok on 15 January 2015. Participants discussed how to apply anti-money laundering efforts to the combating of environmental crime.

55. Access to justice in environmental matters is another key area of interest for UNEP in the implementation of Governing Council decision 27/9, whose provisions were further affirmed by the Environment Assembly in its resolution 1/13. This work is based specifically on the Bali Guidelines.

56. The significance of environmental rule of law as both a means and an end in the context of the 2030 Agenda and the Sustainable Development Goals was recently emphasized during a high-level round table for Member States on environmental rule of law and sustainable development goals, organized by UNEP in cooperation with the Secretary-General's Rule of Law Unit in New York in May 2015. The event coincided with a briefing by UNEP to the Sixth Committee of the General

⁷ www.unep.org/delc/Portals/119/publications/UNEP_Compndium_HRE.pdf.

Assembly on the work of UNEP in the field of the rule of law, organized at the invitation of the Governments of Austria, Liechtenstein and Mexico, and the launch of an issue brief on environmental rule of law in the context of the Sustainable Development Goals developed by the UNEP International Advisory Council for Environmental Justice.⁸

57. UNEP has continued to establish and support partnerships in seeking opportunities to promote environmental rule of law with relevant entities. In November 2014 UNEP, along with other partners, organized the first dedicated session on the environment during the fifty-seventh annual meeting of the International Association of Judges. Various segments held during the session focused on access to justice and capacity-building for the judiciary. Following the session, the Board of the International Association of Judges decided to make the environment a more regular feature in the work of the Association.

58. During the period 2013–2015, UNEP facilitated the conclusion of a number of strategic partnerships to advance environmental rule of law, including those between the Global Legislators Organization and the Organization of American States (OAS); the Brazilian Association of Judges and the World Commission on Environmental Law of the International Union for the Conservation of Nature (IUCN); and the Working Group on Environmental Auditing of the International Organization of Supreme Audit Institutions and the World Bank.

59. UNEP, together with partners, has been facilitating regional dialogues on the environmental rule of law, including in the Asia-Pacific region in December 2013 and May 2015, in the Latin American and Caribbean region in March 2015, and in Nairobi for the African region in October 2015. On the occasion of the first session of the United Nations Environment Assembly, a global symposium on the environmental rule of law was held with relevant partners.

IV. Process for the midterm review of Montevideo Programme IV

60. For the midterm review of Montevideo Programme IV, in addition to conducting an internal review, the UNEP secretariat communicated in December 2014 with all Governments, United Nations bodies and specialized agencies, other intergovernmental organizations and other stakeholders, seeking information, through the use of a questionnaire, on the implementation of Montevideo Programme IV. In response, 22 Governments and 27 international organizations and entities, including United Nations bodies and specialized agencies, other intergovernmental organizations and secretariats of the selected multilateral environmental agreements, responded to the questionnaire and provided relevant information.

61. Furthermore, to obtain information on recent developments in relation to specific environmental issues, the UNEP secretariat organized four seminars on the following topics: enforcement of environmental law to combat environmental crime and illegal activities in the field of the environment (Nairobi, 11 June 2015); laws to regulate air pollution and protect Earth's atmosphere (Osaka, Japan, 23–24 June 2015); laws to promote the environmental sustainability of oceans and seas (Panama City, 9–10 July 2015); and the legal foundation for environmental sustainability (New York, 13–14 July 2015).

62. The UNEP secretariat also convened a meeting of eminent legal experts on the midterm review of Montevideo Programme IV in New York on 15 and 16 July 2015. The experts identified a set of topics as possible priority areas for action by the international law community for the period up to 2020.

63. To the same end, the Executive Director convened a meeting of senior government officials expert in environmental law on the midterm review of Montevideo Programme IV in Montevideo from 7 to 11 September 2015. The meeting was open to all Governments, relevant organizations and other stakeholders, and provided them with the opportunity to review the implementation of Montevideo Programme IV and to recommend priority areas for action. Representatives of 79 Governments attended the meeting. In addition, a number of United Nations bodies, secretariats of multilateral environmental agreements, and other intergovernmental and nongovernmental organizations were represented as observers and the meeting was attended by a number of independent eminent legal experts. The representatives and experts reported on the progress made and challenges encountered in the field of environmental law since 2010, and exchanged their views on a range of issues covered by Montevideo Programme IV. They expressed appreciation for the efforts made by the international law community and UNEP to implement Montevideo Programme IV. They also turned

⁸ “Environmental rule of law: critical to sustainable development”, UNEP Issue Brief, available at www.unep.org/delc/Portals/24151/Documents/issue-brief-environmental-justice-sdgs.pdf.

their attention to emerging and important issues, and discussed possible priority areas for action to be taken by the international law community and UNEP during the remaining period of Montevideo Programme IV. The Government representatives adopted recommendations for submission to the United Nations Environment Assembly at its second session.

V. Conclusion

64. The United Nations Environment Assembly may wish to note the progress made, and challenges encountered in the implementation of Montevideo Programme IV, and to consider the recommendations adopted at the Montevideo meeting of senior government officials expert in environmental law, as set out in the annex to the present report.

Annex

Recommendations of the meeting of senior government officials expert in environmental law on the midterm review of Montevideo Programme IV held in Montevideo from 7 to 11 September 2015

1. The further implementation of Montevideo Programme IV, in addition to addressing emerging issues, should be undertaken against the backdrop of recent developments in the international community to advance sustainable development, in particular the outcomes of the United Nations Conference on Sustainable Development, the expected adoption of the draft outcome document “Transforming our world: the 2030 Agenda for Sustainable Development” by the United Nations summit for the adoption of the post-2015 development agenda and the further development of international environmental law, including multilateral environmental agreements, since 2010, as well as relevant resolutions and decisions of the United Nations Environment Assembly of the United Nations Environment Programme (UNEP) and the UNEP Governing Council, including specifically Governing Council decision 27/9 and United Nations Environment Assembly resolution 1/7.

2. In particular, without prejudice to the ongoing multilateral negotiations with regard to relevant international instruments, the international law community and UNEP, in formulating and undertaking activities in the field of environmental law, should contribute to achieving the Sustainable Development Goals and their targets insofar as they relate to environmental sustainability, guided by the rule of law and good governance and considering a holistic approach.

3. This statement of priority areas of action reflects views and broad perspectives expressed by the senior government officials expert in environmental law who participated in the meeting of senior government officials expert in environmental law on the midterm review of the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV) held in Montevideo from 7 to 11 September 2015 and who noted with appreciation the efforts by UNEP and the international law community in implementing Montevideo Programme IV since its commencement. Bearing in mind that the representatives participating in the meeting were not to negotiate or agree on State positions and that the present recommendations will be submitted to the United Nations Environment Assembly for further consideration by Member States, the representatives recommended for consideration, in no particular order and maybe for the international law community and, subject to available resources and within its mandate, UNEP, possible areas of priority for action during the remaining period of Montevideo Programme IV and towards 2020 as follows:

(a) Addressing as a priority enforcement in respect of environmental offences and developing a holistic approach to environmental offences from prevention and detection to sanctions and remediation through developing and strengthening laws to provide administrative, civil and criminal sanctions for environmentally harmful activities;

(b) Addressing the drivers of environmental offences and crime, considering the ways in which the topic may be dealt with holistically and focusing on appropriate levels of enforcement, taking into account their relationship with money laundering, the financing of drug trafficking, terrorism, human trafficking and corruption;

(c) Initiating a Member-State-driven process to assist States in:

- (i) Developing more effective environmental legislation and, in that context, developing such legislation (both general legislation and that required to implement particular treaties);
- (ii) Developing a major in education in and public access to information, participation and justice in environmental matters and the sharing of environmental information between different implementation institutions to enable the quick and effective assessment and management of environmental risks;
- (iii) Developing criteria to assist States in assessing the effectiveness of environmental law;
- (iv) Developing incentives to move towards sustainable development through economic approaches including environmentally sustainable economy, green

- economy, or others, as tools for achieving sustainable development without prejudice to the right of every country to choose an appropriate approach in accordance with its national sustainable development plans, strategies and priorities;
- (v) Developing guidelines to help States establish mechanisms for the conservation of soil, addressing soil erosion, mitigating contamination and preserving the quality of native soil;
 - (vi) Developing incentives for more effective implementation and enforcement of environmental law;
- (d) Initiating a Member-State-driven process to assist States in strengthening environmental law, including in strengthening the implementation of, compliance with and the enforcement of environmental law, by:
- (i) Establishing networks of environmental law experts for the sharing of experience and lessons learned, for the creation of models and for the sharing of best practices;
 - (ii) The strengthening of all relevant institutions and establishing focal points for the coordination of their actions at the national, regional and global levels, thus ensuring complementarity;
- (e) Assessing the role of litigation, including public interest litigation (where applicable), alternative dispute resolution, prosecution and its relationship with the enforcement of national environmental law and updating the compendium and databases of relevant cases as part of efforts to strengthen public access to justice in environmental matters;
- (f) Considering follow-up mechanisms to review compliance and political commitment and to raise the level of ambition of international instruments in the field of the environment, including through the adequate use of non-binding instruments to achieve environmental protection;
- (g) Developing frameworks to help evaluate the effectiveness and success of environmental treaties and encourage the widest possible participation in multilateral environmental agreements with a view to increasing their effectiveness;
- (h) Translating the Sustainable Development Goals into national law, seeking to make connections and dialogue with existing standards;
- (i) Encouraging action by all non-State actors, including when engaged in environmental activities, to become more environmentally responsible and, with regard to the private sector, exploring the effectiveness of voluntary instruments to supplement corporate and social responsibility mechanisms for implementing environmental and sustainable development goals;
- (j) Recommending that environmental law courses should be mandatory for all universities that have law schools, with minimum content to be suggested by UNEP;
- (k) Enhancing water security in the face of climate change and other environmental pressures, strengthening environmental legal frameworks for ensuring the preservation of ecosystem health and managing conflicting uses and equitable and adequate access to safe water and water supplies;
- (l) Under the auspices of the General Assembly of the United Nations, studying and, if appropriate, developing more effective means for the protection of oceans, fisheries and biodiversity in areas beyond national jurisdictions and supporting the development of international legally binding instruments in accordance with the United Nations Convention on the Law of the Sea;
- (m) Having regard to existing instruments in the area of pollution, establishing a mechanism to enable States and relevant organizations to adopt a more holistic and coordinated approach to preventing and controlling pollution of global significance, including the prevention of further ocean acidification, increasing the resilience of marine ecosystems, the regulation of transboundary air pollution of intercontinental scale, such as tropospheric ozone pollution, and the regulation of air pollutants by addressing all channels of emission and for the protection of the atmosphere;
- (n) Developing, under the provisions of relevant instruments, international standards and procedures for extractive industries, including marine mining, to address the impact of those industries on the environment and on local communities, taking into account links with associated liability and damage compensation regimes;

(o) Compiling a list of best practices in combating noise pollution, taking into account national and regional provisions, and proposing ways of addressing the issue at the local and national levels, taking into account, in particular, considerations raised in the context of spatial planning and transport policy, the effect of noise pollution on fauna and flora, energy policy and human rights;

(p) Continuing to emphasize the importance of and further refining guidelines on environmental impact assessments and strategic environmental assessments, including their transboundary aspects, improving their effectiveness by taking into account social, cumulative and recently discovered impacts, such as the location of wind turbines or radiation from power lines, providing an integrated approach that leads to a full assessment of the impact of the subjects concerned on humans and the physical environment;

(q) Facilitating the promotion of laws that encourage the use of renewable energy, including possible synergies and the coordination of trade and investment laws and ways of collecting and sharing good practices and studying legal issues surrounding the deployment and application of energy-relevant technologies, including energy extraction technologies;

(r) Considering appropriate legal responses to environmental emergencies, climate change and environmental stresses, including as a priority to protect the most vulnerable;

(s) Analysing legal gaps and needs for and benefits of global legal instruments and other approaches to addressing the environmental threats caused by the global problem of waste plastics and marine debris, considering coordination of the current applicable legal instruments and policies, the promotion of a holistic and lifecycle approach to the control of plastic waste and the development of further instruments;

(t) Assessing the use of relevant legal tools for addressing issues related to the reduction of poverty, including the environmental harm caused by poverty and environmental conditions that contribute to poverty;

(u) Supporting the Global Alliance to Eliminate Lead Paint to achieve the goal that all countries adopt national legislation to ban lead in paint;

(v) Assessing cost effective means of improving communication between institutions and joint activities in the field of international environmental law pursuant to section III, programme area F (f), of Montevideo Programme IV;

(w) Strengthening and supporting countries in developing and updating environmental policies, laws and regulations and relevant international instruments that prevent negative impacts on human rights or the environment, including in particular with regard to indigenous peoples and disadvantaged and vulnerable groups; gender and the environment; the effects of climate change on human rights; transparency in dispute settlement; the interface of human rights and the environment with Principle 10 of the Rio Declaration on Environment and Development; and access to essential ecosystem services;

(x) Cooperating in an expeditious and more determined manner to secure environmental protection objectives in international trade, investment and financial laws and policies in order to achieve sustainable development and an appropriate balance between the objectives in those fields in accordance with programme area B of section IV of Montevideo Programme IV;

(y) Furthering the understanding of the linkage between environment, security and peace and promoting further application of environmental norms to military establishments and their activities and the protection of the environment in the context of armed conflict pursuant to areas C and D of section IV of Montevideo Programme IV through appropriate institutions.

4. To strengthen the application of the Montevideo Programme and to monitor and evaluate its implementation, as well as to support UNEP in its activities in the sphere of environmental law, it is equally recommended to undertake appropriate measures, which might include inviting Member States to establish a network of national focal points for exchanging and building capacities in the various fields of the Programme and to establish a regionally balanced mechanism, such as a steering committee supported by eminent legal experts in environmental law, to facilitate the application, monitoring and evaluation of the Montevideo Programme.