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Item **XXXX** of the provisional agenda*

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

Report of the Executive Director

Summary

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

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* UNEP/EA.1/1.

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

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

The United Nations Environment Assembly,

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

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

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

Having considered the report of the Executive Director,

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

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

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

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

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

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

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

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

II. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³ A/59/565.

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. PROGRESSIVE DEVELOPMENT OF PRINCIPLES AND RULES

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

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

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

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

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

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

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

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

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