



Distr.: General  
31 October 2015

Original: English



**United Nations  
Environment  
Programme**

**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)**  
Montevideo, 7–11 September 2015

## **Report of 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**

### **I. Introduction**

1. By section I of its decision 25/11 the Governing Council of the United Nations Environment Programme (UNEP) in 2009 adopted the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV)<sup>1</sup> as a broad strategy for the international law community and the United Nations Environment Programme in formulating activities in the field of environmental law for the decade commencing in 2010. In paragraph 3 of section I of that decision the Governing Council requested the Executive Director of UNEP to implement Montevideo Programme IV in close collaboration with States, conferences of the Parties to and secretariats of multilateral environmental agreements, other international organizations, non-State stakeholders and individuals, while fully respecting the mandates of multilateral environmental agreements. In paragraph 4 of section I the Governing Council requested the Executive Director to undertake a midterm review of the implementation and effectiveness of the Programme no later than at the twenty-eighth session of the Governing Council in 2015 and to report at the Council's thirtieth session, in 2019, on the impact of the Programme.

2. In accordance with paragraph 4 of section I of decision 25/11, the Executive Director is in the process of conducting a midterm review of Montevideo Programme IV. In consideration of paragraph 3 of section I he is doing so in close collaboration with States, conferences of the parties to multilateral environmental agreements and their secretariats, other international organizations and non-State stakeholders and individuals, including through the distribution in December 2014 of a questionnaire on the implementation of Montevideo Programme IV.

3. The current meeting was convened to provide the above stakeholders the opportunity to contribute further to the development of the midterm review of Montevideo Programme IV and to recommend selected priority areas in the field of environmental law for action by the international law community and UNEP during the remainder of Montevideo Programme IV.

---

<sup>1</sup> UNEP/Env.Law/MTV4/IG/2/2, annex I (reproduced for the twenty-fifth session of the Governing Council in document UNEP/GC.25/INF/15).

## II. Opening of the meeting (agenda item 1)

4. The meeting was opened at 10 a.m. on Monday, 7 September 2015. Opening remarks were made by Ms. Elizabeth Maruma Mrema, Director, Division of Environmental Law and Conventions, UNEP, Mr. Fernando Lugris, Permanent Representative of Uruguay to UNEP and to the United Nations Human Settlements Programme, and Mr. Jorge Rucks, Assistant Minister and Under-Secretary, Ministry of Housing, Land Planning and the Environment, Uruguay.

5. In her remarks Ms. Mrema highlighted a number of achievements since the inception of the first Montevideo Programme, such as the adoption of regional and global multilateral environmental agreements, the development and implementation of national framework laws, accompanied by sector-specific regulations, and the establishment of national environmental authorities and other institutional arrangements. She also drew attention to the impacts on environmental law of the various global summits that had taken place in that period, together with the legal dimensions of the new and emerging global priorities stemming from the recently adopted Sendai Framework for Disaster Risk Reduction 2015–2030 and the forthcoming 2015 development agenda and sustainable development goals and the new climate change regime.

6. Montevideo Programme IV, she said, had been adopted as a broad strategy for the international law community to formulate activities for the decade 2010–2020. The midterm review should help to take into account the lessons learned over the first five years and enable the continuation of the Programme; the identification of emerging environmental issues in need of legal and institutional responses; the elaboration of recommendations as to priority areas in environmental law; and the development of perspectives for that field beyond 2020. The historical links between the Programme and the city of Montevideo, underpinned by the hospitality of the Government of Uruguay, should, she said, serve to inspire the participants in their consultations and deliberations over the coming five days.

7. Mr. Lugris warmly welcomed the participants to Montevideo, including on behalf of the Minister for Foreign Affairs, Mr. Rodolfo Nin Novoa. He described as historic the decision of the environmental law community to return to the city where the Montevideo Programme had been launched for the important purpose of reviewing progress in the development of environmental law under Montevideo Programme IV. He looked forward to a fruitful and action-oriented meeting, as all those present recognized the importance of their work and all shared the responsibility of giving environmental law development the importance it merited. He saw the meeting as providing a roadmap for the future in the monitoring of progress in environmental law.

8. Holding the current meeting in Montevideo was also an opportunity for Uruguay to reaffirm its commitment to environmental law and to the work of UNEP. Such commitment was to be found in all areas, but in particular in that of chemicals and waste. He reviewed some of Uruguay's activities to promote protection of the environment, including the leading role it had played in the negotiation and adoption of the Minamata Convention on Mercury, and the areas where it intended to continue to contribute, including the forthcoming twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change.

9. Mr. Rucks reviewed the history of the Montevideo Programme from its creation in the early 1980s. The world had been very different then: there had been no personal computers or mobile phones, and issues related to the environment had been the purview of a few specialists who had not yet recognized the key importance of sustainable development. The world at that time was already feeling the effects of greenhouse gases but was unaware of the full scale of climate change still to come. Over the years the Montevideo Programme had undergone a series of reviews and changes of emphasis, and it had continued to adapt to the demands of an increasingly globalized world.

10. He also reviewed the commitment of Uruguay over the years to the protection of the environment, culminating at the current time in the country's efforts to follow a path of sustainable development. The Montevideo Programme must act as a beacon for international cooperation in the field of environmental protection and in improving the lives of people everywhere. The scale of the Montevideo Programme IV was daunting, yet it would be necessary to enlarge it still further, with the addition of important and emerging issues and decisions on priority actions for the future.

11. The week's meeting would be hard work. The assembled experts would not adopt decisions, but their conclusions and recommendations would be important to future decisions, particularly those to be adopted at the second session of the United Nations Environment Assembly, in May 2016. The meeting participants would be supported in their work by the Government of Uruguay and by the specialists from UNEP, and he hoped that in addition to their hard work they would have time to enjoy Montevideo.

### **III. Election of officers (agenda item 2)**

12. The Government representatives elected Mr. Marcelo Cousillas (Uruguay) as Chair of the meeting and Mr. Larsey Mensah (Ghana) as Rapporteur.

### **IV. Organizational matters (agenda item 3)**

#### **A. Adoption of the agenda**

13. The Government representatives adopted the following agenda, on the basis of the provisional agenda that had been circulated in advance of the meeting (UNEP/Env.Law/MTV4/MR/1/1):

1. Opening of the meeting.
2. Election of officers.
3. Organizational matters:
  - (a) Adoption of the agenda;
  - (b) Organization of work.
4. Midterm review of the implementation and effectiveness of the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV).
5. Emerging and important issues in the field of environmental law, in particular in the programme areas of Montevideo Programme IV.
6. Priority areas for action in the field of environmental law for the period up to 2020, bearing in mind Montevideo Programme IV.
7. Recommendations and conclusions.
8. Adoption of the report.
9. Closure of the meeting.

#### **B. Organization of work**

14. The Government representatives agreed to work, in accordance with the provisional timetable that had been distributed in advance of the meeting, from 10 a.m. to 1 p.m. and from 3 to 6 p.m. each day. As proposed in the annotations to the provisional agenda (UNEP/Env.Law/MTV4/MR/1/1/Add.1), they also agreed to meet primarily in plenary sessions. At the beginning of each of agenda items 4–6, the representative of the secretariat would briefly introduce the documents relevant to the item (as listed in the annotations to the agenda). In addition, invited experts would make presentations under item 4 on important recent developments in the field of environmental law and under item 5 on emerging and important issues in the field of environmental law, in particular in the programme areas of Montevideo Programme IV.

#### **C. Attendance**

15. The meeting was attended by representatives of the following countries: Afghanistan, Albania, Antigua and Barbuda, Argentina, Azerbaijan, Bahrain, Belize, Benin, Bhutan, Bolivia (Plurinational State of), Brazil, Burundi, Cambodia, Cameroon, Chad, Chile, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Dominican Republic, Ecuador, Eritrea, Ethiopia, Gambia, Georgia, Germany, Ghana, Guatemala, Guinea, Guinea-Bissau, Haiti, Holy See, Honduras, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jamaica, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Maldives, Mali, Mexico, Morocco, Myanmar, Nepal, Nicaragua, Pakistan, Panama, Peru, Philippines, Saint Kitts and Nevis, Saint Lucia, Samoa, Senegal, Seychelles, Sierra Leone, Spain, Sri Lanka, State of Palestine, Sudan, Swaziland, Switzerland, Tajikistan, Thailand, Timor Leste, Togo, Turkey, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of) and Viet Nam.

16. The meeting was also attended by representatives of the following United Nations bodies, intergovernmental organizations, convention secretariats and non-governmental organizations: United Nations Office of Legal Affairs/Division for Ocean Affairs and Law of the Sea, United Nations Development Programme, Secretariat of the Convention on Biological Diversity, Secretariat of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, Secretariat of the United Nations Framework Convention on Climate

Change and the Kyoto Protocol to the United Nations Framework Convention on Climate Change, International Union for Conservation of Nature, Organization of American States, Centre for International Environmental Law, Conserve Africa Foundation, Environmental Law Institute, Environmental Management and Law Association, Interamerican Association for the Defense of the Environment.

17. The following invited eminent legal experts also attended the meeting: Ms. Loretta Feris, Professor of Law, Institute of Marine and Environmental Law, Department of Public Law, University of Cape Town, South Africa; Mr. Muhammed Tawfiq Ladan, Professor of Law, Faculty of Law, Ahmadu Bello University, Nigeria; Mr. Daniel Bastow Magraw, Senior Fellow, Foreign Policy Institute and Professorial Lecturer, Johns Hopkins University, United States of America; Ms. Du Qun, Professor of Law and Deputy Director, Research Institute of Environmental Law, Law School, Wuhan University, China; Ms. Dinah L. Shelton, Professor Emeritus of International Law, George Washington University Law School, United States of America.

## **V. Midterm review of the implementation and effectiveness of the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV) (agenda item 4)**

18. The representative of the secretariat introduced the documents relevant to the agenda item, which described major developments in environmental law in the first five years of Montevideo Programme IV, along with challenges in the programme's 27 programme areas, as well as the implementation of decision 27/9 of the Governing Council of UNEP, on advancing justice, governance and law for environmental sustainability. The invited eminent legal experts then gave presentations on emerging and important issues in the field of environmental law. They also served as resource persons and participated in the discussions that took place under the agenda item.

### **A. Presentations**

19. One of the invited eminent legal experts contributed some thoughts on the interaction of environmental law and environmental protection with other areas of international and domestic law in four areas: human rights; trade and investment; military activities and security issues. Since the launch of the Montevideo Programme, human rights bodies had increasingly developed standards and jurisprudence on issues of environmental protection in areas such as the right to water and housing. That had led to a renewed emphasis on the procedural aspects of how human rights affected environmental protection in such contexts as the right to information, the right to public participation and access to justice. One challenge was that a human rights approach to environmental protection was by definition anthropocentric. To address that drawback, some countries had seen emerging constitutional and legislative changes that referred to the rights of nature itself. On the issue of trade and investment, she noted that environmental protection measures were still being challenged before the World Trade Organization as protectionist measures in disguise. In the area of military activities, UNEP had done considerable work since the 1991 Gulf war, examining environmental protection before, during and after conflicts. Work in this area also extended to natural disasters and their amelioration and prevention, particularly with regard to climate change.

20. Another of the invited eminent legal experts gave a presentation concentrating on the conservation and management of sustainable resources, considering both progress and setbacks. She focused on three areas: biodiversity, including wildlife and species; marine waters, including species living in them; and freshwater.

21. Three important aims in biodiversity were to phase out harmful subsidies; to ensure that the harvesting of marine species was sustainable and lawful; and to ensure the implementation of the Convention on Biological Diversity's Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. UNEP had done important work on liability and redress but much remained to be done. Other important pressures on biodiversity included habitat loss, overfishing, deforestation, multiple anthropogenic pressures on coral reefs, the continuation of government subsidies harmful to biodiversity, increasing consumption, climate change and a rise in wildlife trafficking.

22. Marine waters issues included oil pollution and pollution from land-based activities, the development of a new ballast water management convention and the development of various agreements on the protection of regional seas. Hurdles included climate change, particularly its impact on small island developing States; climate-related natural disasters and acidification from land-based activities, especially when combined with acidification from climate change; a rise in nutrients from water treatment plants and from agriculture; and increasing levels of marine litter, including plastics in

particular. Increasing problems were seen in the protection of oceans in areas beyond national jurisdictions, including illegal fishing and seabed mining.

23. A major development with regard to freshwater was a focus on integrated water management at the basin level. There had also been work on the ecological management of freshwater as a sustainable resource and a recognition of a right to safe drinking water and sanitation. Other issues receiving increasing attention were watercourse and groundwater management. A major problem for the future was water security, with 4 billion people projected to be living in severely water-stressed areas in a context of demand increasing by 55 per cent by the middle of the century.

24. Another of the invited eminent legal experts gave a presentation covering the development of environmental law in her country since the 1980s and the various changes and revisions it had undergone in various areas, notably the relationship between environmental law and environmental development.

25. Important milestones had included the country's atmospheric protection law, which had enhanced the responsibility of companies for atmospheric pollution and increased penalties. Other new laws had provided for public participation in environmental protection matters, and the basic environmental protection law had been clarified. Laws on the utilization of natural resources had been in place since the 1980s and 1990s and were currently being revised.

26. There had also been breakthroughs with regard to enforcement, with new forms of environmental litigation, in addition to traditional administrative and criminal proceedings, in environmental cases. The precautionary approach was being used to relax traditional requirements of causation and proof, and standing requirements were being eased to permit non-governmental organizations to be parties to lawsuits. Such steps had proved successful, and major polluters were being sued. Another new development was increased liability of the Government to promote the rule of environmental law.

27. A major challenge for the future was to balance environmental protection and economic development. Her country's economy was slowing, raising a concern about whether environmental law would retard economic development, including employment, and what was an appropriate level of regulation.

28. Another of the invited eminent legal experts gave a presentation on poverty, equity and social justice in the context of environmental protection, highlighting key developments, identifying areas of important progress and indicating some challenges ahead.

29. Since the inception of Montevideo Programme IV, efforts had been made to establish a significant nexus between poverty, equity and social justice in the context of environmental protection by encouraging United Nations Member States and UNEP to ensure the progressive implementation of the various multilateral environmental agreements of the early 1990s; the Millennium Development Goals, particularly goals 1 and 7, referring to poverty and environmental sustainability; and the Stockholm Convention on Persistent Organic Pollutants. The result was a growing recognition that poverty was an important contributor to environmental degradation; that, conversely, a healthy environment could help to improve the lives of the poor and vulnerable; and that alleviating poverty was not a matter of charity but of social justice and human rights. There was also a growing global recognition that the ultimate goal of social justice was to ensure that all people enjoyed the basic minimum conditions necessary to a dignified and healthy life such as access to education, health care and employment, as well as the ability to participate in the processes affecting their lives. Such equity was central to the attainment of sustainable development, because a fair allocation of resources underpinned poverty reduction and pro-poor economic growth while at the same time protecting the environment for current and future generations.

30. In terms of progress, the preceding five years had witnessed a sustained acceptance of environmental sustainability as part of the sustainable development principle and of such specific legal principles as the precautionary principle, the principle of intergenerational and intra-generational equity and the "polluter pays" principle. Second, the final report by the United Nations on the Millennium Development Goals indicated that, globally, extreme poverty had declined by more than half and that 58 per cent of the global population had gained access to piped drinking water. Those were laudable achievements made at the intersection between poverty, social justice and equity that benefited environmental protection.

31. The continuing challenge was to use law in a way that recognized the significant nexus between poverty, equity, social justice and environmental protection, reducing poverty with a focus on the environmental harm that it caused and at the same time addressing the environmental conditions that contributed to poverty and tackling the root causes of inequity and social injustice.

## **B. Discussion**

32. Following the presentations the Chair opened the floor for a general discussion of the agenda item, inviting the representatives to report on key developments, progress and challenges in the respective programme areas of Montevideo Programme IV or other relevant issues in the field of environmental law since the inception of the programme in 2010. The representatives agreed to structure their discussion according to the four major programme areas of Montevideo Programme IV: effectiveness of environmental law; conservation, management and sustainable use of natural resources; challenges for environmental law; and relationships with other fields. Many representatives acknowledged and expressed appreciation for the progress made by Governments and UNEP in implementing Montevideo Programme IV.

### **1. Effectiveness of environmental law**

33. In the discussion on the effectiveness of environmental law, all who took the floor highlighted the steps that their countries had taken to promote and implement environmental law. Many reported that those steps included the enshrining in the constitutions of their countries of the right to a safe and healthy environment, a right that in some cases was extended to animals and to the environment itself. Other measures included the adoption and continued periodic updating of basic and framework laws on environmental protection and implementing regulations, including provisions to facilitate enforcement and provide for punishment of environmental violations; the mainstreaming of environmental protection into sectoral laws of all kinds, including in particular laws on the use of natural resources; the use of strategic environmental assessments as a basis for updating existing laws, with a particular emphasis on integrating the economic, social and environmental pillars of sustainable development, the principles of Agenda 21 and principle 10 of the Rio Declaration on Environment and Development. Participants also pointed to the signing and ratification of multilateral environmental agreements and the adoption and updating of laws to incorporate the obligations thereunder into national law; the establishment and improvement of environment ministries and other national and local bodies charged with promoting environmental protection; efforts to raise awareness of environmental issues among the general public and both to raise awareness and build capacity on the part of responsible officials, including in particular judges; and efforts to establish and protect the right of the public to participate in environmental decision-making. Some representatives underscored the progress in negotiating a regional agreement on the full implementation of the rights of access to information, public participation and access to justice in environmental matters under the auspices of the United Nations Economic Commission for Latin America and the Caribbean.

34. Many representatives also highlighted continuing challenges and possible responses. Several identified effective coordination of government authorities and key sectors as an important issue, and they called for the involvement and effective coordination of all departments and sectors, with an increased emphasis on mainstreaming environmental concerns into policy in areas such as mining, forestry and fisheries. Saying that broad public participation and access to information and judicial and administrative proceedings were crucial, several called for a legally binding agreement in that area for their region, building on the Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters and the model law on access to information adopted by the Organization of American States. Others said that it was essential to incorporate environmental education into school curricula. One representative drew attention to the continuing challenge posed by the devastating effects of war on infrastructure and poverty.

35. Many representatives stressed the importance of enforcement, citing weaknesses in both their police forces and judiciaries. The importance of meaningful penalties, including fines and the closure of plants in breach of their legal obligations, was stressed. Reforms included the establishment of environmental units in police forces and plans to fast-track the settlement of legal disputes, with an emphasis on severe civil and criminal penalties. More was needed, however, and one of the main obstacles was a continuing lack of awareness of developing environmental law among judges and lawyers. It was crucial, therefore, to promote capacity-building efforts not only for government departments and development partners but also for the judiciary.

36. Other challenges identified included the need to ensure that trained officials passed on their knowledge to colleagues before leaving their posts; the need to update outdated environmental legislation; and the need to strengthen local and provincial institutions. Representatives also said that it was necessary to ensure coordination among all relevant agencies; to persuade decision makers and the general population of the economic benefits of environmental protection; to ensure local expertise in environmental and legal matters; to balance conservation and economic development; and to

provide for assistance from UNEP and other bodies to countries in their efforts to implement and enforce their environmental laws.

37. Several representatives noted specific needs in their countries and regions. One requested UNEP to increase its presence and work on environmental law in the South Pacific. Another requested UNEP to provide assistance to his country in its efforts to develop environmental laws on which it lacked technical expertise. In that context one representative said that UNEP had a major role to play in helping countries to make environmental laws more effective, including by assessing the effectiveness of the environmental laws of specific countries upon their request and helping developing countries to develop and strengthen domestic laws and improve compliance with international environmental laws.

38. One representative suggested a number of ways to enhance the effectiveness of environmental law, including a review of organizational and institutional impediments to mainstreaming environmental issues into all sectors. Other means could include tackling transboundary issues through arbitration and diplomacy; and identifying priority legal areas where it would be possible to have specific impacts, including the development of policies for extractive industries, problematic environmental impact assessments, environmental law and health, the promotion of technology as a means of addressing problems in innovative ways, the relationship between gender and environmental law, and the identification of strategies to combat environmental crimes perpetrated by syndicates or large corporations using sophisticated technologies.

39. The representative of the Ozone Secretariat offered his ideas on the elements that had contributed to the effectiveness of the Montreal Protocol on Substances that Deplete the Ozone Layer. He attributed the high compliance with the protocol to ongoing work by UNEP and hard work by individual Governments, none of which had ever failed to comply with its obligations under the Protocol. Regular reporting under the Protocol also showed high levels of enforcement of Protocol-related legislation, which he attributed to capacity-building, awareness raising and training measures built into the Protocol and supported by other programmes of UNEP and other agencies. Implementation of the Protocol had also been supported by trade measures that had encouraged non-parties to join the Protocol and benefit from participation in its implementation. He also stressed the role in the Protocol's success of four environmental principles that he said were enshrined in the Protocol: the principle of common but differentiated responsibilities, the principle of sustainable development, the precautionary principle and the principle of state responsibility for environmental damage beyond the limits of national jurisdiction.

40. The representative of the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs reported on two key developments in the work of the United Nations General Assembly with regard to oceans and the law of the sea. The first was the General Assembly's adoption, in June 2015, of resolution 69/292, by which the Assembly decided to develop a new international legally binding instrument for the conservation and sustainability of marine biodiversity in areas beyond national jurisdiction. The General Assembly decided that a preparatory committee would meet twice to discuss marine genetic resources, including questions of benefit sharing, measures such as area-based management tools, including marine protected areas and environmental impact assessment, and capacity-building and marine technology transfer, and to then make recommendations to the General Assembly on the elements of a draft text for the instrument. The first meeting would be held from 28 March to 8 April 2016 and was open to all States Members of the United Nations, members of the specialized agencies, parties to the United Nations Convention on the Law of the Sea and observers. The General Assembly would then decide before the end of its seventy-second session in 2018 on the convening and start date of an intergovernmental conference to consider the preparatory committee's recommendations and elaborate the text of the instrument. The resolution also established a voluntary trust fund to assist developing countries to attend the meetings of the preparatory committee and the intergovernmental conference. The second key development was the work of the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects. The first cycle of the process had resulted in a first global integrated marine assessment of the world's oceans and seas, a summary of which was available online.

41. The representative of the United Nations Framework Convention on Climate Change outlined key developments in, and challenges for, efforts to combat climate change. A second commitment period for the Kyoto Protocol for 2013–2020 had been adopted in 2012 through an amendment to the Protocol, but the amendment had not yet entered into force as only 43 parties had ratified it and 144 ratifications were required. A process had been launched to negotiate a new climate instrument that would come into effect in 2020 and while progress had been made, notably regarding the legal nature

of the agreement, it was still unclear whether nationally determined contributions would be legally binding.

## **2. Conservation, management and sustainable use of natural resources**

42. A number of representatives reported on their countries' efforts regarding the conservation, management and sustainable use of natural resources, including one who indicated that the protection and conservation of natural resources was enshrined as a citizens' right in his country's constitution.

43. For those who spoke, water and forests were particular areas of focus. Several countries reported on legal measures to protect those resources since 2010, including through the enactment of new legislation, the strengthening of existing laws and the introduction of environmental taxes, while others described special programmes or projects introduced for that purpose, including regional programmes.

44. In relation to marine resources, one representative reported that his country had passed a law to protect the marine environment against damage caused by the exploration and exploitation of deep seabed natural resources. Another expressed concern about the hunting of humpback whales beyond national jurisdictions, noting that the whales constituted a valuable tourism asset for his country. Noting growing objections to groups of countries carrying on activities on the high seas outside national jurisdictions under regional agreements, another representative stressed that the law of the sea should be considered the only framework governing any activity in oceans outside national jurisdictions, including the conservation and sustainable use of marine living resources.

45. With reference to biological diversity, a number of representatives noted that their countries had ratified the Nagoya Protocol and the Cartagena Protocol on Biosafety, and many spoke about the creation or expansion of protected areas. One also reported the introduction of regulations on the use, trade and ownership of protected species, and another described his country's national strategy on biodiversity for 2011–2020.

46. One representative also reported that her country had adopted a law covering the sustainable use of soil in the context of the transfer of ownership of agricultural lands.

## **3. Challenges for environmental law**

47. Noting that many representatives had already mentioned challenges during the discussion under the items above, the chair invited representatives to make any additional comments they might wish to make on the subject.

48. In the ensuing discussion, all who took the floor cited the impacts of climate change as a major concern. Many described how their countries were seeking to address that concern through new and updated legislation and regulatory measures, taking into account their obligations under the relevant international conventions; the development of mitigation and adaptation strategies for key sectors, such as energy, transport and agriculture; and the mainstreaming of such strategies into land planning. Other measures described included the establishment of national climate funds and the submission of project proposals to the Adaptation Fund and Green Climate Fund and the promotion of carbon neutrality, including through ambitious targets in intended nationally determined contributions under the new global climate change regime. In many cases, however, such efforts were undermined by another major challenge to the effective implementation of environmental laws: poverty. Several representatives described how poverty undermined efforts to encourage a switch from fossil fuels to cleaner yet more costly energy sources, such as natural gas and renewables, and prevented effective regulatory action to tackle environmentally hazardous practices, especially in illegal mining, logging, fishing and wildlife trade.

49. Several representatives said that the effective enforcement of environmental laws was also hindered by a lack of binding obligations and adequate penalties for violations. One called for countries to include environmental crimes in their national criminal codes. Another, on the other hand, recommended administrative and civil enforcement rather than a purely criminal approach for less serious violations and suggested that behavioural economics could hold the key to increasing compliance. Several representatives stressed that institutional strengthening was critical, with some adding that the roles and responsibilities of environment ministries within the wider machinery of the State had to be clarified. Several representatives said that their Governments had established national authorities to develop and enforce national standards on, among other things, air, soil and water quality. Some, however, pointed out that many countries could not conduct the preliminary environmental assessments needed to develop such standards without technical and financial support. Many representatives said that there was a need for resource mobilization, together with adequate training and exchanges of experience and expertise, with one pointing out that environment ministries



often had the smallest budgets of all government departments and suggesting that the intervention of international organizations such as UNEP could help to reverse that situation. One representative suggested economic and fiscal incentives and the enhancement of environmental services to render environmental protection economically sustainable; another highlighted the benefits of environmental taxation, backed by stiff penalties for avoidance.

50. One representative described the difficulties faced by his Government in its efforts to enforce environmental law owing to the continued military occupation of his country, suggesting that military occupation be considered an emerging issue.

51. Many representatives said that the participation of all stakeholders, including civil society and the private sector, in decision-making was crucial to overcoming the various challenges, with some adding that such participation required access to information and public awareness-raising. Some said that it was important to ensure that environmental law was clearly understood to provide a framework for development rather than a repressive tool for enforcement officers.

52. The representative of the secretariat of the Convention on Biological Diversity described how gaps in national environmental laws were being addressed by the Nagoya Protocol and the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety, as well as how the Convention's strategic plan for the decade 2010–2020 fostered synergies among parties and provided them with a framework and targets for updating national strategies and action plans.

53. The representative of an environmental law non-governmental organization drew attention to the development of standards in the area of human rights and the environment, saying that there was a need to provide access to information and to protect activists from physical harm.

54. The representative of an environmental law non-governmental organization, noting, among other things, the increasing recognition of interlinkages between environmental law and human rights, security, humanitarian assistance and development, stressed the unique nature of the problems in environmental peace-building in countries affected by conflicts over land, water and other resources, as well as the phenomenon of industrial accidents triggered by environmental causes.

#### **4. Relationships with other fields**

55. During the discussion on relationships between the environment and other fields, both representatives and the invited eminent legal experts identified and discussed a range of crosscutting issues, including human rights, trade, health, agriculture, criminal law and natural resources. One representative offered the general observation that while the United Nations approach was generally good for dealing with crosscutting issues more significant results might be achieved by ensuring enhanced cooperation and coordination between various agencies and coherence among the various positions and organizations. More specifically, he suggested that UNEP could perhaps coordinate the positions of the various secretariats so that solutions to environmental issues took into account the aspects that posed problems in other areas such as trade.

##### **(a) Human rights**

56. A number of representatives spoke about the relationship between human rights and the environment in their countries. One reported growing interest over the last decade in a two-pronged approach to redress for environmental damage, covering both human rights with compensation for affected individuals and natural rights with compensation for environmental damage. In another country, the right to a clean and healthy environment was recognized in the constitution, and citizens had the right to criminally prosecute those responsible for environmental violations, including violations relating to genetic resources and trade in such resources. Another representative said that her country had observed the intersection with human rights during enforcement of environmental rulings.

57. The representative of the Secretariat of the United Nations Framework Convention on Climate Change said that the climate change regime had always focused on the human dimensions of climate change and its impacts, recognizing procedural rights such as access to information and public participation in policy development and policy implementation, but that the consideration of rights expressed in substantive social economic terms was a recent development. Human rights language first appeared in the Cancun Agreements, while the Geneva negotiating text under the Ad Hoc Working Group on the Durban Platform contained language in its operative paragraphs and preamble relating to the interface between climate change and human rights. The parties to the Framework Convention on Climate Change would have to decide what options would remain in the text of the Paris agreement.

58. One representative said that not all States agreed that human rights had recently been created in relation to the environment. His country took the view that there was no specific human right to a clean and healthy environment at the international level, although existing human rights in international law, such as the right to an adequate standard of living, for instance, might be engaged when environmental issues were at stake.

59. One of the invited eminent legal experts said that the crosscutting issue of human rights encompassed environmental impact assessments. International human rights law, he said, required that such assessments be conducted whenever environmental harm might interfere with human rights. He encouraged representatives to read 14 reports that had been produced by the Special Rapporteur on Human Rights and the Environment, Mr. John Knox, saying that they tallied well with the objectives under Montevideo Programme IV. One of the invited eminent legal experts suggested that laws were increasingly being amended to require both environmental and social impact assessments; procedures for such assessments took into account the social, economic and environmental pillars of the sustainable development goals and allowed for public participation in the environmental decision-making process. It was important, she added, to consider where and under what authority assessments were done, suggesting that assessments conducted and reviewed by environmental and social ministries would be very different from those reviewed and approved by mining authorities. In that context one of the invited eminent legal experts suggested that the forthcoming approval of the sustainable development goals gave UNEP the opportunity to analyse how environmental laws should be appropriately adapted and strengthened to achieve the sustainable development goals, which would also be a good way for UNEP to participate constructively in the post-2015 development agenda.

60. One representative described an environmental performance rating and disclosure initiative used to secure compliance with the environmental impact assessment process in his country and strengthen public awareness and participation.

**(b) Trade**

61. Representatives raised a number of issues regarding the relationship between the environment and trade, including the growing tendency for free-trade agreements to include robust provisions pertaining to environmental protection. While perhaps offering a meaningful opportunity to standardize environmental protection in different economies, such a development also carried the risk that environmental disputes might be considered as subsidiary issues within the framework of free trade agreements rather than as primary issues under the multilateral environmental system, one representative warned. Another representative responded that his country had always taken the view that the environment and international trade were to be seen as mutually supportive. In free-trade agreements, international environmental obligations under multilateral environmental agreements were seen as distinct and not subsumed by international trade obligations; free-trade agreements might thus contain provisions that suggested or even required both parties to heed their environmental law obligations.

62. Another trend identified was the increasing establishment of international standards for products, processes and services, which one representative said could become a barrier to trade and needed to be examined from the point of view of environmental law. A related issue was the certification of laboratories, as evidence provided to courts was often rejected as not being from certified laboratories or not complying with specific standards; countries did not always have the resources to certify their laboratories. Activities under the World Intellectual Property Organization were also cited as a trade consideration affecting environment, having been a factor in the ratification of the Nagoya Protocol, with intellectual property laws requiring adaptation to permit implementation of the Protocol.

63. One of the invited eminent legal experts drew attention to recent efforts to broaden the arbitration rules of the United Nations Commission on International Trade Law, which would increase transparency if adopted. The proposed changes would not, however, apply to existing bilateral investment treaties unless the parties to those treaties so agreed. He urged all government officials to push for their Governments to join the United Nations Convention on Transparency in Treaty-based Investor-State Arbitrations, as cases involving them under bilateral investment treaties would then be covered by the new rules.

**(c) Health**

64. One of the invited eminent legal experts pointed to the intersection between public health and the environment, which she said was evident in work by the World Health Organization and the International Labour Organization, such as the Framework Convention on Tobacco Control and other work on the workplace, including for agricultural workers. There was also growing awareness of

epidemics and pandemics linked to environmental harm, with studies linking rises in ailments such as asthma, autism and childhood leukemia to environmental factors, particularly pesticides.

65. Two representatives reported that their countries, having signed the Libreville Declaration on Health and Environment in Africa, had developed action plans under the Declaration but lacked the financial resources to implement them.

**(d) Agriculture**

66. One of the invited eminent legal experts said that the environmental impacts of genetic engineering were beginning to be seen, including in the form of increased resistance to herbicides and other pesticides due to the use of genetically engineered crops. A very recent development that warranted specific attention and was of great concern to scientists was that of gene pushers, which caused changes to move very rapidly through a whole species, causing the entire species to have a new trait regardless of whether it was evolutionarily attractive.

**(e) Criminal law**

67. One of the invited eminent legal experts said that transboundary criminal activity had significant implications for cooperation between countries on criminal matters, as well as for extradition treaties; the latter, she said, should be updated to take environmental crimes into account. Several representatives said that financial penalties needed to be increased significantly if they were to constitute meaningful deterrents.

**(f) Natural resources**

68. One representative reported that the Caribbean Community (CARICOM) was developing a new framework for environment and natural resource management that would be governed under the auspices of the Revised Treaty of Chaguaramas Establishing The Caribbean Community including the Caricom Single Market And Economy, which had also established a Caribbean court of justice.

**5. Additional discussion of Montevideo Programme IV**

69. Following the discussion of the four major subject areas of Montevideo Programme IV summarized in sections 1–4 above, the Chair invited further comments on all four major subject areas.

70. In response, one representative drew attention to the issue of access to funds for the implementation of environmental law, expressing the view that such access should not reflect so much the desires of donors as the needs of recipients. Another said that environmental impact assessments did not always identify possible environmental risks and should be coupled with environmental management plans to mitigate such risks throughout the lives of projects. Another representative said that capacity-building was needed to help countries in Africa to deal with imports of waste electrical and electronic equipment disguised as second-hand equipment.

71. One representative said that his country had launched a pilot project to improve the effectiveness of environmental law that had resulted in the creation of a network of officials, including police officers and judges, and of a specialized office for environmental matters. His Government had environmental police forces that worked in close cooperation with the ministry of justice. In addition to capacity building and the creation of networks involving all relevant players, it was essential that when adopting environmental laws Governments allocate sufficient resources for their implementation.

72. Saying that the implementation of environmental law required a concerted effort by multiple institutions, one representative encouraged UNEP to initiate a member-State-driven process of compiling model laws and frameworks and to set up a programme to provide implementation assistance to countries upon request as part of an effort to realign its work under Montevideo Programme IV.

73. The representative of the International Union for the Conservation of Nature (IUCN) outlined the work of IUCN in the field of environmental law, which he said included the production of legal research, the provision of advice, the development of guides for the implementation of environmental instruments, the generation and dissemination of information, and capacity-building activities, which he said involved not only raising awareness about specific laws but also enabling people to understand and fully engage with the law. Areas of work included integrated planning for increased ecosystem resilience in the face of climate change, rights-based approaches to conservation, soil conservation, marine conservation beyond areas of national jurisdiction and environmental challenges in armed conflicts.

74. A representative of an environmental law non-governmental organization said that valuable lessons could be drawn from multi-disciplinary studies conducted in the Danube river that showed how different government agencies had cooperated to achieve environmental protection objectives, while also showing that certain agencies saw the river as nothing but a source of, for instance, inexpensive energy or transport. He also suggested that there was a need to support sustainable local communities, which he said were crucial to building resilience in the face of climate change and climate mitigation but in some countries faced difficulties because they did not fit into clear legal categories.
75. One of the invited eminent legal experts suggested that UNEP develop a database of legal officers from national environmental institutions and encourage legal officers to build a network among themselves. He also suggested that all representatives contribute to that endeavour to enable UNEP to promote sustainability and capacity-building.
76. Following the discussion above the Chair posed a number of technical legal questions that he said might arise with regard to human rights and the environment, the role of the judiciary in environmental matters, the criminalization of behaviours that violated environmental laws and harmed the environment, and climate change.
77. Regarding the first issue, he queried whether the link between human rights law and environmental law might lead to the latter being subsumed into the former, suggesting that the interpretation of violations of environmental rights as violations of human rights might mean that human rights bodies and institutions would have jurisdiction over environmental matters.
78. On the role of the judiciary in environmental matters, he asked whether repeated calls for increased involvement of judges in environmental matters might compromise judicial independence, suggesting as an alternative that future judges be trained in environmental law at universities.
79. On behaviours that harmed the environment, he queried whether criminalizing such behaviours was the most effective way to deal with them and suggested that administrative and civil law approaches be explored not only to sanction perpetrators but also prevent violations in the first place.
80. With regard to climate change, he asked whether it was possible to enact discrete climate change laws, suggesting that climate change causes, effects and adaptation were perhaps already embedded in environmental legislation and that it was possible to redesign such legislation, as well as the Montevideo Programme, to address the climate challenge.
81. He then invited representatives to address the questions.
82. On human rights and the environment, one representative, sharing the experience of her country, said that in countries where environmental issues had become secondary to other issues due to humanitarian crises and social turmoil strengthening the linkages between environmental protection and human rights was a way of ensuring that judges would tackle environmental issues.
83. One of the invited eminent legal experts said that the establishment of a nexus between human rights and the environment benefitted the international community and should not lead to the interpretation of violations of the environment as human rights violations. Another of the invited eminent legal experts suggested that the nexus offered an opportunity to use a human rights-based approach as a framework through which environmental issues could be addressed; for instance, it could serve to hold Governments and private actors legally accountable for protecting the constitutional right to a healthy environment. Another of the invited eminent legal experts said that human rights tribunals, on which she had served, did not decide environmental cases but rather human rights cases that sometimes happened to involve environmental issues. Human rights tribunals could not, therefore, serve to protect nature except incidentally when human rights were involved.
84. Regarding the role of the judiciary, one representative said that judges could be independent and at the same time serve the interests of the general population, which was affected by environmental problems from which judges could not isolate themselves. One representative said that in some countries judges could not escape from the influence of the executive branch or from pressure exerted by large companies. Another suggested that States be encouraged to make environmental law mandatory in the curricula of their law schools.
85. One of the invited eminent legal experts said that jurisprudence from the previous decade from countries such as India, the Philippines, South Africa and Nigeria showed that judges had benefitted from efforts undertaken by UNEP over the last decade to train the judiciary in environmental law and that they were prepared to take on the challenge of protecting the environment and human rights. UNEP had produced a compendium of summarized judicial decisions on environmental matters by judges from various countries, which was available on the UNEP website.

86. With regard to sanctions for violations of environmental laws, one representative said that both civil and criminal liabilities might be useful in promoting the implementation and enforcement of environmental law. Two representatives asked about standards that countries could follow in estimating damages for the purposes of environmental lawsuits.

87. One of the invited eminent legal experts said that UNEP had developed guidance to help countries determine whether civil or criminal sanctions were appropriate in a given case, suggesting that UNEP continue to compile good practices from member States in that area. Another of the invited eminent legal experts suggested that while administrative sanctions could play a role in environmental law criminal penalties could also be used, for instance to force companies that had caused environmental harm to engage in environmental remediation or restoration activities. Another of the invited eminent legal experts, observing that both civil and criminal penalties could have a role in a given case, said that the growing use of criminal law as a supplement to civil and administrative law to deal with violations of environmental laws had been one of the responses to past concerns that environmental sanctions were not serious enough to deter violations of environmental laws. She noted, however, that the likelihood of prosecution was more significant as a deterrent than the severity of any sanctions. Enforcement, therefore, was key.

88. With regard to climate change, one of the invited eminent legal experts said that recent reports by the United Nations Human Rights Council showed that the trend toward seeing climate change as a human rights issue was based on evidence that climate change affected health, food, water and sanitation, among other things. He encouraged representatives to read the reports, which were available on the Council's website.

89. In a subsequent session, further discussion took place on the four technical questions posed by the Chair. On that on the link between human rights and the environment, most of those who spoke endorsed the view that the right to a clean and healthy environment was a basic human right, with one adding that environmental protection was ultimately a matter of protecting human life. Several pointed out, however, that their national constitutions and laws did not yet recognize such a right. One said that the right to a clean and healthy environment was a relatively new development; it was therefore understandable that it would be attached to other existing rights, such as the right to health and employment and property rights, but that could give rise to contradictions. Another said that it was incumbent on Governments to create the conditions under which citizens could exercise their environmental rights. One representative, however, asked whether the aim of forging the link with human rights was to promote the greening of those rights. She also wondered whether an emphasis should be placed on the collective right of communities to decide how to protect and manage their own natural resources and whether the environment should continue to be considered within the existing framework of human rights law as opposed to talking directly about a right of the environment itself to protection.

90. On the role of the judiciary in environmental matters, one representative said that a country's judiciary had a core duty to protect the basic human rights of its citizens, including the right to a clean and healthy environment; another said that lawyers working in environmental law had to take full account of the science and that the development of environmental law had to keep up with scientific developments; and another added that it was important to reconcile the differing viewpoints of judges and environmentalists, which called for continuous capacity-building, training and the development of networks of experts for sharing expertise and best practices. One representative said that environmental lawyers were not in a position to present the underlying science of environmental protection, which meant that scientists had a key role to play in legal proceedings; she noted, too, that scientific conclusions might not always be sufficiently definite to satisfy applicable burdens of proof.

91. Some representatives questioned whether violations of environmental law could be dealt with by national judiciaries, suggesting that they should be brought before international courts to ensure impartiality. Some representatives said similarly that national judiciaries were ill-equipped to identify violations of environmental law, especially in conflict situations, and to settle disputes through conciliation and arbitration. Judges therefore needed training, which, according to one, was a matter for UNEP to address. Some representatives, however, suggested that judges might not welcome such an initiative.

92. On the question of the criminalization of behaviours that violated environmental laws and harmed the environment, many representatives acknowledged the need for deterrents to modify such behaviours. Several said that severe administrative, civil and criminal sanctions were needed, including not just punishment but also restitution; one added that information on criminal environmental rulings should be published. One representative said that the imposition of sanctions required effective action by the police and law enforcement agencies to assess the scale and nature of

any damage, adding that they needed to be equipped to play that role. Another said that efforts to prosecute environmental crimes in his country were still undermined by a lack of reliable scientific information. Several representatives said that awareness-raising was crucial to ensuring that citizens were cognizant of their rights and responsibilities and the fact that environmental law was being developed in their interest. In that vein, one representative expressed concern that some behaviours harmful to the environment were integral to local indigenous cultures in need of protection.

93. Several representatives said that their legal systems had yet to impose effective sanctions. According to one, the problem lay in the implementation of laws rather than in the laws themselves; the mainstreaming of environmental protection and institutional strengthening were therefore crucial, backed by increased funding for environment ministries. Another said that the authorities in his country refrained from imposing criminal sanctions in order not to obstruct negotiations with the industries concerned, adding that innovative use of criminal codes to enforce environmental laws was needed.

## **VI. Emerging and important issues in the field of environmental law, in particular in the programme areas of Montevideo Programme IV (agenda item 5)**

94. The representative of the secretariat introduced the documents relevant to the agenda item, which presented in summary form various matters that might be considered emerging issues. He noted that the Montevideo Programme IV covered a very broad range of issues, but had been prepared in 2008; in the ensuing years, therefore, significant developments might have taken place with regard to specific issues. The document described a range of emerging and important issues identified through a series of seminars and meetings that UNEP had convened, with the participation of experts, and then discussed developments with regard to environmental offences; air pollution and protection of the atmosphere; oceans and seas; the legal foundations of environmental sustainability; and other areas.

95. The invited eminent legal experts then gave presentations on emerging and important issues in the field of environmental law. They also served as resource persons and participated in the discussions that took place under the agenda item. Representatives of multilateral environmental agreement secretariats and other entities also provided information under the item regarding their organizations and related developments. The floor was then opened for general discussion.

### **A. Presentations**

96. One of the invited eminent legal experts spoke on the growing worldwide problem of noise pollution, which had been shown to be affecting not only humans but all mammals, causing temporary and permanent changes to the endocrine and other nerve systems, hearing impairment, hypertension, heart disease, sleep deprivation, immune system depression, stress, aggressiveness and low birth weight and impeding cognitive development in children. The monetized cost of such harm had been estimated in the European Union at 40 billion euros a year. Sources of noise pollution included vehicular traffic, aircraft and industry, and there were also growing impacts from personal music devices, sold without limit on the sound levels that they could generate. World Health Organization standards recommended that there should be no more than eight hours of daily exposure to sound over 85 decibels. Work in entertainment centres, concert venues, bars and similar places all entailed serious noise pollution, sometimes involving noise sufficient to cause pain, that is, at or above 140 dB for adults and 120 dB for children. There was thus a definite need for regulation of the issue as a public health problem. The World Medical Association had issued a statement on noise in 2007 in which it had recommended to Governments that the public needed to be better informed about the dangers of noise pollution, that ministers of transport and urban planning needed to take into account the growing public health threat of noise pollution and that appropriate regulations on noise needed to be adopted, monitored and enforced, including to protect workers and others.

97. Another of the invited eminent legal experts spoke about water security, noting that it was not strictly an emerging issue but rather one that was becoming more important with the progress of climate change. The issue presented two fundamental questions: whether water of adequate quality was available to sustain the well-being of society; and whether society was adequately protected from the extremes of droughts and floods. Many countries were affected by one or more aspects of water insecurity. The issue was thus not only one of securing enough safe water but also one of protecting the ecosystem itself against polluting activities including agriculture, mining, manufacturing and wastewater treatment. These problems were not simply matters of technology or infrastructure, but also of governance. At least 250 major watercourses were shared by two or more States, increasing the likelihood of conflict during times of environmental stress and in the context of climate change. The

challenge for transboundary watercourse States to achieve water security at the national level was therefore directly linked to international water security. There were models for national and international watercourse management that had been adopted by countries, but much remained to be done to ensure that countries' legal systems were in line with such models.

98. Another of the invited eminent legal experts gave a presentation on extractive industries and environmental management. Many countries were financing development through extractive industries, and effective regulatory, monitoring and evaluation frameworks covering those industries were lacking. At most extractive industries were required to pay fines for any harm to the environment but were not required to repair the harm. In addition a lack of transparency and accountability, as well as a power imbalance between small and relatively poor countries and massive multinational companies, had led to increasing corruption in many countries. Environmental damage was largely ignored and the industries largely unregulated. The situation raised several questions, such as whether corporate entities should be allowed to regulate themselves voluntarily on the basis of their presumed corporate social responsibility; whether national regulatory and accountability frameworks should instead be made stronger; how to strike a balance between profit and environmental damage and how to pay for tighter regulation; and whether sufficient mechanisms could be created to ensure the repair of any environmental damage caused. Ultimately, developing countries had to decide whether it was in their interest to continue to finance development through weakly regulated extractive industries and where to set the balance between profit and the environment. UNEP, he suggested, could help countries make that decision by guiding them towards documented best practices for attaining sustainable development.

99. Another of the invited eminent legal experts described challenges with regard to traditional environmental impact assessment. Stakeholders and Governments, she said, must work together to improve the situation. A new system of assessment was needed, and should be based on whether a given project was safe for people's health and for the environment, including at the ecosystem level. That had been made evident in China by the recent series of dramatic chemical explosions, which raised the question of why the existing assessment system had not predicted the disasters. There was clearly a need to upgrade the technology used for assessments, which would require funding.

100. One of the invited eminent legal experts spoke of several emerging challenges. One was the rate of change in environmental conditions, which he said was likely to increase. There were several reasons, including challenges posed by climate change, conflict situations, new technologies, water shortages and undoubtedly others as yet unknown. Both domestic and international environmental law and institutions would need to be increasingly agile if they were to keep pace with the increasing rate of change. The sustainable development goals shortly to be adopted by the United Nations General Assembly posed another challenge. Environmental law would be very important to achieving many of them, but the sustainable development goals themselves would not protect the environment; UNEP therefore needed to evaluate how environmental laws and institutions could help to achieve the goals. A further challenge related to governance. The current international environmental law system was fragmented and uncoordinated, with numerous multilateral environmental agreements having different administrative overseers, different management regimes and even different definitions for the same terms. Some coordination among all those groupings had been achieved, but more was needed. Another emerging issue was a large increase in bilateral investment treaties, many of which made no provision for the consideration of environmental concerns. There had also been a growth in jurisprudence, with many more cases being filed against countries, some of them involving huge sums of money and some being heard and decided in secret.

101. The representative of the secretariat of the United Nations Framework Convention on Climate Change examined the issue of fragmentation of international environmental governance, using as an example air pollution and the protection of the atmosphere and in particular the relationship between the climate change and ozone layer protection regimes. Hydrofluorocarbons (HFCs) were not ozone-depleting substances and were not currently subject to the regulatory regime of the Montreal Protocol on Substances that Deplete the Ozone Layer. They were, however, very potent greenhouse gases, subject to the Framework Convention on Climate Change and its Kyoto Protocol. Their use had begun relatively recently and was attributable almost entirely to their introduction as substitutes for chlorofluorocarbons, the latter being ozone-depleting substances subject to the Montreal Protocol. Their use, if unchecked, was expected to grow rapidly and to have a major negative impact on the earth's climate, with the potential to undo nearly all of the gains made to date under the climate protection treaties. In seeking to protect the ozone layer, then, the parties to the Montreal Protocol had created a serious problem for the climate. Discussions were under way aimed at phasing down HFCs by subjecting them to the Montreal Protocol. The climate change treaties, however, explicitly excluded from their coverage those greenhouse gases that were controlled by the Montreal Protocol. That raised the question of whether HFC emissions could continue to be regulated under the Kyoto Protocol if

they were made subject to the Montreal Protocol. More broadly, it demonstrated the significant impact that the fragmentation of environmental governance could have. Such impacts could also be caused by fragmentation not just within environmental governance but between environmental governance and other areas. Efforts to deal with climate change, for example, could have a direct impact on human rights. The Clean Development Mechanism, for example, had no safeguards concerning the impact of Clean Development Mechanism projects on indigenous peoples; as a result issues had been raised in some jurisdictions alleging that Clean Development Mechanism projects were having a negative impact on the rights of local and indigenous communities. It was thus essential to consider carefully how international environmental instruments might affect other international regimes.

102. The representative of the Ozone Secretariat then spoke, saying that his comments would very closely match those of the preceding speaker in the broad area of fragmentation and the need for coordination of international environmental law. The World Trade Organization, the World Customs Organization, the International Civil Aviation Organization, the International Maritime Organization, the Food and Agriculture Organization of the United Nations, and probably other international organizations as well, had had to deal with the Ozone Secretariat or the Montreal Protocol on issues relating to ozone-depleting substances. Those organizations thus had to deal with a treaty body's rules and procedures when they had had no input into the creation of those rules and procedures. UNEP or some other body might therefore be mandated to carry out a careful analysis of how environmental lawmaking in the environmental context was affecting – whether positively or negatively – the core functions and mandates of other organizations that were not necessarily concerned with environmental protection. It might be time to consider greater coordination among such bodies.

103. The representative of the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs drew attention to emerging ocean issues, including marine pollution from marine and land-based sources such as shipping, offshore oil and gas installations and land run-off; collective action to prevent further ocean acidification; and greater efforts to enhance the resilience of marine ecosystems. He highlighted the need to implement an integrated approach to ocean management, to promote the conservation and sustainable use of marine biological diversity of areas beyond national jurisdictions and for coordinated efforts by States, intergovernmental and non-governmental organizations to follow up and review the implementation of the sustainable development goals to be adopted in 2015, including the goal on the conservation and sustainable use of the oceans, seas and marine resources for sustainable development.

104. The representative of the Secretariat of the Convention on Biological Diversity said that several new and emerging issues in the area of conservation and sustainable use of biodiversity had been identified under the Convention over the years, including the production of biofuels, ocean acidification and climate-related geo-engineering, as well as “synthetic biology”, on which work continued under the Convention in order to identify its potential effects on biodiversity. While international action might be needed to regulate synthetic biology, it was not yet clear whether the issue would merit inclusion in the list of emerging issues for consideration by the international environmental law community.

105. The representative of the United Nations Development Programme suggested that in thinking about emerging issues it was important to put a greater emphasis on the private sector because, among other reasons, public funds would be insufficient to finance the transition to low-emission and climate-resilient development pathways. In that context, it was crucial that Governments create enabling environments to attract investments from international and domestic enterprises, including by setting up and enforcing adequate regulatory frameworks, by developing human and institutional capacities to deal with private investments, and by striking a balance, which might be different in different countries, between environmental protection and social and economic development to guide private sector activities.

106. The representative of the Organization of American States said that while a clear nexus between environmental protection and human rights had been established in the constitutions of many countries in the Americas, environment-related conflicts were increasing in the region due to droughts, lack of access to water and environmental degradation. It was therefore essential that the work of UNEP and its partners to strengthen the environmental rule of law continue, including in the areas of dispute settlements and public participation and access to environmental justice, and that a human-rights-based approach be used to promote the use of available legal mechanisms to address environmental issues.

107. The representative of an environmental law non-governmental organization suggested that the Montevideo Programme IV could play a leading role in the development of a new framework convention on chemicals, saying that such a convention was needed to achieve coherence between



existing chemical and waste treaties and to meet the objective set out in the Plan of Implementation of the World Summit on Sustainable Development that, by 2020, chemicals were produced and used in ways that minimized significant adverse impacts on human health and the environment. He said that the current piecemeal approach for dealing with chemical and waste issues was insufficient to achieve that objective given the exponential increase in the volumes of chemicals produced, the development of new chemicals and technologies that presented unknown risks, the greater number of companies involved, and the increased exposure of people to hazardous chemicals and wastes.

## **B. Discussion**

108. There followed a general discussion during which representatives suggested issues to be designated as emerging issues for priority consideration, including issues listed in the documents prepared by the secretariat (UNEP/Env.Law/MTV4/MR/1/3 and UNEP/Env.Law/MTV4/MR/1/INF/2). The issues proposed for consideration were waste plastics, including end-of-life plastic packaging, water security, noise, human rights, extraction of non-living natural resources, access to energy, environmental impact assessment, air quality, non-ionizing radiation, the misconception of environmental protection as an obstacle to economic development, environmental law as a means of building security and resilience, urban resilience as it related to the protection of ecosystems, the future shape of environmental law to overcome fragmentation of environmental law, and the implications of the new sustainable development goals for environmental law.

109. Initiating the discussion, one representative speaking on behalf of a group of countries welcomed the meeting document on emerging issues, saying that in conjunction with the document on priority areas it provided a solid basis to direct the work of UNEP. He stressed, however, that it would be essential to focus UNEP activities, perhaps by clustering main areas under a limited number of priorities, and that the proposed list of priorities should be assessed from that perspective. Several other representatives expressed support for the need to prioritize but one expressed concerns about the document, saying that it included statements that incorrectly characterized existing international agreements or customary international law, that in some cases seemed to prejudge the outcome of discussions under way under other United Nations processes and that depended on factual predicates requiring investigation. In addition, one representative suggested that greatest attention should be paid to issues that had global or at least transboundary implications. While agreeing that global or transboundary impacts were important, one of the invited eminent legal experts suggested that Montevideo Programme IV dealt with both domestic and international law.

### **1. Waste plastics, including end-of-life plastic packaging**

110. Two representatives proposed that waste plastics, including end-of-life plastic packaging, be treated as an emerging issue, saying that such waste threatened the world's oceans, seas and soils and posed a truly global problem that required urgent action at the international level, as no single country could address it on its own. Stating that the adoption of bans on plastic packaging might not be feasible in some developing countries because they could have significant negative socio-economic impacts, including on employment, one of the representatives suggested that efforts focus on options for the environmentally sound management of end-of-life plastic packaging.

### **2. Water security**

111. Noting that clean water was increasingly scarce, one representative said that his country viewed access to water as a right and had recently introduced a law making water public property. The representative of a non-governmental organization said that reduced access to water was one of the social stressors arising from climate change; such climate stressors need not necessarily lead to conflict, however, if laws, institutions and the capacity to cope with them were strengthened to allow conflict prevention, management and resolution. Montevideo Programme IV could have a real impact in that area.

### **3. Noise**

112. Noise was raised as a health issue and as an environmental issue in terms of its effect on ecosystems. Representatives underscored the technical complexities associated with the measurement and determination of noise disturbances. One country reported ongoing difficulties with the implementation of noise pollution legislation introduced in 2001 and requested capacity-building in the form of World Health Organization studies on the dangers of noise on public health. Saying that local communities, and especially elderly people, suffered substantially from noise, the representative of a non-governmental organization suggested that there were many gaps in environmental laws in that regard, as well as exemptions that protected certain noise-generating activities.

113. One representative suggested that noise was generally a local issue and as such perhaps not suitable for action at the international level; it was generally regulated by local laws, and in instances where there were transboundary effects it could be dealt with through transboundary environmental impact assessments or other means. Another, however, reported that a case in his country had been taken to an international forum by the petitioners after local and national authorities had been unable to resolve it; the case was still being considered.

#### **4. Human rights**

114. The representative of a non-governmental organization said that environmental deterioration prevented the enjoyment of human rights and stressed the importance of respecting the Rio principles, working with the private sector and strengthening regulatory frameworks and enforcement capacity to prevent such infringements. One representative said that while countries had signed both environmental and human rights international treaties they had not in every case fully integrated them into domestic law, including through implementing regulations. That created confusion for law enforcement agencies and, when environmental issues were at stake, might possibly lead to interpretations that contradicted international views on matters such as the right to an adequate standard of living. Harmonization of the relevant international instruments would therefore be beneficial.

#### **5. Extraction of non-living natural resources**

115. Representatives pointed to the growth of extraction activities and the importance of promoting and maintaining environmental standards to ensure sustainable development as key issues for many countries. The representative of a non-governmental organization said that if a region was not ready for extraction activities such activities could undermine both the environment and human rights. One said that while corporate social responsibility had not thus far prevented environmental degradation resulting from extraction activities it should nevertheless not be dismissed outright in favour of legally binding action as the exclusive means of addressing the problem.

#### **6. Access to energy**

116. One representative said that if credible energy substitutes were not provided energy demands would continue to put pressure on resources like forests, and ongoing efforts by States to support biological diversity and combat desertification, for instance, would fail to produce results. Consequently, access to energy was an important issue to consider.

#### **7. Environmental impact assessment**

117. Several representatives said that environmental impact assessment constituted an important tool that needed strengthening. Several called for expanding the kinds of development projects for which they were required and extending the public participation process and public access to information, including information on the advanced technologies proposed by investors. One representative, however, while allowing that the public had a role to play, argued that Governments should play the primary role in carrying out environmental impact assessments and implementing the resulting environmental management plans; in addition, environmental impact assessments should only be prepared by certified entities, and the implementation of environmental management plans should be overseen by the entities that designed the assessments. Another representative suggested that States were sometimes at a disadvantage when dealing with large enterprises and should work together to strengthen their positions and ensure that such enterprises complied with environmental management plans. The representative of a non-governmental organization said that efforts were often made to undermine the role of environmental impact assessments. A comparative legal analysis had revealed that European environmental impact assessment laws were frequently amended at the behest of large lobby groups; in addition the most important and environmentally significant activities often proceeded through legislation rather than individual permits, which had the effect of circumventing the public participation process.

#### **8. Air quality**

118. One representative suggested that there was a need to address air quality in major urban centres, saying that, although in her country individuals and companies whose actions caused or were likely to cause damage to the environment were subject to a tax or fee and were liable for redress under the law, the relevant laws were often not enforced. Thus, individuals, households and particularly car owners that caused damage to air quality were not held liable.

## 9. Non-ionizing radiation

119. Given the proliferation of electronic devices, one representative proposed non-ionizing radiation as an issue to be considered, noting that it had been identified as an environmental problem with demonstrated links to global warming, chemical reactions and the introduction of electrical currents into cells and tissues.

## 10. Environmental protection misconceived as an obstacle to economic development

120. The representative of a non-governmental organization said that environmental legal frameworks had been undermined and weakened over the past 10 years in the interest of promoting economic development, which she said would have a negative environmental impact and cause greater poverty and inequality. Even in countries where frameworks were not being weakened, they were sometimes undermined by exemptions for investment projects considered to be of national interest. That phenomenon needed to be explored.

## 11. Environmental law as a means of building security and resilience

121. Pointing to UNEP work in Afghanistan, Liberia, Sudan, Sierra Leone and other countries, the representative of another non-governmental organization highlighted the importance of continued work on helping conflict-affected countries adopt, amend and implement a broad range of environmental laws on everything from environmental impact assessment and framework environmental laws to laws governing water, land, minerals, forests and a wide range of other natural resources. It was important, he said, to remember that environmental law was not only a technical issue, but also a highly social issue, and UNEP experience in conflict-affected settings should be assessed to identify learning on strengthening environmental law in conflict-affected states.

## 12. Urban resilience as it relates to the protection of ecosystems

122. Noting that countries had been discussing the issue of urban resilience in the context of adaptation to climate change, one representative said that it should be looked at separately. There were many aspects of the issue, including migration, access to sanitation, urbanization and land planning.

## 13. Future shape of environmental law to overcome fragmentation of environmental law

123. Recalling the increased synergies seen in the past decade in the chemicals and waste conventions, one representative called for further work to increase synergies between multilateral environmental agreements in other areas such as biodiversity, saying that improved coordination would result in a better system at the international level.

## 14. Implications of the new sustainable development goals for environmental law

124. A representative speaking on behalf of a group of countries proposed that UNEP perform an analysis of the implications of the newly-agreed sustainable development goals for environmental law at the national, regional and global levels and for continued UNEP work on the implementation of the Montevideo Programme.

## 15. Other

125. The representative of a non-governmental organization raised the issues of neglected crops on which poor people were heavily dependent and neglected tropical diseases, both of which he said merited more attention.

# VII. Priority areas for action in the field of environmental law for the period up to 2020, bearing in mind Montevideo Programme IV (agenda item 6)

126. Introducing the item, the representative of the Secretariat drew attention to the relevant note by the secretariat (UNEP/Env.Law/MTV4/MR/1/4), which, among other things, presented a list of possible priority areas for action in the second half of the decade covered by Montevideo Programme IV, which had been compiled from the outcomes of previous meetings and seminars, along with an initial analysis of the implementation of Montevideo Programme IV.

127. In the ensuing discussion, several representatives expressed appreciation for the document as a basis for the deliberations at the current meeting. One representative, however, supported by another, said that references to a holistic approach and synergies should not be seen as a call to merge different institutions into a single organization, which could lead to significant inefficiencies. He also said that it was important to avoid prejudging the outcomes of current studies on fostering closer coordination between the chemicals and waste conventions or the negotiations under way under other

United Nations processes and that Montevideo Programme IV should focus strictly on priority-setting for concrete action areas likely to produce real, measurable improvements in quality of life, human health and environmental protection in the few years remaining until the end of 2019.

128. On the overall objective of strengthening the effectiveness of environmental law, many representatives called for an emphasis on capacity-building and training to clarify the roles and responsibilities of judges and prosecutors, environmental management system operators, members of civil society and other stakeholders. One representative, speaking on behalf of a group of countries and supported by several others, suggested practical steps such as the networking of practitioners; information-sharing among implementing agencies for effective environmental risk assessment; and further work to reinforce synergies between multilateral environmental agreements. Another representative said that it was important to harmonize the procedures used in environmental law and in criminal and civil law. Another said that there was a need to develop independent and impartial conflict resolution mechanisms. Several representatives emphasized the establishment of specialized environmental courts, the costing of environmental damage and the use of the precautionary principle.

129. Many representatives said that there was a need for an intersectoral and multidisciplinary approach; several said that such an approach was crucial to developing comprehensive, integrated solutions to the complex and interconnected challenges of environmental protection and that public participation was of particular importance. The representative of IUCN underscored the increasingly complex nature of environmental laws, as reflected in the broad scope of Montevideo Programme IV, and said that their effective implementation demanded, among other things, that national judiciaries be strengthened; he recommended a focus on institutional strengthening and capacity-building at the country level, and in that context, he drew attention to efforts by his organization and UNEP aimed at the gradual establishment of a global judicial institute for the environment. One representative said that the establishment of such an institute should be a priority.

130. Several representatives said that too little attention had been devoted to the negative impacts of poverty on the effectiveness of environmental law, with one calling for an emphasis on providing support to developing countries in assessing effectiveness and another for legal aid for poor communities.

131. On the links between environment and security, some representatives suggested that the scope of the proposed priority action area should be broadened to include peace-building. One highlighted the potential role of environmental law, with the requisite institutional strengthening and standard-setting, in preventing the proceeds of illegal activities in wildlife trade and mining from being used to finance armed conflict and organized crime. Another drew attention to the significant challenge of environmental protection during conflicts, especially those involving armed groups that did not adhere to the same rules as States.

132. On the reference in the document to the green economy, one representative, supported by several others, said that the green economy was not the only means of achieving sustainable development.

133. On the question of climate change, the representative of the United Nations Framework Convention on Climate Change said that UNEP had a key role to play in assisting countries to develop national legislation in preparation for the entry into force of the new climate change regime, including through the identification of best practices.

134. Other aspects to consider for the further development of environmental law included a focus on multilateral compliance mechanisms; the place of scientific evidence in environmental law; access to streamlined environmental information systems; legal frameworks and guidance for the effective management of land, soil and air quality; guidance on incorporating the sustainable development goals into national legislation; international benchmarks for liability and damage compensation regimes associated with the extractive industries; the role of parliaments and the disruptions caused by changes in Governments following elections, especially in developing countries; and combatting all forms of corruption, with an emphasis on transparency and reporting.

135. Following the discussion above, the representatives reviewed the possible priority areas for action in the field of environmental law during the remaining period of the Montevideo Programme IV listed in paragraph 47 of the note by the Secretariat (UNEP/Env.Law/MTV4/MR/1/4). The objective of the discussion was to provide specific comments on each of the areas listed in subparagraphs (a)–(w) of paragraph 47 in order to facilitate the drafting of the recommendations and conclusions that would emerge from the current meeting. The comments are summarized below, sub-paragraph by sub-paragraph.

**(a) Strengthening laws to criminalize certain activities in order to combat environmental offences and crime, taking into account links with money laundering, the financing of drug trafficking, terrorism and human trafficking**

136. A number of representatives proposed textual changes to this priority area, including the addition of a reference to the development of a holistic approach to environmental offences, ranging from prevention and detection to sanctioning and remediation; the expansion of the area's scope to include non-criminal environmentally harmful behaviours and clarification of the role of UNEP and other actors under the priority to facilitate its implementation; a reference to the development, rather than just the strengthening, of laws to criminalize certain activities; and a more precise definition of the activities that should be criminalized.

137. Other proposals included the possibility of merging the priorities described in subparagraphs (a) and (b), which referred to different aspects of environmental crime and offences, with a number of representatives expressing support for keeping them separate, and clarification of whether the terms "strengthening laws" also referred to law enforcement, with two representatives suggesting that merely strengthening rules was insufficient and proposing that UNEP encourage national Governments to ensure that sufficient funds were allocated for environmental law enforcement. Two representatives expressed the view that the priority area addressed political matters that went beyond the authority of environmental legal experts, with one suggesting that UNEP organize a ministerial meeting to discuss the proposed priority and the other suggesting that the current meeting "encourage" the proposed activities. Another representative said that it was important to establish a nexus between environmental crimes and other types of transnational crime that caused environmental harm.

138. One representative cautioned that focusing on criminalizing environmentally harmful behaviours as a priority might not achieve the behavioural changes desired because, among other things, judges and prosecutors might not want to pursue crimes if they perceived the sanctions for specific behaviours to be too harsh. Another representative said that sanctions should be tailored to different kinds of offences. Another suggested that there was a need for guidance to help countries determine the conditions that environmentally harmful behaviours should meet to merit criminalization. A proposal was made to include illegal activities such as illegal mining and illegal tree-felling as a separate priority area, considering principles and criteria that might serve as a framework for the development of national rules. One representative emphasized the need to promote criminology in this area.

**(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**

139. Some representatives said that corruption and other criminal activities should be recognized as important factors underlining crimes and other illegal activities in the field of the environment. One representative said that it was necessary to consider the state of environment in addressing the topic.

**(c) Strengthening the implementation of, compliance with and enforcement of environmental law, including through the application of existing international law to the environment, the sharing of experience, the creation of models and the sharing of best practice, and through the coordination of international environmental law at the national, regional and global levels, thus ensuring complementarity**

140. Proposed changes to this priority area included the inclusion of a reference to the promotion of mechanisms for ensuring compliance with and enforcement of international environmental law; the inclusion of a reference to mechanisms for strengthening the institutions responsible for the application of such law; and a reference to the implementation of international environmental law, rather than the law itself, as the object of coordination. One representative said that environmental law should be enhanced to facilitate the implementation of sustainable development goals. The representative of an environmental non-governmental organization called for a reference to the importance of lessons learned in the sharing of best practices. One of the invited eminent legal experts suggested a reference to the establishment of a forum to enable national legal experts to share practical experiences on implementation, compliance and enforcement.

**(d) Assessing the role of litigation, including public interest litigation 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**

141. Proposals under this priority area included the inclusion of text regarding the facilitation of sharing of and access to environmental information to enable the prompt and effective assessment and management of environmental risks; a reference to alternative, non-judicial, dispute resolution mechanisms; and a reference to “national texts” so that information on domestic environmental laws and not just court cases would be compiled and updated. Representatives of environmental non-governmental organizations suggested the inclusion of language specifying that access to justice should be equitable, timely and not prohibitively expensive, as well as language highlighting the role of public interest litigation, including compliance with judgments.

142. A number of representatives expressed the view that the right of associations working for the defence of the environment to turn to the courts should be recognized, with one suggesting the need to revisit the concept of interest in judicial proceedings to enable any association to bring environmental cases to the courts. One representative cautioned that by opening the door to associations there was a risk that entities with no real interest in the environment would bring lawsuits that might lead to serious backlogs in the courts.

**(e) Assisting States in developing more effective environmental legislation and, in that context, developing such legislation (both general legislation and that required to implement particular treaties) based on good governance and principle 10 of the Rio Declaration on Environment and Development; developing criteria to assist States in assessing the effectiveness of environmental law; developing incentives to move towards the green economy, including through appropriate pricing mechanisms; and developing incentives for more effective implementation and enforcement of environmental law**

143. One representative proposed re-drafting the priority area to enable the initiation of a member-State-driven process aimed at assisting States to strengthen their laws and policies for environmental and health protection through the compilation of national legal models from which they could draw. Another proposed replacing the term “green economy” with “environmentally-sustainable economy”, in accordance with language used in paragraph 25 of the Secretariat note. Some others also expressed disagreement with the reference to a green economy, with one saying that the concept was not in line with many of his country’s objectives and another that his country favoured eco-socialism. Another representative, however, opposed changing the reference to a green economy. Representatives of environmental law non-governmental organizations suggested the inclusion of references to environmental and social development indicators and a separate subparagraph spelling out the role of civil society in developing environmental law.

**(f) Considering follow-up mechanisms to check on commitment and 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**

144. Two representatives suggested that this priority area should involve assessing not commitments in the field of the environment but rather compliance with such commitments.

**(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 the effectiveness of multilateral environmental agreements**

145. The representative of an environmental law non-governmental organization suggested that subparagraph (g) include references to environmental and social development indicators.

**(h) Encouraging action by non-State actors in the field of environmental protection and, in particular, the private sector, to become more environmentally responsible; and exploring the effectiveness of voluntary instruments to supplement corporate and social responsibility mechanisms to implement environmental and sustainable development goals**

146. Discussion on this priority area focused on the objective that was being pursued. One representative said that she understood the objective to be movement away from command and control approaches to approaches through which the private sector would regulate and monitor itself and create records that Governments could review. A formal partnership between Governments and the private sector was therefore needed, as were partnerships with other private actors, such as elders, the academic community and cultural and religious institutions, that could contribute to environmental protection. Another representative agreed that a formal partnership delineating the responsibilities of each partner for environmental protection was needed.

147. Another representative said that corporate social responsibility, which had long been recognized and had been considered at the United Nations Conference on Sustainable Development (Rio+20), should not be seen as an alternative, but rather as a supplement, to environmental regulations. Under such an approach, companies would have to comply with national environmental laws and take voluntary action beyond legal obligations in order to, among other things, improve their corporate images. Representatives of environmental non-governmental organizations called for references to standards developed under multi-actor forums, including corporations; voluntary measures in the private sector; administrative agreements; and sustainable local communities. Another called for a separate subparagraph spelling out the role of civil society, as distinct from corporations, in environmental law.

**(i) Enhancing water security in the face of climate change and other environmental pressures, strengthening environmental legal frameworks and compiling best practices and good governance models for ensuring ecosystem health, managing conflicting uses, and adequate and equitable access to safe water and water supply**

148. Changes were proposed to the wording of subparagraph (i) to ensure that a legal action was being proposed, as well as to introduce the notion of “water resource management”, as “water security” related to human beings while water resource management related more to environmental protection. One representative also argued for a mention of soil, as soil degradation was related to water quality degradation, but two others said that that would introduce an unrealistic and confusing focus on contaminant-free water, whereas access to drinking water appeared to be the actual goal of the subparagraph. One of the invited eminent legal experts suggested references to the protection of drinking water and to integrated river basin management. The representative of an environmental non-governmental organization called for a reference to sustainable local communities.

**(j) 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 global commons and under the auspices of the General Assembly of the United Nations**

**(k) Developing a mechanism to enable States and relevant organizations to adopt a more holistic and coordinated approach to prevent and control 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 emissions and for the protection of the atmosphere**

149. With regard to both subparagraphs (j) and (k), concern was expressed that they included statements that treaded on negotiations taking place under other United Nations processes or other intergovernmental processes, and alternative wording was proposed accordingly with support from several representatives. Another proposed modification for subparagraph (k) related to language that rendered the action more concrete in order to achieve more concrete results.

**(l) Developing standards and procedures for extractive industries, including addressing the impact on the environment and on communities**

150. On subparagraph (l), one representative proposed the inclusion of an explicit reference to marine subsoil extraction, as the activity was quite new and might not be understood to be an extractive industry. New wording was also proposed to specify the international nature of the proposed standards, taking into account links with the relevant regimes on liability and compensation for damage, and the nature of the communities in question, and a focus on transparency was suggested to echo the Extractive Industries Transparency Initiative.

**(m) Compiling a list of best practices on noise pollution, taking into account national and regional provisions, and proposing ways of addressing the issue, taking into account in particular considerations raised in the context of spatial planning and transport policy, the effect of noise pollution on fauna, energy policy and the human rights dimension**

151. A change was proposed to clarify the language of subparagraph (m), and a phrase was added to specify that noise was in principle addressed at the national or local level rather than the international level. One representative, supporting the proposed action, referred to the right to combat noise pollution in his country as a major milestone. Other representatives proposed to clarify that necessary action was to compile best practices to combat noise pollution. The representative of an environmental law non-governmental said that spatial planning, mentioned in subparagraph (m), deserved its own subparagraph.

**(n) Continuing to emphasize the importance of and further refining guidelines on environmental impact assessments, including their transboundary aspects; improving 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 on humans and the physical environment**

152. With regard to subparagraph (n), suggestions were made to broaden the reference to environmental impact assessments to include strategic environmental assessments and environmental audits so as to underscore the importance of environmental assessment directives. The representative of an environmental law non-governmental suggested the inclusion of a reference to the importance of human rights in guidelines on the use of environmental impact assessments.

**(o) Facilitating the promotion of laws encouraging renewable energy, including possible synergies and coordination of trade and investment laws and ways of integrating other considerations; collecting and sharing good practices; studying legal issues surrounding deployment and application of energy-relevant technologies, including energy extraction technologies**

153. While only small changes were suggested to the wording in subparagraph (o), one representative, supported by two others, made the point that it was not laws that were lacking with regard to renewable energy but rather means. Following on that, suggestions were made to incorporate a mention of technology transfer or incentives in relation to renewable energy. The representative of an environmental non-governmental organization called for a reference to sustainable local communities.

**(p) Protecting the most vulnerable, including in environmental emergencies, taking into account environmental protection and human rights and considering legal and regulatory responses to the displacement of persons resulting from environmental and climate change**

**(q) Addressing legal aspects and implications of adaptation to environmental stress and climate change, including with respect to the management of shared natural resources**

154. To address concerns that the text in subparagraphs (p) and (q) might interfere with discussions under way in various other United Nations processes, there was a proposal to combine the two in a much shorter form and retaining the core ideas. One representative, however, emphasized the



importance of maintaining a focus on the protection of the most vulnerable and suggested that those subparagraphs be kept separate.

- (r) Enhancing the response of the international law community to 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**

155. There was considerable discussion of subparagraph (r), with a number of conflicting wording proposals that would emphasize and expand references to plastics on the one hand and marine debris on the other. Consequently, one representative suggested that subparagraph (r) be split into two parts, one dealing with plastic waste and another with maritime debris, regardless of its source. Some representatives proposed to analyse legal gaps and the need for and benefits of global legal instruments and other appropriate approaches to addressing the environmental threats listed in this subparagraph. Another representative urged the clarification of the respective responsibilities of countries according to their handling of plastic waste. There was a view that it was necessary to simply address plastic waste irrespective of whether it was on land or at sea. One representative, on the other hand, said that existing international treaties concerning marine pollution and dumping at sea were not adequate to address the problem of marine debris, which included not only plastic waste but also other waste. Another representative said that there was a need to focus on marine pollution from marine debris. One representative called for action on all types of wastes.

- (s) Using law as a tool to reduce poverty, with a focus on the environmental harm caused by poverty and environmental conditions that contribute to poverty**

156. An addition was proposed to the text of subparagraph (s) to underscore the fact that poverty was not a legal issue and thus could not be solved by laws. It was also suggested that the link between poverty and environmental protection should be clearer in the text. The representative of an environmental non-governmental organization underscored the relevance of the issue, citing examples of activities by relevant United Nations bodies.

- (t) Promoting a more coordinated and holistic approach in the field of international environmental law to address a broad cluster of global environmental issues. In this context, assessing the feasibility of developing either an overarching international legal framework on environmental sustainability or one focused on relevant clusters of subjects and conducting a study on the feasibility of a framework convention in the field of chemicals pursuant to section III, programme area F (f), of Montevideo Programme IV**

157. One representative, suggesting that the proposals under subparagraph (t) implied a significant rewriting of existing international environmental law, proposed the addition of text describing the proposals as a longer-term objective, while noting that an assessment referred to in the second sentence could be undertaken in the shorter-term. Another representative proposed to delete much of the subparagraph, arguing that the proposal would mean rewriting international environmental treaties and customary laws as well as prejudging the ongoing assessment of synergies among the Basel, Rotterdam and Stockholm conventions, and instead called for language urging countries to support the Global Alliance to Eliminate Lead in Paints and to advocate for the elimination of harmful levels of lead in paint by 2020. Another representative suggested a reference to action to ban the use of certain plastic containers. The representative of an environmental law non-governmental organization said that a feasibility study of a framework convention on chemicals should be a priority, as it would generate useful information for considering ways to achieve the 2020 goal of chemicals safety set by the World Summit on Sustainable Development; simply undertaking such a study could not be considered to be prejudging any issue. One of the invited eminent legal experts said that given the nature of Montevideo Programme IV it would be appropriate to include a long-term goal as described in this proposal rather than exclude it.

- (u) **Strengthening and supporting countries in developing and adopting policies, laws and regulations that prevent a negative impact on human rights or the environment, including, as particular focus areas, with regard to indigenous peoples and disadvantaged and vulnerable groups; gender and the environment; effects of climate change on human rights; transparency in dispute settlement; the interface with principle 10 of the Rio Declaration on Environment and Development; and access to essential ecosystem services**

158. One representative proposed to include updating of policies and laws, in addition to developing and adopting them, as necessary action. Another representative expressed concern that the second sentence of subparagraph (u) combined and confused diverse concepts, and proposed to delete the reference to the contents enumerated as particular focus areas. Some other representatives pointed out that the focus areas stipulated in this subparagraph were important and suggested that they be referred to in a separate new paragraph. The representative of an environmental law non-governmental organization, echoed by another, suggested that the subparagraph should address reparations and redress as elements of the relationship between the environment and human rights, emphasising also the importance of addressing the focus areas. Another called for inclusion of a reference to experience under regional organizations such as the Organization of American States.

- (v) **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**

159. No specific comment was made on this priority area.

- (w) **Furthering the understanding of the linkage between environment and security and promoting further application of environmental norms to military establishments and their activities and the protection of the environment during armed conflict**

160. One representative said that subparagraph (w) infringed on discussions under way before the International Law Commission and suggested that it be deleted entirely. Several other representatives, however, said that it was important to retain the proposal in this subparagraph as it was covered by Montevideo Programme IV, and some of them underscored the importance of the application of environmental norms to military establishments, while one representative said that the military had a specific role to play in dealing with natural disasters and another said that it was important to protect the environment during armed conflict. Agreeing with the latter, another representative said that the interrelationship between environmental law and peace should be recognized. Some other representatives said that it was important to address the linkage between security and environmental protection. In addition, two of the invited eminent legal experts said that UNEP had an excellent record of cooperation with other international bodies, including the International Law Commission; its work on water and the consequences of armed conflict were of particular value to the work to be done under the Montevideo Programme, especially given that the International Law Commission consisted of legal professionals rather than environment experts.

161. One representative, supported by another, proposed the inclusion of text on the conservation of soils and the designation of soil conservation as a priority area. The proposal was supported by one of the invited eminent legal experts, who suggested that UNDP participate in the development of relevant guidance.

## VIII. Recommendations and conclusions

162. Following consideration of the priority areas under agenda item 6, as described in section VII above, the Government representatives decided to establish a drafting group made up of representatives of ten countries and open to participation by other interested parties to prepare draft recommendations and conclusions from the current meeting for consideration by the representatives in plenary. The group was asked to prepare draft recommendations and conclusions on the basis of the note by the secretariat, taking into account the discussions on the document held under item 6.

163. Following the work of the drafting group its chair reported that the group had agreed on draft recommendations for consideration by the representatives in plenary. After further discussion and

amendment of those draft recommendations the Government representatives adopted them, as set out in the annex to the present report.

## **IX. Adoption of the report**

164. The Government representatives adopted the present report on the basis of the draft report (UNEP/Env.Law/MTV4/MR/1/L.1 and Add.1), as orally amended and on the understanding that the Rapporteur, working in consultation with the Chair, would finalize it, including to incorporate an account of the proceedings on the last day of the meeting.

## **X. Closure of the meeting**

165. Following the customary exchange of courtesies, the Chair declared the meeting closed at 6.55 p.m. on Friday, 11 September 2015.

## Annex

### Recommendations

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 may be 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.