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Switzerland – Report, Section I - III (Agenda item 5)

I. Introduction

Thank you co-chair, let me state a few elements that we think are missing in the Secretary General's report.

We are missing a general notion on the intrinsic value of the environment such as stated in the Preamble of the CBD: "Conscious of the intrinsic value of the global environment and of the ecological, social, economic, scientific, educational, cultural, aesthetic, and recreational values of the environment and the ecosystems".

We also miss an in-depth embedding in the existing legally and non-legally binding documents available for the international institutions and civil society in a way that the "Non-paper" elaborated by France has done in a comprehensive overview.

Also, the importance of planetary boundaries with respect to social and economic development is not adequately reflected. This is also relevant when assessing the environmental-related instruments further down below.

II. Gaps concerning principles of international law

The report lists existing principles that are part of different instruments and are supposed to be codified. However, as several Member States have mentioned, Switzerland thinks that there is a risk that re-formulating principles may fall behind many of the well-established key principles of international environmental law, while in fact any codification attempted should also reflect newer evolutions.

Some of the principles as laid out in the initial Draft Project by France, are not addressed in the SG's report, e.g. intergenerational equity, environmental damages, resilience, etc. In addition, we consider it necessary to account for the missing principle of equitable use of resources:

In other cases, we are missing the appropriate reference for a specific principle. For example, the Espoo Convention recognizes the principle of "Environmental democracy" (articles 2.2, 2.6, 3.1, 3.8 and 4.2).

Other principles in the SG report have evolved. Precaution for example: precaution has evolved since Rio:

- there has been an expansion to human health,
- the threshold of serious or irreversible damage has been lowered and,
- the cost-effectiveness requirement has been abandoned.

These evolutions are reflected in the CBD, SPS Agreement, Cartagena, Stockholm;

- moreover, precaution has gained new elements like provisional measures.

Further, there is a risk in codifying relatively new principles. The probability of establishing new principles that are robust and strong enough is relatively low.

There is the question of how a codified principle in a pact would relate to a same or similar principle in other policies? For instance, the "Right to clean and healthy environment": How would it differ and relate to the "right to a healthy environment" as recognized within the human rights treaties? If there is no difference, what is the added value. More so streamlining "environment" in other policies may be more beneficial to the protection of the environment per se.

In case of adopting a pact of codified principles the next question concerns their legal implications? For example, the “right to clean and healthy environment”: Would this establish an actionable/enforceable right to a healthy environment? Would this e.g. mean that citizens living next to a road with heavy traffic could sue the government of the city to limit traffic?

III. Gaps relating to existing regulatory regimes

- On an overarching note over the specific thematic fields of the environment, we believe it is crucial to understand the relationship of a pact and the existing multilateral environmental agreements.
- The SG’s report rightly states that agreements and treaties can often only reach agreement through deliberate use of constructive ambiguities and gaps. Yet the report sees the main added value of an overarching framework in the clarification and reinforcement of principles. We see that as a consequence, such a retroactive clarification and reinforcement might, in turn, counteract and preempt future compromises in treaty language needed for agreement. However, the report does not adequately take this risk into account throughout its assessment of gaps.
- We have specific comments on the thematic fields of the environment as laid out in this chapter. These comments are not meant to as an incentive to update the report. We think, however, they will be useful to illustrate the true need, that is to strengthen governance structures.

On Protection of the atmosphere

- The report does identify a gap in the governance of geoengineering. Please note that Switzerland is preparing a resolution on that particular topic to be addressed at the upcoming UN Environment Assembly. It shall initiate the conversation on the topic of geoengineering and its governance. We believe that UNEA shall take on the decisions on emerging issues as the mandate of UNEA is to provide the overarching policy guidance on the environment.
- On the Minamata Convention on Mercury:
 - a) We are of the opinion that this process belongs to the considerations under subchapter *F. Regulation of hazardous substances, wastes and activities*.
 - b) The SG’s report identifies a gap on data reporting. We disagree on this gap since COP 1 adopted a framework to fulfill reporting obligations. The chemicals and waste cluster in particular is exemplary as it addresses the fragmentation by harnessing synergies.

On Conservation of biological diversity, and protection of soils

- We are of the opinion that this subchapter should also account for the “sustainable management of forests”, just as it does for soils. That element is missing in the title.
- In addition, we are missing several important aspects, such as the overuse of ecological resources or the increasing global e-commerce trade of species.
- Further, some deliberations are incomplete or not quite accurate:
 - For example, it avoids telling that the Ramsar convention attaches itself to the Environment Management Group and the biodiversity group to which all the MEAs dealing with biodiversity belong. In addition, the report does not say that the inland waters of the CBD are dealt by the Ramsar convention.
 - Also, there are some inaccuracies in the paragraph pertaining to the Nagoya protocol.

On Protection of freshwater resources

- This part of the report is ignoring that there is another much more complete and more stringent water convention, i.e. the UNECE Convention on the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) with a fully developed institutional set-up and of a global scope. The UNECE Water Convention deals with all impacts, and all underground waters and it includes a compliance mechanism.

- The report is speaking, in this subchapter about insufficiency, patchwork, mosaic, and the resulting gaps. We must, however, recall that both the Watercourses Convention and the UNECE Water Convention were designed as global framework conventions, and as such cannot be tailor-made to local conditions.
- Other conventions with a strong impact on freshwater should also be referenced appropriately in this subchapter, like the Ramsar convention or the chemical and waste conventions with their impact on water quality.

On Protection of oceans and seas

- This report lays out the large gap in the protection of the marine environment from (micro)-plastics. An identified gap we also judge as a gap to be addressed. Under UNEP and its Assembly this specific gaps is being addressed and there are some significant decisions expected for the upcoming UNEA. Again, we are of the strong opinion that UNEA is the appropriate place to decide on the political steps with respect to the global environment agenda.

On Regulation of hazardous substances, wastes and activities

- We believe imposing quantitative restrictions on the generation of wastes within specific time frames on an international level will not prove to be effective. Minimization of waste generation has to regulated on a regional or national level;
- We are missing the mentioning of the possible reasons that hinder states to ratify the liability and compensation regime with respect to transboundary movements of hazardous wastes and why this is a major gap in the international legal framework.
- In relation to the statement that legal intervention in the areas of land-based disposal as well as recycling and reuse is either minimal or non-existent we are missing the mentioning of the work of the Basel Convention in relation to environmentally sound management of wastes and legal clarity.

In concluding, we see that there are certain gaps pertaining to existing regulatory regimes.

Switzerland is of the opinion that:

- Improving the implementation mainly depends on the political will.
- Overarching principles cannot address the gaps in this area. We must assure that we choose bottom up approaches. The response options in this respect are f.ex synergies among MEAs in order to decrease overlap and increase coordination;
- And, we also believe that the Global Environmental Goals can serve a response option to streamline the engagement of the various MEAs;

In a nutshell, the specific comments made here and the practical experience has shown us that improving the international governance structures is needed for the gaps in implementation and to stimulate the political will.

Thank you.