



HIGH COMMISSION OF THE REPUBLIC OF UGANDA
NAIROBI

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The High Commission of the Republic of Uganda presents its compliments to the United Nations Environment Programme (UNEP) Secretariat and pursuant to the First Substantive Session of the Ad-hoc Open Ended Group established in accordance with the United Nations General Assembly Resolution 72/277 has the honour to submit herewith attached Uganda's Comments on Gaps in International Environmental Law and Environment-Related Instruments: Towards a Global Pact for the Environment Report of the Secretary General.

The High Commission of the Republic of Uganda avails itself of this opportunity to renew to the United Nations Environment Programme (UNEP) Secretariat the assurances of its highest consideration.



NAIROBI: 27 February 2019

United Nations Environment Programme (UNEP) Secretariat
Nairobi

UGANDA'S COMMENTS ON GAPS IN INTERNATIONAL ENVIRONMENTAL LAW AND ENVIRONMENT-RELATED INSTRUMENTS: TOWARDS A GLOBAL PACT FOR THE ENVIRONMENT REPORT OF THE SECRETARY-GENERAL

INTRODUCTION

Uganda as a UN member state participated in the 1st substantive session meeting of the Adhoc Open – Ended working group established in accordance with UN General Assembly resolution 72/277, held in Nairobi from 14th to 18th January, 2019.

The delegation of Uganda made submissions on each of the topics for discussion as requested by the Co-Chairs and Rapporteur to all delegation during the meeting.

Following the deliberations during the January 2019 meeting and in accordance with resolution 72/277 the OEWG agreed to a way forward that all member states should consult in their respective states and submit comments to the Secretariat by 20th February 2019, ahead of the 2nd substantive session meeting to be held on 18th to 20th March, 2019.

Find below concluding comments of the Republic of Uganda;

1. Overall, we reiterate the observation made at the OEWG session meeting that the report does not clearly define gaps in international environmental law to aid discussion, nor did it exhaustively identify, assess or analyze the gaps as tasked by the General Assembly resolution 72/277.

2. Chapter I: Introduction

The introduction is critically written to avoid biased conclusions on the subject of study. It therefore fails to point the reader or discussants to the practical evidence of the findings. The report could give universal definitions on the key concepts in the assignment at the onset rather than near the conclusion of the chapter in Paragraph 7. A brief contextual approach to international environmental law, its linkage to national laws governing environment, extent of application of international environmental law and emerging issues, would also be helpful.

In paragraphs 3, 4 and 5 of the introduction chapter, the report should state or make reference to a discussion of the instruments that set obligations and which ones simply influence respect of norms or require incorporation of the principles into national legislation. Further the report could specify which environmental issues have been adequately addressed using the international norms and the non-binding instruments.

In paragraph 6 of the introduction chapter, the report should recognize the fact that the sectoral approach is informed by the segments that constitute environment and therefore, the different disciplines that have informed discussions and development of the several instruments on international environmental law.

3. Chapter II: Gaps concerning principles of international environmental law

A. Scope

In defining the scope of principles, the report makes observation that gaps have emerged from the evolving international legal regime for environment management but fails to observe that the evolution has equally been observed at all levels. Similarly, some of the principles if not most have emerged from soft law, best practice and others from identified need for cooperation informed by results of scientific studies. The section on scope should distinguish principles creating **obligations** and those **influencing** application through national legislation. A clear scope that recognizes the sources that will inform the analysis is critical. In our view the scope and status section of the report is not exhaustive, making the report difficult to discuss.

B. Status of the principles

The discussion on status of the principles did not follow the approach to the assignment. Since the report opted to contextualize the discussion on principles, it should have identified the fundamental principles of environmental law and how they have been integrated into the various instruments. It is our considered view that the discussion in the report should have exhausted the principles applied in environment management and then analyzed the effect or limitations these principles have had when applied to illustrate status, say to one of the CoP Conventions. Possible approach below is suggested to enable general readers appreciate the rationale presented. For instance, **the Duty to Cooperate** is provided for under Article 1(3)-Charter of the United Nations (as amended), June 26, 1945 and Principle 24-Stockholm Declaration. It is also applicable to the principles on Exchange of Information in General; Cooperation in Scientific Research and Systematic Observations; Prior Notification; Consultation; Prior informed Consent; Notification in the Case of an Emergence; and Principle of Emergence Assistance. Similarly, **the Duty to Avoid Environmental Harm** is applicable to Non-Discrimination between States; Pollution Prevention and Minimization; The Precautionary Principle; and Environmental Impact Assessment and **the Duty to Compensate Harm is applicable to** State Responsibility, State and Civil Liability, the Polluter Pays Principle, and Equal Access to Administrative and Judicial Proceedings.

4. Chapter III: Gaps relating to existing Regulatory Regimes

Noted is the observation that the regulatory regime is reliant on participation of all relevant actors, in pursuit of reconciled objectives of the given instruments and in acknowledgement of the differing circumstances, among other factors.

The report should have proceeded to discuss the regulatory actors for international environmental law; the principles guiding the regulatory regime and extent of application and gaps that exist. This chapter should particularly discuss the magnitude of actors, the challenges of coordinating the actors at the different levels, and a reflection on their authority, influence and limiting factors to sustain their regulatory mandate. To an extent this has been discussed under chapters IV and V of the report.

Should the thematic approach be preferred, the report should be focused on regulatory arrangements for the identified segments. This chapter should not shy away from bringing to voice the fact that some areas have been under discussed, researched or conceptualized. For instance, the discussion on soils, land and waste is still evolving.

Without prejudice to discussions relevant to chapters IV and V of the SG Gap report, we recommend that Chapter III (B), (C), (D), (E) and (F) of the report be reconsidered in light of the above comments and merged with Chapters IV and V. The current text may be revised and made part of Chapter II (B) discussing scope and status to provide clarity on how the principles have been applied.

5. Chapter IV: Environment Related Instruments

The Republic of Uganda believes that since 1992 Rio conference, a lot has been achieved in the arena of environment management and its influence in economic development processes. The myriad of the MEAs > 500 (as per the SG report) has been a consequence of the need to solve several environment (sectoral) challenges and others related to trade, investment, intellectual property and human rights issues.

Uganda is in agreement full agreement with the analysis, gaps and recommended actions in this chapter.

6. Chapter V: Gaps Relating to Governance Structures of International Environmental Law

The report discusses the governance structure acknowledging that there are several actors but does not illustrate the function of each structure in the governance of international environmental law. The linkages or strength for each structure should equally be discussed.

We note that governance structures are in place to facilitate and provide direction as well as ensure interaction and collaboration in the implementation and enforcement of agreed objectives under the several instruments. To effectively execute this, different actors and roles have to be assigned and put in place. The report observes that an estimated 200 treaty based institutions have been established to serve over 190 member states with multiple reconciled objectives.

We also note that in Paragraphs 81, 82 and 84 of the report, the complexity in coordinating the established institutions as well as the limitations in implementation, enforcement and assigning liability for harm is a reality. An analysis is critical to determine whether the governance structure requires a formal instrument to enhance monitoring of the application of international environmental law.

The proposals under paragraph 83 to cluster, map coverage and linkages, improve collaboration and establish a unified monitoring mechanism, among others are supported and encouraged. However, this should be mindful of the implications to compliance and enforcement arrangements at all levels as the beneficiaries may vary.

Therefore, further discussion on how to address the limitations to governance structure and implementation arrangements for the international environmental law is recommended.

7. Chapter VI Gaps relating to Implementation and Effectiveness of International Environmental Law

In the discussion under this chapter, the report should illustrate the extent of adoption and adaptation to the different norms established under international environmental law and how the obligations have been fulfilled. It is important to reflect on where we have effectively been successful in applying the principles of international law and draw lessons from our respective obligations towards making cooperation meaningful and beneficial.

The report should consider the contributions science makes to the development, interpretation and implementation of the environmental legal instruments and the different levels of implementation.

The limited capacity, weak data capture on implementation and application of guidelines, as well as the minimal technological transfer as pointed out in the report in paragraph 86 are also critical considerations to attaining effective application of a global legal regime for the environment.

Part C in paragraphs 90 to 93 and part D in paragraphs 94 to 99 of the report should be discussed under status of principles and regulatory regime to illustrate the challenges of their application and enforcement from the global perspective, regional and at national level. For instance of the 500 MEA's how many have universal adoption (ratification)? Could some of these principles have contributed to the slowing of adoption by countries and therefore the application?

Further, the report should recognize that environment by definition calls for segmented but integrated approach. Therefore, different disciplines inform the development, implementation and enforcement of international environmental law.

8. Chapter VII: Conclusions

The Republic of Uganda commends the Secretary General for putting a document together which aided the discussions during the 1st substantive session.

The Uganda delegation reiterate observations and comments that the report is not exhaustive to inform focused discussions and therefore drawing conclusions is premature. Although on environment related instruments, we are in full agreement with the whole text, the following is proposed to reach conclusions;

- i. The report should comprehensively provide the international environmental law principles - (thus whether established by binding instruments, customary or soft law).
- ii. The report should indicate which instruments establish the principles and whether there are limitations to their application and implementation.

- iii. Chapter III should clearly demonstrate that the regulatory regime is reliant on participation of all relevant actors, in pursuit of reconciled objectives of the instruments and acknowledgement of the differing circumstances, among other factors. The regulatory actors for international environmental law and the principles guiding the regulatory regime and extent of application or gaps that exist needed to have been outlined.
- iv. Part C in paragraphs 90 to 93 and part D in paragraphs 94 to 99 of the report should be discussed under status of principles and regulatory regime to illustrate the challenges of their application and enforcement from the global perspective, regional and at national level.

IN CONCLUSION, there is no doubt the final outcome of these negotiations is likely to have serious implications on the global, regional and national management of the environment. The Republic of Uganda remains committed to consistent participation in the negotiations with the objective of contributing to ensuring that the outcome enhances developing countries' capacities to protect the environment in a manner that promotes the achievement of their development aspirations as was agreed at Rio+20 or Earth Summit 2012.

FEBRUARY, 2019

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