



THE PRESIDENT
OF THE
GENERAL ASSEMBLY

27 March 2019

Excellency,

I have the honour to transmit herewith a letter dated 26 March 2019, from H.E. Amal Mudallali, Permanent Representative of Lebanon, and H.E. Francisco Duarte Lopes, Permanent Representative of Portugal, co-chairs of the ad hoc open-ended working group established by General Assembly resolution 72/277 of 10 May 2018 entitled "Towards a Global Pact for the Environment", circulating the oral summary of the second substantive session, held in Nairobi from 18 to 20 March 2019, and the provisional agenda for the third substantive session.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in blue ink, appearing to read "M. ESPINOSA".

Maria Fernanda Espinosa Garcés

All Permanent Representatives and
Permanent Observers to the United Nations
New York



26 March 2019

Excellencies, dear colleagues,

We wish to thank you for your active participation in the second substantive session of the ad-hoc open-ended working group established by General Assembly resolution 72/277 of 10 May 2018 entitled "Towards a Global Pact for the Environment", which took place from 18 to 20 March 2019 in Nairobi. We are encouraged by the exchange of views that characterized the session as well as the constructive engagement of all delegations.

As indicated during the session, we herewith provide you with the co-chairs' summary of the second substantive session that was delivered at the end of the session which focuses mainly on the discussion on possible options to address possible gaps in international environmental law and environment-related instruments. As we have mentioned during the session, while seeking to provide a synthesis of the wide-ranging views expressed at the second substantive session, this summary should not be interpreted as completely exhaustive and should be read together with the interventions made by delegations throughout the session.

As expressed during the second substantive session, we invite all delegations to send us their concrete proposals, in particular those expressed during the discussion on possible options to address possible gaps in international environmental law and environment-related instruments. These elements should be submitted to the co-chairs as soon as possible, and no later than 12 April 2019 at the following address: unenvironment-law-director@un.org and environmentny@un.org. When sending the concrete proposals, please indicate whether you wish to see them posted on UNEP's website.

Finally, we attach the provisional agenda for our next session as was agreed at the second substantive session.

Please accept, Excellencies, the assurances of our highest consideration.

A blue ink signature of Amal Mudallali, consisting of a stylized 'A' followed by a long horizontal stroke.

Amal Mudallali
Ambassador and Permanent Representative of
Lebanon to the United Nations

A blue ink signature of Francisco Duarte Lopes, featuring a stylized 'F' and 'D'.

Francisco Duarte Lopes
Ambassador and Permanent Representative of
Portugal to the United Nations

Co-Chairs' oral summary of discussion

Pursuant to General Assembly Resolution 72/277 of 10 May 2018 and the decisions taken at the organizational session and at the first substantive session, the ad-hoc open-ended working group (the working group) met in Nairobi from 18 to 20 March 2019 for its second substantive session.

The meeting focused mainly on agenda item 4 of the agenda entitled "Discussion of possible options to address possible gaps in international environmental law and environment-related instruments, as appropriate" and on the questions prepared intersessionally by the Co-Chairs with the purpose of further structuring and guiding the debate at the session.

Process

There was general agreement to have an open, transparent and inclusive discussion. Many delegations emphasized a) the importance of seeking consensus, and b) the need to reach pragmatic outcomes that provide added-value, while avoiding duplicating existing processes and initiatives.

There was wide support to the need of a) guaranteeing that the working group does not undermine or weaken existing instruments, in line with paragraph 9 of General Assembly Resolution 72/277, b) ensuring that the process is based on existing relevant political declarations, including the Stockholm Declaration, the Rio Declaration and the Rio+20 Declaration, and c) making sure that the work of this working group supports the implementation of the 2030 Agenda.

Definition of gaps

A number of delegations stressed that the working group should use a broad understanding of gap, one that can be read as including the concept of lacuna, deficiency or challenge.

Reference was made to the importance of the identification of gaps through a science-based process, as well as to the relevance of moving forward on the basis of a broader understanding on the gaps that need to be addressed.

Some delegations highlighted that some gaps cannot be considered as such, since they were voluntarily designed by Member States and were often the result of a delicate balance stemming from difficult negotiations. Others underlined that previous decisions by Member States should not prevent ambitious and innovative solutions today.

Principles

Some delegations identified gaps on principles, most of which related to their interpretation, unequal implementation and lack of consistency. Other delegations did not identify such gaps.

Some delegations mentioned that some principles have matured to become customary international law while others constitute soft law, and thus, further clarifications with regard to the scope of principles was needed.

Many delegations noted the added value of codifying or compiling principles to support implementation at all levels, improve consistency and facilitate interpretation, including by developing a common understanding. Different views were expressed as to whether it should only encompass widely applicable and agreed upon principles, or also emerging ones. In this regard, some delegations noticed that an instrument could also clarify new emerging principles.

In order to have more clarity on the nature of principles, some delegations suggested waiting for the International Law Commission (ILC) to conclude its works on general principles of law, while others indicated that this was not a necessity as the ILC is not addressing specific principles of international environmental law.

A few delegations added that a new instrument on principles would also apply wherever there is a vacuum of multilateral environmental agreements or regulations.

Some delegations warned about the risk of renegotiating or reopening principles as well as weakening existing ones, especially given the fact that one principle can be found in different instruments and have different formulations and interpretations.

Several delegations said any further work on principles should be based on the Rio Declaration. Some of them recalled, in this regard the importance of, inter alia, the principle of common but differentiated responsibilities and respective capabilities. Others reiterated the primacy of the principle of national sovereignty over natural resources¹.

Options mentioned in relation to this issue included but were not limited to:

- Negotiation of a new instrument – in this regard, different views were expressed on the nature and format of such an instrument: a legally-binding instrument, a high-level political declaration, a document agreed by the General Assembly. Views were expressed that the nature of the instrument can be determined at a later stage, namely in the context of a negotiation process launched for the purpose of developing such an instrument. Furthermore, for some delegations, the negotiation of a new instrument does not have to be limited to principles and might also include other aspects, including means of implementation. Several delegations voiced objections against negotiating a new instrument, some of them noting that it was premature at this stage to mention the need for such an instrument.

¹ Concerns were raised with regards to the specific reference made in the co-chairs' summary to these two principles. It was stressed that such a reference did not acknowledge other principles that had been brought up during the discussions.

- Holding further intergovernmental negotiations, be it through the creation of a group of experts mandated by the General Assembly, through the United Nations Environment Assembly (UNEA), or refer to the International Law Commission.
- Establishment of an International Court for the Environment. Several delegations voiced their opposition to such an idea.

Governance

Many delegations agreed that the working group should support the strengthening of governance of international environmental law. They underlined that the lack of coherence and cooperation between the different instruments contribute to creating challenges in implementation and fails to address the natural interdependence between ecosystems. There was a broad agreement that any recommendation regarding governance needs to respect the independence of each instrument or body.

Several delegations underlined the role of the United Nations Environment Programme (UNEP) and UNEA in strengthening governance of international environmental law and the need for the full implementation of paragraph 88 of the Rio+20 Declaration.

Many delegations supported further action to strengthen cooperation and synergies among and between relevant instruments and bodies, including different regulatory regimes and environment-related instruments. Others noted that so far initiatives aimed at improving cooperation and coordination had not provided all the results expected.

Several of the options mentioned to address gaps in governance were considered in connection to regulatory regimes and environment-related instruments. For some delegations, any issue pertaining to environment-related instruments should be considered in each specific and competent forum.

Options mentioned in relation to these issues included but were not limited to:

- Strengthening UNEP and UNEA, consistent with paragraphs 88 and 89 of the Rio+20 Declaration.
- A call by the General Assembly for increased cooperation and coordination among Multilateral Environment Agreements (MEAs).
- A call by the General Assembly to all Member States that have not done so to ratify the MEAs and effectively implement them.
- The creation of working groups tasked with identifying possible synergies to be explored by different instruments and bodies.
- The creation of a specific forum where representatives of relevant instruments and bodies could meet and coordinate, while indicating this could also be done under UNEA.
- A call by the General Assembly for more mainstreaming of the environment within the United Nations system including through coordination mechanisms such as the environment management group.

Implementation

Many delegations recognized that the lack of implementation constituted a key gap in international environmental law. For some other delegations, such gaps rather constitute challenges.

In this connection, the following gaps were identified by delegations: lack of capacity-building, of financial and technical resources, lack of access to funding and environmentally-friendly technologies, lack of prioritization in political decisions related to insufficient political will, weak compliance mechanism and weak monitoring. Many delegations reaffirmed that means of implementations need to be strengthened, some noting that it should be the main focus of the working group, which should result in reinforcing international cooperation and effective means of implementation, including provision of the necessary funding, capacity building and transfer of technology.

Some delegations put emphasis on the importance of generating political will to address implementation gaps.

A number of delegations stressed the variety of legally-binding commitments related to means of implementation which have not been implemented in an appropriate way. In this connection, they suggested that the Secretariats of the different MEAs need to be provided with the sufficient means to support developing countries to implement their obligations.

The importance of compliance was underlined, including through the development of a compliance mechanism. However, some delegations did not find it appropriate to have a global compliance mechanism, suggesting this should rather addressed within the sphere of each specific MEA.

For a number of delegations, mobilization of funding should go beyond environment funds and any proposal should build on the existing processes and instruments (Global Environment Facility, Agenda 2030, Addis Ababa Plan of Action). The need to avoid politization of access to funding was also mentioned by a few delegations.

Options mentioned in relation to this issue included but were not limited to:

- With respect to finance, the role of UNEP could be strengthened to identifying concrete and innovative measures to ensure the necessary support to developing countries, including through UNEP Finance Initiative.
- Recommendation for the General Assembly to look at best practices and good models in public-private partnerships and for the private sector to develop and promote environment sound initiatives.

- Recommendation to Member States making full use of the Montevideo programme to foster the environmental rule of law and support the implementation of environmental law at all levels.
- Request that UNEP, as chair of the Environment Management Group (EMG) and in collaboration with other relevant actors (MEAs and UN Funds), develops system-wide strategies and provide guidance on how the United Nations system can best support Member States facing implementation issues.
- Strengthening the interlinkages between the different scientific bodies.
- The centralization of all the existing corpus of international environmental law on a website with a facilitated access, and the development of a framework on the exchange of data and knowledge.

**Ad hoc open-ended working group
established pursuant to General Assembly resolution 72/277
Third substantive session
Nairobi, 20-22 May 2019**

**Provisional agenda of the third substantive session of the ad hoc open-ended working group
established pursuant to General Assembly resolution 72/277**

1. Opening of the session.
2. Adoption of the agenda and programme of work.
3. Statement on the financing of the activities of the ad hoc open-ended working group.
4. Consideration of the draft recommendations.
5. Consideration of the draft report of the working group.
6. Other matters.
7. Closure of the session.