

Inputs from MGS cluster Env Governance and Law.

3rd Consultation meeting Res 73/333

Nairobi

16-18 February 2022

Wednesday 16 February AM:

1. This political declaration **must enshrine the human right to a clean, healthy and sustainable environment**. Not only following its recognition by the Human Rights Council but also an upcoming decisive vote at the General Assembly in New York. Not following this would severely damage UNEA's reputation as the world's environmental assembly. And would be clearly a party spoiler for UNEP@50 celebration.
2. **We would like to see a bold commitment from member states** to follow up on this declaration and make work of a **framework for env governance and law** (with concrete principles, goals, targets and indicators) together with sufficient means of implementation/capacity building etc and review mechanisms, like the UPR (HR Commission) or EPR (OECD).
3. UNEP should be the leading UN body **to ensure** (not only promote) **the enforcement of env governance and law**, and should support member states in achieving this goal. Making a stronger bridge between Nairobi to regional and national levels is key, if not all good resolution will maintain dead letter. Civil society engagement is very important here, as they often hold national governments accountable for the commitments they made on the international level.
4. We do see that the **2030 Agenda integrates the three dimensions**, including the environmental one. First of all: This agenda ends within 8 years ! But more important: a reality-check outside shows us that the environment is not protected, still overexploited and often undermined by the other two dimensions. Therefore we stress **the importance of having the environmental priorities as a 'stand alone' policy and have that institutionalised in governance structures**. Mainstreaming is important, but let the environmental challenges not be « awaystreamed. » The existing trend of having less ministers for environment worldwide is really concerning, and shows clearly that env priorities are getting undermined by other policies. It is very important that UNEP/UNEA has an own agenda as well, totally in line with her mandate.

Thursday 17 February AM:

5. Several Member States have insisted that the declaration remains within the scope of the UNGA resolution 73/333. We agree with that. However, the mandate of the resolution is to **strengthen** the implementation of international law and governance, **not** to maintain the current state of affairs as it is.

6. Yet, today's discussions make us fear a **risk of regression**. For example, the notion of "environmental rule of law" had been accepted by MS in paragraph 17 of resolution 73/333, as was also correctly stated by some Member States. **PP9 and OP9 should maintain this wording: environmental rule of law.**
7. We also need **strong legal principles** to balance economic development with environmental protection. A rethinking of what kind of development we want is also necessary. This is why we argue that **PP5 needs to go further than simply restating the principles of the Rio Declaration.**
8. Despite the Rio principles, **unsustainable development practices have continued**. We see that with huge infrastructure works or fossil fuel plants that are built without consideration for the environment and local communities, or when forests are felled down for monoculture of biomass, going parallel with land grabbing. That we consider as "bad development". When local communities protest against it, it is considered as "anti-development". That's why we so often experience that economic development tends to undermine environmental protection. And that's why we are defending a strong independent protagonist for the environment, as UNEP should be.
9. **On OP1**, it is important, as some MS stated, that we indeed **commit to enhance the legal and governance** framework. It is not enough to stick to the principles that were agreed 30 years ago. The degrading state of the environment requires us to update the operating system that governs the environment. Public goods (air, clean water etc.), nature and wildlife are often not mentioned in national and international law. The focus is often limited to protecting private interests with little or no consideration for environmental protection. **This needs to change.**
10. **OP8**: Recognize the Right (not just the importance) of access to information, access to public participation in decision-making processes and access to justice in environmental matters and the important role of environmental defenders and their protection in this regard.
11. **OP 9**: The ambition of this resolution should be to **commit to continuously strengthen (etc. (instead of seeking))** and we would also like to maintain "environmental rule of law" as stated in 73/333.
12. **OP 10**: Maintain "principles of international environmental law in enhancing the implementation of international environmental law" as was stated in paragraph 8 of 73/333.
13. **To summarize:**

Overall, Member States need to:

 - **Strengthen** the implementation of international law and governance.
 - Dispel the **risk of regression**.
 - **Enhance the current principles of environmental law and governance.**
 - Particularly, and in addition to what was said yesterday morning on the right to a health environment:

- **PP5** needs to go further than simply restating the principles of the Rio Declaration.
- **PP9 and OP9** should maintain the wording on environmental rule of law.
- **OP1** should commit to enhance the legal and governance framework.
- **OP8** should recognize the right of access to information, participation in decision-making processes and access to justice in environmental matters.
- **OP 10:** Maintain the wording on principles of international environmental law.

Thursday 17 Febr PM :

14. We would like to recall that the declaration being negotiated these days is in the context of the 50th Anniversary of UNEP. Since 1972, thousands of legal texts including goals and commitments have been agreed to protect our planet's environment. However, these texts have not been effective as expected. It makes no sense to negotiate documents which are not going to be respected and therefore not implemented. Thus, we stress the urgent need to implement and enforce the commitments agreed in the last 50 years to protect the environment. For that reason, the rule of law is key. Without rule of law there is no environmental protection, without rule of law principles of environmental law such as the CBR are entelechies.

15. It cannot be obliterated the interlinkages between the human right to a healthy environment with principles of international environmental law such as the CBR principle so many times recalled in the draft declaration. In addition, it cannot be overlooked the intimate relationship between implementation and enforcement of MEAs with achieving Agenda 2030 objectives and targets enshrined in the SDGs.

16. For that we need:
 - 1. Strong governance and rule of law at the international and national levels and this declaration has to facilitate them and in addition this declaration should end up with a strong commitment to start working on concrete goals, means of implementation and compliance mechanisms.
 - 2. The drafting work today has emphasized to fulfil commitments under MEAs. For that purpose, the governance setting of MEAs is essential and particularly the compliance mechanisms. Although compliance mechanisms have been included in several MEAs not all MEAs have such a mechanism. At the same time, a very few of those allow the public to participate and file submissions to them. It is already clear that the action of States alone is not enough to implement the internationally agreed commitments. In fact, one essential element of sovereignty of states is their population. Without population there is no sovereignty. Therefore, population, citizens must be allowed to file submissions to compliance mechanisms of MEAs. For this reason, we make a call to introduce such a statement in the declaration. This could be done in para OP10. adding after the expression "national legal systems" the following "as well as to establish Compliance Mechanisms in MEAs lacking those

mechanisms and open existent and new established compliance mechanisms to submissions by the public to improve their implementation”.

17. We have been following with concern the dialogue on para OP15 which might represent a regression of principle 10 of the Rio Declaration. The Rio Declaration also included the CBR principle so supported in these negotiations, then principle 10 on access to information, public participation, and access to justice in environmental matters is at the very same level as CBR principle. And the UNEP rule on public participation by UNEP legal advisor are based in principle 10.
18. We would like to stress that we fully endorse the EU proposal for OP bis on the report on “The UNEP we want”. We know that a preambular part of a declaration is just aspiration for that reason we would like to see it in the operational part (OP).