



Input by Switzerland

for the Second Substantive Session of the Ad hoc Open-ended Working Group established pursuant to General Assembly resolution 72/277

Disclaimer: Please note that this document here should only be considered as a preliminary input and cannot be taken as the official position by Switzerland. Please find the summary, including the particular asks towards the Co-chairs, at the end of this input paper.

Switzerland welcomes the opportunity given by the co-chairs to provide written inputs in-between the first and second substantive sessions. In order to fulfill the mandate at the end of the third session, we are of the opinion that each session must have an outcome, sequentially leading the working group from one session to another. That means that each of the session must be equipped with appropriate documentation *ahead* of the session (input). The documents will then streamline and guide the discussions during the session towards an anticipated outcome at each session.

We would also ask the co-chairs to look into different formats of interaction that could be applied *during* the sessions. In particular, this holds true when the working group is to explore gaps and possible response options. A valuable example of a successful explorative setting stems from the working group under UNEA on marine litter and microplastics. It combined an informal and open setting followed by a formal part that lead to recommendations.

We ask to the co-chairs to provide a basis for the second session based on the inputs received by the member states and including the following elements (s. also box at the end of this input paper).

On possible gaps

While there are various definitions of what a gap is and what the nature and reasons of gaps are, there is no need to agree on a narrow understanding of the concept of gaps. *The input document provided by the chairs for the 2nd session may give an overview of some concepts of “gaps” and then propose a broad general understanding, indicating that for the purpose of this exercise, gaps are areas where sufficiently clear guidance from international policy and law is missing.*

On possible options to address possible gaps

The SG's report sees the main added value of an overarching framework in the clarification and reinforcement of principles. While there may be a certain value in agreeing on up-to-date, ambitious and clear formulations of key principles, we also see several risks in attempting to codify or re-formulate principles. First, re-formulating principles implies re-negotiation which may result in an outcome that falls behind many of the well-established key principles of international environmental law. Second, re-formulating principles should also reflect new challenges and new evolutions – agreeing in a negotiation process on new formulations to allow well-established principles to address also new challenges and reflect new evolutions may also be a very demanding exercise. Third, trying to codify relatively new, not yet fully matured principles bears the additional risk of not being able to agree on a sufficiently robust, clear, strong and guiding manner. Fourth, a codification and strengthening of principles always bears the risk of limiting future evolutions. And fifth, trying to codify a principle in a general and horizontal manner for all different areas limits the possibility to target principles to specific needs and challenges

of specific sectors. Finally, it must be unmistakably clear how an outcome document of this process that tries to codify general principles relates to the existing multilateral agreements.

International environmental governance and the interplay of the different elements of international environmental law are areas, which we should aim to strengthen. First of all, we must also bear in mind that multilateral environmental agreements do not cover all areas of environmental challenges. There will always be a gap in that respect, and is mainly a reflection of the prioritization the member states have been given towards the environmental challenges.

While in general, we are of the opinion that the implementation of the multilateral environmental agreements works well, we also see room for improvement. We consider the strengthening of the international environmental governance as one way forward towards a more effective implementation. For specific issues in implementation, we believe bottom-up approaches are best suited to address gaps like for example synergies among multilateral environmental agreements.

There is not one single way to address possible gaps. Therefore, processes or a end product that shall address gaps must not be restricted to the goal of codifying general principles. A pact as initially proposed cannot be the sole solution for addressing the many gaps, for example for strengthening the governance structure. *Therefore, the input document for the second session should outline different options how identified gaps can be best addressed, with what kind of measure.*

On how to pursue possible options to address possible gaps:

Switzerland considers a step-wise and systematic approach to making recommendations a suitable way forward: A gap or gaps as identified by the Ad hoc Open-ended Working Group and possible response options to address these gaps should be the drivers for the recommendations to the UN General Assembly and hence the recommended outcome of this process. *We expect that the second session's outcome will be an agreeable overview of the most important gaps (in a broader sense) vis-à-vis a suggested response option to close that particular gap. This includes a risk assessment when applying a particular response option.*

There is a particular momentum and a certain appetite among the member states to look at international environmental governance in a broader sense and put the “environment” (back) on the highest political agenda. There is need for an appropriate “hook”, a commemoration to mark a milestone for international environmental governance. We see that in Stockholm+50 in 2022. In addition, there are the Global Environmental Goals as part of the existing multilateral agreements, now called the internationally agreed environmental goals. They have an intrinsic value, however, do not have the visibility they deserve to have. In contrast to the SDGs some of those goals are legally binding. Could there be an opportunity for the goals in a “global pact”/outcome?

In our view, recommendations of this Ad hoc Open-ended Working Group should take the possible gap or gaps as the starting point facing them individually with a suitable response option in order to close the gap. Gaps may be of varying depths and breadths, which in our understanding must be taken into account when addressing the issue. Bearing the diversity of possible gaps and the risks of re-formulating principles in mind, a pact must not be restricted to one single response option. In contrary, with a pragmatic approach we lay out all the areas in international environmental law and governance that we need to improve on (mapping) and then identify the most suitable way to address that area.

In a nutshell, Switzerland is of the opinion:

- *The working group needs to establish a common understanding what the most important gaps are. The work should thereby remain focused on possible gaps in the international environmental regime.*
- *The working group also needs to come to the conclusion that there are multiple ways / options to address gaps: it could be codifying principles, strengthening governance, the formulation of a common goal e.g. around the GEGs and Stockholm+50, etc.*

In this sense, and to follow a pragmatic approach, we ask the co-chairs with the support of the secretariat, to ensure the following.

For the 2nd session (input documents):

- *Co-chair's overview of concepts of "gaps" and following a proposal for a broad general understanding of a gap, indicating that for the purpose of this exercise, gaps are areas where sufficiently clear guidance from international policy and law is missing;*
- *Co-chair's input document with a first draft of a list of gaps (based on SG's Report, 1st Session, inputs by member states) and subsequently outlining different options how these identified gaps could be addressed, including a risk assessment in particular for the existing principles, governance framework in place.*
- *Clear Outline of the 2nd and 3rd session: that includes an overview of inputs and outcomes, and suggested formats of the sessions.*