

**U.S. Submission to the Co-Chairs of the Ad-Hoc Open-Ended Working Group Established
by General Assembly Resolution 72/277**

April 12, 2019

In response to the invitation from the Co-Chairs at the second substantive session of the ad-hoc open-ended working group established by General Assembly Resolution 72/277, the United States wishes to submit the following views.

The United States has actively engaged in the ad-hoc open-ended working group. During the discussions at the first two substantive sessions of the working group, many have emphasized the importance that any recommendations delivered back to the General Assembly must be made with consensus and reflecting options that can be implemented and supported on a consensus basis. However, we regret that it is clear that there remains a lack of consensus on key issues.

No consensus on possible gaps to be addressed

The first two sessions have demonstrated that there is no emerging consensus on specific gaps in international environmental law and environment-related instruments to be addressed, or even a general sense among member states of areas where gaps may exist. As the United States noted in our previous submission and in our interventions, we do not believe the working group can rely on the Secretary General's report because it, and the possible "gaps" it identified, do not comport with the mandate in Resolution 72/277, and there were many inaccuracies in the report. No case has been made that any perceived gaps cannot be addressed through existing fora and mechanisms.

Further it should be noted that in negotiating existing environmental treaties and instruments, member states have in many cases made intentional choices to exclude certain elements. Such design choices are in no sense "gaps" that need to be filled, but purposeful decisions that take into account a careful balance of equities achieved by negotiating states and intentional decisions about what to regulate. Any working group recommendation must exclude such design choices from the conception of gaps.

Many options proposed are not feasible and lack support

Without consensus on the identification, or indeed the definition, of gaps, there can be no coherent discussion of possible options to address possible gaps, as laid out in the mandate given this group by the U.N. General Assembly in Resolution 72/277 and certainly there is no possibility of determining that a new instrument has been "deemed necessary." Nevertheless, and regrettably, the working group held unfocused discussions on a disparate set of options without a clear sense of what problems such options would in fact address. Several ideas were raised that clearly do not enjoy consensus support, and the United States would not support inclusion in working group recommendations. For example:

- First, it is clear from the first two substantive sessions of the working group that there is no significant support, much less anything close to consensus, for negotiating a legally binding instrument. Indeed, many delegations have indicated that such an

outcome would cross a red line for them. The United States will not support any recommendations to the General Assembly that include the possibility of a legally binding instrument.

- Second, there is also not convergence for proposals for a high-level declaration or renegotiating a common set of international environmental “principles” – even if in nonbinding form. In the working group discussions, a number of countries noted that such a negotiation would likely weaken certain standards and lead to more fragmentation and inconsistency if such principles were endorsed only by a subset of States. Some also felt that it would be almost impossible to achieve a general update of existing principles given the way that, for example, the Rio principles have been adapted in particular ways to be fit for purpose to address particular environmental issues.
- Nor should we seek to engineer an outcome that simply creates new layers of bureaucracy in the name of seeking undefined “synergies” among existing regimes, for example by creating elaborate new mechanisms or processes for joint action by treaty secretariats. We have found that such efforts often, in fact, increase costs rather than create efficiencies. Moreover, such approaches often disempower member states in their efforts to address concrete problems by focusing treaty secretariats away from their governing bodies and the priorities identified by member states, and towards external processes. While there are many positive current avenues for information sharing and cooperation – for example, participation of observers and information sharing channels – we do not see a value and have not seen any shared sense among member states that a top-down synergies effort is needed.

The way forward

The working group needs to take a realistic approach. In this context, a clear recommendation to New York is: no further action be taken. Member states have limited time and resources, and we should resist simply moving through the motions to negotiate an inapposite solution to an undefined problem. Such an approach would only yield failure, which could result in diminishing rather than increasing attention and energy to addressing environmental problems, and would in the meantime pull away limited technical, financial, and diplomatic resources.

In the absence of any consensus on specific gaps to be addressed, there is a general sense among many delegations that there is inadequate implementation of existing commitments and instruments. Rather than focusing on top-down approaches, however, the working group should consider how member states can focus efforts on finding pragmatic ways to improve implementation of existing commitments under treaties or instruments in which they have decided to participate, or in making progress on their own domestic priorities to seek clean air and clean water, and protect the health of their citizens. Of course, this will involve different solutions in different contexts, and the locus of such efforts must necessarily remain within the responsible governance bodies and existing processes for particular treaty regimes or

instruments. Such efforts should involve appropriate engagement with non-state actors, including the private sector and civil society.

We have seen time and time again that identifying solutions to international environmental problems involves finding pragmatic solutions to specifically identified challenges—and not through debating general principles in the abstract. A more useful exercise would be to focus on finding ways to help member states improve the implementation of existing commitments. Our revitalized discussions under UNEP’s Montevideo Programme, which has provided support for national-level enforcement of environmental law, has shown great promise on how we can support national-level enforcement of environmental law.