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Summary of the First Substantive Session of the *Ad Hoc* Open Ended Working Group towards a Global Pact for the Environment: 14-18 January 2019

The first substantive session of the *Ad hoc* Open-ended Working Group towards a Global Pact for the Environment convened on Monday, 14 January 2019 at the United Nations Office at Nairobi, Kenya. During the week-long session, delegates considered the report of the United Nations Secretary-General titled "Gaps in international environmental law and environment-related instruments: towards a global pact for the environment" (A/73/419). Approximately 288 participants attended the meeting, including government delegates, representatives of international organizations, and civil society.

The first substantive session was characterized by some as a "stocktaking" opportunity as delegations had their first chance to examine the state of the art in international environmental law (IEL) and environment-related instruments. With relatively little time to prepare recommendations for the UN General Assembly by the end of the first half of 2019, even the most ambitious delegations have observed that whatever package of recommendations emerges will probably, of necessity, fall short of what is objectively needed to completely overhaul the IEL regime, given the current climate for multilateralism and the risks that would accompany any attempt to force a new normative consensus.

On Tuesday afternoon, Stadler Trengove, UN Office of Legal Affairs, announced that, after a suspected terrorist incident in Nairobi, UN Security had temporarily and preventively sealed the UN compound. On Wednesday, Co-Chair Francisco António Duarte Lopes, Permanent Representative of Portugal, invited delegates to observe a minute of silence for the local and international victims of a city center terrorist attack and their families, and in solidarity with the government and people of Kenya. Delegations prefaced their statements with comments of sympathy and solidarity for those killed in the attack.

On Friday, delegates agreed to the agenda for the second substantive session, including an item on discussion of possible options to address possible gaps in international environmental law and environment related instruments, as appropriate.

A Brief History of the Proposal for a Global Pact for the Environment

In May 2018 the United Nations General Assembly (UNGA), in resolution 72/277, established an *ad hoc* open-ended working group (OEWG) to consider a technical and evidence-based report by the United Nations Secretary-General (UNSG) (A/73/419) identifying and assessing possible gaps in IEL and environment-related instruments with a view to strengthening their implementation. The resolution also recommends, if necessary, consideration of the scope, parameters, and feasibility of an international instrument, with a view to making recommendations that may include the convening of an intergovernmental conference to adopt an international instrument, to the UNGA during the first half of 2019.

The resolution of 10 May 2018, "Towards a Global Pact for the Environment," also called for the appointment of two co-chairs of the OEWG to oversee consultations. The UNGA requested costs to be met through voluntary contributions and that the UNSG establish a special voluntary trust fund to support the process.

Presented by France and sponsored by 71 delegations, the resolution sought to address the challenges posed by environmental degradation in the context of sustainable development. It was adopted by a recorded vote of 143 in favor and five against with seven abstentions. Emphasizing Nairobi's standing as the environmental capital of the UN, Kenya introduced an amendment that said all substantive sessions, rather than just the initial one, must be held in the Kenyan capital.

Origins of the Process

The conceptual origins of the proposal can be found in a 2015 report by the Environmental Commission of Le Club des

In This Issue

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Juristes (CDJ), "Increasing the Effectiveness of International Environmental Law: Duties of States, Rights of Individuals." The CDJ proposed the adoption of a Global Pact for the Environment to serve as a binding, universal "umbrella text" synthesizing the principles outlined in the Rio Declaration on Environment and Development, the Earth Charter, the World Charter for Nature, and other instruments shaping environmental governance. Supporters of the initiative envisage a new international instrument, modelled on the UN's human rights instruments, creating a third generation of fundamental environmental rights.

The proposal for a Global Pact was taken up in an initiative by the President of the French Constitutional Council, Laurent Fabius, after he presided over the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC COP 21) in 2015 and began to work with Yann Aguila, leader of the CDJ. Fabius has been recently appointed as a United Nations Environment Programme (UNEP) Patron on Environmental Governance. Environmental law experts were invited to hold a high-level meeting in Paris in June 2017 to finalize and launch a draft Pact after a three-month iterative process involving a Group of Experts from some 40 countries, led by members of the International Union for Conservation of Nature (IUCN) Academy of Environmental Law and the IUCN World Commission on Environmental Law. The draft was launched by the CDJ, in the presence of French President Emmanuel Macron, who committed to bringing the initiative to the UNGA.

France convened a "launch summit" for the draft Pact at a side event during the high-level segment of the 72nd session of the UNGA on 19 September 2017. France and other supportive Member States then introduced a draft resolution to the UNGA.

Organizational Session

The OEWG convened its organizational session from 5-7 September 2018 at UN Headquarters in New York (A/AC.289/2). The Co-Chairs of the Working Group are Francisco António Duarte Lopes, Permanent Representative of Portugal, and Amal Mudallali, Permanent Representative of Lebanon. The OEWG agreed the dates for its first substantive session. Dates for two additional sessions were agreed for March and May 2019, and were expected to take place "unless otherwise decided" by the Group.

Secretary-General's Report

In line with UNGA resolution 72/277, in December 2018 Elizabeth Maruma Mrema, Director, Law Division, UNEP, announced the release of the UNSG's report entitled "Gaps in international environmental law and environment-related instruments: towards a global pact for the environment" (A/73/419). This technical and evidence-based report reviews and analyzes the corpus of IEL and environment-related instruments as well as the governance structure and implementation of IEL, identifying gaps and deficiencies.

Report of the Meeting

The first substantive session of the *Ad hoc* Open Ended Working Group (OEWG) towards a Global Pact for the Environment was opened by Co-Chair Amal Mudallali on Monday, 14 January 2019. She thanked Kenya for hosting the session.

Macharia Kamau, Ministry of Foreign Affairs, Kenya, welcomed delegates. Describing the work of the OEWG as crucial, he acknowledged France's role in bringing forward the initiative. He described how the proposed pact could help address a fragmented IEL framework, and underlined the importance of working through the prism of the 2030 Agenda and the Sustainable Development Goals (SDGs).

Joyce Msuya, UNEP Acting Executive Director and UN Assistant Secretary-General, invited delegates to engage in frank discussion on which gaps exist in IEL and on the coordinating role of the UN system. She encouraged delegates to include civil society and academia in the process.

Co-Chair Mudallali recalled the OEWG's mandate as established by UNGA resolution 72/277, and underlined this session's focus on the UNSG's report (A/73/419).

Co-Chair Duarte Lopes emphasized the importance and magnitude of the OEWG's work, and urged a focused and results-oriented discussion to ensure that the OEWG delivers its mandate.

Adoption of the agenda and programme of work: Co-Chair Duarte Lopes introduced the provisional agenda (A/AC.289/3). Switzerland suggested that the Co-Chairs synthesize feedback on the report into a non-paper to serve as a basis for deliberations at the second substantive session.

The provisional agenda was adopted without amendment, and the OEWG agreed to organize work in accordance with the draft programme of work.

Financing of the activities of the *ad hoc* open-ended working group: Stadler Trengove, UN Office of Legal Affairs, reported on the status of the voluntary trust funds established by the UNSG to support the process and assist representatives of developing countries to attend the sessions.

General Statements

Ethiopia, for the Group of 77 and China (G-77/China), recalled the United Nations Conference on Sustainable Development (Rio+20) outcome on strengthening UNEP. He highlighted links between finance, technology transfer, and capacity building, and fully operationalizing IEL and related instruments, and stressed the principles of sovereignty over national resources and common but differentiated responsibilities (CBDR).

Romania, for the European Union (EU), offered continuing support for a global pact initiative and strengthening IEL and environment-related instruments. She called for discussions going beyond the UNSG's report, which she said should not become the center of negotiations. She cautioned that the OEWG's outcome should not lead to a weakening of existing environmental standards, and underlined the need for transparency and civil society participation.

Peru underscored the complexity of the OEWG's task, saying it must resolve issues of governance and implementation at both the systemic and national levels. He called for greater consideration of future environmental challenges, which, he suggested, the UNSG's report does not sufficiently address.

Zambia, for the African Group, questioned several dimensions of the UNSG's report, including that it does not sufficiently account for the role of the Rio and Stockholm Declarations, and suggested that strengthening the role of UNEP could play a central role in improving coordination in IEL.

Senegal suggested the UNSG's report identified important gaps in IEL and that in line with the favorable reception of the draft global pact in Dakar, her country supports "universal regulation that is solid, for everyone's well-being."

Iraq noted that the UNSG's report did not mention environmental protection in areas affected by armed conflict and acts of terrorism. He stressed that a global pact should, *inter alia*, support the most vulnerable countries, include the principle of CBDR, achieve climate justice, respect national sovereignty, and avoid duplication with other multilateral environmental agreements (MEAs).

Underscoring that the OEWG's work could result in a "watershed moment," Monaco stressed the essential role of international legally binding instruments in environmental protection. He highlighted the need for unity of IEL, and cautioned against renegotiating existing MEAs.

The United States (US) expressed commitment to engaging in discussions on whether gaps exist in the international environmental system that may need to be addressed, and if so, on actions to address such gaps. Highlighting that the UNSG's report does not comply with its mandate and is "not fully objective nor an accurate reference text," she said many of the perceived "gaps" identified reflect intentional decisions made by states in specific MEAs, and the report is biased towards the option of a global pact.

Argentina highlighted that any gaps and shortcomings in IEL are in implementation, and relate to financing, capacity building, and technology transfer, hinge on political will, and can be addressed through existing institutions.

Cuba underlined the importance of CBDR and cautioned against detrimentally affecting existing work. He indicated that a single instrument dealing with all issues would not be the most consistent way to address a wide range of problems, and called for more coordination across MEAs.

Iran attributed fragmentation in IEL and related instruments to inconsistencies, insufficient resources, unsound policies, inadequate instruments, and politically motivated positions. He cautioned against the creation of a comprehensive new instrument without recognizing root causes of gaps in IEL, and called for creativity in reviving existing environmental instruments.

Bolivia observed that the UNSG's report had disregarded many legal advances, especially on the rights of "Mother Earth" and stakeholders, including indigenous peoples. He cautioned against any move backwards, such as the abandonment of the principle of CBDR in climate change, and called for recognition of the interdependence of ecological and social systems, and the legacy of colonialism, global debt, and questions of ecological injustice.

Indonesia called for the inclusion of the leading principles of IEL in any new global pact.

The Philippines cautioned that the UN already has an integrative framework for sustainable development, and that agreed principles and agreements should not be renegotiated.

The Russian Federation emphasized that the OEWG should not set up a new framework, as fragmentation is a necessary feature to achieve consensus on environmental matters; that the principle of sovereignty over natural resources should be respected; and that UNEP's role should not be weakened by parallel structures.

The Federated States of Micronesia (FSM) expressed support for the UNSG's report, considering that small island developing states are particularly vulnerable and that MEAs have little use unless taken into consideration in a comprehensive approach.

Canada called for the OEWG to take a "pragmatic" approach, underscoring that existing MEAs should not be weakened and that the UN Environment Assembly (UNEA) remains the main environmental body in the UN system.

Egypt highlighted that deficiencies in existing treaties are the result of choices made by sovereign states. He stressed the importance of differentiation and capacity issues, and not using environmental considerations as disguised restrictions on international trade.

Colombia welcomed the UNSG's report, and stressed the need to bolster cooperation and coordination among MEAs as well as improve cohesiveness at the global level.

Algeria expressed full support for the OEWG's work.

China stressed the importance of: the principle of CBDR; providing assistance to developing countries; the principle of national sovereignty over natural resources; and the full engagement of developing countries. He said the OEWG's work should, *inter alia*: avoid overlaps with existing international instruments; pursue progressive development of IEL; and focus on global issues rather than bilateral or regional issues.

Guyana underscored that the OEWG process should: be inclusive, transparent, constructive, and meaningful; take account of prior agreements; and bring added value in terms of cohesion, coherence, synergies, and effectiveness.

Saudi Arabia cautioned that a global pact must complement existing approaches to IEL-making, and called for respect for national sovereignty.

Brazil described the growth and diversification of IEL as a benefit to the international community, rather than a problem, and cautioned that a hasty overhaul of the system could erase important concepts and principles including those universally recognized in the Rio Declaration. He highlighted the need to address insufficient coordination in the UN system and a lack of means of implementation.

Argentina, for the Latin American and Caribbean Group, called for focused attention on the specific implementation challenges for certain countries and the region.

India cautioned that the OEWG's work should not undermine existing instruments and called for a transparent, inclusive, and constructive Member State-led process, taking account of historic responsibilities, equity, justice, and CBDR.

Singapore called for an open, transparent and inclusive process.

Ecuador said the common denominator across MEAs is a lack of financial resources, technology transfer, and capacity building, adding that nature has a right to be respected and maintained, and calling for a universalization of existing IEL concepts.

Norway stressed the need to differentiate between gaps *within* existing MEAs, which must thus be dealt with by those agreements, and those that do not, and called on delegates to take advantage of current political momentum.

Morocco expressed support for harmonizing IEL, underscoring that, in order to safeguard our biosphere, all of IEL's aspects must support a common vision for the organization of human activity.

Japan suggested that this was a good opportunity to reflect on how the international community has addressed pressing environmental issues through MEAs, and expressed his delegation's particular interest in the governance structure of IEL.

Nigeria proposed that new and omitted principles be consolidated in a pact, and emphasized the importance of climate justice and expanding the rights of those suffering from environmental harm.

The Republic of Korea expressed uncertainty as to whether an overarching framework will address the gaps in IEL and related instruments, and said delegates should not negotiate the text of the UNSG's report.

South Africa stressed that her country will not accept any outcome with the unintended consequence of weakening existing environmental law. She highlighted the need for means of implementation, and said the principles of equity and fair and equitable benefit sharing were not adequately addressed in the UNSG's report.

New Zealand stressed the importance of maintaining the integrity of existing obligations and commitments.

Australia urged avoiding duplication of existing obligations and ensuring that the outcome does not result in an overall weakening of existing principles.

Belize expressed concern that the UNSG's report had gone beyond the mandate of the UNGA resolution, which required a factual, evidence-based report.

Cameroon noted the need to discuss other gaps in addition to those identified by the UNSG's report.

Mexico said the fragmentation of IEL is not necessarily a weakness, but reflects a diversity of environmental problems and associated solutions. She called for strengthening the coordination role of UNEP.

The Democratic Republic of the Congo (DRC) noted inconsistency between IEL and the law on armed conflict.

Switzerland said a pact must not be restricted to codifying principles, nor should it be the sole solution for the gaps, which primarily require better governance structures.

Bangladesh described the work of the OEWG as the beginning of a long process, and cautioned against any rollback of existing achievements in IEL.

El Salvador called for strengthening existing principles in IEL and clarification of ambiguities.

Uruguay called for a combination of legal know-how on rights and principles together with political will for adequate compliance and implementation.

Vietnam noted the importance of the environmental pillar of the 2030 Agenda and the SDGs.

Costa Rica underscored the importance of joint analysis, consensus, and knowledge sharing.

Chile called for a practical process leading to a strengthening of multilateral environmental governance that takes into account the varying capacities of Member States.

Mali said it was "high time" for a universal tool for environmental law.

The International Institute for Law and the Environment said the world had entered a new geological epoch, the Anthropocene, and that humanity's most critical challenge is to create institutions that respond to this.

The International Chamber of Commerce (ICC) suggested it could bring "real-world" experience from the business community to these meetings, and that a pact could provide benefits to businesses by, for example, managing uncertainty.

Compassion in World Farming commended the UNSG's report as an excellent starting point and spoke of industrial agriculture's impact on the planet.

The Global Judicial Institute on the Environment, also speaking on behalf of the Group of Experts, clarified that their proposed draft pact is meant to be an umbrella document that does not weaken existing MEAs but rather clarifies common obligations; that it does not propose the creation of an international environmental court; and that it is intended to help the work of national judges.

World Animal Net called for a pact to recognize, *inter alia*, animals as sentient beings, the inherent rights of nature, planetary boundaries, and a duty to care for the environment.

In response to questions about how the work will proceed, Co-Chair Mudallali expressed her understanding that the majority of states believe that the OEWG's roadmap is already laid down in UNGA resolution 72/277, with the discussion evolving in a stepwise manner.

Consideration of the Report of the Secretary-General

On Tuesday, the OEWG began a chapter-by-chapter consideration of the UNSG's report that continued through Thursday. The seven chapters include:

- Introduction;
- Gaps concerning principles of international environmental law;
- Gaps relating to existing regulatory regimes;
- Environment-related instruments;
- Gaps relating to the governance structure of international environmental law;
- Gaps relating to the implementation and effectiveness of international environmental law; and
- Conclusions.

Stadler Trengove, UN Office of Legal Affairs, presented the UNSG's report, saying it reviews and analyzes the corpus of IEL and environment-related instruments as well as the governance structure and implementation of IEL.

Before the chapter-by-chapter consideration began, Ethiopia, for the G-77/China, called for attention to barriers to trade and the risks of overstepping the OEWG's mandate.

Chapter I. Introduction: Switzerland identified elements missing from the report, including reference to the intrinsic value of nature and the importance of planetary boundaries, and noted an informal paper circulated by France.

The Russian Federation noted that IEL is not the same everywhere, thematically or in terms of scope. He cautioned that if states were forced to join progressive environmental agreements, resorting to votes rather than by consensus, universal participation could not be counted on.

Argentina noted that fragmentation of IEL is not due to systemic inconsistencies; rather, the system is complete, while gaps are actually in implementation and compliance. He questioned the empirical basis for the report's claims about fragmentation, and queried why the report compares the existing IEL system with an "ideal" scenario.

The US emphasized concerns with the report, including its "biased" perspective and its analysis of gaps, which he stated are often the intentional product of negotiations.

Singapore called for a practical approach, considering that it would be difficult to reach consensus on a legally binding framework.

Japan said the report does not sufficiently analyze the root causes of the gaps in IEL, and argued that what is identified as a gap under the report's definition should be understood by referring to the context.

Bolivia said no single understanding of the relation between human beings and other living organisms exists, and called for an interdisciplinary analysis of the normative evolution of the concept of the environment.

Algeria recalled the importance of feasibility and capacity for effective IEL implementation, and said a violation of the environment is a violation of human rights.

The DRC, with Cameroon, questioned whether a global pact will resolve problems in implementation.

Egypt distinguished between a "gap," which he said is a void or lacuna in legislation at the international level, and a "deficiency," which he described as an outcome of an existing process that reflects the country priorities and compromise.

China, with the FSM, supported a statement in the UNSG's report that IEL does not operate in isolation, but is rooted in the general corpus of public international law.

Serbia stressed the need to take seriously the UNSG's conclusion that IEL is fragmented, incoherent, and piecemeal.

The FSM noted that the UNSG's report, while recommending the adoption of an umbrella instrument, avoids saying that it should be legally binding.

Saudi Arabia said the UNSG's report should be technical and evidence-based.

Nicaragua underscored the need for cooperation on financial resources and technology transfer.

The Russian Federation said an important problem is the politicization of the environmental agenda.

The EU said the UNSG's report provided a good general overview of IEL, but some issues were addressed in greater detail than others, while other issues were not addressed.

Venezuela voiced caution about filling gaps in IEL by creating a new normative and institutional framework, given the risk of interfering with existing MEAs.

Guyana said the mere absence of a rule or agreement on a particular issue does not necessarily constitute a gap.

Chapter II. Gaps concerning principles of international environmental law: Monaco called for further elaboration of the understanding of "gaps" or "lacunas" as analyzed in the report, and suggested two understandings: a gap where law does not resolve a certain situation; and gaps in an existing reference system, as in extant conventional and customary law.

Argentina questioned the assumption that codification can occur without an overarching system of IEL, given the divergences in concepts, and, with the Russian Federation, identified gaps in the report such as references to sovereignty over natural resources. Argentina added that the precautionary principle is controversial, and that it is not prudent to recognize its customary nature.

The Russian Federation described the report's treatment of principles of IEL as selective and questioned, with Saudi Arabia, its use of the 1992 Rio Declaration as a source of international law. He underlined UNEP and UNEA as the main environmental norm-setting platforms within the UN system.

Kenya underlined the 1992 Rio Declaration as a source of core principles of IEL, together with the principles of non-regression and progression as set out in the Paris Agreement.

The EU noted that the report's list of principles is not exhaustive, these exist in different variations, and thus more work is needed.

Peru underscored that principles such as environmental justice could be included, and that IEL is an evolving field responding to new circumstances, creating a regular need to review what has previously been agreed.

China noted, *inter alia*, that: fragmentation can be, depending on the issue area, a positive or a negative aspect of IEL; soft law may sometimes be a better tool to respond to the urgent nature of environmental issues; and more studies on the codification of principles are needed. China also underscored the "heavy political and ideological bent" of the environmental democracy principle and the importance of respecting Member States' different legal traditions, models, and practices.

Canada questioned the precise scope and content of environmental obligations, and whether codifying the principle of non-regression would create a risk that states would take on weaker obligations to preserve flexibility in future negotiations.

Uruguay stressed that unifying the various principles does not contradict diverse MEAs that provide different solutions to specific issues.

Colombia highlighted the value of codifying existing principles and noted the need to recognize progress as well as contributions from regions, such as the jurisprudence of the Inter-American Court of Human Rights.

Togo urged examining other areas of international law that can impede the implementation of IEL, noting the example of technology transfer.

Brazil said the methodology used in the UNSG's report to identify principles is deficient. Noting that the criteria for the recognition of a general principle of law remain under debate, he suggested that the OEWG should not attempt to advance on this matter until the International Law Commission has developed its clarification on general principles of law.

The US stressed its lack of support for clarifying principles of IEL, many of which it viewed as "significantly outdated," and said there is no universally recognized human right specifically relating to the environment.

Venezuela cautioned that normative pressure could lead to regression in terms of the validity and implications of IEL principles.

The DRC noted an absence in the report of explanations of actual shortcomings in IEL principles. On the polluter pays principle, he called for a future umbrella instrument to tackle the perception that polluters can simply pay for harm, and called for the introduction of a threshold approach.

Mexico noted a lack of empirical and technical analysis in the report, and called for improved coordination of governance and implementation.

Switzerland cautioned that reformulating principles could result in regression in established principles of IEL, and called for any codification to focus on new principles. He identified a number of missing principles in the report, including intergenerational equity and environmental democracy, and noted the evolution of others, including the extension of precaution to human health.

Benin noted the report's selective approach and called for a careful treatment of issues such as the precautionary principle.

Noting that many principles are already established in customary international law, based on the Stockholm and Rio Declarations, Norway questioned how overarching codification could change and risk adversely affecting the application and interpretation of principles in individual MEAs.

The FSM noted that, *inter alia*: the prevention principle is a core element of IEL, but its meaning should be clarified; the polluter-pays principle is not settled; and the role of indigenous peoples and traditional knowledge should be included.

Bolivia said the chapter contains "blind spots" such as: the polluter-pays principle does not take into account outsourcing of pollution and private-sector polluters; historic responsibilities; and environmental and climate justice.

Singapore called for consideration of the principles in the specific context of MEAs, as well as different national circumstances in the principles' application.

Guyana called for a synthesis and analysis of how IEL principles have been treated in domestic jurisprudence and legislation. He considered that principles, once agreed, are a compulsory source for the interpretation and implementation of MEAs.

Uganda noted that some of the principles identified had emerged from soft law, which is not universal.

India cautioned that many of the principles are subject-specific and need to be examined to ensure that existing instruments are not undermined.

Ecuador said several principles were missing from the UNSG's report, including the right to development, the reduction of patterns of unsustainable consumption and production, climate justice, and, with Saudi Arabia and India, the principle of national sovereignty over natural resources.

Senegal said that fundamental principles that enjoy broad consensus include prevention, precaution, and public participation, and noted the need for capacity building.

Nigeria cited the importance of CBDR and fully supported the codification of environmental principles, including the polluter pays principle, although he noted uncertainty on how such codification will close gaps.

Japan noted that it may be premature to codify certain principles that are neither already well established nor widely used in MEAs, and said it remains unclear how an overarching instrument compiling principles can address gaps and challenges in implementation of IEL.

Bangladesh offered support for any instrument that will reduce gaps between MEAs, and suggested that it may be appropriate to consider special and differential treatment of principles in certain circumstances.

New Zealand questioned the report's thesis that an overarching one-size-fits-all framework could improve the situation in areas such as marine pollution, and supported reservations about the non-regression principle.

Algeria noted that some principles identified in the report do not enjoy universal support due to national policies, and cautioned against re-negotiating international agreements.

Armenia called for political will to support reforms in IEL.

The Republic of Korea questioned whether codifying existing principles will strengthen IEL.

Morocco reserved judgement on the necessity of a new instrument.

Bahrain suggested clarifying principles and objectives such as sustainable development.

Chapter III. Gaps relating to existing regulatory regimes: The EU said the UNSG report provided a "good overview," and that the OEWG could make recommendations to the UNGA on gaps not addressed by existing regulatory regimes.

Switzerland said ambiguity contributed to achieving consensus in MEAs and that, instead of overarching legal principles, bottom-up approaches should be privileged.

Egypt said the challenge of multilateral diplomacy was to balance broad participation and ambition, and that a one-size-fits-all approach was unrealistic.

China said having sector-specific regulatory frameworks was reasonable.

Norway noted that compensation for loss and damage is a carefully negotiated result under the climate change regime and should not be referred to as a gap. On biodiversity, she stressed that there is an ongoing process under the UN Convention on the Law of the Sea (UNCLOS) to address areas beyond national jurisdiction. On oceans and seas, she noted the ongoing process under UNEA on marine litter and microplastics.

Australia, Canada, and Argentina said gaps often result from conscious and deliberate decisions by states parties to MEAs. Japan said they result from political compromises. Guyana said they are "necessary gaps." The US described these gaps as "design elements" in existing MEAs, and said the OEWG doesn't have a mandate to second-guess decisions made by states parties to these regimes.

Colombia cautioned that many gaps are being addressed in discussions under MEAs. Brazil said some gaps are in fact emerging issues at an initial stage of discussion. The FSM said even though gaps may be by design, they should be addressed in some way or another.

Saudi Arabia said the report's analysis of gaps relating to existing regulatory regimes was "weak."

India said bodies responsible for existing regimes should be allowed to discuss the gaps under their respective instruments.

Vietnam called for comprehensive assessments based on the cross-cutting nature of environmental issues.

Cameroon noted that specific IEL regimes work autonomously but are interdependent and may require harmonization without attempting to unify them.

Bolivia highlighted: that the report has erroneously limited its scope to environmental law when all spheres related to the link between humanity and nature as a whole should be under consideration, including sources of damage; and gaps in treatment of the Convention on Biological Diversity, including emerging technologies.

Uruguay called for inputs from the UN system.

NGOs called for the main outcome of the process to be the recognition of the interdependence and systemic nature of the "Earth system."

World Animal Net said new principles such as the recognition of the intrinsic value of nature and of planetary boundaries, the "Earth system," and a duty to care for the environment, should be included.

The Minamata Convention Secretariat qualified several statements in the report that are specific to its work, and stressed the Convention addresses the full life-cycle of mercury.

The Global Judicial Institute for the Environment, speaking on behalf of the Group of Experts, said:

- the draft pact was meant as an introduction and umbrella document to existing MEAs;
- such general laws exist in other subject areas; and
- little in the document does not already exist in national jurisdictions.

The Russian Federation requested that all issues relating to climate change be examined under climate-related institutions.

The Ramsar Convention Secretariat noted its formal agreements with other MEAs to work collaboratively, and ongoing work to address gaps.

The Secretariat of the Basel, Rotterdam, and Stockholm Conventions clarified measures being undertaken on additional guidelines and frameworks.

The Common Home of Humanity, speaking for NGOs, underlined the opportunity to address IEL's structural problems including the need for a comprehensive "Earth system" approach, regard for the principle of the common heritage of humankind, and planetary boundaries.

Chapter IV. Environment-related instruments: Switzerland said that while UNEP should be strengthened there should be no hierarchy between UNEP and other UN processes.

The EU, recognizing sensitivities, suggested the OEWG consider putting forward options for the UNGA to address and encourage integration of environment-related considerations in interrelated processes, such as investment and trade, and in relevant UN coordination structures.

The US, Canada, and Japan noted that, under their interpretation of UNGA resolution 72/277, the reference to "environment-related instruments" means that the UNSG report should consider both legally binding and non-legally binding environmental regimes.

Iran said it was unhelpful to discuss trade and human rights, which have their own instruments.

Uganda said it was fundamental to consider environment-related instruments in the areas of trade, investment, and intellectual property, including capacity building for negotiating bilateral instruments.

Bangladesh said it was appropriate to discuss instruments in other areas, because the OEWG is only discussing the environment-related aspects.

Several states pointed out areas where the chapter's analysis was outdated, inaccurate, or contained generalizations. Japan highlighted the World Intellectual Property Organization's (WIPO) environment-related efforts. Argentina and China said that environmental provisions in trade and investment law exist, with Argentina underscoring that the chapter contains unacceptable generalizations. Norway outlined environmental clauses in trade agreements and efforts to reform investment dispute settlement and to protect the right to regulate. Bolivia highlighted progress on instruments related to collective rights, such as rights of indigenous peoples. Colombia pointed to WIPO's work relating to the Convention on Biological Diversity, genetic resources, and indigenous traditional knowledge. India said the report's assessment of trade and investment jurisprudence was incomplete.

Singapore questioned whether IEL principles should apply wholesale in areas such as trade, investment, intellectual property, and human rights.

The FSM stated that, as appropriate, other environment-related instruments can look to IEL for guidance on environmental laws and norms, and apply them.

Argentina stressed that the OEWG's work should not prejudge the outcomes of other negotiations underway, including those in WIPO.

Ecuador noted the lack of references to corporate responsibility for environmental damage, and to the Inter-American Court of Human Rights.

Chapter V. Gaps relating to the governance structure of international environmental law: The DRC noted that the multiplicity of environmental instruments and mandates fail to take account of the nature of the global ecosystem.

Canada and Saudi Arabia invited input from MEA secretariats, noting the need to respect the independence of treaty bodies.

On effectiveness and implementation, Algeria noted a lack of political will and ambition, and synergies across MEAs.

The US supported the specialized approach of MEAs, preferring to address synergies at the national level.

China called for developed country support for capacity building to support developing country participation in the complex treaty system, defended a facilitative approach to compliance mechanisms in MEAs, and underlined the role of states as subjects of treaties.

Argentina expressed concern that the chapter took statements out of context and seemed to point towards a pre-determined objective.

The EU said the OEWG should ask whether there are gaps that affect the efficiency of implementation, and if so, how these must be addressed.

Kenya, Cameroon, Morocco, and Japan agreed with the UNSG report on the need for better coordination and synergy in IEL, and pointed to the crucial role of UNEP.

Switzerland noted the advantages of specialized MEAs that can be legally binding in ways that broader instruments cannot.

Brazil spoke of the 2030 Agenda and UNEA as potential platforms to bridge coordination gaps.

Guyana said a global pact can add value in the area of governance, and, with Egypt and Peru, expressed support for the report's recommendations to address institutional fragmentation and weak coordination between treaties. Uruguay said these recommendations are not legal in nature, and the OEWG can add value by contributing legal recommendations.

Ecuador stressed the need to strengthen the inclusion and effective participation of non-state actors in activities under MEAs. Uruguay pointed to innovations in public participation in the Latin American region. On non-state actor participation, Egypt cautioned against a comparison with the human rights regime. Costa Rica welcomed the enhanced participation of women in UN decision making.

Mexico suggested UNEP create digital platforms for best practice sharing, and said she would like to hear the UNEP Secretariat's position on a strengthened role.

Mali suggested the ineffectiveness of IEL also comes from a lack of some stakeholder knowledge of IEL.

Palestine noted the specific challenges of IEL implementation in countries under occupation.

New Zealand questioned whether an institutional framework with a heterogeneous set of actors is a "gap" in IEL in need of prescriptive universal governance, suggesting that the system is a response to complexity.

New Zealand, Canada, Japan, and Switzerland endorsed the benefits of coordination and synergies.

Norway, with Kenya, called for more clarity on the relationship between MEAs and the SDGs to help strengthen the latter's environmental pillar, and supported strengthening UNEP and UNEA. Colombia observed that UNEP had not yet realized its full mandate of coordinating all environmental initiatives in the UN system.

Nigeria said UNEA should remain the world's highest decision-making body on the environment. Peru supported strengthening UNEP as well as other institutions, and making recommendations to UNEA.

Canada, with Australia, underscored that it is for parties to identify weaknesses in their MEAs, suggesting that there may be an information role for the OEWG.

Uganda said the report illustrated the complexity of established institutions and the limitations regarding implementation, enforcement, and assigning liability, but political will could not be regarded as a gap.

The FSM said a global pact could both call for greater IEL governance synergies between institutions and consolidate a number of principles.

Bolivia underscored that difficulties in integrating the environment and development agendas are insufficiently addressed by the report.

Senegal underscored that, to improve implementation of IEL, it is essential to strengthen states, especially least developed countries (LDCs).

The Secretariat of the Basel, Rotterdam, and Stockholm Conventions outlined cooperation between the three conventions as well as with the Minamata Convention.

Chapter VI. Gaps relating to implementation and effectiveness of IEL: Burkina Faso noted that a global pact could help address gaps at the state, regional, and international levels and help bolster the binding nature of general principles of IEL, as well as the implementation role of judges. He called for legal benchmarks to assess implementation.

Iran said any lack of effective implementation must first be evaluated at the national level, taking account of local priorities and resources.

Brazil called for consideration of cooperation and additional resources to support implementation of the SDGs and MEAs.

Switzerland suggested a comparison of challenges associated with implementation of multiple MEAs at the national and subnational levels. Australia said the report offered an inadequate picture of compliance and enforcement as many agreements have their own varied approaches to compliance regimes.

Guyana said that funding for implementation of IEL was "disappointing" and "unacceptable," and suggested a strongly integrated treatment of Chapters V and VI.

Saudi Arabia, the DRC, Bangladesh, Cameroon, Egypt, Bolivia, Nigeria, and Colombia stressed the need for financial resources for national implementation.

China highlighted definitional and operational issues related to liability and redress for transboundary environmental damage.

Chad stressed the importance of access to justice and, with Bangladesh and Morocco, capacity building for national implementation.

Morocco highlighted that technology transfer and transfer of know-how are necessary for implementation in developing countries.

Cameroon underscored the need for training judges on IEL.

On liability and dispute settlement, Kenya pointed to numerous international courts and tribunals that may be used to resolve environment-related disputes.

Argentina said the chapter exceeds the UNSG's mandate to assess gaps, as it goes into issues that are only tangentially linked to legal issues.

The US said much more can be done at the national and local levels to improve implementation, rather than at the international level, and disputed the report's assertion that funding for implementation remains insufficient, unpredictable, and incoherent.

Mali called for a focus on capacity building to bolster synergies between stakeholders and increase non-state actors' involvement.

The EU described the strengthening of implementation as the core of the UNGA resolution, requiring enabling policies and other measures. She asked that the OEWG not examine state liability and civil liability.

Egypt called for consideration of reporting by developed countries on resource mobilization and technology transfer, and underlined the facilitative role of compliance mechanisms in IEL.

Ecuador said the status of implementation is the sole responsibility of each state, and highlighted the lack of reference to corporate liability.

The Maldives said the gap in national implementation comes down to political will.

Colombia described the chief difficulty in dispute settlement as the lack of legal or arbitration mechanisms that can systematically resolve disputes.

Bolivia warned that sections of the Spanish translation of the UNSG report are not accurate, and that an international justice tribunal for environment and climate issues is needed.

The FSM indicated that, in the UNSG report, the "due diligence" standard of care denotes an obligation of conduct and not of result, which is not sufficient to address transboundary environmental harm.

Nigeria pointed to the greater historical responsibility of developed countries in driving environmental degradation.

The Catholic Youth Network for Environmental Sustainability in Africa stressed the importance of implementation of existing regimes, and of global environmental legal cohesion.

Natural Justice called for recognizing the interconnectedness of global environmental systems, and for ensuring effective compliance with IEL.

World Animal Net highlighted the need for funding to support civil society participation in the OEWG process.

Chapter VII. Conclusions: The Russian Federation said the report transcends the OEWG's mandate, thus prejudicing discussion. He questioned the absence of references to sovereignty and the consensus approach to the elaboration of MEAs, and raised problems arising from the impact of sanctions on implementation. He proposed concentrating on microplastic ocean pollution and MEA synergies.

Guinea noted that some principles of IEL lack clarity, implementation, and legal consensus, leading to different interpretations, while others are applied only at the regional level. He supported bringing all principles into a single instrument, more multi-level coordination, and expanding civil society and business participation.

The US stressed that the OEWG was no closer to identifying gaps and the report could not serve as the foundation for recommendations to the UNGA, adding that there was no justification for proceeding to a discussion on possible options.

The EU suggested that the next step should be to find ways to address gaps and arrive at recommendations for the UNGA. Noting that some gaps will be addressed by other bodies, she saw potential for the OEWG to work on principles to strengthen environmental protection and suggested the next session of the OEWG could consider to what extent and how to address issues.

Australia said it remained unclear how a pact would address the issues identified in the UNSG's report, and, with Singapore, expressed concern about the risk of undermining existing IEL.

Egypt, underscoring that IEL principles evolved within sectoral regimes and may apply differently in different regimes, said an instrument unifying IEL may be useful for areas currently lacking regulation, but not for existing regimes.

Argentina said the OEWG should move on to considering options to fill any gaps in IEL and related instruments, but stressed that a new instrument is not needed.

St. Lucia suggested that prior to the second substantive session, states should submit comprehensive analyses of IEL principles and related environmental instruments, and provide concrete

recommendations for addressing gaps, which the Secretariat should synthesize for discussion at the next substantive session.

Pakistan stressed the need to simplify IEL and ensure it works towards environmental protection without detrimentally affecting developing countries.

Paraguay called for bolstering already existing coordination mechanisms between the UN and MEAs.

China said, *inter alia*, state sovereignty should be respected, and developing countries should be extended more assistance in implementing MEAs.

Brazil said diversification in IEL was not a problem, and urged giving special attention to the operational and practical aspects of IEL, with full respect for countries' sovereign rights.

Bangladesh underscored that the UNSG report could provide more examples and technical evidence.

Switzerland said the UNSG report was flawed and, going forward, the OEWG should also rely on further documentation, and, with Australia, called for appropriate time to ensure meaningful participation in the process.

Canada said she was not entirely convinced that a single overarching framework would bring about overall effectiveness in IEL, and noted that the report goes beyond the UNGA mandate. She cautioned against unwinding political compromises and identified areas where further work could contribute, including plastics and air pollution.

Chile suggested that the OEWG consider which principles of IEL can be agreed upon and, with St. Lucia, Canada, and Serbia, invited delegations to go beyond the UNSG's report to see if a pact can be achieved by examining what is needed for national implementation.

Norway noted the importance of distinguishing between gaps in MEAs and other gaps identified in the report, and between those that can be addressed by existing instruments and those that may need new instruments, respecting ongoing work in fora such as UNEA. She expressed doubt as to the merits of a legally binding pact, suggesting that recommendations to UNGA could address the need to strengthen IEL.

Guyana called for work on definitional clarity and stressed the need to complement the UNSG's report with a synthesis of how environmental law principles operate at the domestic level. He called for a summary of the gaps discussed with options for how each might be addressed, to help determine the necessity and shape of a global pact.

Egypt suggested that the OEWG's mandate covers gaps understood in a narrow sense, while deficiencies in implementation and other challenges may complicate its work. He called for respect for the integrity of existing regimes, especially where related work is ongoing. On environment-related institutions, such as trade, intellectual property rights, and human rights, he suggested that the OEWG encourage the relevant processes to consider the environment-related aspects of their work.

Uganda stressed that gaps in IEL exist and that the UNSG's report was not intended to be negotiated but rather to help generate ideas for discussion.

Saudi Arabia said deficiencies in IEL are normal and the result of political compromises, and IEL principles are non-binding.

Singapore noted limited support among states for the adoption of a legally binding instrument, calling for a pragmatic approach to other possible options.

Serbia, while supportive of France's initiative, acknowledged it would be difficult to seek a global pact, and said the choice was to let the moment pass or risk "tampering" with the system to improve it.

The DRC highlighted its support for an overarching instrument, saying it could unify IEL, provide for visibility of its principles, and strengthen cooperation. Senegal called for a global pact that should also be a democratic institution for more equity between North and South. Costa Rica reaffirmed her country's support for the global pact initiative, and said it provided an opportunity to bolster multilateralism and the leading role of the UN system. Mali supported adopting a universal legal instrument, and requested the OEWG work with an open spirit. Algeria expressed support for a unified governance structure.

Uruguay proposed that the interventions by various delegations be compiled in an outcome document, and that the OEWG should continue fulfilling its mandate.

Turkey said that general top-down multilateral approaches will not fix deficiencies in IEL.

Ecuador emphasized the need for greater focus on lack of implementation in IEL, and said she does not believe that a single global overarching framework will help.

Cameroon suggested that it would be premature to say that there is no consensus, but rather that the OEWG is at the beginning of a process that will be dynamic and fruitful.

Bahrain said there is no need to set up a new instrument that would risk duplicating and repeating existing MEAs.

Colombia stressed the need to strengthen UNEP, avoid duplicating efforts, address means of implementation, and recognize how IEL principles have evolved.

Bolivia underscored the need to redefine the relationship between humanity and the environment, proposing the concept of "Mother Earth" as a technical, political, and legal unifying concept.

Kenya highlighted the need to strengthen UNEP, address gaps in existing MEAs through relevant treaty mechanisms, and assist developing countries and LDCs in fulfilling commitments.

World Animal Net, speaking on behalf of NGOs, reiterated their commitment to a global pact and requested full NGO participation in the process of developing options for the OEWG to consider.

The Global Judicial Institute on the Environment said the OEWG's focus on "gaps" in IEL was counterproductive and not in keeping with the spirit of the experts' draft pact.

The ICC offered assistance with the implementation of IEL, notably through the ICC Court of Arbitration.

Mexico said the world is at a "watershed point" where existing measures are insufficient, and multilateralism is the best way to find solutions.

Armenia said a global pact would not put an end to existing environmental issues, and would need to be a dynamic document.

Morocco urged strengthening synergies, coordination, and harmonization of MEAs.

Consideration of the report of the Secretary-General: On completing their consideration of the Secretary-General's report Thursday, Co-Chair Duarte Lopes reflected on the process to date and the way ahead, highlighting that the Co-Chairs had heard many delegations recognizing the existence of gaps, challenges, and limitations in IEL and environment-related instruments, while some other delegations held different views.

Provisional Agenda and Dates for the Second Substantive Session

On Thursday, stating that further efforts were needed to reach a common understanding of which gaps need to be addressed, Co-Chair Duarte Lopes presented a draft provisional agenda for the second substantive session, highlighting that it contains an item for the "consideration of possible options" to address possible gaps. He invited delegations to submit inputs during the intersessional period on options to address possible gaps in IEL and environment-related instruments, as soon as possible and preferably by 20 February 2019, adding the Co-Chairs plan to use these inputs to better prepare discussions for the second substantive session. He proposed that the second substantive session take place over three working days in March 2019.

The draft includes the following agenda items:

- opening of the session;
- adoption of agenda and programme of work;
- financing of the activities of the *ad hoc* open-ended working group;
- consideration of possible options to address possible gaps in international environmental law and environment related instruments;
- provisional agenda and dates for the third substantive session;
- other matters; and
- closure of the session.

Australia called on the Co-Chairs to develop a non-paper on key themes and divergent views in conjunction with submissions, and voiced concern about the availability of sufficient time to progress the OEWG's mandate. With Canada and Switzerland, she suggested that the second substantive session take place in May with inputs on definitions and options, with opportunities for interactive exchange.

The Russian Federation, supported by China, proposed replacing "consideration" of possible options with "discussion" in the provisional agenda.

Instead of considering possible options, Saudi Arabia suggested that a draft summary of the first substantive session be sent to delegates who would then decide on a date for an exchange of views. He suggested that discussion at the next session could focus on the UNSG's report and, supported by the Russian Federation and Bahrain, further proposed merging the proposed second and third meetings of the OEWG.

South Africa, for the African Group, proposed that the next substantive session last five days, and asked the Co-Chairs to clarify the basis for the consideration of gaps.

Guyana, for the Caribbean Community (CARICOM) and with the EU, Algeria, and Costa Rica, agreed with the dates for the upcoming substantive session as proposed by the Co-Chairs. CARICOM called for a focused document to aid discussion, and requested clarification on funding arrangements for developing countries.

Algeria suggested feedback from convention secretariats regarding shortcomings and synergies in implementation.

Canada, with Egypt and Bahrain, suggested that a synthesis report of views expressed during the first session would be helpful. The Russian Federation said a summary of the outcome of this discussion will show that there is a lack of consensus on gaps in IEL.

The EU, with Egypt, said that the second session should focus on guiding questions from the Co-Chairs. Egypt called for a more structured discussion.

Bangladesh suggested a more interactive discussion rather than delivering statements, as well as a guiding text from the Co-Chairs.

The US, noting a lack of consensus on potential gaps, and even on the definition of a gap, said, with CARICOM, that a paper from the Co-Chairs laying out a definition of gaps or a discussion of gaps would be helpful to direct the conversation.

Co-Chair Duarte Lopes noted that the OEWG was bound by its mandate, by its decision taken at the organizational session in September, and constrained by the meeting dates of other environment-related processes.

On Friday morning, a revised draft provisional agenda and dates for the second substantive session of the OEWG was circulated to delegates. In the new draft, a revised agenda item referred to "discussion" rather than "consideration" of possible options to address possible gaps in international environmental law and environment-related instruments. The proposed dates for the second substantive session were 18-20 March 2019.

Co-Chair Mudallali, introducing the revised draft provisional agenda, noted the absence of agreement on proposals to change the dates, recommended that the OEWG respect the agreement reached at the organizational session in September 2018, and recalled the Co-Chairs' intention to facilitate a focused debate at the second session.

The US, supported by Saudi Arabia, recalled the OEWG's mandate, and noted the absence of consensus on what is or is not a possible gap, or even that gaps exist. With Argentina, Australia, and Canada, he proposed that discussion of options should be left until the OEWG decides whether gaps exist and what they are. In response, Co-Chair Mudallali noted that there was no consensus on further changes to the provisional agenda.

Argentina recalled that issues remained unclear after the OEWG's consideration of the UNSG's report, and cautioned that the credibility of the process relies on achieving consensus.

Japan underscored the need to discuss the definition of a gap, before discussing whether there is a gap or not.

The EU, Norway, Uganda, the FSM, Colombia, Morocco, China, Bolivia, Chile, Burkina Faso, Uruguay, and India agreed to the Co-Chairs' revised provisional agenda as circulated. The EU said it was in line with the UNGA mandate, and urged that the process move forward, suggesting that differences among delegations could be aired at the second substantive session.

China underlined that the three steps outlined in the UNGA resolution are interlinked, and that a second session could include a discussion of the UNSG report as well as possible recommendations.

Egypt expressed concern at the lack of structure for the OEWG's deliberations. He queried the logic and sequence of moving to discuss "possible options to address possible gaps" and called for more understanding of where compromises can be found regarding gaps and how these might be addressed. Co-Chair Mudallali responded that the language reflects that of the UNGA. Egypt clarified that he was not proposing a change to the language.

Bangladesh proposed that the wording of the relevant agenda item be changed to "discussion of possible gaps in IEL and environment-related instruments, and of possible options to address those gaps."

The US proposed splitting the agenda item into two sub-items, one proposing a discussion on possible gaps, as appropriate, and the other on possible options.

Singapore, with the Russian Federation, Nigeria, Argentina, and the US, suggested as a compromise to add the words "as appropriate" to the agenda item to allow more flexibility.

Eritrea, for the African Group, cautioned that ongoing efforts must not undermine existing MEAs and should contribute to strengthening UNEP in line with the Rio+20 outcome, and noted the need to address the 2030 Agenda, with a focus on the environment-poverty nexus.

The FSM said the wording of the Co-Chairs' proposed agenda item gives enough flexibility to delegations who wish to discuss possible gaps.

Switzerland pointed to the process followed by the OEWG on marine plastic litter and microplastics, which were the subject of interactive discussions alongside the formal meeting, as a possible example to follow.

On intersessional preparations for the second substantive session, Sierra Leone, supported by New Zealand, Uganda, and Bolivia, said a compilation text of the views of the delegations expressed during the first session was essential for progress in the second session. Uganda said the Co-Chairs should produce a synthesis of the inputs to be submitted by February on possible gaps, to be discussed at the second substantive session. Mexico, Uruguay, and Switzerland said a document from the Co-Chairs is needed on how the OEWG can address gaps in IEL.

Australia and Uruguay supported holding intersessional meetings. Costa Rica proposed using a web platform during the intersessional period to draft a list of possible gaps. Iran stressed the need to identify the possible options before the second substantive session. Senegal called for options to be sent to the Co-Chairs during the intersessional period.

The DRC said the UNSG's report is incomplete and consensus had not been achieved at the OEWG. Argentina called for empirical evidence to support the OEWG's work on gaps.

China proposed that, to respond to concerns by other delegations, the Co-Chairs' summary of the session make it clear that during the second session parties can refer to the UNSG's report, and that gaps will be addressed first.

After a short break, Co-Chair Mudallali proposed to add "as appropriate" to the wording of the proposed agenda item, affirming that further efforts are needed to reach a common understanding of which gaps need to be addressed.

Ethiopia, for the African Group, and opposed by the EU, proposed splitting the agenda item into two parts: consideration of possible gaps and consideration of possible outcomes. Co-Chair Mudallali, noting lack of consensus on the proposal, stressed that the Co-Chairs will take it into account in preparing for the second substantive session. She agreed to a request from the African Group for a short break to allow the group time for internal consultation. On resuming discussion on the wording of the item, the African Group proposed that the split in the agenda items, on options and gaps, be reflected in the supporting documentation.

The Co-Chairs agreed to provide delegations with elements to structure their discussion, taking into consideration all views expressed, including those of the African Group. The OEWG agreed the provisional agenda for its second substantive session, including its dates of 18-20 March 2019.

Closure of the Session

On Friday afternoon, the OEWG began its closing session. In a closing statement, NGOs noted the process's origins outside the UN system and underlined the legitimating role of civil society participation and collaboration. He said the NGOs would prepare a submission, including material on the case for a framework convention on the "Earth system."

Co-Chair Duarte Lopes delivered an oral summary of the session on behalf of the Co-Chairs, noting that while it provided a synthesis of wide-ranging views it should not be treated as an exhaustive account, and should be received together with statements delivered by delegations. He told delegations that a copy would be circulated.

Duarte Lopes reported that discussion had been rich and wide ranging, focusing mainly on the UNSG report on gaps in international environmental law and environment-related instruments.

On the process, Duarte Lopes noted:

- the general agreement on a constructive, open and transparent, and inclusive discussion, with agreement that the work should not undermine existing instruments, bodies, and processes;
- how some delegations underlined the importance of conducting work on a consensus basis with a view to a pragmatic outcome;
- support for a step-wise approach to the OEWG's mandate in the first half of 2019; and
- support for the Stockholm Declaration, the Rio Declaration, and the Addis Ababa Action Agenda.

On the UNSG's report, Duarte Lopes noted:

- agreement not to subject the report to negotiation, and significant support for not limiting discussion to the report;
- some calls for greater justification for the report's findings, and views that the report had exceeded its mandate;
- calls for a clear definition of a gap, with some preference for a focus on normative gaps, and a clearer identification of challenges; and
- the need to distinguish between normative, institutional, and implementation gaps.

On fragmentation in the IEL regime, he noted how some view this as an asset and a reflection of the diversity of IEL, its non-hierarchical character, and ability to adapt and provide specialized answers to certain issues. He acknowledged the view that some gaps can be intentional and a reflection of compromise among states parties, while for others fragmentation is regarded as problematic when it reflects a lack of legal clarity. Duarte Lopes noted that several delegates stressed that IEL is part of general public international law and the rules of international law can be used to fill gaps, while some felt that the role of customary law and non-binding instruments had not been sufficiently stressed in the report.

On principles, Duarte Lopes noted that many delegates underlined their role as building blocks, while several stressed the role of principles in promoting legal certainty and enhancing the visibility of IEL, ensuring consistency of implementation, and facilitating interpretation and filling normative gaps. He noted the absence of agreement on whether a comprehensive unifying instrument clarifying IEL principles would contribute to greater effectiveness and a strengthening of implementation, while recognizing that many had indicated preparedness to work on the consolidation of principles.

He noted that several delegations had signaled an openness to developing a new instrument, and different views on the nature that such an instrument would take, including its legal status; with several pointing to the need for further discussion on the added value of a legally binding or non-binding approach and how such proposals could contribute to a strengthening of environmental protection. He noted concerns from several delegations about

re-opening existing principles and regression, while some stressed that the work should focus on the principle of pursing international consensus. Others, he added, took the view that there was an opportunity to update existing principles and include principles that have emerged over the past decade. Recalling discussion on a number of principles, such as precaution, polluter pays, CBDR, national sovereignty over resources, non-regression, equity, environmental justice, and the right to a healthy environment, he noted the controversial nature of the OEWG's work, and the role of the International Law Commission's ongoing work on the criteria for defining principles.

Duarte Lopes recalled views on the risk of undermining existing MEAs and how principles ought to be addressed within the context of their specific agreements, and the possibility of recommending that UNGA send a strong signal to encourage existing structures to address gaps, given the concerns of some that gaps can be the result of political compromises and must be addressed within their own processes.

On gaps in existing regulatory regimes, the Co-Chair noted that some delegations believed the UNSG report had not sufficiently taken account of voluntary instruments.

On environment-related instruments treated in the report, Duarte Lopes recalled calls for additional sectors to be addressed. He said some delegations had taken the view that the report had not sufficiently addressed the role of the World Trade Organization and the progress made on environment-related measures. On human rights, he noted the view that human rights cannot be fully enjoyed without a clean and healthy environment, while others cautioned against politicization.

On gaps relating to the governance structure of IEL, Duarte Lopes noted:

- a general understanding that the OEWG could support governance structures while preserving the independence of MEAs;
- emphasis on the role of UNEP as a global authority on the environment in the UN system, and the role of UNEA, together with calls for implementation of paragraph 88 of the Rio+20 outcome document;
- views on strengthening synergies and collaboration between MEAs; and
- a broader understanding of the role of non-state actors in governance, including roles for Major Groups.

On implementation and effectiveness, the Co-Chairs noted a broad understanding that national implementation is first the responsibility of states, and a view that many face challenges, taking account of national circumstances and the need to support means of implementation in line with the 2030 Agenda and the Addis Ababa Action Agenda, with calls for increased resourcing.

On dispute mechanisms, he said that some had noted the absence of an international environmental court, while others prioritized resort to existing institutions. He noted that many delegations underlined the view that it would be inappropriate to make recommendations on liabilities.

On the conclusions, Duarte Lopes recalled that several delegations had stressed the importance of being provided with elements to guide and structure their approach to the second substantive session.

On the provisional agenda for the second substantive session of the OEWG, Duarte Lopes recalled that some delegations had sought a more integrated discussion, and a sequenced discussion of gaps and options. He reassured that the Co-Chairs would take on board all views together with submissions received during the intersessional period.

The Co-Chairs brought the session to a close with words of thanks to the Kenyan authorities, the Secretariat, conference services, and translators.

Co-Chair Mudallali expressed condolences to the people and government of Kenya after the loss of life in Nairobi and thanked all participants for their commitment, including to "Mother Earth." She thanked the "peacemaker" delegates who had stepped in to bring sides together during the session and expressed the hope for a proliferation of peacemakers at the second substantial session in March. She thanked her Co-Chair and brought the gavel down at 4:01 pm with the word, "inshallah."

A Brief Analysis of the Meeting

"It is a serious thing, just to be alive, on this fresh morning, in this broken world." – Mary Oliver

It was a week of gaps as delegates met in Nairobi to begin substantive discussions on a possible global pact for the environment. The *Ad Hoc* Open-ended Working Group's (OEWG) primary task at this session was to consider a report of the UN Secretary-General (UNSG) that identified and assessed possible gaps in international environmental law (IEL) and environment-related instruments with a view to strengthening their implementation. However, at times this turned out to be a game of deconstruction of the meaning of gaps. With not much of a "gap" between the release of the UNSG's report in December 2018 and this session, many delegates indicated that there are still many gaps in their understanding of the proposed pact and its contribution to international environmental law.

The week was complicated by the fact that the genesis of the OEWG process lay outside the multilateral system. The initiative has origins in 2015 with a report of the Commission Environnement of the Club des Juristes, a legal think tank in Paris. One of the recommendations, for an international environmental pact, was taken up by former UNFCCC COP 21 President Laurent Fabius who decided to take the pact initiative to the international level. By early 2017 an international network of top environmental experts had been convened to draft a "Global Pact for the Environment," to serve as the basis for an approach to a new legally binding instrument.

Advocates of a pact argue that the current fragmented body of IEL is relatively weak because it is often non-binding, has blind spots, and instruments are often sector-specific and limited in spatial scope, with differential application of IEL principles. In their view, a global framework instrument on environmental protection should have a long term perspective, and assemble the main principles of environmental law in order to create a "level playing field" for the environment. Supporters cite the adoption of an overarching statement of principles as consistent with other areas of international law such as human rights, trade, and international humanitarian law.

Introduced at the 72nd session of the UN General Assembly in 2017 by French President Emmanuel Macron, the pact began its voyage through the UN system, and UN General Assembly resolution 72/277 subsequently established the OEWG with a mandate to submit its recommendations in the first half of 2019.

This brief analysis examines how the origins of the pact initiative shaped discussions at the first substantive session, consider emerging positions, and look ahead to the next steps.

"If you ask the wrong question, you will get the wrong answer."

Delegates approached the first substantive meeting in Nairobi with a series of tentative responses to the Secretary-General's report on gaps in IEL, but some felt that the original questions had disappeared over the horizon before delegates arrived. Almost at once, the principal task for the sponsors of the pact was to re-introduce the original intention and explain its rationale.

The tenor of the discussion at the OEWG was due, in large part, to the fact that the global pact initiative originated outside the UN system. As one delegation observed, there was a feeling during the week that participants had to step back and go through the motions of the UN process, such as consideration of the UNSG report, before they could properly take ownership of the initiative. As one observer put it, the OEWG delegations will have to rewind and replay the conversation that has already taken place among the jurists and group of experts.

This explains a perception among some participants that the UNSG's report and the OEWG's mandate appeared to be starting at the wrong end of the problem. According to one advocate for the pact, the focus on "gaps," which was part of the enabling UNGA resolution (72/277), led the process astray: "If you ask the wrong question, you will get the wrong answer. These should be: do we need a global pact for the environment? What may be the theoretical and practical purpose of a pact? What are its benefits and risks?"

The supporters of a global pact also encountered frustration as a result of a perceived ambiguity in the UNGA resolution, referring to the mandate to "consider possible options to address possible gaps in international environmental law and environment-related instruments." This ambiguity was attributed, by some participants, to the mixed response to the proposal when it was introduced at the UNGA. One delegate felt that talk of a new generation of environmental rights, and an institutional architecture that would be modelled on a committee of independent experts akin to that of the Human Rights Committee established by the 1966 International Covenant on Civil and Political Rights, had "frightened the horses."

Unusually for the UNGA, a recorded vote was requested in the case of the global pact resolution, which yielded a 143 majority, with six votes against (the Philippines, Russian Federation, Syria, Turkey, the United States, and Iran, although the latter noted at the end that its vote had been inaccurately recorded, because it supported adoption) and six abstentions (Belarus, Malaysia, Nicaragua, Nigeria, Saudi Arabia, and Tajikistan).

Mind the Gaps: Emerging Differences in Positions

As the session began, delegates took a cautious approach, with some describing the process as an "airing of views" or a "stocktaking" exercise. "This week is about getting an understanding of the situation," one delegate mused during the opening reception on Sunday.

As the week went on, the "airing of views" began to tease out some preliminary positions by Member States on the UNSG's report. It became clear that the conclusions of the UNSG's report raised more questions than answers. In fact, contention emerged over the very notion of what constitutes a gap in IEL, and thus whether there are gaps in IEL at all and, if so, whether the gaps exist because Member States agreed they serve a useful purpose in the crafting of compromise in multilateral environmental agreements.

As one delegate noted, "There are three camps: those who think there are no gaps; those who agree with gaps as identified in the UNSG's report, but who don't agree with how they are formulated; and those who say there are gaps, but not the ones in the UNSG's report." Those who held the "no gaps" view tended to support their positions with one of two broad, connected rationales: first, that fragmentation in IEL is the result of the very nature of the field, and indeed is desirable since different multilateral environmental agreements (MEAs) are required to address different needs; and, secondly, that gaps in existing MEAs are the result of deliberate design by their respective parties.

At the other end of the spectrum were delegations that endorsed the need for new, global, and bolder environmental action. But still others warned that, although gaps in IEL exist, an overarching framework such as the global pact risked weakening existing MEAs and coordinating bodies such as UNEP. Many also highlighted that the bigger issue may be gaps in IEL implementation. In this perspective, more legal instruments may not necessarily be as helpful as finance, technology transfer, and capacity building.

The OEWG's chapter-by-chapter discussion of the UNSG's report "clarified," in the words of one delegate, how emergent positions carried over into the various chapters of the UNSG report, with some chapters being more of a cause for concern than others. The second chapter of the report, on suggested principles to be consolidated, was among the most polarizing. While there was some agreement on the report's inclusion of some principles, such as principles of prevention and precaution, divergences appeared in terms of whether other principles should be included at all, or whether the report had omitted important principles. Delegates from the G-77/China emphasized the principle of sovereignty over natural resources and a strong principle of common but differentiated responsibilities. Others suggested IEL had evolved and required new principles such as the right to a healthy environment.

In discussions regarding Chapter III, on existing regulatory regimes, concerns were frequently heard about upsetting the "delicate consensus" achieved in some MEAs, as well as the possibility of an overarching instrument affecting existing rights and obligations. One participant cited the risk of regression in the case of the carefully negotiated update to the principle of CBDR as part of the Paris Agreement on climate change. Meanwhile, Chapter IV on environment-related instruments, which considered gaps in other areas of law such as trade, investment, intellectual property, and human rights, sparked its own debate, leading one delegate to question whether this chapter had "opened a can of worms."

Towards a "Dignified Outcome": What next for the OEWG?

In the face of the critical reception to the UNSG's report, many speculated that a legally binding instrument was sliding "off the table" before the conversation had really begun. For some, the struggle to effectively land the pact initiative within the UN system was, in part, the result of an overly juridical, "lawyerly" approach by advocates that had not sufficiently taken account of the realpolitik of UN institutions. They pointed to the need to respect the embedded politics of the multilateral environmental law system.

In this light, in the corridors some started to entertain notions of a "dignified outcome" for the pact initiative in the form of, for example, a political declaration or some such package. Others

saw in the term "compact" a more faithful and less threatening path forward for the proposal, noting the potential example provided by the Global Compact for Migration.

One proponent mused that the conversation about a pact was never driven primarily by the notion of "gaps" in IEL, and indicated that a conversation about a compact or assembly of "principles" or "pillars" was more on point. This compact would, he suggested, respect national sovereignty and existing MEAs, and assist national jurists to navigate environmental law principles (enshrined in 300+ MEAs) with greater coherence, consistency, and effectiveness.

Questions about landing or introducing the pact initiative also prompted some participants to ponder whether parts of the UN system could in fact benefit from the initiative and inject momentum. Could the "pact" in some form contribute to the long-held ambitions of some Member States to strengthen the coordinating role of UNEP and UNEA in the multilateral environmental law regime? And wasn't the idea of a pact for the environment (when finally articulated) precisely the kind of opportunity the UN system is looking for to shore up the environmental dimension of the 2030 Agenda and the Sustainable Development Goals?

As the week came to a close and delegates looked ahead to the March session, there was reluctance to move forward without a more detailed map and clarifications for the journey ahead. The Co-Chairs request for submissions by 20 February will open up an opportunity for advocates of the pact to embed their initiative in a more expansive case for a new instrument. Some hope that it could address a long-standing demand for a level playing field for IEL, alongside other regimes such as trade. Many also called for more time to prepare. But, some warned, in an ever-worsening global environmental context, the international community must strike a balance between acting fast and acting well.

Others were optimistic that the process would eventually bring about a useful set of recommendations for the UNGA, and that some of the original intentions behind the pact would be resurrected. As one delegate noted as the conference drew to a close: "There is light at the end of the tunnel, but we are still in the tunnel."

Upcoming Meetings

Negotiation of the Summary for Policy Makers of the Sixth Global Environment Outlook: The negotiation of the Summary for Policy Makers (SPM) of the sixth Global Environment Outlook (GEO-6) is expected to result in the adoption of the SPM, as mandated by the first session of the UN Environment Assembly (UNEA) (UNEP/EA.1/Res.4 on Science Policy Interface). The results will be presented for consideration by UNEA at its fourth session. **dates:** 21-24 January 2019 **location:** Nairobi, Kenya **contact:** Pierre Boileau, Head of Global Environment Outlook **phone:** +254 20 762 3520 **email:** Pierre.Boileau@un.org **www:** https://www.unenvironment.org/events/un-environment-event/negotiation-summary-policy-makers-sixth-global-environment-outlook

Third Forum of Ministers and Environment Authorities of Asia Pacific: The third session of UN Environment's Forum of Ministers and Environment Authorities of Asia Pacific will provide an opportunity for Member States in the Asia Pacific to bring a regional perspective to UNEA-4. **dates:** 23-25 January 2019 **location:** Singapore **contact:** UNEP Regional Office for Asia and the Pacific **phone:** +66-2-288-1899 **email:** unep-apmf@un.org **www:** https://www.unenvironment.org/events/conference/third-forum-ministers-and-environment-authorities-asia-pacific

Expert Group Meeting on Conservation and the Rights of Indigenous Peoples: This EGM is organized annually by the Indigenous Peoples in Development Branch within the Division of Inclusive Social Development of the UN Department of Economic and Social Affairs (DESA). The theme of the 2019 EGM is "Conservation and the rights of indigenous peoples," as recommended by the 2018 session of the UN Permanent Forum on Indigenous Issues. **dates:** 23-25 January 2019 **location:** Nairobi, Kenya **contact:** Indigenous Peoples in Development Branch/Secretariat of the Permanent Forum on Indigenous Issues (IPDB/SPFII) **email:** indigenous_un@un.org **www:** https://www.un.org/development/desa/indigenouspeoples/meetings-and-workshops/expert-group-meeting-on-conservation-and-the-rights-of-indigenous-peoples.html

Fourth Session of the UN Environment Assembly (UNEA): The theme of the fourth session of the UNEA is "Innovative solutions for environmental challenges and sustainable consumption and production." It will be preceded by a meeting of the Open-Ended Committee of Permanent Representatives (OECPR) from 4-8 March 2019. **dates:** 11-15 March 2019 **location:** Nairobi, Kenya **contact:** UNEP **email:** unepinfo@un.org **www:** http://web.unep.org/environmentassembly/

Second substantive session of the Ad Hoc Open-ended Working Group: The second session of the OEWG will discuss possible options to address possible gaps in international environmental law and environment-related instruments, as appropriate. **dates:** 18-20 March 2019 **location:** Nairobi, Kenya **contact:** UNEP email: stadler.trengove@un.org **www:** https://www.unenvironment.org/events/conference/towards-global-pact-environment

For additional meetings, see: http:///sdg.iisd.org/

Glossary

CARICOM	Caribbean Community
CBDR	Common but differentiated responsibilities
CDJ	Le Club des Juristes
COP	Conference of the Parties
DRC	Democratic Republic of the Congo
FSM	Federated States of Micronesia
ICC	International Chamber of Commerce
IEL	International environmental law
IUCN	International Union for Conservation of Nature
LDCs	Least developed countries
MEAs	Multilateral environmental agreements
OEWG	*Ad hoc* open-ended working group
SDGs	Sustainable Development Goals
UNEA	UN Environment Assembly
UNEP	UN Environment Programme
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UNSG	UN Secretary-General
WIPO	World Intellectual Property Organization