NGO INPUT 3rd Workshop Resolution 73/333

Wednesday 7 of July 2021

(i) Which building blocks under titles "Environmental law is essential for the protection of our planet" and "Accelerating and facilitating action and implementation at all levels" expand current mandates or fall outside the scope of resolution 73/333?

Leida Rijnhout - Stakeholder Forum:

We agree on all building blocks, but want to reiterate that for us our main request or demand is that this declaration contains a political commitment from all members and UNEP to start a process, led by UNEP/UNEA to develop a Global Framework for Environmental Governance and Law. This Framework should contain main objectives, targets, indicators, means of implementation and monitoring tools. We aim to adopt such a Framework in 3 to 4 years. This would be a milestone and great deliverable for UNEA as "International Environmental Parliament", it would show that UNEP has the authority it should have in coordinating and being the leading force in international environmental governance and law. We are not asking for an overall legally binding framework, it will be depending on individual topics to see if this is appropriate or not.

The ILO has managed to negotiate international conventions that has led to national labour laws in many countries, UNDESA has managed to adopt a global 2030 Agenda for SD, so why would UNEP/UNEA not be able to develop a Global Framework on env governance and law ?

We see it as very important that environmental issues are seen as a separate and "stand-alone" issue, and treated like that. We see the advantage of integrating and coordinating env dimensions in other UN bodies, as is done by the EMG, but that does not mean that UNEP should not take the role of establishing a Global Framework for Environmental governance and law, to guarantee a level playing field and protect planetary boundaries.

(ii) What are the benefits of international environmental law when it comes to protecting the environment?

Lucia Omoyemen - Centre for Human Rights and Climate Change:

National laws are not enough. → We need international environmental laws for effective protection of the environment.

International Environmental law is linked to international awareness of the transboundary nature of most environmental problems related to the global environment and the need for coordinated multilateral action to address environmental problems effectively.

Standards developed at the international level through treaties, and other international instruments provide obligations for regulating the behaviour of states and corporations in environmental related matters and for states to take individual and collective action to protect the environment.

Predominantly international law drives stronger national environmental law and regulation through their domestication and implementation of national measures including those focused on strengthening environmental law provided for in the instrument.

International Environmental Law expand funding ecosystem and international coordination of financing support to address environmental issues and implement environmental laws.

International environmental law drives unification of fundamental environmental principles and the global agenda for environment and sustainable development

International Environmental Law drives the agenda for coordination of technical support needed to protect and to restore the environment.

Lionel Chami, Global Pact Coalition:

1/ **No nation can solve the climate, biodiversity, sea pollution crises, or in fact any crossborder environmental problem on its own.** There are many environmental problems that need global interventions or solutions. National laws are incapable of resolving these problems, hence the need for international environmental law.

2/ **International environmental law is a tested and effective method to deal with international environmental issues.** The 1987 Montreal Protocol is a case in point. Collective action through a robust legal framework successfully addressed the ozone depletion crisis, and in some parts of the world, species have been saved from extinction. This shows that where there is a **strong legal framework** and **collective action,** success can be achieved. (Source: Article from Prof. Nilüfer Oral.)

3/ **International environmental law can create a global level playing field.** Akin to the recent G7 effort to impose a common standard via a 15% Global Minimum Corporate Tax, **Member States have to agree on uniform environmental standards** to prevent environmental dumping. This will increase accountability since polluters shall be held equally accountable at home and abroad.

4/ **International environmental law can regulate markets, prevent negative externalities, and drive a sustainability revolution**. The market needs to be regulated - and polluters need to be held accountable for their actions. This is the only way to prevent environmental degradation and Member States have a huge role to play in that regard.(Source: Article from Prof. Dan Esty).

5/ **To be more effective, it should recognize the Right to a Healthy Environment. Does it really make a difference? The answer is a resounding YES**. Research demonstrates that this right has served as a catalyst for stronger environmental laws and policies, increased implementation and enforcement, higher levels of public participation in environmental decision-making and most importantly, improved environmental performance. (Source: David R. Boyd's article).

(iii) What are the opportunities that exist for making full use of the Montevideo Environmental Law Programme in order to increase Member States' capacity building for implementing environmental law? (Rob Wheeler + Victor Tafur?)

Rob Wheeler - Commons Cluster :

We appreciate the recent progress being made on the Montevideo Programme and particularly note that which was made during the first meeting of National Focal Points in June. We appreciate that 136 countries now have appointed National Focal points; however we want to second the co-chairs request that the rest of the countries do so as well and that all countries update their information, and each country that have not yet done so add their

primary environmental legislation, regulations and other means of implementation to the LEAP and UNEP websites.

If good progress continues to be made through the Montevideo Programme on Capacity Building that would provide a good starting point for developing the Global Framework for Environmental Governance and Law that we have called for. But much more work is still needed.

We support the eight priority areas for implementation; but also see it as an urgent necessity to begin work on all 8 priority areas and that sufficient financial and other resources be provided in order to be able to do so. The EU and other developed countries could provide the initial funding to underwrite such a commitment; but as Switzerland suggested the listing should be further discussed so as to become more focused and results oriented.
The partnerships and stakeholder engagement is also essential and the brainstorming session and suggestions were appreciated; but now we and the Secretariat and/or Steering Committee will need to reach out to the NGO environmental community and international experts for more specific input and responses to this process.

So: We take note of the good work under the programme but we are concerned about some similarities between this and the Montevideo process. We therefore ask for their integration without losing the quality of important issues raised under the Montevideo Programme e.g. on prevention, mitigation and environmental damage (Section C), avoidance and settlement of international disputes (Section D) and strengthening international environmental law (Section E)
I would suggest that almost no one outside of these UN processes knows about the Montevideo Programme and it would be helpful if attention could be drawn to it.

We also believe that UNEP is ideally placed to help build capacity for the implementation of environmental law (Montevideo) through a **"Day of Action for Environmental Law"** during which it could continue to support capacity development

- further develop and promote its excellent resource materials
- make it available through its own mailing lists and those of other IGOs.

A "Day of Action for Environmental Law" could significantly boost UNEP's efforts by:

1. Creating awareness and cooperative action among both civil society and governments focusing on the implementation of environmental law at all levels throughout the year;
2. Advance the understanding that environmental Law is and must be the foundation for effective implementation of the MEAs;
3. Encouraging MS to add their reports, also of their citizens in the relevant section of InforMEA, UNEP's computer, that becomes an increasingly powerful tool for the implementation of the other substantive para s of 73/333.
4. Offer intervision sessions between UNEP MS with with similar challenges encouraging them to move forward together.

Victor Tafur - ICEL:

For the Montevideo programme to be more effective, it needs to be expanded and integrated with other solutions flowing from broader problems associated with implementation of International environmental Law that led to all consultation in respect of Resolution 73/333. We recommend integration of new and existing solutions to ensure effective outcomes and solutions including the integration of UNEP capacity building efforts with implementation of all efforts to implement environmental agreements including those contained in UNEP Guidelines on Compliance with and Enforcement of Multilateral

Environmental Agreements and Guidelines for National Enforcement, and International Cooperation in Combating Violations, of Laws Implementing Multilateral Environmental Agreements.

The Montevideo Programme needs adequate, sufficient and dedicated funding and institutional support, and in the best case integrated as one of the means of Implementation for the Global Framework of Environmental Governance and Law.

Advantage of Montevideo is that it can involve civil society including local authorities, schools, etc. Bottom up. Advantages it increases numbers of participants who are implementing it from local to global levels and it raises consciousness. It can work as a global campaign to stress the importance of env governance and law.

(iv) What assessment tools, including environmental performance reviews, would help Member States in advancing the environmental agenda?

Leida Rijnhout - Stakeholder Forum

We need assessment tools that will provide guidance on how to uphold the implementation of International Environmental Law at all levels. There are many existing examples. The Bangalore Principles that provide guidance to Judges is a good starting point, and dealing with environmental crime (being often collective and towards future generations) could be integrated.

We recommend amongst others an assessment that measures the enforcement of international environmental laws, integrates peer reviews and provides opportunity for major stakeholder consultation and civil society reporting. The existing UPR (OHCHR) scheme is an interesting tool that could be appropriate for env governance and law too. The OECD's EPR too.

However, we would not support a review process that will be entirely non binding or having a voluntary nature but it should support an accountability assessment tool for environmental performance review that monitors the overall effectiveness of implementation of international environmental laws.

An appropriate review process needs to be integrated in our mentioned Global Framework, and can still be negotiated under the coming UNEAs. As fragmented compliance systems are already there like the UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements and Guidelines for National Enforcement, and International Cooperation in Combating Violations, Wildlife crime and many more. Innovation, coordination and alignment is crucial.

It is necessary to look at implementation of all dimensions in an integrated manner and the national review processes and opportunity for civil society engagement where it occurs. We are not happy with Voluntary National Reviews (VNRs) as they have been carried out to date by the HLPF, as those reviews are far too voluntary and they don't include a progress assessment. Too much Public Relations for the country, without review from other MS. We do agree that the review tool should also include an exchange of best practices and a "learning curve".

Lionel Chami, Global Pact Coalition:

We propose that the political declaration calls for the UNEP Law and Environment Assistance Platform to develop an "Environmental Rights Index".

- Building up on the mechanism described by Leida, which would resemble the Universal Periodic Review of the OHCHR, this new index would document the environmental law, rights, duties, and principles that are recognized by law – *de jure* – and how they effectively implemented in fact – *de facto*.
- Akin to the World Bank's *Doing Business* Index, it would monitor each country's environmental rights performance, and allow for comparisons and mutual learning.
- This index could be featured on an interactive world map. It is capital that this tool be simple to use, so that it could be used by NGOs, journalists, academics etc. This would help publicize the work and progress of member states in that domain into the mainstream.

(v) How can Member States make optimal use of existing financial mechanisms and funds for implementing the international environmental law and improving the status of the global environment? (Ana Barreira)

Ana Barreira, Director, International Institute for Law and the Environment

We recognize that if sufficient funding is not put forward to support the development of the Paris Agreement comprehensive framework as well as other international environmental law instruments, the environmental damage that is likely to continue to increase will cost far more than the cost of putting such a framework in place and doing what is needed to fully implement it.

However, financial mechanisms and funds are not the only instrument to facilitate the implementation of international environmental law. It is not all about financial mechanisms and funds. To implement international environmental law a combination of means of implementation is necessary. **Means of implementation** includes:

1.- Financial mechanisms. There is an enormous fragmentation in this regard. There financial mechanism provided in MEAs, in other international instruments, the GEF, IFIs, regional instruments such as those existing at the EU level, national development agencies. However, there is no clear information on how much is invested for the implementation of international and national environmental law and to ensure the environmental rule of law.

2.- Technology Development and Technology transfer. It is necessary for developed countries to build the technical capacities of developing countries to produce technology at the national level. There are several advantages for doing this which include the cost, the appropriateness to national circumstances, challenges of IPRs, equitable distribution of finance, etc It is necessary to transfer the best and updated technology to comply with environmental standards and other requirements provided by environmental Law. The case of the ozone legal regime: the Vienna Convention and the Montreal Protocol is a very illustrative example of a successful case of how through technology transfer international environmental law contributes to avoid and reduce the planet degradation.

3.- Capacity building. There are many programmes and projects in place to create capacity but as said before funding for the Montevideo programme is essential for this.

Finally, we must be realistic. Means of implementation do not work when the legal and the institutional settings and frameworks are weak at the international level but also in the

recipient countries. Thus, robust international and national legal and institutional frameworks are key for the environmental rule of law. We cannot forget that many times the very same administrations are the ones which do to comply with the environmental national laws such as when public projects are developed such as roads, airports or dams. At the same time without strong and well equipped administrations and well trained courts environmental law cannot be enforced. In addition, without compliance committees within MEAs in which the public can submit notifications of non-compliance with international environmental law monitoring of compliance will continue to be weak.

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