

2nd substantive session of the AH OEWG “Towards a Global Pact for the Environment”
18-20 March 2019

EU and its Member States

Question 1: What options can be considered to address the possible gaps or challenges related to principles of international environmental law mentioned by delegations without duplicating nor undermining existing law and ongoing efforts/processes? What would be the objective of such options? What methodology should be used to develop them?

Objective

- EU and its MS acknowledge that “principles of international environmental law” are an important building block for environmental governance and their usage is widespread. Some principles are included in non-binding instruments, including political instruments, while others are enshrined in customary international law, relevant case law, or in issue-specific multilateral environmental agreements that are legally binding.
- EU and its MS also acknowledge there are gaps (in our broad understanding of the term, including voids, defects, challenges and/or deficiencies) related to the application of principles of international environmental law. The work within this process on principles should contribute to the overall objective of environmental protection, by, for example, enhancing clarity and better interpretation, increasing visibility, improving coherence and consistency of international environmental principles, as well as their implementation, at all levels, and facilitating mainstreaming environmental aspects into other policy areas.
- With the overall objective of strengthening environmental protection, including through enhancing implementation of international environmental law, the EU and its MS see the potential for further work on principles of international environmental law in the GPE process to address these gaps, to:
 - improving their implementation, at all levels,
 - enhancing clarity and interpretation, as appropriate,
 - improving coherence and consistency
 - enhancing visibility and application, and
 - facilitating mainstreaming environmental aspects into other policy areas.
- Beyond working towards enhanced application of existing principles, the EU and its MS also see merit in further work in the AHOEWG to clarify emerging principles as appropriate.

Options and way forward

- Without duplicating nor undermining existing law and ongoing efforts/processes to enhance environmental protection, the GPE process could:
 - Acknowledge the relevance/importance of principles of international environmental law;
 - Express that States are committed to be guided by / to follow / to apply principles of international environmental law in the formulation and implementation of domestic policies;
- The recommendations should include the adoption of an instrument within a certain timeline, that would address all the areas under discussion and the nature of such an instrument remains to be determined. It could be, for example a document approved by the UNGA, a High Level Declaration, a legally binding multilateral agreement, or other means, or a combination of these options.
- The GPE process should revolve on how further work on principles will be taken forward. Our internal reflections are ongoing as to possible options, taking into account the ongoing discussions.
- We also believe the Montevideo Programme is well placed to provide support to MS or regions for further work on development of possible instruments and implementation of principles of international environmental law at national level
- Taking into account the urgency of enhancing environmental protection, we do not agree with the suggestion made by some delegations to wait for the outcomes of the ILC study on criteria to define general principles of law and are of the view, like other delegations that the work to be undertaken on principles of international environmental law could be well addressed in this process.
- We see the potential in working in the time-limited GPE process on principles in line with the overall objective of strengthening environmental protection and strengthening their application.
- Moreover, any work on principles must not weaken environmental protection actions and standards nor undermine ongoing negotiations or existing processes, legal instruments and frameworks.
- Furthermore each international environmental principle must be considered on its own merit, taking into account their history and specific context.

