



ELEMENTS FOR CONSENSUS ON DRAFT RECOMMENDATIONS TO STRENGTHEN  
IMPLEMENTATION OF INTERNATIONAL ENVIRONMENTAL LAW UNDER  
RESOLUTION 72/277 “TOWARDS A GLOBAL PACT FOR THE ENVIRONMENT”

Submitted on behalf of the

**INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW (ICEL)**

FOR CONSIDERATION IN THE 2019 NAIROBI CONSULTATIONS - 12 APRIL 2019

This Note is submitted to the Co-Chairs of the Ad Hoc Open Ended-Working Group (OEWG) established by General Assembly Resolution 72/277. Its purpose is to give input to the UN General Assembly Consultations on “Towards a global pact for the environment” following the invitation to submit statements on elements for the draft recommendations as of 12 April 2019. ICEL welcomes the invitation by the co-chairs of the OEWG to provide inter-sessional input for the third substantive session taking place in Nairobi, from 20 to 22 May 2019.

Since 1969, when it was established in New Delhi, the International Council of Environmental Law has advanced knowledge on international environmental law and the legal foundations for sustainable development. As an international non-governmental organization accredited to the UN Economic and Social Council since 1973, ICEL has shared its expertise with ECOSOC, UN Members States, and international organizations. ICEL’s members are senior environmental law experts drawn from all of the UN regions and all legal traditions: civil law, common law, socialist law, Islamic law, and customary law.

As in previous Notes, ICEL requests consideration of the ICEL Charts that record the consensus on principles and objectives in international environmental law, and of the views by experts and scholars from developing nations (predominantly cited in the ICEL’s previous submissions), which may be accessed on the website of the Law Library at the Elisabeth Haub School of Law, New York (<https://libraryguides.law.pace.edu/icel>).

ICEL urges consensus on concrete recommendations for an enhanced framework of cooperation to strengthen the implementation of international environmental law within a precise timeframe. The fruitful consultations so far have sufficiently identified challenges in relation to principles, governance and implementation. ICEL suggests that the way forward is to conduct further consultations for the preparation of a global declaration or instrument to address these challenges in the context of sustainable development. These consultations would culminate in the proclamation of such a global declaration or instrument in 2022 for the 50th anniversary of the Stockholm Declaration and the creation of the United Nations Environment Programme (UNEP). Such a timeframe for a new global declaration or instrument would also be timely for the mid-term review of the Sustainable Development Goals (SDGs) and the 2030 Sustainable Development Agenda.

## **Gaps**

ICEL concurs with the broad understanding of “gaps” in international environmental law as including the concept of lacuna, deficiency or challenge, and the importance of the identification of “gaps” through a science-based process. In this regard, the draft recommendations should embrace the process to regularly prepare an independent assessment of the state of the environment, the effectiveness of the policy and law response in addressing environmental challenges in the context of sustainable development, and the possible pathways to achieving the internationally agreed goals.

The latest of such assessment is the sixth Global Environmental Outlook (GEO-6), endorsed by the fourth UN Environment Assembly in March 2019 (UNEP/EA.4/L.27), which identifies science-based gaps focusing on the SDGs, and concludes that *“trends in environmental degradation are projected to continue at a rapid rate and the related sustainable development targets and internationally agreed goals are not expected to be achieved, including on climate change, biodiversity loss, water scarcity, excess nutrient run-off, land degradation and ocean acidification (well established).”* See <https://www.unenvironment.org/resources/global-environment-outlook-6>, Summary for Policy-Makers at 4.1. Other rigorous science-based assessments that serve to identify “gaps” can also feed-in such processes. These include the *Global Land Outlook* produced by the UN Convention to Combat Desertification Secretariat in 2017: *“Scientific knowledge on dryland production systems remains underdeveloped and is often side-lined in favor of management approaches that have been developed for humid lands. This is compounded by inadequate data on dryland environments and economies, which allow important decisions to be made in an information vacuum”*; <https://knowledge.unccd.int/publication/full-report>, at 64; see also the first World Ocean Assessment: [https://www.un.org/Depts/los/global\\_reporting/WOA\\_RegProcess.htm](https://www.un.org/Depts/los/global_reporting/WOA_RegProcess.htm); “Knowledge Gaps” are identified at 42 to 47.

On “gaps” in environment-related instruments, understood as covering those international legal instruments that have an environmental dimension but do not have an environmental protection objective per se, the generation of an adequate set of recommendations requires substantially more time than provided for the Nairobi consultations in 2019. Nonetheless, the OEWG should acknowledge the challenges in these areas and provide a momentum by sending a strong message from the General Assembly encouraging involved bodies and structures to address these “gaps.”

## **Principles**

The process for harmonizing the meaning of different principles based on the Rio Declaration should go forward with the mandate for a developing a general declaration or global instrument on the environment to build on the new vision of the SDGs and the 2030 Agenda. As many delegations mentioned, principles perform a significant role in framing the development of environmental law, providing a shared normative ground to reflect the interlinked, transversal, and integrated dimension of sustainability issues. Thus, principles play a key

integrative role to overcome the negative aspects of unintended fragmentation. Principles also have a connectivity function between international environmental law, regional environmental law and domestic law.

The next step would be to convene further consultations for the preparation of a global declaration or instrument in the context of sustainable development, with a focus on achieving the SDGs and implementing the 2030 Agenda. Strengthening national environmental law to implement the SDGs would be greatly advanced by recognition of the right to a clean and healthy environment in the context of sustainable development. ICEL reiterates that the principle of sustainable development implies that “the right to development is to be balanced with and constrained by the right to a clean, safe, healthy and sustainable environment.” While embraced by at least 155 States in their national constitutions, this would ensure that all UN Member States working towards the realization of the 2030 Sustainable Development Agenda apply this principle.

With respect to the methods of further consultations after May, ICEL notes that in the year 2022 the United Nations will observe the 50<sup>th</sup> anniversary of the Stockholm Declaration on the Human Environment (1972), the 30<sup>th</sup> anniversary of the Declaration of Rio de Janeiro on Environment and Development, and the 20<sup>th</sup> anniversary of the Declaration of Johannesburg on Sustainable Development (2002). ICEL is gratified to see how these declarations have advanced the framework for sustainable development in all nations. To prepare for 2022, ICEL proposes that the OEWG give consideration to the UN General Assembly establishing a preparatory committee for the 2022 anniversaries, with the mandate to draft a Declaration that would contribute to implementation of the UN Sustainable Development Goals. By 2022 we shall have seven years of experience in working to attain the SDGs by 2030, and the encouragement of a new Declaration would stimulate the additional cooperation needed to attain the SDGs.

While Member States took the momentous, transformative leap of adopting the SDGs and the 2030 Agenda, ICEL observes that the Stockholm, Rio, and Johannesburg Declarations, as well as the World Charter for Nature (UNGA Res. 37/7), and other subsequent declarations and instruments in the context of sustainable development are not fully aligned with the new transformational and universal vision set forth in the 2030 Agenda. The General Assembly acknowledged that “[t]he challenges and commitments identified at these major conferences and summits are interrelated and call for integrated solutions,” and stated: “To address them effectively, a new approach is needed.” (A/RES/70/1, para. 13). A robust global declaration on the environment and sustainable development in 2022 would be a way to express that new approach.

As noted in the Co-chairs’ summary of the second substantive session, many delegations understand “the added value of codifying or compiling principles to support implementation at all levels, improve consistency and facilitate interpretation, including by developing a common understanding,” of the challenges and solutions posed by environmental degradation and sustainable development. ICEL observes that it would be effective and productive to employ the two-tier approach to consider widely applicable and agreed-upon principles, such as those

based on the 1972 Stockholm Declaration, the World Charter for Nature and the 1992 Rio Declaration, as well as those embodied in the 2030 Agenda outcome document, and clarifying emerging ones, such as the non-regression principle. The nature of any such declaration or instrument, including whether it should be legal in nature or not, binding or non-binding, need not be debated or resolved at this stage in the consultations.

ICEL follows closely the work of the UN International Law Commission on the progressive development of international law and its codification. That work is different from the processes by which States cooperate to define how to advance sustainable development in new ways. In any event, ultimately the ILC reports directly to the General Assembly. States have agreed that renewed efforts to implement the Sustainable Development Goals should advance as expeditiously as possible. The General Assembly can promote the national implementation of the SDGs through a further round of consultations, such as through a preparatory committee for the 2022 observances. ICEL also agrees with States that have advised that there is no need in this context for any consultations on the establishment of an International Court for the Environment.

Acknowledging broad consensus on guaranteeing that the consultations do not undermine existing instruments, bodies and processes, there is no risk associated with compiling and refining existing principles. In this respect, ICEL has provided UN Member States with the tools that enable overview of existing environmental law commitments, in cooperation with the Vance Center of the New York City Bar and the international law firm of White & Case. ICEL has assembled this information in a set of Charts (the “ICEL Charts”) available at <https://libraryguides.law.pace.edu/icel>.

The Charts identify general principles that have already been adopted within multilateral environmental agreements (MEAs) and regional agreements. They include: the African Union (AU), the Association of South East Asian States (ASEAN), the Caribbean Community (CARICOM), the Commonwealth of Independent States (CIS), the League of Arab States (Arab League), the Organization of American States (OAS), the South Asian Cooperative Agreement (SACEP) and the Pacific Islands Forum. ICEL has also assembled a Chart indicating the legal foundation provided by these agreed principles of international environmental law for each of the UN Sustainable Development Goals. The ICEL Charts reveal the consensus on principles and objectives in international environmental law.

### ***Governance***

On the strengthening of governance of international environmental law, particularly to overcome lack of coherence and cooperation between the different MEAs, there is broad agreement on the need for concrete recommendations by the General Assembly for the full implementation of paragraphs 88 and 89 of the Rio+20 Declaration. Such recommendations must underscore due care not to undermine specific regulatory regimes, avoid duplication, and respect the interdependence of each instrument and body. The OEWG should recommend reaffirming this notion and reiterating that any deficiencies identified under specific regimes

are addressed in the context of each specific agreement, an explicit recognition that existing sector-specific agreements present specific law to be applied, *lex specialis*, and therefore have priority and should not be undermined.

ICEL submits that it would be appropriate for any further consultations for the preparation of a global declaration or instrument for an enhanced framework of cooperation to strengthen the implementation of international environmental law and sustainable development, as recommended above, could also address governance challenges, with a focus on achieving the SDGs and fully implementing the 2030 Agenda, aligned with the specific objectives of the MEAs.

Since a multifaceted response is called for, ICEL would encourage further consultations to involve the several secretariats and conferences of the parties under international agreements, to develop concrete actions to address the gaps identified, as well as the means and actors with authority to act on the solutions. Such recommendations must call for aligning budgets for shared tasks, as appropriate, for example on REDD-plus initiatives.

ICEL finds that all options mentioned in the Co-chairs' summary of the second substantive session in relation to governance are sound and merit serious consideration. ICEL would consider it prudent to include these options in the scope of work of the consultations leading to the global declaration or instrument for an enhanced framework of cooperation to strengthen the implementation of international environmental law and sustainable development.

### ***Implementation***

With regard to options to address the implementation gap, broadly recognized as the most serious challenge to sustainable development, ICEL recommends consultations with an aim to streamline, and fully finance, the Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo V) "Delivering for People and the Planet" (UNEP/EA.4/L.24). While the Montevideo V program is a global program for the development of environmental law in general under the auspices of UN Environment, its mandate does not yet facilitate coordination of the national implementation efforts of the MEAs. It would strengthen national implementation of the SDGs to employ the Montevideo consultations to examine the "best practices" available.

ICEL recommends that serious consideration be given to strengthen efforts, and provide adequate funding, for consolidating and centralizing, as appropriate, the databases being created under the EAs about national implementation of the SDGs and MEA undertakings. ICEL has cooperated in doing so for environmental laws around the world, through ECOLEX, an information service on environmental law operated jointly by FAO, IUCN and UNEP (see <http://ecolex.org/>), and InforMEA, the information portal facilitated by UNEP to access MEAs (<https://www.informe.org>). Similar cooperative databases could be established across many international organizations that address aspects of implementing the SDGs.

Attention should be devoted to how such databases should link scientific and policy-related databases to improve interdisciplinary, integrated and cross-cutting approaches, and to harness big data initiatives, as well as supporting expert commissions in the relevant disciplines needed to strengthen the implementation of international environmental law. These could include academies of science and other scientific bodies and other networks, IUCN's expert commissions, and regional bodies.

Finally, ICEL congratulates the Co-chairs for their summary of the second substantive session in relation to implementation. The inclusion of these options would substantially advance the consultations leading to the global declaration or instrument for an enhanced framework of cooperation to strengthen the implementation of international environmental law and sustainable development.

### **The Way Forward to Attaining “The World We Want”**

In conclusion and looking forward, ICEL respectfully submits that the fruitful consultations to date have sufficiently identified a “package” of issues in relation to principles, governance and implementation, that merit urgent attention by the General Assembly.

ICEL commends the OEWG for its productive deliberations since January 2019. The foundation has been laid for the OEWG to recommend that the General Assembly take immediate actions based on the consultations and recommendations, and to initiate a two-year review process to develop precise actions to address the challenges, leading to the adoption of an enhanced framework of cooperation to strengthen the implementation of international environmental law and sustainable development by 2022 for the 50th anniversary of the Stockholm Declaration, the creation of UNEP, and the 30<sup>th</sup> anniversary of the 1992 Rio Declaration, and 20<sup>th</sup> anniversary of the Johannesburg Plan of Implementation.

ICEL was already 24 years old when the General Assembly convened the Stockholm Conference on the Human Environment in 1972. Environmental Law was born in that year, laying the basis for the concept of sustainable development. Much has been achieved to fashion “the world we want,” but even more remains to be done in order to implement nationally and regionally the UN's multilateral cooperation on sustainable development.

*This is ICEL's fourth submission for consideration in the process launched by Resolution 72/277, to follow-up on the initial Note of 10 December 2018 on the Report of the Secretary-General entitled “Gaps in international environmental law and environment-related instruments: towards a global pact for the environment” (A/73/419), a second Note on the agreed principles that provide a foundation for restating a common aspiration and global vision for sustaining Earth's shared biosphere, dated 10 January 2019, and a third Note on options to address gaps under Resolution 72/277.*

The ICEL Notes may be accessed on the website of the Law Library at the Elisabeth Haub School of Law, New York (<https://libraryguides.law.pace.edu/icel>), see also, <http://icel.international>.

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