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Sixth [Virtual] Meeting of the Working Group on Access Rights and Regional Instrument created in the Plan of Action to 2014 of the Declaration on the application of principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean

Friday, 1 August 2014

[This document has not been subject to editorial review]

MINUTES – SUMMARY OF THE MEETING

1. BACKGROUND

The Plan of Action to 2014 for the implementation of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, adopted in Guadalajara (Mexico) in April 2013, established two Working Groups in order to advance towards the achievement of a regional instrument. According to the Plan of Action, the Working Group on access rights and the regional instrument has the objective of deepening knowledge on access rights with the outlook of proposing the nature and contents of a regional instrument.

Below is a description of the development and conclusions of the Sixth meeting of the Working Group on Access Rights and Regional Instrument, for information purposes only, which had the aim of advancing in the discussions on the nature of the instrument by holding a round-table discussion with the renowned experts in Public International Law: Dr. Marcos A. Orellana, Professor of American University and Dr. Concepción Escobar, Chair in Public International Law and member of the United Nations International Law Commission.

Annex 1 contains the list of participants of the meeting.

2. DEVELOPMENT OF THE MEETING

In the opening remarks, ECLAC expressed gratitude for the high levels of participation and briefly outlined the objectives of the meeting.

The delegate from Chile then spoke, in her capacity as Chair of the Process, to comment on the expectations of the Presiding Officers with regard to the second half of the year. To this end, she stated that a new phase of the process will begin with the Fourth Meeting of Focal Points to be held in November 2014. She requested that all countries have a clear position on the nature and contents of the instrument and sufficient mandates to adopt agreements no later than the November meeting. She also invited the members of the public to continue to actively participate as they have done in the past.

The coordinators of the Working Group (Brazil and Costa Rica) took the floor to welcome the participants and to explain how the meeting would function. The coordinators also encouraged countries to resolve any doubts related to the nature of the instrument so that agreements could be reached at the seventh in person meeting in Costa Rica as well as at the fourth meeting of Focal Points in November.

After a brief presentation of his CV by the delegate of Costa Rica, Dr. Marcos Orellana answered the following questions:

- Can a legally binding instrument contain binding and voluntary approaches?
- What international instrument would prove to be more effective to fully apply access rights?
- In what way can a binding instrument facilitate compliance of obligations assumed in other international environmental treaties?
- What is the legal value of the preamble and the annexes in a treaty?
- What is the legal value of the documents adopted to date in the process (Roadmap, Plan of Action and Lima Vision)?

There was a first round of questions after Dr. Orellana's presentation. Once finished, Dr. Concepción Escobar delivered her presentation after a brief summary of her CV.

Dr. Escobar made a short presentation on the reasons that, in her opinion, support the idea of adopting a binding convention on the basis of her experience as a negotiator and government representative and her wide technical knowledge in Public International Law. In addition, she expanded on the different models of treaties that could be chosen and the effects that a binding instrument would produce.

Throughout her presentation, Dr. Concepción Escobar replied to the following questions:

- What type of legal liabilities can a country incur if it does not comply with the obligations of a binding instrument?
- Does participation in the negotiation of a text of a binding instrument generate any type of obligation and/or international liability?
- Can a treaty foresee different application phases?

- Can some of the obligations in a treaty be deferred in time or can some of the obligations be subject to a certain condition (legislative and institutional development, etc.)?
- In the event of a binding framework convention which establishes that provisions on specific matters be developed in the future, does the treaty have to be ratified again once these provisions have been determined? Can a convention authorize executive governments or bodies created by the instrument (delegation of competencies) to adopt such provisions without a new ratification?
- Can the modality of protocols "solve" the conflict of having a binding agreement now regulating general matters and leave other matters and/or details (such as compliance and monitoring mechanisms) for a second stage of the negotiation/agreements?

After her presentation, a second round of questions and a dialogue with the participants took place. At the end of the latter, the coordinators of the Working Group took the floor to thank the statements and comments. They also were grateful for the high number of inputs received to the document of matters to be considered and invited participants to the in person meeting in Costa Rica where important developments are expected on the nature and contents of the instrument.

Chile, in its capacity as Chair of the Process, also thanked the speakers and reiterated the call of the Presiding Officers of carrying out all necessary consultations at the national level so that concrete results are achieved in Costa Rica. The delegate recalled that the first responsibility for the advancement of the process lies with the participating delegates.

Finally, ECLAC added that more than 60 participants from different parts of the region had participated and that the interest in the process was increasing. ECLAC also thanked the delegates and the public for their questions and the speakers for their excellent presentations. ECLAC also informed that the minutes of the meeting would be circulated in writing and translated into English. On the other hand, ECLAC also detailed the next meetings of the process which, up to now, are open to all those who are interested:

- 22 August: sixth virtual meeting of the Working Group on Capacity-Building and Cooperation;
- 9, 10 and 11 September: seventh in person meetings of the Working Groups established in the Plan of Action to 2014 and capacity-building and good practices workshop to be held in San José, Costa Rica;
- 9 October: workshop on PRTR in Santiago; and,
- 4, 5 and 6 November: fourth meeting of Focal Points designated by the Governments of the Signatory Countries in Santiago.

Annex 2 contains the answers of Dr. Orellana and Dr. Escobar to the questions and the interactive dialogue with participants which followed.

Annex 1
LIST OF PARTICIPANTS

A. Países signatarios de la Declaración / Signatory countries of the Declaration

ARGENTINA
Punto focal/Focal Point:

- Fabiana Loguzzo, Directora de la Dirección General de Asuntos Ambientales, Ministerio de Relaciones Exteriores y Culto
- Brenda Mariana Pangrazi, Secretario de Embajada, Ministerio de Relaciones Exteriores y Culto

BRASIL / BRAZIL
Punto focal/Focal Point:

- Bernardo Macke, Coordinación General de Desarrollo Sostenible, Ministerio de Relaciones Exteriores

CHILE
Puntos focales/Focal Points:

- Constance A. Nalegach, Punto Focal Democracia Ambiental, Ministerio de Medio Ambiente

Otros participantes / Other participants:

- Julio Cordano, Ministerio de Relaciones Exteriores
- Gabriel Mendoza Miranda, División de Educación Ambiental, Ministerio de Medio Ambiente
- Mirella Marin, Jefa de Oficina de Atención Ciudadana y Transparencia, Superintendencia del Medio Ambiente

COLOMBIA
Punto focal/Focal Point:

- Andrea Alarcón, Ministerio de Relaciones Exteriores

COSTA RICA
Punto focal/Focal Point:

- Mariamalia Jiménez, Ministerio de Relaciones Exteriores

GUATEMALA
Otros participantes:

- Paola Andrea Morris, Coordinadora, Unidad de Relaciones y Cooperación Internacional, Ministerio de Ambiente y Recursos Naturales

MÉXICO / MEXICO

Punto focal/Focal Point:

- Dámaso Luna, Director General Adjunto para Temas Ambientales, Secretaría de Relaciones Exteriores

Otros participantes / Other participants:

- Berta Helena de Buen, Directora General Adjunta de Participación y Atención Ciudadana, Secretaría de Medio Ambiente y Recursos Naturales
- Alfa María Ramos Herrera, Directora de Normas de Participación Social, Secretaría de Medio Ambiente y Recursos Naturales
- Miguel C. Molina, Subdirector de Asuntos Internacionales de Acceso, Instituto Federal de Acceso a la Información y Protección de Datos

PANAMÁ/PANAMA

Punto focal/Focal Point:

- Joana Abrego, jefa del Departamento de Asesoría Legal, Autoridad Nacional del Ambiente
- Lenisel Saavedra, Departamento de Asesoría Legal, Autoridad Nacional del Ambiente

PERÚ/PERU

Puntos focales/Focal Points:

- Mariano Castro Sánchez Moreno, Viceministro de Gestión Ambiental, Ministerio del Ambiente
- Sonia María Gonzales, Directora General de Investigación e Información Ambiental, Ministerio del Ambiente

URUGUAY

Punto focal/Focal Point:

- Alison Graña, Secretario del Servicio Exterior, Dirección de Medio Ambiente, Ministerio de Relaciones Exteriores
- Marcelo Cousillas, Asesor Legal, DINAMA

C. Organismos de Naciones Unidas / United Nations bodies

Instituto de las Naciones Unidas para Formación Profesional e Investigaciones / United Nations Agency for Training and Research (UNITAR)

- Carlos Alberto Suárez Marín, Consultant, Chemicals and Waste Management Programme

D. Otras organizaciones internacionales / Other international organizations

International Development Law Organization (IDLO)

- Cecile de Mauleon, Program Coordinator – Latin America

E. Público / Public

- Carla Aceves Ávila, Universidad de Guadalajara, México
- Silvia Alonso, SA Consultores & Servicios Asoc., Argentina
- Danielle Andrade, Legal Director, Jamaica Environment Trust, Jamaica
- Luisa Araúz, CIAM, Panamá
- Gabriel Eduardo Araya, Chile
- María Rosa Ávila
- Daniel Barragán, Centro Ecuatoriano de Derecho Ambiental, Ecuador
- Mariano Beret, México
- Astrid Milena Bernal Rubio, abogada, Ambiente y Sociedad, Colombia
- Anne Laure Bouchet, Centro Ecuatoriano de Derecho Ambiental, Ecuador
- Rossana F. Bril, Presidente, La Tierra Habla, Argentina
- Jorge Diego Brito, Asociación Civil Cooperar, Argentina
- Gabriela Burdiles Perucci, Abogado, Directora de Proyectos FIMA, Chile
- Isabel Calle Valladares, SPDA, Perú
- Julián Casasbuenas, Colombia
- Olimpia Castillo Blanco, Comunicación y Educación Ambiental SC
- Juan Carlos Castro, Universidad Andrés Bello, Academia de Derecho Ambiental, Chile
- Andrea Cerami, CEMDA, México
- Alberto Contreras, Red de control social ambiental de Colombia, Colombia
- Hugo Contreras, Director General, Asesores en Conservación y Desarrollo, AC, México
- Alejandra Cornejo, CEDEPESCA, Argentina
- Chiara Coztanzo, National University of Ireland, Ireland
- Franklin Díaz, República Dominicana
- Michael Díaz Rodríguez, Secretario Ejecutivo, Coordinadora Nacional de Atención en VIH/Sida, Chile
- Carmelo Ecarri, Venezuela
- Teresa Flores, Bolivia
- Yumna Ghani, Artigo 19, Brasil
- Javier Gonzaga Valencia Hernández, Decano, Facultad de Ciencias Jurídicas y Sociales Universidad de Caldas, Colombia
- Manuela Hernandez Nanetti
- Stefan Knights, UNEP-TUNZA Youth Advisor for Latin America and the Caribbean
- Noémie Kugler
- Paula Mandolese
- Pia Marchegiani, FARN, Argentina
- Joara Marchezini
- Paula Martins, Diretora para América do Sul, Artigo 19, Brasil
- José Alberto Miglio, Asociación Civil Cooperar, Argentina

- Renato Morgado, Imaflora, Brazil
- Florencia Ortúzar Greene, Asesora Legal, AIDA
- Norberto Ovando, Asociación Amigos de Parques Nacionales, Argentina
- Laura Palmese, Instituto de Derecho Ambiental de Honduras, Honduras
- Adriana Pulicicchio
- Eyolquy Ríos López, Guatemala
- Rodrigo Rivera, abogado, eelaw, Chile
- Silvia M. Rojo, Presidente, Fundación EcoAndina, Argentina
- Daniel Ryan, Director Área Cambio Global, FARN, Argentina
- Andrea Sanhueza, Chile
- Tomás Severino, Cultura Ecológica, México
- Plácido Silva, Colombia
- Pía Slanzi, LLM student, Queen Mary, University of London, UK
- Solange Teles da Silva, Brasil
- Clarisa Vega, Honduras
- Juan Manuel Velasco, Fundación Ecologista Verde, Argentina
- Héctor Villaverde, Programa Mercosur Sustentable, CEFIR, Uruguay
- Ernesto Villegas Rodríguez, Colombia
- Pablo Wisznienski, Director del Instituto de Estudios e Investigaciones Ambientales de UCES, Argentina
- Marisa Young, Fundación Agreste, Argentina
- Sharon Zabarburu Chávez, SPDA, Perú

F. Secretaría / Secretariat

Comisión Económica para América Latina y el Caribe (CEPAL)/Economic Commission for Latin America and the Caribbean (ECLAC)

- Carlos de Miguel, Oficial de Asuntos Ambientales, División de Desarrollo Sostenible y Asentamientos Humanos/Environmental Affairs Officer, Sustainable Development and Human Settlements Division
- Valeria Torres, Oficial de Asuntos Económicos, División de Desarrollo Sostenible y Asentamientos Humanos/Economic Affairs Officer, Sustainable Development and Human Settlements Division
- David Barrio, Oficial de Asuntos Políticos, División de Desarrollo Sostenible y Asentamientos Humanos/Political Affairs Officer, Sustainable Development and Human Settlements Division

Annex 2
PRESENTATIONS AND ANSWERS FROM THE EXPERTS

Dr. Marcos A. Orellana

Can a legally binding instrument contain binding and voluntary approaches?

A legally binding instrument can, indeed, contain both binding and non-binding provisions. For example, in a treaty one can distinguish the preamble, which establishes aspirations, the vision, the intentions of the parties and the problems that it pretends to tackle, among others, from the rest of the provisions. The preamble does not establish international obligations as such and therefore contemplates a non-binding approach. However, it is framed within a whole which is binding. The legal value of preambles is explained in further detail in another question.

Certain voluntary approaches are reflected in the provisions of some treaties. A clear example of this is the Minamata Convention on Mercury which in article 16, relative to health, encourages the parties but does not oblige them. This structure offers the advantage of flexibility which is relevant both in the negotiations and in the implementation phase. Binding provisions would, therefore, be a standard minimum whereas non-binding provisions would allow guiding the action of States.

What international instrument would prove to be more effective to fully apply access rights?

A binding instrument would be more effective for several reasons but mainly due to the very nature of the matters which will be included in the instrument: access rights. Rights-related matters need an adequate internal legislation to be fully applied. Without a binding approach the content of the instrument which regulates these matters can hardly be operational. Accordingly, the binding nature increases effectiveness and strengthens democracy.

Furthermore, the full application of access rights requires the strengthening of institutional competencies. Considering these basic provisions in public law, a normative platform that allows the establishment of such institutional competencies is required. In addition, it is important to recall that this process does not have a sanctioning approach but rather a preventive and capacity-building one, reinforcing the channels of citizen participation which deepen democratic structures, foster social dialogue, prevent conflict and allow for the adoption of sustainable development policies that reflect the interests of society.

On the other hand, the region is facing serious and unprecedented environmental challenges which require new and effective legal tools. Voluntary approaches are useful but have their limitations. Given the existence of conflicting interests in our societies and considering the environmental crisis the region is experiencing, legally binding tools that regulate the activities of stakeholders which would prefer not to be regulated are necessary.

In what way can a binding instrument facilitate compliance of obligations assumed in other international environmental treaties?

It is important to underline that there are several international environmental treaties which crystallize the will of the international community by addressing certain environmental issues of global or regional nature which are of global public interest. Even if each treaty deals with specific matters, access rights are a common thread in all environmental treaties.

Therefore, several multilateral environmental agreements (MEAs) refer specifically to access rights and include specific provisions thereof. For example, the Stockholm Convention on Persistent Organic Pollutants contains a specific article on access to information. Likewise, the Framework Convention on Climate Change contains specific provisions on the participation of the public in climate change-related programmes. At the same time, the Protocol on Liability of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes contains provisions on access to justice. These provisions create synergies with access rights. As a result, a binding instrument on access rights strengthens the capacities of the parties of MEAs to implement international obligations contained therein.

In addition, it is worth mentioning that the first United Nations Environment Assembly held in July of this year examined the role that "environmental rule of law" has in the achievement of environmental objectives. In this debate, the centrality of access rights contained in Principle 10 is reaffirmed inasmuch as they are a fundamental tool in the attainment of sustainable development and the effective implementation of MEAs. Access rights represent, as a result, a platform to create synergies between different international environmental treaties so that the capacities of governments and their societies are strengthened.

What is the legal value of the preamble and the annexes in a treaty?

The preamble and the annexes are integral parts of the treaty and play a crucial role. The preamble reflects the vision of the parties, its aims, objectives and common platforms. Pursuant to the Vienna Convention on the Law of Treaties (art. 31 and 32), the preamble allows for the correct interpretation of a treaty since it establishes its context and reflects its object and purpose.

For their part, the annexes are extremely important to materialize the binding elements of a treaty. This technique has been particularly used in international environmental treaties, several of which establish international obligations in their provisions, leaving the scope and details of activities, species or substances (depending on the case) to the annexes. Moreover, these treaties foresee expeditious amendment mechanisms for the annexes so as to update them without having to renegotiate basic obligations. In this sense, the flexibility that the use of annexes provides allows the treaty to evolve over time.

Some examples are useful to illustrate the importance and role of annexes. For example, they would normally include maps in a boundary agreement. In other treaties, annexes can include

provisions for settlement of disputes such as the Convention on the Law of the Sea that in its Annex VII regulates international arbitration on certain matters related to the Convention.

As indicated, in environmental agreements, the annexes can specify obligations set out in the articles. The Stockholm Convention establishes a list of certain covered chemicals that are the object of an obligation established in the treaty. A similar approach can be found in the Basel Convention where the annex offers details on the dangerous nature of wastes. In the Framework Convention on Climate Change and the Kyoto Protocol the annexes identify certain parties which assume certain obligations are identified as opposed to other parties, in accordance with the principles of common but differentiated responsibilities.

What is the legal value of the adopted documents to date in the Process (Roadmap, Plan of Action and Lima Vision)?

The legal value is dependent upon two aspects. In the first place, the adopted documents reflect certain commitments of States with regard to sustainable development, with environmental democracy, access rights and a process of open dialogue with the public. These documents also reflect the capacity of States to reach agreements. In addition, they lay the groundwork for a second phase of the process in which the contents and nature of the instrument would be defined. The ambition and degree of consensus that they reflect make one think that during the second phase of the process, countries will reach important agreements.

Secondly, the legal value can also be dealt with on the basis of article 32 of the Vienna Convention on the Law of Treaties. This article foresees supplementary means of interpretation, including the preparatory work of a treaty. The Lima Vision and its contents such as the rights-based approach, the relationship between the right to the environment and sustainable development, the link between access rights and democracy as well as the interrelation between access rights (that is, the three pillars of Principle 10) are elements that inspire a future regional instrument. The principles established in these documents also reflect values of transcendental content that inspire the actions of States.

Subsequent dialogue (questions are indicated in bold):

In the dialogue which followed, the following questions were asked:

- A member of the public from Honduras asked **how international obligations assumed by countries could be incorporated and influence national legislation.**

  Dr. Orellana replied that the question illustrates one of the differences between voluntary and binding instruments. Generally speaking, voluntary instruments have not had a real incidence in national law precisely because of their voluntary nature. The examples of binding international agreements that have not had an incidence in domestic systems are those that fall into a model that is outdated nowadays. Contemporary instruments contemplate implementation and compliance mechanisms allowing for the effective incorporation through adequate national legislation of international obligations. For example, the use of a

Compliance Committee may help States identify aspects to improve in their normative frameworks.

- A member of the public asked **how the future regional instrument could incorporate the participation of youth and teens** and mentioned the importance of government capacity-building to ensure effectiveness.

  Dr. Orellana answered that access rights are not restricted to adults and highlighted the work of the Committee of the Rights of the Chile with regard to the importance of incorporating the vision and interests of children that could be affected by programmes and public policies. In this sense, public participation is inclusive and shall be mainstreamed.

- The delegate from Mexico posed the following questions: **what examples are there of successful international environmental conventions that have fully achieved their objectives? What are the limitations of binding conventions? To what extent do all countries of the region have the capacity to comply with the obligations of the future instrument?**

  Dr. Orellana replied that international law offers examples of effective instruments at the regional and global level. He indicated that international law is only one tool and is, in some way, limited as it does not cover all the dimensions that are necessary to effectively address the environmental crisis. Therefore, it is necessary to resort to other tools such as the changes of paradigm initiated by the United Nations General Assembly in the context of Harmony with Nature, development indicators to measure the impacts of the environment in the economy and the achievement of sustainable development, among others. In this sense, to be effective, a legal instrument must focus on a specific matter such as access rights and the strengthening of normative frameworks as well as institutional and social capacities.

  With regard to the capacities to comply with the obligations of a future instrument, he stated that international law allows incorporating certain flexibility in the design of instruments. For example, it is possible to set minimum standards while other objectives can be fulfilled progressively over time.

- A member of the public asked **if the legal value of the documents adopted in the process up to now could take effect before a binding instrument is adopted or if it was necessary to wait until it was adopted.**

  Dr. Orellana replied that these documents express the *opinion iuris*, the conviction that States could have with regard to Principle 10. They are elements that express values that establish major guidelines. Depending on the matter, they could be used to interpret other conventions such as the American Convention on Human Rights and its San Salvador Protocol.

Dr. Concepción Escobar

Dr. Escobar delivered an initial presentation on the basis of the following outline:

1. Why a binding instrument?
2. Which model of a binding instrument?
3. What effects would a binding instrument produce?

During her presentation, she replied to the six questions which she had been asked previously.

Why a binding instrument?

Based on her professional and academic experience and as a former governmental legal adviser, Dr. Escobar was of the opinion that to achieve the main objectives of the Principle 10 process it would be preferable to opt for a binding instrument.

In her view, the instruments that had been adopted to date (Declaration on the application of Principle 10, Road Map, Plan of Action and Lima Vision) had provided progressively new elements which are of great interest for the process. They also reflect the political commitment of States with this process and with the establishment of a framework to recognize and guarantee access rights. According to Dr. Escobar, in light of the above it would not be necessary to adopt another instrument of soft law, especially because the pillars of the process, its principles and main elements had been well established. Therefore, any attempt of returning to another declaration would face the risk of being repetitive and duplicating efforts unnecessarily. In her opinion, the instruments adopted up to now by the process provide a sufficient basis to develop a binding instrument or treaty.

Afterwards, she explained the reasons that justified her preference for a binding instrument.

Firstly, she indicated, as did Dr. Orellana, that the subject matter of the process required a legally binding treatment. The rights-based approach contained in the Lima Vision and, in general, the nature of the three pillars of Principle 10 (access to information, participation and justice) required the adoption of national measures in each of the participating countries. As a result, the instrument which is adopted needs to have the capacity of projecting itself in each State, should produce effects in their national systems, administrative practice and national public policies which, in her opinion, could only be guaranteed by means of a binding instrument. The declarations of principles could guide government policies and operational actions of civil society but would be insufficient to guarantee access rights. On the other hand, if countries are looking for the establishment of national measures in a coordinated manner in all countries, favouring regional cooperation and national capacity-building, then a soft law instrument would neither be sufficient nor useful to achieve this.

Secondly, she stressed that the establishment of a permanent, solid and sufficient institutional base to ensure the fulfillment of the expected objectives could only be achieved through a binding instrument. With regard to this argument, she highlighted that no treaty, even the one that should be adopted could effectively achieve its objectives without a permanent institutional

structure that supports States in the application of the treaty. She also emphasized that the institutional structure can be more or less advanced and may take various forms. According to her, it would be useful to have at least three different bodies: (i) a Conference or Meeting of the parties; (ii) a secretariat; and, (iii) a follow-up body. A permanent structure creates permanent and formal spaces for the exchange of information, administrative cooperation, the exchange of good practices and other elements which would require an operational base. In addition, it would serve as a permanent forum for intergovernmental communication, strengthening bilateral and multilateral cooperation. On the other hand, a follow-up body could notably contribute to the building of national capacities, responding to requests from States, and providing them with technical assistance when needed, whether it be directly or through a secretariat.

Thirdly, she underscored that a binding instrument could also serve as a basis for future institutional developments or future actions of administrative cooperation which could be articulated in an easier and more flexible way. This is because, under a binding instrument, future decisions would not need to be negotiated individually in each case, thus facilitating the adoption of agreements and the fulfillment of the proposed objectives.

Lastly, she said that another feature of the binding instrument is that it could contribute to reducing the litigation and social conflict within States. A treaty can assist them in adapting their national systems. The treaty could establish that States shall recognize access rights and adopt legislative measures to render them effective. It is proven, she continued, that when formal channels are established to facilitate participation and access, litigation becomes more formalized: every claim or petition must be made through the pre-established channels and this reduces social conflict. She also stated that an international treaty could alleviate conflicts between States in environmental matters. This is interesting because these matters have been the object of several disputes between countries in the region. Some examples worth mentioning are those of the International Court of Justice: Uruguay-Argentina (pulp mills case); Ecuador-Colombia (fumigation case) and Costa Rica-Nicaragua (draining of San Juan River case). If the treaty establishes as permanent structure for exchange, this will undoubtedly improve communication between States and reduce tensions between them, even if this is not the main objective of the new treaty.

Which model of binding instrument?

Based on the aforementioned, according to Dr. Escobar the debate would not focus on whether or not a treaty is needed, but rather on what type of treaty would be more appropriate to achieve the expected objectives of the process.

Regarding this, she stated that the model of a binding instrument would depend solely and exclusively on the will of the States. She stated that, as in all international treaties, States are the "owners" of the instrument, even though they will have to consider other elements already agreed upon in an informal manner during the Process, especially the Lima Vision.

In her presentation, she called into question the extent to which it would be useful to adopt an absolutely uniform regime in the future instrument. On this, she stated that if one were to

consider the diversity of the legal, economic and social systems of the participating countries in the Process, choosing the model of treaty which rigidly regulates all matters related to access rights from the start would not be best option. On the contrary, it would be preferable to opt for a more flexible model which would consider the principles of progressive realization and non-regression, and would favour setting up capacity-building and cooperation mechanisms. Taking this into account, Dr. Escobar compared two models of treaties: (i) closed, and (ii) open.

The closed treaty model could contain all legal elements to regulate and define all obligations for States, thus shaping a full legal regime. This model has the advantage of having the obligations assumed by States clearly outlined from the beginning. However, it has the disadvantage of having little flexibility in its application, not allowing an easy application of the principle of progressive realization. Moreover, each time States would like to amend or modify the treaty (however small the modification may be) new negotiations between States, and the ratifications processes in each State, would need to take place.

On the contrary, an open treaty model would allow for the introduction of the principle of progressive realization as well as the necessary flexibility so that the States treaty application process is successful. An open treaty model would guarantee a common minimum content that would apply immediately and would not be modifiable under any circumstance, would facilitate the progressive incorporation of States to the new system (which could progressively adapt their national laws) and would ensure that, in the end, all States are bound by the same obligations. There would be three options of open models:

i) Framework convention that only sets principles and refers to complementary treaties that could be concluded subsequently to develop it progressively;
ii) General convention that includes principles, rights and operational provisions and establishes an institutional structure, even if it is minimal, but which foresees the possibility of concluding additional protocols which could complement the system progressively as greater consensuses are reached; and,
iii) General convention that includes principles, rights and obligations, establishes a permanent structure and foresees that within that permanent structure new legal instruments are adopted to complement the original treaty. In this third model there would also be the possibility of including administrative or execution arrangements, attributing certain national authorities of State parties (normally those which are competent in access rights and environmental matters) with the capacity to conclude complementary agreements. The latter would be binding but would not need to be negotiated or ratified like a treaty, given that their binding legal force is derived directly from the General Convention. In both cases, the treaty would be very flexible and the decision-making process to adapt the original treaty to the new circumstances would follow a simplified and less rigid model.

Dr. Escobar stressed that the election of the model depends solely and exclusively on the will of the States but that it should also consider technical criteria. In this sense, it would depend on what the countries would like to specifically achieve and how fast they would like to advance in the establishment of a regional system that guarantees access rights.

Even when States would have opted for a closed treaty, having considered it safer given that countries would know their undertakings from the beginning, it is important to note that the treaty could be successively modified by means of an amendment, optional or additional protocols, among others. However, in her experience, negotiating a closed treaty in the matters such as those dealt with in the process could be more difficult for States and could create uncertainty and reticence between them as not all countries could be sure to comply with the obligations foreseen in the treaty. States can also have doubts as to the degree which the treaty would have an influence on their respective legislations and national practices. On top of this, there is another aspect that can determine the ratification of a closed treaty by each State: in these types of treaties, obtaining national political balance for ratification is more difficult and the process of its entry into force is usually slower. Therefore, if countries were to opt for this model of treaty, it would be useful to establish a very low number of ratifications for its entry into force. Otherwise, if a high number of ratifications is required, its entry into force could take considerable time and this could damage the credibility of the instrument.

What effects would a binding instrument produce?

During this part of her presentation, Dr. Escobar focused on the meaning of the binding effect of a treaty and emphasized that a binding instrument generates legal obligations for State parties. In this framework, she took the opportunity to answer two questions asked previously (in bold).

Does participation in the negotiation of a text of a binding instrument generate any type of obligation and/or international liability?

Dr. Escobar drew the attention of participants to the fact that negotiation and ratification are two different things. The treaty is only binding for those States which have previously ratified it. Participating in the negotiation does not generate any type of obligation for the State. Even if the treaty is signed by the States, such signature does not generate legal obligations if it is not followed by ratification. In practice, there are some examples of States that have negotiated a treaty and then not ratified it, and as such, are not obliged by it. These include the Statute of Rome on the International Criminal Court which has not been ratified by the United States even though it was one of the countries that most actively participated in the negotiations. Much of the same occurred with the United Nations Convention on the Law of the Sea. In addition, ratification always takes place in accordance with the national legal systems. As a result, States always have the last say before being bound by a treaty.

According to Dr. Escobar, in a process such as that of Principle 10, the States should be interested in participating in the negotiation given that they could raise their interests and needs and have an influence in the final text. In the end, they would reserve the right to ratify or not. Moreover, participating in the negotiation would facilitate ratification since the State would have participated in the development of the treaty and would be aware of the degree to which it can have an impact on its national system.

What type of legal liabilities can a country incur if it does not comply with the obligations of a binding instrument?

To reply to this question, Dr. Escobar underlined that the content of the obligations that the State must comply with will be established in the treaty. Consequently, a State will only have to comply with those obligations which specifically and voluntarily have been included in the treaty during the negotiation. Once again, political decisions are key here.

It is important to note that non-compliance of the treaty gives rise to international liability. However, she highlighted that international liability does not necessarily mean the imposition of sanctions at the international level, unless the treaty establishes that the bodies it creates can impose sanctions. Therefore, it is important to clarify that lack of compliance by the State does not necessarily translate into imposition of enforceable sanctions. On the contrary, to Dr. Escobar's understanding, the approach of the Principle 10 process is more related to building mutual trust, offering technical assistance, strengthening regional cooperation and national capacities and establishing national mechanisms. To her knowledge, in the Principle 10 process countries were not looking to establish a system for attributing liabilities in case of non-compliance or to adopt a sanctions-approach in the instrument. In addition, she indicated that in a system such as the one foreseen, liability can ultimately translate into the setting up of technical assistance mechanisms to strengthen national capacities and prevent a new situation of non-compliance.

All in all, international liability only emerges for those States that are obliged by the treaty and additionally do not comply with it. And even in the case of non-compliance, the situation does not automatically translate into the imposition of sanctions to the State concerned.

After finishing the initial presentation, the professor answered her other questions.

Can a treaty foresee different application phases? Can some of the obligations in a treaty be deferred in time or can some of the obligations be subject to a certain condition (legislative and institutional development, etc.)?

A treaty can, indeed, foresee that the obligations contained within it be applied progressively or even in different time periods. The idea of progressive realization in the compliance of a treaty and its progressive application are found in treaties of a different nature. This formula is frequent in treaties which oblige to adopt measures in national systems. As such, it is present in almost all human rights treaties. Therefore, for example, in treaties which govern economic and social rights, the State usually undertakes to comply with it progressively and to the extent possible according to its capabilities. Likewise, it is possible that a treaty establishes obligations at various levels (for example, some principles that are mandatory for all, a minimum of rights that are obligatory for all, and another group of rights or obligations that they can assume progressively).

On the other hand, any treaty can establish that it will enter into force when certain conditions established expressly therein are met. This way, the production of effects of the treaty is differed

in time. Such conditions can be of different kinds. For example, the treaty could foresee that a certain period should elapse or that the treaty is ratified by a certain number of States that have a specific condition or fall into a specific category.

Furthermore, a treaty can establish that the obligations of the instrument will be complied with gradually. There are many possible formulas such as establishing a grace period for the compliance of certain obligations, distinguishing between different types of obligations that shall be fulfilled in different moments or phases and so on.

All these possibilities can be considered when negotiating the binding instrument if negotiators want to modulate or make its application conditional.

However, and replying to the second part of the question, in her opinion, it is more complicated to tie some obligations to the general condition of having legislative or institutional developments. This would refer to a matter of domestic law and it is important to recall that a basic principle of the law of the treaties is that no State can justify the failure to perform an international obligation it has voluntarily undertaken on the grounds that it is contrary to its internal law, unless the treaty sets some specific parameters. As a result, if the treaty, for example, establishes a system for the exchange of information, a condition could be established by which that provision will only be applicable when the States have an institution that is responsible for managing environmental information, but always undertaking to develop it within a specified framework of time. What could not be established in the treaty is that States must put in place a system that guarantees access rights and, at the same time, contemplate that such obligation would only apply from the moment that the State adopts national legislation to guarantee access rights. That would be an empty, senseless norm.

In practice, a great number of treaties include formulas for their successive application in time. An interesting model that could be explored by this process would be a treaty that contains different categories of provisions which would become applicable successively, such as institutional provisions, intergovernmental cooperation mechanisms and specific obligations that shall be applied in domestic law. First, the institutions would be established. Then, the cooperation mechanisms and finally, the obligations would be incorporated into national law. As a result, the establishment of the first (basic institutional structure) would contribute to articulating the second (intergovernmental cooperation mechanisms) and this would, in turn, contribute to fulfilling the last (adaptation of national law and adoption of the internal measures which are required to strengthen national capacities).

A simple example worth noting in this sense is the European Social Charter. The Charter contains a series of principles which must be accepted as legally binding by all State parties, a set of common obligations for all States and, thirdly, a series of obligations which States can accept or not. This model incorporates the necessary flexibility so that States in a different economic and social situation can participate in the general system and accept common general obligations for all. One should bear in mind that the final objective is that all States end up fully participating in the treaty.

The following questions were replied to jointly:

In the event of a binding framework convention which establishes that provisions on specific matters be developed in the future, does the treaty have to be ratified again once these provisions have been determined? Can a convention authorize executive governments or bodies created by the instrument (delegation of competencies) to adopt such provisions without a new ratification?

Can the modality of protocols "solve" the conflict of having a binding agreement now regulating general matters and leave other matters and/or details (such as compliance and monitoring mechanisms) for a second stage of the negotiation/agreements?

Every international treaty is a living instrument which can be modified, amended or complemented in several ways, as is deemed necessary and as the process develops. Therefore, it is essential to leave open the possibility of adopting these modifications and supplements.

There are many mechanisms to modify or complement a treaty in force. These can basically be grouped into three: i) amendment, additional and optional protocols (which are treaties); ii) execution agreements, which are obligatory but do not necessarily need to be treaties given that their binding force is derived from the treaty which authorizes such execution agreements (these can be adopted directly by governments on the basis of the original convention); and, iii) institutional agreements adopted by the Conference or Meeting of the State Parties, the follow-up body, etc. which are also binding but do not take the form of a treaty.

However, not all of these instruments serve for the same purpose. For example, in the event that a follow-up body is created with 15 members and in the future parties would like it to be composed of 6 or 25 members, such modification would be a minor issue which could be solved by means of an execution or institutional agreement. But if parties would like to modify its competencies substantially these simplified methods for modification of the treaty would not be valid. For example, this would be the case when parties want the follow-up body, in addition to receiving reports from governments or exchanging information, also to examine complaints from individuals or other governments. This would represent a radical change with respect to the obligations undertaken by the States in the original treaty and would thus require a more formal mechanism, such as an optional or amendment protocol. In these cases of substantive changes of the treaty, another treaty is needed to modify it.

Any of the aforementioned instruments can be included in the binding instrument that could be adopted in the framework of the Principle 10 process. Including more or less flexibility depends upon the political will of States. But in any case, regardless of the model chosen, foreseeing this flexibility in the treaty is what is most important. As a result, the treaty should stipulate how amendments are to be adopted, whether administrative or execution agreements are permitted, for which matters or objectives, and who the national authorities which can conclude these agreements are (whether it be directly, or requesting that States notify who the authorities are in their country). Lastly, it should indicate whether the Conference or Meeting of the Parties (or other bodies created by the treaty) has the power, or not, to adopt instruments that complement the main treaty through the adoption of institutional instruments.

Subsequent dialogue (questions are indicated in bold):

In the subsequent dialogue the following questions were asked:

- The delegate from Brazil requested that Dr. Escobar elaborate on **environmental conflict between States** as, in his opinion, the process had focused up to now on the national application of access rights.

  Dr. Escobar agreed with the idea that the instrument was essentially aimed at strengthening access rights at the national level. She clarified that when she made reference to conflicts between States she was thinking of the usefulness of including mechanisms for permanent communication between States (Conference of the Parties, Secretariat, Council and/or follow-up body) in the instrument. The establishment of such an institutional forum could reduce regional conflict. She pointed to the pulp mill case between Argentina and Uruguay with respect to which she considered that the degree of conflict could have been reduced had there been a permanent forum for consultation on access rights, at least from the perspective of the confrontation between local communities. Given that environmental issues have a strong transboundary dimension, tension and conflict can be significantly reduced if there is a binding instrument on Principle 10 in place which foresees access rights from a transboundary dimension.

- A member of the public asked if **any type of sanction could be imposed on infringing States during the negotiation process**, taking into account the slow pace of ratification processes and the seriousness of environmental issues.

  Dr. Escobar replied that the point of departure is that if a treaty is chosen it only obliges those that have ratified it. Therefore, if a State does not ratify the treaty there would be no way to oblige it. She indicated, however, that it would be different if negotiating States include a clause on provisional application to facilitate that the treaty produce effects before it enters into force (between signature and entry into force). This notwithstanding, she underlined that it was a political decision and indicated that it could be useful for some matters to be dealt with such as institutional structure or the application of general principles. Dr. Escobar insisted that the production of effects of a treaty prior to its entry into force must be separated from the imposition of sanctions which, to her understanding, was not the approach agreed by the countries in this process.

- The delegate from Mexico stated that all options established in the Declaration on Principle 10 in Latin America and the Caribbean should be explored. On the other hand, he insisted that multilateral environmental agreements such as the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification had encountered serious difficulties to achieve their objectives. For this, he held that **political will was fundamental and that it was important to measure expectations of this process with the experience of other regional and global processes.**

Dr. Escobar also backed the idea that political will was decisive. In addition, she stated that it was not unusual to find countries in practice that ratify treaties, assume obligations and then do not develop them internally or fully comply with what was agreed. Dr. Escobar asserted that there is no sense in developing an international instrument of any type (binding or non-binding) if there is not a clear political will of complying with it. Otherwise, tremendous frustrations are created and conflict increases.

With regard to the difficulties of a treaty's compliance, Dr. Escobar highlighted that these were not in themselves a flaw of the binding instrument but a consequence of the lack of political will by States to put in place something which they had previously consented.

As for multilateral environmental agreements, such as the United Nations Framework Convention on Climate Change and the United Nations Convention to Combat Desertification, she indicated that it was hard to value their effectiveness abstractly. In any case, she underscored that an international treaty can serve to tackle previously identified difficulties by establishing specific reaction measures, something which would not be possible in the case of a declaration of principles which is not followed by concrete measures. A treaty can, in this sense, strengthen regional cooperation and national capacities.

- Along the same lines, a member of the public asked about **examples of successful open treaties**.

  Dr. Escobar pinpointed that there is a long list of them and she cited various treaties such as the European Convention on Human Rights (an open convention with additional protocols), the Convention of Palermo against transnational organized crime or the conventions of the International Maritime Organization on navigation and pollution of the seas. The latter would belong to the third category of open treaty mentioned earlier in which it is the same institution that adopts norms. In the three cases, principles and a minimum content had been provided for and then specific procedures had been established to complement them.

- The delegate from Uruguay pointed to **the link between form and content, inasmuch as depending on the content a certain form could be chosen and vice versa.**

  Dr. Escobar was also of the opinion that both elements were related. Accordingly, she sustained that adopting an international treaty only to set principles would be senseless much like adopting a memorandum of understanding (non-binding instrument) containing clearly normative components. According to Dr. Escobar, the stance in favour of adopting a binding instrument was based on the logic of the instruments already adopted in the process, the experience of the Aarhus Convention and other related experiences. She insisted on the fact that the very nature of the matters that would be included in the new instrument would hardly be effectively regulated by a non-binding instrument since it would not succeed in ensuring that States adopt legal measures to comply with access rights.

  Dr. Escobar was doubtful about the order in which both aspects should be determined. On this, she indicated that one option was indeed to leave the decision of the form to end on the basis of the negotiation of the content. However, in her experience, negotiators will not

commit themselves easily if they do not know the nature of their commitment. A true negotiation of the content without knowing the nature of the instrument is not common practice in international negotiations. Nonetheless, it would be possible to establish a process in successive phases whereby basic contents are agreed upon (without specific provisions or legal specifications) and, on the basis of such basic contents, a decision is made on whether a treaty or a non-binding instrument is wanted, opening thereafter the negotiating process.

- **A representative of the public from Chile commented that the political will of advancing in this process was evidenced by the fact that 18 signatory countries of the region had adopted decisive instruments in the last two years. Therefore, in her opinion, there would be no other way to advance in the process if it were not by means of a binding instrument. Adopting a declaration of principles would make no sense given that there is already the Lima Vision. She continued saying that the governments had to continue expressing their political will and that this was what their citizens were expecting to strengthen their democracies. She recalled that a binding instrument would be focused on assistance and support to improve respect for access rights and that under no circumstance did it have a sanction approach.**

  Dr. Escobar did not make any comment on the above given that it was not, *stricto sensu*, a question.

- A member of the public asked about the need of focusing the flexibility of an open treaty to **increasing adhesions of countries.** Moreover, she asked if **it could be linked to development or budgetary issues.**

  Dr. Escobar insisted once again on the importance of political decisions. It will all depend on the actual content of the treaty and if, in this framework, development or budgetary issues can be considered. She underlined that a binding instrument would favour and facilitate cooperation and technical assistance and this would go along the lines of considering development and budgetary issues.

- A representative of the public from Guatemala commented on the need of taking into account the lack of research in the matter. For this, he insisted on the **importance of capacity-building.**

  Dr. Escobar did not make any comment on the above given that it was not, *stricto sensu*, a question.

- The delegate from Mexico asked about the **economic implications of a binding instrument.**

  Dr. Escobar replied that any cooperation process –whether it is binding or non-binding- which also foresees the building of national capacities would need budgetary forecasting. The establishment of permanent institutional structures also generates costs. However, she clarified that though one tends to think of significant costs in these cases, costs can be reduced and they can be assessed progressively according to the needs and the specific budget availability.

- A representative of the public from Mexico asked why during her presentation, the speaker had only mentioned the **Aarhus Convention** once. Furthermore, he asked if she would place the Aarhus Convention within the third category of treaties and, if so, if it could be considered successful. On this, he stated the difficulty of measuring the success of a future binding convention since, as opposed to other conventions, success was not based on the reduction of emissions but rather in terms of strengthening of access rights.

  Dr. Escobar replied that she had voluntarily avoided citing the Aarhus Convention as the "sole example", given that each region had its own specificities. However, she considered that this treaty was, undoubtedly, a successful convention (with the limits of every international treaty), especially considering that it had been able to influence national legislations. She also added the difficulty in assessing the success of this treaty abstractly. As for the category in which it would fall into, she stated that it would probably be between categories two and three of open treaties.

- The delegate from Argentina recalled that the instrument was focused on strengthening access rights. She mentioned the pulp mill case between Argentina and Uruguay indicating that neither the treaty not the consultation bodies had been able to prevent the conflict. In addition, she agreed with the idea that the decision on the form would lie with States and that this will depend to a large degree on political will. This will, she said, has been expressed in the region during the two years that the process has been advancing and requires the participation of many stakeholders. She also stated that it was essential that the instrument be effective. Her question focused on the **economic or budgetary aspects that would imply assuming obligations by means of a binding agreement such as the creation of structures, bodies for follow-up.** She suggested incorporating this theme in one of working groups of the process.

  Dr. Escobar made reference to the pulp mill case between Argentina and Uruguay saying that, as indicated in her presentation, she did not want to go into further details on this. In any case, she highlighted that even though it is true that in the case at hand there was a treaty and a consultation commission between both States which did not prevent the conflict, the fact remains that the International Court of Justice had underlined the importance of consultation mechanisms that had not, however, functioned.

  With regard to the economic impact of the treaty, she reiterated her previous reply and stated that earmarking a certain project in a budget is, essentially, a manifestation of commitment and political will of the State.

- A member of the public from Argentina interjected to comment that the region had been working on public participation for the last two decades but that there were notable differences in terms of the development between countries and between each one of the developed pillars. His question focused on **how to prevent that the convention be reduced to a common minimum denominator that is limited to establishing standard minimums.**

Dr. Escobar replied by stressing the example of the European Social Charter as a model of flexibility that established minimum principles for all, minimum obligations for all complementing those principles and the commitment of opting for the rest of the obligations progressively. To her understanding, an open treaty would be the best way to prevent the common minimum denominator that would be included as the sole content of a closed treaty. With an open treaty that includes elements of flexibility, the States could progressively come closer to the end result they expect; a result which some countries could not reach automatically and immediately due to justified reasons (institutional, economic, legislative development and so on). In addition, to guarantee progressive realization, the application of the treaty could foresee the obligation of submitting periodic reports on how each country is complying with the general obligations and those obligations progressively undertaken. This would favour that in a given horizon, the treaty is applied in its entirety by all State Parties.

- ECLAC interjected to comment on the **effectiveness of conventions and financing.** With regard to effectiveness, it indicated that it was not possible to assess a convention on the basis of what it has achieved without considering the counter-factual, that is to say, what would have happened if they had not been adopted. There are a great number of conventions that evidence this point. For example, without the United Nations Framework Convention on Climate Change there would have been no reports and no measures would have been taken to reduce emissions. Given the power of economics, it is important to have powerful instruments in environmental matters. As for financing, it highlighted co-benefits. In addition, it indicated that a significant part of what was being discussed by countries had already been adopted and should have been implemented. A certain degree of institutions already exist. In many cases, it would not represent an additional burden for countries but it would rather complement what is currently being carried out.

- The delegate from Mexico took the floor to say that the Nagoya Protocol was an experience of an international negotiation worth mentioning. During its negotiating process, which took eight years, the nature of the instrument was present from the beginning but no decision was reached until the seventh year. He mentioned that the process could **take two paths: (i) define the nature and then the contents; or (ii) advance the contents and later define the nature.** He agreed that the economic implications were important. However, he emphasized that all options are open and that it was essential to look for the spirit of collaboration so that country ownership in the process and its results are ensured.

  Dr. Escobar replied that in the Nagoya Protocol the debate on the form was present from the very beginning indeed. However, the final closing of Nagoya was very much conditioned upon the permanent tension between the adoption of a treaty or another type of instrument. If there had been an agreement on the form progress would have been faster with respect to contents and vice versa.

Dr. Orellana made the following additional comments:

- Regarding the question on the Aarhus Convention, he added that he also considered it successful given the normative development that the State Parties as well as the European Union bodies had experienced. Moreover, the Aarhus Convention has influenced and

strengthened the progressive development of the jurisprudence of the European Court of Human Rights, especially with respect to the link between the State obligations on the prevention of environmental risks and the access right to environmental information. In short, there is strong evidence on how the Aarhus Convention has succeeded in helping countries and the European Union strengthen their normative frameworks.

- Referring to flexibility, he added that there are several forms of making it operational such as the establishment of grace periods or the differentiation of commitments. International law foresees several examples of open treaties that allow strengthening regimes over time. There are successful experiences such as the use of negative consensus by the International Maritime Organizations regarding the environmental protection of the seas as well as the use of protocols and amendments in the regime for the protection of the ozone layer. In the case of the Basel Convention, he indicated that the application of flexibility was hindered due to the lack of legal clarity in the drafting of certain provisions. Against this background, a future treaty should foresee the necessary clarity to make flexibility schemes such as amendments operational. As for the so-called "conditions", he highlighted that these need to be objective, measurable and verifiable.

- With regard to the debate on the levels of development and compliance of obligations, Dr. Orellana mentioned that this discussion had already taken place in past decades. The idea that the respect of rights is possible once certain levels of development have been achieved has been surpassed with the conceptualization of the right to development. This notion of development as a process is then taken up by the 1992 Earth Summit, which coins the term sustainable development based on the application of access rights.

- Finally, concerning conflict between States, he pointed to the importance of the extraterritorial application of the obligations on access rights. An aspect that could illustrate how an instrument on access rights can reduce conflict is how affected populations could have access to environmental information, participate in decision-making processes and have access to justice. With regard to the pulp mill case between Argentina and Uruguay, he said that, for the most part, the controversy had to do with the threat the Argentine population felt as a result of the constructions of pulp mills in the Uruguayan side of the border. He mentioned that if these people had been able to exercise access rights extraterritorially, there would have been an institutional channel for debate. This leads one to think that, if that were the case, those potentially affected would not have blocked the bridges between Uruguay and Argentina, triggering the conflict between both countries.

- Dr. Orellana added that extraterritoriality is a matter expressly provided for in the Aarhus Convention and has been reaffirmed by the Maastricht Principles on Extraterritorial Obligation of States in the area of Economic, Social and Cultural Rights. Consequently, the application of access rights in favour of individuals outside the territory of a State is a matter that should be considered in the Latin American and Caribbean process. A possible formula to explore could be to start off applying the access rights internally and, after a certain period of time, establish the conditions to apply these rights extraterritorially considering that the environment knows no political borders that States trace.