



The New Global Pact for the Environment

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Abstract: On 19 September 2017, the UN General Assembly in New York informed everyone that it was to present the project of a Global Pact for the Environment, before the Heads of State and Governments, representatives of civil society, the private sector, etc. of the 193 Member States of the organisation, in the presence of UN Secretary-General Antonio Guterres, President of the French Constitutional Council Laurent Fabius², and French President Emmanuel Macron. If adopted, this pact (Moroianu Zlătescu, 2017) comes to complement the legal edifice of fundamental human rights norms, created by René Cassin³, consolidated by Karel Vasak⁴ by creating the three generations of rights⁵, each of them having thus its own pact. (First generation, civil and political rights, second generation, economic, social and cultural rights, third generation, right to peace, development and the environment).

Keywords: rights; Global Pact; Environment; international treaty

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⁵ The classification of human rights into the three generation was first proposed in 1977-1979, when Karel Vasak was first Secretary-General of the International Institute of Human Rights in Strasbourg. He was also Director of the Division of Human Rights and Peace of UNESCO, and later on, Legal Advisor to UNESCO and the World Tourism Organization. First generation, civil and political rights, second generation, economic, social and cultural rights, third generation, right to peace, development and the environment.

1. Introduction

On 19 September 2017, the UN General Assembly in New York informed everyone that it was to present the project of a Global Pact for the Environment, before the Heads of State and Governments, representatives of civil society, the private sector, etc. of the 193 Member States of the organisation, in the presence of UN Secretary-General Antonio Guterres, President of the French Constitutional Council Laurent Fabius¹, and French President Emmanuel Macron.

The French President announced that he wanted to lay the foundations, under the aegis of the UN, of what would not be a pre-project but a global pact for the environment, therefore, a new instrument of international environmental law aimed at supplementing international environmental law, enhancing its coherence and facilitating the implementation of the obligations provided by this law, which should take the form of an international treaty adopted by the General Assembly in the future.

The idea of the initiative ²is to bring together in a single text the major international principles of environmental law and to make them binding, thanks to the possibility to enforce them before a court of law.

The Global Pact for the Environment is based on the Rio Declaration, Rio+20, the 2030 Agenda adopted in 2015 and the Paris Agreement, which entered into force in 2016³.

The 2030 Agenda allows, through the 17 Sustainable Development Goals⁴ (SDGs), to ensure a link between the fight against extreme poverty and the conservation of the planet. The harmonisation of international environmental legislation, supported by the Pact, will thus facilitate the implementation of the 2030 Agreement.

¹ Former Prime Minister of France and Paris Agreement/COP21 President.

² The initiative belongs to the Club des juristes, which is a French think-tank that has worked with dozens of magistrates, law professors and lawyers from 40 countries to develop the project.

³ Between 30 November and 11 December, Paris hosted the 21st session of the Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change (UNFCCC) and the eleventh session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP 11).

⁴ The Ambitious 2030 Agenda, proposed by the United Nations in late 2015, is a universal programme of global action in the field of sustainable development. The 17 SDGs are aimed at underdeveloped states and regions and developed ones, alike. Thus, by 2030, the states of the world have committed to eradicate poverty and hunger, combat inequalities and injustice and adopt active measures for environmental protection.

The Paris Agreement specifically focuses on climate change. Adopting a global pact for the environment would be complementary to providing a comprehensive response to defining the basic principles of international environmental law.

In June 2017, the Club des juristes¹ concluded that the environmental dynamics of 2015 and 2016, the adoption of the 2030 Agenda (Sustainable Development Goals) in 2015, the adoption of the 2015 Paris Agreement, may be complemented by a new legal step considering that at present there is no international text of universal character that brings together the fundamental principles of the right to the environment and that has legal value.

Yann Aguila, chairman of the Environment Commission of the Club des juristes, author of the Pact, said it was essentially a codification work to bring together the general principles of environmental law in a single “umbrella” text, as stated particularly in the 1972 Stockholm Declaration or in the 1992 Rio Declaration², considering that these texts have great symbolic and political value, but cannot be enforced before a judge.

The draft text, written by the Environment Commission of the Club des juristes, contains 26 articles listing rights and obligations for States and citizens, including:

1) Principle of Intergenerational Equity

No decision may be taken without due consideration to future generations (Article 4). Thus, present generations “*shall ensure that their decisions and actions do not compromise the ability of future generations to meet their own needs.*”

2) Principle of Cooperation

The Parties that have acceded to the Pact shall immediately notify other States of any natural disasters or other emergencies that are likely to produce harmful effects on the environment (Article 7) and shall cooperate “*promptly, in good faith and in a spirit of global partnership*” to help concerned States (Article 18). In case of armed conflicts, States shall take all feasible measures to protect the environment (Article 19).

¹ It is a framework for debates and legal proposals. It brings together academics, magistrates, lawyers, French jurists. It is a think-tank that has formed around two major objectives: encouraging legal debate and innovation, aiming to strengthen the role of law in the public debate and to contribute to the understanding of legal issues by the general public.

² <https://www.novethic.fr/actualite/environnement/climat/isr-rse/pacte-mondial-pour-l-environnement-une-premiere-etape-decisive-se-joue-en-ce-moment-145652.html> retrieved 20.02.2019.

3) “Polluter-pays” Principle

It is the polluter’s duty to pay. Prevention, mitigation and remediation costs for pollution, and other environmental disruptions and degradation are, “*to the greatest possible extent*”, borne by their originator (Article 8). Moreover, “*Parties shall ensure the right of effective and affordable access to administrative and judicial procedures, including redress and remedies, to challenge acts or omissions of public authorities or private persons which contravene environmental law*” (Article 11).

4) Principle of Non-Regression

There is no turning back. Parties cannot allow activities or adopt standards that have the effect of “*reducing the global level of environmental protection guaranteed by current law*” (Article 17).

5) Monitoring and Control Mechanism

The pact is accompanied by a monitoring and control mechanism. Each State shall present periodically a report on the implementation of the Pact before a committee of independent experts (Article 21). “*It operates in a transparent, non-adversarial and non-punitive manner.*” Each review shall give the concerned country the possibility to review the state of the environment on its territory and the progress made in implementing the provisions of the Pact.

Furthermore, the Committee shall take into account the principle of differentiation between developed and developing countries (Article 20). The control modalities and procedures shall be established one year after the Pact enters into force. The first review shall take place two years after the beginning of the mandate and then at a frequency not exceeding four years.

On 24 June 2017, in the Sorbonne Grand Amphitheatre¹, the pact was handed to the President of France, who pointed out that “all these joint efforts merit the adoption of a single universal framework” and promised to present the document in September 2017 at the UN Summit in New York, which he did.

¹ Personalities such as the president of the Constitutional Council of France, Laurent Fabius, of the Sorbonne University, also attended, together with former UN Secretary-General Ban Ki-moon, former California governor and actor Arnold Schwarzenegger, who chairs the R20 (Regions of Climate Action) NGO, or the Paris mayor, Anne Hidalgo, chair of the C40 Cities Climate Leadership Group.

2. Authorising the Opening of Negotiations on a Global Pact for the Environment

If adopted, this pact¹ comes to complement the legal edifice of fundamental human rights norms, created by René Cassin², consolidated by Karel Vasak³ by creating the three generations of rights⁴, each of them having thus its own pact. (First generation, civil and political rights, second generation, economic, social and cultural rights, third generation, right to peace, development and the environment).

For the first two generations of rights, in 1966 were adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This new Global Pact will be for the right to development and the environment, and it will determine humankind to take “action for the planet, action through law”.⁵

The main objectives of the Pact, as set out by its proponents, are⁶:

- To include in a legally binding treaty the fundamental principles of environmental law, already included in universal political declarations, so as to make them enforceable before internal courts;
- To make universal the main provisions of legally binding conventions that are not universal;
- To add new principles, in view of new challenges: for instance, the draft text prepared by the lawyers includes principles of non-regression and resilience, as well as a duty of care for the environment;

¹ Irina Moroianu Zlătescu (2017) *Spre un Pact Mondial privind Dreptul la Mediu*, în *Punctul Critic*, issue 03/30 September 2017.

² First laureate of the Nobel Peace Prize, main author of the 1948 Universal Declaration of Human Rights.

³ PhD Professor, legal advisor to the Council of Europe (1969-1976). He edited *Les dimensions internationales des droits de l'homme* (1978) and co-edited *Les dimensions universelles de droits de l'homme*, 1990, both published under the aegis of UNESCO.

⁴ The classification of human rights into the three generation was first proposed in 1977-1979, when Karel Vasak was first Secretary-General of the International Institute of Human Rights in Strasbourg. He was also Director of the Division of Human Rights and Peace of UNESCO, and later on, Legal Advisor to UNESCO and the World Tourism Organization. First generation, civil and political rights, second generation, economic, social and cultural rights, third generation, right to peace, development and the environment.

⁵ Logo of the Conference of the French Club des juristes on 24 June 2017 where the project of this document was launched.

⁶ Recommendation for a COUNCIL DECISION authorising the opening of negotiations on a Global Pact for the Environment, COM/2018/0138 final, Brussels, 19.03.2018.

- Other more innovative principles were incorporated, such as non-regression of legislative and regulatory standards.

The subject matter of the Pact falls largely within EU policies and competences, in particular in the field of environmental protection [Article 192(1)] and, as it may have consequences on EU law, negotiations cannot be conducted without EU participation¹ (to this end, the EU shall make sure that this international instrument remains as consistent as possible with the relevant EU legislation and other international law instruments in the field). Therefore, it is necessary to act within the meaning of Article 216(1) TFEU, so as to protect the integrity of EU law and preserve consistency between the provisions of international law and those of EU law on the protection of the environment.

On 20 September 2017, Columbia University of New York, alongside Columbia Center on Sustainable Investment, the French Club des juristes, the Sustainable Development Solutions Network, University Carlos III of Madrid, etc., organised a conference dedicated to the Global Pact for the Environment² aiming to address the case of the Global Pact for the Environment from the perspective of international governance, analysing the state of the existing governance instruments and discussing the content that the Pact should have.

The conference dealt with the purpose and impact of the new document, giving the opportunity to review the legal and political framework set out in the Pact in the light of existing agreements and environmental law principles, in the context of the current global policy, highlighting the fact that it is about bringing together the major principles of environmental law in a single text, something that “did not exist”, considering that at first sight it seems very complicated for the project to become an international treaty.

Following the New York meeting, an ad hoc group of States, led by France, drafted a procedural resolution that was submitted to the United Nations General Assembly for adoption, being available electronically; it was presented officially at a later date, the initiators calling for the resolution to be adopted in March 2018 in order for negotiations to begin officially.

¹ The goal of EU’s participation in negotiations is to make sure this international instrument will be as harmonised as possible with the relevant EU legislation and other international law instruments in the field.

² The proponent was Professor Jeffrey David Sachs, PhD, Director of the Center for Sustainable Development of Columbia University, special advisor to the UN Secretary-General on the Millennium Development Goals.

By this resolution, the General Assembly would, among others:

- Decide on the development of an international instrument, called the “Global Pact for the Environment”, which would have the objective of completing international environmental law, enhancing its coherence and facilitating the implementation of its obligations;
- Decide to set up an open intergovernmental working group, before the organisation of an intergovernmental conference, so as to negotiate a Global Pact for the Environment and meet in New York between 2018-2020;
- Call on the President of the General Assembly to appoint two co-facilitators to lead the negotiations and consultations of the working group, in coordination and in regular consultation with all Member States, regional groups and all relevant stakeholders.

On 15 February 2018, the draft resolution already had 48 co-sponsors, of which 14 EU Member States. There were also three informal meetings in New York (22 January, 6 February and 14 February 2018) to pre-negotiate the draft resolution concerning which the positions of the European States were adopted.

On 3 March 2018, the Council adopted a Recommendation for a Council Decision authorising the opening of negotiations on a Global Pact for the Environment.

The objective of this recommendation is to obtain from the Council the authorisation for the Commission to negotiate the future Global Pact on behalf of the EU¹. The legal basis for the Council to authorise the opening of negotiations is Article 218(3) and (4) TFEU (the Pact contains appropriate provisions enabling the Union to become a Party to it and to fully participate in any mechanisms to be created for its implementation, allowing the Union to take part in the debates of this group, as the provisions of the Pact are consistent with the relevant EU legislation and the relevant multilateral agreements to which the Union is a Party).

In this context, the Environment Council of 5 March 2018 reiterated the need for the EU and Member States to support the initiative, throughout the consultations and the negotiations alike. Following the works, the French delegation presented the main goals of the Global Pact for the Environment to the European Ministers by way of an annex, as well as a planning for further negotiations so that the Pact would be adopted by 2020.

¹ The Union may conclude agreements with one or more third countries or international organisations where so provided for in the Treaties or where the conclusion of an agreement is either necessary for the achievement, within the Union’s policies, of one of the objectives set out in the Treaties, or is provided for by a binding legal act of the Union, or may influence common rules or may alter their scope.

The European Union has reviewed some of the most advanced and comprehensive environmental policies in the world, and is committed to promoting sustainable development worldwide. As a strong global actor, it has led a number of processes and negotiations, such as the 2030 Agenda for Sustainable Development and the Paris Agreement for Climate Change.¹

On 10 May 2018, the UN General Assembly adopted the resolution opening the way for negotiating a Global Pact for the Environment² with a very large majority³ (out of the 193 UN Member States only 143, including China, supported the resolution, five opposed it – the USA, Russia, Syria, Turkey and the Philippines – seven abstained, including Iran, and 38 did not vote⁴). France welcomed the adoption of this resolution⁵, which marks a decisive step in mobilising the international community towards environmental protection. The resolution was co-sponsored by one hundred countries, which proves strong membership.

According to the resolution's text, the Assembly decided to establish an open-ended working group to consider a technical and evidence-based report identifying and assessing possible gaps in international environmental law and environment-related instruments with a view to strengthening their implementation. The report was presented at the Assembly's seventy-third session at the United Nations Headquarters in New York on 3 December 2018 and it provided a platform to discuss options to address these gaps.

The report examines how countries could meet the general principles of environmental law in an international instrument and was entitled "Gaps in International Environmental Law and Environment-Related Instruments: Towards a Global Pact for the Environment" (document A/73/419)⁶. It notes that today there are more than 500 agreements on environmental protection, but they are incomplete and not fully implemented. An agreement on a common set of guidelines could clarify, harmonise and reinforce these principles at international level. The report

¹ Le Club des jurists, "*L'UE s'empare du Pacte Mondial pour l'Environnement du Club des jurists*", 20 March 2018, <http://www.leclubdesjuristes.com/pacte-mondial-lenvironnement-devant-lunion-europeenne>, retrieved 16 November 2018.

² The UN General Assembly adopted the resolution "Towards a Global Pact for the Environment".

³ Permanent Mission of France to the United Nations, "The Global Pact for the Environment", 17 July 2018, <https://onu.delegfrance.org/The-Global-Pact-for-the-Environnement>.

⁴ <http://www.rinnovabili.it/ambiente/patto-ambientale-mondiale-onu/>.

⁵ Resolution 72/277 entitled "Towards a Global Pact for the Environment".

⁶ <https://globalpactenvironment.org/uploads/IGEP-Communiqu%C3%A9-4-Dec-2018.pdf> retrieved 20.02.2019, 15.00 hours.

also highlights legal deficiencies, particularly to prevent cross-border air pollution or to protect soil and land from erosion.

Some of the report's conclusions¹ are as follows:

- The review and analysis of the state of international environmental law and environment-related instruments reveals deficiencies at multiple levels. There are significant gaps and deficiencies with respect to the applicable principles of environmental law, particularly as regards their content and legal status;
- Environmental principles affect the way in which environmental treaties can be interpreted, and may be used, if necessary, to fill gaps between the rules laid out in the instruments. Such principles include the duty of States to prevent any significant environmental harm, exercise precaution in making decisions which may harm the environment, so as to provide public access to information and decision-making involving potentially significant environmental harm and cooperate in environmental protection;
- The biodiversity cluster of treaties is also characterised by issues of ineffective implementation; ineffectual processes relating to monitoring, reporting, review and verification; and the absence of or inadequate procedures and mechanisms to promote and enforce compliance;
- Freshwater resources are regulated through a patchwork of global, regional and basin agreements; such agreement often use ambiguous terms, which leads to uncertainty and a lack of consistency as to how they are applied;
- With respect to the marine environment, while the United Nations Convention on the Law of the Sea provides a comprehensive set of rules for the protection and preservation thereof, various complementary instruments cover various activities depending upon the subject matter and the geographical location concerned. This sectoral approach complicates the implementation of integrated approaches. Compliance mechanisms are not common and disparities still remain in terms of assessing implementation. No specific instruments comprehensively address the modern challenges of marine debris, plastics and microplastics. While the Convention provides a unifying legal framework to remedy fragmentation, the role it may play in that regard has not yet been fully realised;
- The connection between multilateral environmental agreements and environment-related instruments remains problematic due to the lack of clarity of several environmental

¹ <https://undocs.org/fr/A/73/419> retrieved 20.02.2018, 14.22 hours.

principles, both content-wise and status-wise. There is a need for greater mutual supportiveness of rules concerning trade and environment;

- Environmental concerns addressed in treaties have not generally evolved and do not yet include issues such as climate change and biodiversity. Furthermore, there are significant gaps in the regulation systems of hazardous substances, activities and wastes;
- The implementation of international environmental law at national level is constrained in many countries by a lack of legislative provisions, appropriate financial resources, environmental technologies and institutional capacities;
- At the international level, implementation is also constrained by the lack of clarity of numerous environmental principles. Compliance mechanisms are extremely inadequate and must be enhanced to promote effective implementation of multilateral environmental agreements;

The report concludes that States must seize the opportunity to use international environmental law in new and dynamic ways to create strong and effective governance so as to better safeguard the environment for future generations. It is essential that States and the United Nations work together to address gaps in international environmental law;

On “Human Rights Day” – 10 December 2018, France, Senegal, the International Union for Conservation of Nature (IUCN) and the International Council of Environmental Law (ICEL) assembled a panel of international experts at the United Nations Headquarters, to comment upon the recommendations in the report. The document promoted the international recognition of the right to a healthy environment. The debates took place seventy years after the adoption of the Universal Declaration of Human Rights. Their message was that it is now time to recognise a new generation of fundamental rights and, in particular, the right for all persons to live in a healthy environment;

Attendance at the sessions of the special working group as observers was open to non-governmental organisations in consultative status with the Economic and Social Council, as well as to those that were accredited to relevant conferences and summits.

The Assembly¹ decided that the ad hoc open-ended working group shall hold the following sessions, in accordance with established practice:

- a) An organizational session will be held for a duration of three days, at the end of the seventy-second session of the General Assembly, in New York, to examine matters related to the organisation of the committee's procedures, the open-ended working group, including the duration and number of its substantive sessions; and
- b) Substantive sessions that will be held in Nairobi (January, March and May), the first of which is to take place at least one month after the submission of the report of the Secretary-General.

Thus, the first substantive session of the AdHoc Open-ended Working Group on a Global Pact was held on 14 January 2019, at the United Nations Office in Nairobi, Kenya. During this one-week session, the delegations (about 288 participants, including governmental delegates, representatives of international organisations and the civil society) examined the report of the UN Secretary-General.

The first substantive session was described by some delegates as the opportunity to “take stock of the situation”, while others underlined the need to comply with the established policies of the multilateral environmental law system and distinguish between normative, institutional and implementation gaps.

Some have begun to consider the idea of a “worthy result” for the pact’s initiative, for instance, in the form of a political statement or a similar package. Others considered the term “pact” a more faithful and less threatening way for the proposal, noting the potential example offered by the Global Compact for Migration.²

It has been suggested that the Pact should respect national sovereignty and existing multilateral environmental agreements and help national lawyers to manage the principles of environmental law (enshrined in over 300 multilateral environmental agreements) with greater consistency, uniformity and efficiency.

Many have asked for more time to prepare for this. But some have warned that in the global context of an increasingly degraded environment, the international community must find a balance between acting rapidly and acting well.

Others have been optimistic that the process will eventually lead to a series of useful recommendations and that some of the initial intentions of the Pact will be

¹ <https://www.unenvironment.org/fr>.

² <http://enb.iisd.org/vol35/enb3501f.html>.

resuscitated, as a delegate pointed out at the end of the conference: “At the end of the tunnel there is light, but we are still in the tunnel.”

As far as dispute settlement mechanisms are concerned, the absence of an international environmental court was highlighted, while other delegates favoured the use of existing institutions.

With little time available to prepare recommendations to the UN General Assembly by the end of the first half of 2019, even the most ambitious delegations pointed out that there could be many risks that would accompany any attempt to impose a new regulatory consensus.

At the meeting in Nairobi, the delegates approved the agenda for the second substantive session, including an article on exploring options to overcome any gaps in international environmental legislation and related instruments.¹

In May 2019, at the end of the working group’s activity, if the need for a Global Pact for the Environment is confirmed, the UN General Assembly may adopt a second resolution in view of opening negotiations on the content of the Pact. If these negotiations are successful, the Global Pact for the Environment could be adopted in the coming years at an adhoc international conference and then open to ratification by States.

3. Conclusions

In order for this pact to become a reality, we need sustained fight against legal uncertainty with regard to climate and environment, cooperation to achieve global environmental law, to create the conditions for responsible economic and social development and, clearly, a strong international commitment that would bring progress.

The Global Pact for the Environment could become the first legally binding international agreement, bringing together and harmonising all environmental rights in a single document. The aim is to provide governments with an essential tool to help them implement the different environmental principles and rules within their jurisdiction.

Faced with the unprecedented deterioration of our environment, the Global Pact for the Environment will be an essential tool, as it will create a space in which the same

¹ <http://enb.iisd.org/vol35/enb3501f.html> retrieved 20.02.2019.

environmental standards will apply to everyone, regardless of their country, which will facilitate international business processes and observing their social and environmental responsibilities.

Besides, due to its universal nature, it will open the way to recognising environmental rights as “*fundamental rights*” for everyone.

This pact would provide a text of general applicability that would lead to the coordination of rules and institutions in international environmental law, codifying the principles set forth in the agreements so far, establishing legal rights and responsibilities that can be enforced in national and international courts, filling many of the existing gaps in international environmental governance.

Therefore, this text could become the backbone of international environmental law.

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