

WHITE PAPER

TOWARD A GLOBAL PACT FOR THE ENVIRONMENT

SEPTEMBER 2017



GLOBAL PACT
FOR THE ENVIRONMENT

Preface

The idea of a global environmental pact, endorsed by the international community of jurists, is not new. The adoption of the Sustainable Development Goals (SDGs) in September 2015 and the subsequent adoption of the Paris Agreement in December 2015 have created a strong, new momentum towards such a pact. Meanwhile, the seriousness of environmental harms has strengthened awareness of the need to go further. It is now time to take a decisive step towards this Global Pact, which would unite the guiding principles of environmental action into a single text with legal force.

In this context, I was invited to support this project of a Global Pact for the Environment shortly after I took office as President of the Constitutional Council of the French Republic in March 2016. In light of my experience both as President of a Constitutional Court and former President of the COP21, I thought that my involvement in this important initiative could be useful.

Since September 2016, we have completed significant legal work prior to the political and diplomatic phase of the project. Along with the *Club des juristes*, the first French legal think tank, and, in particular, its “Environment Commission,” chaired by Yann Aguila, we have completed a preliminary draft of the Global Pact in close cooperation with an international network of leading experts. In the end of June 2017, dozens of these experts gathered in Paris, coming from all continents to proceed with the last arrangements and determinations of the project. As it stands, the project is a short text, both ambitious and realistic, consisting of a Preamble and twenty-six articles. Most of the principles contained in this text have already been agreed on in international environmental law.

In the wake of this meeting, an international launching event of the draft Pact was organized in Paris, in the Grand Amphithéâtre of the Sorbonne University. Many personalities committed to the protection of the environment spoke at the event, including Ban Ki-moon, Arnold Schwarzenegger, Mary Robinson, the French Environment Minister Nicolas Hulot, the Mayor of Paris Anne Hidalgo, and prominent international judges and lawyers. The President of the French Republic Emmanuel Macron delivered the closing speech and announced clearly and distinctly France’s support for the draft Pact, which he committed to pushing through the United Nations in September.

Based on our project, President Macron's support represents the official starting point of the Global Pact. The culmination will be, hopefully, its adoption – as soon as possible – by the United Nations General Assembly. A new diplomatic and political work phase starts now, aimed at building a coalition of States determined to endorse this project in the United Nations.

In the period ahead, this White Paper aims at precisely and pedagogically setting out the rationale for this initiative, the nature and content of the Pact project, and the benefits that can be expected from its adoption. The White Paper is intended to be a useful document not only for the international community of jurists but also for central and local authorities, companies, NGOs, and, more broadly, anyone interested in the draft Pact.

Following the two international Covenants adopted in 1966 by the United Nations General Assembly, one related to civil and political rights and the other to economic, social, and cultural rights, the Global Pact for the Environment will strongly establish a third generation of fundamental rights: the rights associated with the protection of the environment. Fifty years later, it is time to move forward in that direction, for damage to the planet and to humanity is now critical, and we cannot wait any longer to take action.

Laurent FABIUS

President of the Constitutional Council of the French Republic

President of the Group of Experts for the Pact (GEP)

Former President of the COP21

Foreword

For thirty years, the international community of jurists has called for the adoption of a genuine treaty to enshrine the founding principles of environmental law. The Stockholm Declaration of 1972 and the Rio Declaration of 1992 recognized these major principles, which today are subject to a consensus. But even though these texts have a significant symbolic impact and have inspired breakthrough on environmental matters, they do not have a legal binding force.

This is the reason why jurists called upon States to enshrine these principles in a text with legal force a long time ago. This was first the case in 1987 with the Brundtland Report, which includes a list of “*Legal Principles for Environmental Protection and Sustainable Development*”. Then again in 1995, with the Draft International Covenant proposed by the International Union for Conservation of Nature (IUCN).

And this is the case today, with the Global Pact for the Environment project of the Group of Experts for the Pact (GEP), an international network of jurists chaired by Laurent Fabius, President of the French Constitutional Court and former President of the COP21.

The Global Pact project is a collective work. It follows in the footsteps of many international precedents, upon which it is largely based, from the Rio Declaration to the Draft Covenant of the IUCN and the World Charter for Nature of 1982. The project is then the result of the work of a network consisting of over one hundred experts, representing nearly forty nationalities, mobilized by the Environment Commission of the Club des juristes and supported by a group of student volunteers.

This White Paper gives us the opportunity to express our sincere gratitude to those who have contributed, directly or indirectly, to this project: all the members of the network of experts –academics, lawyers, and judges – whose intellectual contributions have been remarkable; students and young professionals who have assisted the network and dedicated many hours to organizing our work, providing us with studies and legal research; and, lastly, President Laurent Fabius, who has agreed to endorse this project, and without whom nothing would have been possible.

Over several months, the experts had many enriching exchanges to progressively elaborate, through iteration, a draft project of the text. We launched a succession of consultations and received many comments that enabled us to first identify the fundamental principles to integrate into the Pact, next to specify the content, and lastly to determine the wording. These consultations rapidly brought clarity on a double consensus:

- A consensus on the core necessity of an international treaty establishing the fundamental principles of environmental law;
- A consensus on the content of this Pact; the principles enshrined in the text have been largely agreed on.

At the end of this period of talks, on June 23, 2017, around forty experts gathered in Paris to determine the final draft of the Pact project, under the chairmanship of Laurent Fabius. The day after, the project was officially presented during an international conference in the Grand Amphithéâtre of the Sorbonne University, attended by many prominent personalities committed to environmental protection. On this occasion, President Emmanuel Macron announced his intention to push the Pact through the United Nations General Assembly.

This remarkable mobilization compels us. It imposes upon us the duty to succeed in our work.

In this spirit, this White Paper intends to express the shared analysis of leading legal experts on the Global Pact for the Environment. It also intends to be a reference document on the project, so that everyone can know the legal context in which it intervenes, the precedents upon which it is based, the justifications for it, the choices that have influence its architecture, and the manner in which it should be implemented.

General in nature, the Global Pact for the Environment should strengthen the coherence of global governance of the environment, currently characterized by the fragmentation of international institutions and the multiplication of international environmental norms both technical and sectoral. It would be the cornerstone of international environmental law, with the sectoral conventions being the mode of implementation for specific areas of the general principles of the Pact.

Based on consensus, the Pact project brings together twenty principles, balanced between rights and duties and supplemented by six articles for the final provisions. It is based on two "source principles", a right and a duty: the right to a healthy environment and the duty to take care of the environment. Interrelated, they must be read together, for the right of human beings to their environment cannot exist without a responsibility to nature. This results in a series of "derived principles" that are widely recognized today: duties of prevention and remediation of environmental harms, the right to information and public participation in environmental decision-making, and access to environmental justice. The Pact project also proposes some innovations, such as the official recognition of the role of civil society for the protection of the environment and the non-regression principle, which forbids any backtracking when it comes to environmental legislation.

Compulsory, the Pact would supplement the legal architecture and consolidate the benefits of the Rio Declaration. In the spirit of the significant codification work, it would strengthen principles agreed on but that have only been enshrined up until now in documents which are part of soft law.

Living and constantly evolving, the Pact should trigger a new legislative and jurisprudential dynamic inspiring national lawmakers and judges in each state. We have favored a short text with general and short formulations. It is not necessary, for a text to be adopted on a global scale, to be too specific and to go into the details. The benefit of such a general principle is, precisely, its undetermined nature: It has an open structure, creating a fertile dynamic, leaving to each State a margin of discretion to implement it in light of national contexts.

The Pact must be an instrument for action; at a later stage, monitoring bodies of the Pact will be responsible for interpreting the principles and specifying how to progressively implement them. The Implementation Committee of the Pact should be a place to exchange experiences among States in order to make recommendations useful to all, in light of the best national practices. The implementation of the Pact will be progressive. It should also strengthen the legal framework in each State through the adoption of legislations more protective of the environment.

It is now time to act. There is a momentum for consolidating the consensus-based principles of environmental law in a general treaty: the Global Pact for the Environment. This White Paper is only a starting point. Hopefully, its culmination will be the adoption of the Pact within the United Nations framework.

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Introduction

At the time of the implementation of the Paris Agreement on climate change, awareness of the many failures and difficulties experienced in environmental protection and the urgency to reduce its deterioration is stronger than ever. Despite the remarkable progress that has been achieved and the existence of a genuine collective will, the status of the planet is critical and evidences the fact that serious issues remain in the implementation of environmental regulation.

The year 2017 marks the 25th anniversary of the Rio Declaration on Environment and Development. Since 1992, lawmakers, governments and courts, as well as local governments and non-governmental organizations around the world, have gradually contributed to the dissemination and implementation of the fundamental principles set forth by such Declaration. The importance and the role of these principles for the protection of the environment locally and globally are undeniable. Many of them, however, are essentially embodied in provisions which belong to “soft law”. Moreover, practical experience since 1992 shows that a need for clarification has emerged as to the drafting and the scope of these principles.

The time has thus come to clarify and consolidate these commonly shared principles into a global covenant: a Global Pact for the Environment. This international treaty with a general ambit aims at constituting a major reference for worldwide environmental governance. It should be remembered that there are more than 500 international treaties dealing more or less directly with the environment. Such a Global Pact could constitute an «umbrella text» that would alleviate the inconveniences of the fragmentation and improve the consistency of the numerous existing sectorial environmental agreements.

After more than four decades of exponential development of international environmental law, there is a new impetus, offering a new momentum and new ways to improve global environmental governance and provide it with a true effectiveness. The proposed Global Pact for the Environment is part of this trend. The new propulsion through the adoption of a global and binding covenant will constitute a major step forward, responding to long-standing expectations of the international legal and diplomatic community. The goal for such a cornerstone document is to codify

the guiding principles of Environmental Law, with a view to playing the same role in the future as the 1966 United Nations Covenants did with respect to the Universal Declaration of Human Rights, by conferring upon such principles the binding nature, which they sometimes lack.

This white paper is the result of the collective work of the Group of Experts for the Pact (GEP), which prepared the draft presented to the French President on June 24th, 2017. It aims at presenting the origins, the objectives and the content of the Pact in order to assess its scope and necessity regarding today's environmental governance issues.

1. A document responding to the contemporary dynamics of environmental law

The Draft Global Pact for the Environment provides notably a response to the international community's expectations, expressed since 1987 in the Brundtland Report and manifested in the Group of Expert for the Pact (GEP) work, comprised of a hundred lawyers, representing almost 40 nationalities.

Environmental issues have never been as acute as they are nowadays. Scientific developments confirm their global and complex nature; the various threats are intertwined. These findings call for both global and transnational care. Environmental law also impacts national law, all the way up to the top of the hierarchy of norms. The adoption of a Global Pact is part of and will support and deepen this momentum.

1.1. The globalisation movement of international governance

At this stage of development of international environmental law, it is necessary to provide a new impetus to environmental governance. It is now time to coordinate a collective and cross-cutting set of actions to expand upon the sectorial approach enshrined in the legal landscape. International institutions have acknowledged this need and recently initiated this new dynamic in which the Global Pact for the Environment project takes place.

1.1.1. The Global Pact for the Environment as an extension of the Sustainable Development Goals

During the United Nations Summit on sustainable development in September 2015, the General Assembly of the United Nations adopted the “2030 Agenda for Sustainable Development” as a new framework for global development. The Agenda is “a plan of action for people, planet and prosperity”. It shall enable the elaboration of policies to be implemented in this area around defined objectives and concrete targets. The Agenda relies on seventeen sustainable development goals (SDGs), driven by the success of the millennium development goals (MDGs) adopted in 2000. In order to ensure their practical application and monitoring, these goals are complemented by 169 indicators. The SDGs are part of the new global strategy in that they do not establish sectorial obligations but rather goals across all sectors. They are relevant to each country, irrespective of its level of development, the private sector and civil society, so as to promote prosperity and to protect the planet. Thus, the SDGs express a holistic vision, which places the international environmental governance in a more general framework, including economic and social objectives. While these goals do not have binding power by themselves, they nonetheless embody a universal approach with a general scope and set a common framework for action for all those concerned by development and the environment, including State entities and others.

1.1.2. The Global Pact for the Environment as an expansion of the Paris Agreement’s momentum

The Paris Agreement, even if it is not a general instrument but rather a sectorial agreement, also falls within this new movement, the necessity of which needs no further demonstration. The 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21) has led to the much-anticipated adoption of a universal agreement on climate. The chosen strategy lies in the elaboration of a common objective: the reduction of anthropogenic greenhouse gas concentrations in the atmosphere in the long run by means of an agreement that is simultaneously sustainable, fair, active and tiered. The adoption and rapid entry into force of the Paris Agreement illustrate the new perspective that prevails on the international scene towards a global and better coordinated care of environmental issues.

The SDGs lack legal and expressly binding power and the Paris Agreement deals mainly with a specific legal regime of climate change mitigation. Regardless of their importance and of their impact on environmental issues, the Draft Global Pact for the Environment proposes the adoption of a legal document with a general ambit and binding value to create a unifying perspective that has become urgently needed.

1.2. The dynamics of the constitutionalisation of environmental principles

The principles of environmental law have spread throughout national laws. Their fundamental nature has led numerous States to raise them to the highest level in the hierarchy of norms: in national constitutions. The observation of national practices reveals that this movement is general, strong and deep.

The Global Pact for the Environment codifies fundamental principles that are to be implemented, *inter alia*, at the national level. In that way, it will support, accompany and frame the environmental constitutionalism currently developing in domestic legal systems.

1.2.1. The consecration of environmental principles in national constitutions

Environmental constitutionalism refers to norms responding to environmental issues becoming enshrined at the top tier of domestic legal systems'. Beyond specific statutes and regulations, there is a gradual process of constitutionalisation of environmental rights and obligations. This movement testifies of the existence of a large consensus on the main environmental principles, shared around the world. It illustrates the desire to fill a gap, specifically regarding the invocability of major international principles. The constitutionalisation of fundamental principles leads to the strengthening of their status in domestic law and the facilitation of their implementation on a more global level, better than their embodiment in a specialized and sector-based approach. The introduction of the principles reflected in the draft Global Pact for the Environment in domestic constitutional laws reflects a growing consensus on these principles. This is also a means of ensuring their influence and effective implementation at the national level.

Since the adoption of the 1972 Stockholm Declaration, a very large majority of countries have included related provisions in their constitutions. For example, these constitutions may now include substantial rights, as is the case of the Beninese, Chilean, Colombian, Turkish, Kenyan, Hungarian and Spanish constitutions, which explicitly establish the right to live in a healthy environment for all citizens. They may provide procedural rights, traditionally covering the rights to information, public participation in decision-making and access to justice in environmental matters. These procedural rights often come together with substantive rights. Some national constitutions further this logic by establishing environmental duties and obligations on individuals or by imposing environmental policies on State and non-State actors. Article 225 of the Constitution of Brazil, after the consecration of the right to a balanced environment, states that public authorities and civil society have a duty to defend and protect it for present and future generations. The Chinese Constitution, in its Article 26, impose the obligation to protect the environment and fight pollutions on the State. The Uruguayan Constitution specifically states that the protection of the environment is of common interest, acting as a guideline for public policies. This is also the case with the constitutions of Qatar and Chile, which make it possible for law-makers to put environmental values before other rights and freedoms. The development of other provisions related to environmental protection confirms this trend, such as the establishment of the right to access water, the rights of nature, etc. Some States have even constitutionalized climate change stakes, like the Dominican Republic, which subjects the organisation of the territory to the objectives pursued in this respect.

The Charter of the Environment, adopted by France in 2004 and included in its “block of constitutionality”, fully participates in this movement. It includes substantive rights and duties of individuals, which come together with procedural rights and public policy guidelines. The Charter is thus the entry point to the fundamental principles of environmental law within the national constitutional sphere. It establishes, *inter alia*, the right to a balanced environment (Article 2), the prevention principle (Article 3) and the precautionary principle (Article 5), which can now radiate throughout French law.

Thus, a large consensus appears on the environmental principles that are considered fundamental enough to be consecrated in national constitutions, at the highest level of the normative hierarchy. The UNEP has also presented this movement in its “Judicial Handbook on Environmental Constitutionalism”.

1.2.2. The appropriation of environmental principles by Supreme Courts

This constitutional impetus is transposed onto the case-law of national courts, especially that of supreme courts, which have to rule on these environmental provisions. Case-law is an additional vehicle for the development and the influence of these principles. It facilitates their implementation by clarifying their scope and defining more precisely their content. For example, the Constitutional Court of Peru clarified the scope of the right to a balanced and adequate environment. It found, based on Article 22 of the Constitution, that the effectiveness of this right includes the right to enjoy the environment and the right to its preservation. The Supreme Court of the Philippines sought to clarify the concept of «healthy and balanced ecology». It decided that the list of the types of complaints that may be submitted under this heading is entirely open. The Constitutional Court of Ecuador has also embraced constitutional guarantees related to the environment. In many cases, it has decided that the right to a healthy environment was breached by certain modes of production or by the degradation of certain natural areas, despite the economic interests at stake. The Latvian Constitutional Court, which is particularly active in environmental matters, has repeatedly held that plans for the use and development of local territories are contrary to Article 115 of the Constitution, which protects the right to a healthy environment. It even invoked the Stockholm Declaration and the Aarhus Convention to support its reasoning and to require the government to review the contested plans.

National courts, and especially supreme courts, thus play a crucial role in the implementation of environmental law principles, including those that should be recognized by the Global Pact for the Environment. Whether it is the affirmation of human rights or the recognition of specific obligations in the environmental field, the recognition of these principles at the constitutional level favors their introduction to the national sphere and strengthens their justiciability. These objectives are among the priorities of the Global Pact for the Environment project.

2 A consensual document backed by numerous international precedents

The Global Pact for the Environment project is the result of a maturation process that accompanied the growth and development of international environmental law. It builds on multiple initiatives undertaken in favour of the synthesis of international environmental law principles into a single document. The evolution of international environmental law, which it is now possible to look back on, shows that this necessity might be even more pressing today. While the worsening condition of the environment is a significant concern, international environmental law, whose dynamism and flexibility have long been praised, is now a victim of its own assets. The normative and institutional fragmentation from which it suffers makes the call of the international community of jurists for a unified approach more valid now than ever.

That desire to globalise environmental protection is not new. The Global Pact for the Environment follows numerous efforts that should now be extended and strengthened to give flesh to an international will operating since the 1970's.

2.1. The Declarations of principles backed by international institutions

The year 1972 stands as the official beginning of modern international environmental law. The United Nations Conference on the Human Environment in Stockholm led to the adoption of an Action Program and a Declaration, both still pertinent. The Stockholm Declaration already recognised the preoccupying status of the planet and proclaimed for the first time in a universal instrument the importance of protecting and restoring the environment. It sets out, in twenty-six articles, fundamental principles that were to govern environmental management and that still guide international action. It therefore plays a major role in the global understanding of environmental governance by providing its first structuring principles.

The World Charter for Nature, which was adopted and proclaimed by the United Nations General Assembly in 1982, follows the same logic. While reaffirming the philosophical fundamentals of environmental protection, it also provides principles aimed at reinforcing respect for nature and its essential processes. Though still a non-binding document, it nevertheless gives further indication about the necessity and the content of these fundamental principles.

In line with the Stockholm Declaration and the World Charter for Nature, the second United Nations Conference, held in Rio in 1992, adopted a Declaration on the Environment and Development. The Declaration regroups in its twenty-seven articles the fundamental principles of international environmental law. It brings together existing principles and provides new ones, such as the precautionary principle and the “polluter-pays” principle. This document, while not formally binding, still remains a major factor in the development of international environmental law. Many of its principles were incorporated in later instruments, illustrating their juridical weight and the fertilising and coordinating virtues of a global text.

Ten years later, the 2002 World Summit on Sustainable Development in Johannesburg resulted in disappointment for some observers who were waiting for concretisation and consolidation of the progress achieved in Rio. The adopted Declaration was useful in achieving developing States’ concerns but did not address the need to better coordinate environmental governance around these structuring principles.

It should also be noted that, since 1972, some of these principles have been consecrated, punctually, in sectorial conventions. This is the case of the Aarhus convention (right to information and public participation), or the Espoo convention (impact assessment) or the United Nations Framework Convention on Climate Change (common but differentiated responsibilities). Nevertheless, such conventions have a limited scope and a synthesis is still missing.

This long process of identification and reinforcement of the principles and their dissemination, especially from the Rio Declaration for over twenty years, highlights a strong expectation from the legal community to see the foundations of environmental regulation systematised in a single instrument at an international level. Civil society has long accompanied this movement and conceived numerous initiatives in favour of a general text of obligatory principles.

2.2. Civil society initiatives for a compendium of fundamental environmental principles

It is impossible to produce an exhaustive inventory of all the civil society's initiatives to draw up a document combining the fundamental principles of environmental law, as they have been numerous. This attests to the vivacity and constancy of environmental actors' needs. Some of these must be mentioned to illustrate the diversity of these projects, which the Global Pact for the Environment is based on.

As early as 1987, Annex I to the Brundtland Report established a "*Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development*", adopted by the Expert Group of the World Commission on Environment and Development for the purpose of strengthening environmental law. This collection of principles concerned both fundamental human rights and states' obligations and responsibilities related to environmental management. Already, it set out a series of principles that structured environmental action, such as the prevention principle and the obligation to notify or to make assessments, among others. In 1995, the Expert Group on identification of principles of international law for sustainable development, within the Commission on sustainable development, produced a report gathering those principles. The Earth Charter, adopted in the year 2000, constitutes a real international declaration of values and fundamental principles, including, for example, the prevention principle, for the actors of civil society. The New Delhi Declaration of Principles of International Law Relating to Sustainable Development, drafted by the International Law Association in 2002, also takes part in this dynamic. The demand for such a document has remained intact, and in 2015, an expert group adopted the Oslo Principles on Global Obligations for Climate Change, which again constitutes an affirmation of the structuring principles of environment law in an attempt to overcome the relatively abstract character of legal obligations in this area through an effort of identification and definition.

The work of the International Union for the Conservation of Nature (IUCN) in this regard is also remarkable. In 1995, the organization proposed a particularly ambitious Draft International Covenant on Environment and Development. This document was constantly updated since its initial drafting up until the latest version, which was published in 2015. In addition to an affirmation of the fundamental principles of environmental law, including in particular the principles of non-regression, common but differentiated responsibilities and the precautionary principle, this project was intended to address the sectorial aspects of environmental protection in

a single instrument. It provides for specific obligations related to the various protection regimes and a chapter dedicated to global issues. IUCN is also responsible for a World Declaration on the State of the Law, which was adopted at the World Congress on Environmental Law held in Rio in April 2016. This second document, whose ambition is not the adoption of a binding document, also proclaims *“general and emerging substantive principles for the promotion and attainment of environmental justice with the support of environmental law.”* They include the principles of non-regression, public participation and equity, as well as the principle in dubio pro natura and the right to a healthy environment.

Many initiatives have also taken place at the national level. This is the case in Hungary, of the Declaration on environmental responsibility, drafted by a group of national experts following the initiative taken by the President of the Supreme Court, and adopted in 2014 during the 11th annual of the EU Forum of Judges for the Environment. This is also the case in France, of the Universal Declaration of the Rights of Humanity, drawn up by the Lepage Commission in 2015. In 2006, a group of experts led by Ukrainian Professor Yuriy Tunytsya, pleaded for the elaboration of a real World Environment Constitution. The recent draft of the International Covenant on the Right of Humans to the Environment prepared by the International Center for Comparative Environmental Law, led by Professor Michel Prieur in February 2017 is also part of this process of consolidating and harmonising principles, adopting a human rights perspective.

The Global Pact for the Environment project therefore relies upon a series of previous achievements. It builds on these achievements in the hope of being able to take the decisive step of transposing these fundamental principles into an instrument of binding value. The call of the international community in this regard is unequivocal, whether through international institutions or various civil society bodies. The need to enshrine these principles in a single instrument is today the object of a large consensus.

3 A general document and a vehicle for harmonisation and consistency for international environmental law

The primary interest of a document such as the Global Pact for the Environment is to structure the subject-matter. International environmental law needs great coherence. Characterised by fragmentation, it consists of a large number of treaties dealing with particular aspects of environmental protection. There are conventions on climate, biodiversity, desertification, chemicals, etc. They operate according to their own rules, often have their own monitoring mechanism and are characterised by their autonomy.

Concluding a treaty whose overall purpose would be the protection of the environment would make it possible to lay down in a single text the principles common to the whole of the subject-matter. The *special* conventions would then be analysed *de facto* as the declensions of general principles in particular fields. In this regard, the Global Pact for the Environment proposes to fill the gap by adopting a general, cross-cutting, universal reference instrument constituting the cornerstone of international environmental law.

3.1. The Global Pact as an instrument designed to remedy the normative proliferation of multilateral environmental agreements

Beyond general documents, international environmental law has grown significantly at a sectorial level. The vast majority of modern environmental regulation is composed of multilateral environmental agreements concluded between States to protect or restore certain components of the environment and to commit to abiding with several hundreds of legal obligations materially and territorially confined. These instruments are particularly suited for environmental law, taking into consideration their flexibility and technical nature. Nevertheless, over the last decades, their multiplication occurred without real coordination or an attempt to prioritise them. Consequently, today's environmental regulations for different spaces and activities forms a myriad of intertwined and overlapping rules.

3.1.1. "Ad hoc" management of environmental issues

This normative proliferation reflects international environmental law dynamism. Nonetheless, this is not without adverse consequences on the effectiveness of the implemented rules. The main inconvenience of using the ad hoc approach of multilateral environmental agreements is that the sectoral approach is, by definition, constrained. Whereas international environmental law is promoting international cooperation as a means for dealing efficiently with global issues, it considers environmental issues in a fragmented way. Yet, scientific research proves that all environmental aspects are interdependent. The development of multilateral environmental agreements occurred without a comprehensive strategy to respond to urgent and concrete considerations. Thus, environmental law appears fragmented in its own judicial system, resulting in a juxtaposition of sub-legal regimes rather than a consistent system of commitments.

3.1.2. Lack of coherence in environmental commitments

The current configuration of international environmental law raises practical challenges. While multilateral environmental agreements provide States with a high degree of freedom, their proliferation without coordination can result in inconsistencies between parties' obligations. Such inconsistencies can impair both the binding nature of environmental norms as well as parties' responsibilities. The increase of multilateral environmental agreements makes their enforcement more difficult. States can feel overwhelmed by the heap of obligations they subscribe to, resulting de facto in a lack of implementation. This normative dynamism necessarily leads to unequal environmental protection. Multilateral environmental agreements are concluded at different levels: internationally, regionally or locally, making it even more complex to organize global governance and management of similar environmental issues in different areas of the globe.

Consistency and coordination are continuous needs of international law. Environmental law requires such a global management to be efficient since it suffers from intrinsic normative fragmentation. This is a deficiency that the Global Pact for the Environment aims at filling. Framing environmental governance within a treaty enacting fundamental principles can bring coherence and help strengthen sectorial protection of the environment around founding principles.

3.2. A Global Pact as a counterweight to institutional fragmentation of environmental governance

3.2.1. *Diversity of the UN institutions*

The institutional organisation of environmental governance also demonstrates such a fragmentation. In the UN system, two major institutions operate in this respect. The United Nations Environment Program (UNEP) is the United Nations program chiefly in charge of environmental issues. Created in 1972, it acts as a catalytic force, a defender, an instructor and a facilitator of the promotion of reasonable use and sustainable development of the world environment. For that purpose, UNEP coordinates the actions of numerous partners, including United Nations bodies, international organizations, national governments, non-governmental organisations, the private sector and civil society. Its mission was consolidated and reinforced in recent years. UNEP, whose headquarters are in Nairobi, includes six regional offices and delocalised branches. It houses the secretariats of numerous environmental treaties, such the Ozone Secretariat and the multilateral Fund of the Montreal Protocol and the secretariats of the Convention on the International Trade of Endangered Species (CITES), the Convention on Biodiversity and the Convention of Migratory Species, among others. UNEP is a United Nations program, and, unlike agencies, it does not have extended powers. Several calls have been voiced for its mutation towards an Organisation of the United Nations for the Environment to confirm its coordinating role and to improve the consistency of environmental law.

In parallel, the United Nations Commission on Sustainable Development (UNCSD) was created by the General Assembly of the United Nations in December 1992 within the Economic and Social Council in order to ensure effective follow-up of the United Nations Conference on Environment and Development (UNCED). Until 2013, it was mainly in charge of examining the progress accomplished in the implementation of Agenda 21 and the Rio Declaration on Environment and Development, as well as of supplying orientation and insuring follow-up on the Johannesburg Action plan at the local, national, regional and international levels. Since then, it has been replaced by the High Level Political Forum on Sustainable Development, which became the central platform for follow-up and control of the implementation of Agenda 2030. Moreover, numerous actors, agencies and programs might have an influence, through their missions, on the environment: The United Nations Develop-

ment Program, the World Bank, the World Trade Organisation... At the UN level, the main institutions are in theory entrusted with different missions but in practice must cross paths considering their interwoven objectives.

3.2.2. The multiplication of specialised bodies

Besides the major universal institutions, numerous more or less structured bodies were established within the framework of the environmental treaties. Frequently, one environmental multilateral agreement provides for its own monitoring mechanism with respect to the implementation of the treaty. The exact mechanisms vary according to the concerned agreement, but the typical structure of these mechanisms includes at least a Conference of the Parties (COP), a Secretariat and sometimes scientific committees. Such ad hoc institutionalisation also involves the risk of division of environmental governance, even though it aims at strengthening effectiveness. It is necessary to add to this constellation an increasing number of organisations and bodies for whom the primary goal is not environmental protection, but they nevertheless exist in this domain because of the cross-cutting issues involved.

A consideration of this institutional plurality also highlights the need for a global articulation of the action of the various actors of environmental governance. It indeed reinforces the idea that environmental governance cannot be merely sectorial. This plurality calls for a synthesis and coordination effort with respect to the skills and regulation tools. The existence of universal and structuring standards could thus contribute to strengthening the coherence of these various mechanisms.

4 A document of binding value to complete the body of legislation and strengthen codified principles

International environmental law operated a transition vis-a-vis general international law. Soft Law has developed tremendously on this subject. While it may be particularly fitting for the need for adaptability and flexibility in environmental matters, this new kind of normativity can sow doubts on the authority of the founding principles.

As mentioned above, there are indeed several non-binding international declarations that set forth environmental protection principles. They were adopted either at major

environmental conferences (1972 Stockholm Declaration, 1992 Rio Declaration) or by way of a resolution of the General Assembly of the United Nations (1982 World Charter for Nature, Resolution N 37/7). As such, they are of a debatable legal value. The time has come to recognise such environmental protection principles in a real treaty; that is, to say, a document with binding legal value.

In this respect, the project of a Global Pact for the Environment provides a response to the contemporary necessity for transposing the consensual principles of international environmental law into a binding instrument, applicable to States and capable of being relied upon in court.

4.1. Consolidating international environmental law principles' authority through *soft law* codification

4.1.1. *The flexible normative nature of international environmental law*

The traditional basis of international law's authority lies in the expression of State consent. A traditional legal theory stems from this fundamental assumption, which links the development of international law to the will of States. Incorporating Article 38 of the Statute of the PCIJ, article 38 of the Statute of the ICJ lists these sources: international treaties, international custom and the general principles of international law. In different ways, all of these indicate States' intent to commit to the norm in question. Although this strict classification tends to be reconsidered in light of the latest developments in international law, it enables us to grasp the origin of international normativity.

The specific requirements of environmental protection, particularly in terms of responsiveness and flexibility, have often led to favouring the adoption of so-called "*flexible*" standards, in the sense that they are not formally binding. Alongside international conventions, there is now a wide variety of acts, in the form of recommendations, programs, declarations, decisions of international organisations, charters, codes of conduct, etc., missing the traditional characteristics of international law emanating from one of the formal sources of Article 38. While these acts are not binding per se, they do have legal value. This legal value fluctuates, often reflecting

a consensus and continued application. Some of these acts, like major declarations of the United Nations, benefit from an indisputable authority, as they have been transposed into numerous legal instruments, both national and international.

4.1.2. Crystallization of the fundamental principles of environmental law as a source of legal certainty

That States have adhered to certain soft law standards, such as the principles of environmental law embodied in the Global Pact, reflects a consensus that is reminiscent of the formation of customary norms. International custom arises from the combination of a consistent and settled State practice and of an *opinio juris*, understood as the conviction that the conduct adopted is binding. Admittedly, international environmental law is a new body of law while custom develops over a long period of time based on repeated practice. However, some customary rules have already been identified. For instance, the customary value of Principle 21 of the Stockholm Declaration (the obligation not to cause damage to the environments of other States) was recognized by the ICJ in its Advisory Opinion of 8th July, 1996, *The legality of the threat or use of nuclear weapons*, and in its judgment of 20 th April, 2010 in the Pulp Mills case.

Basic principles of international environmental law are now contained in soft law instruments. As a result, even if they have a political weight, most of them lack legal force. The need to codify these principles within a binding instrument is therefore clear. The crystallisation of these norms within the many precedents already mentioned is an indicator of their authority, which must now be formally recognized. The transposition of the principles into legal obligations within the Global Pact for the Environment will bring considerable added-value to environmental law in terms of norm accessibility and legibility. It will therefore also foster additional legal certainty.

4.2. Invocability of international environmental law principles through their integration into a binding instrument

In addition to the expected recognition of the legal value of the fundamental principles of environmental law, their codification will also allow for the resolution of difficulties linked to their invocability.

4.2.1. Justiciability of the principles

The difference between a simple declaration and a treaty is fundamental: a treaty, such as the International Covenants on Human Rights, can be invoked before a judge. The Global Pact for the Environment would thus enable a domestic court to monitor the compliance of national laws and regulations with the guiding environmental principles, which is not presently possible with mere declarations. Certain States have already enshrined these principles in documents with constitutional value, such as France did with the 2004 Constitutional Charter on the Environment. This is not the case in many countries which have, at best, laid down a single principle (the right to a healthy environment) in their constitutions. The availability of a genuine catalog of founding principles of a binding nature would effectively supplement the legal edifice. National courts may be best placed to take national specificities into account and adjust judicial intervention to the individual situation of each State. Nevertheless, the national judicial review of the compliance to the Pact and its procedures are issues within the domestic legal order, which are delicate to deal with within the Pact itself, given the diversity of legal systems.

4.2.2. The direct effect of the principles

The transposition of the principles into an internationally binding instrument would therefore ensure their direct effect, depending on the way in which international law is incorporated into domestic law in each country. This will promote the incorporation of the principles into national law and encourage the adoption of measures necessary for their effective implementation. Under this condition, the Global Environment Pact may be to the Rio Declaration what the 1966 International Covenants are to the 1948 Universal Declaration of Human Rights: a legal act that makes principles

previously enshrined in the form of a simple declaration legally binding. The 1948 Universal Declaration of Human Rights had taken the form of a simple resolution of the General Assembly of the United Nations. It was only on 16 December 1966 that the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights were adopted to give each of them a binding force upon ratification. These treaties are the legal transposition of the Universal Declaration; they are binding and may be invoked directly by individuals. The Pact project intends to achieve a symmetrical process in the environmental field.

4.3. The contribution of the Global Pact to public international law

Aside from domestic law, the Global Pact holds the potential to assist in systemic integration at the level of international law. The fragmentation of public international law is a long-observed phenomenon resulting from uneven normative and institutional development in a range of subject areas including trade liberalisation, investor protection, the protection of human rights, humanitarian law, environmental law and so on. These are sometimes grouped as 'regimes' of norms and institutions, which tend to become insular and self-contained, or at the very least specialized within established professional competencies and attitudes. The related proliferation of international courts and tribunals has impacted upon long-standing generalist bodies such as the International Court of Justice (ICJ); it is not uncommon, for example, for a trade panel to rule on an inter-state dispute involving environmental issues. The United Nations International Law Commission (ILC), in a seminal study led by Martti Koskenniemi, advocates a tool-box of professional techniques responding to fragmentation for international lawyers. These techniques seek first and foremost to ascertain the common intention of states parties to the relevant regimes in resolving normative conflicts, and include the principle of "systemic integration" in treaty interpretation. For example, when interpreting a treaty (such as a trade agreement), regard should be had to 'relevant rules of international law applicable between the parties', as set out in Article 31(3)(c) of the *Vienna Convention on the Law of Treaties*. Accordingly, adjudicators are guided by relevant customary international law in interpreting treaties, and, where there is generally overlapping membership, by other relevant treaties. It is less straightforward for adjudicators to take account of soft law instruments in treaty interpretation. A binding and widely ratified Global Pact for the Environment will provide clearer direction for adjudicators

and other treaty-interpreters to achieve systemic integration in public international law, due both to its ongoing contribution to the crystallization of custom and to its status as a binding treaty.

5 A living and evolving document designed to nurture and support environmental action at national and international levels

The Global Environment Pact is destined to be a long-term instrument that can unify and structure environmental law in the long run. It is therefore essential that it be continuously evolving and capable of adapting to the developments that the planet, science and technology will inevitably experience. The Pact is intended to become a timeless document, adaptable through its interpretation, ever relevant and not inscribed in a single era.

This is one of the interests of resorting to general principles rather than precise rules: creating a category of legal requirements in the form of general, abstract rules of conduct applicable to multiple practical situations. In this sense, the general principles guide the implementation of more specific and concrete rules. These tools are tailor-made for environmental law as they are adapted to its characteristics and needs. The use of principles has the advantage of federating the States' agreement around a direction to give to their action, built on broad yet strong pledges, the ability to be specified later. The negotiation and adoption of these principles is thus facilitated. Their openness as well as their necessarily abstract and general content affords adaptability in time and space, in light of the legal, political and cultural specificities of each State.

Implementation of the Pact will therefore result in its achievement and adaptation in a genuine legislative and judicial dynamic at the national and international levels. The Pact's monitoring Committee will contribute to ensuring its uniform and evolving interpretation, as well as the effectiveness of the text.

5.1. The creation of a legal and judicial dynamic based on the Global Pact

The adoption of a document that endorses general principles implies that the general provisions included are subject to a concrete implementation through specific rules. At a legislative level, the adoption of the Pact will give rise to the adoption of national and international provisions, intended to give shape to the abstract commitments represented by the adoption of these principles. The same goes for case law. Judges confronted by a question related to the Pact will have to precisely determine its content, delineate the contours of some notions and to adapt them to the circumstances. Case law will in turn be used by other legal actors, and thus it will participate, too, in the enrichment and updating of the Pact.

As demonstrated in France after the adoption of the Environment Charter in 2004, the existence of a catalogue of fertile principles has an impact on the legal system. Experience shows that a founding document inspires case law, which, according to Portalis, father of the French civil code, should « *mettre ses principes en action, de les ramifier, de les étendre, par une application sage et raisonnée, aux hypothèses prévues* ». Such a text creates a judicial dynamic that fosters inspiration for all the courts.

The establishment of general principles will serve as a reference framework for the development of future environmental policies. As this will inspire different levels of governance, this momentum will be able to generate a “*cross-fertilisation*” of different legal systems around the content of the Pact. The adoption of the Global Pact for the Environment by States and the legal recognition of the principles will therefore represent an important step. The Pact also aims to become a reference, at the source of fertile dynamics at both a legislative and case-law level, in order to ensure the effectiveness of the principles on a long-term basis.

5.2. The monitoring committee of the Pact as a tool that aims to promote the principles and to support States in the implementation process

One of the major objectives of the Global Pact for the Environment is to consolidate and to achieve principles of environmental law. The shift from “*soft law*” to “*hard law*”, through the adoption of a real treaty, aims to enhance effectiveness. This is the reason why, beyond the sole proclamation of these principles, the Pact must be accompanied by a monitoring mechanism that aims to ensure its effective implementation.

5.2.1. *The difficulties of the judicial solution*

International law proposes an array of monitoring mechanisms that control the implementation of norms. At the most rigorous level, compliance with a treaty may become subject to jurisdictional control. Then, the dispute resolution must be submitted to a court, following particular rules of law. The dispute is resolved by a legally binding decision, producing a *res judicata* effect. This solution is generally not adequate for monitoring compliance to a Global Pact for the Environment, due to the very nature of the questions that will need to be resolved. Indeed, implementation of the principles enshrined in the Pact will mainly be translated, for each State, into laws and regulations. Monitoring this rule-making activity is a delicate exercise, involving broad discretion at the national level. Concerning open structured principles, the monitoring of their application requires taking into account not only legal considerations but also political, economic and social ones. If the involvement of a national court may appear relevant, an international court appears less relevant when it comes to the control, by States, of the implementation of general principles. Such a control must be an on-going, systematic and multilateral one.

5.2.2. *A non-judicial monitoring mechanism*

This is the reason why non-judicial monitoring mechanisms are nowadays more common in international environmental law. These organs may appear under a wide diversity of forms and have various powers. One of the common characteristics of these mechanisms is the absence of binding force of their findings. They therefore

seem adapted to the case of general, non-reciprocal norms. These mechanisms were first developed in the UN human rights system: nine UN committees are monitoring the implementation of the main treaties. This kind of monitoring was then replicated and adapted to international environmental law. The most important multilateral environmental agreements include a monitoring mechanism, from the Montreal Protocol to the 2015 Paris Agreement. These so-called “*non-compliance procedures*” are often focused on facilitation rather than sanction: the first goal is to prevent non-compliance cases with cooperation and to provide assistance in cases of non-compliance.

First, the control traditionally occurs through “reporting”, that is through reports from States releasing information on the implementation of the obligations contained in the conventions. Depending on the treaties, States must send a report either on a regular basis or only when a monitoring committee asks for one. These bodies often have the capacity to examine communications from States or from individuals. These particular triggers may come from different sources: a State regarding its own issues with respect to implementation, other State Parties, the Executive Secretary of the Convention, or, more rarely, non-state actors.

These Committees most often have the power to make recommendations. This result, in the elaboration of a form of “*case-law*” or “*administrative doctrine*” of the Committee. The latter clarifies treaty provisions step by step, through interpretations made in light of its concrete implementation. They may also promote “best practices” currently existing in State Parties. The Monitoring Committee of the Global Pact for the Environment will become a forum for exchanging views between actors of environmental protection. It will be, in other words, the guardian of the concrete implementation of the principles.

6 The architecture of the Global Pact for the Environment

6.1. The method

The Global Pact for the environment is the result of a collective work. More than a hundred experts of environmental law, representing almost 40 nationalities have collaborated during several months to identify and define the fundamental principles of international environmental law. The environment commission of the “*Club des juristes*” presided their efforts. The last stage involved a committee of 30 experts meeting under the presidency of Laurent Fabius. They adopted the final draft presented below on June 30, 2017.

The final draft reflects the cooperative and international approach which governed its adoption. Because the experts involved represent different legal and social cultures, because they come from countries with very different ecosystems, the draft takes into account the diversity of needs, principles and challenges characterizing the environment as well as environmental law. The group aimed at adopting a text short, precise and capable of creating consensus among States despite their political, economic and environmental differences. In order to achieve this aim, the group paid close attention to existing practices both at international and national levels in order to select the most commonly recognized principles, and the most commonly used formulation of these principles.

The working group’s aim has been to produce a text with a clear added value for international environmental law. The draft was designed to facilitate its implementation in national law and policies. This is why the draft creates a balance between rights and obligations while taking into account the specific situation of developing countries. This is also why it takes into account not only States actors, but also non-State actors who have an important role to play in the implementation of environmental law.

The first provision of the Global Pact, following its preamble, is the right to live in an ecologically sound environment and the obligation to preserve it. This is the foundation on which the Pact proclaims a series of horizontal principles well recognised in international environmental law. On this basis the Pact lists a series of special rights and obligations including general obligations, procedural rights and principles guiding

public policies. Even though most of the Pact is a collection of consensual principles, its ambition is also to contribute to the progressive development of law. This is why the Pact enshrines two principles which, despite being more innovative, are more and more recognised at the international level. The Pact sets up a mechanism dedicated to follow up these principles, in order to ensure their effective application.

6.2. The Preamble

The Pact reflects the classic structure of international agreement, and starts with a preamble. Even though the preamble is not *stricto sensu* part of the text of the Pact, it gives precious information on its objectives. It can therefore play a crucial role in its interpretation – as explicitly mentioned by the 1969 Vienna Convention on the law of treaties in Article 31 paragraph 2.

The preamble affirms the essential objectives of environmental law: protecting the planet, promoting solidarity between humans and generations. It also reminds the interconnection between environmental protection and the promotion of gender equality, human rights protection, the protection of indigenous people's rights, intergenerational and intragenerational equity and the role of non-State actors. The preamble indicates the truly global ambition of the Pact

6.3. The consecrated principles

The first article of the Global Pact for the environment sets the right to an ecologically sound environment, which is one of the two pillars of the Pact. The right was clearly proclaimed by the Stockholm declaration and is mentioned, even though in a more implicit manner, by the Rio declaration. The right has been integrated by several national constitutions and is now broadly consensual. The second pillar of the Pact, can be found on the Article 2 of the Pact, is the obligation to protect the environment. This obligation can also be found in some existing texts, but sometimes only partially or only incidentally. The Rio declaration affirms it as an inter-State and trans-border obligation.

According to the Principle 2 of the Rio declaration, States have the obligation to guarantee that the activities on their territory do not harm the environment of other States. According to principle 7, States have to cooperate in order to 'to conserve,

protect and restore the health and integrity of the Earth's ecosystem'. The Pact voluntarily adopted a broader formulation in order to guarantee a wide obligation to protect the environment. This obligation concerns everybody: it is applicable to States and non-State actors as set by Article 2.

Article 3 of the Pact is dedicated to the principles of integration and sustainable development. The necessity to achieve sustainable development has been the keystone of international environmental governance, since the Rio Summit of 1992 up to the 17 sustainable development goals adopted in 2015. The global pact for the environment concretizes the SDG in law. The integration principle is the legal vehicle to integrate the SDG to every public policy, including development policy, as well as into production and consumption patterns.

In the same pursuit of gaining a horizontal influence, Article 4 of the Pact is about intergenerational equity. The necessity to preserve the 'interest' or 'needs' of future generations was mentioned as early as the 1972 Stockholm declaration, in its Article 1. Intergenerational equity is mentioned in the annex of the 1987 Brundtland report, in the legal principles for the protection of the environment and for a sustainable development, such as the principle of intergenerational equity, principle 2. Since then, this requirement has been taken up in all the main international environmental texts: Rio declaration, the UNFCCC, the Aarhus Convention. The project of pact by the IUCN also mentions, in an article entitled 'equity and justice'. The idea is to make sure that the long-term impact of environmental decisions is taken into account, considering the impact on future generations.

Article 5 of the Pact concerns the obligation to prevent environmental harm, which is widely recognized but is consecrated in the Pact in an ambitious form, with both a trans-border and internal dimension. The obligation to prevent harm is present in many international treaties as well as the Rio declaration. In practice it includes two obligations – the obligation to prevent harm (Rio declaration, principle 2), and the obligation to inform other States in case of an emergency or, more generally, in case of activities which may cause harms on the territory of other States (Rio declaration, principles 18 and 19). Article 6 is dedicated to the principle of precaution, applicable to situations when scientific uncertainty remains on the potential risks of a given activity. The precautionary principle is widely integrated in international and national texts. The Pact adopts a form of the precautionary principle which guarantees its adequate articulation with the prevention principle.

Article 7 is dedicated to environmental damage. The Rio Declaration mentions the responsibility principle, which implies that States ensure the existence of law relating to reparation of environmental damages, but also notify such damages to other States that might be affected and cooperate with them. Article 8 picks up the polluter-pays principle: the polluter must, in theory, bear the costs of the pollutions, in accordance with the Rio Declaration.

Articles 9, 10 and 11 consecrate the procedural obligations of information, public participation and access to environmental Justice. The right to access environmental information is mentioned in numerous international environmental texts (Rio Declaration, UNFCCC, Aarhus Convention or Paris Agreement). Public participation is its immediate inference, as it implies the right to express an opinion during the decision making process, in accordance with the Rio Declaration. Finally, access to environmental Justice is closely linked to the Pact's effectiveness. Considering the fact that this principle will be applied in countries with various judicial organisation, the chosen wording is general enough to respect national traditions.

Article 12 proclaims the principle of education and training, affirmed in conventions (the Convention on biological diversity) as well as in soft law instruments. Environmental education and teaching are essential elements of sustainable development (according to SDG n°4). They contribute not only to the emergence of an environmental awareness (individual and collective), but also allow public participation and effective exercise of rights and duties. This principle aims at guiding public policies, as article 13 declaring the research and innovation principle, also stated in the Rio and Stockholm Declarations.

Article 14 enshrines the essential role of non-State actors and subnational entities in the implementation of the Pact. Their inclusion gives them rights and duties, such as established by the Global Compact, a soft law instrument relating to corporate social responsibility. Article 15 states more generally the obligation to ensure the effectiveness of environmental norms, following principle 11 of the Rio Declaration. The fundamental principle requires both the adoption and implementation of necessary measures.

Article 16 and 17 shows the drafters willingness to promote progressive development of environmental law, as they codify the resilience and non-regression principles. On the one hand, the resilience principle finds its origins in the idea of an "improvement" of the environment of the Declaration of Stockholm (principle 1) or in

the spirit of the 1982 Earth Charter. According to this principle, environmental policies must aim not only at repairing environmental harms but also at reinforcing the ecosystem's ability to restore itself and find its balance. On the other hand, the idea of non-regression is old. It is present in the Stockholm Declaration in its principle 1. It relates to the principle of "standstill", dear to the Belgian case law, implying that public authorities cannot legislate to diminish a pre-existing degree of protection. It involves the prohibition, when adopting a new legislation, to promulgate norms less favorable to the environment.

Article 18 affirms the obligation of cooperation. This requirement is at the very origin of the entire environmental governance. It involves that States act together to preserve, protect and restore the health and integrity of the terrestrial ecosystem. It shows the necessity to promote a real "international solidarity", rooted in a community of destiny uniting living beings. Article 19 extends the environmental protection to armed conflicts situations, following the principle 24 of the Rio declaration. Article 20 consecrates the principle of common but differentiated responsibilities, in accordance with principle 23 of the Stockholm Declaration and 6, 7 and 11 of the Rio Declaration. Consideration for the special situation of developing countries serves the objective of equity in international relations. It is based on the observation that States have reached different levels of development and have contributed and contribute to a different extent to the environmental degradation. It thus implies a differentiation of States according to their historical or current contribution to a specific environmental harm, their technical and financial capacities or their specific needs or interests.

6.4. The monitoring mechanism

One of the Pact's main objectives is the consolidation of environmental law principles. The transition from soft law to hard law, with the adoption of a Treaty, aims at reinforcing their effectiveness. This is why, beyond the proclamation of principles, the Pact must be accompanied by a monitoring mechanism, to guarantee their implementation.

Article 21 is therefore dedicated to the Pact's implementation. It establishes a committee of independent experts and provides for its main functioning methods. It states that the committee's action will be focused on facilitation instead of repression, and that it will apply non-accusatory and non-punitive proceedings, in accor-

dance with the principle of transparency and taking into account the diversity of national situations.

From a technical point of view, a meeting of the Parties will be convened one year after the entry into force of the Pact, which will organise in details the rules and procedures applicable to the committee. The Pact states nevertheless that reporting will be its main mode of control. Parties will have to hand over their report on the implementation of the Pact on a fixed term.

The choice of a non-judicial and facilitating mechanism based on a reporting system seems appropriate for the challenges and the audience of a universal and general environmental text. This solution offers the necessary flexibility, adaptability and accompaniment for the effective implementation of this type of obligation in an agreement of such scope.

DRAFT GLOBAL PACT FOR THE ENVIRONMENT

Preamble

The Parties to the present Pact,

Acknowledging the growing threats to the environment and the need to act in an ambitious and concerted manner at the global level to better ensure its protection,

Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted in Stockholm on 16 June 1972, the World Charter for Nature adopted on 28 October 1982 and the Declaration of the United Nations Conference on Environment and Development, adopted in Rio on 14 June 1992,

Recalling their commitment to the Sustainable Development Goals adopted by the General Assembly of the United Nations on 25 September 2015,

Considering in particular the urgency to tackle climate change and recalling the objectives set by the United Nations Framework Convention on Climate Change adopted in New York on 9 May 1992 and the Paris Agreement of 12 December 2015,

Observing that the planet is facing an unprecedented loss of its biodiversity requiring urgent action,

Reaffirming the need to ensure, while using natural resources, that ecosystems are resilient and continue to provide essential services, thereby preserving the diversity of life on Earth, and contribute to human well-being and the eradication of poverty,

Acknowledging that the global nature of threats to the Earth's community of life requires that all States cooperate as closely as possible and participate in an international, effective and appropriate action according to their common but differentiated responsibilities and respective capabilities, in light of their different national circumstances,

Determined to promote a sustainable development that allows each generation to satisfy its needs without compromising the capability of future generation to meet theirs, while respecting the balance and integrity of the Earth's ecosystem,

Emphasizing the vital role of women in sustainable development matters and the need to promote gender equality and the empowerment of women,

Conscious of the need to respect, promote and consider their respective obligations on human rights, the right to health, the rights and knowledge of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situation, under their jurisdiction,

Welcoming the vital role of non State actors, including civil society, economic actors, cities, regions and other subnational authorities in the protection of the environment,

Stressing the fundamental importance of science and education for sustainable development, Mindful of conducting actions guided by intragenerational and intergenerational equity,

Affirming the need to adopt a common position and principles that will inspire and guide the efforts of all to protect and preserve the environment,

Have agreed as follows:

Article 1

Right to an ecologically sound environment

Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment.

Article 2

Duty to take care of the environment

Every State or international institution, every person, natural or legal, public or private, has the duty to take care of the environment. To this end, everyone contributes at their own levels to the conservation, protection and restoration of the integrity of the Earth's ecosystem.

Article 3

Integration and sustainable development

Parties shall integrate the requirements of environmental protection into the planning and implementation of their policies and national and international activities, especially in order to promote the fight against climate change, the protection of oceans and the maintenance of biodiversity.

They shall pursue sustainable development. To this end, they shall ensure the promotion of public support policies, patterns of production and consumption both sustainable and respectful of the environment.

Article 4

Intergenerational Equity

Intergenerational equity shall guide decisions that may have an impact on the environment.

Present generations shall ensure that their decisions and actions do not compromise the ability of future generations to meet their own needs.

Article 5

Prevention

The necessary measures shall be taken to prevent environmental harm.

The Parties have the duty to ensure that activities under their jurisdiction or control do not cause damage to the environments of other Parties or in areas beyond the limits of their national jurisdiction.

They shall take the necessary measures to ensure that an environmental impact assessment is conducted prior to any decision made to authorise or engage in a project, an activity, a plan, or a program that is likely to have a significant adverse impact on the environment.

In particular, States shall keep under surveillance the effect of an above-mentioned project, activity, plan, or program which they authorise or engage in, in view of their obligation of due diligence.

Article 6

Precaution

Where there is a risk of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing the adoption of effective and proportionate measures to prevent environmental degradation.

Article 7

Environmental Damages

The necessary measures shall be taken to ensure an adequate remediation of environmental damages.

Parties shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Parties shall promptly cooperate to help concerned States.

Article 8

Polluter-Pays

Parties shall ensure that prevention, mitigation and remediation costs for pollution, and other environmental disruptions and degradation are, to the greatest possible extent, borne by their originator.

Article 9

Access to information

Every person, without being required to state an interest, has a right of access to environmental information held by public authorities.

Public authorities shall, within the framework of their national legislations, collect and make available to the public relevant environmental information.

Article 10

Public participation

Every person has the right to participate, at an appropriate stage and while options are still open, to the preparation of decisions, measures, plans, programmes, activities, policies and normative instruments of public authorities that may have a significant effect on the environment.

Article 11

Access to environmental justice

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, taking into consideration the provisions of the present Pact.

Article 12

Education and training

The Parties shall ensure that environmental education, to the greatest possible extent, is taught to members of the younger generation as well as to adults, in order to inspire in everyone a responsible conduct in protecting and improving the environment.

The Parties shall ensure the protection of freedom of expression and information in environmental matters. They support the dissemination by mass media of information of an educational nature on ecosystems and on the need to protect and preserve the environment.

Article 13

Research and innovation

The Parties shall promote, to the best of their ability, the improvement of scientific knowledge of ecosystems and the impact of human activities. They shall cooperate through exchanges of scientific and technological knowledge and by enhancing the development, adaptation, dissemination and transfer of technologies respectful of the environment, including innovative technologies.

Article 14

Role of non-State actors and subnational entities

The Parties shall take the necessary measures to encourage the implementation of this Pact by non- State actors and subnational entities, including civil society, economic actors, cities and regions taking into account their vital role in the protection of the environment.

Article 15

Effectiveness of environmental norms

The Parties have the duty to adopt effective environmental laws, and to ensure their effective and fair implementation and enforcement.

Article 16

Resilience

The Parties shall take necessary measures to maintain and restore the diversity and capacity of ecosystems and human communities to withstand environmental disruptions and degradation and to recover and adapt.

Article 17

Non-regression

The Parties and their sub-national entities refrain from allowing activities or adopting norms that have the effect of reducing the global level of environmental protection guaranteed by current law.

Article 18

Cooperation

In order to conserve, protect and restore the integrity of the Earth's ecosystem and community of life, Parties shall cooperate in good faith and in a spirit of global partnership for the implementation of the provisions of the present Pact.

Article 19

Armed conflicts

States shall take pursuant to their obligations under international law all feasible measures to protect the environment in relation to armed conflicts.

Article 20

Diversity of national situations

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special attention.

Account shall be taken, where appropriate, of the Parties' common but differentiated responsibilities and respective capabilities, in light of different national circumstances.

Article 21

Monitoring of the implementation of the Pact

A compliance mechanism to facilitate implementation of, and to promote compliance with, the provisions of the present Pact is hereby established.

This mechanism consists of a Committee of independent experts and focuses on facilitation. It operates in a transparent, non-adversarial and non-punitive manner. The committee shall pay particular attention to the respective national circumstances and capabilities of the Parties.

One year after the entry into force of the present Pact, the Depositary shall convene a meeting of the Parties which will establish the modalities and procedures by which the Committee shall exercise its functions.

Two years after the Committee takes office, and at a frequency to be determined by the meeting of the Parties, not exceeding four years, each Party shall report to the Committee on its progress in implementing the provisions of the Pact.

Article 22

Secretariat

The Secretariat of the present Pact shall be provided by the Secretary-General of the United Nations [or the Executive Director of the United Nations Environment Program].

The Secretary-General [or the Executive Director of the United Nations Environment Program] convenes in as much as necessary meeting of Parties.

Article 23

Signature, ratification, acceptance, approval, accession

The present Pact shall be open for signature and subject to ratification, acceptance or approval by States and international organizations. It shall be open for signature at the United Nations Headquarters in New York from XXX to XXX and shall be open for accession from the day following the date on which it shall cease to be open for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 24

Coming into force

The present Pact shall enter into force three months after the date of deposit with the Secretary- General of the United Nations of the XX instrument of ratification, approval, acceptance or accession.

For each State and international organization ratifying, approving, accepting or acceding to the present Pact after the deposit of the XX instrument of ratification or accession, the Pact shall enter into force three months after the date of deposit by that State of its instrument of ratification or accession.

Article 25

Denunciation

On the expiry of a period of three years from the date of entry into force of this Treaty in respect of a Party, that Party may at any time denounce it by written notification to the Depositary. Such denunciation shall take effect on the expiry of a period of one year from the date of receipt by the Depositary of such notification, or on such later date as may be specified in such notification.

Article 26

Depositary

The original of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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The draft Global Pact for the Environment was prepared by the “Group of Experts on the Pact” (GEP), an international network of over one hundred world-renowned experts in environmental law representing more than 40 nationalities, chaired by Laurent Fabius, President of the French Constitutional Council and former President of COP 21, and mobilized by the Environment Commission of the Club des juristes. On 24 June 2017, the President of the French Republic, Emmanuel Macron, announced his intention to present the draft Pact to the United Nations. This White Paper is a reference document designed to provide a clear and educational presentation of the issues and content of the Global Pact for the Environment.

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