

Joint meeting of the Bureaux of UN Environment Assembly and
Committee of Permanent Representatives
Tuesday 27 February 2018
4:00 p.m. to 6:15 p.m.
Executive Office Boardroom
United Nations Office at Nairobi, Gigiri
Agenda Item 6

Note on the Global Pact for the Environment

The French delegation has submitted the attached note on the Global Pact for the Environment, in support of the Joint meeting of the Bureaux of the UN Environment Assembly and Committee of Permanent Representatives to be held on Tuesday 27 February, 2018.

The Global pact for the environment

For more than 30 years, the international community has tried to find multilateral answers to the unprecedented degradation of our planet and our environment, which compromises the future of next generations. The Stockholm declaration, the 1987 Brundtland Report, then the 1992 Rio declaration have erected the major principles of international environmental law; however these texts are not legally binding. The 2030 agenda adopted in 2015, then the Paris agreement concluded the same year, have come to reinforce this corpus. We now have the opportunity to move to new stage.

The Global Pact for the Environment project aims to enhance the legal value of and codify the main principles of international environment law and make them accessible to citizens in an international treaty by supplementing them based on current challenges.

Why now?

Three reasons why we believe it is the good time to start negotiating a Global pact for the environment:

- ▶ **The raising awareness of the unprecedented collapse of our environment** (climate, biodiversity, pollution, etc.) with its increasing threats for our societies and international stability. In 2018 as in 2017, environmental risks account for four out of the five most hard-hitting risks, according to the World Economic Forum.
- ▶ **The 2015 paradigm shift: the 2030 Agenda and the Paris Agreement** underlined that it is possible to take ambitious, concrete action on environmental issues. Article 13 of the 2030 Agenda notably calls for a “new approach” and “integrated solutions”. It is now time to move to a new stage.
- ▶ **The initiative itself, launched in early 2016 by a Group of experts** in their name alone, comprising 80 renowned legal experts, from 40 countries of the global South, North and all legal traditions, with the support of Laurent Fabius, former president of the COP21 and UN Environment Patron on Environmental Governance.

France decided to support this initiative and organized a Summit for the Global pact for the environment on the sidelines of the United Nations General Assembly in September 2017. With the participation of the Secretary-General and the President of the United Nations General Assembly, this summit brought together some 40 Heads of State and Government and ministers who called for support for the project . This event was the first open contribution towards the drafting of a final text.

What would be the added value of a Global pact for the environment?

Consolidating the law despite its fragmented nature

The Global Pact for the Environment aims to consolidate the general principles of environmental law despite its fragmented nature – mainly regarding principles that are already widely recognized. The fragmented nature of international environmental law is widely observed and noted by all environmental law studies, textbooks and treaties. The databases set up by the United Nations (ecolex.org; informea.org) and universities confirm this assessment. (iea.uoregon.edu - lists over 1,200 multilateral environmental agreements)

Fragmentation is not a difficulty per se. It may be considered as indicative of the large amount of regulatory activity in the environmental sector and the growing interest it is receiving. It becomes problematic, however, when the various players, in particular State players, do not have the same tools for understanding and managing it.

The Pact therefore aims to consolidate and facilitate the implementation of international environmental law by helping countries who do not have a sufficiently solid legal corpus to implement an ambitious environmental protection policy; **it aims to provide clearer guidance for States and judges to integrate international law.**

Compensate for the shortcomings of international environmental law

The Pact is designed to be cross-cutting – it aims to protect the environment in the broad sense – and universal - making it applicable to all signatories.

Let us first consider the sectorial shortcomings: there is no legally binding instrument to protect forests (Sustainable Development Goal no. 15), for example, or water management (Sustainable Development Goal no. 6). However, in many countries, these habitats are protected, partly through the application of general principles such as the precautionary principle or the prevention principle enshrined in national constitutions or regional conventions. The adoption of a global Pact for the environment would therefore achieve a better global application of these recognized founding principles, thus leading to better protection of the environment and societies (vulnerable populations are often the first to be affected by environmental degradation).

We must also consider geographical shortcomings. The Pact will allow that principles only embedded at this stage in regional conventions are made universal. It will draw on the provisions of ambitious multilateral agreements that are not universal due to the fact that they are regional agreements or have been signed by few States. This is the case for example of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters which was originally regional but has now a universal remit.

The Global pact for the environment does not in any way aim to modify the institutions dealing with the environment, nor their coordination mechanisms, nor their unification. The aim is to strengthen the international environmental norms and organize them in a short, coherent, cross-cutting text.

The Pact therefore aims to be a text with a broad scope. Its aim is not to add to the complexity, but rather help to clarify, harmonize and simplify environmental law internationally. It is a common core, the purpose of which will not be to replace existing environmental conventions but to supplement them and make them easier to implement. The idea behind the Global pact for the environment is to use shared law which applies where no convention does. The general principles are necessary and fruitful in legal systems: they inspire national legislators and enlighten the jurisprudence of national and international courts. They also enable us to interpret ambiguities and reconcile conflicts.

Making environmental law available to all through an international treaty

The major principles of environmental law on which there is consensus were set out in the Stockholm Declaration of 1972 and the Rio Declarations of 1992 and 2012. However, while these texts are highly symbolic and have inspired environmental progress, most of them are not legally binding. The existing texts are rarely implemented and infrequently invoked by national judges. **The approval of an international treaty would help to consolidate and disseminate these general principles, through law or internal jurisdictions.**

Seven of the 17 Sustainable Development Goals approved in 2015 directly relate to our environment. They are based on a profoundly innovative view of sustainable development which brings together the fight against extreme poverty, inequality and preserving the planet using a comprehensive and universal approach.

By strengthening international environmental law, and thus facilitating the implementation of the environmental pillar of sustainable development, **the Pact will be a tool for all States in implementing the 2030 Agenda, which makes use of most of the Rio principles.**

It will help to create a place where the same environmental regulations apply to all, regardless of the country, something which will facilitate businesses' international procedures and ensure they meet their social and environmental responsibilities. **The Global pact for the environment will provide greater legal predictability and security.**



In what way will the Pact supplement the existing conventions?

The Pact will be a common core, the purpose of which will not be to replace existing environmental conventions but to supplement them and make them easier to implement.

Some see the fragmentation of international environmental law as a response to the diversity of environmental issues which require tailored approaches on a case-by-case basis. The Pact does not aim to provide a single, inflexible response to all environmental issues, but to introduce a general reference. **The Pact should be worded in such a way that the more specific provisions contained in existing or upcoming multilateral environmental agreements take precedence over the Pact's generic provisions.**

The Global Pact and the sector-specific conventions will interact according to the well-known doctrine of *lex specialis* relating to the interpretation of a general law and special rules. Should conflict arise between a general principle of the Pact and a special rule of a convention, the rule of the convention or the scope of a principle already provided for by the convention shall take precedence. A special provision saying that the Pact applies without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously could be included.

The Pact is therefore based on the idea of supplementation: it fills the existing gaps; it will be applied alongside existing compatible treaties; it will not take precedence over specificities or sectorial conventions.

To go further:

Original project led by the Group of experts : <http://pactenvironment.org/fr/>

Directories of multilateral agreements : ecolex.org ; informea.org

Dedicated page on the French representation to the UN website :

<https://onu.delegfrance.org/Le-Pacte-mondial-pour-l-Environnement>

What are the next steps?

Following the Summit in New York in September 2017, a **“group of friends”** was created, comprising approximately 20 countries from different parts of the world, to prepare a draft resolution for the creation of the open-ended working group that will negotiate the draft Pact.

This draft procedural resolution:

- Proposes the creation of an intergovernmental open-ended working group;
- ask the President of the United Nations General Assembly to appoint two co-facilitators to lead the consultations and negotiations of the working group, in consultation with the Member States, regional groups and relevant stakeholders;
- ask the United Nations Environment Programme to provide the necessary support for these consultations;
- and recommend that the open intergovernmental working group complete its work no later than 2020.

The draft resolution is now open to co-sponsorship from all States and we hope to see as many as possible take up this opportunity.

To date (Feb. 2), 45 sponsors, from all of the UN regional groups, have signed up.

⇒ The aim is to see the resolution adopted by the UN General Assembly by March 2018 and to start formal negotiations of the Pact in the spring.