

Towards a Global Pact for the Environment

by Prof Jan Glazewski*

Introduction

Environmental law delegates gathered at a high-level meeting in Paris towards the end of June 2017 to finalise a draft [“Global Pact for the Environment”](#). This was after a three-month iterative process whereby environmental lawyers throughout the world, including members of the IUCN Academy of Environmental Law and the IUCN World Commission on Environmental Law, provided substantial input into the process prior to the meeting. The initiative was spearheaded by the President of the French Constitutional Court, Laurent Fabius, who also led and was no doubt buoyed by the successful adoption of the landmark Paris Agreement in December 2015. Thus, the current name of what will eventually hopefully become an international treaty is “Pact” rather than “Convention” as the French word for “Convention” is “Pact”. The end result after the draft has been steered through the various UN processes may well be that it will be called the “Global Environmental Convention” or “Covenant on the Environment”. Whatever the eventual title of the treaty, all delegates, including newly-elected French President Emmanuel Macron and climate law ambassadors Ban Ki-Moon, Mary Robinson and Arnold Schwarzenegger, were unanimous that the time for the adoption of such a treaty was well overdue as environmental degradation continues apace.

Underlying motivation for an international environmental treaty

The underlying motivation for such a global pact or treaty on the environment is laudable in that both the 1972 Stockholm and 1992 Rio Summits or UN Conference on the Human Environment (UNCHE) and UN Conference on Environment and Development (UNCED) produced significant soft law declarations (the “Stockholm” and “Rio” Declarations respectively). But these are just that: “soft” law declarations rather than “hard” law. Thus, while some of the principles in these declarations have undoubtedly become crystallised over time as principles of customary international law — Rio Principle 15: the Precautionary Approach, being arguably one example — the time has now come to strengthen these and give them the international law *gravitas* that they deserve.

In so-doing the underlying motivation for this initiative is for the global environment what the 1948 Universal Declaration on Human Rights was or human rights. Thus the Universal Declaration was concretised in 1966 by first, the International Covenant on Civil and Political Rights, and second, by the International Covenant on Economic, Social and Cultural Rights. If and when the Global Pact is adopted, it will add an important international “hard” law dimension to environmental principles thus giving further momentum to the development of so-called group or third generation rights. Given the current animosity by the current US President, Mr Donald Trump, to any such notion it is imperative that buy-in from the remaining community of nations is obtained including developing nations in Africa and China. Furthermore, it must be borne in mind that this is not the first such initiative. Predecessors include the 2000 Earth Charter, the 1982 World Charter for Nature and the all-important, ongoing, living and developing document, namely the 2015 IUCN “Draft International Covenant on Environment and Development: implementing sustainability”.

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The substantive content of the draft Environmental Pact

The 26-article draft presented to the newly elected French President Emmanuel Macron on 24 June 2017, to take further through the necessary UN channels, consolidates both relatively “mature” environmental principles found in the abovementioned Stockholm and Rio Declarations but also some “newer” ones found in the Earth Charter, the IUCN Draft Covenant and elsewhere. Thus, the draft commences in Article 1 with the bedrock principle that everyone has the right to an ecologically sound environment but continues with the rather novel obligations that States and other legal persons have a “duty to take care of the environment” in Article 2, thus echoing article 192 of the Law of the Sea Convention that imposes a duty on States to preserve and protect the marine environment. The duty to protect the environment and promote sustainable development and promote intergenerational equity is contained in Articles 3 and 4 respectively while Articles 5 to 8 refine and consolidate the age-old principles of Prevention, Precaution, Environmental Damages and the Polluter Pays Principle. In the same vein Articles 9, 10 and 11 provide for Access to Information, Public Participation and Access to Environmental Justice, while Articles 12 and 13 provide for the traditional norms of Education and Training as well as Research and Innovation.

The draft Pact contains some novel provisions as well. Among these is Article 16 acknowledging the role of non-state actors and subnational entities. Also novel are articles on Resilience (Article 16) and Non-regression (Article 17), the latter of which prevents parties “... from allowing activities or adopting norms that have the effect of reducing the global level of environmental protection guaranteed by current law”. This article is however arguably contradicted by the penultimate Article 25 which provides for Denunciation.

Conclusion

While the global international environmental law community has seen a number of similar initiatives over the last decade or two as indicated above, the big advantage with the draft Global Pact is that it has political backing in the form of high-level French politicians, including the President as indicated at a public ceremony on 24 June 2017. With their unbridled success in getting the Paris Agreement adopted, there is every reason to believe that they will be able to obtain the political buy-in of other countries, particularly the developing world, to steer this Pact through the corridors of the UN. In this regard it is notable that Article 20, titled Diversity of National Situations, acknowledges the special situation and needs of developing countries. There is no reason to believe that the majority of the world’s nations will not come on board and the end result will be a global environmental pact for the benefit of all. *Allez la France*