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A Global Pact for the Environment: The Logical Outcome of 50 Years of International Environmental Law

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Abstract: The Global Pact for the Environment is a project for an international treaty that seeks to recognize the environmental rights and duties of citizens, states, and businesses. The text of the initial Pact project was drafted in June 2017 by a network of over 100 environmental law experts from more than 40 countries. In May 2018, the United Nations General Assembly paved the way for its negotiation by adopting the resolution “Towards a Global Pact for the Environment”. These talks resulted in a recommendation for states to adopt a “political declaration” in 2022 for the 50th anniversary of the Stockholm Conference. This article retraces the origins of the Global Pact project and makes the case for its adoption. It argues that a Global Pact is the missing piece to implement the 2030 Agenda and would help to “constitutionalize” fundamental environmental principles. The article further responds to concerns raised about the Global Pact project, such as interactions with existing instruments, the applicability of broad principles at the national level, as well as the risk of regression. It ultimately asserts that all stakeholders would reap benefits from its procedural and substantive provisions, should it be adopted.

Keywords: international environmental law; Global Pact for the Environment; Stockholm Conference; Rio Declaration; 2030 Agenda; Global Environmental Constitutionalism; environmental governance; multilateral negotiations; duties; principles; sustainability; law; rights; environmental governance

1. Introduction: What Is the Global Pact Initiative?

This article defines the notion of a Global Pact for the Environment as an international treaty that aims to give legal effect to fundamental principles of environmental law in a way that enshrines individual and court-enforceable environmental rights and duties. This idea has given rise to several illustrations, including a 2017 draft text that is commonly referred to as the Global Pact for the Environment. For the purpose of this article, this text will be referred to as the “2017 draft”, while the wider concept will be designated under the “Global Pact” appellation.

At present, international environmental law resembles a building whose top floors were built prior to its foundations. It lacks a fundamental, legally binding document that effectively translates environmental law principles in international and national legal systems. As a result, effective global environmental governance is impeded by fragmentation and gaps in the law. At the least, a Global Pact for the Environment is necessary to fill in these gaps and harmonize fragmentation in international environmental law. Further, an ambitiously drafted Global Pact would allow for a robust implementation of its provisions by empowering all facets of societies with enforceable environmental rights. Finally, a Global Pact will serve as a unifying symbol to demand ambitious action from states and private sector actors to protect the planet and to create a sustainable development economy.

In a report requested by a resolution of the United Nations General Assembly [1,2], international environmental law was found to suffer from fragmentation in that, unlike many other fields of public international law, there is no overarching treaty or text to define the obligations and rights with respect to the global environment. A Global Pact would fill this gap by serving as an “umbrella text” of sorts, and thus reinforce the coherence of international environmental law. Thus, a Global Pact would harmonize the law as well as evolve and expand the legal protections that exist for the global environment.

In 2017, a group of legal experts sought to give shape to this idea by elaborating an initial draft of a Global Pact. This draft is based on two “source principles”, a right and a duty: the right to a healthy environment [3–8] and the duty to take care of the environment [9]. These source principles are corollaries of one another, as the right to a healthy environment cannot exist without a countervailing responsibility to protect and preserve the environment. These source principles give rise to a set of widely recognized principles of international environmental law: duties of prevention and remediation of environmental harms [10,11], the right to information and public participation in environmental decision-making [12], and polluter-pays [13–16]. This draft Pact also proposes innovative principles, such as non-regression or official recognition of the role of civil society in environmental protection. This Global Pact can be seen as a global environmental constitution, as it would consecrate the foundational principles of international environmental law into one text with legal force.

The world faces possibly irreversible environmental tipping points due to climate change and destructive human activities [17], which care little for national boundaries. Therefore, it is imperative to reinforce international environmental governance with a coherent, legally binding Global Pact that can prompt governments, civil society, and companies to better protect the environment. Further, a Global Pact would enable societies to address issues that “fell through the cracks” of existing environmental laws, such as plastic pollution. An ambitious Global Pact for the Environment could give rise to a new paradigm and thus be a game-changer in the fight against environmental degradation. It would provide the indispensable legal foundation needed to ensure effective environmental protection and sustainable development by all and for all.

The aim of the following paper is to provide an overview of the initiative for a Global Pact and to make the case for its transformative potential. Section 2 retraces the roots of the idea of a global framework for environmental protection. It links this history with the recent 2017 initiative to adopt a Global Pact for the Environment. Section 3 discusses the added value of a Global Pact. It argues that a Global Pact is needed to implement the 2030 Agenda and would serve to “constitutionalize” fundamental environmental principles. Section 4 responds to criticism raised about the Global Pact initiative, such as interactions with existing instruments, the applicability of broad principles at the national level, as well as the risk of regression. Section 5 argues that all stakeholders would reap benefits from the procedural and substantive provisions from a Global Pact, should it be adopted.

2. History of the Global Pact Initiative

The ambition to develop a Global Pact for the Environment is not new in global environmental governance [18]. The first significant attempt to develop a global framework for environmental protection was the Conference on Human Environment in Stockholm in June 1972 [19–21] (For two contemporary accounts of key figures see Wade Rowland. *The Plot to Save the World. The Life and Times of the Stockholm Conference on the Human Environment*; Clarke, Irwin & Company: Toronto/Vancouver, Canada, 1973. Strong, M. *One Year after Stockholm: An Ecological Approach to Management*. *Foreign Aff.* 1973, 51, 690), now widely regarded as the “constitutional moment” of international environmental law [22]. Yet despite its fundamental political importance, the conference’s resulting declaration was a soft-law instrument devoid of legal force.

In 1982, the adoption of the World Charter for Nature generated momentum for a second and more structured attempt at codifying international environmental law principles [23]. This Charter set forth “general principles” of international environmental protection [24] and was adopted by the

UN General Assembly by a nearly unanimous vote of 111 Member States for and only 1 vote against [25]. Five years later, the UN-appointed World Commission on Environment and Development recommended the adoption of a list of “Legal Principles for Environmental Protection and Sustainable Development” in its seminal *Our Common Future* report (known as the “Brundtland Report”) [26].

The next step in the evolution of the idea of a Global Pact for the Environment was the 1992 Rio Declaration on Environment and Development [27], which set forth constitutional principles for global environmental governance [28]. Significantly, the Rio Declaration stated the now ubiquitous principles of Prevention (*Rio Principle 2*), the Environmental Impact Assessment requirement (*Rio Principle 17*), and the Duty to Cooperate (*Rio Principles 18 and 19*). Other key environmental principles stated, many of which were environmental principles of first impression [29], are (i) common but differentiated responsibilities (*Rio Principle 7*); (ii) precautionary principle (*Rio Principle 15*); (iii) polluter-pays; (iv) notification of emergencies; (v) notification and consultation in case of risk; and (vi) peaceful settlement of disputes. Many of these environmental principles have catalyzed the development of customary norms and have been transposed into a wide range of global treaties and instruments. However, it is also important to note that these examples highlight the limitations of “soft-law” instruments like the Rio Declaration, in that they establish principles without legal force that *may*, and often in piece-meal fashion, crystallize into customary norms or be adopted into binding agreements. These limitations underscore the need for a Global Pact.

Inspired by the 1992 Rio Declaration, the International Union for the Conservation of Nature (IUCN) released the first of consistently updated drafts of an International Covenant on Environment and Development in 1995 [30]. Further developments pointing to a Global Pact include the 2012 Rio Summit on Sustainable Development [31], the 2015 Addis Ababa Action Agenda on Financing for Development [32], the Agenda for Sustainable Development with its Sustainable Development Goals (SDGs) in 2015 [33], and, finally, the adoption of the Paris Agreement in December 2015 [34].

In November 2015, the legal think-tank *Club des Juristes* released a report recommending the adoption of a Universal “Pact” to unify international environmental law in a binding instrument that would (i) impose environmental obligations on states and non-state actors; (ii) confer environmental rights to citizens; and (iii) create an invocable legal instrument in national courts [35]. The adoption of the Paris Agreement inspired high-level international support and led to the 2017 convening of an international network of over 100 environmental law experts from more than 40 countries who redacted a draft text for a Global Pact in June 2017.

It is important to understand that this draft Pact has always been intended as an example, simply to show to the states what a text codifying the principles of environmental law could look like. It is only a preliminary draft, which *can* and even *needs* to be transformed, modified, and completed. It is not “the” Global Pact for the Environment, but only “a” Pact.

In September 2017, over 40 heads of state expressed their support at the “Summit on a Global Pact for the Environment” [36]. In May 2018, the UN General Assembly adopted the enabling resolution [37] “Towards a Global Pact for the Environment” [38], with 143 states voting to adopt the resolution and only five voting against it (the United States, Russia, Syria, the Philippines, and Turkey); the latter were broadly unconvinced that a Global Pact is a priority and necessary [39]. For example, Russia and the Philippines stated that the 2030 Agenda already exists as a comprehensive framework, and the United States expressed concern that this initiative could disrupt existing environmental commitments [40]. The enabling resolution called on the UN Secretary-General to prepare a report and to set up a working group to make recommendations to the UN General Assembly on the matter, including the possibility to convene an intergovernmental conference to adopt an international instrument [41].

The Secretary-General’s November 2018 report found that international environmental law could indeed be strengthened “through a comprehensive and unifying international instrument that gathers all the principles of environmental law” [42] (p. 2). The Pact’s working group met at the UN

Environment's Nairobi headquarters for three substantive meetings during 2019, resulting in a recommendation to states to adopt a "political declaration" on the matter in 2022, in the context of the 50th anniversary of the Stockholm Conference [43]. While this delays the Pact's adoption, supporters of the Pact remain hopeful that continued mobilization might see the formal adoption of a Global Pact in 2022 [44].

3. Why We Need a Global Pact

3.1. *The State of the Global Environment*

International environmental law, as evidenced by the general decline of the environment, has been unable to mitigate the human-driven causes of the global environmental crisis. Since the Earth Summit in 1992, and with the notable exception of stabilizing the stratospheric ozone layer, humankind has failed to tackle the global environmental challenges of the century. Scientists agree that the current trajectories of greenhouse gas emissions [45], deforestation [46], and agricultural production are potentially catastrophic [47]. The Anthropocene is the set of a "mass extinction event, the sixth in roughly 540 million years, wherein many current life forms could be annihilated or at least committed to extinction by the end of this century" [48].

3.2. *A Global Pact Is the Missing Piece to Implement the 2030 Agenda*

In September 2015, the United Nations Sustainable Development Summit recognized the need to create a sustainable global economy in order to protect and restore the global environment. In this context, the United Nations adopted the "2030 Agenda for Sustainable Development" as a new framework for the global economy and development. The Agenda is described as "a plan of action for people, planet and prosperity" that sets forth seventeen SDGs with 169 indicators to monitor whether these SDGs are being attained [49]. The SDGs, like a Global Pact, are part of a new global strategy to create non-sectoral obligations and goals for environmental protection that are relevant to each country and to all actors in society.

However, it is important to note that the 2030 Agenda does not impose binding obligations on states, it is rather an articulation of political ambition. A Global Pact is the missing piece for the implementation of the SDGs, as it would ideally create binding obligations on nations and private actors alike with respect to environmental protection.

3.3. *Global Environmental Constitutionalism*

Environmental constitutionalism refers to environmental norms being incorporated at the top tier of domestic legal systems. This goes beyond specific statutes or regulations, as it is a gradual process of constitutionalizing environmental rights and obligations. The incorporation of environmental rights and obligations in constitutions leads to the strengthening of their status in domestic law and the facilitation of their implementation at the regional and international levels [50]. A regrettably little-known project for a "World Environment Constitution" was in fact proposed in that direction by a Ukrainian team led by Professor Yuriy Tunytsya in 2006 [51]. This movement, as seen in the national constitutions of many countries. For examples of environmental constitutionalism, see [52–54], demonstrates the existence of a large consensus on the main principles of environmental law.

A Global Pact seeks to elevate principles of environmental law to the universal and unalienable status of fundamental rights. As such, it would "constitutionalize" these fundamental principles by integrating them in the highest tier of the pyramid of norms in domestic law [55–57]. International environmental law currently lacks the tools to ensure that fundamental environmental principles are constitutionally enshrined and invocable [58]. A Global Pact can provide the overarching text necessary to integrate environmental protection into the top tiers of domestic law on a global scale.

3.4. Strengthen Implementation of International Environmental Law

Another important reason that a Pact is needed is that the guidance provided by the Rio Declaration to national legislators and courts is neither clear nor strong enough [59]. The example of the precautionary principle provides, once again, a pertinent illustration. One can attempt, in this regard, to identify uses of this principle and to organize them across a spectrum that goes from more conservative to more ambitious uses [60]. Such references have indeed been used (i) to caution against the principle's 'potentially paralyzing effects' [61]; (ii) to assess whether certain measures expressly adopted on the basis of the precautionary principle are indeed justified under this principle [62]; (iii) as a stand-alone norm relevant to produce procedural effects (the reversal of the burden of proof) [63–68]; (iv) as a stand-alone norm relevant to the interpretation of an environmental provision governing a case [69]; (v) as a stand-alone norm for reviewing government action [70]; (vi) as a stand-alone norm creating a positive procedural obligation [71]; (vii) as a stand-alone norm redefining the parameters of liability (effectively transforming a fault-based liability system into a strict liability one) [72]; and (viii) as a stand-alone norm requiring the creation of a new administrative system [73]. One possible reason for this variation is that the understanding of this principle fluctuates significantly across jurisdictions. Legislators and judges who are aware of the scope of the environmental crisis would certainly be more empowered in their everyday work if they could rely on a binding treaty rather than on a soft-law instrument. Environmental protection may face great resistance in some specific periods of the political life of a country, but international norms are patient. Lack of reliance on them or even open confrontation do not necessarily jeopardize their operation.

3.5. Filling the Gaps in International Environmental Law

The absence of a broader common core of legally binding principles leaves significant gaps in regulation and leaves certain important questions too open or unsettled. Most observers would accept that plastic pollution is currently a matter that has largely remained unaddressed or “fell between the cracks” of international instruments. In fact, the entire land-based marine pollution regime rests, at the global level, only on soft instruments. The same is true of the critical problem of air pollution, which at present is only regulated regionally [74–79]. These are certainly not minor lacunae that can be addressed by mere “tweaks” here and there. These issues can be addressed effectively now with an organized response that carries legal force. In the meantime, their broad regulation could rely on a general statement of binding principles capable of not only imposing obligations but catalyzing meaningful action at the regional and national levels.

Moreover, there are even broader questions that influence the operation of the entire international environmental law system that have been largely overlooked. A major example is consumption-driven environmental degradation in international trade; that is, environmental degradation in one country led by consumption in others [80–85]. Unfortunately, neither the Rio Declaration [86] nor the numerous multilateral environmental agreements (MEAs) have much to offer in this regard. The large majority of them (with the notable exception of CITES [87]) focus on production and, thus, they offer almost no means to address the situation of a country in which environmental degradation is driven by foreign consumption.

As another example, plastic pollution has been largely unaddressed by sectoral environmental instruments; however, a Global Pact would help address this gap in the law. The discharge and dumping of plastic debris into the oceans has become an increasingly serious form of marine pollution, with 8 million tons of plastic waste ending up in the oceans every year [88]. The binding and inclusive nature of a Global Pact would serve as a stronger legal basis to foster the adoption of new laws protecting the ocean from plastic pollution as well as the enforcement of such laws by judges. Further, a Global Pact would provide for more stringent language than the 1982 Convention on the Law of the Sea (“UNCLOS”) and the 1992 Convention on Biological Biodiversity (“CBD”), and as such, it would strengthen states’ obligation to prevent plastic pollution. The 2017 draft Global

Pact indeed states that “Parties have the duty to ensure” whereas UNCLOS and the CBD require that parties “shall take all measures necessary to prevent” and “have the [...] responsibility to ensure” respectively [89]. Lastly and most importantly, an ambitious and binding Global Pact would impose a legal obligation on each nation to adopt domestic laws to ensure they comply with their duties under the Pact, which would include adopting ambitious legislation to mitigate ocean plastic pollution.

Another form of gap in the law concerns the possible conflicts between instruments with limited sectoral or spatial scope. The ocean may appear, from the perspective of the climate change regime or that of the ocean dumping regime, as a carbon sink or a carbon sequestration dumpsite [90,91]. But that is in open conflict with the requirements of the provisions on the protection and preservation of the marine environment under the UNCLOS [92] or in the ongoing negotiations relating to the protection of biodiversity beyond national jurisdiction [93]. Legally, there are no overarching principles, aside from the limited set of customary international environmental law norms, that can provide solutions to such far-reaching conflicts. Thus, when one considers the questions of “gaps” seriously, beyond the superficial references to commonly acknowledged lacunae, there is a much deeper need for a binding overarching framework.

3.6. Address Fragmentation in International Environmental Law

Due to the fact that the Rio Declaration is a soft-law instrument, the principles of international environmental law have been understood and treated differently across treaty contexts and their related dispute settlement mechanisms, with important practical implications. Three examples concern the different positions taken with respect to the nature and scope of the precautionary principle (The divergence is serious with respect to precaution, with different international courts and tribunals considering that: (i) it is not a recognized norm of customary international law (EC – Biotech (n 28) para 7.88) or, conversely, (ii) that it is indeed recognized (Tatar v Romania, App No 67021/01 (ECtHR, January 27, 2009) para 120), with two positions in-between, namely (iii) that is an emerging norm (Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion), 2011, ITLOS Rep 10 (‘Responsibilities in the Area’) para 135) or (iv) that it “may be relevant” for interpretation purposes (Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment), 2010, ICJ Rep 14 (‘Pulp Mills’) para 164), those regarding the spatial scope of the requirement to conduct an environmental impact assessment [94], and those relating to public participation [95]. This divergence is possible because of a lack of an overarching statement of binding principles. A Global Pact would importantly serve as a general, synthesizing text to unambiguously state the principles of international environmental law by which states are bound. As such, a Global Pact would ensure a unified interpretation and application of the foundational principles of environmental law, thereby reducing the fragmentation of the law [96].

3.7. Legislative and Jurisprudential Significance

A Global Pact will have two effects at the national level. It would (1) compel legislatures to promulgate new environmental legislation; and (2) compel judges and courts to create new environmental jurisprudence.

Firstly, a Global Pact will create more robust obligations on states to protect the environment and, as a consequence of existing obligations in public international law [97,98], states will correspondingly be required to adapt their domestic laws to ensure they uphold their obligations under a Global Pact. Thus, a Global Pact would be an international legal tool that compels domestic legislative action for the environment.

Secondly, a Global Pact has an important jurisprudential value in that it provides for general principles guiding the interpretation of case law by judges presiding over a specific dispute. These principles will help to create new case law in favor of stronger environmental protection. Article 38 of the Statute of the International Court of Justice provides that general principles of international

law are a formal source of public international law upon which the court relies when deciding a case [99].

4. Addressing Concerns of a Global Pact

4.1. Interaction with Existing Multilateral Environmental Instruments

The main critique of a Global Pact concerns whether and how it would interact with the legal obligations of pre-existing environmental agreements [100–105]. As mentioned above, the five states who voted against the adoption of the Global Pact's enabling resolution expressed concerns that the Global Pact was not necessary because of existing environmental agreements, or that the Global Pact could confuse existing obligations in other environmental agreements. More recently, some countries at the final working group in Nairobi in May 2019 asserted that focusing on implementation and administration of existing agreements would be more effective than creating a new legal tool [31]. However, these concerns overlook the fact that most of those existing instruments are not legally binding. In addition, the enabling resolution, "recognizes that the process indicated above i.e., the ad hoc open-ended working group and its possible continuation by an intergovernmental conference should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies" [1,2] (paragraph 9).

It is important to dispel the common misunderstanding that a Global Pact would alter or subvert the legal impact of existing agreements. A Global Pact would neither exclude the application of other instruments to a similar situation nor be prevented from applying when such other instruments apply. The guiding principle would be the legal maxim of *lex specialis derogat legi generali*, which is to say, "the specific prevails over the general". Where an existing multilateral environmental agreement has a specific provision governing a particular question or dispute, that specific law would apply or displace the more general obligations enshrined in a Global Pact.

To avoid any misunderstanding, the Global Pact could include a specific provision, similar to UNCLOS Article 237, which provides that "the provisions of this Convention are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously". It is possible for existing instruments to be either more specific or more general than the proposed 2017 draft, or even be both more specific and more general at the same time. The analysis may have to be conducted provision-by-provision or clause-by-clause. It is also possible that the proposed Global Pact may cover areas left open by existing instruments, such as providing a global fallback regime for matters as diverse as plastic pollution, land-based pollution, or atmospheric pollution, before a more targeted instrument is adopted. Or that it may contribute to their interpretation in such a way that it unlocks the potential of certain provisions, for example to clarify the implications of some existing treaties for consumption-driven pollution. These and other forms of interaction are possible and acceptable.

It should be noted that from a technical standpoint, the International Court of Justice has expressly recognized that different norms may all apply together to cover different aspects of a complex situation. Thus, the court has referred to the need to take into account the prevention of environmental harm in assessing the necessity and proportionality of an armed action taken in self-defense [106] or, more specifically, to the possibility that human rights norms and norms of international humanitarian law (by analogy, also environmental norms) may apply together [107]. For present purposes, the relevance of this point is to recall that different norms are not necessarily mutually exclusive. The principles formulated in a general statement, such as the proposed Global Pact, could (i) apply together with other more specific norms and treaties; (ii) without either excluding their application or being excluded by it; and (iii) make useful contributions to the regime governing a range of different situations, either by addressing aspects left open by existing treaties or by contributing to the interpretation of the latter.

4.2. *The Broadly Applicable Principles of a Global Pact*

Another concern raised with respect to the Global Pact is the broadness of its provisions' language, which would be too unspecific to create legally binding obligations. The wording of the 2017 draft is intentionally broad because it aims to provide for general rights and obligations, which can then catalyze ambitious action. However, regardless of whether states adopt a more detailed text, the 2017 draft is certainly specific enough to carry binding obligations.

Two concepts should be distinguished: generality and normativity. A general principle could perfectly have a significant normative effect. By way of comparison, a constitution or a bill of rights contain many principles that are both broad and mandatory. In the same way, the European Convention for the Protection of Human Rights is very general [108], but it still retains its binding force on European states and confers legally protected rights to European citizens. Furthermore, its generality has facilitated more ambitious action by individual European nations with respect to human rights. Accordingly, the broadly applicable principles of a Global Pact would not preclude a more specific incorporation.

Moreover, the broadness of the Global Pact is necessary for this text to play the role of a constitution for international environmental law. It would both synthesize the fragmentation of international environmental law and accommodate the diversity of national situations and legal cultures. If the text of the Global Pact is too rigid or specific, it will not serve its purpose in addressing the exceedingly fragmented state of international environmental law, which already has an excess of very technical, specific sectoral agreements. Furthermore, the broad scope of the rights and obligations ensures these principles can be adapted to many different legal systems with varying cultural contexts. A Global Pact would allow for a national margin of appreciation. That is to say the general nature of the principles, rights, and obligations included in a Global Pact ensure states can retain flexibility and discretion in how they implement the respective provisions of the treaty and take into account their specific national context.

4.3. *Ensuring the Effective Application of a Global Pact at the National Level*

There are concerns with whether and how a Global Pact can be effectively applied at the national level. This depends on the legal system in which a Global Pact is applied. Generally, there are two types of legal systems with respect to international law—monist and dualist systems. In dualist countries, neither international customary law nor treaty law can be applied in a domestic court without a national act of incorporation. As an example, the United Kingdom has a dualist system and as such, required the passage of the Human Rights Act in order for the European Convention on Human Rights ("ECHR") to be invocable in its domestic courts. In monist countries, international customary and treaty law can be applied, but it depends on whether the obligation in question has "direct effect". For treaties specifically, the question of applicability turns on whether the treaty is self-executing. As an example, the United States is a monist country with respect to treaties, even if it requires the treaty to be self-executing in order for it to be applicable in American courts [109]. Similarly, France is a monist country: a treaty has direct effect when (1) "it does not have the sole purpose of governing relations between States" and (2) "does not require the intervention of any supplementary act to produce effects on individuals" [110]. Of course, the solutions will vary according to the drafting eventually adopted for the Pact and according to the jurisprudence of each country. But there are strong reasons to think that some of the general principles codified in a Global Pact could be regarded as having direct effect.

In addition, states cannot justify disregarding international obligations by taking recourse to their domestic law, regardless of their system of incorporation [87]. Thus, complying with a Global Pact would likely require modifying domestic law. This process will lead to more stringent environmental legislation and ambitious interpretative principles. By way of comparison, in Europe, the ECHR has had a profound impact on the legal systems of all state parties, whether monist or dualist. It has led to many changes in national laws and has inspired many national courts.

4.4. *The Risk of Regression*

Lastly, the Global Pact initiative has been criticized on the basis that it would either regress or undermine the purpose of pre-existing multilateral environmental agreements. The term “undermine” must be understood in this context as defeating the purpose of existing environmental treaties. In other words, so long as the proposed Global Pact does not defeat the purpose of these many instruments, the approach would be deemed consistent with the parameters set in Paragraph 9 of the enabling resolution.

It is difficult to conceive how the proposed Global Pact could defeat those purposes. A Global Pact provides for a minimum standard. It seeks not to prohibit, but rather to encourage further action on specific environmental issues. If needed, a Pact could provide for an interpretation clause aiming to prevent any regression risk, stating for instance that “the present Agreement shall not be interpreted as involving a reduction in environmental protection”, in the spirit of Article 17 of the ECHR [111].

Those who argue against the proposed Global Pact or a specific provision included in it have the burden to identify how exactly and to what extent there is a genuine risk that a Pact may undermine an existing instrument. Such arguments should be established in a manner that is no less “technical and evidence-based” than the report envisaged in the enabling resolution, which was published in late November 2018.

5. **Benefits of a Global Pact**

A Global Pact would bring forward a global environmental constitution that would enshrine fundamental environmental rights. It would thus provide both state and non-state actors with the legal tools to catalyze further legal improvements.

Environmental law is rife with specific sectoral regulations. At the international level, it spans over 500 agreements focused on specific sectors and targeting nation-state-level relationships. At the regional and domestic level, there are countless environmental laws, regulations, and a growing body of case law. However, whether taken separately or pieced together, existing environmental governance still lacks specific guidance and obligations for other actors in society—citizens, corporations, and local governments.

A Global Pact would confer rights, obligations, and duties on these essential facets of society, thus catalyzing effective participation and action for environmental protection. A Global Pact could be a guiding compass for all actors in society—citizens, businesses, and states. For citizens and NGOs, a Pact would provide new guarantees and strengthen their capacity to assert their environmental rights before national courts. For corporations, a Pact would create a level-playing field and provide more predictability and legal security, which are crucial for making long-term investments. For governments, a Pact could provide a basis to create new legislation.

5.1. *Citizens and NGOs*

A Global Pact is significant to citizens because it would, in a best-case scenario, give each citizen, regardless of nationality, rights with respect to the environment. For example, a Global Pact would give citizens the right to a healthy environment, the right to participate in environmental decision-making, and access to environmental information and to environmental justice. Thus, a Global Pact would empower citizens to invoke their right to a healthy environment in their national courts and at the international level. Further, citizens would have a legal mechanism by which to hold their governments accountable in the face of inaction on critical environmental issues. Governments would then be under an obligation to, for example, remediate environmental harms, to take care of the environment, and to integrate sustainable development [112]. Here we find the idea that a duty of the state often corresponds to a right of individuals, like an obligation often includes a debtor and a creditor. The state’s duty to protect the environment corresponds to a citizens’ right—the right to a healthy environment—which implies in particular the right of citizens to demand that the state respect its obligation to act in environmental matters [113]. In addition,

citizens would benefit from a Global Pact in that it also recognizes duties, such as the duty to take care of the environment, which would be imposed on all persons, whether public or private.

Most importantly, the Global Pact is an accessible and judicially invokable text for citizens, unlike the majority of other multilateral environmental agreements. Generally, environmental treaties are extremely technical as necessitated by the highly scientific and technical nature of environmental issues. However, a Global Pact clearly and unambiguously provides citizens with a description of their rights with respect to the environment. The simplicity and accessibility of the Global Pact can allow citizens without legal or scientific backgrounds to engage with international environmental law and assert their rights at the domestic and international levels.

For both citizens and NGOs, a Global Pact would serve as a robust legal tool to compel ambitious environmental protection in their respective countries. Thus, a Global Pact is an integral mechanism for civil society and citizens to advocate for expanded action on environmental protection and strengthened implementation of existing laws.

5.2. Corporations

Firstly, a Global Pact would harmonize environmental principles at the international level, which is to say that it would help “level the playing field” for multinational corporations. By setting out a global minimum standard, all companies, regardless of place of incorporation, would be held to similar environmental standards to ensure fairer competition. Moreover, a Global Pact would improve judicial security insofar as companies can be sure of the environmental legal standards and principles of each country in which they invest.

Secondly, a Global Pact makes business sense. The rights and obligations enshrined in a Global Pact, such as the polluter-pays principle, the principle of integration of sustainable development, and the duty to repair environmental damages, would create legal obligations to create a sustainable global economy. These legal obligations present a wealth of opportunity to corporations. For example, implementing the SDGs would create \$12 trillion in business savings and revenue by 2030. Further, they would help avert the inevitable costs of environmental degradation—the cost of biodiversity loss and ecosystem damage alone could reach up to 18% of global economic output by 2050, which represents a 15% rise from 2008 levels [114]. Business is already moving in this direction with 92% of the world’s 250 largest corporations already reporting on sustainability [115,116].

5.3. National Government

The majority of citizens want action for environmental protection and the security of a sustainable global economy. The will of the electorate is heavily in favor of strong action for the environment. As an example, 65% of voters in the United States believe that environmental protection should be given priority over economic growth and 59% of voters believe President Donald Trump is failing to adequately protect the environment [117]. Over 80% of adults in Latin America and the Caribbean region cite climate change as a very serious problem for their respective country [118]. Similarly, a vast majority of citizens in the Middle East and North Africa admit that water pollution and waste management are very serious issues [119]. Thus, it is in the interest of governments and political representatives to take decisive action to protect the global environment, including supporting the adoption of a Global Pact.

Further, and more importantly, a Global Pact can help national governments strengthen the implementation of their environmental laws. As previously mentioned, each state will have the obligation to ensure its domestic laws are in accordance with its obligations under a Global Pact. Consequently, this will require states to adopt implementing legislation corresponding to each principle enshrined in a Global Pact. Thus, a Global Pact can serve as the basis for inspiring new laws. With respect to this matter, a Global Pact can have a monitoring committee responsible for its implementation. Such a committee could, for example, collect examples of national laws that are “best practices” for each principle within the Global Pact. This would be similar to the monitoring body of CITES, that collects illustrative domestic laws to serve as examples for other Member States

on how to implement the treaty obligations. These “best practices” can inform and inspire legislators in each country to strengthen the implementation of their domestic environmental laws.

5.4. Local Government

Local governments play an increasingly important role in environmental protection. An example is best seen in local government’s reactions to the federal level of government’s inaction on climate change in the United States. Following President Trump’s withdrawal of the United States from the Paris Agreement, citizens and the private sector mobilized to meet the commitments for action on climate change in the face of federal inaction. Mayors of major cities in the US created the Climate Mayors group, which includes 406 U.S. mayors, to coordinate and facilitate collective climate action. This coalition includes the mayors of Boston, Los Angeles, Orlando, Portland, Chicago, Austin, and New York City. This coalition of mayors adopted a resolution committing themselves to 100% renewable energy, calling on Congress to act, and instituting programs to train workers in green energy sector jobs [120]. Further, the private sector has recognized the will of its consumer base by creating the Task Force on Climate Related Financial Disclosures [121] and the RE100 renewable energy coalition [122]. Thus, a Global Pact could empower civil society, companies, and citizens to hold politicians accountable for their inaction on the environment by using the power of law.

6. Conclusions

The Global Pact for the Environment is a unique and imperative opportunity for the international community. The world needs a global environmental constitution like a Global Pact, especially in a time of such unprecedented environmental degradation. However, the third substantive session in Nairobi has demonstrated a need for rethinking the treaty-making process. The necessity for consensus in order to adopt a multilateral environmental agreement ensures that the contrary agenda of a select few nations can subvert the collective will of the international community. The voting record for the enabling resolution demonstrates this very point—143 countries voted in favor of talks to strengthen environmental protection, whereas only 5 countries voted against the resolution. The method of consensus in adopting environmental agreements has paralyzed the diplomatic process in a time when the strengthening and expansion of international environmental law is so desperately needed. A minority of states have the power to prevent the majority of the international community from prevailing in taking decisive environmental action. As part of a broader reflection on global environmental governance, one might ask whether decision-making methods should change. Faced with the exigency of an unprecedented ecological catastrophe and the corresponding necessity for urgent action, it is increasingly crucial for the international community to acquire more effective means to act collectively. More and more people are questioning this “consensus dictatorship”, which sometimes turns into a “tyranny of the minority”. We must redefine this notion—consensus is not unanimity.

The state of the global environment requires urgent and collective action by all nations. The paralysis of the international political community can be overcome by citizen, civil society, and private sector mobilization. A Global Pact for the Environment gives an opportunity to reinvigorate multilateralism. It is one essential mechanism by which to achieve meaningful action by both state and non-state actors to ensure a sustainable future. For all actors, it can be a guiding compass. A Global Pact can provide the world with a global environmental constitution and the legal tools necessary to achieve a sustainable global society. With a Global Pact, there is hope for the planet.

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GLOBAL PACT FOR THE ENVIRONMENT: THE POLITICS



Photos: IISD

Janice H Cox, MBA
World Animal Net

GPE PROCESS: UN GA RESOLUTION (72/277 MAY 2018)

Three OEWGs (Jan, March, May 2019)

- Consider UN Secretary-General's report on possible gaps in IEL
- If necessary, consider the scope, parameters, and feasibility of an international instrument
- Make recommendations to the UNGA

POLITICAL RESISTANCE

- Lot of resistance to way GPE was introduced
- Initiative started outside UN system
- Then came through UN GA (not UNEP)
- Did not develop MS ownership





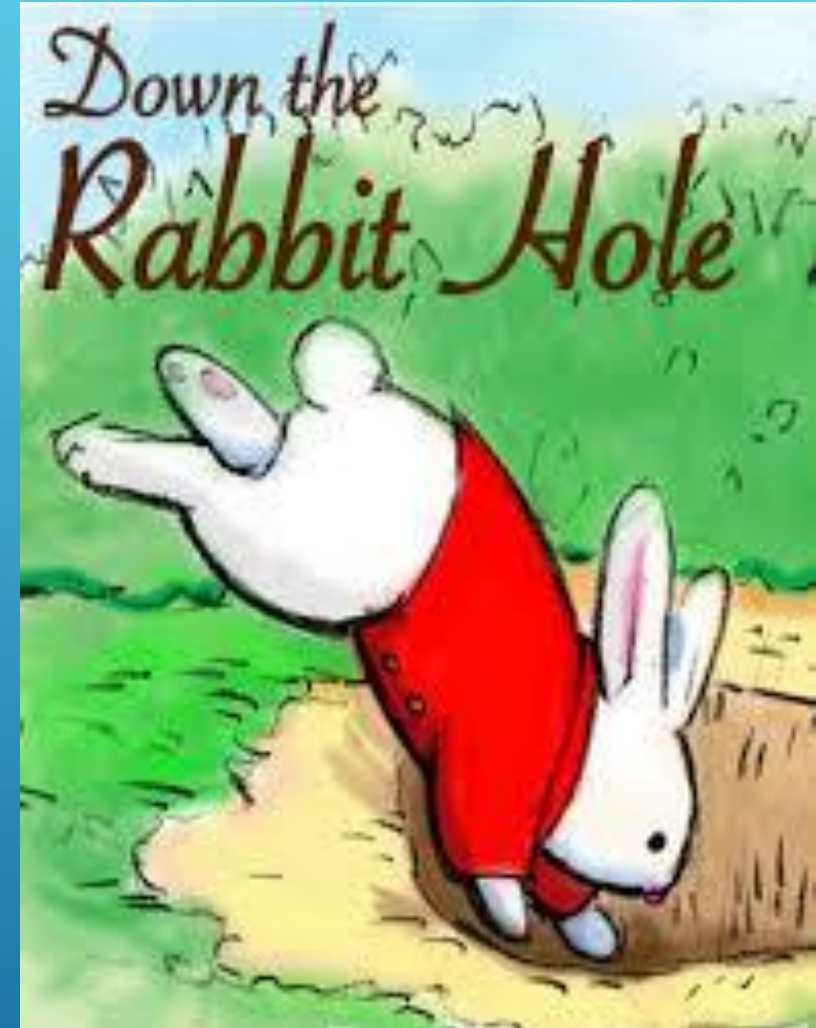
PROCESS

Process also caused problems –

GAP report

**Gaps in international environmental law and
environment-related instruments: towards a global pact
for the environment**

Report of the Secretary-General



“Watching Brief”

Being thrown in at the deep end, into complex report on GAPs made M/S very wary of potential measures and implications

Some had no instructions from capitals

Many had a “watching brief”

Some NGOs too...



SUPPORTERS OF GPE

- ▶ Current IEL fragmented, weak because non-binding, has blind spots
- ▶ Instruments often sector-specific and limited
- ▶ Different applications of IEL principles
- ▶ Global framework instrument: Long term perspective, include main principles to create “level playing field”
- ▶ Overarching statement of principles consistent with other areas of international law such as human rights, trade, humanitarian

ALLIES

Strong:

- ▶ Micronesia was a solid supporter
- ▶ Small island states (their future at risk)
- ▶ St Lucia
- ▶ Guyana
- ▶ Costa Rica

Also, Morocco, Cameroon, Senegal, Algeria and Benin

NEGATIVES

- What is a gap? Are there gaps? Lacunae?
- Sometimes gaps existed because of delicately balanced negotiating positions (i.e. some gaps reflected conscious decisions to leave alone)
- Many expressed concern about possibly weakening or opening up existing MEAs
- Stressed that main problem is implementation of existing agreements
- Downgrade e.g. to declaration?

MANY NEGATIVE REACTIONS

- ▶ More than voted against at recorded GA vote: Philippines, Russian Federation, Syria, Turkey, the United States [and Iran]

Hard-line blockers too:

- ▶ USA – very anti
- ▶ Brazil – very anti
- ▶ Russia
- ▶ Argentina – dangerous to acknowledge gaps (sovereignty)

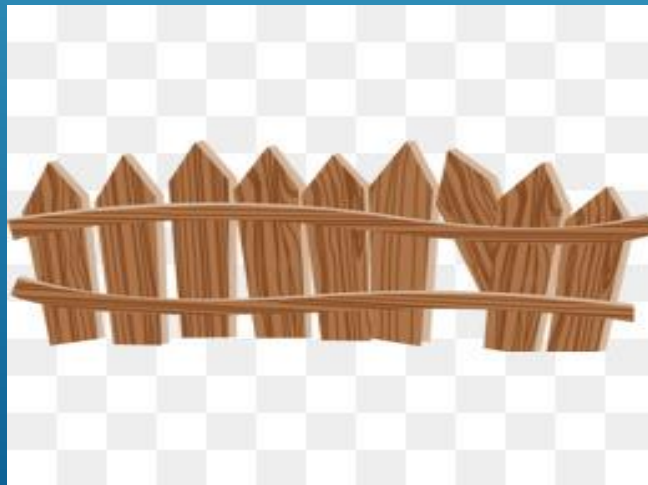


ON THE FENCE

Many countries sitting on the fence – including some normally sympathetic e.g.

Canada, Australia, New Zealand, Switzerland, Bolivia, Ecuador

- ▶ Many felt that more arguments were needed on how a Global Pact could be beneficial
- ▶ Others had their own systems, and did not want another layer of protections (which may interfere or divert resources)



EUROPEAN UNION



Convergence
that there are
gaps

No agreement
that instrument
was the right
solution

France v
Germany

EU speaks on its common positions

EU member states do not make separate statements

Other groupings made statements about common positions, plus
individual members spoke

This considerably weakened voices of support for the Global Pact

AFRICAN GROUP

Broadly negative

In common with a number of developing countries: Concerned about the potential obligations and burden of compliance, given their development priorities





LOTS OF POLITICKING!

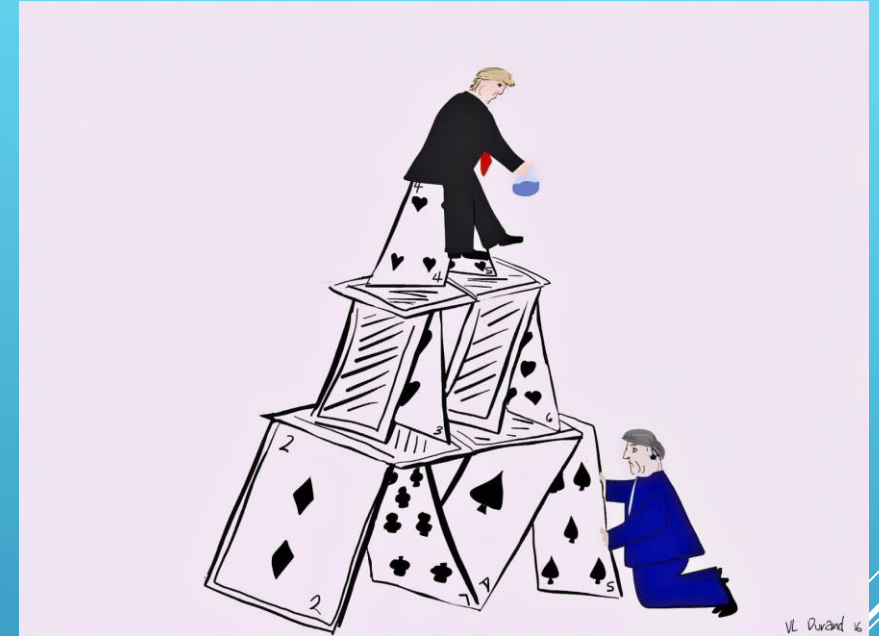
PROCESS ALMOST COLLAPSED

NGOs went in strongly..

Did we inadvertently scare M/S further?

Whole process almost collapsed

How can we avoid this happening again?





Need for Consensus
Strong body of antis

WHAT NEXT ?

Submission from the NGOs involved in the Res. 73/333 process (before on Res. 72/277 - Global Pact for the Environment)

17 July 2020

THE URGENCY IS CALLING US TO ACT:

Over the past several decades the Earth's global temperature has gotten hotter and hotter during each successive decade; and the past 5 years have been the hottest on record - resulting in an increasing number of catastrophic storms, floods, droughts, wildfires, hurricanes, landslides and tsunamis. And now we have been hit with a major world-wide epidemic causing one of the worst health and economic disasters ever faced by our increasingly global community - most likely directly caused by the damage we have done, and continue to do, to nature. It has gotten so bad now, that we have to ask ourselves, when will this ever stop.

We, all of humanity, have begun to realize that we are facing not a Global Emergency; but multiple Global Emergencies. And each of them is compounded and made worse by the others. For example, FAO has suggested that if we do not change our agricultural practices almost all of the top soil will be gone within another 50 years. We have already far exceeded the carrying capacity of the earth and crossed over a growing number of planetary boundaries. If all of the world's people lived like those in the developed world we would need 3 - 5 planets to provide the needed resources for everyone.

60 percent of the world's people are facing looming water shortages. Two million hectares of land have been significantly degraded, an area as large as all of South America. 39% percent of the old growth forests have been cut down and lost. There are more than 500 dead zones extending well into the ocean at the mouths of the Earth's major rivers - caused by the herbicides, pesticides and fertilizers that were supposed to be making our soils richer and more productive but are instead stripping it of life. 90% of the wastewater flows back into the watershed untreated in the developing world. And we are facing a sixth mass extinction of wildlife and biodiversity,

Truly humanity is facing a global Armageddon of our own making; and this must be stopped and reversed as quickly and as assuredly as possible. There is no more time left for weak political declarations that do not lead to wholesale commitment and dedicated action.

We know, and all can see, that neither humanity, nor our governments, have been taking sufficient action to stem the tide on this catastrophic situation nor have we fulfilled most of the global treaties, conventions, commitments, and international agreements that have made over the past 50 years since the Stockholm Declaration was signed.

We are now starting into the Fifth round of the Montevideo Programme to strengthen and upgrade environmental legislation and law. But still today many if not most governments and countries have not put in place the rule of law, regulations, legislation and programmes that would be, and are still, needed to take sufficient

action to reverse the negative consequences of our consumption and production patterns and to return to living sustainably on our planet home.

It is thus essential that the United Nations and our representative Member States agree on the most substantive and ambitious Global Political Declaration possible - one that is fit for purpose and will play an essential role in reversing this egregious situation. It is imperative that we, the international community - including governments at all levels along with all other stakeholder groups, develop and implement a Political Declaration, which is action oriented, and contains political commitments, targets and timelines. All That is necessary to deal adequately with all of these problems and challenges in a fully integrated, holistic and systemic manner.

Overall: the current pandemic COVID-19 shows again clearly that we put too much pressure on our ecosystems. UNEP recognises this in their reaction on COVID-19: *"Human activity has altered virtually every corner of our planet, from land to ocean. And as we continue to relentlessly encroach on nature and degrade ecosystems, we endanger human health. In fact, seventy-five percent of all emerging infectious diseases are zoonotic, i.e. viruses originating from the transfer from animals, whether domesticated or wild, to humans"*.

It is therefore getting more urgent that strong measures are taken to stop this. Strengthening environmental law and governance is crucial. This is a rallying call for all people, governments and businesses to join together in effective strategies and policies, together with urgent actions to save and protect ecosystems and nature.

ENVIRONMENTAL LAW AND GOVERNANCE

Already since 1992 (Agenda 21) there has been strong language agreed on the need for implementing environmental law and regulations. One of the Human Rights is the *right to a healthy environment*, 151 countries do mention this right in their Constitution but with weak or no implementation. Under the auspices of UNEP, many MEA's (Multilateral Environmental Agreements) were established. Nevertheless we are facing a huge lack of compliance. Many corporations and governments are not really motivated and are not held accountable for the damage they cause and still cause in regard to the environment like climate change, land- and air pollution, deforestation, plastic soup in the oceans, ...

As Civil Society groups, we applauded and supported the initiative and the call to develop a Global Pact for the Environment. On the same level as the Declaration of Human Rights, it is necessary to agree globally on a set of principles for environmental rights, along with the recognition of universal responsibilities. At the same time, it is necessary to encompass our legal systems with the functioning of our Planet establishing a systemic approach in our legal and institutional frameworks.

The present pandemic is providing more insights into the imperative of and need for a Global Pact for the Environment, the benefits of which were unfortunately not sufficiently recognized by a majority of countries. We now have the opportunity to remedy this by clearly planning a two-step approach: the Declaration in 2021 and the possible decision to develop and adopt a Global Pact for the Environment in 2022.

We need to start with a strong declaration with bold principles (most of them already in Agenda 21, complemented with the 16 Framework Principles that the special

rapporteur for Human Rights and Environment drafted in 2018) ..) and then give UNEP the mandate to start a process to come up with something more substantive (cfr: SDG process, with goals, targets, timeline and indicators), where you create ownership of MS and civil society and with concrete commitments and where possible legally binding targets.

Such a Global Pact should come with a whole package of modalities and increased capability: capacity building for judges, lawyers, civil society in the Global South, but also in the North. (Montevideo program) and means of implementation. It is also necessary to build capacity in administrative bodies and devote economic resources to monitoring authorities.

Merge this process with UNGA (New York) and OHCHR (Geneva) initiatives that are currently taking place in putting more emphasis on the Human Right for a Healthy and Safe Environment. UNEP could develop, put forward, and promote a better wording based upon and coming from the draft GPE:

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.

POLITICAL DECLARATION: BUILDING BLOCKS:

What should be in a strong political declaration, that can both consolidate the leadership role of UNEP and can enable the Declaration to become a motivational force for the adoption later of a Global Pact for the Environment with UNEP in a central role.

- A unifying and positive call to action, e.g. Covid 19 provides a rallying call for all people everywhere to draw on our rich diversity to resolve the threats to human life and livelihoods and Nature as a whole.
- We need the Global Environmental Declaration to be strong and visionary and agreed by consensus if possible. This will open hearts and minds to the positive repercussions for all that a possible Global Pact for the Environment can have.
- Recognition of planetary boundaries and the unity of the Earth System as a single unit - one whole system highly interconnected and interdependent.
- A Global Pact to address our urgent Planetary Emergency and the multiple interrelated causes, aspects and consequences, need not be binding from the start. What came out of Rio was not binding but it gave the MEAs a big boost, nevertheless: Principles in and of themselves are important and necessary and should be integrated in law where possible (precautionary principle, polluter pays principle. So too the Universal HR Declaration has become traditional international law and was followed by the legally binding Covenants of Economic and Social Rights and Civil Political Rights etc.)

- More than the discussion about the binding standard, for one Universal Declaration, the most important is to open a new systemic approach to the environmental law - using as basis the new knowledge about the functioning of the Earth System.
- The Human Right to a Healthy and Safe Environment should be one of the basic elements
- The call for an International Court of Justice for the Environment. It is possible to build on the work already done in this respect. (It is bound to be in the UN's archives.)
- UNEP should be tasked with reaching out with regard to the MEAs to develop more and better cooperation and collaboration. UNEP is uniquely positioned to provide strong motivation: It is the agency that focuses on nature and environment which is integral to all we are and do as human beings, and it provides the basic resources for our economies. Covid 19 has emphasized that Nature is the great equalizer. These facts can be touched on in the Declaration and used as powerful motivational forces to encourage Member States to agree to a strong and comprehensive Declaration and to integrate their efforts to achieve all in a cohesive manner, including their SDG strategies and plans
- Integrate commitments for the implementation of the MEAs.
- Build on what has already been done in the various other areas of law and human rights to leverage strong environmental agreements and compliance procedures.
- Launch of a tracking system for compliance with the MEAs. This should be in the public domain and easily accessible to all. This should be accompanied by a list of clearly formulated advantages to all if these are implemented and the dire consequences to all if they are not.
- Revisit the gap analysis: compliance of existing law, filling in the gaps and couple this with the carefully spelled out consequences positive and negative of filling or not filling each of the gaps.

ANNEX:

Responding to the questions raised in the co-facilitators paper you'll find the NGO input in blue

INFORMAL CONSULTATIONS UNDER GENERAL ASSEMBLY RESOLUTION 73/333 OF 30 AUGUST 2019

General Assembly resolution 73/333 endorsed the recommendations of the ad hoc open-ended working group established pursuant to General Assembly resolution

72/277 entitled “Towards a Global Pact for the Environment”. In those recommendations, and under the heading “Further Work,” the United Nations Environment Assembly (UNEA/Environment Assembly) has the responsibility:

“To prepare, at its fifth session, in February 2021, a political declaration for a United Nations high-level meeting, subject to voluntary funding, in the context of the commemoration of the creation of the United Nations Environment Programme by the United Nations Conference on the Human Environment, held in Stockholm from 5 to 16 June 1972, with a view to strengthening the implementation of international environmental law and international environmental governance, in line with paragraph 88 of the outcome document of the United Nations Conference on Sustainable Development, entitled ‘The future we want’.”

This Document provides a set of questions for the consideration of Member States and members of Specialized Agencies on how the substantive recommendations contained in resolution 73/333 can be taken forward. The Co-facilitators hope that this Outline Document and the discussion at the first substantive consultation meeting to be held virtually on 21-23 July 2020 will assist in forming the basis for a second paper that will address the building blocks of the draft political declaration.

As far as the recommendations are concerned, they are divided between five objectives guiding the recommendations and thirteen substantive recommendations.

The five objectives guiding the recommendations are to:

- (1) reinforce the protection of the environment for present and future generations;
- (2) uphold the respective obligations and commitments under international environmental law of States Members of the United Nations and members of specialized agencies;
- (3) contribute to the strengthening of the implementation of international environmental law and environment-related instruments;
- (4) support the full implementation of the 2030 Agenda for Sustainable Development, as well as the outcome document of the United Nations Conference on Sustainable Development, entitled “The future we want”, including paragraphs 88 and 89 thereof; and
- (5) not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

=====

- 1. Reaffirm the role of the United Nations Environment Programme as the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system and serves as an authoritative advocate for the global**

environment, and also reaffirm the role of the United Nations Environment Assembly.

- a. What concrete actions can Member States and members of Specialized Agencies take to strengthen and reaffirm the role of UNEP as the leading global authority, that sets the global environmental agenda and facilitates the implementation of the environmental dimension of the 2030 Agenda within the United Nations system, and also the role of UNEA?
- b. How can the role of UNEP, and also of UNEA, be enhanced in the area of environmental law and environmental governance?

NGO-INPUT:

- Member States and Specialised Agencies should put more funding into UNEP to fulfil that role. Increasing levels of finance and staff should be provided to UNEP so that it can more effectively support the Strategies on Sustainable Consumption and Production, on Ecosystem Services, and on the UN Decade on Ecosystem Restoration, etc.
- In the Review of the HLPF: stronger mandate should be given to UN programs, funds and specialised agencies that should be held politically accountable of the progress made in their sector (FAO, UNEP, UNDP, WHO, ..).
- The role of UNEA should be significantly strengthened, for example by agreeing to adopt actionable and/or binding and enforceable resolutions, and follow-up mechanisms. These agreements or resolutions should be developed and agreed upon using some type of a qualified majority or consensus process where the will of the majority should supersede the resistance by a few. Thus the will of the great majority should take precedence over the reservations raised by a few. In instances where there is a question about this it could be resolved by a vote which would require perhaps 2/3rds or 3/4ths of those voting agreeing.
- Give UNEP a strong central role in One Health/One Welfare cooperation.
- Authority is something you earn by being a visionary leader and taking your responsibility - UNEP and their scientific bodies should do that.
- This means also: Strengthen the role of science, and the science evidence base, through improved support and funding.
- Ensure that the UNEA resolutions and directives are forwarded to and carried out by all other departments and agencies within governments. Ensure that all countries recognize their environmental departments as the lead agencies in regards to environmental policies and upholding of environmental principles, legislation and law; adopt a resolution encouraging this and authorizing UNEP, in partnership with the UN Law Commission and UNDESA, to work with governments to ensure that this happens.

2. **Call for renewed efforts at all levels to enhance the implementation of existing obligations and commitments under international environmental law, stressing the importance of enhanced ambition regarding means of implementation, including the provision and mobilization of all types and sources of means of implementation, consistent with the Addis Ababa Action**

Agenda of the Third International Conference on Financing for Development and the 2030 Agenda for Sustainable Development.

- a. What actions can Member States and members of Specialized Agencies take to further strengthen the implementation of international environmental law and environment- related instruments and international environmental governance.
- b. How can the role of UNEP be enhanced in leading the UN system and supporting national Governments in the development and implementation of environmental law, environmental rule of law, and environmental governance?
- c. Through what actions can enhanced ambition regarding means of implementation, including the provision and mobilization of all types and sources of means of implementation be realized?
- d. How can Member States and members of Specialized Agencies make full use of the technical legal assistance from UNEP and MEA Secretariats in order to fulfill the implementation of their obligations under the MEAs?
- e. How can Member States and members of Specialized Agencies strengthen the financial base of UNEP and the MEAs?
- f. How can the role of the international financing mechanisms, including the GEF, be increased to mobilize increased resources to further enhance the implementation of environmental law and especially MEAs?
- g. How can and should other forms of innovative financing be used?

NGO-INPUT:

- Better coordination of all MEA would already decrease the administrative burden for MS to implement them.
- Capacity building of the legal institutions and lawyers is necessary.
- Provide training courses to judges and create specialized courts
- Provide budgets to create monitoring and control administrative bodies
- Build an assessment system for member states on the status of their environmental policies, laws and implementation. Link to international development assistance, with UNEP being funded to both assess, and to capacity build. The World Organisation for Animal Health (OIE) has a system for veterinary services (PVS pathway), which could be used as reference (although far from perfect!).
- “Building Back Better” post-Covid-19 should be used to focus recovery funding on key environmental objectives (climate change, biodiversity loss, pollution) and prevention of future pandemics. Member States could bring UNEP into this picture, supporting and capacity building interventions - with funding. [Problem - [UNEP’s new report on preventing future pandemics](#) is good on causes (giving 7 main drivers), but weak on corresponding actions for prevention].
- MEAs must establish compliance committees open to public submissions following the example of the Aarhus Convention. Those having compliance committees must open them to submissions by the public.
- Develop an on-going process to support and encourage governments and UNGA to strengthen National and Intl ELL through developing a draft legal framework that could be used as a template by national, state, and local governments to either strengthen or further implement environmental regulations, legislation, and the rule of law. Include in this framework guidelines and examples of best practices. Include a legal framework that

describes the establishment and use of judicial processes and that contributes to eliminating corruption, that protects government whistle-blowers and civil society earth stewards and environmental defenders, etc

- Implement the precautionary principle: action needs to be taken at all levels of government to respond more ambitiously to the need to regulate and safeguard humanity from the harmful effects and impacts coming from our consumption and production along with the usage and consumption of plastics, toxic materials and chemicals, fireworks, accumulation of toxic substances in the human body, and products and chemicals that have not yet been tested for their potential toxicity.
- Member States and members of Specialized Agencies should take action to address cross boundary pollution, further establish environmental courts of law and the setting of precedents, and UNEP needs to either establish a well-resourced legal department and/or further empower its legal department to support and assist states on this.
- UNEP ought to be mandated to consult with all stakeholder groups and to develop a detailed set of guidelines for how governments can best develop and implement environmental law, environmental rule of law, and environmental governance. In addition UNEP should be tasked with the role of supporting governments, other UN agencies, and law making bodies in order to implement such policies.
- UNDP should be mandated to work with UN Member States to develop a set of guidelines and tools to support governments in implementing MEAs
- In order for the Member States and Specialized Agencies to make full use of the technical legal assistance from UNEP and MEA Secretariats they should consult and work closely with civil society organizations, the scientific community, and the courts; publicise such efforts through UNEA, UNGA, and HLPF. and issue an open invitation for all interested parties that do not have “vested interests”
- Innovative taxation policies should be applied at both the national and international level including the use of taxes, fees and surcharges on the use and abuse of nature and natural resources and land value taxation. A primary focus on the use of such policies should be on internalizing the externalities and ensuring that humanity lives within the carrying capacity of the earth and returns to living within and avoids exceeding planetary boundaries.

3) Recognize the role of discussions on principles of international environmental law in enhancing the implementation of international environmental law, also noting the ongoing work in the International Law Commission on general principles of law.

- a. How can UNEP provide assistance to Member States and members of Specialized Agencies in ongoing discussions on principles of international environmental law, in further developing their understanding and in their implementation?
- b. How can Member States and members of Specialized Agencies recognize and make use of principles of international environmental law for the purposes of enhancing their implementation of international environmental law, including at the national level?

c. How can Member States and members of Specialized Agencies take into account the ongoing work in the International Law Commission on general principles of law?

NGO-INPUT:

- An International Court for the Environment; and make 'ecocide' an international crime, on a par with war crimes and genocide, prosecutable under the International Criminal Court
- UNEP Law Division should follow (and engage with) the work of the International Law Commission and advise Member States of areas of relevance/importance. Where work has a significant environmental component, such as in the current ILC topics 'General principles of law' and 'Protection of the environment in relation to armed conflicts', UNEP should coordinate views.
- Draft and distribute a report on best practices in responding to the Principles focusing on the best examples being implemented at all levels of governance. Develop a process to welcome input and determine the ways in which upholding and respecting the Principles of international environmental law are essential for dealing adequately with our rapidly increasing and urgent local to global environmental challenges.
- Making ecocide a crime against peace.
- UNEA should urge States to endorse the work of the ILC pertaining to international environmental law.
- Recognition of the work of the International Law Commission (ILC) to codify principles, although relevant, may not be sufficient to meet the specificities of international environmental law (IEL). Indeed, ILC report A / 72/10 refers only to "general principles of law", and not a single word is devoted to IEL. The specificity of the IEL and its object, including the relevance of protecting the environment to ensure the continuity of life on the planet, justify an effort to approach the IEL as an independent subject. It is therefore important to continue the discussions for the adoption of a Global Pact for the Environment.

4) Invite the scientific community to further its work on interconnected and cross-cutting issues by sharing information among the leading scientific, technical and technological bodies that inform the work of multilateral environmental agreements and environmental processes, and encourage the scientific, technical and technological bodies to strengthen cooperation among themselves.

a) How can the scientific research, innovation and cooperation across relevant bodies be encouraged to better inform the work of multilateral environmental agreements and environmental processes?

b) How can scientific subsidiary bodies of MEAs strengthen their collaboration with each other and with the intergovernmental science-policy platforms, including with UNEP's science-policy interface?

c) How can Member States and members of Specialized Agencies make greater use of the assessments and outputs of scientific bodies?

NGO-INPUT:

- Rule that UN bodies (specialized agencies, programs, funds) and MEAs must consult on any relevant policy recommendations contained in (commissioned) scientific reports, and prepare an explanation for any not actioned as recommended (risk assessment, cost-benefit analyses etc.).
- Work on coordinating principles across MEAs and the work of UNEP.
- Scientific analysis, reports and presentations should inform national and sub-national sustainable development commissions and processes
- Scientific information should be discussed and forwarded to governments through national science and educational councils and associations
- Governments should make good use of holding public hearings and consulting with all stakeholder groups when determining policy and drafting legislation
- Bring the scientific community evidences to the legal level such as planetary boundaries
- The scientific community and scientific subsidiary bodies should be called upon to do definitive studies and report on such matters as the problems that are occurring due to:
 - Food borne pathogens and disease
 - The use of genetically modified organisms
 - Pesticides, herbicides and fertilizers
 - Usage of potentially toxic chemicals that have not been tested
 - Dispersion of plastics in the natural environment
 - Solid waste streams
 - Impact of human and other wastes flowing back into the watershed untreated
 - Agricultural run-off and other pollution from industrial agriculture
 - Air borne pollution and pollutants
 - etc.
- Along with the benefits that can come from transitioning to:
 - Regenerative Agriculture
 - Dietary transition
 - A circular economy
 - Environmentally friendly green chemicals
 - Composting and biological waste processing
 - Biomimicry
 - Ecosystem restoration in all types of environments and habitats
- Bring Traditional Knowledge and Science together

4) Invite the governing bodies of the multilateral environmental agreements, while preserving their independence and respective mandates, to increase their efforts to promote policy coherence across environmental instruments at all relevant levels and to consider identifying and addressing implementation challenges in their regimes, with a view to strengthening implementation at the national and international levels.

a) What opportunities do Member States and members of Specialized Agencies see for strengthening policy coherence across MEAs?

b) How can States, at the national level, integrate MEA implementation and SDG implementation into their sustainable development strategies and action plans? How can MEAs and UNEP collaborate to assist countries through for example, the UN Sustainable Development Framework, the UN Resident Coordinators and country teams?

c) Would the establishment of forums through UNEP that enable cooperation and coordination among national focal points of the various MEAs on policy development and their implementation be useful?

d. How can Member States and members of Specialized Agencies encourage an open and inclusive dialogue between regional and global MEAs on the environment including between their secretariats?

NGO-INPUT:

- Invite Member States and members of Specialized Agencies and governing bodies of MEAs to set in place an online integrated tracking system that shows linkages, links challenges with implementation and identifies windows for reinforcement and
- Invite governing bodies of MEAs to work in collaboration with regional and national governments to build capacity to use the online tracking system.
- Invite member states to recognize the critical role of governing bodies of the multilateral environmental agreements in promoting the rule of law in environmental matters.
- Achieve coherence of public policies and legislative frameworks in environmental matters.
- Insist on clarifying the degree of "enforcement" (level of obligation) and "normativity" (normative value) of the provisions relating to the protection of the environment.
- Clarify the status of "international law" at the national level: how to take it into account, what level of integration or hierarchy obligation: and this, in terms of its application by the courts but also in terms of legislative production.
- MEAs must be put in the service for the achievement of all SDGs
- The set-up of new legal indicators to be able to measure the progress of states in implementing environmental law, as it has been asked by the "environmental rule of law" report of 2019 by UN environment.
- Establish a "voluntary" reporting and rating system for environmental protection performance indicators.
- work with member states and stakeholders to develop UN System-Wide Action Plan for coherent implementation of MEAs
- In the monitoring reports added to the existing indicators an overview should be made on the enforcement of existing environmental laws and gaps.
- In UPR reporting (OHCHR) a chapter on environmental human rights should be included.

- UNEP should be given the mandate of coordination, and the capacity of submitting governance recommendations for enhanced implementation and greater consistency.
- The establishment of forums through UNEP that enable cooperation and coordination among national focal points of the various MEAs on policy development and their implementation be quite useful if and only if civil society is given an active and truly meaningful role and is welcomed to participate in the process.

5) Invite the governing bodies and secretariats of multilateral environmental agreements to enhance cooperation and collaboration among themselves within the scope of their respective mandates, as well as between themselves and the United Nations Environment Programme and the United Nations Environment Assembly, building on work already done.

- a. How can Member States and members of Specialized Agencies enhance cooperation and collaboration across all MEAs and between them and UNEP and the UNEA in order to promote policy coherence, coordination and implementation?
- b. For example, should the Governing bodies of MEAs consider welcoming the decisions of UNEA of relevance to their work, adopt corresponding decisions and share information with UNEA on their implementation efforts?
- c. Should Member States encourage UNEA to take into account the decisions of the Governing bodies of MEAs in developing global environmental policies?
- d. To what extent can existing mechanisms for cooperation and coordination among the MEAs be strengthened and can existing mechanisms serve as a model for similar arrangements across other thematic clusters of MEAs?

NGO-INPUT:

- Perhaps more effective to have a better-defined relationship, including this in UNEP's mandate (whilst keeping their own mandates/governance)?
- Start some joint work in key areas. For example, collaboration on priority issues such as avoiding future pandemics and transforming food and agricultural systems (from an environmental lens) - working across mandates, and building common understanding and vision.
- Undertake a system-wide review of the purpose, function and thus structure of MEAs, individually and together some of which are now seriously dated and no longer fit for purpose in a very different 21st century world eg. CITES.

6) Encourage the governing bodies of multilateral environmental agreements and scientific, technical and technological bodies to exchange information and experiences, including with a view to considering the streamlining of reporting and/or monitoring processes.

- a. What proposals do Member States and members of Specialized Agencies have for enhancing cooperation between the scientific, technical and technological bodies of MEAs and UNEP with a view to enhancing synergies including exchanging information and experiences, mutual data use and developing joint assessments?

- b. Should Parties to MEAs request that joint scientific assessments be conducted by their scientific, technical and technological bodies to ensure a more coherent science policy interface in all areas of environmental policy?
- c. How can Member States and members of Specialized Agencies further support initiatives and fora for MEA Secretariats to exchange information and experiences, such as the United Nations Information Portal on Multilateral Environmental Agreements (InforMEA)?
- d. To which extent could UNEA be the instrument in establishing linkages between scientific and technical bodies of MEAs?

NGO-INPUT:

- Member States should support joint scientific assessment, uncluttered by MEA's ingrained "cultures" and objectives.
- Study best practice in reporting and implementation mechanisms, with a view to rolling out across MEAs and UNEP programmes.
- Promote access to information held by scientific, technical and technological bodies in usable form and language.
- Promote the improvement of scientific knowledge of ecosystems and the impact of human activities.
- 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

7) Encourage all that have not yet done so to consider ratifying multilateral environmental agreements and to effectively implement them.

- a. What are the main challenges at national level in considering ratification and effective implementation of MEAs?
- b. To what extent can UNEP encourage Member States and members of Specialized Agencies in ratifying MEAs and supporting their effective implementation building on, for example, the UNEP Guidelines on Compliance with and Enforcement of MEAs?

NGO-INPUT:

- Lack of political will is the major challenge to ratification and implementation.
- Environment Ministries not afforded the political importance or resources.
- In some countries, lack of knowledge, capacity and awareness.
- Bring pressure to bear on countries to ramp up the importance and resources of MEAs,
- CSOs in the national level lobby their national governments' parliamentarians, agencies, by creating campaign initiatives.
- Consider a public database of countries and their ratification status of MEAs/environmental measures. Plus regular - preferably public - sessions on why certain countries have not done so.

8) Encourage States Members of the United Nations and all members of the specialized agencies to strengthen, where needed, environmental laws, policies and regulatory frameworks at the national level, as well as capacities across all sectors for the effective implementation of international environmental law, including in the administrative and justice sectors in

accordance with national legal systems, while acknowledging the importance of international cooperation in supporting and complementing national actions.

a. How can UNEP support Member States in this effort and promote quality information and data exchange, improve education, capacity-building and technical assistance, including with the aim of strengthening effective national environmental governance systems and improving environmental rule of law?

NGO-INPUT:

- See suggestion at 2 above.
- It is crucial to strengthen the role of science through improved support and funding for, inter alia, the World Environment Situation Room digital platform; in addition, build the necessary strong capability to track, monitor and refute science that is not based on scientific evidence.

9) Encourage States Members of the United Nations and all members of the specialized agencies to mainstream the environment into sectoral policies and programmes at all levels, including into national development and sustainable development plans, to enhance the implementation of international environmental law and applicable environment-related instruments.

a. How can Member States and members of the Specialized Agencies enhance the implementation of international environmental law and applicable environment-related instruments by mainstreaming the environment into sectoral policies and programmes at all levels, including into national development and sustainable development plans, following national UN Common Country Analysis, the UN Sustainable Development Cooperation Frameworks (UNSDCFs) and relying on support from UN Country Teams?

b. How can UNEP and UNEA contribute to the mainstreaming of environment into the UN Common Country Analysis and the UN Sustainable Development Cooperation Frameworks, in support of the UN Country Teams?

c. How can Member States and members of the specialized agencies foster integrated approaches at country level, in particular strengthening the reporting on MEAs implementation in the voluntary national reviews delivered at the High-Level Political Forum (HLPF)?

NGO-INPUT:

- VNRs should have some obligatory and standard reporting categories - including on the environment.
- In “developing” countries, development assistance could be conditional upon progress with implementing environmental agreements, and incorporating into national development planning.

10) Encourage the active and meaningful engagement of all relevant stakeholders at all levels in the different forums related to the implementation of international environment law and environment-related instruments.

a) What actions can be taken to promote access to information and engagement of all relevant stakeholders at all levels in the different forums related to the implementation of international environment law and environment-related instruments?

b) How can Governing Bodies continue to support the active and meaningful engagement of all relevant stakeholders?

NGO-INPUT:

- Formulate standard protocols for stakeholder engagement.
- Budget allocations should also include MGS coordination
- Efforts should be taken to establish a MGS liaison office in Nairobi, and MGS coordination units/focus points at each MEA.
- Build significant online engagement platforms for stakeholder engagement and collaboration, also ensuring that those groups without digital access are fully catered for.
- There must be a real political will to remove stakeholders from the current role of "spectator" to that of "actor", by offering them, following the model of the World Labour Organization (ILO), "a deliberative voice" within UNEP and all international environmental institutions.
- Allow non-state actors to be able to directly bring requests within the control mechanisms of multilateral agreements.
- Measures should also include the strengthening of coordination of environmental networks in national and subnational levels and to work on producing a national environmental forum with environmental CSOs, government and private sectors (Whole-of-society approach).

11) Encourage the exploration of further ways for States Members of the United Nations and all members of the specialized agencies to support and make full use of the fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V), adopted at the fourth session of the United Nations Environment Assembly, in order to foster environmental rule of law and advance the implementation of environmental law at all levels.

a) How can Member States and members of the Specialized Agencies support the implementation of Montevideo Programme V and its efforts to promote the development and implementation of environmental rule of law, strengthen national-level capacity, advance the implementation of environmental law at all levels and contribute to the implementation of the 2030 Agenda for Sustainable Development?

b) How can the network of national focal points designated by Member States, pursuant to UNEA resolution 2/19, be supported and extended for exchanging information and building capacity in order to strengthen the application of Montevideo Programme V?

NGO-INPUT:

- Efforts need to be taken to disseminate the M. Programme V to various national bodies and to plan the necessary instruments and means (human, financial, strategic means) for its implementation.
- Undertake measures to include the objectives of Program V in their national strategies on major environmental themes.
- Integrating the objectives of the program into public policies to support research and education. Scientific projects funded or co-funded by the State must refer to the Montevideo Program and the achievement of the objectives of the Program must constitute an evaluation criterion for the selection of projects.
- Take measures to mobilize national authorities, starting with the Ministries, but also public bodies, independent authorities, etc. responsible at one level or another for the implementation of environmental law, on the objectives of Program V.
- Precisely define the missions of the national focal point to ensure good knowledge of the program and the involvement of all stakeholders at the national level.

12) Encourage the United Nations Environment Programme, as chair of the Environment Management Group, in collaboration with the other members of the Group, to continue to strengthen system-wide inter-agency coordination on the environment and to call for the active involvement and support of all members of the Group in the implementation of system-wide strategies on the environment.

- a. How can Member States and members of Specialized Agencies support the implementation of the UN System-Wide Framework of Strategies on the Environment of the Environment Management Group (EMG)?
- b. How can UNEP, as the chair of the Environment Management Group, in collaboration with the other members of the Group, strengthen system-wide inter-agency coordination on the environment and the implementation of system-wide strategies on the environment?

NGO-INPUT:

- See Para 2 above.
- Develop strategic objectives and outcomes for improved environmental governance for the EMG to catalyse, implement, measure and report on.

This document is a result of a consultation process, led by Stakeholder Forum (SF), with the many NGOs that were engaged in the earlier process on Res 72/277 (GPE), and new NGOs that started to be involved just now. SF organised a webinar as capacity building for the new-comers, and after that a consultation meeting to discuss a coordinated position as NGOs. Financial support was given by the Global Pact Coalition and Stakeholder Forum. For more info: Leida.Rijnhout@stakeholderforum.org