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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 invocable 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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