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REFORMING INTERNATIONAL ENVIRONMENTAL LAW FOR THE ANTHROPOCENE

This panel was convened at 10:15 a.m., Friday, June 26, 2020, by its moderator Cinnamon Carlarne of Moritz College of Law, Ohio State University, who introduced the panelists: Yann Aguila of Bredin Prat; Louis Kotzé of North-West University; Carla García Zendejas of the Center for International Environmental Law; and Deepa Badrinarayana of Chapman University.

Toward a Global Pact for the Environment

*By Yann Aguila**

These *Proceedings* remarks aim to address interrogations on a Global Pact for the Environment. A Global Pact for the Environment is a project for an international treaty that seeks to recognize environmental rights and duties for citizens, states, and businesses.

Since the French President Emmanuel Macron introduced the idea of a Global Pact for the Environment to the United Nations in 2017, negotiations have been ongoing at the UN. The first round of negotiations in Nairobi ended in May 2019 after the opposition of a few reluctant states. However, on August 30, 2019, UN Resolution 73/333 launched the beginning of the second round of negotiations toward a Global Pact for the Environment.

I. What Is the Pact?

A Global Pact for the Environment would consist of a concise text with the objective to recognize human rights and duties in the environmental field. Such a text would be a founding text in the same way that the Universal Declaration of 1948 is a founding text in the human rights field.

Plus, this text would complement the two International Covenants of 1966. These two covenants enshrined the two first generations of human rights. The first generation is related to civil and political rights, among which are the right to life, the right to self-determination, and freedom of speech. These rights are enshrined in the International Covenant on Civil and Political Rights of 1966. The second generation includes social and economic rights, that is to say, for instance, the right to health, education, and the right to work. This generation is recognized in the International Covenant on Economic, Social and Cultural Rights of 1966.

The third generation of human rights deals with the rights and duties toward the environment. However, an international pact that would enshrine these fundamental rights has not yet been adopted by the international community.

Nevertheless, international legal experts have been asking for such a text for the past thirty years. In 1987, the Brundtland Report introduced the idea of a global treaty that would give legal force to the most important principles of environmental law. In 1995, the International Union for Conservation of Nature proposed a Draft International Covenant for the Environment. Since then, this draft has been updated regularly. Finally, in 2017, an international network of experts,

* Partner, Bredin Prat.

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composed of a hundred legal experts proposed a Global Pact for the Environment. This network is called the International Group of Experts for the Pact. Their draft Global Pact for the Environment was introduced to the United Nations by the president of France, Emmanuel Macron, in September 2017.

Hence, the idea of a founding text that would recognize the fundamental rights and duties is not recent. A Global Pact for the Environment would be the logical outcome for decades of international environmental law.

II. Why Do We Need a Pact?

The preservation of the environment has gradually become a major issue in the international community. In the past several years it has become impossible to deny the alerts launched by scientists regarding climate change, plastic pollution, and biodiversity loss. On this matter, international environmental law has reacted in two different ways.

First, with the signing of several declarations, such as the Stockholm Declaration in 1972 and the Rio Declaration in 1992. These declarations are universal, and quote the principles of international environmental law, but they do not have legal value.

Second, international environmental issues have been endorsed by treaties, which, for their part, are legally binding. Nevertheless, these treaties are sectorial. For instance, the Paris Agreement of 2015 aims to deal with climate change. It addresses only one issue, whereas environmental issues are inseparable from one another. In addition, the existing treaties are technical: the language used in these treaties is not accessible to non-experts. This is a major issue, since law is made for citizens, and therefore should be accessible to them.

The lack of an accessible, global, and holistic text for the environment is the first main reason that justifies the adoption of a Global Pact for the Environment.

Secondly, a Global Pact would be very useful on different levels. It would have a major impact on international but also on national laws, the same way the European Convention on Human Rights impacted legal systems through Europe.

Indeed, a founding text creates a new dynamic in the legal system. First, lawmakers will have to enact new laws to concretize the principles. Second, it creates a dynamic in jurisprudence for courts.

A Global Pact would benefit citizens. Such a text is tangible, practical, and understandable for the majority of the population. It would give new rights to the people. For instance, the right to a healthy environment is not often recognized in domestic law. If a Global Pact is to be adopted, this right could be invoked by citizens before courts, directly (in monist countries) or indirectly (in dualist countries).

These are some of the many reasons why the Pact would benefit the international community in various scales and fields.

III. The Current Status of Negotiations for a Global Pact

The first round of negotiations ended with 143 states that voted in favor of a Global Pact, and five states that voted against it (the United States, Russia, Syria, the Philippines, and Turkey). The consensus rule in the decision-making process at the United Nations is interpreted as the unanimity rule. Therefore, the adoption of a Global Pact was postponed.

Nevertheless, the second round of negotiations began with the enabling resolution of August 30, 2019 that confirmed the need to adopt a Global Pact for the Environment. On May 8, 2020, Saqlain Syedah of Pakistan and Ado Lohmus of Estonia were nominated as co-facilitators with the purpose to lead informal consultations. These informal consultations between states and other UN groups

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aim to negotiate the next text for international environmental law. More specifically, these negotiations will lead to the adoption of a political declaration in 2022, during the next Earth Summit *Stockholm+50*.

This political declaration is the opportunity to reaffirm and consolidate the environmental rights and duties and the general principles of environmental law. Moreover, these negotiations for a political declaration are an opportunity to introduce new principles in international environmental law, such as the duty to protect the animals.

IV. Conclusions

A global framework for the environment is essential in order to enshrine fundamental environmental rights and duties. It has been called for by legal experts for three decades. In the current context of climate emergency, this period of time seems to be the right occasion for the international community to tackle the environmental issues.

Nevertheless, the decision-making process at the United Nations still follows the rule of consensus. This rule is interpreted as the rule of unanimity. This rule has been the source of failure in Copenhagen and during the third substantive session in Nairobi. The latter showed that the necessity of 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.

States and the international community need to reposition citizens at the center of international law in order to ensure their protection. A global pact would harmonize international environmental law, provide stakeholders with new rights and duties, and help to better protect the environment and its inhabitants.

Supplementary Material

To view supplementary material for this article, please visit https://doi.org/10.1017/amp.2021.18

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