

# ICC PRIMER ON THE UNITED NATIONS GLOBAL PACT FOR THE ENVIRONMENT

## What is the UN Global Pact for the Environment (the “UN Pact”)?

The initiative for a UN Pact aims to provide an overarching framework to international environmental law aimed at further solidifying, consolidating — as well as advancing — international environmental law in response to the pressing environmental challenges of our time.

The initiative also aims to improve the implementation of international environmental law in furtherance of the UN Sustainable Development Goals, as well as globally agreed environmental principles, goals and targets currently contained in an extensive patchwork of instruments, declarations and agreements.

## What could the UN Pact mean for business?

The UN Pact aims to become the cornerstone of international environmental law and strengthen the coherence of global environmental governance. If adopted, and depending on the final elements agreed by governments, the UN Pact could therefore have an impact on the rights and obligations of business as regards its interaction with the environment.

There are a wide range of ideas relating to the UN Pact held by different governments and other key actors. While there is not yet agreement on the substance or legal form of a UN Pact, it can be expected to include:

- an “umbrella” legal framework, which would aim to address fragmentation of existing environmental law, and induce some greater degree of uniformity of national environmental laws;
- codification and legal force to certain well-known principles considered in international law to be “soft law” (such as from the Rio and Stockholm Declarations);

It has also been suggested that a UN Pact could codify a new tier of human rights related to the environment (building on the UN’s two existing international human rights covenants on civil and political rights and on economic, social, and cultural rights).

## What is the timeline toward a UN Pact?

On 10 May 2018, the UN General Assembly adopted a resolution entitled “[Towards a Global Pact for the Environment](#)”. The resolution created an ad hoc open-ended working group open to participation of all UN Member States that is co-chaired by the Permanent Representatives to the United Nations of Lebanon and Portugal.

This ad hoc open-ended working group will consider the need for and possible form and content of any UN Pact. The deliberations will take place in two steps:

- 1. Gap analysis** — UN Environment and the UN Secretary General will prepare “a technical and evidence-based report that identifies and assesses possible gaps in international environmental law and environment-related instruments with a view to strengthening their implementation.”<sup>1</sup> The report is expected to be published by 30 November 2018 for review by UN Member States and other stakeholders.
- 2. Merits of a UN Pact** — The ad hoc open-ended working group will then be tasked with considering the findings of the report and will “discuss possible options to address possible gaps in international environmental law and environment-related instruments, as appropriate, and, if deemed necessary, the scope, parameters and feasibility of an international instrument, with a view to making

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<sup>1</sup> A/RES/72/277, §1.

recommendations, which may include the convening of an intergovernmental conference to adopt an international instrument, to the Assembly during the first half of 2019.”<sup>2</sup>

The first phase of the substantive sessions to discuss the need for and possible contents of a UN Pact will take place in Nairobi, Kenya in January 2019. Further sessions are expected to take place in March and May 2019.

By the end of Q2 2019 the ad hoc open-ended working group is expected to adopt a position on whether there is a need for a UN Pact — and, if so, what form any such instrument of this nature should take. Should UN Member States consider that a UN Pact is needed, a follow-on UN General Assembly resolution will be required to convene an intergovernmental conference to commence negotiations on the provisions of the instrument itself.

ICC, as an Observer to the UN General Assembly and UN Environment Focal Point for Business, will have the opportunity to participate in all of these deliberations going forward.

## Earlier proposals for a UN Pact

While the UN Pact will be developed from a blank page, the substantive deliberations may be informed by a preliminary draft text published in 2017 by the Club des Juristes entitled a “Global Pact for the Environment” (the “Pact Proposal”).

## What is the Pact Proposal developed by the Club des Juristes?

The Pact Proposal is a preliminary draft of an international treaty — comprised of 26 articles — seeking to address the fragmented nature and inconsistent implementation of international environmental law by bringing together its fundamental principles under one legally binding framework instrument.

The Pact Proposal was developed by a group of 80 recognized international environmental legal experts, the “Group of Experts for the Pact”, chaired by Laurent Fabius, former COP21 President and UN Environment Patron on Environmental Governance, and mobilised by the Environment Commission of the Club des Juristes, a leading French legal think tank.

## How did the Club de Juristes’ Pact Proposal come before the United Nations General Assembly?

On 24 June 2017, the Pact Proposal was presented at an international event in Paris, “Toward a Global Pact for the Environment: Action for the Planet, Action through Law.” On this occasion, French President Emmanuel Macron committed to introducing the Pact Proposal to the United Nations, which he did at a side event at the United Nations General Assembly on 19 September 2017.

The Pact Proposal has received early support from a number of countries, as well as NGOs, academic institutions and other stakeholders.

## What are the contents of the Pact Proposal?

Given that the Pact Proposal may be used as a reference in developing the UN Pact, it is worth noting some of its key provisions.

The first two articles of the Pact Proposal contain the core principles:

### **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.”

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<sup>2</sup> A/RES/72/277, §2.

If the Pact Proposal was adopted as currently drafted, it would be the first time the right to live in an ecologically sound environment would have legal value in international law.

The specific principles addressed in the remainder of the articles flow from these two core rights and duties. Some of them have previously been recognised as ‘hard’ or ‘soft law’ in sectorial or regional treaties, including: provisions on sustainable development, intergenerational equity, the no-harm and precautionary principles, the right to information and public participation in decision-making, and access to environmental justice.

The Pact Proposal also includes references to increasingly prevalent principles that are not currently recognised in international law – such as a commitment to ecological resilience and a non-regression principle, which calls on governments to refrain from repealing or weakening existing environmental laws, not to mention the remediation of environmental damages or the polluter-pays principle.

While these principles will be among the ideas and proposals that may be considered in negotiating a text for the UN Pact, it is still too early to tell which of them, if any, will be retained.

### **How can business engage?**

ICC, in its capacity as Permanent Observer to the UN General Assembly and as UN Environment Focal Point for Business, has been closely following the on-going negotiations toward a UN Pact – and through its engagement has emphasised the need for an open, transparent and inclusive process that includes consultation with all relevant stakeholders, including business.

ICC has also established a working group to monitor the development of the UN Pact and consider the implications for business. ICC members are invited to take part in this working group and share their views on the UN Pact, as it develops.

ICC is in active contact with key government representatives in New York, Paris and Nairobi to ensure that private sector views are taken into account as these negotiations progress.

ICC will continue to advocate for enhanced engagement with the private sector and on 9 January 2019 will host a major roundtable discussion in Paris with key policymakers and thought leaders in this space that will consider the business perspective on the UN Pact.

### **THE INTERNATIONAL CHAMBER OF COMMERCE**

ICC is the world’s largest business organization with a network of over 6 million members in more than 100 countries. We work to promote international trade, responsible business conduct and a global approach to regulation through a unique mix of advocacy and standard setting activities—together with market-leading dispute resolution services. Our members include many of the world’s largest companies, SMEs, business associations and local chambers of commerce.