

TOWARDS A GLOBAL PACT FOR THE ENVIRONMENT

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ABSTRACT

On the occasion of the UN General Assembly in New York on September 19th 2017, the French President Emmanuel Macron presented the draft of the Global Pact for Environment in front of Heads of States and Governments, representatives of the civil society and of the private sector, the 193 member states of the organization, in the presence of the UN Secretary General Antonio Guterres and of the President of the French Constitutional Council, Laurent Fabius¹.

This pact, if adopted, will complement the legal building of the fundamental human rights norms created by Rene Cassin², reinforced by Karel Vasak³ by creating the three generations of rights⁴. Each of these generations could now have its own Covenant. For the first two generations of rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted in 1966. For the third generation, this new Global Pact will come to cover the most part of rights. It will be the one that will lead mankind to "act for the planet, to act by law⁵".

The period following the creation of the United Nations Organization, the elaboration of the United Nations Charter and the adoption of the Universal Declaration of Human Rights is considered by the doctrine to be the contemporary era of human rights, characterized by the emergence of numerous regulations in the field of fundamental rights⁶.

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² First Nobel Peace Prize laureate, principal author and editor of the Universal Declaration of Human Rights of 1948.

³ University Professor, adviser to the Council of Europe (1969-1976). He was the publisher of the volume *Les dimensions internationales des droits de l'homme* (1978) and codicer of the volume *Les dimensions universelles des droits de l'homme*, 1990, both under the aegis of UNESCO.

⁴ The classification in three generations was first proposed in 1977-1979, when Karel Vasak was then the First Secretary General of the International Human Rights Institute in Strasbourg. He was also the director of UNESCO's Human Rights and Peace Division and then legal adviser to UNESCO and the International Tourism Organization. Generation I, civil and political rights, second generation, economic, social and cultural rights, third generation, the right to peace, development and the environment.

⁵ The motto of the French Jurists Club Conference from 24 June 2017 where the draft of this document was launched and where I had the honor to be invited.

⁶ The United Nations Commission on Human Rights, which ended its activity based on Resolution 60/251 of 15 March 2006, when it was replaced with the United Nations Human Rights Council, provided the international community with a universal framework of human rights, including the Universal

The 70 years since the proclamation of the Universal Declaration of Human Rights by the United Nations General Assembly, more precisely on the 10th of December 1948, have hardly diminished the power of the message conveyed by this document of exceptional importance, meant to consecrate a common ideal for all nations, the foundation on which the construct of human rights has been edified. The main author of the draft, René Cassin, laureate of the Nobel Peace Prize after the adoption of the Declaration, compared the latter with the porch of a temple sustained by four columns. The first column is the one of the personal rights and liberties. The second regards the rights of the individual in relation to the groups he belongs to and to the elements of the outer world. The third pillar is the one of the spiritual faculties and the fourth, the one of the economic, social and cultural rights. Above these columns should be set a gable that binds the individual and the society⁷. The basic principles that guide the United Nations' entire outlook about human rights are the universality, the indivisibility, the interdependence and the inalienability of human rights.

Another evidence in favor of this principle is the very passing of the two Covenants under the same resolution and the opening for signature on the same day. Also, Resolution 42 (V) of December 4th 1950 by the General Assembly had explicitly asserted that enjoyment of the civil and political freedoms as well as the economic, social and cultural rights are related and condition each other and that the man deprived of economic, social and cultural rights does not represent the human person that the Universal Declaration of Human Rights considers to be the ideal of the free man. The very Preamble to the International Covenant on Civil and Political Rights asserts that „the ideal of free human beings enjoying civil and political freedom and freedom from fear can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”. The Conference of Teheran of 1968, devoted to the 20th anniversary of the Universal Declaration of Human Rights, reiterated the great importance of this principle. The Declaration was passed by a vast majority, namely 48 States⁸ voted yes, 8 States abstained⁹ and there was no vote against. Two States were absent¹⁰. The Declaration appreciated from the very moment it was

Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights,, respectively their Protocols, as well as other fundamental human rights treaties.

⁷ Irina Moroianu Zlătescu, *Drepturile omului – un sistem în evoluție*, Ed. IRDO, Bucharest, 2008, p. 79-97.

⁸ Afghanistan, Argentina, Australia, Belgium, Burma, Bolivia, Brazil, Canada, Chile, China, Columbia, Costa Rica, Cuba, Denmark, the Dominican Republic, Egypt, El Salvador, Ecuador, Ethiopia, France, Greece, Guatemala, Haiti, India, Iraq, Iran, Iceland, Lebanon, Liberia, Luxembourg, Mexico, The Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, The United Kingdom, The United States of America and Venezuela.

⁹ The Soviet Socialist Republic of Belarus, Czechoslovakia, Poland, Saudi Arabia, The Soviet Socialist Republic of Ukraine, The Union of South Africa, The Union of Soviet Socialist Republics, Yugoslavia.

¹⁰ Honduras and Yemen.

passed as a first step to the institutionalization of human rights and the fundamental freedoms at international level. It was a document of an exceptional value; it was the first time when an organized community of States elaborated such a document endorsed by the authority of the assembly of Member States of the United Nations and that of tens and hundreds million people all over the world. But, according to a memorandum of the UN legal service, "a Declaration is a formal and solemn instrument, only justified in rare occasions, when very important principles of durable value are being enunciated".

Watching closely a process of elaboration, on the 16th of December 1966, the General Assembly passed under Resolution 2200 A (XXI) not one covenant, as had been anticipated as far back as 1947/1948, but two covenants and an optional protocol, namely the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

As a result of this, the International Charter of Human Rights – of which only the Declaration had been elaborated by 1966 – was completed by these documents. As was shown, it was to be added later other documents as well.

A number of similar provisions are included in the two Covenants. Thus, each Preamble enumerates the general principles of human rights taken from the Declaration, that is, those referring to the inherent dignity of the human person and the ideal of the free human being; the States' obligation imposed under the Charter of the United Nations to promote the observance of human rights is reasserted. „in almost identical words, the Covenants state the principle according to which „recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, peace in the world". Both Covenants reassert the principle according to which the right to self-determination is universal; States are required to assist the achievement of the right of peoples to make their own decisions applicable within their own territories as well as respect this right in third states. By virtue of this right, peoples shall freely decide upon their political status and freely ensure their economic, social and cultural development, for which they shall freely make use of their natural assets and resources. The provisions of articles 3 in the two covenants are also similar and refer to the commitment of States to ensure the equal right of men and women to enjoy all the economic, social, cultural, as well as the civil and political rights set forth in the respective covenant. Thus, not only is the principle of equality between men and women stated, but also the States are required to make it become a reality. However, the rights and freedoms laid down in the two covenants are not absolute and can, if necessary, be subject to limitations. As a rule, the International Covenant on Civil and Political Rights provides that such limitations can only be applicable when provided under the law and if they are necessary to ensure national security, public order, public health or morality, or the rights and freedoms of others.

It should be mentioned, that the Resolution 23(XXXVI) of February 29th 1980 insisted on the fact that in the exercise of his/her rights and freedoms, every person shall only be subject to limitations established under the Charter of the United Nations, the Declaration, the two Covenants and the other instruments that had been elaborated. Any illegal limitations or persecutions are incompatible with the commitments assumed by the States.

The two Covenants as well as the Optional Protocol were passed and opened for signature, ratification and accession under the same resolution by the General Assembly (2200A(XXI)) of December 6th 1966. The International Covenant on Economic, Social and Cultural Rights came into force on January 3rd 1976. The other Covenant came into force on March 23rd 1976.

In 1985, the Economic and Social Council created the Committee of the economic, social and cultural rights by restructuring the workgroup established in 1978. The Committee was tasked to examine the reports submitted by the States and formulate general recommendations for the Council. Among others, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted in 2008, authorizes the Committee established under the Covenant to receive and analyze communications.

The provisions included in the fourth part of the Covenant, articles 28-45, are of a particular importance as they refer to the ways the Human Rights Committee shall be established, its structure, election of the members, its competences and work procedures.

The Optional Protocol to the International Covenant on Civil and Political Rights includes additional provisions related to the Human Rights Committee established under the Covenant. They regulate the mechanism by which the complaints submitted by individuals who feel one or several of their rights have been violated, shall be examined.

The Protocol authorizes the Human Rights Committee, created under the Covenant, to receive and examine the communications submitted by individuals who claim to be victims of the violation of one or several rights laid down in the Covenant. By virtue of articles 1 and 6 of the Protocol, any State Party to the Covenant that becomes Party to the Protocol recognizes the competences of the Committee to receive and consider such communications. As a result, any individuals who claims to be a victim of such violation and has exhausted all domestic remedies may submit a written communication to the Committee.

The Second Optional Protocol to the Covenant on Civil and Political Rights, which deals with the abolishment of the death penalty, was passed by the UN General Assembly on December 15th 1989, following long-lasting debates.

It is asserted in the Preamble of the Protocol that „abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights”.

All these instruments joined together in the International Charter of Human Rights are of the utmost importance. Their binding nature has been proclaimed on numberless occasions; their provisions have been and still are the basis of a very large number of decisions made by the UN bodies and by the regional and national organizations; many of the member states of the international community have included them in their national legislations. The Universal Declaration of Human Rights and the two Covenants were the model and source of inspiration to a multitude of other instruments which, one way or another, further develop the various provisions they include and add new ones, in the spirit they have consecrated.

First there have been established instruments¹¹ and mechanisms¹² only for the first two generations of human rights. For the third generation of human rights¹³, the works went slower. The idea of a Pact for the third generation of rights has only spread shortly before the 70th anniversary of the Universal Declaration of Human Rights. Even if this third generation includes the right to peace, the right to sustainable development and the right to environment, the new Pact only sets legal norms for the last two categories of rights.

The objectives of the Global Pact for the Environment, the content of which is achieved through consensus¹⁴, enshrine the fundamental commitments of the states to the environment as well as the rights and obligations of citizens and businesses towards the planet. The Global Pact for Environment seeks to create a legal text that, together with the Sustainable Development Objectives adopted at the UN General Assembly in New York in September 2015¹⁵, represents the pillars of global environmental governance. The principles that it enshrines are already the subject of a broad consensus, being laid down in various declarations such as the Stockholm Declaration of 1972, the World Nature Charter of 1982 and the 1992 Rio Declaration, which recognize human rights in a healthy environment and the obligation of states to protect it¹⁶. Since their adoption, they have progressively contributed to the circulation and implementation of fundamental principles, with over 500 international environmental treaties currently in place. But given that the declarations have only moral strength, but lack legal force, this pact will take the form of a treaty of legal value, to become an instrument that can be invoked before the courts, creating a jurisprudential dynamic. It must be accompanied by a

¹¹ In the form of Covenants.

¹² Through the Protocols.

¹³ According to the classification of Karel Vasak.

¹⁴ As the initiators of the Covenant underlined, it restores in a binding treaty the recognition of the right to a healthy environment for every person. This right derives the right of citizens or more of civil society to require states to respect the environment.

¹⁵ In relation to the objectives for sustainable development, see Irina Moroianu Zlatecu, *Noi obiective pentru dezvoltarea durabilă*, Ed. IRDO, Revista Drepturile Omului, no. 2/2015, p. 7 et seq.

¹⁶ See Irina Moroianu Zlătescu, *Drepturile Omului – un sistem în evoluție*, Ed. IRDO, București, 2008, p. 207 et seq.

tracking and control mechanism. Thus, each state will have to send regularly to a body set up under the Covenant a report on its application.

After the launch of the UN Pact, of course follows the real work of official drafting of the definitive form of the document. In principle, it is desirable that this activity brings together international lawyers representing the five continents. The first stage in which the project was drafted began after December 12, 2015, when the international agreement following the UN Conference on Climate Change in September 2015 was adopted in Paris¹⁷. It was ratified by many states in 2015.

The Jurists' Club¹⁸ concluded that the 2015 and 2016 dynamics, the adoption of the above-mentioned Paris Agreement, the adoption of sustainable development objectives can be prolonged through a new legal step. It found that there is no important international text yet that has legal value and which brings together the fundamental principles of environmental law. This text, which would have the vocation to become the cornerstone of international environmental law, would be the Global Environment Pact.

Further on, until the 23rd of June 2017, a large number of French lawyers, theorists and practitioners, made the avant-garde draft of the pact and debated it with law experts from over 40 countries on June 24th, in the Sorbonne Grand Amphitheater under the presidency of Laurent Fabius and in the presence of eminent lawyers, magistrates of Constitutional Courts and Supreme Courts, teachers from prestigious universities around the world, etc. The high-profile international event enjoyed the presence of former UN Secretary-General Ban Ki-moon. The draft pact, which had initiators as Laurent Fabius and Yann Aguila¹⁹, was also supported by Marry Robinson, Paul Polman, Sidiqui Kaba, Luc Lavrysen, Swatanter Kumar, Arnold Schwarzenegger²⁰, Anne Hidalgo, Laurence Tubiana, Manuele Pulgar-Vidal, Jean Jouzel, Antonio Benjamin, and others.

It was an impressive moment, both through the quality of the participants and their impressive number. On this occasion, the pact was handed to the President of France, who pointed out that "all these joint efforts deserve a universal single framework" and promised to present the document in September 2017 at the UN Summit in New York, which, in fact, as can be seen from the first lines of this study, has been achieved. As set out in Paris on the 24th June 2017, the day after the

¹⁷ From November 30 to December 11, Paris hosted the 21st session of the Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change (UNFCCC) and the 12th Session of the Meeting Parties to the Kyoto Protocol (CMP11).

¹⁸ It is a framework for debates and legal proposals. It brings together academics, magistrates, lawyers, French jurists. It is a think tank that has formed around two major objectives: encouraging legal debate and innovation, proposing to strengthen the role of law in the public debate and to contribute to the understanding of legal issues by the general public.

¹⁹ Lawyer, President of the Environment Commission of the Jurists Club.

²⁰ The ex-governor of California supported the project even one month after the exit of the United States of America from the Paris Agreement. The United States returned to the position of supporting the project during the UN New York Summit in September 2017.

summit organized by France on the occasion of the ministerial week at the 72nd Session of the UN General Assembly, on the 20th of September 2017, when the Columbia University in New York, together with the Colombia Center for Sustainable Investment, the French Lawyers Club, the Sustainable Development Network, the Carlos III University of Madrid, and others, organized a conference on the World Environment Pact²¹.

This session will address the case of the Global Environment Facility from the point of view of international governance, analyzing the state of the existing governance tools and discussing the content that the pact should have.

Thus, it has been given the opportunity to review the legal and political framework set out in the Pact in the light of existing agreements and environmental law principles in the context of the current global policy. The conference dealt with the purpose and impact of the new document. Among the debated issues was the normative framework of the pact, the legal challenges and the opportunities offered by it as well as the ways in which responsibilities will be imposed on both states and corporations. Issues have also been discussed with regard to the implementation of existing international case law on the environment. In the same framework, the mechanisms proposed in the pact and the way in which they operate have been explained.

At the same time, proposals were made regarding the activities of various bodies that contribute to the achievement of the objectives of the 2030 Agenda and to finding opportunities for collaboration between companies, governments, state institutions and civil society.

In order that this pact becomes reality, it is necessary to fight against climate and environmental insecurity, to cooperate in achieving world environmental law, to create the conditions for responsible economic and social development and a strong international commitment.

A Global Environment Pact will eliminate many of the gaps in international environmental governance. Unlike the specific sectoral agreements of the Treaties adopted over time, this pact would provide a text of general applicability that would lead to the coordination of norms and institutions in international environmental law. In addition, it would codify the principles stated in the agreements so far, establishing legal rights and responsibilities that can be invoked in national and international courts.

All this would transform the World Environment Pact from an ideal into a reality of great international visibility.

Nevertheless, it is important to be noted that both the Covenant on social, economical and cultural rights and the Covenant on civil and political rights only

²¹ The initiator was prof. Dr. Jeffrey David Sachs, director of the Columbia University Institute for Sustainable Development, special advisor to the UN Secretary General for Sustainable Development Objectives.

contain a state review procedure. This procedure obliges the states to submit periodic reports to the different Committees on how the rights are being implemented in their country. The Committees will examine each of the reports and will address their point of view and recommendations to each member State. These recommendations are called *concluding observations*. The main disadvantage of this procedure is that the individual cannot directly submit his claim to an international body. At the time the two Covenants have been ratified it was very unlikely to reach a consensus regarding the establishment of an individual claim procedure. The State parties were not ready to give up on certain aspects of their sovereignty and to appear as equal parties with individuals in front of an international body. Thus, it has been tried to introduce an individual claim procedure through Optional Protocols, a measure considered by the doctrine to be one of the greatest achievements in the recent development of the International Human Rights Law. The Optional Protocols establish the jurisdiction of the Committees to examine individual complaints/communications regarding alleged violations of the Covenants. However, an individual complaint can only be submitted against a State party that ratified the corresponding Protocol.²² Taking this development into account, one of the most important questions raised in the context of a Global Pact for Environment is the question of its enforcement. Article 21 of the Draft text only foresees a monitoring body, a Committee consisting of independent experts entitled to receive periodic reports of the State parties regarding their progress in implementing the provisions of the Pact. Further, one year after the entry into force of the Pact, the Parties will have to establish the modalities and procedures by which the Committee shall exercise its functions. It remains open, if the third Human Rights Covenant will also be followed by an Optional Protocol establishing either an individual complaint mechanism or another enforcement mechanism.

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²² Kälin Walter, Künzli Jörg, *Universeller Menschenrechtsschutz – der Schutz des Individuums auf globaler und regionaler Ebene*, 3rd edition, Basel, 2013.