**International Council of Environmental Law**

**- toward sustainable development -**

**Conseil international du droit de l’environnement**

**-vers un development durable –**

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Essential Principles of International Law,

The Pact and the U.N. 2030 Agenda

Statement of Prof. Nicholas A. Robinson, ICEL Executive Governor

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*A Tool in Implementing the 2030 Agenda”*

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Since 1969 when it was established in New Delhi, the International Council of Environmental Law has advanced knowledge about how laws further the rational use of natural resources and conservation of nature. Today, these laws provide the foundations for sustainable development. As an international non-governmental organization accredited to the UN Economic and Social Council, ICEL has shared its expertise with ECOSOC, UN Members States, and international organizations. ICEL’s members are senior experts drawn from all of the UN regions and all legal traditions: civil law, common law, socialist law, Islamic law, and customary law. Many ICEL members were honored to have been participants in the Group of Legal Experts that initially recommended a “Global Pact for the Environment” in Paris in June of 2017. ICEL welcomes UN General Assembly Resolution A/72/L./51 (7 May 2018) “Towards a Global Pact for the Environment,” and will provide ICEL members’ expertise in the upcoming consultations of the open-ended working group in New York in and Nairobi, where ICEL has resident representatives. ICEL is pleased to participate in this High Level side event for the HLPF on the Sustainable Development Goals.

ICEL participated in the 1972 Stockholm Conference on the Human Environment. States have elaborated the legal principles articulated at that seminal conference, and enabled the articulation of environmental laws in every nation to support sustainable development. These national environmental laws are complemented by a number of international environmental law agreements, such as those for protecting the oceans under the UN Convention on the Law of the Sea, or on combatting desertification, sustaining biological diversity, or coping with climate change. Much remains to effectively implement these laws. Since 2015, and the adoption of the Sustainable Development Goals, the overarching aim of such implementation is agreed to be attaining the SDGs via the 2030 Agenda.

As illustrated by the current U.N. consultations to progressively develop the international law for the protection of biodiversity in areas beyond national jurisdiction (BBNJ), there are many topics where laws do not yet address how to safeguard the natural systems that support human life and socio-economic endeavors. One-third of Earth’s oxygen depends on the marine phytoplankton of the high seas. Laws do not yet manage Earth’s nitrogen cycle, which is being destabilized. Wetlands laws are incomplete, and scarcely any states manage peat, where 1/3 of carbon dioxide is sequestered. Alien Species are moving into nations worldwide, with insect-borne infectious diseases in tow. Scientists in every state can identify gaps in their country’s legal systems for stewardship of the natural environment. Many States would benefit from capacity-building to enable more effective implementation of their existing environmental laws, and since ecological systems link all UN Member States together in Earth’s biosphere, it is in every state’s interest to build effective national implementation of the environmental laws. This is the proven lesson of the global cooperation to eliminate gases that erode the stratospheric ozone layer, under the 1985 Vienna Convention and 1987 Montreal Protocol, and associated agreements.

Despite the progress in fashioning national and international laws for the strengthening the “environmental pillar” of sustainable development, the problems of environmental degradation are increasingly evident in all regions. The consensus among the world’s senior environmental law experts is that there is still a missing internationally norm, the “right to the environment,” whose recognition could unite the application of the diverse environmental laws. States will always organize their governmental agencies around different national priorities, whether for agriculture, industry, urban settlements, or other socio-economic aims. Each sector will incrementally impact water supplies, add to air pollution, produce wastes, and aggravate or ameliorate the public health and security. No one agency can produce sustainable development. All agencies have a role to play, which is the wisdom recognized by the UN Sustainable Development Goals. The 2030 Development Agenda needs all sectors to unite behind each of the SDGs. They are interdependent.

In 1972, the States gathered at Stockholm articulated this realization in the UN Conference on the Human Environment’s concluding statement:

“Life holds to one central truth: that all matter and energy needed for life moves in great closed cycles from which nothing escapes and to which only the driving fire of the sun is added. Life devours itself: everything that eats is itself eaten; every chemical that is made by life can be broken down by life; all the sunlight that can be used is used. Of all that there is on earth, nothing is taken away by life. And nothing is added by life – but nearly everything is used by life, used and reused in thousands of complex ways, moved through vast chains of plants and animals and back again to the beginning.”

These are the “laws of nature.” It has been the role of environmental law to help humans learn to fashion their human laws to respect these laws of nature. By doing so, there can be ample water for all, a verdant planet, in short the “future we want.”

Principles of law are essential at both national and international levels in guiding socio-economic undertakings. Most environmental laws around the world reflect substantially the same principles. Because these principles are scattered in different statutes or appear in different forms in multinational environmental agreements, the near universality of acceptance of these shared norms is obscured. ICEL is compiling digests of where principles are agreed across all UN regions, for the forthcoming consultations under UNGA Res. A/72/L.51.

Restating these principles is important. In 1991, at preparatory committee meetings for the UN Conference on Environment & Development (UNCED) in New York, ICEL participated in the drafting of what became the 1992 Declaration of Rio de Janeiro on Environment & Development. ICEL thereafter worked with States and the UN with respect to implementation of these principles, which has been widespread. By articulating the principles of the Rio Declaration, the UN General Assembly made it possible for individual states to understand and embrace the diverse principles as the opportunity to do so presented itself. Progressively, over time, the principles have become a legal foundation for sustainable development in states from all regions. The values of these principles are set forth in Chapter 3 of the UNEP *Training Manual on International Environmental Law* (2006; Nicholas A. Robinson & Lal Kurukulasuriya, editors; available at http://digitalcommons.pace.edu/lawfaculty/791/).

Adoption of the UN Sustainable Development Goals presents a new opportunity for the General Assembly to articulate the shared principles that will be essential to attaining the SDGs. The incomplete and fragmented character of environmental law is likely to retard achieving the SDGs. If states can agree on a common set of principles – most of which they already explicitly embrace – the principles can guide state practice to support the SDGs. Moreover, adhering to these general principles of law can guide conduct in subject areas were treaties or national legislation are lacking. The principles also would afford guidance for tribunals and specialized agencies in their decision-making.

What about alternatives to a Global Pact? To be sure, the coherence either among states’ international obligations under multinational environmental agreements or across the diverse duties assigned to ministries in their national governments, could be sought by means other than by endorsing a Global Pact for the Environment. The alternatives would take more time to become agreed, well beyond 2030, and meanwhile environmental degradation trends exacerbate. For example, a number of experts propose negotiating a “third Covenant” on human rights for the environment, but it took nearly two decades to codify the Universal Declaration of Human Rights into the two extant Covenants. Some urge merely adoption of a new “soft law” declaration rather than a Pact, but as with the 2002 New Delhi Principles on Sustainable Development (International Law Association), even the most well drafted non-binding declarations may not change state practice fast enough. The Rio Principles took more than 20 years to become widely recognized within nations, and implementation is still mixed. Alternatively, closer collaboration among the Conferences of the Parties of the Multilateral Environmental Agreements has been urged, under existing treaties. However, efforts to do so are slow and themselves fragmented. Even the 2010 “Aichi Biodiversity Targets” do not reach all international organizations that guide management of nature. The UN itself has encountered many problems in coordinating the many development programs and organization at world or regional levels. Principles do not need a bureaucracy. They apply directly, once recognized. Some urge a “no action” alternative, to let the existing systems go on “as is,” but this is inconsistent with UNGA Res. 70/1 (25 September 2015), which adopted the UN Sustainable Development Goals. No action undermines sustainable development goals.

Endorsing a Global Pact has the benefit if providing an agreed and binding framework around the world, relatively quickly. One need not debate wither a sustainability norm has been recognized as a general principle of law, or become so universally observed as to be a customary law norm. Once in force, the treaty format binds (*Pacta sunt servanda*). Moreover, clarifying already applicable principles of law in a Global Pact does not require budgets or new commitments. It is a “least difficult” step in support of Res. 70/1. As UN Environment, the Organization of American States, and the IUCN World Commission on Environmental Law have explained, the “environmental rule of law” is a proven pathway for attaining the Sustainable Development Goals (see, e.g. <http://www.oas.org/en/sedi/dsd/environmentalruleoflaw_selectedessay_english.pdf>).

Observing the principles of law restated in the draft global pact for the environment is essentially a task for national governments. They will individually decide how to observe them, as is the case with other general principles of law. Having an agreed set of principles will “level the playing field” and encourage cooperation among states, which can be assured all others a have similar outlook. It will enable sharing “best practices” and foster capacity building. ICEL values agreement on the principles themselves, as they possess strong, normative authority. It is less urgent to couple them with a compliance mechanism, as adherence to principles are different than the sorts of state obligations for phasing out ozone-depleting substances under the Montreal Protocol, whose non-compliance procedures helps States Parties to ensure implementation of their treaty duties. The principles of 1992 Rio Declaration succeeded because of their intrinsic authority. States may wish to provide for a conference of the parties, to address any further amendments to the Pact.

More than 170 states have recognized the right to the environment in their national constitutions and basic laws. France’s Charter of the Environment provides an instructive illustration. The content of the first two principles of the draft Global Pact (right to an ecologically sound environment and duty to care for the environment) is thus already accepted law around the world at the national level. The General Assembly has already recognized the right to water, and endorsed the other principles in many different contexts. The principle of resilience, Article 16 in the proposed Global Pact, while implicit in other principles, should be restated independently to encourage states to design resilience into preparations to cope with climatic and other environmental disruptions. In our world of legal pluralism, it is likely that state practice under a Global Pact will witness different legal systems and states developing robust applications of the principles, with innovations that accelerate sustainability objectives.

Arguably, the greatest hindrance to implementing the 2030 Agenda is the lack of shared commitment to making the Agenda the over-arching priority of finance ministries, education ministries, security ministries, in many states. Regions and ministries have understandably focus on their immediate interests. They exist as in a “silo” and often do see wider interests. This has impeded sustainable development in the past and will undermine the SDGs. Providing a set of common governing principles has the capacity to broaden this focus into a widely shared perspective. The UNGA debate about the proposed principles of a Global Pact will itself promote a shared perspective among nations. The endorsement of a Global Pact will set the stage for making agreement on giving priority to the 2030 Agenda. Each of the Pact’s principles can be aligned behind different SDGs and their agreed indicators. The principles can also encourage states to align decisions of the conferences of the parties under the multilateral environmental agreements inn support of the SDGs. These are mutually complementary, not competing, objectives. For human society to thrive in Earth biosphere, the laws of states will need to better reflect the laws of nature. The legal principles of the Global Pact are an essential foundation for a sustainable world.