

Essential Elements for Developing an Effective & Coherent Global Pact for the Environment: Suggestions from Civil Society



The following document is time-sensitive. It has been written to support UN Member States in the Open Working Group as they begin to identify gaps in environmental legislation; and our suggestions are thus offered for consideration and inclusion in the Secretary-General's Report. It contains, among other things, commentary on elements of the preliminary draft and principles contributed by the Group of Experts for the Pact, for which we are duly grateful.

Introduction:

All people share the need for a healthy environment. No one is exempt. All people need fresh air to breathe, clean water to use and drink, sufficient nutrient rich soil and the weather patterns required to produce the food we need to eat, and a thriving resilient environment that can provide the resources needed to sustain our individual and collective survival and quality of life.

Once these subsystems of the Earth are safeguarded and sustainably available to all, a basis will be provided to form for a strong and resilient economy, including healthy and fulfilled human beings who contribute to the well-being of humanity, economy and society.

The Universal Declaration of Human Rights, along with various other human rights instruments insist that all people have the right not only to clean water, food, healthcare, housing, etc. all of which are dependent upon having a healthy and abundant natural environment, but also are entitled to a “social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.” In addition, the Preamble states that “every individual and every organ of society... shall take progressive measures, both national and international, to secure the universal and effective recognition and observance of these same rights and freedoms.”

The Universal Declaration speaks to the needs of and protects all people, not just the most vulnerable, for in the end the rich, poor, powerful, marginalized, we all depend on one another for a healthy environment, strong economy and peaceful society. The alternative is a world of unbridled competition, scarcity and despair with no real winners and a diminished quality of life for many if not all.

The *Commons Cluster* and the *Partnership on the Rights of Nature: Integrating Nature into the Implementation of the SDGs* therefore strongly support a strictly enforceable and strong and fair Global Pact for the Environment in the interest of all.

We wish to thank France and all those many Nations that have supported the initiative to establish a ***Global Pact for the Environment***. This is critical at a time when people's lives and livelihoods are being threatened by human's impact on Nature, including those plants and animals, with which human life and well-being is so deeply inter-linked.

No person can escape the effects of climate change, the over consumption of fresh drinking water, nor the rate of species extinction, forest loss, stratospheric ozone depletion, ocean acidification, biochemical flows of the phosphorus or nitrogen cycles, or the introduction of novel entities. And since it is the sum of all human actions that will determine whether we can maintain planetary boundaries that are hospitable to human life, it is essential that as many people and governments as possible feel compelled to support the recommendations of the Open Working Group. And should a Global Pact be required—we have no doubt that this will be the case—that all feel confident that by supporting this wholeheartedly their best self-interest is being served. For all are needed to bring to bear what motivates them individually and collectively, their rich diversity as well as the skills and tools at their individual disposal.

Without the active participation of civil society, the deliberations of the OWG and any resulting Pact for the Environment cannot but fail

For this reason, it is also essential that civil society be fully included first in the deliberations and negotiation process, then in helping to adopt any legislation for implementation, and finally in helping to implement the Pact. For civil society is critical to

ensure that it is as strong and relevant as possible and is fully implemented at all levels of government, as well as by civil society.

The *Commons Cluster and the Partnership on Nature: Integrating Nature into the Implementation of the SDGs* consist of representatives of mainly UN ECOSOC accredited organizations, academics, and Indigenous Peoples as well as other organizations and individuals. These are united by their dedication to helping UN agencies and Member States as they search to develop policy and implement initiatives for the well being of all people and Nature as a whole. We share this aim with other organizations that are also likely to take a leading role in the work of the Open Working Group and possibly also the formulation of a Global Pact for the Environment.

Building on the diversity and expertise among the members of the above networks and organizations, we offer the following suggestions in order to garner support from as many people as possible while ensuring the development of an effective and fully enforceable Global Pact for the Environment.

The ideas presented here can eventually be divided under three headings that we suggest the Secretary-General's Report along with the Open Working Group also consider and recommend, along with a fourth section on Modalities for Participatory Discussion and Dialogue:

- 1. Declaration, Chapeau or Summation of Basic Principles**
- 2. Gaps in existing standards, a binding agreement, the need for binding legislation, and legal institutions necessary for its implementation**
- 3. Recommended actions and examples of best practices**

The advantage of including these diverse sections is that this will facilitate the negotiations of a Pact if it is determined that it is needed since Member States can first discuss what is to go into the Pact and then later, once the primary topics and essential details have been agreed upon, their exact formulation and what goes where can be determined.

The suggestions that follow are presented in a logical order and would fall under one of the three headings mentioned above. The sections entitled "Benefits" and "Challenges" provide food for thought to promote further constructive dialogue on each of the points suggested.

We very much appreciate the preliminary draft by the Group of Experts for the Pact (GEP), led by Le Club des Juristes. This provides a good basis to begin a discussion, which builds on many of the points made. The advantage that working from their draft has, is that in-depth thinking has taken place and initial thoughts have been formulated that constitute an excellent foundation for further discussion.

Here are some suggestions, which build on the important thinking that went into this first step.

DECLARATION, CHAPEAU OR SUMMATION OF BASIC PRINCIPLES

I. THE IMPORTANCE OF COOPERATING WITH AND RESPECTING NATURE

1. Rights of Nature.

As human beings we rely on Nature both socially and economically, as well as for our very well being and survival itself. Nature, although deeply affected by human activity, has survived many cataclysms and has 15-plus billion years of experience of surviving—an experience with which humans can align themselves, but are unable to oversee. It is therefore to our advantage to build on the forces at work in Nature that support human life and indeed all life on Earth.

This can be done by legally respecting and protecting the inherent rights of Nature. Doing so evolves our treatment of Nature from being mere “property” to a co-inhabitant of our shared planet - upon which the well being of all of life ultimately depends. Indigenous peoples across the world have recognized Nature's inherent value and rights for millennia. Already, Ecuador and Bolivia recognize rights of Nature in their Constitutions and at the national level, and dozens of local and regional governments recognize Nature’s rights, as well. The rights of rivers in particular are being recognized worldwide, including in New Zealand, Columbia, and Mexico City.

A listing of such laws along with establishing court cases can be found at:

<http://www.harmonywithnatureun.org>

As such, the Rights of Nature, where this has not yet been implemented, must be considered a serious gap in legislation wherever it occurs in the world and should eventually be included in the Global Pact for the Environment.

Benefits

- *Nature is the basis for human survival. It is imperative that this insight motivates us as we proceed.*
- *Such an approach will restore the balance between the 3 approaches to the SDGs: Nature, the economy and society. For although Nature provides the foundation for human survival, as well as for social and economic well-being, discussion of society and the economy tend to take centre stage more often than the environment; and when the environment is discussed it is often with regard to how it can contribute to economic well being. In the implementation of the Millennium Development Goals, Goal 7 lagged behind. It is therefore vital that we more strongly emphasize the importance of Nature as the foundation from which all else becomes possible.*
- *It is essential that we recognize that Nature has rights that are as important as human rights, in fact, without effective stewardship of Nature there can be no Human Rights.*
- *A number of governments from national to local levels have already included the Rights of Nature, bioregions, etc. in their constitutions and the UN General*

Assembly has adopted a number of Resolutions on Respecting the Rights of Nature, so this approach already has support.

- *There is an increasing body of supportive scientific thinking on Earth Jurisprudence.*
- *Native peoples, small-scale farmers and others that depend directly on Nature for their livelihood, as well as Nature communicators and scientists with relevant instrumentation can help people become more sensitive to subtle signals being emitted or communicated by Nature with regard to the effects of diverse human actions. Here, building on the support of civil society everywhere, can promote a more in-depth understanding of how to be more sensitive to and how we can more-so work with and respect Nature. Such understandings of and communications with Nature ought to be included in the principles put forward by the OWG and considered during any negotiations leading to an Environmental Pact.*
- *More about the benefits of this "Earth Jurisprudence" approach can be found in a paper by environmental attorney Cormac Cullinan.*

Challenges

- *In the past, Nature has been seen and treated as an infinite resource for human exploitation. While this mindset is beginning to change, it is essential that humans begin to understand more-so just how much our very survival and well-being depends upon the well-being of Nature as a whole as well.*
- *While we are able to stand apart from the economy and society and look at these "objectively" from the outside, we are an integral part of the sub-systems that constitute the Earth System as a whole. Our relationship to the subsystems (geosphere, biosphere, hydrosphere and noosphere) are in constant flux and affect all we do and think through the food we eat, the water we drink, the air we breathe, and the thoughts we think. Traditional scientific methods as practiced in the West, whereby parts of a system are kept constant while other parts are studied and analysed have not helped us in establishing constructive interaction with Nature. So, understanding our relationship with Nature requires that we integrate faculties such as intuition as a way of creating a more constructive relationship with Nature.*
- *This aspect of the mind is not consciously used as a part of what is referred to as the "rational" mind by the (Western) scientific and technological community. Intuition, no matter how important and general its use, is therefore not typically considered as valid as other methods used by scientists, etc. However indigenous cultures have long respected and been based upon such knowledge as is directly communicated by or seen in nature. And such scientifically based efforts and initiatives as biomimicry, herbal medicine, agro-ecology and agroforestry, and transitioning to a circular economy are largely dependent upon our efforts to learn from and communicate directly with nature.*

2. The Recognition of Animal Sentience and Welfare is Integral to the Rights of Nature and Can Greatly Support Us As We Develop a More Constructive Relationship to Nature as a Whole.

While many people have not considered animal sentience, the ability of animals to feel states of suffering and well-being, it is important to recognize that the wellbeing of humans, nature and animals are intrinsically linked. These linkages include farmers whose livelihoods depend on the constructive interaction they have with their farm animals, people and their companion animals, Indigenous Peoples, Nature, and a growing number of scientists who are focussing on animal sentience. This increasing understanding of the science behind animal sentience and welfare creates a moral obligation to respect their welfare, which is now being integrated into several international policy streams.

Benefits

- *There is already an international policy stream covering animal welfare, under the aegis of the World Organisation for Animal Health (OIE). Science-based standards on animal welfare have been internationally accepted, and every continent in the world has agreed on a strategy for the development of animal welfare.*
- *Animals are an integral part of Nature, and deserving of express inclusion in any Global Pact that might be negotiated. But their sentience and ability to feel states of suffering and well-being (now well-proven scientifically, and included in the EU's Lisbon Treaty and the Animal Welfare Strategy for Africa) means they cannot be treated simply as renewable resources. In the words of the OIE's Guiding Principles for Animal Welfare: "...the use of animals carries with it an ethical responsibility to ensure the welfare of such animals to the greatest extent practicable".*
- *As an avowed purpose of the Pact is the harmonisation of existing environmental law, therefore this separate policy stream should be considered and recognised.*
- *Such legislation will be strongly supported by all those who have close ties with animals.*
- *With increasing urbanization, more and more animals in search of food are being forced to share human settlements as they strike out in search for food. Although this has led to confrontations with wildlife, community-based initiatives are helping people to find ways of sharing space with animals in a peaceful way.*
- *Building on these civil society initiatives that are making sensitivity to animals (domesticated or wild) increasingly well accepted, it will be easier to build peaceful coexistence between human beings and other sentient beings.*

Challenges

- *With increasing urbanization, more and more people are becoming estranged from the animal kingdom and animals are seen as competitors for food and space. It will require considerable education to help many people recognize the importance of living in harmony with other species.*

II. CIVIL SOCIETY SUGGESTIONS FOR SIGNIFICANT STRENGTHENING ANY PACT FOR THE ENVIRONMENT THAT MIGHT EVENTUALLY BE NEGOTIATED

1. Proactive and Preventative Approach.

The provisions in the draft designed to prevent environmental damage are extremely weak and ought to be strengthened. For example, as drafted, environmental impact assessments only apply where “significant adverse impacts” are likely, and the precautionary principle will not apply unless there is a risk of “serious or irreversible damage”. Similarly, remediation only needs to be “adequate”, and the “polluter pays” principle (and other payment schemes, such as trade-able permits) can simply be a license for the rich to continue environmental harm.

It is vital that strong, proactive, preventative precautionary measures are taken. The need to protect planetary ecosystems underlies everything else that we do, including our ability to achieve the Sustainable Development Goals (SDGs) as a whole. Indeed, the lack of a clear obligation to research and monitor planetary boundaries, and for the latest evidence to inform updated international agreements, policies and environmental protection decisions and actions constitute a serious weakness that must be remedied with the Environmental Pact.

One of the most effective tools in the armoury of prevention against environmental damage is the development of respect and reverence for Nature.

In this regard, the Pact could usefully incorporate more of the principles and language from the Rio Declaration and the World Charter for Nature mentioned in the preamble to the preliminary draft; as well as the widely-supported Earth Charter and the UN’s own Harmony with Nature initiative. See: <http://www.harmonywithnatureun.org>
Combining the elements of all these documents would encourage a strong collaboration between both Governments and civil society, since people at the grass roots were widely involved in formulating the Earth Charter and are participating actively in efforts to respect and live in Harmony with Nature.

In 2009 the UN General Assembly proclaimed 22 April as International Mother Earth Day, Member States acknowledged that the Earth and its ecosystems are our common home, and expressed their conviction that it is necessary to promote Harmony with Nature. Furthermore, the first General Principle of the World Charter for Nature, which was adopted and proclaimed by the United Nations General Assembly in 1982, was: “Nature shall be respected and its essential processes shall not be impaired”.

In this regard, stronger language and principles should be coupled with stronger obligations governing the need to drive public awareness, the provision of environmental information on consumer products to enable informed choice, and environmental education at all levels of education. With respect to environmental education in schools,

this frequently deals only with environmental problems, rather than developing respect and reverence for Nature – and our experience has been that Humane Education is also vital. The definition of Humane Education is: "A process that encourages an understanding of the need for compassion and respect for people, animals and the environment and recognizes the interdependence of all living things".

2. The Pact should express the need for *governments* to take action to reduce human impacts on the natural environment.

In order to protect the environment from future damage, and to remediate past impacts, whilst Article 2 gives a general duty to care for the environment, this is considerably weakened by its general application, and the qualifier that "***everyone contributes at their own levels***" to the conservation, protection and restoration of the integrity of the Earth's ecosystem. As stated in the Rio Declaration, "***States*** shall co-operate in a spirit of global partnership to ***conserve, protect and restore*** the health and integrity of the Earth's ecosystem".

Measures are also needed to ensure that ***Corporations*** respect environmental rights. In this regard, close cooperation would be needed with the Intergovernmental Working Group on Transnational Corporations and other business enterprises and human rights, which was established at the 26th session of the Human Rights Council (26th June 2014). Whilst not detracting from the need for firm regulation as core protection, it is vital that such measures should include "a supportive and open international economic system to better address problems of environmental degradation" (as per the Rio Declaration). Other economic measures need to be carefully considered to provide strong disincentives to environmental degradation and incentives to support the development of environmentally-friendly systems, methods and technologies.

We propose the inclusion of and suggest that many benefits would accrue from the adoption of international standards for protecting both human health and the natural environment. <https://www.iso.org/news/2016/09/Ref2118.html>

The World Bank Group's Cecile Fruman, suggests that international standards:

- Support sustainable economic growth and productivity gains
- Help facilitate the adoption of good regulatory practice and create economies of scale that are particularly beneficial for small and medium sized enterprises
- Promote open international trade by reducing technical barriers and building confidence in the quality and safety of traded products, and increasingly also services
- Promote innovation and technology diffusion
- Level the playing field on environmental and societal issues, and codify international agreements
- Provide common ground for understanding and agreement on difficult issues, e.g. social responsibility

- Help to protect communities and consumers from unsafe and harmful products and practices

Such legislation must, of course, go hand in hand with a Nature-centred approach whereby the indications coming from Nature herself are seen as primary.

3. Financing Mechanisms are needed to reward environmentally-friendly behaviour and discourage harm to the environment.

Pigouvian Taxes that are levied on actions that degrade or deplete the environment. In addition the polluter/degrader of the environment is required to bring it back to its original state. Through such taxes, products that pollute or degrade become uneconomical and business will be inclined to steer away from them.

Commons Rent, which shifts taxes off of labour and productive capital and onto land and natural resource rents. Thus, municipalities can collect the surface land rents within their jurisdiction. Regional governing bodies, the resource rents from forestlands, mineral, oil and water resources. And a Global Resource Agency could be established to collect user fees on such transnational commons as satellite geostationary orbits, minerals mined or fish caught in international waters, and the electromagnetic spectrum, etc.

4. It must also be recognized that Human Rights to a Healthy Environment can only exist where these go hand in hand with Duties to Take Care of the Environment.

We recognise the value of taking a human rights approach, and the inclusion of the right to a healthy environment, but this can only exist where there is also a duty to take care of the environment.

The strong focus on the right to a healthy environment can easily result in anthropocentrism and a somewhat utilitarian approach to the environment (for example, ecosystems providing “essential services”, contributing to “human well-being” etc.). The draft could be greatly improved and strengthened by the adoption of language recognising our duty to protect Nature.

Rights and duties go hand in hand. Expressed in terms of duties, one might say that humanity has a duty and moral obligation to honour the inherent right of Nature, as having evolved naturally and organically on Mother Earth, to be respected and protected. But much of the harm done to the Earth has occurred not out of malice, but because people have been ignorant of the effects of their actions.

Here are additional ways to help people to become more aware of what they can do to safeguard their right to a healthy environment without aggravating environmental problems:

A Declaration of Human Duties and Responsibilities (DHDR) with Regard to the Environment should be developed specifically to aid our commitment to maintaining the

necessary Planetary Boundaries that are hospitable to human life and/or specific principles should be incorporated within the Environmental Pact to ensure that the human duty and responsibility to live within such Planetary Boundaries is supported and carried out.

Benefits

- *The recognition that rights must go hand in hand with responsibilities already exists. A **Declaration of Human Duties and Responsibilities** was written to reinforce the implementation of human rights under the auspices of UNESCO. In 1998 the UN High Commissioner of Human Rights adopted it for the commemoration of the 50th anniversary of the Universal Declaration of Human Rights (UDHR) in the city of Valencia. Therefore, it is also known as the Valencia Declaration. This is a first step to developing a Universal Declaration specifically for the environment.*
- *The Valencia Declaration is further strengthened by the 2018 Framework Principles on Human Rights and the Environment published by the UNHR, January 4, 2018.*
- *The documents mentioned in this publication, including the Earth Charter, contain many important points that can be included.*
- *Focusing on the need to maintain planetary boundaries that support human life provide a strong incentive for some to implement the responsibilities in the Declaration.*

Challenges

- *People are often disinclined to take responsibility and thus to consider the importance of such a document. It is thus essential that the Pact should spell out the many dangers to people, organizations and nations individually, that are likely to ensue if Nature is not seen as the foundation from which all else becomes possible. These dangers should be clear enough to ensure that governments will take sufficient action both to engage their citizenry and so that the citizens themselves will feel compelled to respond and will take the precautionary actions needed to live within the above mentioned Planetary Boundaries.*
- *At the same time, the advantages should likewise be spelled out to provide a strong 'carrot' effect.*
- *Both the pros and cons should be illustrated with stories that all can relate to easily.*

5. Planetary Boundaries Must Be Adhered to and Honoured if the Earth System Is To Be Able to Support Human Life.

Scientists have developed a set of nine planetary boundaries that must be respected if the Earth System is to be maintained in a stable state that is hospitable for human societies to survive and thrive. The paper referenced below suggests that we have exceeded 4 of these boundaries: climate change; the biochemical flows, particularly with regard to the Phosphorus and Nitrogen cycles; land-system change; and the rate of biodiversity loss. The Pact must specify that actions be taken to ensure that we return to and live within planetary boundaries.

Please see:

Planetary Boundaries: "Guiding human development on a changing planet" published in *Science Magazine*, Feb. 2015: <http://science.sciencemag.org/content/347/6223/1259855>

Modelling and monitoring the system, as a whole versus reductionist practices adapted in the industrial revolution is essential, since Nature consists of many subsystems that are all interconnected. Lifecycle practices further enable greater visibility into the threats to planetary boundaries.

Benefits

- *Where the findings of scientists with worldwide respect can explain the reason for the calamities that are increasingly affecting people from every conceivable background, and do so convincingly, we have a firm basis to explore how to deal with the problems that we have and are continuing to create.*
- *People will thus be more motivated to both take and to support constructive action.*
- *Leveraging shared conversations and learning can provide a strong motivational force and provide important insights for effective action.*

Challenges

- *Those who are used to seeing Nature as there to be exploited for their welfare, are likely to resist being reminded that their actions might be endangering their lives and those of their loved ones.*
- *We currently lack insight into all the ways society and academia are working or having debates. With the help of global communications this should be possible to remedy simply.*

6. Since the Survival and Well Being of Every Human Being Depends on Planetary Boundaries, It Is Essential that the Global Commons Be Stewarded by All Jointly.

This will require lifelong education in sustainable development both through formal and informal education, as well as laws that govern human interaction to ensure the commons is safeguarded for present and future generations. A Global Pact could be an effective tool to encourage governments at all levels to engage all stakeholders in protecting and stewarding the global commons.

Instead of using concepts such as "trade-able permits" which allows those with more resources to profit rather than those with less, the use of depletable natural resources would be strictly capped and the cap enforced. At the same time countries/localities would be compensated for stewarding these. Permits could then be sold to the highest bidder for use of what is available each year and then these natural resources can be used to make products with the cost of the permits being passed on to those who buy the products. In this way, the cost of the use of natural resources can be spread among the users. This concept can be combined with a number of financing mechanisms.

Examples:

Countries with large natural resources, like Brazil with its rain forests, would be compensated for stewarding these as a part of the global commons for humanity. This would be an incentive to stop logging large tracts. And a country like Ethiopia that is damming the Nile would pay for the use of the water and get paid for ensuring that the water of the Nile was still available in sufficient quantities for Egypt to use.

In this way a new form of gathering funds at local, national and global levels can take place that can be used instead of taxes.

Benefits

- *Lifelong education is already covered in SDG 4 itself and education for sustainable development is covered in target 4.7.*
- *UNESCO and other UN Agencies have gathered significant resources to help Nations to implement lifelong education in most fields relating to sustainable development.*
- *Commons have the advantage that all those involved in a commons have a stake in their preservation.*
- *Common stewardship of global commons has already begun, for instance, with regard to Antarctica, Outer Space, and the Seabed beyond national jurisdiction. It has existed at the local level for centuries in the form of village greens, common fishing grounds, water sources, etc.*
- *With the help of the Internet and other mass communications, people at the grass roots have already begun to develop a host of new ways to share commons resources that can alleviate the pressure we are putting on the environment for our individual survival by providing alternatives free of charge, such as the rapidly growing sharing economy which supplies a sizable percentage of the GDP of some national economies (10% of the French economy); alternative currencies to revive flagging economies; Wikipedia; Open Education Resources, Open Course Ware using electronic texts.)*
- *The concept of commons is well understood by many businesses, notably cooperatives (see www.ica.com). One billion people are members of cooperatives worldwide.*
- *Administration of the commons as shared property open up the possibility of a range of innovative financing mechanisms for sustainable development, such as “cap and share” and “commons rent” that can replace taxes on labour and thus stimulate local and national economies.
Examples are the Norwegian Pension Fund, and the Alaska Permanent Fund.*
- *The concept of the commons (“commoners”, “commons goods” and the type of decision making processes referred to as “commoning”) have become better understood, since Elinor Ostrom won the Nobel Memorial Prize in Economic Sciences in 2009 for her “Analysis of economic governance, especially the commons”.*

Challenges

- *While sharing at local levels where people are keenly aware of their reliance on one another for their survival, people are much less aware of our global interdependence.*
- *Much consciousness raising will be required to help people accept and see the advantages inherent in global interdependence.*

7. The Earth Charter. (<http://earthcharter.org/>)

The need to agree on an Earth Charter, as an essential step in the framework for global governance, was first introduced by the Brundtland Commission in 1987. An attempt to draft an Earth Charter and have it accepted at the Earth Summit in 1992 failed. The process of consultations and worldwide dialogues on the Earth Charter was taken up in 1994 - outside the UN - and finalized with the launch of The Earth Charter document in the year 2000. The Earth Charter is a document and a movement organized according to the principle of decentralized empowerment. This has increased its impact on people's thinking at the grassroots level.

The Earth Charter has been used in the field of education, global citizenship and governance. At times it has been used as a standard for negotiations where parties to disputes had no other guidelines in common. For example, this happened in the context of a diplomatic conflict between the Netherlands and India. The Ombudsperson for Future Generations in The Netherlands is based on the Earth Charter and the SDGs. And the Earth Charter is the foundation for the development of a next step in global governance, called Earth Trusteeship.

Benefits

- *Through widespread participation in the development of the Earth Charter this document has achieved recognition beyond even that of the UN Charter.*
- *It is being used as a standard in conflict resolution where no other common standard exists.*
- *The concepts in the Earth Charter have been honed and thought through by people from most diverse backgrounds which adds to its general acceptance and credibility*
- *The Earth Charter is a declaration of interconnectedness and calls upon intergenerational cooperation. It provides the ethical values and principles to guide and assess the transition towards a sustainable, just and peaceful world.*
- *The Earth Charter can be positioned as an ethical foundation for the implementation of the SDGs (and qualitative improvement of the indicators for the SDGs).*

Challenges

- *The Charter was adopted by some governments and parliaments, but was never adopted by the UN. It has had to travel far and wide over many years to gain the level of acceptance it has today. This is in vivid contrast to the Sustainable*

Development Goals that were developed with popular input but adopted in the first place at a global level through the United Nations by Governments thus benefiting from a combined top down and bottom up approach.

- *The Earth Charter Initiative continues to work with limited financial resources.*

8. Our Individual and Collective Ecological Footprint.

The Global Footprint Network coordinates research and develops methodological standards for the development and use of the Ecological Footprint. This accounting tool and its results are aimed at increasing awareness in both Civil Society Organizations and decision makers on their use of the planet's renewable resources and ecological services to ensure humans live within the Earth's ecological 'budget'. The concept is increasingly being used in a variety of contexts at both the global (e.g., WWF's leading publication - Living Planet Report, the Convention on Biological Diversity, and the Biodiversity Indicator Partnership) and national levels. It is a promising way to help people individually as well as Nations States to become aware of the extent to which their actions safeguard or harm the Planet.

Two important resources for these two stakeholders groups are: 1) a recently updated online Ecological Footprint calculator (available at: <https://www.footprintcalculator.org/>) allowing individuals to calculate their own Ecological Footprint and learn about Footprint mitigation/reduction options and 2) an online data platform (available at: <http://data.footprintnetwork.org>) allowing users to access and freely download detailed Ecological Footprint results - for approximately 160 countries, over a period of more than 5 decades (from 1961 to 2013) - which can be used to inform trend analyses and decision making.

If we are to equitably share the common resources found on our shared home, then it is essential that we use no more than our own fair share, both individually and collectively, of the full but limited assortment of resources that are available; and that we do our best to fully sustain them for future generations. Thus the Pact ought to stipulate that both people and governments, at all levels, use no more than their fair share of the planet's resources.

In addition, if we are to live within the carrying capacity of the Earth and respect the planetary boundaries then we must maintain and sustain a favourable state of the Earth System as a whole. And this favourable state, which has existed throughout the current geological epoch, the Holocene, should be recognised as the Intangible Common Heritage of Humanity. It is thus essential that the Global Environmental Pact recognize and respect this favourable state of the Earth System as an intangible common heritage and global legal asset that must be protected and preserved for all time.

For more on this see: www.commonhomeofhumanity.org; and we are including below and attached an article entitled: "Common Home of Humanity: A Legal Construct Based on knowledge."

Benefits

- *The concept of an ecological footprint has been developed over a long period of time and it has already become a part of people's thinking. Many governments are already implementing it as summarized at <https://www.footprintnetwork.org/category/case-studies/>.*
- *The Global Footprint Network has developed many tools to help both people and governments measure their Ecological Footprint and sends out regular mailings to encourage people to use these tools.*
- *The basic concept is easily communicated and understood by all stakeholder groups*

Challenges

- *The Ecological Footprint only measures one aspect of sustainability; that is whether or not humans live within the regenerative capacity of the planet. It does not track the economic and social pillars of sustainability and not even the full palette of environmental sustainability. As such, it is not intended nor should it be used as a single and omni-comprehensive sustainability indicator.*
- *Nor does it take into account the subtleties and complexities involved in restoring the natural environment and living within the planetary boundaries required to support human life on Earth.*

Two websites have been created that can help us ensure that these challenges are adequately addressed and that the SDGs will be achieved in a comprehensive manner.

- Our World in Data <https://ourworldindata.org/>, an independent project based in Oxford, UK, has released a new tool that will make it much easier for everyone to keep track of progress on the SDGs. It's also perfect for university and high school teachers.
- The **SDG Tracker** <https://sdg-tracker.org/>, is a new website that offers one-click access to data on every SDG, organized by Target, while also noting where data is lacking.

The Global Pact should insist that such tools as this be used, and that sufficient data can be and is employed by all countries, to ensure that the SDGs are met in such a way that will safeguard the natural environment.

III. CREATING A PROGRESSIVELY BINDING TREATY

The point regarding a Global Pact for the Environment will be a crucial part of the discussions as the OWG discusses gaps in environmental legislation. We strongly support the principle of creating a binding treaty, which is non-regressive in Nature. In the thinking up until this point in the discussions there are areas that can – and should be! -- strengthened.

For instance, many of the provisions in the preliminary draft would not be actionable as binding, as they are too vague and non-specific, and imprecise as to whom they are directed.

Indeed, the principles being put forward do not even address what might or could be done to ensure that the Pact is binding. It appears that it will be up to each government to do what it will to adopt and enact the principles. Though there will be a monitoring and review process, there is no indication that there will even be any guidelines or suggested processes for how governments ought to adopt and implement the principles. Nor whether any effort will be made to support governments in implementing the Pact and principles.

It is thus essential that the Global Pact for the Environment should include an Operative Section that clearly spells out how the Pact is to be carried out and implemented by governments at all levels along with the steps, actions and policies needed in order to ensure that it will indeed be both binding and enforceable.

The advantage of seeing the shortcomings is that we can pinpoint ways in which they can be overcome and where constructive action is taking place. In fact, steps are already being taken to help us achieve this. This could be mentioned in the chapeau or as a key element within the Principles, along with specific directions for carrying this out.

Here are some specific points that should be addressed followed by some important and relevant initiatives that have been in development over a number of years:

1. Governmental Actions.

- Introduce **effective** environmental legislation (as per the Rio principles) and enforcement mechanisms, including environmental impact assessments (which puts the onus of proof on the applicant).
- Include the agreed environmental principles/rights of Nature in local, state, and national charters and constitutions.
- Fully implement all international environmental agreements to which Member States are parties.
- Include the agreed environmental principles in national legislation, implementation and enforcement mechanisms, and in environmental impact assessments.
- Mainstream the agreed environmental principles across all government policies and programmes and establish sustainability as a basic operating principle of government, which must be considered as all decisions are made.

- Include provisions for interstate applicability and procedures where the environmental impacts from one Member State have a direct impact upon another.
- Include provisions to ensure that binding and enforceable action is taken, under international law, on matters where there is a substantial impact upon the global environment.

2. Strengthening and Implementing Environmental Law

There is an urgent need to protect ***environmental defenders***, an increasing number of who are persecuted or killed in countries around the world each year. This issue was an important theme at the UN Environment Assembly 3. UNEP is already developing a policy on this issue that needs to be adopted and carried out by all governments.

There should also be a requirement for the appointment of international and national ombudspersons for the environment and for future generations.

Similarly, while the explanatory note suggests that the Principles will serve as a basis for continuing to develop binding international environmental law, there is little indication so far as to how this could or will be done. Such a process could be one of the most important elements deriving from the Pact, and as such we suggest that the Pact include specific guidance or direction on how such a process could and will be developed.

Likewise, the explanatory note suggests that the Pact is intended to provide a means for ensuring policy coherence among various international agreements, conventions and protocols etc. but again there is no evident guidance on how this will occur. Thus, we request that specific guidance be included in the Pact for how coherency among and across various environmental agreements can and will be developed and implemented.

Here are some additional initiatives that can help with the development and implementation of international environmental law. We call on governments to strongly support one or more of these approaches towards ensuring that the Pact is indeed both binding and enforceable:

3. Recognizing Ecocide as a Crime against Peace

There have already been calls for ecocide to be made the fifth crime against peace. Ecocide is formally recognised by dictionaries; however we wish to draw your attention to the legal definition suggested by lawyer Polly Higgins which is: "The extensive destruction, damage to or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished". Still, it would be better if such a definition referred to the inherent rights of nature and various ecosystems to exist as viable entities unto themselves as well.

Ecocide would fit within the ethos of the Pact and provide a clear lens with which to examine human moral obligations and duty of care to Nature within environmental and human rights law.

Following on from above, we feel that strong juridical and judicial systems are vital. The proposed compliance committee may be useful for administrative supervision of compliance, but a firm judicial system would also be needed.

Benefits

- *Experience already exists in dealing with other Crimes Against Peace;*
- *Much work has already been done to prepare this topic by international lawyer, UK barrister and award winning author Polly Higgins.*

Challenges

- *There is often resistance to enforceable legislation.*
- *We have many laws without a means to enforce the laws unilaterally or across borders.*
- *We have no uniform manner in which to report crimes to ensure visibility.*
- *We have yet to find viable ways to prevent and detect threats.*

4. International Environmental Court of Justice

We favour the establishment of an International Environmental Court of Justice (to ensure the necessary level of impartiality, expertise and competence). However we recognize that there may not be sufficient political will to establish such an International Environmental Court. If this turns out to be the case, then we call on the UN member states to either further empower the International Criminal Court and strengthen it so that it may become prepared to deal with environmental challenges OR for the International Court of Justice to be further strengthened and directed to focus more-so on and to implement the provisions of the Global Pact for the Environment.

Since stewarding Nature, is imperative to our well-being and very survival, it is important that an International Environmental Court be established with the mandate to ensure that the possible Global Environmental Pact is respected and carried out. Until such time as this is possible then at the very least either the ICC or the ICJ should be given the mandate to do so.

Benefits

- *Here we are not beginning from ground zero since the International Court of Justice (ICJ) provides several examples where they have ruled on matters relating to the environment, The ICJ can thus continue along these lines while a specific Environmental Court of Justice is being developed.*
- *Much thinking has already been given to this topic at the UN.*

Challenges

- *The creation of new global institutions often takes much time.*
- *Some countries, which include some of the worst abusers of environmental law, may oppose the development of binding and enforceable decisions and thus as well the establishment of an international environmental court or the strengthening of the ICJ or ICC so as to be able to rule on environmental cases and matters.*
- *In addition, specific provisions would need to be developed and put in place in order to ensure that the rulings of such a court are indeed implemented and carried out; as we note that many of the ICJ's most important rulings such as on nuclear weapons and the mining of harbors have not been.*

IV. SUGGESTED DISCUSSION MODALITY FOR PARTICIPATORY DISCUSSION AND DIALOGUE

1. CSD and FfD History: We suggest that the OWG look at the CSD and FfD processes and their history for lessons learned and examples of what can be done to ensure a more inclusive discussion process. For example, the interactive dialogues with civil society as well as civil society and business hearings have provided excellent opportunities for a fairly large number of NGO participants to give our input as well as for direct interaction between civil society and the UN Member States.

Similarly the informal sessions often held for a week in February before the formal sessions of CSD provided an excellent means for all participants to discuss specific questions of importance in a truly interactive process that seldom happens at the UN. During these sessions any of the participants from any stakeholder group could raise their hand and respond to the question at hand in a most interactive manner and formal statements were almost never made.

2. TALANOA PROCESS (FIJI) which will continue to be used for COP24 and 25 of the UNFCCC Climate Summit process. The main features of the dialogue, which ought to be included in this OWG process include:

- The dialogue should be constructive, facilitative and solutions oriented;
- It should be an inclusive, participatory and transparent dialogue;
- The purpose of Talanoa is to share stories and information and build empathy, understanding and trust;
- It creates a platform of dialogue, which results in better decision-making for the collective good;
- By focusing on the benefits of collective action, this process will inform decision-making and move the discussion forward for creating an effective, coherent, and cohesive Global Environmental Pact.

3. The [Future Worlds Center](#) team and the [Institute for 21st Century Agoras](#) have developed the structured dialogic design process found in the [Re-inventing Democracy](#) project. Group deliberations help to explore and negotiate root causes and deep drivers. The United Nations Democracy Fund supports Re-inventing Democracy, which similarly encourages and supports the involvement of young people and the development of more participatory decision making processes along and across sectors and levels. An international environmental pact and court ought to be created which would address controversial themes in multi-track diplomacy efforts using such processes as these to further develop and strengthen both national and international environmental law and peace-making efforts.
4. The Open Working Group process that was used to develop the SDGs and the 2030 Agenda provides us with an inspiring example where-in suggestions made by civil society and Major Group representatives often found their way into the Chair's reports; interactive hearings were held near the beginning of discussions on any particular topic; and representatives of individual NGOs were often called upon to give their input intermixed with governments and UN agencies etc. when it was felt to be helpful.

