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# *THE GLOBAL PACT FOR THE ENVIRONMENT: ELEMENTS OF CODIFICATION OR/AND A NEW INTERNATIONAL AGREEMENT*[**]

***Abstract:*** *The paper explores the relationship between the Draft Global Pact for the Environment (the Global Pact) and relevant international documents (declarations and international environmental agreements) and the legislation of Republic of Serbia (RS). The first part of the article provides a survey of the contents of the Global Pact, pointing to the significance of the international environmental law principles included in this document. The next part of the paper discusses the relationship between the Global Pact principles and RS legislation, with specific reference to the relationship between the Global Pact and the right to a (healthy) environment. The author concludes that the norms of the Global Pact and those of the international environmental agreements and RS domestic laws coincide to a great extent. Apart from the intentions to codify environmental law principles, the Global Pact also introduces some new principles whose contents and scope should be analysed in detail.*

***Keywords*****:** *Global Pact for the Environment, international environmental agreements, right to (healthy) environment, environmental law principles, Republic of Serbia.*

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## 1. Introduction

The current state of affairs in environmental law and the dynamics of changes in the causes and effects of the current situation point, among other things, to the problems in the functioning of the adopted regulations and the need to upgrade them. The problems observed long ago in the functioning of the system of legal norms have made numerous debates on possible ways to improve the system highly topical. Various ideas are being discussed, including the adoption of a new document which would strengthen the role of environmental law and clarify some open questions. In that context, the efforts of the experts gathered round the project of drafting an international treaty on this matter resulted in the creation of the Draft Global Pact for the Environment (Global Pact for the Environment, 2017), which was presented in the UN in 2017. As a follow-up activity, in May 2018, the UN General Assembly adopted its resolution "Towards a Global Pact for the Environment" (UNGA Resolution A/RES/72/277, 2018a). As provided in the Resolution, an intergovernmental working group was established with the aim to discuss the possibility of opening negotiations on the adoption of an agreement which should include all general principles of international environmental law in one place. In May 2019, the intergovernmental working group finished its work and adopted several recommendations which were officially supported by the UN General Assembly in August 2019. However, contrary to the expectations of a part of expert audience, the working group recommended that a "political declaration" should be made not requesting the principles of international environmental law to be codified (de Lassus St-Geniès, 2020). Yet, regardless of what will happen with the document, the idea on building up the environmental legal system through the adoption of a new document is seriously conceptually founded (Aguila, Vinuales, 2019).

In this context, the goal of this paper is twofold. First of all, it stresses the significance of the problems in the environmental legal system and especially those being present in the international field. It also points to a possible contribution of the Global Pact for the Environment in overcoming those problems. The second goal is to identify (principally) the points which coincide and differ in the contents of the norms envisaged in the Global Pact and international and domestic sources of law. The paper analyses the instruments of soft law which the Global Pact directly recalls: the Stockholm Declaration on Human Environment (1972), the World Charter for Nature (1982), and the Rio Declaration (1992).[1] The author has selected some global international agreements created in several stages of the development of contemporary international environmental law (since

1 The Global Pact also recalls the Sustainable Development Goals adopted by the UN General Assembly on 25 September 2015, while international agreements mentioned in the document are UNFCCC and CBD.

1985 to the present days) as the basis for analysis and discussion. These eight agreements are: The Vienna Convention on Substances that Deplete the Ozone Layer (VC); the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (BC); the United Nations Framework Convention on Climate Change (UNFCCC); the Convention on Biological Diversity (CBD); the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD); the Convention on the Law of the Non-Navigational Uses of International Watercourses (CLNNUIW); the Stockholm Convention on Persistent Organic Pollutants (POPs); and the Minamata Convention on Mercury (MCM). The texts of all international agreements have been retrieved from the UN depository of international treaties, (Chapter XXVII: Environment)[2]. The paper also explores the contents of the norms of the Global Pact for the Environment (2017)[3] concerning the formulation of the right to a (healthy) environment from Article 1 of the Global Pact. Finally, the norms included in the Global Pact are compared to those contained in the RS legislation (the Act on Environmental Protection and the Constitution of the RS).

By applying the comparative method, the article explores the principles included in the Global Pact and their presence in some relevant sources of international and domestic law.[4] The basis of the analysis includes an attempt to give arguments in favour of the thesis that the Global Pact encompasses all most important principles of environmental law adopted so far, and introduces some new principles as well. Based on the results of the analysis, the author discusses how the contents of the Global Pact can possibly affect its (potential) codification or the progressive development of environmental law.[5]

2 UN Treaty Collections (2023). Multilateral Treaties Deposited with the Secretary-General, CHAPTER XXVII: Environment; https://treaties.un.org/Pages/Treaties.aspx?id=27&subid=A&clang=_en (accessed 1 September 2023. Due to the limited scope of this paper, the analysis does not include a number of global international agreements and regional international agreements, some of which could be rather relevant for the discussion.

3 Global Pact Environment.org (2017). Draft Global Pact for the Environment, Preliminary Draft of the group of experts, 2017; https://globalpactenvironment.org/uploads/EN.pdf

4 Aguila and Vinuales (2019: 192-281) make a detailed survey of international law norms which are relevant (or could be relevant) for the corresponding norms from the Global Pact. It seems sensible to interpret, in a broader philosophical and conceptual sense, the connection between some norms included in the international documents which the authors point to and the norms included in the Global Pact. However, the reliability of their legal character remains disputable.

5 The paper does not particularly deal with the "codification" and "progressive development "but it takes the definitions given by the International Law Commission for the basic meaning of these concepts. According to Article 13, paragraph (1) (a) of the UN Charter, the General Assembly shall initiate studies and make recommendations for the purpose of: a) promoting

## 2. Literature overview

The discussion on the Global Pact for the Environment should be considered in the context of the general framework of international environmental law whose characteristics are clearly defined in comparative law as problem-based and time-based categories. In that sense, the existing architecture of environmental norms are analysed in relevant literature by applying various criteria. In the past fifty years, global environmental problems have been presented in the way that they have become recognisable and basically generally accepted (Shaw, 2014: 613-654). The role of various subjects (right-holders and duty-bearers) has also been recognised in resolving some problems where, apart from states, an increasingly important role is played by some international organisations, particularly those within the UN system (Todić, 2018: 120-140). Historically, the principles of the Stockholm Declaration on Human Environment (1972), the World Charter for Nature (1982), and the Rio Declaration on Environment and Development (1992) are taken as conceptual foundations of contemporary environmental law that the Global Pact leans on. Recently, the Sustainable Development Agenda (UNGA, 2015) and other related documents have been more and more frequently added to this. The Global Pact considerably reminds of these documents by its form and contents, thus presenting a sort of upgrading and modernising of the principles included in the documents of the so-called soft law. Considering it in this way, it is hard to deny the opinion that the Global Pact has come out as a "logical result" of the half-a-century-long development of contemporary international environmental law (Aguila, 2020). One of the issues that characterises the debates on environmental law is the efficiency of norms of international environmental law (Todić, 2017; des Club des jurister, 2015). It is partly a build-up of the more general issue which deals with the implementation and instruments for ensuring the consistent implementation of laws. Although these debates partly lean on the debates on the characteristics of international law as a whole, a considerable part of debates focus on the gaps in international environmental law and the possibilities of overcoming them (UNGA Report, 2018b). Voigt (2019: 20-23) considers the possibility of overcoming the gaps, first of all, within the context of redefining the meaning of "principles" (pointing

international cooperation in the political field and encouraging the progressive development of international law and its codification. The progressive development of international law encompasses the drafting of legal rules in fields that have not yet been regulated by international law or sufficiently addressed in State practice. In contrast, the codification of international law refers to the more precise formulation and systematization of rules of international law on subjects that have already been extensively covered by State practice, precedent and doctrine (UN Legal (2023): Codification and Progressive Development of International Law, the Codification Division of the United Nations Office of Legal Affairs; https://legal.un.org/cod/, accessed 11 January 2022).

at the same time to the difficulties and problems in codifying principles); then, Voigt elaborates in detail on five "other ways" for overcoming the gaps.[6] This also includes some questions pertaining to eliminating the problems generated by the specific features of some legal systems (horizontal and vertical) and the need to bring them into accord. Many authors point to the need of the so-called defragmentation of the whole system in this field.

In the philosophical sense, the significance of environmental law principles is not unambiguous; thus, this issue is the subject matter of debates that tend to be considerably polarized. Apart from establishing a list of principles which could be considered generally accepted, the nature of rights and duties resulting from a principle could have a deeper meaning in the context of legal philosophy. Paradell-Trius (2000) points to the legal nature of principles, stressing at the same time the need to understand the social conditions under which principles are created; he also points to the functions, effects and the role of principles as well as to the creation and identification of environmental law principles. Describing the general principles and rules of international environmental law, the way they reflect in international agreements, binding documents of international organisations, practice of states and the so-called soft law, Sands *et al.* (2012) particularly discuss the following principles: sovereignty over natural resources and responsibility not to cause transboundary environmental harm, the preventive principle, the principle of co-operation, the principle of sustainable development, the precautionary principle, the polluter pays principle and the principles of common but differentiated responsibilities (Sands, Peel, Fabra, MacKenzie, 2012: 187). The Global Pact has "the potential to clarify, consolidate, and legalize principles of international environmental law that now appear in hundreds of agreements and declarations. Perhaps more importantly, it also promises normative coherence for the international legal system as a whole." (Young, 2018).

Kotzé and French (2018) put their approach in the context of the dilemma whether this is "a stillborn initiative" or the "Anthropocene law" (Kotzé, French, 2018: 814). They analyse the contents of the document by critically considering some norms, which they have arranged into groups as follows: the right to an ecologically sound environment (Article 1 GP), the duty to take care of the envi-

6 They include: 1) support to better co-ordination and synergy of various international agreements; 2) the Global Pact form as a framework or roofing document, aimed at putting together different agreements (by the subject matter of regulation and geographic scope) under a common vision of international environmental law for the Anthropocene; 3) overcoming the implementation weaknesses; 4) the role of the Global Pact as a mediator between international environmental law and international law in other fields; and 5) the role of the Global Pact in the future challenges and technologies which are not included in international treaty law (Voigt, 2019: 15-17)

ronment (Art. 2 GP), integration and sustainable development (Art. 3 GP), "more from the same" (Articles 5-8 GP), the role of non-state actors and subnational entities (Art. 14 GP), effectiveness of environmental norms (Art. 15 GP), and resilience (Art.16 GP). It is not clear why the authors have included the norms on global co-operation, armed conflicts, the principle of common but differentiated responsibilities, monitoring and implementation (the issues of fundamental importance) as well as the norms of technical/procedural nature (the role of the Secretariat, signature and ratification, coming into force, denunciation and depositary) under the subtitle "Miscellaneous" (Kotzé, French, 2018: 832).

Responding to the question on the need to adopt the Global Pact, Tigre (2000) points to the fact that the changes in the Earth system denote the appearance of a distinct new geological era in the Earth history. The Earth is moving towards the period of instability as a result of the global footprint left by people in the biosphere. The opinion prevails that the mankind has become a geological factor like a volcano or a meteor, being capable of changing the Earth and its systems (Tigre, 2000: xxiv). Similar to Kotzé, Tigre indicates the significance of the environmental changes which have occurred within the Anthropocene. The Anthropocene moving towards the creation of a new cognitive framework offering an opportunity for the re-examination and re-thinking of legal interventions that could best respond to the present global socio-ecological crisis (Tigre, 2000: xxiv). Kenig-Witkowska (2018) particularly points out the significance of the first two articles of the Draft Global Pact recognising that their formulation has enabled "codification" of the right to an ecologically sound environment and the duty to take care of the environment (Kenig-Witkowska, 2018: 15). These norms are two pillars of the Global Pact which set the foundation for numerous "horizontal principles" that have already been established in environmental law. The Global Pact further provides a comprehensive list of rights and duties of general and procedural nature, as well as the leading public policy principles. Therefore, the position taken by of Kenig-Witkowska may not seem pretentious as she concludes that the Global Pact provides the foundation which to be recognised as the third generation of codification on human rights.

## 3. Research

By its form, the Global Pact for the Environment looks like an international agreement; it is structured in 26 articles and the Preamble, which contains 11 paragraphs.[7] The Global Pact formulates the rights and duties relating to the

7 The Preamble of the Global Pact recalls, among other things, a broader context and key issues of contemporary international environmental law. It connects it with the existing sources of international environmental law recalling them and pointing to their significance. Also, it recognises the commitment to the goals to pursue sustainable development which

following issues: right to an ecologically sound environment (Art.1); duty to take care of the environment (Art.2); integration and sustainable development (Art.3); intergenerational equity (Art.4); prevention (Art.5); precaution (Art.6); environmental damages (Art.7); polluter-pays system (Art.8); access to information (Art.9); public participation (Art.10); access to environmental justice (Art.11); education and training (Art.12); research and innovation (Art.13); role of non-state actors and subnational entities (Art.14); effectiveness of environmental norms (Art.15); non-regression (Art.16); resilience (Art. 17); cooperation (Art.18); armed conflicts (Art.19); diversity of national situations (Art.20); and monitoring the implementation of the Pact (Art.21). The remaining five articles of the Pact regulate the functioning of the Secretariat (Art.22), signature, ratification, acceptance, approval, accession (Art.23), coming into force (Art.24), denunciation (Art.25), and deposition (Art.26).

*Table 1* (below) provides a comparative survey of articles of the Global Pact and key corresponding articles of the three declarations explicitly recalled in the Global Pact, as well as relevant global international environmental agreements and the Republic of Serbia legislation.

***Table 1:*** Global Pact and Declarations, Global Environmental Treaties and Serbia

| **Global Pact for the Environment** | Declarations | International Environmental Treaties | R. Serbia |
|---|---|---|---|
| Article 1 - Right to an ecologically sound environment | SD, RD | VC, BC, UNFCCC, CBD, WC, MC (human health, subject of protection) | Art. 74 Con RS Art. 1 EPA |
| Article 2 - Duty to take care of the environment | SD, WCN, RD, | UNCCC, CBD | Art. 74 Con RS |
| Article 3 - Integration and sustainable development | RD | UNCCC, CBD, UNCCD, WC, SC, MC | Art. 9 EPA |
| Article 4 - Intergenerational Equity | SD, RD | UNCCC | Art. 9 EPA |
| Article 5 - Prevention | SD, WCN, RD | VC, BC, WC, UNCCD, UNCCC, CBD, SC, MC | Art. 9 EPA |

were established by the UN General Assembly on 25 September 2015; it considers in particular the urgency to tackle climate change and recalls the objectives set by the United Nations Framework Convention on Climate Change and the Paris Agreement, etc.

| | | | |
|---|---|---|---|
| Article 6 - Precaution | WCN, RD | VC, UNCCC, CBD, SC | Art. 9 EPA |
| Article 7 - Environmental Damages | SD, RD | BC, CBD, UNCCC, SC | Art. 105, 107 EPA |
| Article 8 - Polluter-Pays | SD, WCN, RD | SC | Art. 9 EPA |
| Article 9 - Access to information | SD, RD | UNCCC, CBD, UNCCD, SC, MC | Art. 74 Con Art. 9 EPA |
| Article 10 - Public participation | WCN, RD | UNCCC, CBD, UNCCD, MC | Art. 9 EPA |
| Article 11 - Access to environmental justice | RD | WC | Art. 9 EPA |
| Article 12 - Education and training | SD, WCN, RD | UNCCC, CBD, UNCCD, SC, MC | Art. 6, 55, 65 EPA |
| Article 13 - Research and innovation | WCN, SD, RD | VC, BC, UNCCC, CBD, UNCCD, MC | Art. 6,12,14, 55, 90v EPA |
| Article 14 - Role of non-State actors and subnational entities | RD | VC, BC, UNCCC, CBD, UNCCD, WC, SC, MC | Art. 7, 9 EPA |
| Article 15 - Effectiveness of environmental norms | SD, RD | MC | |
| Article 16 - Resilience | | | |
| Article 17 - Non-regression | | | |
| Article 18 - Cooperation | SD, WCN, RD | VC, BC, UNCCC, CBD, UNCCD, WC, SC, MC | Art. 8 EPA |
| Article 19 - Armed conflicts | SD, WCN, RD | | |
| Article 20 - Diversity of national situations | SD, RD | VC, BC, UNCCC, CBD, UNCCD, WC, SC, MC | |

*Sources:* UN, 1973; UN, 1982; UN, 1992 (table prepared by the author, 2023).[8]

8 *Abbreviations:* SD–Stockholm Declaration, WCN–World Charter for Nature; RD – Rio Declaration. VC–Vienna Convention on Substances that Deplete the Ozone Layer, BC–Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; UNCCC–UN Convention on Climate Change, CBD–Convention on Biological Diversity, UNCCD–UN Convention to Combat Desertification, WC-Convention on the Law of the Non-Navigational Uses of International Watercourses, SC– Stockholm Convention on Persistent Organic Pollutants (POPs), MC–Minimata Convention on Mercury; EPA–Environmental Protection Act of the RS (2004), Con RS–Constitution of the RS (2006).

## 4. Discussion

### *4.1. Connections between the Global Pact, declarations and international environmental agreements*

First of all, one can instantly note that the Stockholm Declaration on Human Environment (1972), the Rio Declaration on Environment and Development (1992), and the World Charter for Nature (WCN) contain, in different ways, most principles included in the Global Pact.

The situation is similar with the contents of the analysed international agreements. In some of these agreements, the connection with the Global Pact principles is achieved by directly recalling relevant declarations (usually in the preamble to the agreement), while some of agreements stress the special significance of some principles in their operating parts.[9] Thus, for example, in its preamble, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal recalls the Stockholm Declaration (1972) and some other relevant documents which deal with waste management as well as the World Charter for Nature (1982). In its preamble, the Vienna Convention on Substances that Deplete the Ozone Layer recalls the Stockholm Declaration on Human Environment (1972)[10], referring in particular to principle 21 envisaged therein which entails the sovereign right of states to exploits their own resources provided that some conditions have been fulfilled.

Apart from recalling the Stockholm Declaration, the preamble to the 1992 UN Framework Convention on Climate Change (UNFCCC) [11] formulates several principles in a specific way. Article 3 (Principles) of the Convention obliges the State Parties to protect the climate system "for the benefit of present and future generations of humankind" The principle of "common but differentiated responsibilities and respective capabilities" is taken as a sort of corrective measure to reach "equity" of the parties to the agreement (Art.3, Principle 1). Accordingly, developed countries should take the lead in combating climate change and its adverse effects. The State Parties should take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects. (Art.3, Principle 3). The parties have a right to, and

9 All international agreements which have been analysed contain different provisions that correspond to most principles mentioned in the Global Pact. However, for the recognition of the presence of several principles contained in the Global Pact, a much more detailed analysis should be done (which primarily refers to Articles 11, 16, 17 and 19 of the GP).

10 the Stockholm Declaration on Human Environment (1972), https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf

11 UN Framework Convention on Climate Change (UNFCCC, 1992) https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change (Art.3, Principle 4). The parties should co-operate to promote a supportive and open international economic system that would lead to "sustainable economic growth" in all parties, particularly developing countries (Art.3, Principle 5 UNCCC).

The Convention on Biological Diversity (CBD, 1992)[12] contains a separate article titled "Principle" which provides that "states have the sovereign right to exploit their own resources pursuant to their environmental policies", provided that they do not cause environmental damage to others (Article 3 CBD). The Global Pact indirectly recalls several other principles contained in the Convention (e.g. sustainable development, conservation, maintenance and recovery, etc.).

In its preamble, the UN Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD)[13] recalls Principle 2 of the Rio Declaration (the sovereign right of states to exploit their own resources). In the operative part, Article 3 ("Principles") of the Convention prescribes the duty of the State Parties to ensure the principle of the participation of populations and local communities in making decisions on the design and implementation of programmes to combat desertification and/or mitigate the effects of drought (Art. 3 a) UNCCD). In a spirit of international solidarity and partnership, Parties should improve co-operation and co-ordination at all levels (subregional, regional and international), by focusing on more efficient distribution of financial, human, organisational and technical resources "where they are needed" (Art.3 b). The Parties should develop co-operation at all levels of government for the purpose of "establishing a better understanding of the nature, the value of land and scarce water resources in affected areas" and achieving "sustainable use" of natural resources (Art.3 c). In particular, the Parties should "take into full consideration" the special needs and circumstances of affected developing countries, particularly the least developed among them" (Art.3 d). The Convention also prescribes the obligation of states to co-operate in good faith and in the spirit of global partnership (Article 18) as well as the obligation to take into account "diversity of national situations" (Article 20 UNCCD).

12 The Convention on Biological Diversity (CBD, 1992), https://www.cbd.int/doc/legal/cbd-en.pdf

13 UN Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD, 1994); https://catalogue.unccd.int/936_UNCCD_Convention_ENG.pdf

In its preamble, the Convention on the Right of Non-Navigational Uses of International Watercourses (CLNNUIW, 1997)[14] recalls the principles of the Rio Declaration and the Agenda 21 for global action. In its operating section, the Convention contains a separate part that includes "general principles" (Articles 5-10). Article 5 envisages the "equitable and reasonable utilisation" and participation of State Parties in equitable and reasonable use, development and protection of international watercourses", including the obligation to enter into consultations and cooperate in their protection and development (Art. 5). In addition to specifying the criteria for equitable and reasonable utilization (Art. 6), the Convention also prescribes the obligation not to cause significant harm (Art.7), to facilitate co-operation (Art. 8), and to exchange of data and information regularly (Art. 9 CLNNUIW).

The preamble of the Stockholm Convention on Persistent Organic Pollutants (POPs, 2004)[15] recalls the Rio Declaration (Principles 7 and 16, in particular), stressing the significance of the international law principles within which states have the sovereign right to exploit their own resources assuming the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction (Preamble § 10 of the POPS). Pursuant to Article 1 of the POPs, the objective of this Convention is to protect human health and the environment from persistent organic pollutants, which is based on the "precautionary approach" set forth in Principle 15 of the Rio Declaration on Environment and Development (1992).

In its preamble, the Minamata Convention on Mercury (MCM, 2013)[16] recalls the Rio Declaration, particularly stressing the principles of common but differentiated responsibility, the States' respective circumstances, and the need for global action (Preamble § 4 of the MCM).

### *4.2. Connections between the Global Pact and the legislation of the Republic of Serbia*

Before discussing the relationship between the contents of the Global Pact for the Environment and the RS legislation, it should be noted that that Serbia is a

14 the UN General Assembly Convention on the Right of Non-Navigational Uses of International Watercourses (CRNNUIW, 1997); https://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf

15 the Stockholm Convention on Persistent Organic Pollutants (POPs, 2001); https://treaties.un.org/doc/Treaties/2001/05/20010522%2012-55%20PM/Ch_XXVII_15p.pdf

16 the Minamata Convention on Mercury (MCM, 2013); https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf

state party to key international environmental agreements which are significant for the Global Pact. In the last two decades, the Republic of Serbia has made considerable efforts to develop the environmental law system which would be in line with EU law (Todić, 2021a; Vukasović, Todić, 2021). In that regard, a large number of domestic laws should be examined in detail but, in this article, we will focus on the key legislative act in this field: the Environmental Protection Act of the RS.[17]

The Environmental Protection Act contains the fundamental legal provisions which are largely in accord with the contemporary environmental law trends. The principles of environmental protection are set forth in a separate article (Article 9 of the EPA) but they can also be found in some other articles. Article 9 of the EPA specifies eleven environmental protection principles: 1) the principle of integration: 2) the principle of prevention and precaution; 3) the principle of preservation of natural values; 4) the principle of sustainable development; 5) the principle of polluter's and the legal successor's liability; 6) the "polluter pays" principle; 7) the "user pays" principle; 8) the principle of subsidiary liability; 9) the principle of incentive measures' application; 10) the principle of public information and participation; and 11) the principle of protection of the right to healthy environment and access to judiciary. One can instantly note that the principles defined in such a way correspond to Articles 1, 3, 4, 5, 6, 8, 9, 10 and 11 of the Global Pact although there are some differences in the way the contents of some of the provisions are formulated. The EPA provisions are also related to some other provisions of the Global Pact. For example, the norms relating to environmental damages set forth in Article 7 of the Global Pact can be found in the provisions of Articles 105-107 of the EPA. The provisions of Article 12 of the Global Pact (relating to education) can be found in several articles of the EPA (Articles 6, 12, 14 and 65); the provision of Article 13 of the Global Pact (on scientific research) is included in Articles 6, 12, 14, 55 and 90v of the EPA; the provision of Article 14 of the Global Pact (on the role of non-state actors) is included in Articles 7 and 9 of the EPA. As for other Global Pact articles, a more exhaustive assessment on the correspondence of the Serbian legislation with the provisions set forth in the Global Pact can be given only after performing a detailed analysis of the EPA and related regulations. In particular, it refers to the General Pact provisions relating to effectiveness of norms (Article 15), resilience (Article 16), non-regression (Article 17), armed conflicts (Article 19), diversity

17 the Environmental Protection Act (EPA), *Official Gazette of the Republic of Serbia*, no.135/2004, 36/2009, 72/2009–other law, 43/2011, 14/2016, 76/2018, 95/2018–other law); https://www.zzps.rs/wp/pdf/zakoni/LAW%20ON%20ENVIRONMENTAL%20PROTECTION.pdf

of national situations (Article 20), and monitoring of the implementation of the Pact (Article 21 GP).

### *4.3. Right to healthy environment*

As already mentioned, the two fundamental "pillars" of the Global Pact are envisaged in the first two articles of the document: 1) the right to live in an ecologically sound environment adequate for human health, well-being, dignity, culture and fulfilment; and 2) everyone's duty to take care of the environment. The first article of the EPA expressly prescribes that every person has the right to life and development in ecologically sound (healthy) environment (Art. 1 EPA). However, the contents and the basis of the right to healthy environment has for many years been the subject matter of numerous analyses. The right of every individual to live in the environment adequate to his/her health is envisaged both in the Stockholm Declarations 1972) and the Rio Declaration (1992), with slight variations. Although none of the analysed international agreement guarantees the right to healthy environment, the word "health" is mentioned in all of them within different contexts. Yet, what the Global Pact introduces as a kind of novelty is the way this right has been formulated. The characteristics of the environment in which "every person has the right to live" are defined as "ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment". This formulation leaves a huge leeway for reaching a broad consensus of states from various parts of the world but, at the same time, it opens some questions on how accurately this norm has been defined as well as on how it is interpreted in practice.

On the other hand, a large number of contemporary constitutional documents of numerous states guarantee the right to live in healthy environment in various ways (Todić, 2021b). The foundation of the right to healthy environment in the Serbian legal systems strongly contributes to the understanding of the needs and interpretations of the contents of this right. In that regard, we will refer to relevant provisions in the RS legislation. Describing the scope of the Environmental Protection Act, Article 1 of the EPA prescribes that this Act "regulates the integral environmental protection system that shall enable the exercising of the right of man to life and development in healthy environment, and a balanced relationship between economic development and the environment in the Republic of Serbia". Thus, the Act does not explicitly define that the man has the right to a healthy environment. However, the Constitution of the Republic of Serbia (2006)[18] explicitly prescribes this right. Article 74 of the Constitution

18 the Constitution of the Republic of Serbia (2006), *Official Gazette of the RS,* no. 98/2006; http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution

prescribes that everyone shall have the right to healthy environment and the right to timely and full information about the state of environment. Although this provision is not fully in accord with the norm set forth in Article 1 of the Global Pact (which refers not only to one's health but also to well-being, dignity and fulfilment as characteristics of sound environment), the basic range of the norm in the Constitution RS can hardly be disputed. Moreover, this constitutional provision guarantees the right to information about the state of environment, which corresponds to the right of access to environmental information held by public authorities contained in Article 9 of the Global Pact.

## 5. Conclusions

After comparing the contents of the Global Pact with the norms of international agreements and other international documents, as well as with relevant legislation of the Republic of Serbia (RS), it can be said that the Global Pact considerably reflects the achieved level of development of contemporary environmental law at the international level. The principles envisaged in the Global Pact are included (in the same or similar ways) in all international environmental law documents and in relevant RS legislation. This clearly demonstrates the codification intentions of the drafters of the Global Pact. The principles of environmental law which have been developed so far have found their place in the Global Pact. However, some of the principles are formulated in a way that brings some new elements to their meaning, which may produce different final outcomes. Therefore, the scope of the Global Pact should be analysed in much more detail, by minutely scrutinising individual norms. Such a need is supported by the fact that, in some of its elements, the Global Pact attempts to make a step forward in the development of contemporary environmental law. This issue could be the subject matter of a special debate on the criteria of the progressive development of environmental law.

Moreover, none of the international agreements, nor the RS regulation, mention three environment protection principles which are drafted in the Global Pact: Principle 16 (resilience), Principle 17 (non-regression), and Principle 19 (armed conflicts). On the other hand, one cannot ignore the fact that the Global Pact does not include the principle of sovereignty of states to exploit their natural resources, whereas it appears (in various forms) in all three analysed declarations (SD, WIN and RD) as well in most of the analysed global international agreements (VC, UNFCCC, CBD, UNCI and SC). It is also interesting that the Global Pact does not recall the UN Charter, although most of the analysed declarations (SD and RD) and agreements (VC, UNFCCC, CBD, UNCCD, WC and SC) do.

Besides, the significance of some global problems which are already part of the common concern of humankind seems to be insufficiently underscored, and the principle of common concern has not been included in the Global Pact. Some issues could be a subject matter of a more careful elaboration (e.g. the relationship between the Global Pact and other international agreements, responsibility for the violation of rights in the environmental field, application of contemporary biotechnologies, protection of natural resources, the way the right of every individual to "an ecologically sound environment" is formulated, etc.).

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## *ГЛОБАЛНИ ПАКТ ЗА ЖИВОТНУ СРЕДИНУ: ЕЛЕМЕНТИ КОДИФИКАЦИЈЕ И/ИЛИ НОВИ МЕЂУНАРОДНИ УГОВОР*

### *Резиме*

*У раду се разматра питање какав је однос између нацрта Глобалног пакта за животну средину (Глобални пакт) и релевантних међународних докумената (декларација и међународних уговора) и унутрашњег права Републике Србије (РС). У првом делу рада се даје преглед садржаја Глобалог пакта и указује на значај начела (принципа) права животне средине које овај документ садржи. Одредбе Глобалног пакта се пореде са постојећим нормама међународног права животне средине (меког права и међународних уговора). Питање односа између Глобалног пакта и људских права се посебно нагашава. Последњи део чланка је посвећен питању односа између принципа садржаних у Глобалном пакту и унутрашњих прописа РС. У закључку се констатује да се може говорити о високом нивоу преплитања норми из Глобалног пакта са нормама из међународног права и унутрашњих прописа РС. Поред кодификацијских намера аутора Глобалног пакта овај документ уводи и неке нове принципе чији би садржај и домете требало детаљније анализирати.*

***Кључне речи*:** *Глобални пакт за животну средину, међународни уговори у области животне средине, право на (здраву) животну средину, принципи права животне средине, Република Србија.*