



International Council of Environmental law (ICEL)

[www.icelinternational.org](http://www.icelinternational.org)

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Since its establishment in 1969 in New Delhi, the International Council of Environmental Law has advanced knowledge on international environmental law and the legal foundations for sustainable development.<sup>1</sup> As an international, non-governmental organization accredited to the UN Economic and Social Council since 1973, ICEL has shared its expertise with ECOSOC, UN Members States, and international organizations. ICEL's members are senior experts drawn from all UN regions and all legal traditions: civil law, common law, socialist law, Islamic law, and customary law. ICEL is also an accredited observer with the UN Framework Convention on Climate Change (UNFCCC) Secretariat, the Convention for Biological Diversity (CBD) Secretariat, and the United Nations Environment Programme (UNEP), as well as other international and regional organizations.

## Chapeau

At the outset, ICEL provides the rationale for its input to the zero draft. To do so, ICEL adheres to the main observation made by the International Union for the Conservation of Nature (IUCN), in the Summit of the Future Policy Brief dated November 2023:

Environmental issues have so far been largely absent from the Our Common Agenda process, and have not featured prominently in the discussions on the scope for the Summit of the Future, with none of the policy briefs produced to inform the summit focusing on environmental issues. As there can be no future without nature IUCN considers it essential

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<sup>1</sup> ICEL was founded in New Delhi in 1969 and was originally constituted under Article 60 of the Swiss Civil Code. ICEL reconstituted in Madrid in 2020, under Spain's Organic Law 1/2002, recognized on May 28, 2021. It maintains representatives in Bonn, Geneva, Nairobi, and New York. It is a Member of International Union for the Conservation of Nature (IUCN). See: <https://www.icel.international.org>. This Note was prepared and published with support of the Coalition for Ecological Law, Inc. NY, [Consortium For Ecological Law \(ecologicalaw.org\)](http://Consortium For Ecological Law (ecologicalaw.org)).

that environment and climate is mainstreamed throughout the text of the Pact for the Future and also feature prominently in the agenda of the Summit of the Future.

And to IUCN's key messages:

- The impact of humanity on our ecosystems is reaching irreversible tipping points. As there can be no future without nature, the Summit of the Future needs to speak to the concerns of future generations and must include a strong commitment to take urgent action on the triple planetary crisis through a rights-based approach.
- Environment and climate need to be mainstreamed across the agenda for the Summit of the Future – which requires a step change in the process given the marginal attention given to these topics in the process to date. The Pact for the Future should send a clear message of a commitment to realize a fossil-free and nature-positive future.
- The Summit should not only reaffirm agreements made elsewhere, but add value to the multilateral agenda by reflecting ambition that goes above and beyond existing commitments. This includes, for instance, the time-bound commitments to accelerate the achievement of targets and goals set out in the Kunming-Montreal GBF and in the Paris Agreement, as well as the swift ratification of the BBNJ agreement.
- It is essential to include a commitment to turn ambition into reality, through enabling the private sector, civil society and governments to measure and track progress in a verifiable and consistent manner, and implement an evidence-based approach to decision-making, based on the best available science.
- IUCN also stresses the need to go Beyond GDP, by not only agreeing on metrics that capture measures not included in GDP but by also expanding GDP measurement to incorporate nature and the environment more generally.

Specific text proposals include:

- a. "We commit to work towards a naturepositive future, which means that we, as a global society, halt and reverse the loss of biodiversity measured from its current status, reducing future negative impacts alongside restoring and renewing nature, to put both living and non-living nature measurably on the path to recovery."

b. “We reaffirm our commitment to effectively address the triple planetary crisis through a rights-based approach, and commit to promote, protect and fulfil the human right to a clean, healthy and sustainable environment”.

Accordingly, below please find additional suggested language for the Chapeau and/or the other sections based on IUCN’s Declaration on the Rule of Law that ICEL has endorsed:<sup>2</sup>

Emphasising that humanity exists within Nature and that all life depends on the integrity of the biosphere and the interdependence of ecological systems,

Recognising the anthropogenic stresses on the Earth now causing unprecedented transgression of planetary boundaries manifested by climate change, loss of biodiversity, depletion of natural resources, and other environmental degradation, all of which contribute to insecurity and conflict,

Further recognising the close relationship between human rights and environmental conservation and protection, and the fundamental importance of ecological integrity for achieving human well-being and tackling poverty,

Endorsing a UN purpose for living in Harmony with Nature and for the stewardship of Earth’s shared biosphere.

States must address the climate crisis and protect Earth’s interconnected systems in our shared biosphere, as well as the links among cycles and environmental conditions to sustain life. The urgency of this issue is acute because environmental decline disproportionately burdens the poor and vulnerable. Environmental degradation is also a transtemporal human rights disaster.

Acknowledging the need to fully implement the human right to a clean, healthy, and sustainable environment for present and future generations, recognized in G.A. Res. 76/300 (July 28, 2022) and the [World Charter for Nature](#), adopted in G.A. Res. 37/7 (Oct. 28, 1982).

Further acknowledging that the basis for the protection of the biosphere, the climate system, and other parts of the environment is an integration of international law principles emmeshed with human rights, which together operate to “establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained,” and “to achieve international co-operation in solving international problems...,” at the heart of the UN Charter.

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<sup>2</sup> See [world declaration on the environmental rule of law final 2017-3-17.pdf\(iucn.org\)](#).

Five key principles enjoying global consensus in international law provide the foundation for States' positive obligation for the stewardship of the shared biosphere and the climate system. These principles are elucidated by international case law, treaties, and customary law and are undergirded by general concepts of human rights.

First, international law principles of cooperation, solidarity, and good faith are vital in determining States' duties based on the negative environmental impact of climate change on all States.

Second, the principle of prevention of significant harm implies an affirmative duty to prevent transboundary harm to other States and shared resources.

Third, States have an obligation under customary international law to exercise procedural due diligence. Further, due diligence embeds the duty of States to operate in good faith, thus ensuring compliance with affirmative environmental duties and not causing harm to another state, which may also imply notification and consultation.

Fourth, customary international law imposes a specific obligation to undertake an environmental impact assessment (EIA) where there is a risk of significant transboundary environmental harm.

Fifth, to protect the human rights of present and future generations, States also have a duty to protect the biosphere, the climate system, and other parts of the environment, as human rights are dependent upon environmentally habitable conditions. Consequently, the need to implement the human right to a clean, healthy, and sustainable environment, as underlying the law of human rights and sustainable development.

The Pact of the Future needs to go further, recognizing the principle of ecological sustainability and resilience, as follows: Legal and other measures shall be taken to protect and restore ecosystem integrity and to sustain and enhance the resilience of social-ecological systems. In the drafting of policies and legislation, and in decision-making, the maintenance of a healthy biosphere for nature and humanity should be a primary consideration.

## **Chapter I. Sustainable development and financing for development**

ICEL's main recommendation is anchor ecologically sustainable development on strengthening the rule of law in the environmental dimension, supporting the Secretary General's Our Common Agenda vision towards a more dynamic, inclusive, rule of law within the UN System, including suggested language, as follows:<sup>3</sup>

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<sup>3</sup> The environmental rule of law is understood as the legal framework of procedural and substantive rights and obligations that incorporates the principles of ecologically sustainable development in the rule of law.

The rule of law in environmental matters is essential for the advancement of the Sustainable Development Goals (SDGs).

Strengthening the rule of law is critical to protecting environmental, social, and cultural values and to achieving ecologically sustainable development, and provides the basis for improving environmental governance.

The environmental rule of law and robust institutions are essential to respond to increasing environmental pressures that threaten the ecological integrity of the Earth, in a way that respects fundamental rights and principles of justice and fairness,

The environmental rule of law should thus serve as the legal foundation for promoting environmental ethics and achieving environmental justice, global ecological integrity, and a sustainable future for all, including for future generations, at local, national, sub-national, regional, and international levels.

See the First Global Report on Environmental Rule of Law in 2019 and the Tracking Progress and Charting Future Directions 2023 Report.<sup>4</sup>

## **Chapter II. International peace and security**

As noted above, the rule of law in environmental matters is essential for international peace and security.

## **Chapter III. Science, technology and innovation and digital cooperation**

For this chapter, ICEL supports the IUCN comment:

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Strengthening the environmental rule of law is the key to the protection, conservation, and restoration of environmental integrity. Without it, environmental governance and the enforcement of rights and obligations may be arbitrary, subjective, and unpredictable. The environmental rule of law is premised on key governance elements including, but not limited to: a. Development, enactment, and implementation of clear, strict, enforceable, and effective laws, regulations, and policies that are efficiently administered through fair and inclusive processes to achieve the highest standards of environmental quality; b. Respect for human rights, including the right to a safe, clean, healthy, and sustainable environment; c. Measures to ensure effective compliance with laws, regulations, and policies, including adequate criminal, civil, and administrative enforcement, liability for environmental damage, and mechanisms for timely, impartial, and independent dispute resolution; d. Effective rules on equal access to information, public participation in decision-making, and access to justice; e. Environmental auditing and reporting, together with other effective accountability, transparency, ethics, integrity and anti-corruption mechanisms; and f. Use of best-available scientific knowledge. See [world declaration on the environmental rule of law final 2017-3-17.pdf \(iucn.org\)](#)

<sup>4</sup> [Environmental Rule of Law: Tracking Progress and Charting Future Directions | UNEP - UN Environment Programme.](#)

IUCN's data, standards and guidance have been instrumental in supporting evidence-based decision-making in conservation and sustainable development. Through the work of the entire Union – Members, Commissions and the Secretariat – IUCN has a long history of establishing standards and tools to track and measure the conservation of nature. For Chapter 1, IUCN considers it essential to include a commitment to turn ambition into reality, through enabling the private sector, civil society and governments to measure and track progress in a verifiable and consistent manner using well-established standards, tools and methodologies.

a. We commit to measure and track contributions towards protecting and restoring nature and achieving sustainable development goals and applying an evidence-based approach to decision-making, using the best available science. We will work to expand collaborative and inclusive approaches, and strengthen science-policy interfaces at all levels.

#### **Chapter IV. Youth and future generations**

The triple planetary crisis is a human rights crisis because the impairment of Earth's interconnected systems threatens the quality of life and health of all humans, present and future. In particular, the immediate threat rests disproportionately on particular groups like children, women, Indigenous peoples, the poor, those residing in island states, land-lock states and other areas severely threatened by climate impacts.<sup>5</sup> Tellingly, the crises infringe on every identified human right. To this end, in addition to supporting the Secretary General's proposal on this section, the Pact for the Future must recognize the following principles (also included in the IUCN Declaration on the Rule of Law):

**Principle of Intragenerational Equity:** There shall be a fair and equitable sharing of the benefits of nature, including appropriate access to ecosystem services. There shall be a fair and equitable sharing of efforts and burdens. Natural resources shall be used and managed in an ecologically sustainable manner.

**Principle of Intergenerational Equity:** The present generation must ensure that the health, diversity, ecological functions, and beauty of the environment are maintained or restored to provide equitable access to the benefits of the environment by each successive generation.

**Principle of Gender Equality:** Gender equality shall be incorporated into all policies, decisions, and practices in recognition of the often-disproportionate impacts of

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<sup>5</sup> See generally Maastricht Principles on the Human Rights of Future Generations (2023), <https://www.rightsoffuturegenerations.org/the-principles>.

environmental degradation on women and girls, and their key role in achieving sustainability.

**Participation of Minority and Vulnerable Groups** The inclusion of minority and vulnerable groups and perspectives across generations, shall be actively addressed with regard to effective access to information, open and inclusive participation in decision-making, and equal access to justice.

**Participation of Indigenous and Tribal Peoples:** Indigenous and tribal peoples' rights over, and relationships with, their traditional and/or customary lands and territories shall be respected, with their free, prior, and informed consent to any activities on or affecting their land or resources being a key objective.

**Principle of Non-regression** States, sub-national entities, and regional integration organisations shall not allow or pursue actions that have the net effect of diminishing the legal protection of the environment or of access to environmental justice.

**Principle of Progression:** In order to achieve the progressive development and enforcement of the environmental rule of law, States, sub-national entities, and regional integration organisations shall regularly revise and enhance laws and policies in order to protect, conserve, restore, and ameliorate the environment, based on the most recent scientific knowledge and policy developments.

## **Chapter V. Transforming global governance**

For Chapter 5, ICEL again supports the IUCN recommendation:

IUCN stresses the need to go Beyond GDP, by not only agreeing on metrics that capture measures not included in GDP but by also expanding GDP measurement to incorporate nature and the environment more generally as recommended in the UN Secretary-General's policy brief on Beyond GDP. Specific language therefore includes: a. We confirm our political commitment to develop a conceptual framework to "value what counts", anchored in the 2030 Agenda. The framework should be designed to achieve the following outcomes: (i) well-being and agency; (ii) respect for life and the planet; and (iii) reduced inequalities and greater solidarity.