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► **To cite this version:**

Sophie Gambardella. International Environmental Law (2020). Yearbook of international disaster law, 2022, 2020 (3). halshs-03468534

HAL Id: halshs-03468534

<https://shs.hal.science/halshs-03468534>

Submitted on 7 Dec 2021

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International Environmental Law (2020)

*Sophie Gambardella**

1. Introduction

Even if, from an environmental point of view, our planet experienced a few months of respite in 2020 due to the strong slowdown of the world economy, this will have had no more effect than a “drop in the ocean” in the face of the ecological drama that the Earth is experiencing. As proof, if any were needed, despite the near global lockdown imposed by the Covid pandemic¹, ecological disasters still punctuated the year 2020: red tide in the Arctic¹, acid contamination of the Taguil river in Russia², and the oil spill off Mauritius³. However, in terms of the international governance of environmental issues, 2020 could have been a year of great progress. Key biodiversity negotiations might have been concluded - such as those relating to the treaty for the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) or post-2020 Global Biodiversity Framework. In 2020, the States could have submitted their new national commitments to achieve the Paris Agreement ahead of COP 26, which was postponed by one year. In the end, 2020 was the year of all postponements: with the postponement of the Intergovernmental Panel on Climate Change, the postponement of COP 26, and the postponement of the Convention on Biological Diversity’s COP 15. However, some international forums have taken up the challenge of “distance” by maintaining certain sessions to have budgets voted on.

However, although 2020 did not produce any major achievements for the planet on the international scene, it was not a “blank year” either. On biodiversity, the preparation of a post-2020 Global Biodiversity Framework continued with efforts to maintain the commitment of States, notably at the Summit on Biodiversity, which was able to take place virtually on 30 September 2020. In the area of climate change, the United Nations, the United Kingdom and France co-organised a Climate Ambition Summit on the fifth anniversary of the Paris Agreement to maintain the momentum of States in the face of the challenge of climate change. Finally, in the area of ocean plastic pollution, the Ad Hoc Open-Ended Expert Group on Marine Litter and Microplastics was able to conclude its work and enable discussions to be held within the United Nations Environment Assembly on the various ways to reduce and control marine plastics. In the remainder of this report, we will therefore look back at these three events that have set the pace in the field of international environmental law in a year that has been unprecedented.

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¹ More than 20,000 tonnes of diesel have been spilled into an Arctic River after a major fuel leak at a subsidiary of mining giant Norilsk Nickel, on 29 May 2020. A state of emergency has been declared by Vladimir Putin.

² In July 2020, Acidic water from abandoned mines has spilled into the Taguil River, following a flood, and is poisoning all nature in its path.

³ The bulk carrier "Wakashio" struck a reef in Mauritius on 25 July, and some of the 3,800 tonnes of fuel oil and 200 tonnes of diesel it was carrying subsequently spilled into the island's waters.

2. Post-2020 Global Biodiversity Framework

The dizzying acceleration of the sixth mass extinction is a real disaster for the biodiversity of our planet. Since 2018, the publication of reports by scientific experts on the state of biodiversity have made the alarming observation that biodiversity is collapsing. The Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) published in 2019 its global assessment report on biodiversity and ecosystem services estimating that “of an estimated 8 million animal and plant species (75 per cent of which are insects), around 1 million are threatened with extinction”.⁴ The global nature of the challenges posed by the protection of biodiversity therefore requires, above all, a collective response on an international scale. At the fourteenth meeting of the States Parties to the Convention on Biological Diversity held in 2018, States adopted decision 14/34⁵ to create a preparatory process for the development of the global biodiversity framework for the post-2020 period. This global framework is expected to follow up on the Strategic Plan for Biological Diversity 2011-2020 and the Aichi Targets.

A Working Group was established to develop this new framework. At its first meeting, the Working Group considered proposals and identified possible elements for the structure and scope of the post-2020 global biodiversity framework. An initial draft text prepared by the Co-Chairs was submitted to the Working Group at its second meeting in February 2020. According to the initial draft text, “[t]he vision of the framework is a world where humans live in harmony with nature” and where “[b]y 2050, biological diversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and providing essential benefits for all people”⁶. It is therefore a vision to be phased in over the long term. To achieve this “2050 vision”, the “Framework” sets four global objectives for 2050⁷, but also intermediary deadlines for 2030 to assess the progress made on twenty specific targets.

The 2050 vision is ambitious. Each global objective and each target will be accompanied by a precise numerical objective. For example, states should “protect and conserve through [a] well connected and effective system of protected areas and other effective area-based conservation measures at least 30 per cent of the planet with the focus on areas particularly important for biodiversity”.⁸ Most of the numerical targets have yet to be negotiated and are therefore not included in the initial draft. On 15

⁴ IPBES, ‘Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, (2019), 24.

⁵ COP CBD, Decision 14/34, ‘Comprehensive and participatory process for the preparation of the post-2020 global biodiversity framework’, (30 November 2018), CBD/COP/DEC/14/34.

⁶ Preparations for the post-2020 biodiversity framework, ‘Update of the zero draft of the post-2020 global biodiversity framework’, note by the co-chairs, (17 August 2020) CBD/POST2020/PREP/2/1, <<https://www.cbd.int/doc/c/3064/749a/0f65ac7f9def86707f4eaeafa/post2020-prep-02-01-en.pdf>>

⁷ The four goals are:

- (a) The area, connectivity and integrity of natural ecosystems increased by at least [X%] supporting healthy and resilient populations of all species while reducing the number of species that are threatened by [X%] and maintaining genetic diversity;
- (b) Nature’s contributions to people have been valued, maintained or enhanced through conservation and sustainable use supporting global development agenda for the benefit of all people;
- (c) The benefits, from the utilization of genetic resources are shared fairly and equitably; (d) Means of implementation are available to achieve all goals and targets in the framework.

⁸ *Ibid.*, fn 6

September 2020, the fifth Global Biodiversity Outlook report⁹ was published to assess the state of implementation of the Aichi Targets. According to this report, at the global level, none of the 20 Targets has been fully achieved. Only six of them have been partially achieved. In this context, the outcome of the negotiations to determine numerical targets for the post-2020 global framework will be crucial for reversing the decline of biodiversity by 2050. To prepare for COP15, which has been postponed to 2021, a United Nations Summit on Biodiversity was organised on 30 September 2020. Two days before the summit, 75 states signed the ‘Leader Pledge for Nature’, which is also open for signature by non-state actors. Symbolically, the signing of this pledge shows that the States have realised that all the indicators for biodiversity on a global scale have yet to be achieved. However, the absence of the BRICS and the United States among the signatories is problematic for a collective response. However,

‘[i]n a more interesting trend, which seems to be growing stronger month by month, the causes of biodiversity loss, and in particular the deeper causes linked to what may be referred to as the all-encompassing term “productivism”, are more and more directly spelled out. In the sequence that opens, it will now be necessary to clarify how the States, especially the most ambitious, intend to tackle them concretely’.¹⁰

It is to be hoped that COP 15, to be held in Kunming, China, from 11 to 24 October 2021, will produce an ambitious text for the protection of biodiversity over the next decade.

3. Climate Ambition Summit

The goal of the Paris Agreement is to limit global warming to below 2°C and to aim for 1.5°C. However, in September 2020, UNEP’s Emission Gap Report found that, despite a short-lived drop in carbon dioxide emissions caused by the COVID-19 pandemic, the world is still heading for a temperature increase of over 3°C this century.¹¹ Moreover, the postponement of COP26 in Glasgow to the autumn of 2021 risks demobilising states as they report their enhanced national commitments - their nationally determined contributions (NDCs) - for the next five years. At the dawn of 2021, a disaster scenario is emerging.

In this context, the Climate Ambition Summit, dubbed by the United Nations as the “sprint to Glasgow”, was held in December 2020. The objective of the 2020 Climate Ambition Summit was for states to make bold new commitments under the three pillars of the Paris Agreement: mitigation, adaptation and finance. At the end of the event, only 75 of the Agreement’s signatories had submitted their updated climate commitments. These States only accounted for around 30% of global greenhouse gas emissions. According to the first monitoring by Climate Action Tracker (CAT), a scientific analysis

⁹ Secretariat of the Convention on Biological Diversity, ‘Global Biodiversity Outlook 5 – Summary for Policy Makers’, (2020) Available at: <<https://www.cbd.int/gbo/gbo5/publication/gbo-5-spm-en.pdf>>

¹⁰ Aleksandar Rankovic, Juliette Landry, ‘The first United Nations Summit on Biodiversity, revealing the challenges on the road to COP 15’, (6 October 2020) IDDRI, available at: <<https://www.iddri.org/en/publications-and-events/blog-post/first-united-nations-summit-biodiversity-revealing-challenges>>

¹¹ UNEP, ‘Emissions Gap Report 2020 - Executive summary’ (2020) Available at: <<https://wedocs.unep.org/bitstream/handle/20.500.11822/34438/EGR20ESE.pdf?sequence=25>>

tool, as of 1 June 2021, 48% of global greenhouse gas emissions are covered by the new NDCs¹². However,

‘as of May 2021, a substantial gap remains between the levels of emissions in 2030 projected in the NDCs submitted to the UNFCCC, including those recently announced by Canada, China, Japan, South Africa and Ukraine, and the lower levels that would be consistent with the temperature limit of the Paris Agreement. The benchmark emissions from a 1.5°C compatible pathway are at 26 GtCO₂e in 2030. Comparing these with the emissions from the pledges and targets scenario, including some long-term or net zero targets, submitted or announced by April 2021, the CAT calculates a gap of 20-23 GtCO₂e in 2030’.¹³

The commitments of the States are therefore still insufficient to achieve the objective of the Paris Agreement and some States, such as Brazil, Russia and Australia, refuse to increase their ambition. While the objective of COP 26 will obviously be to convince the States to ambitiously increase their commitments, it will also have to try to reach a decision on the rules for implementing Article 6 of the Paris Agreement, which concerns emissions trading systems and on which there is still considerable disagreement. 2021 thus promises to be a key year in the field of climate change. The 2021 Climate Ambition Summit and the return of the US to the negotiating table could provide a glimmer of hope ahead of the first official UN climate meeting since COP25 in Madrid eighteen months ago.

4. Marine Litter and Microplastics

“Plastic soup”, “waste vortex”, “7th continent”, the expressions proliferate to name the environmental catastrophe represented by the 80,000 tonnes of waste that occupy 1.6 million km² of the Pacific. In 2017, UNEP's United Nations Environment Assembly, which had taken up the issue of plastic and microplastic litter in the marine environment at its first meeting in 2014¹⁴, established the Ad-hoc Open-ended Expert Group on Marine Litter and Microplastics, whose mission was to identify the brakes and levers for combating plastic and microplastic litter in the marine environment from all sources. The Expert Group met four times and held its last session virtually from 9 to 13 November 2020.

For the group of experts, ‘a new legally binding agreement should be drawn up in order to effectively deal with the problem of waste and microplastics in the marine environment’.¹⁵ This desire to move towards a new international agreement was supported by certain states, notably Norway, Japan, Sri Lanka and the Nordic Council of Ministers and the heads of state of the Caribbean Community as well as by some authors of the doctrine.¹⁶ The European Commission, in its March 2020 Communication ‘A new action plan for the circular economy’, also stated that it would lead the international effort

¹² See: <https://climateactiontracker.org/climate-target-update-tracker/>

¹³ See: <https://climateactiontracker.org/global/cat-emissions-gaps/>

¹⁴ UNEA I Res. 1.6 ‘Marine plastic debris and microplastics’ (27 June 2014).

¹⁵ Report of the second meeting of the ad hoc open-ended expert group on marine litter and microplastics, (3–7 December 2018), Annex, para. 5.

¹⁶ See: Pascale Ricard, ‘Le droit international et la lutte contre la pollution marine par les déchets de matières plastiques’, (2019) *AFDI*, LXV, 549-554.

to reach a global agreement on plastics. In contrast, for other observers of international negotiations,

While it is tempting to propose new international agreements to fill identified legal gaps, recent experiences in multilateral environmental governance compel us to reflect more critically on this approach. The long and winding road towards a high seas biodiversity treaty has demonstrated how time – and resource - intensive such negotiations can be, while recent setbacks for the Global Pact for the Environment indicate a limited appetite for new global initiatives. Even the Paris Agreement, seemingly a success story, now faces considerable implementation challenges and has not managed to constrain humanity's ever-growing carbon footprint.¹⁷

At the fifth session of the United Nations Environment Assembly, held virtually in February 2021, states' positions on the way forward became clearer. While the Asia-Pacific group of states merely reiterated the need for international cooperation and multilateralism to effectively tackle marine plastic waste pollution, the European Union explicitly called for negotiations to begin at the resumed face-to-face meeting of the fifth session of the Assembly to adopt a global agreement on plastics. The Assembly will meet in person, in 2022, in Nairobi following its fifth session. At that time, it will have to decide on the future of the issue of marine plastic pollution and whether or not to open negotiations for a global agreement.

Unfortunately, there are still too many examples of environmental disasters, but beyond that, disasters on an international scale are multiplying in all areas, as all the columns in this section show. How then should international law evolve to put an end to these events? The diversity of the areas in which these disasters take place, the sources that cause them, and the very nature of these disasters force us to think about the law in a global way. International disaster law could be this legal catalyst. The international law of disasters could, in fact, lead us to have a transversal reading of international law to identify the levers and brakes for a world without disasters by drawing from each specific law the legal tools that have proved their worth and that could be transposed to other areas. In this sense, the triptych from environmental law, "prevent-reduce-compensate", could, for example, be future area for debate.

¹⁷ Julien Rochette, Romain Schumm, Glen Wright, Klaudija Cremers, 'Combatting marine plastic litter: state of play and perspectives', (2020) 3 IDDRI, 10.