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The Outcome of the Negotiations on the Global Pact for the Environment: A Commentary

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Abstract: In May 2018, the United Nations General Assembly adopted the resolution "Towards a Global Pact for the Environment". This resolution established an intergovernmental working group to discuss the opportunity to open treaty negotiations to codify the fundamental principles of international environmental law into a treaty dubbed the Global Pact for the Environment. In May 2019, the intergovernmental working group completed its mandate and adopted a set of recommendations that were formally endorsed by the United Nations General Assembly in August 2019. Contrarily to what the supporters of the Global Pact for the Environment project had hoped for, the working group only recommended the preparation of a "political declaration" without referring to the codification of the principles of international environmental law. This paper offers a critical commentary of the outcome of these negotiations. The analysis suggests that the decision to elaborate a Global Pact for the Environment would have entailed considerable risks for international environmental law and that if adopted, this instrument would not have necessarily helped to increase the problem-solving capacity of international environmental law. Based on the language used in the recommendation to prepare a "political declaration", the paper also discusses some of the key elements that could shape and inform the upcoming negotiations of this declaration.

Keywords: international environmental law; environmental governance; multilateral negotiations; codification of principles

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1. Introduction

International environmental law is composed of a myriad of multilateral agreements. As these agreements usually have a limited and sectoral scope, international environmental law has no overarching treaty that can be regarded as its cornerstone. This situation contrasts with other areas of international law, such as trade law, the law of the sea or international criminal law. But to what extent is it problematic? Is this absence of an overarching treaty on the environment the reason why international environmental law has so far been largely ineffective to halt the generalized process of environmental degradation? To enhance environmental protection, should the most fundamental principles of international environmental law be codified into a general and universal legally binding instrument that would supplement all existing sectoral agreements?

Since 2018, these questions have been the subject of intense discussions between the members of the United Nations in a negotiation process that recently came to an end, but which spurred a reflection on a global scale on what needs to be done to increase the problem-solving capacity of international environmental law. Often—yet unofficially—called the negotiations on the Global Pact for the Environment project, these discussions took place within an ad hoc open-ended working group established in May 2018 by the United Nations General Assembly (UNGA) resolution 72/277 [1]. The mandate of this working group was to "discuss possible options to address possible gaps" in international environmental law, and make recommendations to the UNGA, including the possibility to convene "an intergovernmental conference to adopt an international instrument" [1] (para. 4).

The launch of these discussions was the result of the diplomatic efforts of France, whose President Emmanuel Macron had proposed, in September 2017 during a special event at the UNGA, to strengthen international environmental law by combining its most fundamental principles into an umbrella treaty, dubbed the Global Pact for the Environment [2].

The idea to adopt such an instrument originated from the work of the Environment Committee of a French think thank, *Le Club des Juristes*. In the run up to the Paris Climate Conference (COP 21), this Committee (composed of around twenty French legal scholars, mostly lawyers and academics) published a report on how to make international environment law more effective [3]. One of the findings of this report was that international environmental law was not suffering "from a lack of norms" but rather "from their dispersal, their fragmentation even" [3] (p. 100). To address that problem, the Committee recommended the adoption of an international treaty, which would lay down the founding principles of international environmental law and would become the cornerstone of this area of international law [3] (p. 103). Based on that premise, the Environment Committee of the *Club des Juristes* put together a group of legal experts (a network of over 100 lawyers and academics from all legal traditions representing almost 40 nationalities, and chaired by Laurent Fabius, the president of COP21 and current President of the French Constitutional Council), which drafted a preliminary version of a Global Pact for the Environment [4]. When the draft Global Pact for the Environment was unveiled, in June 2017, the French President immediately endorsed this initiative and publicly vowed to push it through the UNGA [4] (p. 5).

For the drafters of the preliminary version of the Global Pact, this instrument was needed to enhance environmental protection, notably because it would: (a) "alleviate the inconveniences of the fragmentation" [4] (p. 16) of international environmental law; (b) "prevent some important issues from remaining "unaddressed" by falling between the cracks" [5] (p. 3) of existing sectoral instruments and; (c) enable national and international courts to rely upon the fundamental principles of international environmental law in their legal reasoning, as these principles would be legally binding [4] (p. 30). According to the proponents of the Global Pact for the Environment project, the absence of a treaty representing the "cornerstone" [4] (p. 8) of international environmental law, and capable of creating "a unifying perspective" [4] (p. 19) in this field, was a gap that needed to be filled.

From the outset, the Global Pact for the Environment project received mixed reactions in the legal literature. Some scholars welcomed the proposal very positively and saw in this initiative "the type of innovative, big thinking necessary to reverse course on environmental degradation" [6] (p. 61). Conversely, others considered that the preliminary version of the Global Pact drafted by the group of legal experts only regurgitated many of the accepted principles of international environmental law and that this initiative was therefore bringing "little new on the table" [7] (p. 833). Some authors also questioned whether the Global Pact was "the right vehicle for enhancing environmental protection", given the "numerous issues of both legal and policy nature" that such a project would raise [8] (p. 1). In any case, the launch of the Global Pact for the Environment project has aroused stimulating legal debates in the academic community [9].

Although the mandate of the open-ended working group established by the UNGA in May 2018 was not to negotiate a legally binding instrument, the adoption of resolution 72/277 represented a major diplomatic success for the proponents of the Global Pact for the Environment, and an important first milestone in their quest for a new treaty. Adopted by a vote of 143 in favor and five against, the resolution—entitled "Towards a Global Pact for the Environment", a very explicit title—was formally bringing the Global Pact for the Environment project inside the UN, by setting up an intergovernmental working group that could decide that a gap existed in international environmental law and that a treaty was needed to address it. The open-ended working group had indeed the authority to recommend the adoption of a treaty, since its mandate was referring to the adoption of any form of "international instrument". Resolution 72/277 was therefore officially launching a process that could ultimately lead to the adoption of a legally binding instrument similar to that of the draft Global Pact for the Environment prepared by the *Club des Juristes*.

The open-ended working group held three substantive sessions, in Nairobi, in January, March and May 2019. At the end of the last session, a three-page document containing a set of recommendations was adopted by consensus. However, contrarily to what the proponents of the Global Pact for the Environment project had hoped for, the open-ended working group did not recommend the UNGA to convene an intergovernmental conference to adopt a new treaty. Instead, the open-ended working group recommended, inter alia, that the United Nations Environment Assembly (UNEA) "prepare, at its fifth session in February 2021, a political declaration for a United Nations high-level meeting" in the context of the commemoration of the 50th anniversary of the United Nations Environment Programme (UNEP), created at the 1972 Stockholm Conference, "with a view to strengthening the implementation of international environmental law and international environmental governance" [10] (para. 3.b).

By referring to a "political declaration" (which is a non-binding instrument, but still an "international instrument"), the open-ended working group implicitly ruled out the idea to launch treaty negotiations. In addition, as indicated by the absence of any reference to the principles of international environmental law in the recommendation to prepare a "political declaration", the idea of codifying these principles into a single instrument was not explicitly retained by the working group. Given that all the recommendations of the open-ended working group have been endorsed on 30 August 2019 by the UNGA [11], the Global Pact for the Environment project suffered an important setback. Legally speaking, however, the outcome adopted by the open-ended working group did not put a definitive stop to this project. The preparation of the "political declaration" and the high-level meeting to be convened in 2022 could serve to breathe new life into the idea of codifying the fundamental principles of international environmental law into a treaty. For instance, the "political declaration" could encourage, or call on, States to adopt such an instrument. If that were the case, a new diplomatic window would then be opened. That said, this scenario is far from a given.

During the negotiations of the open-ended working group, the majority of the States did not appear convinced that a Global Pact for the Environment was what was the most needed at the moment to enhance environmental protection, nor that it could yield results that could not already be achieved with existing legal tools. Yet, one can wonder whether all of these States will radically change their position by 2022. New political leaders with a more progressive environmental agenda could be office in several countries by then. But this does not necessarily mean that they will consider the elaboration of a Global Pact for the Environment as a priority. The key question during the negotiations was not to determine if more needed to be done to protect the environment, but rather whether the codification of the principles of international environmental law was the most pressing issue to deal with to enhance environmental protection. One could very well support the idea that "something" has to be done to improve the quality of the environment, but not support the idea to adopt a Global Pact for the Environment for well grounded legal or/and political reasons.

That said, since the exact purpose of the new negotiation process launched at UNEA (besides preparing a "political declaration" with a view to "strengthening the implementation of international environmental law and international environmental governance") remains so far rather nebulous, all the options are still on the table, including the possibility that the declaration recommends the elaboration of a Global Pact for the Environment. The open-ended working group may have completed its mandate, but the global conversation on how improving the problem-solving capacity of international environmental law is not over.

The following paper offers a brief analysis of the outcome of the negotiations on the Global Pact for the Environment project. It discusses the decision of the open-ended working group not to recommend a process toward a legally binding instrument and the steps toward a future "political declaration". The paper unfolds as follows. Section 2 focuses on the decision not to recommend treaty negotiations. It assesses the risk that the launch of treaty negotiations would have entailed and questions the potential added value that a Global Pact would have had for environmental protection. Section 3 examines the language used in the sentence that recommends the preparation of the "political

declaration" and discusses how this language could shape and inform the upcoming negotiations of this declaration. Section 4 offers some concluding remarks.

2. The Decision Not to Recommend Treaty Negotiations

The final document adopted by the open-ended working group in which the recommendations are contained is divided in three sections. Section I lays out the five "Objectives guiding the recommendations". Section II, which is the longest, identifies thirteen "Substantive recommendations", which cover a wide range of different issues. These recommendations encourage, inter alia: the implementation of existing environmental obligations; the promotion of policy coherence across environmental instruments; the collaboration among the governing bodies and secretariats of multilateral environmental agreements; the ratification of existing multilateral agreements; the integration of environmental considerations into sectoral policies; and the engagement of relevant stakeholders in the implementation of international environmental law [11] (Annex, para. 6–18). Entitled "Further work", Section III contains two recommendations. The first is to "circulate" the substantive recommendations and "make them available" to UN member States, UN agencies and the governing bodies of multilateral environmental agreements. The second deals with the preparation of the political declaration [11] (Annex, para. a–b). Nowhere do the recommendations refer to the Global Pact for the Environment project.

Those who were convinced that enshrining the fundamental principles of international environmental law in a treaty was an absolute necessity to enhance environmental protection have generally interpreted this outcome as a missed opportunity and a "failure of the negotiations" [12]. However, such an interpretation is debatable. For instance, it could be argued that even with this outcome, the proponents of the Global for the Environment project already succeed in achieving some of the goals they were pursuing. The creation of the open-ended working group brought States to have a discussion on the challenges faced by international environmental law from a systemic perspective and recommendations have been made to encourage efforts to "promote policy coherence across" multilateral environmental agreements. The point could be made that this contributes to creating a "unifying perspective" in international environmental law.

Moreover, it should be noted that legally speaking, the negotiations did not fail. The mandate of the working group (which was only procedural in nature) was fulfilled, since States discussed "possible options to address possible gaps" in international environmental law and made recommendations to the UNGA. Moreover, in assessing the outcome of the negotiations, it seems important not to overestimate the advantages of hard law over soft law. No one would deny that the Rio Declaration, despite its lack of binding force, has had a considerable and positive influence on the development of environmental law, both internationally and domestically (perhaps even more than some treaties). During the negotiations, a delegate rightly pointed out that a political declaration "wouldn't have zero legal effect" [13] (p. 10).

Last but not least, one can ask whether launching treaty negotiations to codify the fundamental principles of international environmental law would have been desirable (i.e., beneficial for environmental protection and international environmental law). Several arguments can be put forward to support the view that the elaboration of a Global Pact would have entailed considerable risks for international environmental law and that, if adopted, this instrument would not have necessarily helped to increase the problem-solving capacity of international environmental law or improve the overall quality of the environment.

2.1. The Risk of Launching Treaty Negotiations

Negotiations aiming at elaborating a Global Pact for the Environment could have easily led to a diplomatic deadlock. Of course, any kind of negotiation can always get bogged down. But in this case, the risk of deadlock would have been particularly high due to the very nature of these negotiations, i.e., the codification of the fundamental principles of international environmental law.

States would have had the delicate task of reaching a consensus on the principles that can be deemed sufficiently fundamental to be codified in the Global Pact and on their definition. One could argue that a similar work has already been done in the past for the Stockholm and Rio Declarations. However, the difference is that when these documents were adopted, States knew that the declarations that they were preparing would not be legally binding. Yet, States tend to be more cautious and to adopt less progressive and/or flexible positions when they know that what they are discussing is intended to be legally binding.

In addition, since the adoption of these declarations, international environmental law has considerably expanded and gained in diversity and complexity. For instance, principles that bear the same name are sometimes formulated differently throughout environmental agreements. This is notably the case for the precautionary principle, which can be found in many treaties but very often with different wording [14]. These divergences could have been problematic to determine how to formulate the principles in the Global Pact.

Moreover, the process of codification always entails the risk of revealing "divergences where none had been expressed or anticipated before" [15] (p. 32). This would have surely been the case in the context of the elaboration of a Global Pact. To give just one example, one can imagine that developing countries would have wanted to include some elements relating to the differentiation of treatment in an article codifying the principle of prevention and that developed countries would have fiercely opposed this demand. But the current customary formulation of the principle of prevention simply does not refer to that issue. Because of the broad scope of the Global Pact, a deadlock in the negotiations of this instrument could have led to a global crisis in green multilateralism, thus hindering progress on other areas of international environmental law, as well as diverting attention from more specific and pressing issues like climate change, biodiversity or marine pollution.

If States had nonetheless reached consensus on the content of a Global Pact for the Environment, one can ask what the content of this treaty would have been. Presumably, because of the strong divergences of views expressed during the negotiations, States would have agreed on the lowest common denominators rather than on ambitious principles. Yet, a set of weak and vague principles enshrined in a legally binding instrument would have the effect of downgrading the current level of environmental protection, as well as "freezing" international environmental law at a low standard. International judges would probably be reluctant to use the customary process to give another and more progressive meaning to principles that States have codified, or even recognize principles that have deliberately not been codified. A Global Pact for the Environment could still have included an amendment procedure. But as the practice shows, changing the content of a treaty through this procedure is always a complex task whose outcome is highly uncertain.

A Global Pact for the Environment could also have remained ineffective either because of a low number of ratifications or because of a lack of implementation. Considering the opposition expressed by the US and Russia to the Global Pact for the Environment project and their vote against the May 2018 UNGA resolution, universality would have likely been hard to achieve. Here again, the risk of having a low number of ratifications or shortcomings in implementation arises for any kind of treaty. States remain sovereign to decide the treaties they wish to ratify, and many existing multilateral environmental agreements lack of universal participation. However, as the Global Pact aims to be a form of international constitution for the environment [16] (p. 41), the stakes associates with these risks are higher. The power of a Global Pact, as its proponents argue, would rest in its symbolic value. But what would be the consequences if the instrument that is supposed to represent the constitution of international environmental law proves to be ineffective, or if it appears that this instrument is not observed? This would certainly contribute to feeding an already growing feeling of disenchantment towards international environmental law and perhaps towards multilateral diplomacy more broadly. In that regard, fragmentation can be viewed as an advantage as it can help to compartmentalize the failures of—and the criticisms against—international environmental law.

One also has to take into consideration the fact that the existence of a general treaty on the environment could be invoked by some States to oppose the elaboration of more detailed agreements on new environmental issues on the ground that these issues could be adequately addressed simply by applying the general principles contained in the Global Pact. They could argue that this approach is the best way to protect the environment while allowing each State to take into account its own national circumstances.

Lastly, the elaboration of a Global Pact for the Environment could have created legal uncertainty given the complexity to define precisely the relationship between this broad and overarching new instrument and the existing sectoral multilateral environmental agreements. The Global Pact would have likely contained principles not included in some sectoral agreements. But what effect would this situation have had on the application of these agreements? And what would have happened in situation where the provisions of the Global Pact would have differed from those of a sectoral agreement? The simple fact of laying out overarching principles formulated in general terms generates, in itself, legal uncertainty. For instance, a Global Pact could recognize a general right of access to environmental information held by public authorities. But would it mean that public authorities would no longer be allowed to refuse an environmental request if it is manifestly unreasonable or if its disclosure would affect national defence or the course of justice, as provided by Article 4 of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters? The recognition of a general right of access to environmental information could perhaps be invoked before an international court to justify a restrictive interpretation of the exceptions set out in Article 4 of the Aarhus Convention. But two different international courts could have two different interpretations of what this general right means in the context of the Aarhus Convention. In that case, in addition to increasing legal uncertainty, the Global Pact would also increase the fragmentation of international environmental law.

One could think that the principle that special law derogates from general law (*lex specialis*) could help to bring more legal certainty regarding the articulation between a Global Pact and the existing sectoral agreements. However, "[t] here are a variety of rules of interpretation and other maxims that may be applied in conflict resolution, such as (...) *lex posterior*" [17] (pp. 40–41). And because "no particular principle or rule can be regarded as of absolutely validity" [18] (p. 407), *lex posterior* "may take precedence over *lex specialis*, or they may be applied concurrently" [17]. For greater clarity and legal predictability, States could have wanted to include a provision in the Global Pact specifying its relationship with other environmental agreements. But what would such a provision have said? If the provision had stated that special conventions have precedence over the Global Pact to the extent of any inconsistency, or that the Global Pact does not affect the rights and obligations of other agreements, what would have been the added value of this instrument? On the other hand, a provision stating that a Global Pact has precedence over the sectoral agreements would have generated a great deal of legal confusion. Interestingly, the concern that the adoption of a Global Pact could undermine existing environmental agreements was expressed in the UNGA resolution 72/277 [1] (para. 9) and often recalled during the sessions of the open-ended working group.

As all these elements suggest, if the open-ended working group had recommended the launch of treaty negotiations to codify the fundamental principles of international environmental law, and if the UNGA had followed this recommendation, States would have initiated a process that could have generated many unintended consequences, which would have jeopardized the legal predictability and perhaps hinder the development of more detailed environmental standards in the future. In that sense, the decision not to recommend the launch of treaty negotiations may have very well prevented States from adding another layer of complexity to international environmental law.

2.2. The Questionable Benefits of a Global Pact for the Environment

To properly assess the outcome adopted by the open-ended working group, the risks that would have come with the launch of treaty negotiations must be weighed against the potential added value

that a Global Pact could have had for environmental protection. Of course, the extent to which a treaty can have beneficial impacts for the environment is always difficult to predict. It depends on a range of different factors, such as its content, its membership, the extent to which Parties comply with it, how it influences the behavior of its Parties and the dynamics that the whole "life cycle" of the treaty can create both domestically and internationally.

That said, the proponents of the Global Pact often argue that this instrument could have various benefits for environmental protection, notably because it would help to address fragmentation in international environmental law and avoid environmental issues not already covered by sectoral agreements from remaining unregulated. They also contend that contrarily to a declaration (like the Rio Declaration), a treaty "can be invoked before a judge" and that adopting a Global Pact "would thus enable a domestic court to monitor the compliance of national laws and regulations with the guiding environmental principles, which is not presently possible with mere declarations" [4] (p. 32). These assumptions are, however, debatable.

To begin with, one can ask whether the "problems" that the proponents of the Global Pact seek to address are really what hinders the effectiveness of international environmental law. For example, is the fact that some principles of international environmental law are formulated differently throughout environmental agreements a problem? From a practical standpoint, does it really have an influence on the effectiveness or implementation of these agreements? A similar reasoning can be made about the alleged necessity of having an overarching treaty to avoid that some environmental issues remain unregulated due to the absence of a specific agreement. One could say that the environmental customary rules already play this safety-net role and that, in any case, the best option is to develop sectoral tailored-made treaties for each environmental problem. The fact that a Global Pact would enable domestic judges to invoke the principles of international environmental law because they would become legally binding also needs to be put into perspective. A Global Pact is likely to codify principles that already have a customary status or that are already enshrined in sectoral treaties. Enshrining them once again in a treaty would probably not have much added value with regards to their domestic justiciability. Moreover, the role that such principles could play domestically depends on how each jurisdiction defines the relationship between its domestic legal order and international law.

Thus, a Global Pact may not be what is the most needed to address the actual causes of inadequate environmental protection. The fact that trade and environment are addressed through different bodies of law could be viewed as a much bigger problem for the effectiveness of international environment law than its fragmentation and its alleged lack of coherence. So could be the lack of financial and capacity building resources, as well as the lack of commitment in the implementation of existing agreements.

During the negotiations, most of the States never appeared very convinced that codifying the fundamental principles of international environmental law into a legally binding instrument was a priority (or even a necessity). This point of view was, for instance, expressed by Argentina, who declared that "any shortcomings in international environmental law are in implementation, and relate to financing, capacity building, and technology transfer, hinge on political will, and can be addressed through existing institutions" [19] (p. 3). Other developing countries (such as Brazil, Peru, Saudi Arabia, Malaysia, Cuba, Ecuador or Nigeria) also "pointed to the need to strengthen means of implementation available to developing countries" [13] (p. 5). Although for different reasons, developed countries also expressed reservation about the need for a Global Pact. For example, the representative of Canada declared that "she was not entirely convinced that a single overarching framework would bring about overall effectiveness" in international environmental law [19] (p. 9). Japan [13] (p. 5), as well as Norway [19] (p. 5) and Australia [19] (p. 8), made similar interventions. While the concerns of developed and developing countries regarding the Global Pact seem to have been different, it is interesting to note that these negotiations were not structured around the traditional and systematic opposition between these two blocs of States.

Regarding the issue of fragmentation, one must nevertheless admit that this phenomenon can entail inconvenience. For example, the objective of an environmental agreement can be frustrated by

the measures taken to implement other environmental agreements. A good example of this is the case of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, whose implementation undermined for many years the efforts undertaken under the United Nations Framework Convention on Climate Change and the Kyoto Protocol to tackle global warming. Indeed, by restricting the production of CFCs (which has had a beneficial impact for the climate, since CFCs, in addition to be substances that deplete the ozone layer, are also powerful greenhouse gases), the Montreal Protocol indirectly stimulated the production of HFCs, which can be used as a replacement for CFCs. However, while HFCs do not affect the ozone layer, they are potent greenhouse gases. Fragmentation can also be institutional. In the field of the environment, the proliferation of bodies and institutions poses practical challenges, notably, with regard to the participation of countries with limited financial and human resources. Moreover, the fact that two different judicial bodies could rely on the same rules of international environmental law in their legal reasoning means that they could potentially develop different interpretations of a rule.

However, it is not clear how a Global Pact would contribute to addressing these various issues. For instance, how exactly would a treaty help to increase coherence across two autonomous multilateral environmental agreements? It might be easier (and presumably more efficient) to try to harmonize the pursuit of different environmental objectives on an ad-hoc basis (and/or at the domestic level) than trying to address the issue from a systemic perspective at the multilateral level [20] (p. 10). It is also difficult to see how a Global Pact would contribute to alleviate the rich institutional structure of international environmental law. As for the risk of divergent judicial interpretations, even codified into a Global Pact, the principles of international environmental law could still be interpreted differently by two jurisdictions.

In sum, the added value of codifying the fundamental principles of international environmental law into a treaty appears to be very hypothetical, and one can think that the risks of launching treaty negotiations to do so would have likely exceeded the potential benefits that such an endeavor could have brought. Therefore, the outcome of the open-ended working group should perhaps not be regarded as a missed opportunity, as there are good reasons to believe that by not recommending launching treaty negotiations, States, in fact, "dodged a bullet" [21].

3. The Preparation of the Political Declaration

Although the open-ended working group decided to rule out the treaty option, it still recommended that States prepare a "political declaration". The elaboration of this declaration is likely to be a challenging task. Of course, the process is not at risk of being crippled by the fact that a legally binding instrument has to be adopted. States may also have a more constructive approach in the preparation of the declaration now that this process can officially be regarded as entirely country-driven. States did not always perceive the negotiations held in the open-ended working group this way given their "unorthodox origins" [22] (p. 10). This whole process had started because of an initiative led by civil society, which was afterwards "imported" in the UN. Moreover, in several countries, new political leaders with a more progressive environmental agenda could be in office in 2021/2022. Nevertheless, States will still have to find consensus on the content of this "political declaration". The outcome adopted by the open-ended working group provides very little indication on what this content should be. Moreover, some States (perhaps France) could try to reintroduce the idea to elaborate a Global Pact for the Environment.

In the final document adopted by the open-ended working group, States agreed on the following elements: (a) the political declaration is to be prepared by UNEA in February 2021 for a UN high-level meeting; (b) "in the context of the commemoration of the creation of" UNEP; (c) "with a view to strengthening the implementation of international environmental law and international environmental governance"; and (d) "in line with paragraph 88 of the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want"" [11] (Annex,

para. b). These four indications should be carefully considered as they could shape and inform the upcoming negotiations.

The first two elements essentially relate to the timeline and the organization of the negotiations. The fact that the discussions will be held under the auspices of UNEA will contribute to strengthening the role of this institution as one of the leading authorities in environmental governance. However, UNEA was only invited to "prepare" the "political declaration", not to adopt it. The formulation used by the open-ended working group seems to suggest that the declaration will be adopted during the UN high-level meeting. This meeting should be convened in June 2022, since this date will mark the 50th anniversary of UNEP's creation. At its fifth session (February 2021), UNEA could then establish a working group tasked to prepare a draft declaration and to forward it to the UN high-level meeting for its consideration. If this is the case, States will only have seventeen months to prepare the declaration, which is a short period of time. In any case, the adoption of the declaration is unlikely to go unnoticed. One can expect that the 50th anniversary of UNEP's creation (an event that will surely be presented as the 50th anniversary of international environmental law) will draw considerable attention. Tying up the adoption of this document to this event was a strategic decision to maintain a certain level of pressure on the States and to ensure that the preparation of the declaration would not fade into oblivion.

The two other elements could be more relevant for the discussions on the substance of the declaration. The indication that the declaration must be prepared "with a view to strengthening the implementation of international environmental law and international environmental governance" is very broad. To a certain extent, it echoes the underlying objective of the Global Pact for the Environment project. However, because the recommendation refers to the "implementation" of international environmental law, this could mean that the declaration will have to focus on existing legal instruments and institutions. During the process, this reference could be invoked by some States to close the door to any attempt aiming at reopening the discussion on a Global Pact. That said, apart from this reference, the text of the final document adopted by the open-ended working group does not provide many indications about the content of the declaration.

Since the second section of the document adopted by the open-ended working group (entitled "Substantive recommendations") already identifies different avenues to strengthen the implementation of international environmental law and international environmental governance, some States could simply want to restate this agreed language in the political declaration. Others may consider this as useless or insufficient and try to go further. States will also have to determine whether or not the political declaration will be principles-based. Paragraph 8 of the substantive recommendations recognizes "the role of discussions on principles of international environmental law in enhancing the implementation of international environmental law". The choice of this ambiguous UN-style language represented a compromise between the States who wanted to have a discussion on the codification of principles and those who saw any "principles-based instrument as problematic" [13] (p. 10). Because paragraph 8 seems to suggest that "discussing" principles of international environmental law is relevant for enhancing the implementation of international environmental law, it is difficult to imagine that "discussing" these principles could not be part of the negotiation of a declaration aiming at "strengthening the implementation" of international environmental law. However, there is a difference between "discussing" principles and trigger a process to codify them into a treaty.

Whether the substantive recommendations are connected to the elaboration process of the "political declaration" remains unclear. The final document adopted by the open-ended working group indicates that the UNGA forwards "these recommendations" to UNEA "for its consideration, and to prepare" a "political declaration". However, no formal link is established between the second section of the document, which contains the substantives recommendations, and the second part of paragraph b) of the third section (entitled "Further work"), which refers to the preparation of the "political declaration". That said, even if the second section and the paragraph b) of the third section do not refer to each other, they are still included in the same document and guided by the same objectives set out in the first section (entitled "Objectives guiding the recommendations"). One could also contend that if UNEA

was asked to consider the recommendations, it is precisely because of the preparation of the "political declaration", and therefore, argue that the mandate to "consider" the recommendations is intrinsically connected to (and should inform) the preparation of the "political declaration". This last point raises the question of whether the five objectives that guide the recommendations of the open-ended working group are also intended to guide the content of the "political declaration".

Those who are not in favour of reopening the discussions on the Global Pact for the Environment project may be tempted to say that this is the case, as this would allow them to justify their position by the second guiding objective ("Uphold the respective obligations and commitments under international environmental law of States of the United Nations") [11] (Annex, para. 2). If the respective obligations and commitments under international environmental law must be upheld, this could be interpreted as suggesting that the declaration cannot include the possibility to elaborate a new treaty (like a Global Pact). However, those who are willing to reopen the discussions on the Global Pact for the Environment project could also be tempted to say that the guiding objectives are intended to inform the negotiation of the "political declaration" in order to be able to invoke the fourth guiding objective ("support the full implementation of the 2030 Agenda for Sustainable Development") [11] (Annex, para. 4). As the Sustainable Development Goals are non-legally binding goals that form a global strategy for the environment, they could argue that achieving these goals requires a legally binding instrument that also reflects a global approach of the environment. The Global Pact and the 2030 Agenda for Sustainable Development would thus be presented as the two faces of the same medal.

The fact that the "political declaration" will have to be "in line" with paragraph 88 of the document "The future we want" is another element that could come into play. In this paragraph, States committed to strengthening the role of UNEP as "the leading authority that sets the global environmental agenda" [23]. One could argue that a declaration "in line" with this paragraph could not lead to the creation of new institutions outside UNEP, such as a new international environment court (this idea was briefly raised during the open-ended working group negotiations), or to the adoption of any legal document that would not originate from UNEP. This is just one possible interpretation, but it shows that this reference could offer another legal basis for those who will want to make sure that the preparation of the declaration does not lead to major institutional or structural shifts in international environmental law, such as the adoption of a Global Pact. In sum, as the outcome adopted by the open-ended working group provides little guidance on the content of the "political declaration", and given the wide objective of this process (i.e., strengthening the implementation of international environmental law and international environmental governance), the preparation of the declaration could very well become a highly contentious process.

4. Conclusions

Because of their origins and their nature, the negotiations on the Global Pact for the Environment project that took place within the open-ended working group represented an unconventional and unprecedented episode in the history of international environmental law. In the field of the environment, intergovernmental discussions are usually held to determine how to combat a form of pollution or how to protect a specific ecosystem, not to discuss the opportunity to elaborate an overarching treaty on the environment. That said, what the outcome achieved by the open-ended working group shows is that the elaboration of such a treaty is not considered as a priority (or even as a necessity) by a majority of States. And the fact that the open-ended working group decided not to recommend the launch of negotiations aiming at elaborating a Global Pact for the Environment was probably for the best. As illustrated in this paper, a process of this nature would have entailed considerable legal and political risks and would have likely generated unintended adverse consequences for international environmental law.

Since a new negotiation process has been launched at UNEA, the discussion on the Global Pact for the Environment project might not be over yet. However, to strengthen the implementation of international environmental law, many other (and less potentially damaging) options than a Global

Pact could be contemplated in the context of the preparation of the "political declaration". For instance, the political declaration could recommend the creation, under the auspices of UNEA, of different working groups on crosscutting issues that are key to bolster the implementation of existing environmental agreements (such as finance, capacity-building, coherence across treaty regimes). A high-level political forum on international environmental law, similarly to that of the High-level Political Forum on Sustainable Development, could also be established, and/or the functions of the Montevideo Programme could be expanded and enhanced. In any case, increasing the problem-solving capacity of international environmental law probably requires solutions that are more technical and targeted than the adoption of a Global Pact for the Environment.

If adopted, such an instrument may have a strong symbolic value, as the proponents of the Global Pact often argue. That said, considering the gravity of the current environmental crisis, one can ask whether a symbolic legal instrument is really what would be the most beneficial for the environment. Moreover, over the years, a feeling of fatigue and weariness seems to have developed among civil society with regard to UN high-level meetings and "empty words" [24]—to quote young climate activism Great Thunberg—pronounced by political leaders. If the "political declaration" to be adopted in 2022 is just "another" declaration without a concrete and targeted plan of action, this document could very well only contribute to fuel a growing feeling of disenchantment towards green multilateralism.

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