Note on the project of a Global Pact for the Environment

Response to the concerns of some States about the project of a Pact

Some States have expressed concerns regarding the project of a Global Pact for the Environment. The present note aims to address these concerns relating, on the one hand, to a risk of regression **(II)** and, on the other hand, to the binding nature of the Pact **(III)**. To address these concerns, however, it is first necessary to briefly recall the origins of the Pact **(I)**..

I/ The project of a Pact finds its origin in a long-standing request from the international legal community

1/ The Global Pact for the Environment aims to gather the main principles of environment law within a single text with legal value that would form a universal framework of reference. With the momentum created by the adoption of the 2030 Agenda and the Paris Climate Agreement in 2015, the Pact would go beyond the sectorial differences, by not targeting a particular sector (climate, biodiversity, pollution, etc.), the Pact applies to environmental politics as a whole. The Pact will add value to current international environmental law. The Pact will **strengthen environmental principles and make them more easily available**. Some of them already exist in some States' laws. However, they are scattered in various texts. The Pact will represent a new and very useful legal resource to enshrine rights and duties of citizens and Governments in the environmental field. In each State, the legislator will implement principles of the Pact, by adopting new laws protecting the environment. The Supreme Courts will have a source of inspiration for their jurisprudence, within the Pact principles. The purpose of the Pact is **to harmonize environmental standards on a global scale.**

2/ The origin of this project is long-standing. In 1987, the **Brundtland Report** called for the adoption of such treaty, which draft was annexed to the report. In 1995, **the IUCN** (International Union for the Conservation of Nature) presented a similar project named 'International Covenant for the Environment'. As a continuation of these works, the current project was prepared in 2017 by an international group of experts from 40 countries, chaired by Laurent Fabius, former president of the COP21. In October 2018, **more than a hundred lawyers**, among the most renowned in international law and environmental law, urged States to adopt the Pact.

II/ The risk of normative conflicts or regression is practically zero and, in all circumstances, can be easily prevented

Some are concerned about a risk of weakening existing treaties and normative conflicts with sector-specific agreements.

1/ At the outset, it has to be noted that the purpose of the Global Pact is undeniably to ***strengthen*** **the legal framework** and not to weaken it.

2/ A regression risk does not exist: the Pact will create a ***minimum*** set of requirements. However, nothing will prevent States **to go further** in sector-specific international treaties or in domestic laws. In the event that a sector-specific agreement is more demanding, such agreement will prevail. As a comparison, the same articulation applies between **the European Convention on Human Rights and domestic laws**: the ECHR acts as a **minimum** standard but does not prevent States from being more ambitious. Back in the 1950s when the ECHR was adopted, there was no concern about regression.

3/ This type of instrument is a common legal mechanism. It relates to the rule of the primacy of special law over general law (*specialia generalibus derogant*). General law is only intended to apply in cases not covered by special law. Additionally, the Pact will not apply in fields within the scope of sector-specific agreements. The normative conflict is therefore excluded.

4/ Many examples are illustrative in international law:
→ **On human rights issues**: both **International Pacts of 1966** (one relating to civil and political rights, the other relating to economic, social and cultural rights) form a minimum set of requirements. They perfectly co-exist with **more precise texts**, such as the 1984 Convention against torture and the 1989 Convention on the Rights of the Child.
→ **With regard to the law of the sea**: the major general agreement, so-called the **Montego Bay Convention of 1982**, works in harmony with sector-specific and/or regional texts.

5/ To prevent any risk, it is possible to **add a provision in the Pact** expressly dealing with this matter. Such provision does not exist in the current project. The Pact could:

- Expressly govern the relationship between the Pact and sector-specific agreements, for example on the basis of Article 237 of the Montego Bay Convention (which provides that '*The provisions of this Part are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously'*);
- And/or provide for an interpretation clause aiming to prevent any regression risk (stating, for instance that '*the present Agreement shall not be interpreted as involving a reduction in environment protection'*, in the spirit of Article 17 of the ECHR.

III/ Concerns about the binding nature of the Pact are also surmountable

Some are worried about the binding nature of the Pact.

1/ It is very important that the Pact adopts **a legal form**, and is not a purely political statement, as would be a 'declaration' from heads of States and governments.

2/ Indeed, such a declaration already exists with the **Rio Declaration of 1992**. The purpose of the project of a Pact is precisely to grant a legal value to the Rio Declaration. There is no benefit in adopting a new Declaration. Notably, it is this path, from soft law (i.e., a declaration) to hard law (i.e., a treaty), that has been followed for human rights; the **Universal Declaration on Human Rights of 1948**, which was initially restricted to soft law,, has been transposed into legal form by the two **International Covenants of 1966** (one relative to political and civil rights, the other to economic, social, and cultural rights).

3/ However, **among legal acts**, there are various possibilities. The distinction between "soft law" and "hard law" may be misleading due to its **divisiveness**: there is in fact a **progressive scale** of binding force that may be present in an international legal instrument. There are many treaties in existence today that are **more or less** binding depending on their substance. For instance, the Paris Agreement is binding due to **its form** (a treaty), but, **in substance**, the more or less precise nature of the obligations and the flexibility of the sanction mechanism may sometimes lead to it being described as a "non-binding" agreement. The same applies with the project of a Pact: because of the general nature of the principles, it offers great flexibility. It provides States with discretion in the implementation of these principles.