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RESEARCH ARTICLE

Environmental Intervention: An Activist Idea or Legal Tool? An Analysis of the Possibilities of Environmental Protection under the Principle of Non-Intervention

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Abstract

Climate change is arguably the single most important threat to all life on Earth. Through the 2015 Paris Agreement and annual United Nations (UN) climate change conferences, the international community has attempted to rally universal support for mandatory greenhouse gas emission reduction targets. If attained, it is likely that destructive global temperature rises would be at least slowed. The fact that States agree to pursue environmental protection objectives, but routinely fail to act accordingly provides essential context for this four-section critical discussion. 'Environmental intervention' as contemplated by this research topic is more than a mere activist idea. It necessarily represents a valid international law alternative given that the entire world faces a potentially catastrophic climate emergency. The various points considered in this discussion confirm that unilateral State intervention to prevent transborder pollution created in another State might seem justified under well-recognised 'Responsibility to Protect' principles. The materials assembled for present discussion purposes support an alternative conclusion. The combined effect of the international law emphasis placed on State sovereignty, and a dysfunctional, inconsistent international community commitment to achieving actual climate change mitigation likely condemns to failure any environmental intervention measures that the UN might advance through proposed treaties or similar international agreements.

Keywords

Environmental Intervention, Responsibility to Protect, Climate Change, The Principle of Non-Intervention, Humanitarian Intervention

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I. Introduction

Climate change as associated with global warming and other human contributions to the Earth's environmental degradation has inspired intense, often divergent opinions regarding the best environmental protection measures.[1] The article title references made to theoretical possibilities versus legal enactments (ideas versus enforceable laws) are a testament to this reality. There is a broad and ever deepening consensus that if the international community does not take immediate, aggressive, and sustained action to curb greenhouse gas (GHG) emissions, the environment will be irreversibly compromised.[2] Rising sea levels that might destroy numerous island States, violent storms that have increased in frequency and severity in recent years, sweeping wildfires – a small sampling of what climate change means in 2023, and what looms as even more environmental disasters for the foreseeable future if nothing meaningful is done to reverse its current directions.[3]

Current climate change realities bring the international law principles engaged in the following five section critical discussion into clearer focus. At its core, international law (IL) is understood as legal rules, norms, and standards that sovereign States and other international actors (such as non-governmental organisations for instance Greenpeace, or the World Wildlife Fund) accept as law.[4] By its nature, IL as applied in practice is often fluid. The ways that individual States conduct their international relations based on 'rules, norms, and standards' is inherently pragmatic and highly circumstance driven.[5] There may be an apparent international community consensus regarding climate change posing an existential threat to humankind – the Paris Agreement 2015 and the recent UN climate change conferences (such as COP 27) provide evidence of such expressed State commitments.[6] The sources cited throughout this discussion confirm a more sobering reality. If these IL sources were accepted as representative of current international community attitudes adopted towards climate change, environmental protection measures being made enforceable

1 Geneva Environmental Network, 'Human rights and the environment' (2022) [Online] <https://www.genevaenvironmentnetwork.org/resources/updates/human-rights-and-the-environment/> [15 October 2023], citing UNGA Resolution 76/300, 'The human right to a clean, healthy and sustainable environment' (28 July 2022).

2 Rachel Pepper and Harry Hobbs, 'The Environment is All Rights: Human Rights, Constitutional Rights and Environmental Rights' (2020) 44(2) *Melbourne University Law Review* 1, 3.

3 UN Conference on Environment and Development [1989] UNGA 313; A/RES/44/228 (22 December 1989). Of numerous examples, see Khodayar Samira Pardo 'Uneven Evolution of Regional European Summer Heatwaves Under Climate Change' (2023) [Online] <http://dx.doi.org/10.2139/ssrn.4594918> [14 October 2023], 2, 3.

4 Britannica 'The nature and development of international law' (October 2023) [Online] <https://www.britannica.com/topic/international-law#Definition%20and%20scope> [14 October 2023].

5 Ibid.

6 Because it concluded the first global stocktake of the global efforts to combat climate change under the Paris Agreement, COP 28 was especially significant. Countries decided to speed up action in all areas of climate action by 2030 after it was demonstrated that progress was moving too slowly in all areas, including lowering greenhouse gas emissions, enhancing resilience to a changing climate, and providing vulnerable countries with financial and technological support. In their upcoming round of climate agreements, governments are urged to expedite the shift from fossil fuels to renewable energy sources like wind and solar power. UN. United Nations Framework Convention on Climate Change. Declaration on Climate and Health. Conference of the Parties to the United Nations Framework Convention on Climate Change (28th session), December, 2023. <https://www.cop28.com/en/cop28-uae-declaration-onclimate-and-health> [4 March 2024].

against offending polluter States would appear to be moving closer to reality.[7] These attitudes are contrary to IL non-intervention principles, ones that have traditionally been interpreted as prohibiting States from taking unilateral action that interferes with another State's sovereign power exercised over its domestic affairs.[8]

The following hypothetical scenario illustrates this point. As a general IL proposition, State A armed forces cannot invade State B to prevent B's factories from causing cross-border pollution to A. Taken to its logical conclusion, 'environmental intervention' that might involve such A actions is presumptively illegal under current IL understandings (ones based upon the UN Charter 1945 and States' permitted rights of self-defence).[9] The research topic thus invites consideration of a provocative proposition – ***should*** States be permitted to take such direct actions against other States who are complicit in environmental harms being committed as a means of saving the Earth from further environmental harm? In the outlined scenario, an A invasion of B is a lawfully justified response that is designed to protect A, its people, and its ecosystems from further environmental harm attributable to B and its industrial or other polluting activities occurring within B's borders.[10]

In other words, can IL principles reasonably support an interpretation where States can either act unilaterally, or operate under United Nations Security Council authority as environmental intervenors to prevent ongoing, or future environmental damage? Four key IL concepts that frame this environmental protection discussion. These are: (i) eco-intervention; (ii) State sovereignty; (iii), what level of damage should constitute actionable transboundary environmental harm giving States legal justification to pursue eco-intervention; and (iv), 'Responsibility to Protect' (R2P) principles as otherwise defined under IL.[11] These concepts are each explained in Section II. The leading cases and academic commentaries that have considered these concepts are given closer Section III attention, where the possible legal justifications (also described as 'triggering events') for any States determined to pursue environmental intervention are also outlined.

In Section IV, an independent commentary focuses on the pragmatic aspects of IL and what environmental intervention might mean in practice. This commentary also examines whether the international community can likely find common ground regarding what climate change - environmental circumstances will give State versus

7 United Nations 'The right to a healthy environment' (2022) [Online] <https://www.un.org/en/climatechange/right-h…> [14 October 2023], citing Paris Agreement 2015.

8 Alex Ansong, 'The Concept of Sovereign Equality of States in International Law' (2016) 2(1) *GIMPA Law Review*, 14, 34 <https://ssrn.com/abstract=3171769> [16 October 2023].

9 UN Charter 1945, Article 51 as a commencement point.

10 Ibid.

11 Christina Voigt, 'International Environmental Responsibility and Liability' (February 2021) [Online] <http://dx.doi.org/10.2139/ssrn.3791419> [15 October 2023], 2.

State intervention IL sanction.[12] The detailed Section V conclusions sound a pessimistic note: environmental intervention should be clearly defined under IL through a more robust Paris Agreement or similar IL instrument.[13] The Paris Agreement does not authorise sanctions to be imposed against States who do not reach its carbon emission reduction targets. The reasons why the Paris Agreement was negotiated in this way, and how this perceived Agreement weakness impacts larger global efforts to mitigate climate change and global warming are given deeper Section IV attention. There should be circumstances where States can intervene to protect themselves and the planet from environmental degradation. Intervention might conceivably take different forms. Economic sanctions imposed by the UN Security Council against offending States could be the primary option, with armed intervention regarded as a last resort when all other efforts have failed (the hypothetical State A versus State B scenario).

It is suggested that notwithstanding the clear appeal that environmental intervention may have for reasonable observers as a powerful environmental protection tool, pragmatism supports the strong Section IV and V doubts expressed regarding such measures ever becoming enforceable IL provisions. The currently fractured international community and its apparent inability to meaningfully move beyond Paris Agreement 2015 and COP rhetoric are the prime drivers of these doubts.[14]

II. Key Concepts

A. Eco-intervention

The short form used here to describe environmental intervention theory is readily defined. The Section I and II sources largely confirm that how eco-intervention is understood in practical terms is a more challenging, and less definitive exercise (especially the ways that its application might conceivably interact with the three other highlighted concept definitions outlined below).[15]Eco-intervention represents what its advocates argue is a logical, thus principles expansion of the accepted IL notion that in exceptional circumstances, the UN Security Council may authorise UN member States to intervene in other States' internal activities on the basis of UN Charter 1945 Chapter VII provisions.[16] These are the collective powers afforded to the Security Council to preserve peace across the international community.[17] The core powers exercisable here are rooted in this Article 39 language: the Council is

12 Ibid.

13 As defined under the Vienna Convention on the law of treaties 1969 (VCLT), Articles 2, 23 through 29.

14 A phrase taken from Charles rotter, 'Watts Up with That? COP28 in Dubai: A Crossroads of Rhetoric and Reality' (2023) [Online] <https://wattsupwiththat.com/2023/10/16/cop28-in-dubai-a-crossroads-of...> [16 October 2023].

15 Marcelo Varella, 'Right of Intervention and Right to Environmental Intervention' (September 2019) [Online] <http://dx.doi.org/10.2139/ssrn.3448158> [15 October 2023],2-4.

16 UN Charter 1945 Chapter VII, commencing with Article 39, through Article 52.

17 Ibid.

authorized to determine "the existence of any threat to the peace, breach of the peace, or act of aggression", with the additional authority to take any necessary military and non-military action that will restore "international peace and security".[18]

This Article 39 power is linked directly to the overarching IL obligation assumed by all UN members to resolve any international dispute through peaceful ('pacific') means. Charter Article 33 states that where States are involved in any dispute that carries the potential to endanger the "maintenance of international peace and security", such parties must first seek a solution by engaging in "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice…".[19] It is noted that when taken together, Articles 33 and 39 make no direct reference to the Security Council having authority to direct States to intervene when an environmental protection related dispute arises. The phrase 'international peace and security' must have its natural meaning stretched to a degree for UN Charter 1945 Chapter VII to accommodate environmental issues.[20]

It is suggested for present discussion purposes that this liberal approach to Chapter VII Security Council dispute resolution powers is valid. Of numerous examples, the current international environmental law scholarship confirms this IL area as a "relatively pragmatic discipline", where problem solving must be priorised over strict IL rules-based interpretations.[21] The following rationale is plainly sound, given international acceptance that the world now faces a climate emergency: IL must now sanction Security Council approaches that appear "… best suited to achieving the desired results in a given context".[22]

Using the State A – State B scenario outlined above, the following environmental intervention pathway could be authorized by the Security Council under its liberally interpreted Chapter VII powers: (1) State A satisfies the Council that State B generated transborder pollution is harming A's environment and human population; (2) the Council directs A and B to mediate their dispute; (3) mediation fails and A satisfies the Council that B will not cease its polluting activities; (4) the Council imposes economic sanctions on B; (5) B still refuses to relent, and the Council authorizes A and other States to take military action against B to intervene and stop further environmental harm.[23]

18 Ibid, article 39.

19 Ibid, article 33.

20 Jutta Brunnée, 'The Sources of International Environmental Law: Interactional Law' (2017) Samantha Besson & Jean d'Aspremont, eds., *Oxford Handbook on the Sources of International Law* (2017) [Online] <https://ssrn.com/abstract=2784731> [16 October 2023], 2-5.

21 As noted in this older article, John Dreyer, 'Military Intervention in Environmental Affairs' (2011) APSA 2011 Annual Meeting Paper [Online] <https://ssrn.com/abstract=1900361> [16 October 2023].

22 Brunnée, 2.

23 UN Charter, Chapter VII.

On this basis, it is ***theoretically*** permissible under IL principles to expand upon Article 39 Security Council powers whereby environmental protection – now an accepted human right[24] - becomes the functional equivalent justification of any authorised Council interventions to secure State populations from physical harm or destruction. For example, the Security Council authorized international community military intervention in the brutal, even horrific Yugoslavia conflict (1998).[25] In such circumstances, the right of intervention concept takes precedence over sovereignty, otherwise the accepted "basis of unity of nations and public international law" – as further explained in section II.[26] It is noted that not only has the Security Council never authorized any action that even approaches the five step A versus B chronology outlined above – such potential actions have never been debated by the Council membership.[27]

B. State Sovereignty

The points developed in section I collectively underscore a proposition that goes directly to appreciating the 'idea' versus 'legal tool' dichotomy that anchors this entire discussion. State sovereignty is defined under IL as the State possessing the ultimate decision-making authority regarding the maintenance of order, preserving control of internal affairs, and security over its borders.[28]The entire notion that IL is the law governing State to State relations thus logically depends on sovereign, independent States engaging in these relationships.[29] Non-state actors such as terrorist groups and NGOs might have dealings with States, but IL theory does not recognize such entities as having greater IL status than sovereign States.[30]

It is equally apparent that State sovereignty and environmental intervention are antithetical IL concepts. A State's sovereignty is compromised where eco-intervention is sanctioned under UN Charter Chapter VII auspices. The more important issue that flows directly from this tension is whether, to what extent, or for how intervention principles might permissibly prevail over sovereign State interests. If the section I chronology unfolded, how long could a State A-led international force occupy State B and remain a legitimately authorised intervenor and not become an unlawful invader, colonizer, or conqueror?[31]

24 Varella, 2, 4.

25 Security Council Resolution 1160 (1998), due the Kosovo conflict.

26 Dreyer, 3.

27 See e.g., United Nations 'Security Council Strongly Condemns Attacks against Critical Infrastructure, Unanimously Adopting Resolution 2573 (2021) [Online] < https://press.un.org/en/2021/sc14506.doc.htm> [16 October 2023].

28 Renata Giannini 'The Rule of Law: State Sovereignty vs. International Obligations' (2014) <https://ww1.odu.edu/content/dam/odu/offices/mun/2010/legal/issue-brief-2010-the-rule-of-law.pdf> [14 October 2023], 3.

29 Ibid.

30 Ibid.

31 International Committee of the Red Cross, 'Occupation and international humanitarian law: questions' (2023) [Online] <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm> [16 October 2023].

C. Transboundary Environmental Harm (TEH)

This definition is aligned with the literal meaning of the individual terms. Jervan offers this representative scholarly definition example: TEH is any harm caused in a State's territory (or other places under the State's jurisdiction or control) other than the State where the TEH originates. TEH includes air pollution, transboundary watercourse pollution, or transboundary waste shipments or dumping.[32] TEH is closely linked to the 'no-harm rule', whereby States cannot conduct or permit any activities within their sovereign territories (or those taking place in common spaces such as the high seas) without regard to other States' interest, or the need to pursue global environmental protection.[33]

When eco-intervention, State sovereignty, and TEH concepts are collectively considered, one can appreciate a principled, albeit entirely theoretical basis for eco-intervention operating as a State sovereign power exception. In the State A – State B hypothetical scenario, the State A arguments made to the Security Council would logically emphasize the following cause and effect relationship. State A can assert that eco-intervention would not be necessary if State B was not engaging in TEH misconduct. The R2P principle is now explained with this State A example providing context.

D. Responsibility to Protect (R2P) Principles

R2P principles have acquired ever-increasing IL prominence in recent years. R2P is both a political principle and emerging IL norm that is utilized to when four 'atrocity crimes' have been committed, or their commission appears imminent.[34] These crimes are: genocide, war crimes, ethnic cleansing, and crimes against humanity (the key offences defined by the International Criminal Court statute).[35] The United Nations World Summit (2005) gave R2P principles an express IL – normative standard endorsement. R2P is founded upon three conceptual pillars, namely: (1) the fundamental sovereign State responsibility to protect its civil populations; (2) a companion international community responsibility to assist any States seeking to achieve (1); (3), a second international community responsibility to take any necessary collective action when a given State fails to satisfy R2P obligation (1).[36]

32 Marte Jervan, 'The Prohibition of Transboundary Environmental Harm. An Analysis of the Contribution of the International Court of Justice to the Development of the No-Harm Rule' (2014; revised 2020) [Online] <https://ssrn.com/abstract=2486421> [16 October 2023], 3, 4.

33 Ibid.

34 Karen Smith, 'A reflection on the Responsibility to Protect in 2020' (2020) [Online] <https://www.globalr2p.org/publications/a-reflection-on-the-responsibility-to-protect-in-2020/> [16 October 2023].

35 Ibid, and see Statute of the International Criminal Court 1998, Articles 5 through 8.

36 Smith, 3.

R2P principles have been invoked in circumstances where a State population has faced dire harm, and the State was unable or unwilling to discharge its obligations to protect the population from harm. A leading example is the 2011 Security Resolution dealing with Yemen and its civil war.[37] The Resolution includes the following provisions that essentially echo the R2P definition highlighted above: (i) "… Recalling the Yemeni Government's primary responsibility to protect its population", while (ii), strongly condemning continued human rights violations committed by the Yemeni authorities (including State agents' excessive use of force directed against peaceful protestors), where "acts of violence, use of force, and human rights abuses perpetrated by other actors" each engage R2P principles.[38] It is apparent that R2P also generally aligns with the eco-intervention, State sovereignty, and TEH concepts.

E. Observations and Propositions

This observation supports a further, albeit entirely theoretical eco-intervention proposition. These IL concepts have obvious utility in terms of determining their ultimate suitability for use as international environmental law building blocks (the present discussion 'idea') to construct robust, effective climate change mitigation IL provisions. These concepts could therefore be readily modified for use in wide ranging environmental protection contexts through a comprehensive eco-intervention treaty that every member State would be obligated to implement into and make enforceable under its relevant domestic laws (as contemplated under Vienna Convention 1969 treaty rules).[39]

The above observation thus prompts the following further enquiry, as framed by a simple, succinct question. The Rio Declaration published at the 1992 'Earth Summit' proclaimed the international community's commitment to these (among other) seemingly noble IL objectives: [40] (1) all humans are ***entitled*** "to a healthy and productive life in harmony with nature" (environmental protection as a human right);[41] (2) environmental protection is ***essential*** to every fully functioning sustainable development process;[42] (3) States shall ***cooperate*** "in a spirit of global partnership" regarding all Earth ecosystem protection, and restoration, where developed world countries will assume a leading role given their greater "contributions to global environmental degradation";[43] and (4), all States "shall enact effective environmental

37 Security Council Resolution 2014 (2011).

38 Ibid.

39 Vienna Convention on the law of treaties 1969, Articles 2, 23 through 30.

40 United Nations General Assembly, 'Rio Declaration On Environment And Development' (also A/CONF.151/26 (Vol. I) (1992) [Online] <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration> [16 October 2023].

41 Ibid, Principle 1.

42 Ibid, Principle 4.

43 Ibid, Principle 7.

legislation".[44] It is notable that after 31 years since the Rio Summit, these declared international community objectives have not been converted into enforceable IL environmental standards. The fundamental question that must be addressed in the following discussion sections is 'why?'

III. Cases and Academic Commentaries

A. Overview – Transboundary Harm Case Law

In their detailed 2021 eco-intervention analysis, scholars Erik Axelsson and Victor Schill provide a commencement point for considering the 'why' question posed at the Chapter 1 conclusion.[45] They observe that under currently prevailing IL principles governing potential State liability for its transboundary environmental damage is limited to the offending State paying provable compensation to the affected neighboring State(s).[46] There are no enforceable IL mechanisms that will permit a broader international community recovery for environmental harm that has any other effects.[47]

An example can be taken from the State A – State B scenario presented above. State B has a rare ecosystem ('Pure Island') that has been declared a United Nations (UNESCO) 'World Heritage Site', one UNESCO describes as a rare pristine island ecosystem that exists in the complete absence of alien plants, animals, and human impacts.[48] State B authorities have now permitted gold mining on Pure Island and international scientists have confirmed that Pure Island's ecosystem will be destroyed if the mining continues. This State B-sanctioned conduct does not have any transborder effects, thus State A (nor any other States, or other legal entities) does not currently have any legal right to prevent these State B activities.[49]

If this scenario is taken to its logical and sobering conclusion, State B can permit the destruction of a place that the international community (through UNESCO) has declared one that has value to the entire world – the ethos echoed, but never acted upon in the post-1992 Rio Summit era.[50] The following cases assist in appreciating the 'why' question answers supported by the further discussion points developed below.

44 Ibid, Principle 11.

45 Erik Axelsson and Victor Schill, 'Eco-Intervention, the Protection of Sovereignty and the Duty of the Sovereign State to Protect the Environment: An Analysis of Eco-Intervention in Connection with the Principle of Sovereignty and Other Norms of International Law' (2021) [Online] <https://www.diva-portal.org/smash/get/diva2:1598173/FULLTEXT01.pdf> [17 October 2023], 2, 3.

46 Ibid, 5.

47 Ibid.

48 UNESCO 'Heard and McDonald Islands' (2023) [Online] <https://whc.unesco.org/en/list/577> [17 October 2023], the example used to support this hypothetical scenario.

49 Ibid.

50 United Nations General Assembly, 'Rio Declaration On Environment And Development' (also A/CONF.151/26 (Vol. I) (1992).

B. Trail Smelter – An Important Commencement Point

This 1935 international arbitration decision is arguably the first important transborder environmental harm (TEH) ruling, one that has exerted continuing influence over all IL – TEH developments for almost 90 years.[51] The dispute facts remain a classic TEH example.

Commencing in 1932, the British Columbia, Canada based defendant owned and operated a zinc and lead metal smelting plant. The smelter operation emitted hazardous gas fumes (primarily sulfur dioxide) that were carried by prevailing winds across the United States border into neighbouring Washington State. There was significant scientific evidence assembled by US authorities that the smelter gases were causing plant life, forest, soil, and crop yield damage in Washington. Though an international agreement, Canada and the US agreed to establish an arbitral tribunal ('the 1935 Convention', with one member nominated by each State, and a neutral chairman).[52] The Tribunal relied on expert evidence tendered by each side.

In its initial (1938) decision, the Tribunal concluded that the smelter gas emissions resulted in Washington State harm between 1932 and 1937. The Tribunal ordered Canada to pay US authorities a $78,000 indemnity, one that constituted a 'complete and final indemnity and compensation for all damage which occurred between [these] dates'.[53] In its subsequent (1941) decision (1941), the Tribunal addressed three other questions posed in the 1935 Convention, namely: (1) how to determine responsibility, appropriate mitigation and indemnification related to future smelter transborder harm.[54] The Tribunal made the following 'future harm' finding: (i) no State has the right to have its sovereign territory used in any manner that causes "… injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence…".[55]

There is a clear global scholarly consensus regarding what the *Trail Smelter* arbitration decision means regarding all IL – environmental law evolution.[56] At its heart, the Trail dispute requires the Tribunal to decide competing State sovereignty claims – a crucial point, given the ways that sovereignty is central to all IL understandings (as confirmed by the Section II definitions). Canada was essentially advocating for a 'right

51 *Trail Smelter Case (United States v Canada)* (1935, 1938, 1941) [Online] <https://www.informea.org/en/court-decision/trail-smelter-case-united-states-v-canada> [17 October 2023].

52 Ibid, citing Convention For Settlement Of Difficulties Arising From Operation Of Smelter At Trail, B.C. 1935, '1935 Convention'.

53 Ibid.

54 Ibid.

55 See also Catherine Punella, 'An International Environmental Law case study: The Trail Smelter Arbitration' (2014) *International Pollution Issues* [Online] <https://intlpollution.commons.gc.cuny.edu/an-inter…> [17 October 2023].

56 Of numerous examples, see Rebecca M. Bratspies 'Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration' (2006), in *Transboundary Harm In International Law: Lessons From The Trail Smelter Arbitration*, Rebecca M. Bratspies & Russell A. Miller, eds., Cambridge University Press, 2006 (Article updated in 2012], [Online] <https://ssrn.com/abstract=1990519>]17 October 2023].

to pollute' that was driven by its economic development objectives. Conversely, the US sought to enforce its right to be secure from Canada's TEH.[57] The Tribunal reasoning thus supports two principles that remain embedded into all current IL frameworks - the 'polluter pays' principle, and duty assumed by all States to prevent TEH.[58]

A reasonable Trail tribunal ruling reader might assume that given how clearly the Tribunal articulated its reasons, there would be a natural progression from these two principles to a comprehensive legal framework supported by the international community concerning these State duties. The post-*Trail Smelter* case law is now considered with this assumption providing guidance, particularly with regard to how the present discussion 'idea' – 'legal tool' dichotomy must be understood today.

Where *Trail Smelter* required the clear adjudication of an environmental dispute where competing State sovereignty claims were central to all dispute resolution, the subsequent case law is less clear-cut. The *Gabcikovo-Nagymaros* dispute is a notable example.

C. Gabcikovo-Nagymaros

The 1997 *Gabcikovo-Nagymaros Project (Hungary/Slovakia)* International Court of Justice (ICJ) is a notable example concerning the *Trail Smelter* legacy as influencing a non-air pollution environmental harm related dispute outcome.[59] This dispute had an extensive political history, one that was linked to a 1977 agreement between former Czechoslovakia and Hungary to build a hydroelectric dam complex on the Danube River.[60] By the early 1990s, shifting political and nationalist currents (including Czechoslovakia having been divided into two sovereign states (and European Union treaty membership admission) led to related concerns that the project would result in irreversible environmental harm (impacts on the Danube River watercourse).[61] Hungary specifically argued that upstream dam construction would irreversibly harm its downstream river sections – a transborder harm.[62]

EU pressure ultimately led to the dispute being referred to the ICJ. The Court made several comments that contribute to the view that it recognized how international environmental law was now driven by norms that are captured in the discussion Section II concept definitions. For example, the ICJ accepted that it must be "… mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment…"[63]

57 Ibid.

58 Punella, 'An International Environmental Law case study: The Trail Smelter Arbitration' (2014).

59 *Gabcikovo-Nagymaros Project (Hungary/Slovakia)* 1997 I.C.J. 7 (ICJ), reprinted in 37 I.L.M. 162 (1998).

60 Ibid, [139].

61 Ibid, [25].

62 Ibid, [37].

63 Ibid, [140].

D. ICJ Role and Relevance

A brief explanation of the ICJ, its jurisdiction and dispute resolution approach each contribute to more fully appreciating why (or why not) *Gabcikovo-Nagymaros Project* is an important IL – TEH milestone. The Court is self-described by its UN leadership as a 'world court', one that operated under its two parts jurisdictional framework: (1) deciding IL-related disputes that States submit to the Court ('jurisdiction in contentious cases)'; (2) providing advisory opinions on legal questions as requested by UN institutions, specialized agencies or other organizations that have authority to make these requests ('advisory jurisdiction').[64]

A realist might offer an alternative description to the ICJ world court claim. The ICJ statute (through its Article 36) confirms that the Court does not possess compulsory jurisdiction.[65] In other words, the so-called 'world court' only renders biding decisions when the State parties or other defined entities with status agree to be bound by them. The *Nicaragua v US* case (1986) is a famous instance of a State party (the US) refusing to recognize the Court's jurisdiction after the US had originally accepted it.[66] The well-known ICJ advisory opinion rendered regarding the wall erected by Israel to separate the disputed Palestinian territory remains a theoretical abstract – the opinion did not seemingly influence IL-based change.[67] The following *Gabcikovo-Nagymaros Project* outcome comments are presented against these 'world court' claim shortcomings.

E. Outcome

However, for champions of environmental protection, the ICJ reasons are disappointing. *Gabcikovo-Nagymaros Project* was the first international dispute argued before the ICJ where environmental issues were "… fully pleaded and considered".[68] However, the Court expressly declined to pursue an otherwise golden opportunity to set new environmental protection standards that aligned with the Rio Declaration and what Mari Nakamitchi characterized as a chance to put "… the spirit of countless international environmental agreements and conventions into effect… ."[69] It can be convincingly argued that the ICJ could have taken the *Trail Smelter* 'polluter pays' and 'State environmental protection duty' principles to build out a coherent IL position, one that is summarized as: States may not unilaterally decide

64 International Court of Justice 'Jurisdiction' (2023) [Online] <https://icj-cij.org/jurisdiction> [17 October 2023].

65 International Court of Justice Statute 1946, Article 36.

66 Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment of 27 June 1986, (1986) ICJ Rep 14 (1986).

67 *Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, ICJ Reports 2004 (ICJ). No comment is made or intended here regarding the current Israel – Hamas – Gaza conflict.

68 *Gabcikovo-Nagymaros Project*, [6].

69 Mari Nakamichi 'The International Court of Justice Decision Regarding the Gabcikovo-Nagymaros Project' (2017) 9(2) *Fordham Law Review* 337, 344.

to alter the natural environment where such alterations are opposed by neighbouring States (as supported by cogent, objective environmental impact evidence).[70]

This *Gabcikovo-Nagymaros Project* point can be taken one step further when assessing how it affects the project topic 'idea' versus legal tool comparisons. IL has always evolved incrementally – a reflection of its pragmatism as outlined in the article Introduction. The ICJ decision to remain silent concerning the full 'State duty' nature and scope means that other transborder environmental disputes must be located to determine where the law sits today. The ICJ could have sent a clear signal to the international community regarding these issues, and thus perhaps stimulated debate regarding what a comprehensive TEH treaty might include. *Gabcikovo-Nagymaros Project* thus carried IL framework evolution possibilities that have remained unexploited. More recent cases are now considered to determine if the ICJ has made more positive contributions to overall IL evolution in this area.

F. Costa Rica v. Nicaragua (2018)

This landmark 2018 ICJ decision represents the first time that the Court had rendered a decision awarding TEH-based damages.[71] The specific dispute facts are less important to the current discussion than the Court's analysis of all relevant TEH issues. Each State argued that as a matter of fundamental sovereignty, they could undertake works (such as road construction, or canal dredging along their shared border) without liability to other State for any TEH consequences.[72]

The Court concluded that any environmental damage that occurred in such circumstances, along with any resulting "… impairment or loss of the ability of the environment to provide goods and services, is compensable under international law".[73] IL compensation could conceivably include innocent States being indemnified by the harm producing States "… for such impairment or loss or payment for restoration of the damaged environment".[74] It is thus possible to logically conclude that *Costa Rica v Nicaragua* goes where the ICJ declined to venture in the earlier *Gabcikovo-Nagymaros Project* proceedings – providing a clear, cause and effect based treatment concerning how TEH is satisfactorily proven and compensated.[75]

70 Gerrit Betlem, 'Trail Smelter II: Transnational Application of CERCLA' (2007) 19(3) *Journal of Environmental Law* 396.

71 *Certain Activities Carried Out By Nicaragua In the Border Area (Costa Rica v. Nicaragua)* (Compensation Owed By The Republic Of Nicaragua To The Republic Of Costa Rica) (2018) [Online] < https://www.icj-cij.org/files/case-related/150/150-20180202-JUD-01-00-EN.pdf> [17 October 2023].

72 Ibid, [2], [3].

73 Ibid, [3].

74 Ibid, [34].

75 Diane Desierto 'Environmental Damages, Environmental Reparations, and the Right to a Healthy Environment: The ICJ Compensation Judgment in Costa Rica v. Nicaragua and the IACtHR Advisory Opinion on Marine Protection for the Greater Caribbean' (2018) *EJIL Talk* [Online] <https://www.ejiltalk.org/environmental-damages-environmental-reparations-and-the-right-to-a-healthy-environment-the-icj-compensation-judgment-in-costa-rica-v-nicaragua-and-the-iacthr-advisory-opinion-on-marine-protection/> [17 October 2023].

G. Commentary

It is equally important to consider the obvious limitations that necessarily limit *Costa Rica v Nicaragua* precedent value in the present discussion context. The ICJ ruling concerned two States that agreed to submit their TEH dispute to the Court. Returning to the first State A versus State B TEH scenario, if B refuses to have the ICJ decide the dispute, State A's sole, presently lawful recourse would be the Security Council option outlined in Section II – the (as yet) untested IL – UN Charter 1945 Chapter VII avenues. Their more aggressive, and potentially unlawful alternatives are unilateral State A measures directed at State B (options that might include economic sanctions, or military force). These possibilities are more fully considered in Section IV.

IV. From Novel Ideas to Legal Frameworks – Can Environmental Intervention Achieve Recognition

Based on the Section III sources and related discussion points, the reasonable observer introduced earlier in this discussion might willingly accept the following set of propositions as an excellent environment intervention IL rules framework. Each is consistent with the Section II IL characterization as a "relatively pragmatic discipline", where over time enforceable international agreements would implement environmental protection – climate change mitigation activism as workable, thus practical legal tools. The 2015 Paris Agreement and its GHG reduction targets satisfy all Vienna Convention – IL requirements, ones that ensure the Agreement has legally binding international treaty status concerning climate change.[76] The Agreement could become a more comprehensive climate change legal tool if every member State is mandated to achieve its targets, or face the legal sanctions as further discussed below.[77]

The Paris Agreement was the product of intense, multi-year international negotiations. These processes tended to revolve around how best to resolve the following issues. The environmental science evidence is now regarded as indisputable – climate change is rapidly accelerating due to untamed global warming to the point where the entire planet must be treated as being on 'red alert'.[78] An accompanying reality cannot be ignored any longer: the world faces irreversible ecological harm and potential destruction in its present form unless the international community acts immediately and decisively to curb GHG emissions in every nation.[79]

76 VCLT Articles 2, 23 through 29.

77 Annalisa Savaresi, 'The Paris Agreement: Reflections on an International Law Odyssey' (2022) 8(7) *ESIL Conference Paper Series* [Online] <https://dspace.stir.ac.uk/bitstream/1893/26276/1/SSRN-id2912001.pdf> [17 October 2023], 3-5.

78 Pardo 'Uneven Evolution of Regional European Summer Heatwaves Under Climate Change' (2023), and see UN Meetings Coverage and Press Releases (SG/SM (2021)" 'New United Nations climate change report 'red alert' for planet, Secretary-General says, warning current emission plans not enough to adequately curb global temperature rise' (2022) [Online] <https://www.un.org/press/en/2021/sgsm20604.doc.htm> [19 October 2023].

79 Ibid.

The Paris Agreement debates were highly complex because such otherwise essential international community initiatives would invariably produce one or more of the following negative combined economic – environmental impact outcomes: (1) reducing GHG means utilising more expensive alternatives to carbon fuels that currently power much of the world's economic activity; (2) the costs to convert to clean ('green') energy will disproportionately impact developing world nations who are bound by Paris Agreement GHG emission targets; (3) the targets will only be attained if (i) the developed world States make proportionately greater contributions to GHG reductions (thus increasing their costs of Agreement compliance), or (ii) developing world nations are permitted a longer, or more flexible period to achieve compliance (thus reducing overall Agreement effectiveness in mitigating or ultimately reversing climate change).[80] As with any international treaty where numerous competing State interests are advanced during the negotiations process, the Paris Agreement provisions reflect where climate change objectives and carbon emission targets were created through compromise. The following commentaries that identify and discuss what are presented as inherent Paris Agreement weaknesses are understood with these IL realities clearly understood.

A. IL 'Idea' to Legal Tools – the Paris Agreement Provisions and Their Enforcement

IL has often been criticized for being weak and ill-suited for providing solutions to complex, real world global problems.[81] The suggested ICJ weaknesses and its institutional shortcomings as outlined in Section III are only one aspect of these broadly expressed IL criticisms. Numerous commentators challenge fundamental IL legitimacy on the bases that its frameworks are unduly weighed down with ideas and theory, with lesser attention directed at how practical enforcement powers capable of being exercised against State-related lawbreaking can be crafted and meaningfully implemented across the entire international community.[82]

At the risk of being influenced by recency bias, events such as the Russia – Ukraine war, the Hamas terror attacks launched against Israeli targets, and the Israeli military response that have not attracted decisive UN Security Council action to end the use of armed force.[83] This Council inactivity stands in stark contrast to the Council's UN Charter 1945 position (reinforced through Article 24) as the world's designated

80 As also explained in UN Meetings Coverage and Press Releases (SG/SM/20993 (26 October 2021).

81 Rotem Giladi and Yuval Shany, 'Assessing the Effectiveness of the International Court of Justice' (December 2020), in the *Cambridge Companion to the International Court of Justice*, Carlos Espósito, Kate Parlett and Callista Harris [Online] <https://ssrn.com/abstract=3801580> [19 October 2023], 3-4.

82 Paul Stephan, 'The Legitimacy of International Law' (January 2020), in *Palgrave Handbook of International Political Theory* (Palgrave MacMillan: New York, Howard Williams, David Boucher, Peter Sutch & David A. Reidy, eds., (2021) [Online] <https://ssrn.com/abstract=3521378> [18 October 2023], 5, 6.

83 Jeremy Farrall, 'The Populist Challenge and the Future of the United Nations Security Council' (May 2020) 35 *Maryland Journal of International Law* 1, 4 [Online] <https://ssrn.com/abstract=3611535> [19 October 2023].

peacekeeper.[84] The ways that these key problems might be resolved are beyond the scope of this discussion, but for present Section IV purposes, it is assumed that the Security Council can play a meaningful Paris Agreement GHG targets enforcement role if the international community adopted the following 'idea' to 'legal tools' solutions.

The central Paris Agreement negotiations revealed serious developed versus developing world tensions. These factors led directly to how the current GHG emission targets were set, and the ways that they might be achieved. It is noted that the Paris Agreement has no enforcement mechanisms in place regarding GHG target compliance, such as penalties, or other sanctions that the international community can impose through a central overseeing agency.[85] Stankovic is one of many IL – climate change scholars who agrees that "implementing strong enforcement measures is ***politically infeasible*** in the realm of international politics".[86] However, the above-noted IL criticisms directly contribute to how the Paris Agreement GHG targets might conceivably be made 'enforceable' using two different mechanisms.

B. The UNCLOS – IMO Example

The first Paris Agreement enforcement option is modeled on the UN Convention on the Law of the Sea 1980 (UNCLOS) provisions.[87] It is possible to establish a climate treaty body that is given equivalent oversight powers to those exercised by the International Maritime Organisation (ILO) (a primary UNCLOS organization).[88] The IMO role requires the following brief elaboration to more fully appreciate how the Paris Agreement and its member states' compliance could be similarly monitored and overseen.

The IMO is comprised of an Assembly (where all UNCLOS member states are represented), a Council that gives the IMO its primary leadership and policy directions, and five main Committees. The Marine Environment Protection Committee (MEPC) is the most relevant of these IMO committee structures for UNCLOS – Paris Agreement comparative purposes.[89]All UNCLOS member states are included in MEPC. This committee has been given primary Convention responsibility for devising and encouraging member state implementation of laws that increase prevention and

84 UN Charter 1945, Article 24.

85 Tatjana Stankovic 'The Paris Agreement's inherent tension between ambition and compliance' (September 2023) *Nature* [Online] <https://www.nature.com/articles/s41599-023-02054-6> [18 October 2023], 3.

86 Ibid.

87 United Nations Convention on the Law of the Sea 1980 (UNCLOS), and see UNCLOS Annex IX, International Organizations.

88 International Maritime Organization (IMO) (2023) [Online] <https://www.imo.org/en> [20 October 2023].

89 IMO 'Structure of IMO' (2024) [Online] <https://www.imo.org/en/About/Pages/Structure.aspx> [5 March 2024].

control of pollution from ships.[90] The MEPC also reviews the overall international community "… adoption and amendment of conventions and other regulations and measures to ensure their enforcement…"[91] In this important respect, the MEPC is the single most important IMO unit regarding how ship-related environmental harms are addressed under IL auspices.[92]

The UNCLOS provisions and all subsequent Convention developments confirm the following IL realities. The IMO and its committees like MEPC are not akin to an international law of the sea police force. The IMO organs (including MEPC) lack any substantive legal power to authorise military intervention or other direct UNCLOS provisions enforcement where States breach Convention rules concerning ocean pollution or sea habitat protection.[93] One can readily appreciate why such power – even if it existed – would be contrary to the fundamental principle that all effective IL measures are based upon State consensus and cooperation, with military intervention on any issue a clear last resort.[94]

However, if the above cited Stankovic observations made regarding IL are taken to their logical conclusion, a Paris Agreement body that functioned like the IMO (notably its 40 Member States' IMO Council, and an MEPC oversight equivalent) would represent a positive environmental protection step. Stankovic argues that in the current international climate politics sphere, States must exert 'social pressure' where the international community member who honour their Paris Agreement commitments are praised for their climate change mitigation leadership, while 'climate laggards' invite strong, focused criticism.[95] For Stankovic, international organizations are key players in the social pressure process.[96] The IMO through its committees' activities has made the UNCLOS provisions more effective through such efforts.[97] For these clear reasons, a Paris Agreement institutional counterpart to the IMO and its MEPC represents a sound environmental protection step – one that takes the Agreement closer to being enforced through 'legal tools' as contemplated by this discussion topic.

Further, there is ***some*** persuasive power in the pro-Agreement contention that its flexibility and emphasis placed on State to State cooperation will eventually achieve positive climate change results. Agreement detractors raise a compelling

90 Ibid.

91 Ibid, and see also Saiful Karim, 'IMO Institutional Structure and Law-Making Process. In: Prevention of Pollution of the Marine Environment from Vessels' (2015) <https://doi.org/10.1007/978-3-319-10608-3_2> [5 March 2024], [2.3].

92 Ibid, and see UNCLOS Articles 37, 38.

93 Ibid.

94 Ibid.

95 Stankovic 3, 4-5.

96 Ibid.

97 Robert Beckman, 'The Relationship Between UNCLOS and IMO Instruments' (2017) 2(2) *Asia-Pacific Journal of Ocean Law and Policy* 245.

counterargument – the climate change 'red alert' status means that no time must be wasted to achieve its GHG emission targets.[98] The second proposed Agreement revisions are presented with these competing viewpoints in place.

However, the 'some persuasive power' comment offered above invites an (at least) equally persuasive counterargument. The entire Paris Agreement negotiations process did not yield any concrete member State agreements regarding punishments for Paris violators. These Agreement breaches could conceivably take one of two forms: (1) failing to implement the Agreement into domestic law (a Vienna Convention obligation); (2) punishing any State that does not meaningfully enforce the Agreement greenhouse gas emissions reduction targets.[99]

This apparent Paris Agreement shortcoming is readily understood when the geopolitical dynamics are fully appreciated. The UN leadership that has been driving the global climate change mitigation agenda made a pragmatic decision. It would be better to have a relatively weak, aspirational international community instrument than none at all.[100]. This observation reflects reality – a point given further attention below.

C. A Reinvigorated Security Council?

The second option represents a more aggressive Paris Agreement enforcement tool, one that could elevate Section II eco-intervention and R2P concepts to legal tools status. A Paris Agreement that is expanded to include specific Security Council powers that build upon the current UN Charter Chapter VII provisions.[101] The seemingly most logical Paris Agreement – Security Council linkage is readily outlined. The Paris Agreement could be amended whereby the Agreement member states would accept the Security Council possesses the power to enforce the Agreement GHG emission targets in one of two ways. These are: (1) imposing economic sanctions on States that do not meet their accepted targets; and (2), where sanctions do not achieve Agreement compliance, the Security Council may authorize the use of armed force (where willing States are prepared to commit military resources).[102]

If this approach was adopted by the Paris Agreement membership, international peacekeeping concepts that are reflected in numerous prior Security Council resolutions authorizing military – armed force intervention are effectively repurposed

98 Savaresi, 4, and UN Meetings Coverage and Press Releases (SG/SM (2021).

99 Vienna Convention on the law of treaties, Articles 23-30.

100 Imad Ibrahim, 'The Paris Agreement Compliance Mechanism: Preparing For COP 26 In Glasgow And Beyond' (2021) 11 *Wake Forest Law Review Online* [Online] <https://ssrn.com/abstract=3958371> [27 February 2024].

101 UN Charter Chapter VII.

102 As contemplated by Chapter VII.

to sanction environmental intervention.[103] It is suggested that this Security Council power would operate as a true last resort – a narrowly defined State sovereignty exception. It would only be invoked where the Paris Agreement's usual emphasis placed on international community cooperation to reach all climate mitigation goals.[104]There is merit in the 2021 Brady Dennis assertion that the UN leadership that eventually secured the Paris Agreement has now assumed "the role of the globe's exhorter-in-chief for bolder climate action", a position that criticizes wealthy nations where GHG target inaction is confirmed.[105] It is equally clear that even the strongest climate change – environmental protection rhetoric does not necessarily achieve desired results.

An important point must be factored into this specific discussion point. Under UN Charter Chapter VII, the five permanent Security Council members (China, France, Russian Federation, United Kingdom, and United States) must agree on the specific resolution terms.[106] Where any one of these members vetoes a proposed resolution, it cannot pass and thus it will have no IL effect.[107]

D. The State A – State B Scenario

It is assumed that State B transborder air pollution generated by its factories continues to cause TEH in State A. Its government then unilaterally imposed trade sanctions and established strict border controls governing all State B traffic in retaliation for these TEH events. This State A action does not solve the TEH problem. State A then requests that State B agree to have the ICJ adjudicate this dispute. State B refuses to accept ICJ jurisdiction. State A then seeks a Security Council resolution (Resolution 1) whereby economic sanctions are imposed on State B across the entire international community. State C is State B's largest trading partner, and notwithstanding all three States being Paris Agreement members, State C declines to enforce the resolution.

When the Security Council concludes that Resolution 1 has not motivated State B to cease its TEH causing activities, Resolution 2 is proposed whereby an international armed force is authorized to enter State B and use military means, if necessary to shut down polluting State B factories. Security Council permanent member State D vetoes Resolution 2. State B TEH continues to pollute State A ecosystems, and

103 Farrall, 6-7.

104 Brady Dennis, 'The U.N. chief's relentless, frustrating pursuit to bring the world together on climate change' (October 2021) *Washington Post* [Online] <https://www.washingtonpost.com/climate-environment/2021/10/25/antonio-guterres-climate-change/> [19 October 2023].

105 Ibid.

106 The power of veto originates in Article 27 of the United Nations Charter, even if the term "veto" is not used in it. United Nations Security Council 'Current Members' (2023) [Online] <https://www.un.org/securitycouncil/content/current-members> [20 October 2023].

107 Jennifer Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (Cambridge University Press 2020) 48..

State A ultimately declares war on State B. The following commentary builds on this scenario.

E. Commentary - IL Fundamental Weakness and Pragmatic, Consistent Enforcement

The world has not yet seen a situation unfold such as these State A – State B scenario events. Some observers might therefore argue that the scenario is far-fetched and thus a poor illustration of the Section II concepts in action. Voight and other commentators provide a convincing rebuttal – the fact that these scenario events have never unfolded cannot logically mean that as climate change impacts worsen, the scenario remains unrealistic.[108] State B is presumptively violating the Paris Agreement and thus it is permitting illegal TEH to continue. In general terms, wrongdoer states like B assume an international responsibility "…to cease that act, to offer assurances of non-repetition, and to make full reparation of the injury caused by the internationally wrongful act, including compensation for environmental damage…"[109]

State B has not accepted this international responsibility. The Security Council is revealed here as a weak, flawed international community institution if its resolutions are either unheeded, or a single permanent member veto effectively prevents the Council from exceptionally utilizing armed force to stop State sanctioned TEH. Its high minded language aside, the current Paris Agreement does not guarantee that the international community will save the planet from GHG-based climate change, global warming, and environmental destruction. A war has not yet been fought between States regarding a need for eco-intervention such as that depicted in the State A – State B scenario. The likelihood of such events must logically increase as destructive climate change outcomes also increase in both their frequency and severity.[110]

This commentary closes with a provocative, but logically sound IL observation. The Paris Agreement as currently structured does not have any GHG emission target enforcement mechanisms. The two Agreement revisions outlined above would include such mechanisms, but each has significant practical limitations. An IMO-styled Paris Agreement is (at best) an international community 'exhorter-in-chief' that lacks true enforcement capabilities. The proposed express Security Council – Paris Agreement power is easily undermined unless full permanent member consensus exists to use UN Charter Chapter VII peace and security maintenance provisions to their fullest permitted extent.[111] These realities underscore the concluding observation and its two

108 Christina Voigt, 'International Environmental Responsibility and Liability (February 2021) [Online] <http://dx.doi.org/10.2139/ssrn.3791419> [19 October 2023].

109 Ibid, 4-5.

110 A point taken from reading Caitlin Werrell and Francesco Femia 'Climate Change, the Erosion of State Sovereignty, and World Order' (2016) 22(2) *Brown Journal of World Affairs* 221, 235 [Online] <https://www.jstor.org/stable/26534704>.

111 UN Charter 1945, Chapter VII.

elements: (1) State A can rightly argue that the combined effect of climate change, State A's sovereign right to protect its citizens and ecosystems from State B TEH, coupled with a weak IL framework (the ICJ and Security Council procedural gaps and related shortcomings) left it with no choice but to either accept destructive TEH, or take military action as its last resort; given (1), State A's invasion is an ultimate act of eco-intervention that satisfies the Section III R2P definition. The article conclusions are directly influenced by these commentary points.

V. Conclusions

It is suggested that the various Section II conceptual definitions, Section III IL case law, and the Section IV Paris Agreement discussion points collectively leave little doubt the eco-intervention is now more than a mere activist idea when the entire topic and its environmental protection ramifications are fairly considered. State sovereignty principles remain an IL framework lynchpin. Any actions taken by the international community to further environmental protection ambitions (or those undertaken by individual states like A in its State B invasion scenario) are exceptions to sovereignty being respected by all other States. One may reasonably conclude that the Paris Agreement as currently constructed implicitly recognizes State sovereignty as remaining paramount – or the Agreement would have included more vigorous, clearly defined enforcement mechanisms such as those IL reform possibilities outlined in Chapter IV.

Eco-intervention on a scale contemplated in the State A – State B dispute may still seem unlikely, but the discussion confirms that the core topic element is likely closer to occurring than at any previous time: Eco-intervention is potentially justified where IL does not provide a clear, workable answer to increasingly dire TEH threats that originate in States that are unable or unwilling to remedy them. The question posed in the project Introduction must be answered affirmatively, with a further qualification. States ***should*** be permitted to take such eco-intervention actions where these are reasonably necessary to save the Earth from further environmental harm. It is acknowledged that in the State A – State B context, if State A may permissibly rely on the combined effects of all four Section II concepts to justify military invasion as its last resort to combat State B's TEH activities, other willing States might join its cause. Conversely, State C or other State B allies might rally to its defence. The world order contemplated by adherence to the UN Charter and its Security Council as global peacemaker would collapse into ruin.

This potential unraveling of the international community and its Paris Agreement commitments does not detract from the final conclusion clearly supported by this discussion. When the current IL framework weaknesses are stripped away, States can

act on the powerful ideas that provide environmental protection with its persuasive appeal. If the current climate change mitigation framework created under Paris Agreement auspices do not work very well, and the proposed enhancements of Agreement GHG emission targets cannot be converted into workable legal tools, R2P gives State A its IL justification to unilaterally act if necessary to protect its environment and people from State B TEH. This is a sobering, but legally sound restatement of where IL and environmental protection principles are today.

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