A REVIEW OF THE ROLE OF SOFT INSTRUMENTS IN INTERNATIONAL ENVIRONMENTAL LAW: CLIMATE CHANGE LAW AS AN EXAMPLE

ULUSLARARASI ÇEVRE HUKUKUNDA YUMUŞAK ARAÇLARIN ROLÜNE İLİŞKİN BİR GÖZDEN GEÇİRME: ÖRNEK OLARAK İKLİM DEĞİŞİKLİĞİ HUKUKU

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ABSTRACT

This legal review will attempt to test the climate change law in terms of hardness and softness. It will deploy a content analysis method in order to approach the very deep and direct meaning of the environmental laws, treaties, and rules in general and those related to climate change in particular. It will present examples of environmental hard and soft law instruments to show an overview of the law as it is. Then it will accordingly test the relevant climate change rules to find out their nature in terms of the three elements of hardness: obligation, precision, and delegation. It will conclude that such a legal system reflects the very basis of the current world in its political and social dimensions, such as globalization and fragmentation, and it aims to demonstrate that climate change law needs a new level of normativity with sufficient potential to achieve it.

Keywords: Climate change, anthropocentrism, environment, hard law, soft law.

ÖZET

Bu yasal inceleme, iklim değişikliği hukukunu sertlik ve yumuşaklık açısından test etmeye çalışacaktır. Çevre yasalarının, antlaşmaların ve kuralların genel olarak ve özellikle iklim değişikliğiyle ilgili olanların

DOI: 10.32957/hacettepehdf.1672865

Makalenin Geliş Tarihi: 10.04.2025 **Makalenin Kabul Tarihi:** 02.06.2025

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Bu makale Hacettepe Üniversitesi Hukuk Fakültesi Dergisi Araştırma ve Yayın Etiği kurallarına uygun olarak hazırlanmıştır.

çok derin ve doğrudan anlamına yaklaşmak için bir içerik analizi yöntemi kullanacaktır. Hukukun olduğu gibi bir genel görünümünü göstermek için çevresel sert ve yumuşak hukuk araçlarına örnekler sunacaktır. Ardından, ilgili iklim değişikliği kurallarını, üç sertlik unsuru açısından doğalarını bulmak için test edecektir: yükümlülük, kesinlik ve delege etme. Böyle bir hukuk sisteminin, küreselleşme ve parçalanma gibi politik ve sosyal boyutlarında mevcut dünyanın temelini yansıttığı sonucuna varacak ve iklim değişikliği hukukunun bunu başarmak için yeterli potansiyele sahip yeni bir normatiflik düzeyine ihtiyaç duyduğunu göstermeyi amaçlamaktadır.

Anahtar kelimeler: İklim değişikliği, antroposentrizm, çevre, sert hukuk, yumuşak hukuk.

GENİŞLETİLMİŞ ÖZET

Bu çalışma, uluslararası çevre yönetişimi mimarisi içinde yumuşak hukukun tartışmalı ancak önemli rolünü incelemektedir. Hızlanan ekolojik krizler ve bağlayıcı taahhütlerin genellikle siyasi olarak ulaşılamaz olduğu parçalanmış bir uluslararası hukuk düzeni zemininde ortaya çıkmaktadır. Temel amaç, bağlayıcı olmayan normların (ilkeler, bildirgeler, yönergeler ve davranış kuralları) resmî hukuk kaynaklarıyla nasıl etkileşime girdiğini, devlet ve devlet dışı davranışları nasıl etkilediğini ve örf ve adet hukukunun evrimine nasıl katkıda bulunduğunu eleştirel bir şekilde değerlendirmektir.

Çalışma, yumuşak hukuku genel uluslararası hukuk içinde bağlamlandırarak başlamaktadır. Doktrinel tartışmalardan yararlanarak, yumuşak hukuku, resmî yasal uygulanabilirlikten yoksun olsa da, siyasi mutabakat, itibar teşvikleri ve usule ilişkin unsurların yerel hukuk çerçevelerine dahil edilmesi yoluyla normatif ağırlık taşıyan araçlar olarak tanımlamaktadır. Analiz, hukuki kesinlik, hesap verebilirlik ve demokratik meşruiyet konusundaki endişelerden kaynaklanan yumuşak hukuka yönelik geleneksel şüpheciliği ele almaktadır. Bu durum, bağlayıcı hukukun siyasi veya teknik olarak elde edilmesinin zor olduğu alanlarda yumuşak hukukun pragmatik faydasının giderek daha fazla kabul görmesiyle karşılaştırılmaktadır.

Çalışma daha sonra, yumuşak hukukun özellikle verimli olduğu çevre alanına kaymaktadır. Stockholm Bildirgesi (1972), Rio Bildirgesi (1992) ve Paris Anlaşması'nın bağlayıcı olmayan unsurları gibi önemli çerçeveler, örnek teşkil eden kilometre taşları olarak incelenmektedir. Bu araçlar, ihtiyat ilkesi, kirleten öder ilkesi ve sürdürülebilir kalkınma gibi kavramsal çerçeveleri şekillendirmiş ve bu çerçeveler daha sonra antlaşma hukukunu, yargısal muhakemeyi ve iç mevzuatı etkilemiştir. Metin, bağlayıcı olmayan yapılarına rağmen, bu ilkelerin genellikle normatif dayanak noktaları olarak işlev gördüğünü, davranışları yönlendirdiğini ve bağlayıcı yükümlülükler için yorumlayıcı araçlar olarak hizmet ettiğini vurgulamaktadır.

Analizin önemli bir ayağı, yumuşak hukuk ve antlaşma rejimleri arasındaki etkileşimi ele almaktadır. Çalışma, yumuşak hukuk araçlarının sıklıkla bağlayıcı anlaşmaların öncülüğünü ve yolunu açtığını, normların oluşturulması ve uzlaşı oluşturulması için laboratuvarlar olarak hizmet ettiğini göstermektedir. Montreal Protokolü veya Biyolojik Çeşitlilik Sözleşmesi'nin işleyişinde görüldüğü gibi, ayrıntılı teknik

yönergeler sağlayarak antlaşma yükümlülüklerini de tamamlayabilirler. Yumuşak ve katı hukuk arasındaki yinelemeli geri bildirim -bazen katı hukukun "yumuşaması" ve yumuşak hukukun "sertleşmesi" olarak adlandırılır- uluslararası çevre hukukunun normatif kapsamını genişleten dinamik bir süreç olarak sunulmaktadır.

Ancak, çalışma eleştirel olmayan bir duruş benimsememektedir. Yumuşak hukuk araçlarının önemli sınırlamalarını, özellikle gönüllü uyuma dayalı olmalarını, siyasi değişimlere karşı duyarlılıklarını ve devletlerin bunları bağlayıcı taahhütlerin yerine kullanma potansiyelini ele almaktadır. Devletlerin esaslı bir değişiklik yapmadan taahhütlerini bildirdikleri sözde "sembolik hukuk" riski, tekrarlayan bir zorluk olarak kabul edilmektedir. Bu bağlamda yazar, yumuşak hukuk araçlarına daha fazla pratik etki kazandırmak için şeffaflığı, izlemeyi ve incelemeyi artıran usul mekanizmalarının önemini vurgulamaktadır.

Çalışmanın ayırt edici bir katkısı, yumuşak hukuku çok aktörlü bir yönetişim alanı olarak ele almasıdır. Uluslararası örgütlerin, ulusötesi ağların, STK'ların ve özel standart belirleme kuruluşlarının, yumuşak hukukun hem oluşturulmasında hem de uygulanmasında önemli bir rol oynadığı gösterilmiştir. Çalışma bunu ISO çevre yönetimi standartları, kurumsal sürdürülebilirlik raporlama çerçeveleri ve şehir düzeyindeki iklim girişimleri gibi örneklerle açıklamaktadır. Bu, analitik bakış açısını devlet onayının ötesine genişleterek, otorite ve norm üretiminin dağınık olduğu çok merkezli yönetişim yapılarını vurgulamaktadır.

Tartışma aynı zamanda yumuşak hukukun yargısal muhakemedeki rolüne de uzanmaktadır. Uluslararası Adalet Divanı, Amerika İnsan Hakları Mahkemesi ve Avrupa İnsan Hakları Mahkemesi de dahil olmak üzere uluslararası ve bölgesel mahkemeler, anlaşma hükümlerini yorumlamak veya normatif boşlukları doldurmak için bağlayıcı olmayan düzenlemelere atıfta bulunmuştur. Çalışma, bu uygulamanın sert/yumuşak hukuk ikiliğini bulanıklaştırdığını ve bir normun pratik etkisinin resmi statüsünden daha önemli olduğu işlevsel bir yaklaşım önerdiğini savunmaktadır.

Çalışma, sonuç bölümlerinde yumuşak hukuk tartışmasını, Antropocen'de uluslararası hukukun geleceği hakkındaki daha geniş normatif sorular çerçevesinde ele almaktadır. İklim değişikliği, biyolojik çeşitliliğin kaybı ve sınır ötesi kirlilik gibi çevresel zorlukların hızlı ve uyarlanabilir yönetişim mekanizmaları gerektirdiğini ileri sürmektedir. Yumuşak hukuk her derde deva olmasa da, özellikle katı hukuk konusunda fikir birliğinin zor olduğu durumlarda, siyasi hedefler ile bağlayıcı yasal taahhütler arasında önemli bir köprü görevi görebilir. Yazar, hibrit bir yönetişim modelinin parçası olarak, açık biçimselleştirme ve uygulama yollarıyla bağlantılı olarak yumuşak hukukun daha stratejik kullanımını talep etmektedir.

Sonuç olarak, çalışmanın argümanı betimsel haritalamadan normatif savunuculuğa doğru evrilmektedir. Yumuşak hukukun hukuki niteliği ve işlevi üzerine bir incelemeyle başlamakta, çevresel etkisini gösteren sektöre özgü vaka çalışmalarıyla ilerlemekte ve yumuşak hukuku tutarlı, çok katmanlı bir yönetişim çerçevesine entegre etme önerisiyle sonuçlanmaktadır. Bu çerçeve, yumuşak hukukun esnekliğini ve

kapsayıcılığını katı hukukun istikrarı ve uygulanabilirliğiyle birleştirerek, uluslararası hukuk sisteminin çevresel krizlere karşı dayanıklılığını ve duyarlılığını artıracaktır.

Çalışma, yumuşak hukukun hem potansiyelini hem de tuzaklarını eleştirel bir şekilde ele alarak, akademik ve politik tartışmalara dengeli bir katkı sunmaktadır. Özellikle uluslararası çevre hukuku akademisyenleri, antlaşma müzakereleri ve uygulamalarıyla ilgilenen uygulayıcılar ve sürdürülebilirlik için yenilikçi hukuki araçlar arayan politika yapıcılar için önemli olacaktır. Çalışma, yumuşak hukuku çevre yönetişiminin dinamik ve ayrılmaz bir bileşeni olarak çerçeveleyerek, geleneksel kaynak hiyerarşisini sorguluyor ve uluslararası hukuka ilişkin daha çoğulcu bir anlayışın kapısını açıyor.

INTRODUCTION

All social and scientific endeavors in the social realm are open to interpretation, doubt, and suspicion. General international law and specifically international environmental law are no exceptions. International law has long been the subject of heated debates. Depending on one's viewpoint, each word in the phrase 'international environmental law' can denote a variety of meanings. Bodansky argues that the concept of 'environment' lacks clarity and remains vaguely defined. While international environmental law primarily addresses the interaction between humans and nature, he asserts that it inherently assumes a division between the two. This presumption stems, in part, from deeply ingrained anthropocentric perspectives, a notion that will be further explored in this paper. Moreover, both societal perceptions of environmental issues and the understanding of the environment itself evolve over time.[1] The same is true for the terms 'international' and 'law': what is international is not only between states, but, in the case of environmental law, it also includes what is within states themselves; and what is law is not only what is justified or authorized by a proper legislature supported by sanctions, but it can also include so-called 'soft laws,' at least in relation to environmental law.[2]

Soft law or non-binding instruments are widely debated in the relevant legal fields. This can be seen at the field level or a specific branch of international law, such as human

[1] Daniel Bodansky, *The Art and Craft of International Environmental Law* (Harvard University Press 2010) 9-10.

[2] Daniel Bodansky, *International Environmental Law: Mapping the Field* (OUP 2008) 35.

rights law, refugee law or environmental law[3]; at the level of a specific country or region[4]; at the level of a specific treaty[5]; private sector or corporates[6]; specific research areas.[7] In all those studies the soft instruments are praised for several reasons, mainly attracting state participation and state compared with the case of hard law that requires and pushes towards compliance.

It is clear that some requirements, such as sanctions and remedies, must be met for a norm to be considered law or hard law. In rare cases, however, a soft proclamation or resolution is followed as if it were binding. This paper will concentrate on the flexibility of environmental legislation, attempting to emphasize the dispersion of its instruments in terms of scope and efficacy, along with highlighting the outcomes of such legal regulations. The paper's main argument is the necessity of soft rules when it comes to the preservation of the environment, and their capacity in assembling states and other international actors around the modern environmental degradation. Environmental degradation refers to the deterioration of the environment through depletion of natural resources, destruction of ecosystems, and extinction of wildlife. Key aspects include accelerated loss of biodiversity, with high species extinction rates in ecosystems, such as forests, coral reefs, and in Arctic region; climate change impacts causing cascading effects across ecosystems; degradation of land surface; ocean acidification and marine ecosystem collapse.[8] Economically, it is reported that there is a U-shaped relationship

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3 Ferris E and Bergmann J, 'Soft Law, Migration and Climate Change Governance' (2017) 8(1) Journal of Human Rights and the Environment 18; Pierre-Marie Dupuy, 'Sof Law and the International Law of the Environment' (1999) 12(2) Michigan Journal of International Law 420.

4 Sitt Zarina Alimuddin and Ali Muhammad, 'Soft Law and Protection of Climate Migrants: A Case Study of Bangladesh' (2023) 6(1) Nation State: Journal of International Studies 18; Ionescu D Petropoulou and M Eliantonin, 'Soft Law Behind the Scenes: Transparency, Participation and the European Union's Soft Law Making Process in the Field of Climate Change' (2023) 14(2) European Journal of Risk Regulation 292.

5 Maximilian Wanner, 'The Effectiveness of Soft Law in International Environmental Regimes: Participation and Compliance in Hyogo Framework for Action' (2021) 21 Int Environ Agreements 113.

6 Daniel Esty and Nathan de Arriba-Sellier, 'Zeroing in on Net-Zero: From Soft Law to Hard Law in Corporate Climate Change Pledges' (2023) 94(3) University of Colorado Law Review 635.

7 Hema Nadarajah, 'Fewer Treaties, More Soft Law: What does it Mean for the Arctic and Climate Change' in L Heininen, H Exner-Pirot and J Barnes (eds), Arctic Yearbook 2020*: Climate Change and the Arctic: Global Origins, Regional Responsibilities?* (Akureyri, Iceland: Arctic Portal).

8 IPCC, 'Sixth Assessment Report (AR6) "Climate Change 2023" – Synthesis Report' (WMO & UNEP, Geneva 2023)

between economic growth and environmental degradation: as the former rises the latter also peaks until certain points (which vary due to several factors from country to country) before the relationship is reversed.[9] The most vulnerable sectors in this regard are health and medication, foreign direct investment, and technological advancement, mainly in the developing countries due to open economies and economic underdevelopment.[10]

However, the study will assert, no matter how strong and helpful the non-binding instruments may get, the modern environmental crisis requires more rigid laws and actions than the current.

I. CHARACTERISTICS OF NON-BINDING INSTRUMENTS

With respect to the nature and content of international norms, it should be considered that it is associated with the norm's subject matter. Needless to say, the view of the state and its decision-makers cannot be separated easily from the subject matter itself. It is all dependent on how the state and its representative individuals perceive the subject and its effects on the current or future issues inside the territory under its jurisdiction. In other words, a legal norm is considered hard or soft according to the purpose behind the regulation process: why do states wish to regulate and why in such a way and not in another? It is possible to assess the environmental codes from the same perspective. Why are these codes soft, and if so, what are the motives?

The issue of human's attitude toward the environment seems to be more serious. Law is believed to be an apolitical, objective enterprise. However, despite the claim of objectivity made by international law (similar to other local systems), Martti Koskenniemi, for instance, contends that when confronted with a specific problem, international law cannot give an objective solution since the law incorporates the same

<https://www.ipcc.ch/site/assets/uploads/2023/03/Doc5_Adopted_AR6_SYR_Longer_Report.pdf> accessed 22 February 2025.

9 Alex O Acheampong and Eric Evans Osei Opoku, 'Environmental Degradation and Economic Growth: Investigating Linkages and Potential Pathways' (2023) 123 Energy Economics 106734.

10 Acheampong (n 9) 3-5.

subjectivities that generated the problem in the first place.[11] That means the very foundations of international law itself can be questioned indefinitely. The same suspicions are expressed widely in the literature, notably through the legal-political school called the Third World Approaches to International Law (TWAIL).[12] Nonetheless, the study will not depart from the point of questioning the very bases of international law, but from another one, namely that an international law enterprise has been established and it is functioning on a variety of scales. Despite this starting point, the study retains a number of doubts with respect to international environmental law, considering it as a tool mirroring, to a great extent, the interests of its actors, most notably states as well as multinational corporations, and seeing them as the biggest drive behind its current status as a non-binding law.

A. Definition of Non-Binding Instruments

Thus, any scholar seeking knowledge in a given international law field must to a certain extent follow the other dimensions of the event, that is, political, economic and other social considerations. Beginning by reflecting on the environment and its contemporary issues, that simply threaten life on Earth, one has to bear in mind that there is no consensus in the literature regarding the role and the nature of the legally non-binding instruments. Weil, among the first scholars who addressed the question of legal softness, and being a legal positivist, simply did not believe in such a 'soft' category in international law and he called it a 'conceptual weakness'.[13] His ideas on soft law and some other related issues have subsequently been responded to by other scholars, stating the fallacy of those ideas, for which some environmental principles, such as the 'no harm principle' are sufficient illustrations.[14] The latter principle evolved over the years and it

[11] Usha Natarajan, 'Third World Approaches to International Law (TWAIL) and the environment' in A Philippopoulos-Mihalopoulos and V Brooks (eds), *Research Methods in Environmental Law: A Handbook*, (Edward Elgar Publishing 2017) 222.

[12] Natarajan (n 11).

[13] Prosper Weil, 'Towards Relative Normativity in International Law?' (1983) 77 The American Journal of International Law 413.

[14] Pierre-Marie Dupuy, 'Prosper Weil's Article: A Stimulating Warning' (2020) Symposium on Prosper Weil, Towards Relative Normativity in International Law <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/prosper-

was maintained in a number of cases before the International Court of Justice (ICJ) as a rule of international customary law.[15] Consequently, it is undeniable that this type of soft category appears to exist within international law: it is there and somehow functioning.

The nature, content and role of the soft laws could change over time, in different states or according to any other considerations. Despite this, soft laws perform different works and duties and states revert to them for different reasons. Generally speaking, states combine these soft instruments into other regulations in order to guarantee a space for taking other measures and steps that circumstances require.[16] Nevertheless, regardless of how these legal standards are labelled, as hard or soft or even non-legal or non-binding, they are all critical factors in the process by which international law is developed. As Chinkin argued, though soft law may cause 'normative confusion' and 'uncertainty' with respect to international law sources, it remains inevitable as there is a huge, but unresolved, pressure for change in international law.[17] The notable, significant word in what Chinkin says is the ability of states to maneuver differently when the situation so requires.

Soft law is often associated with areas of international law that lack binding authority or have limited enforceability. This association is due to the perceived ambiguity of its content, the uncertain goals or effects of acts, and the possibility that the substance of such acts may be incomplete. Soft law allows for the establishment of commitments among members of the International Community who are unwilling to adhere to formal regulatory instruments.[18]

Among the various instruments used by public and private organizations and entities, there are several areas of legislation that, in addition to not requiring any

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weils-article-a-stimulating-warning/5E242326306B0F0202D98EC0018C789F> accessed 12 April 2023.

15 Pulp Mills on the River Uruguay (Arg. v. Uru.), Merits, 2010 ICJ REP. 14, para. 193 (Apr. 20).

16 Christin Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38(4) The International and Comparative Law Quarterly 850.

17 Chinkin (n 16).

18 Paulo Otero, *Legalidade e Administração Pública: O Sentido da Vinculação Administrativa à Juridicidade* (Almedina 2007) 172-173.

consequence for noncompliance, have a low incidence. At this point, the following instruments could be identified:

_ Code of conduct;

_ Code of good practice;

_ Code of ethics;

_ Recommendations; and

_ Guidelines.[19]

These are legally non-binding, but help states to comprehend them as codes of conduct or behavior. In other scenarios, there other instruments that are established and recognized as non-binding by scholars. These include:

_ The UN General Assembly resolutions and declarations;

_ Elements (such as statements, principles, codes of conduct, codes of practice);

_ Action plans (such as Agenda 21); and

_ Any other non-treaty obligations.[20]

Dinah Shelton identifies several sorts of non-binding instruments in different fields of international law. According to her, these instruments are present in human rights, environmental and trade laws, and they generally serve different tasks, such as coming as precursors to treaties, as in human rights law with the Universal Declaration of Human Rights, or following an already existent treaty, as in the environmental law.[21]

To sum it up, in contemporary legal literature, 'soft law' refers to rules of conduct that, while not legally binding, can influence the behavior of states and other international actors. These instruments, such as guidelines, declarations, or codes of conduct, lack

[19] Tiago De Melo Cartaxo, 'Theories of Legal Sources and Soft Law: of the Unbearable Lightness of Ought' (2016) Faculty of Law, NOVA University Lisbon 12.

[20] Arif Ahmed and Md. Jahid Mustofa, 'Role of Soft Law in Environmental Protection: An Overview' (2016) 4(2) Global Journal of Politics and Law Research 5-6.

[21] Dinah Shelton, 'Soft Law' in JD Armstrong (ed), *Routledge Handbook of International Law* (Routledge 2009) 68-80.

enforceability but may carry significant practical effects. Soft law is defined as "rules of conduct which are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain (indirect) legal effects, and that are aimed at and may produce practical effects."[22]

The distinction between soft and hard law often hinges on two criteria: obligation and enforcement. Hard law prescribes clear, enforceable obligations, whereas soft law either lacks clear obligations or enforceability. As noted by Fionnuala Ní Aoláin, soft law encompasses "international norms, principles and procedures that are outside the formal sources of international law enumerated in Article 38 of the ICJ Statute and that lack the requisite degree of normative content to create enforceable rights and obligations but are still able to produce certain legal effects."[23]

Soft law serves various functions, including guiding the interpretation of hard law, filling gaps where no binding rules exist, and facilitating consensus-building among states. Its flexibility allows for the adaptation to emerging issues without the rigidity of formal treaties. However, its non-binding nature can lead to challenges in enforcement and consistency in application.

B. The Associated Challenges

Nevertheless, the biggest challenge when dealing with non-binding instruments lies in determining their status as legal sources and, consequently, as justifications for normative action by those who follow them. This is particularly difficult due to the lack of enforcement and coercive characteristics associated with soft law. Soft law primarily aims to facilitate negotiations and persuade parties to adopt certain behaviors, rather than enforcing them effectively. As a result, doubts may persist regarding its legal validity and the extent to which it can compel compliance.[24]

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[22] Merijn Chamon, 'Soft Law and Challenges to Access to Justice' in Melanie Fink (ed), *Redressing Fundamental Rights Violations by the EU: The Promise of the 'Complete System of Remedies* (CUP 2024) 366.

[23] Fionnuala Ní Aoláin, ''Soft Law', Informal Lawmaking and 'New Institutions' in the Global Counter-Terrorism Architecture' (2021) 32(3) The European Journal of International Law 922.

[24] Cartaxo (n 19) 3.

As Jürgen Friedrich suggests, it is preferable to use the term 'non-binding instrument' in legal reasoning rather than the contentious term 'soft law,' as the latter complicates the debate over 'soft' and 'hard' law and their roles in the legal realm.[25] Thus, a non-binding legal instrument is distinguished by the fact that no international legal obligations are imposed on states or other actors. The term 'non-binding' appears as an alternative to the usual term 'soft-law'. The reason behind its use is the question of enforceability of the rules: soft laws are the non-binding ones. Whatever the law said to be, these soft or non-binding rules fall beyond the scope of law as proper. They could be rules, but not proper legal rules. Despite Austin and Kelsen's argument regarding the importance of 'sanctions' in determining the valid normative rules from others, such as ethical and religious rules that lack sanctions, H. L. A. Hart asserted otherwise. According to Hart, not all law is 'commands', as Austin and Kelsen argued, therefore, not all law is established on sanctions; there are rules that are regulating and defining, known as the 'secondary rules', which are rules about the rules, or rules related to the mechanisms or procedures through which the primary rules (or "ought") are generated.[26] After all, whether law is always backed with sanctions does not render the non-binding rules a legal status. When it comes to law, at least from a 'positivist' viewpoint, a rule is either law or not, either obligatory or not. There cannot be a hybrid rule, which is partly law and partly non-law.

Moreover, that binary thinking of law in general and international law in particular could be problematic. As Abbott et al. argue[27], soft law can be seen as a continuum to what they term 'legalization': on top of which is undoubtedly the hard law treaties. They argue that, soft law is preferred due to reasons—some of them mentioned below—but they stand above what they on other hand term 'anarchy': absence of law or no law at all. From anarchy to hard law, there is a long process, to a spot where the three dimensions of legalization—obligation, precision and delegation—are not as clear as imagined or wished for. After all, what the observers—who mostly adopt positivistic approaches and

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[25] Ibid.

[26] HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 79.

[27] Kenneth W Abbott, Robert O Keohane, Andrew Moravcsik, Anne-Mariie Slaughter and Duncan Snidal, 'The Concept of Legalization' (2000) 54(3) International Organization 401.

demand for most stringent legal codifications backed with sanctions—risk can be too much, if we consider that "a binary characterization sacrifices the continuous nature of the dimensions of legalization and makes it difficult to depict intermediate forms."[28]

The reason of forwarding such a category in legal theory and jurisprudence, according to the study, is rooted in anthropocentrism and/or social conflicts. One of the main reasons behind the regulation of a phenomenon in a soft form, as in a resolution or a declaration, or in terms of the content, is, besides this maneuvering flexibility, the social hierarchy among and within the human populations. To apply this linear linkage between soft laws and anthropocentrism, the study shall turn to consider climate change's legal regime as the most relevant one for investigating such threads. Critics of the soft side of international climate change law argue that non-binding instruments, such as the Paris Agreement, lack the enforceability and accountability needed to drive meaningful global action. While these soft-law mechanisms foster cooperation and flexibility, allowing states to set nationally determined contributions (NDCs) tailored to their capacities, they often result in insufficiently ambitious commitments and inconsistent implementation. Scholars like Bodansky[29] and Rajamani[30] highlight that the absence of stringent compliance mechanisms undermines the effectiveness of such frameworks, as states face no legal consequences for failing to meet their pledges. This voluntary approach risks perpetuating a 'race to the bottom', where countries prioritize economic growth over environmental integrity, jeopardizing global climate goals.

Despite their significance in building consensus and inclusivity, soft instruments alone are inadequate to address the urgency of the climate crisis. The IPCC emphasizes that limiting global warming to 1.5°C requires immediate, transformative action, which soft laws cannot guarantee. Hard laws, such as binding emissions reduction targets and enforceable sanctions, are essential to ensure compliance and accountability.31 Legal

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28 Abbott (n 27) 405.

29 Daniel Bodansky, 'The Paris Climate Change Agreement: A New Hope?' (2016) 110(2) American Journal of International Law 288.

30 Lavanya Rajamani, 'The Increasing Currency and Relevance of Rights-Based Perspectives in the International Negotiations on Climate Change' (2010) 22(3) Journal of Environmental Law 391.

31 IPCC (n 8).

experts like Voigt and Gao argue that a hybrid approach, combining the flexibility of soft laws with the rigor of hard laws, could bridge this gap.[32] Ultimately, the international community must prioritize stronger legal frameworks and concrete actions to mitigate climate change, protect ecosystems, and safeguard the future of life on Earth. Without such measures, the soft-law paradigm risks falling short of delivering the systemic change needed to preserve nature and planetary health. However, let us now turn to the stance on examples of environmental law's non-binding instruments.

II. ENVIRONMENTAL LAW AS NON-BINDING

Today's world is much more complicated as a result of the number of the actors interchanging and interacting together, as well as the nature of the emerging issues. States and their representatives are involved in a variety of issues that vary in nature, range, and scope. States use a variety of methods and approaches to address legal and political issues. Bilateral and multilateral treaties, also known as 'hard law', are one method. However, such strict laws do not address all of the issues at hand. States interact with the most current global issues in different ways, including soft law or non-binding instruments, similar to what exists in the domestic legal systems. As a result, the existence of 'soft law' is not limited to international environmental law. Rather, states use this type of regulation in multiple situations to achieve different sets of goals.[33] There are at least ten international treaties and protocols related to climate change, and at least twenty at the regional level, with a universal participation of the world states.[34]

Nevertheless, this does not detract from the legal significance of non-binding instruments in the context of international law or that they lack effectiveness. Although a resolution by which an international declaration is adopted is considered a non-binding instrument, the principles that the declaration contains are highly influential, and

[32] Christina Voigt and Xiang Gao, 'Accountability in the Paris Agreement: The Interplay between Transparency and Compliance' (2020) 1 Nordic Environmental Law Journal 31.

[33] Jürgen Friedrich, *International Environmental Soft Law* (1st edn, Springer 2013) 2.

[34] Bodleian Libraries, University of Oxford, 'Environmental law: Treaties (MEAs/IEAs)' <https://libguides.bodleian.ox.ac.uk/law-env/treaties> accessed 22 January 2024.

potentially critical, in terms of how states behave and practice in the future.[35] Principle 21 of the United Nations Conference on the Human Environment regarding the requirement to prevent damage from being caused to the environment of different states of regions that exceed the boundaries of national jurisdiction, for instance, has had such an influence on the conduct of states that the ICJ determined that the obligation stipulated by the principle should be considered a component of the body of international environmental law.[36]

When perceived from different angles, it is possible to state that non-binding instruments perform various roles and have assisted with strengthening the functioning of international law. These instruments can sometimes help with the development of international law, an approach that is defined as being incremental or gradual. In this way, a non-binding instrument by which fundamental principles are established is adopted by a treaty that determines particular obligations such that the given principles are implemented. In some situations, treaties could mirror the content contained within past instruments of soft law, thus making them legally binding, e.g., the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses of 1997.

Conversely, soft law is not just a different label for the process of developing international law. In different cases, soft law aids in the identification of standards relating to state behavior. For instance, when it comes to cases where states are obliged to work jointly in the process of managing mutual natural resources, soft law standards provide a framework for due diligence. Similarly, soft law instruments have aided in defining the scope and normative content of the provisions of a treaty in dispute resolution. Furthermore, soft law instruments can aid in the direction and implementation of concrete national policies. For example, the United Nations Environment Programme's Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters (Bali Guidelines), an in-

[35] Friedrich (n 33) 12-13.

[36] ICJ, Advisory opinion on Legality of the Threat or Use of Nuclear Weapons, 8 July 1998, para. 29.

depth discussion of which is provided below, helps states with the adoption of measures that express the access rights stipulated within Principle 10 of the Rio Declaration.

Soft law, from this perspective, is an analytical category that perceives international to be a continually evolving discourse intended to influence the conduct of the different actors, rather than a static collection of (re)sources. This comprehension demonstrates the following key features and functions of non-binding instruments:[37]

_ Principles declarations that embody a universal strategic and political vision;

_ Programmatic guidelines or directives by which activities are planned and implemented;

_ Interpretations of international treaty standards; and

_ Guiding principles that facilitate the clarification of international obligations.

It is possible for various different actors to create soft law or non-binding instruments, including states, international organizations, committees of independent experts, and international NGOs. In reality, a large proportion of such instruments are created via a resolution through which they are approved and then included in the form of an annex. States recognize that soft law or non-binding instruments are of a 'political' rather than a 'legal' nature, and that these instruments produce political consequences rather than legal commitments, even if they have the potential of so doing.[38]

In the field of environmental law, Stuart Bell, Donald McGillivray, and Ole W. Pedersen highlight the growing interconnectedness of international law, EU law, and domestic legislation. While these legal sources are often perceived as distinct, they are becoming more interdependent. This is because domestic and EU laws frequently incorporate obligations derived from international environmental law, resulting in a "layering" effect where multiple laws addressing specific issues overlap with each other.

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[37] Marcos A Orellana, 'Typology of Instruments of Public Environmental International Law', United Nations ECLAG Environment and Development series no. 158, 9 <https://www.cepal.org/sites/default/files/publication/files/37186/S1420605_en.pdf> accessed 13 December 2021.

[38] Kal Raustiala, 'Forms and Substance in International Agreements' (2005) 99(3) The American Journal of International Law 587.

Accordingly, the mentioned authors argue that, a) there are layers within layers, namely, broad frameworks that have the details fleshed out in other legislation; b) not all topics will be layered in the same way. Although the law on any particular environmental issue can come from a variety of sources, there are certain issues, such as transboundary pollution, which require international solutions. Other areas are more appropriately dealt with at a regional or a national level; and c) there is no 'conveyor belt' system by means of which environmental law is transferred from one layer to another. Because international and European obligations are often framed in very broad terms, a range of measures may be adopted at a national level. They may not be directly linked to any European or international measures even though they have the function of meeting the obligations laid down elsewhere.[39]

As Bodansky stipulates, the resolution of the majority of international environmental problems typically involves negotiation rather than resorting to third-party dispute settlement or unilateral changes in behavior. Within this process of mutual control, international environmental norms play a crucial role. They define the parameters of the discussion, offer evaluative criteria, allow for criticism of the actions of other states, and establish a framework of principles that serves as the basis for negotiations to develop more detailed norms, often in the form of treaties.[40]

This is likely to occur in the case of environmental law, which suffers from soft law characteristics such as fragmentation and decentralization. Nonetheless, non-binding instruments in this legal area have also assisted in gathering more active global reactions towards some of the emerging challenges, such as climate change. Non-binding instruments are not exclusive to environmental law. Rather, all the legal systems, international and national, do have them; it is a natural aspect of society and social order, as will be demonstrated below through presenting examples of such instruments in the environmental domain and others too.

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[39] Stuart Bell, Donald McGillivray and Ole W Pederson, *Environmental Law* (8th edn, OUP 2013) 86 ff.

[40] Daniel Bodansky, 'Customary (And Not So Customary) International Environmental Law' (1995) 3(1) Indiana Journal of Global Legal Studies 118.

A. UN Conference on Environment and Development (1992)

The UN Conference on Environment and Development was held in 1992 in Rio, Brazil, in response to UNGA Resolution 44/228. The Rio Declaration, a non-binding document, produced from the negotiations between countries that attended the Conference. Additionally, non-binding agreements like Agenda 21 were also developed by the Conference, along with binding instruments like the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD) of 1992.

While states are not legally bound by the Rio Declaration, the ideas it contains are critical for developing and implementing national and global environmental policy and legislation. Furthermore, some of its concepts are based on customary international law regulations or standards stipulated within international treaties. Its Principle 10 envisions rights that have recognition and protection from both international treaties and national constitutions.[41]

B. Environmental Guidelines

In February 2010, the Guidelines for the Development of National Legislation on Access to Information, Public Participation on Decision-making and Access to Justice in Environmental Matters (Bali Guidelines) received approval from the Governing Council of the UNEP in Bali, Indonesia.[42] The Guidelines are aimed at guiding the process of developing national laws such that access rights are protected. The tool was developed by an expert panel with the assistance of civic society. The Guidelines are a set of 26 guidelines shaped around Principle 10's core tenets: justice, participation and information. They are designed to resolve deficiencies and reinforce the legal systems of states, particularly developing nations that need help in meeting their obligations under Principle 10. The Aarhus Convention of 1998 underpins these guidelines. It has been

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41 UNEP, *Training Manual on International Environmental Law* (Nairobi 2006) 79.

42 UNEP, 'Putting Rio Principle 10 Into Action' (2015) <https://wedocs.unep.org/bitstream/handle/20.500.11822/11201/UNEP%20MGSB-SGBS%20BALI%20GUIDELINES-Interactive.pdf?sequence=1&isAllowed=y> accessed 26 January 2024.

signed by not so many states. Iraq and Turkey, for instance, have not ratified the Convention, and therefore are not formally bound by its provisions under international law.[43] However, the spirit of the Convention—especially regarding access to environmental information and public participation—is partially reflected in Turkish domestic law. For instance, Law No. 4982 on the Right to Information (2003) provides a legal foundation for access to environmental data, while Environmental Law No. 2872, amended in 2006, includes provisions promoting public participation in environmental impact assessment procedures. These are examples of states such as Turkey informally aligning with soft international norms despite not being a party to the underlying treaty.

Steps have been taken by the UN Institute for Training and Research and the UNEP to ensure that the Bali Guidelines are implemented more effectively, including regional seminars, national initiatives, and the creation of a Bali Guidelines implementation handbook. The Guidelines, despite its being a soft instrument, has proven to be inspiring and powerful to make progress in environmental democratic rights and public participation around the globe.[44]

C. UN Conference on Human Environment (1972)

The United Nations Conference on the Human Environment, held in Stockholm in 1972, resulted in the establishment of 26 principles addressing the interaction between humans and their environment. Two of these concepts are pertinent to the question of whether international environmental law applies during armed conflict. Principle 21, a key premise of the conference, says that nations have the sovereign right to use their resources in accordance with the UN Charter and international law norms. Furthermore, they are responsible for ensuring that activities under their authority or control do not impair the environment of neighboring states or places beyond national jurisdiction. While the Trail Smelter Principle (transboundary harm) first appeared in a bilateral setting

[43] UN Treaty Collection, Aarhus Convention 1998 <https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xxvii-13&chapter=27&clang=_en> accessed 29 May 2025.

[44] Uzazo Etemire, 'Insights on the UNEP Bali Guidelines and the Development of Environmental Democratic Rights' (2016) 28(3) Journal of Environmental Law 1ff.

between the United States (US) and Canada[45], Principle 21 of the Stockholm Declaration was amended to include a general commitment for all governments.[46]

D. Sustainable Development Principles

The World Summit on Sustainable Development was held in Johannesburg, South Africa, in 2002. While the Summit reiterated the principles expressed in the Rio Declaration and Agenda 21, no further proposals, resolutions, or declarations were issued that particularly addressed environmental preservation in the context of armed conflict.

Furthermore, The International Law Association (ILA), a non-profit civil society organization focused on international law research, clarification, and advancement (public and private), ratified the New Delhi Declaration of International Law Principles Concerning Sustainable Development in 2002. Principle 5 concentrates on access rights as one of three tenets of justice, information and participation.[47] The ILA Conference in Sofia, Bulgaria in 2012 adopted the Guiding Statements with Principle 10 being referred to as "foundational" to sustainable development.

E. The UNGA Resolutions

The UNGA adopted several resolutions pertaining to the environmental questions. Examples are UNGA Resolution 37/7 in 1982 adopting the World Charter for Nature. The Charter is hailed as one of the greatest documents pertaining to nature and ecosystems. As Louis Kotze says, the Charter "leans towards the types of principle that actively seek to counter the prevailing Western, Eurocentric and anthropocentric neoliberal development ethic that global Northern countries are generally seen to

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[45] Russell A Miler, 'Pandemic as Transboundary Harm: Lessons from Trail Smelter Arbitration' (20230 55) International Law and Politics 273 ff.

[46] Martijn van de Kerkhof, 'The Trail Smelter Case Re-examined: Examining the Development of National Procedural Mechanisms to Resolve a Trail Smelter Type Dispute' (2011) 27(3) Merkourios 71.

[47] ILA, 'New Delhi Declaration of Principles of International Law Relating to Sustainable Development', ILA 70th Conference, A/CONF.199/8, (New Delhi, India, 2-6 April 2002) <http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-070850.pdf> accessed 24 December 2021.

pursue."[48] For the same reason, the Charter has been praised as most fully representing the idea of global environmental constitutionalism, however unfortunately ignored by states.[49]

F. World Forests

Many environmental subject matters, such as climate change, land degradation, wetlands, species at risk of extinction, ozone layer depletion as well as biological diversity have received attention from states via the enactment of multilateral binding instruments dealing directly with those matters, while protecting forests has not had the same fortunate attention.[50] The reason is some developing countries consider forests as part of their natural resources and critical for their economic growth, while other scholars highlight the negative role of advanced nations like the United States in breaking down the negotiations for such a convention.[51]

Protecting forests by adopting a special convention on them seems significantly necessary. Forests are home to a vast proportion of the biological diversity that exists on the Earth as estimations indicated that around 70 percent of all species of animals and plants around the world are found in forest habitats. Though forests are mentioned in a series of environmental treaties, such as the UNFCCC and CBD, especially in the latter as its scope has been widened to incorporate forests in its ambit, forests do not enjoy an independent legal regime of their own.[52] The soft reality of forests is evident in two ways: first, the functions of forests are dispersed, fragmented onto different international agreements; and second, the different political views of states on the extent to which they consider forests as part of their sovereignty.[53]

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48 Louis J Kotzé, 'A Global Environmental Constitution for the Anthropocene?' (2019) 8(1) Transnational Environmental Law 31.

49 Kotzé (n 48).

50 Harro von Asselt, 'Managing the Fragmentation of International Environmental Law: Forests at the Intersection of the Climate and Biodiversity Regimes' (2012) 44 International Law and Politics 1205.

51 Asselt (n 50) 1216.

52 Barbara Ruiz, 'No Forest Convention but Ten Tree Treaties' (FAO 2001) <http://www.fao.org/3/y1237e/y1237e03.htm> accessed 09 May 2022.

53 Ruiz (n 52).

III. Binding Sources of Environmental Law

A. Treaties

Treaties and associated agreements can come in a variety of different guises in the Conference of the Parties, including multilateral, regional and bilateral. Furthermore, a particular international environmental matter could involve agreements at multiple different levels.

1. Bilateral agreements

Bilateral agreements, briefly, are legally binding agreements between two different governments. In the context of the environment, they are often negotiated between two bordering countries with respect to mutual natural resources, like water, or a source of pollution that traverses boundaries.[54] Examples include the 1991 Air Quality Agreement, and the 1909 Boundary Waters Treaty between the US and Canada, and the 1993 Agreement on Environmental Cooperation between India and China.[55]

2. Regional agreements

In certain situations, regional agreements can be self-contained and autonomous regimes that are customized according to the specific environmental characteristics of the region in question. For instance, this applies to the regional maritime agreements that UNEP has adopted, such as the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region and its Protocols.

In different examples, the scope of regional agreements pertaining to the environment is fundamentally the same as international treaties, albeit with further commitments that are purely applicable to the specific participants in the region that the agreement covers. For instance, the Bamako Convention, which came into force in 1991 with the support and approval of the Organization of African Unity, strengthens and

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[54] K Russell Lamotte, 'Mechanisms for Global Agreement' in Roger R Martella and J Brett Grosko (eds), *International Environmental Law: The Practitioner's Guide to the Laws of the Planet* (American Bar Association 2014) 968.

[55] Agreement on Great Lakes Water Quality, 1978; Agreement on Environmental Cooperation between India and China, 1993.

expands the duties enshrined in the Basel Convention, its worldwide forerunner. It occurs when a regional agreement comes before and serves as a benchmark for a future global agreement. For instance, this applies to the Protocol on Persistent Organic Pollutants to the Convention on Long-Range Transboundary Air Pollution (LRTAP Protocol), which preceded the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention). While they have similarities in terms of their fundamental nature and aims, the specific requirements and lists of chemicals covered by the agreements are slightly different. Where agreements overlap, determining which duties apply is governed by treaty interpretation standards, specifically those outlined in the Vienna Convention on the Law of Treaties (which also generally reflects customary international law in this field).[56]

3. Multilateral agreements

Global multilateral environmental agreements (MEAs) constitute the captivating giant of the international environmental law framework: they are the most appealing and can be fascinating to observe regardless of whether they actually achieve anything. In fact, there is a widespread belief that international environmental law starts and finishes with the MEAs, and although the extent to which they are important and influential could be exaggerated, their importance still remains.[57]

The fact that MEAs are purpose-built agreements with defined (rather than open-ended) objectives and COP is a key distinguishing feature. Since the 1970s, negotiations have resulted in MEAs in various different policy fields, such as waste or chemicals (Stockholm Convention and Basel Convention); biological diversity (Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES), CBD and Cartagena Protocol); climate and atmosphere (UNFCCC), and seas (UN Convention on the Law of the Sea). All the above agreements, the negotiations for most of which were

[56] In other circumstances, important regional agreements are not at all concerned with the environment, but rather with trade or investment issues. Regional trade agreements, like bilateral accords, may incorporate crucial environmental substantive and procedural provisions. NAFTA and MERCOSUL are two examples of such relevant regional trade agreements.

[57] Rak Hyun Kim, 'Unravelling the Maze of Multilateral Environmental Agreements: A Macroscopic Analysis of International Environmental Law and Governance for the Anthropocene' (2013) PhD thesis, Australian National University.

supported by UNEP, are different from each other in legal and institutional terms, and they all have meaningful, focused missions.

4. Framework agreements and protocols

Certain agreements are specifically classified as "framework" agreements, which are broad and generally shallow accords designed to act as a basis for subsequent and more specialized talks, often by adopting protocols. Notable examples include the Vienna Convention on the Protection of the Ozone Layer, which led to the more famous Montreal Protocol; the UNFCCC, the precursor to the Kyoto Protocol; and the CBD, which led to a number of focused protocols including the Protocol on transgenic organism trade as well as the Nagoya Protocol on access and benefit sharing. Despite the fact that the institutional frameworks of these protocols are often similar (i.e., common secretariats and, in many cases, shared meeting events) to their forefathers, they are distinct MEAs with their own legal status and party rosters.

Although a protocol's commitments may need to be interpreted on the basis of the convention's predecessor convention in some cases (similar to how regulations should generally be comprehended on the basis of the main legislation which gave it authorization), MEAs classified as being 'conventions' and 'protocols' are not inherently different in legal terms.

B. Conference of the Parties

Contrary to other branches of international law, such as trade and human rights, there is no global institutional framework that acts as a basis or focal point for all associated activities in the international environmental field.

When an agreement enters into force, the Conference of the Parties (COP) becomes the entity responsible for deciding how the agreement will be implemented and operated. The COP comprises states that have signed the multilateral environmental agreement and meets on a regular basis, as defined in the agreement. The Secretariat of an agreement may manage the agreement by organizing COP meetings and assisting the Parties, but the COP makes all key decisions.

The MEAs frequently refer to the parties' conference as the main body responsible for making decisions pertaining to the treaty, which is characteristically designed to be fluid and evolving in nature. Resultantly, the COP is not only authorized to assess treaty compliance and implementation, but also to establish subsidiary organizations, analyze new information, and pass resolutions that address gaps in the agreements through modifications and decisions. Examples include the 20 Aichi Biodiversity Targets, which were adopted at the 10th COP in 2010.[58]

The COP is responsible for a variety of critical functions. To begin with, the COP may convene inter-sessional meetings of subsidiary organizations or technical specialists. The COP's technical procedures and activities may have an indirect impact on national regulatory developments. In contrast, the positions of national regulators during such meetings can often give a clue as to the approach that such regulators will take when faced with emerging environmental problems.[59]

Additionally, through revisions and the approval of new protocols, COP decision-making may result in new legal requirements. MEAs are typically intended to evolve over time in response to revisions that can be implemented in accordance with specific processes outlined in the treaties. Accordingly, the COPs can adopt two main types of resolutions that will have impacts on the parties.[60] The first kind generates external obligations (such as COP decisions under art. 2(9)(a) of Montreal Protocol on Substances that Deplete the Ozone Layer regarding adjustments and reductions in the production or consumption of ozone depleting substances covered by the Protocol will be made using a consensus-based method of voting), while the second type makes internal obligations (such as making changes to appendices and annexes of treaties or protocols).

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[58] UNEP, 'Multilateral Environmental Agreements, 17 and 27' <https://wedocs.unep.org/bitstream/handle/20.500.11822/21491/MEA-handbook-Vietnam.pdf?sequence=1&isAllowed=y> accessed 27 December 2021.

[59] OECD, 'Regulatory Co-operation for an Interdependent World' (Paris 1994) 76 <https://www.anu.edu.au/fellows/jbraithwaite/_documents/Articles/Lessons%20for%20Regulatory%20Co-operation.pdf> accessed 21 December 2021.

[60] Wiersema A, 'The New International Law Makers? Conferences of the Parties to Multilateral Environmental Agreements' (2009) 31(1) Michigan Journal of International Law 237.

Finally, certain MEAs expressly provide for the adoption of legally binding adjustments. Such decisions permit legal obligations to be rapidly expanded while avoiding the necessity to revise the treaty or make national ratification decisions, which consume vast amounts of time. For instance, this applies to the COP decisions regarding listing or delisting species under CITES, which imposes responsibilities on parties to apply restrictions on trade to certain species, as well as decisions to "modify" the Montreal Protocol's phase-out timetable for ozone-depleting compounds. This particular point is what makes some scholars define COP activity, at least the consensus-based decisions, as something between hard and soft law, even close to the former through enhancing international cooperation and custom-creation.[61]

IV. CLIMATE CHANGE LAW

The term ‘climate’ broadly encompasses all surrounding elements, including air, soil, and water. Over the past few decades, human activities and interactions have significantly altered the climate. The UNFCCC defines climate change as any climate variation resulting directly or indirectly from human actions.[62] The UNFCCC primarily aims to stabilize greenhouse gas concentrations in the atmosphere to prevent hazardous anthropogenic interference with the climate system.[63] It explicitly acknowledges humanity's role in environmental degradation while also positioning humans at the forefront of climate protection and conservation efforts. The states that have ratified the UNFCCC are obligated to safeguard the climate system for both present and future generations.[64] This underscores the paradox that, while human actions are major contributors to climate change, they have also been actively involved in addressing environmental challenges—from the Trail Smelter case to contemporary legal frameworks.[65]

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61 Art. 1, para. 2.

62 Art. 2.

63 UNFCCC, Preamble.

64 Olivier Barsalou and Michael H Picard, ‘International Environmental Law in an Era of Globalized Waste’ (2018) 17(3) Chinese Journal of Environmental Law 887.

65 Paul Crutzen and Eugene Stoermer, ‘The Anthropocene’ (2000) 41 IGBP Newsletter 17.

Ultimately, humans are recognized as the sole bearers of intrinsic value, whereas other ecosystem components are assigned only instrumental value, serving to fulfill the needs of both current and future human populations. However, the global responsibility shared by states and other actors is not bore equally. There are principles that demonstrate the unequal contribution of states into the climate change issue and hence their different level of responsibility to address it. This is reflected in the principle common but differentiated responsibility, which will be discussed at the end of this section. Hence, below there will be a discussion on two parts of climate change; the anthropogenic contribution thereof, and the soft side of the climate change law.

A. The Anthropogenic Contribution

Human is a critical factor in terrestrial life and his positive and negative contributions therein are tremendous. The climate system is not merely affected by humans. Rather, natural factors are also in involved; in other words, some changes have happened and are happening as a result of such natural interactions. However, there seems to be sufficient scientific evidence on the negative role humans are playing in affecting the whole climate system on the Earth. The purpose of showing this evidence is to highlight the anthropocentric lifestyle humans have followed for a long time.

The word 'Anthropocene' first appeared in 2000 when it was coined by Paul Crutzen and Eugene Stoermer. They used the term to emphasize the central role humans play in both geology and ecology.[66] Since then, there seems to be enough scientific evidence supporting the existence of such a geological epoch and the planet has already entered this new phase.[67] This means that, despite all the other natural effective forces and factors in changing the climate, the role of the humans remains central. Although there is no general consensus as to when the Anthropocene started exactly (certain scholars refer to the first agricultural revolution thousands of years B.C, others suggest the modern industrial revolution in the 1700s, etc.), its outcome and impact on the environment is well established and beyond doubt, and many geological and climate changes are due to

[66] Richard T Corlett, 'The Anthropocene Concept in Ecology and Conservation' (2015) 30(1) Trends in Ecology & Evolution 36.

[67] Corlett (n 66).

major drivers, primarily population growth, economic growth, etc.[68] For this reason, the UNDP titled its 2020 *Human Development and the Anthropocene*, which is the formal, institutional naming of the Earth's new geological epoch in the 21st century. In its most recent reports, the Intergovernmental Panel on Climate Change (IPCC) concluded that human activities caused an increase in the climate temperature though greenhouse gases (CO_2) in a way unprecedented in the last 2000 years, which makes the human influence in warming the atmosphere, land and oceans 'unequivocal.'[69] That means, regardless of any natural causes, the human cause is stronger and it helps accelerating the decline of climate wholly.

Religions, specifically Christianity, are leading in proposing and advocating for anthropogenic notions. In Christianity, the entire natural world, the irrational world, is created for the sake of humans, so the humans can conquer and have domination over all the other living and non-living creatures. Historically and politically, the triangle relationships between the three notions of Christianity, anthropocentrism and capitalism should be considered. It was Max Weber who elaborated on the relationships between Protestant-Christianity and the spirit of capitalism—the latter emerging from the cloak of the former—both dominating the developed industrialized Western states and cultures.[70] The huge amount of data made available by scientists in different scientific disciplines has facilitated the understanding of the correlations between anthropocentrism, industrialization and global climate change.

B. Nature of Climate Change Law

The climate change legal system is an example of an environmental array including binding and non-binding tools. For instance, Article 4(2)(a) of the UNFCCC requests the state parties to implement policies at the national level and implement relevant measures in order to mitigate climate change, although they have the autonomy

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[68] IPCC, 'Climate Change 2021: The Physical Science Basis' (Geneva 2021) 5; IPCC, 'Climate Change 2023: Synthesis Report' (Geneva 2023).

[69] Max Weber (trans. Talcott Parsons), *The Protestant Ethic and the Spirit of Capitalism* (first published 1930, Routledge 1992) 58.

[70] Robyn Eckersley, 'Soft law, hard politics, and the Climate Change Treaty' in Christian Reus-Smit (ed), *The Politics of International Law* (CUP 2004) 83.

to decide the terms on how and when to implement such measures. During the Earth Summit in 1992 (Rio de Janeiro), many environmental non-governmental organizations (NGOs) were suspicious and critical of the 'soft' regulation in which the convention expressed the commitments; the lack of any binding and concrete basis in terms of timetables and goals related to greenhouse gas emissions was said to be a commitment failure.[71]

Some of these soft standards were adjusted and amended at other times, as in the Kyoto Protocol of 1997, the Copenhagen Accord of 2009 and the Durban Mandate of 2011, but the hard contradictory views of the state parties regarding the amount and percentage of gas emissions remained the same. In all these legal codifications, a separation between the developed countries and non-developed countries was maintained. As a result, some of the giant emission states, namely China and India, were categorized as non-developed countries, which led to a conflict with some of the Western developed countries, namely the United States, and because of this split, they were unable to receive a global ratification, unlike the Paris Agreement of 2015 which did.[72]

The Paris Climate Agreement of 2015 received universal acceptance from more than 190 states. The Paris Agreement, like the preceding Kyoto Protocol, has hard law components, such as the binding general goals of the treaty, and its requirement from the states to clearly report their compliance with the agreement's emission mandates.[73] For instance, Iraq ratified the UNFCCC in 2009 and the Paris Agreement in 2020 (with Law no. 31), and Turkey is a party to the UNFCCC since 2004 and it ratified the Paris Agreement in 2021 (with Law No. 7335).

Nonetheless, the Paris Agreement has a significant soft part: the set emissions targets inside the countries are not implemented, and the language of the treaty regarding the common and individual targets is generally vague and is left to the individual

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[71] Kayla Clark, 'The Paris Agreement: Its Role in International Law and American Jurisprudence' (2018) 8(2) Notre Dame Journal of International & Comparative Law 108.

[72] Jonathan Pickering, Jeffrey S McGee, Sylvia I Karlsson-Vinkhuyzen and Joseph Wenta, 'Global Climate Governance between Hard and Soft Law: Can the Paris Agreement's 'Crème Brûlée' Approach Enhance Ecological Reflexivity?' (2019) 31(1) Journal of Environmental Law 12.

[73] Pickering (n 79).

countries to decide whether to adhere to the agreement according to their political will.[74] In response, domestic legal reforms have followed, including the Turkish National Climate Change Action Plan (2011–2023) and more recently the Climate Law Draft, submitted to the Turkish Grand National Assembly in February 2025. While the draft law is still under review, it proposes binding GHG mitigation targets, marking a shift toward hard law domestically, in contrast to the earlier soft-law character of climate governance in Turkey; it updated its GHG emission reductions to 41% through 2030. Iraq has submitted its Nationally Determined Contribution in 2021, committing to a 1% unconditional and 13% conditional emission reduction by 2030.[75]

The hard law-based components of the Paris Agreement are seen in a number of articles. Article 2(1)(a), which establishes the agreement's overall target of maintaining the average global temperature below 2°C above levels recorded prior to the Industrial Revolution and taking measures to prevent the temperature rising by more than 1.5°C above such levels. Article 4(2), which dictates that each party must maintain 'nationally determined contributions' in terms of reducing the emissions of the country which it intends to achieve; and the articles that set out the reviewing mechanism, which acts as the primary enforcement and accountability mechanism.[76] This includes Articles 13, 14 and 15, ruling on matters such as when the COP should convene, an enhanced transparency framework among the states and primary compliance-inducing mechanisms, respectively.

The above-mentioned compliance and enforcement mechanisms of the Paris Agreement are said to be weak. To ensure compliance, the Agreement depends on a naming and shaming procedure, which means reputation costs for the state, and on a

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[74] Carter A Hanson, 'Hard and Soft Law in the Paris Climate Agreement' (2021) 925 Student Publications <https://cupola.gettysburg.edu/student_scholarship/925> accessed 18 April 2022.

[75] UNFCCC, 'Nationally Determined Contributions Registry' < https://unfccc.int/NDCREG> accessed 29 March 2025.

[76] Peter Lawrence and Daryl Wong, 'Soft Law in the Paris Climate Agreement: Strength or Weakness?' (2017) 26(3) Review of European, Comparative & International Environmental Law 282.

transparency system, which encourages states to confront other states who are not meeting their set contributions established at national level.[77]

The long-term targets established as part of the Paris Agreement, which extends to the mid-21st century in terms of reducing the emissions of greenhouse gases, is nothing but a true reflection of the negative impacts of anthropocentrism in the environmental discourse now and in the past. There is also the interpretation that a state can withdraw from the Paris Agreement or any other one due to the terms such as sovereignty, territory, independence, etc. This is what the US, under the presidency of Donald Trump did in 2017, before returning to the Agreement when Joe Biden became president in 2021, and again withdrawing under the new presidential term of Donald Trump soon after his inauguration in 2025.[78] The ultimate reason for this softness of environmental law, despite their effective contribution in garnering international support and consensus regarding some environmental matters, like climate change, is the states' dislike of full-fledged laws, of which non-compliance amounts to a breach of international law.[79] However, under the climate change law every state bear responsibility; everyone is responsible though differently than the others. For that purpose and reason, the principle of common but differentiated responsibility shall be discussed as an example below.

C. Common but Differentiated Responsibility

1. General Outline

An important point to address is a reflection of the anthropogenic factor, softness and global environmentalism. The common but differentiated responsibilities (CBDR) principle reflects certain social, political and economic differences among the states. It is well established that according to the principle of political sovereign equality, states are de jure equal[80], but they are not de facto equal due to other factors, such as GDP, natural

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77 Clark (n 78) 123.

78 Hartmut Hillgenberg, 'A Fresh Look at Soft Law' (1999) 10(3) European Journal of International Law 504.

79 Charter of the United Nations <https://legal.un.org/repertory/art2.shtml> accessed 13 April 2025.

80 UN Charter, Art. 2(1) states that: "The Organization is based on the principle of the sovereign equality of all its members."

resources, demography and others. For this reason, the differentiation principle has been mentioned and emphasized several times in different treaties. It was first articulated in the 1992 Rio Declaration on Environment and Development (Principle 7), and it was asserted explicitly in several environmental conventions, such as UNFCCC (Art. 3(1))[81], Kyoto Protocol (Preamble and differentiated Annex obligations), and Paris Agreement (Art. 2(2) and Art. 4(3))[82], and implicitly in some others, mainly the United Nations Convention on the Law of the Sea (Art. 202 and 203)[83], each of which deals with differences among their respective state members in their economic growth and other considerations.

However, the one in the other treaties is wider compared to the CBDR in the MEAs. With respect to environmental law, the whole idea of the CBDR reflects the social grounds, basis of humanity's perception of nature and its living and non-living components: since states are different in terms of their political development and economic growth—due to various historical reasons—the responsibility of adaptation and mitigation (change action) should be customized accordingly. This means that there is flexible climate mitigation procedures and greenhouse gas emissions because of the different levels of economic wealth among states.

The climate change system is defined by two interrelated principles: first, the CBDR and second, the right to national sovereignty. The former recognizes that the abilities of states to deal with climate change are different, whereas the latter grants countries the right to decide on the approach they will take to address the problem in their own best interests. The UNFCCC enshrined the CBDR principle in Article 3(1) stating that the parties should protect the climate system … on the basis of equity and in accordance with their common but differentiated responsibilities and respective

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81 United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, art 3(1).

82 United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, art 3(1); Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1.

83 Christopher Stone, 'Common but Differentiated Responsibilities in International Law' (2004) 98(2) American Journal of International Law 276.

capabilities. Accordingly, the developed country parties should take the lead in combating climate change and the adverse effects thereof.

It is specified in CBDR that the responsibilities of actors are common, suggesting that everyone is entitled, if not obliged to engage in adaptation and mitigation efforts. The concept that duties are shared is considered to originate from the fact that ever country will be affected by climate change, if they are not already.[84] Moreover, all nations are required to be cognizant of the fact that domestic legislation and policies pertaining to this issue are not only a matter of national authority. As a result of the global effects of climate change, decisions pertaining to such matters are required to consider the entire international community.[85]

2. From the Lens of Paris Agreement

The Paris Agreement recognizes that countries have different capacities to deal with climate change, and that each country possesses the right to determine, in its own best interests, the approach it will take to deal with the problem. The Parties shall pursue internationally coordinated mitigation efforts, including through the implementation of the Clean Energy Mechanism, as agreed in the Paris Agreement, and as may be necessary.

The principle of climate change justice recognizes that the rich and the poor have contributed differently to climate change, and that it is inequitable that they should bear the brunt of its adverse impacts.[86] Climate change justice is about ensuring that those with the greatest ability to adjust with the problems caused by climate change are those primarily to blame for such issues. The CBDR principle enshrined in the Paris Agreement is about ensuring that those who have contributed the most to climate change are also the ones that have the greatest ability and responsibility to mitigate its disastrous impacts. This principle is about ensuring that the burden of addressing climate change is shared fairly and equally. It is not confined to the climate change system. Rather, CBDR is seen

[84] Tuula Honkonen, *The Common but Differentiated Responsibility Principle in Multilateral Environmental Agreements: Regulatory and Policy Aspects* (Kluwer Law International 2009) 2.

[85] Ibid.

[86] Honkonen (n 84).

in almost all the major environmental instruments, including the Stockholm Declaration of 1972 (Principle 12), Montreal Protocol of 1987 (art 5), and CBD of 1992 (art 20 & 21).

Table 1: sample countries and total number of their active actors in global climate action, which includes the government, companies, investors, organizations, regions, and cities.[87]

Developed or major economies	# Active actors in climate action	Developing & smaller economies	# Active actors in climate action
The USA	3793	Iraq	5
China	1282	Angola	1
India	886	Uzbekistan	3
Brazil	593	Myanmar	4
Russia	38	Niger	6
The UK	6735	Central African Republic	4
Canada	558	Mauritania	5
Japan	1621	Algeria	8
Germany	729	Mongolia	7
France	1433	Yemen	2

[87] UNFCCC, 'Global Climate Action' (2024) <https://climateaction.unfccc.int/> accessed 25 January 2024.

Table 1 highlights the fact that all environmental discourse is based on, and related to, social aspects from within the states. For 2024, as some commentators say, a major political issue and hence barrier to climate action—and the EU's Green Deal—will be the far-right political parties in case they win the majority or more seats than before in the EU Parliament's elections in June, as those parties are opposing climate action.[88] The CBDR principle clearly indicates two aspects: first, the difference between states is in terms of development, and second, because of that difference, there is need to adopt changeable policies for mitigating climate change effects worldwide. The original difference is anthropogenic, and the remedy—CBDR—is a soft procedure. Linking these two together, one can hope that the vast majority of world states who ratified the Paris Agreement, would help mitigate the deadly anthropogenic impact on the environment.

The adaptation/mitigation methods in the UNFCCC and Paris Agreement are different. In UNFCCC, the burden of adaptation/mitigation is placed on the developed countries, representing a top-down method. On the other hand, in the Paris Agreement it is bottom-up, meaning that all the countries, regardless of the extent to which they contribute to global greenhouse gas emissions, still need to report their national contributions.

All the world countries are parties to Paris Agreement, and as it was shown in the table 1, thousands of other actors besides the states—such as companies, investors and organizations—are engaged globally in climate action. This makes the Agreement a universal one.

Table 2: world regions and total number of their actors in global climate action, which includes the government, companies, investors, organizations, regions, and cities.[89]

Regions	**# Actors in climate action**

[88] Kate Abnett, 'Opinion Polls Signal EU Election Result Could Hamper Climate Action – Research' *Reuters* (January 24, 2024) <https://www.reuters.com/world/europe/opinion-polls-signal-eu-election-result-could-hamper-climate-action-research-2024-01-23/?utm_source=Sailthru&utm_medium=Newsletter&utm_campaign=Sustainable-Switch&utm_term=012524&user_email=04d064c1ed3d0d3822a34481a5d7d6fecfd0772269d328a3e24ebef1b1a9f60c> accessed 26 January 2025.

[89] UNFCCC (n 87).

Asia	**5405**
Africa	**1111**
Latin America & the Caribbean	**2092**
North America (US & Canada)	**3751**
Europe	**21493**

The responsibility is common, but differentiated according to national circumstances, and above all, in line with the sustainable development goals (SDGs) agenda.[90] Although it would restrict climate change policies depending on the SDGs for each country, it also would be of great help in the future—despite any fear of failure and besides the 'soft tune' of the Paris Agreement—to increase more common, global actions toward mitigating climate change's effects. Despite elaborating local plans, alongside the global ones, to fight the negative impacts of climate change—as some cities like Gaziantep did in Turkey—more action is necessary, more international cooperation is required in order to align the mitigation policies with the adaptation ones, the local plans with the international ones to avoid selectivity in incorporating international—mainly soft—environmental principles and keep the planet in a safe zone.[91]

[90] Stellina Jolly and Abhishek Trivedi, 'Principle of CBDR-RC: Its Interpretation and Implementation through NDCs in the Context of Sustainable Development' (2021) 11(3) Washington Journal of Environmental Law & Policy 309.

[91] Dilara Yilmaz and Oznur Isinkaralar, 'Climate Action Plans in Under Climate-Resilient Urban Policies' (2021) 7(2) Kastamonu University Journal of Engineering and Sciences 140.

CONCLUSIONS

Prior to the year 1900, there were few bilateral or multilateral environmental treaties dealing with broad environmental issues. However, hundreds of treaties and instruments, bilateral and multilateral, binding and nonbinding, have been signed since the Stockholm Conference on Human Environment in 1972.[92] Not only that, but the scope of environmental agreements and the parties' roles have shifted from narrow and specific issue-area coverage to a largely global assessment, with due participation of NGOs.[93] As a result, the fact that the environment resembles humanity's common heritage has drawn more attention, increasing international cooperation among state and non-state actors.

Why do states opt to or prefer soft law over hard law among the legal instruments at their disposal? In the context of international relations, soft law usage is not constrained to environmental law, but is used in different domains. There may be several reasons why states opt for a soft or non-binding instrument.[94] First, measures must be taken immediately for certain problems, like climate change, and states may not have the time to negotiate a new treaty, which can take years. As a result, they address the issue via a soft or legally non-binding instrument. Second, because the international legal regime is consent-based, and some states may not adhere to treaties or any hard laws, soft law can influence the attitude, behavior, and course of action of dissenting states. Third, these instruments are useful in addressing new areas that necessitate new rule-making means with regard to non-state actors, as they are generally not participants in the process of forming treaties or customary law, but can in the case of soft or non-binding instruments. Fourth, soft laws are sometimes negotiated and concluded solely by non-state actors, establishing a new type of private governance and opening a wider door for non-state actors to participate in international affairs. Fifth, soft law instruments are used for the purpose of resolving ambiguities in binding treaties without requiring extensive

92 Edith Brown Weiss, 'International Environmental Law: Contemporary Issues and the Emergence of a New World Order' (1993) 81 The Georgetown Law Journal 678.

93 Ibid.

94 Andrew T Guzman and Timothy L Meyer, 'International Soft Law' (2010) 2(1) Journal of Legal Analysis 171.

amendment. Thus, similar to the context of environmental law, soft law can play a role in achieving a number of goals.

The existence of soft law necessitates the reconsideration of the law-making process at the international level, emphasizing the challenges in describing this phenomenon solely via the classical concept of formal sources of public international law. This is correct, because soft law can, in general and over time, lead to some hard laws or treaties dealing with environmental degradation.

Another point to emphasize is that non-bindingness is not only measured by relying on some formal criteria, but also on substance: there are several measures in treaties that, due to the wording, can be said to be soft. Thus, a law is determined to be soft due to its content, not just by following the formalities.[95] Until now, soft law has proven to be effective in garnering more participation and working as a reconciliatory framework wherein state and non-state actors can jointly work on common issues. It is important as it is not just a stepping stone to hard law, and it provides a basis for efficient international 'contracts', and it helps create normative 'covenants' and discourses that can reshape international politics.[96] From this vantage point, it is reasonable to conclude that identifying environmental law as soft is a result of its instruments' tendency to impose political rather than legal responsibilities, and to aspire for some rigid basis for the subject matter in the near future rather than immediate actions.

As stated in the preceding sections, environmental law, despite having a relatively large number of treaties covering a wide range of issue matters, is generally considered as soft law. This is due, among other things, to the lack of an international, state-sponsored organization capable of gathering resources and uniting efforts around shared values (lack of delegation). Another reason is environmental law's reliance on soft instruments, such as recommendations, repetitions, and declarations, as previously stated, with the goal of

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95 Dupuy (n 14) 429-30.

96 Kumaravadivel Guruparan and Jennifer Zerk, 'Influence of Soft Law Grows in International Governance' (Chatham House, August 2021) <https://www.chathamhouse.org/2021/06/influence-soft-law-grows-international-governance> accessed 22 February 2025; Kenneth W Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54(3) International Organization 430.

achieving or anticipating political consensus on environmental issues such as climate change (reliance on persuasion).

Climate change is increasingly recognized as a profound challenge that goes beyond conventional frameworks such as state-centric security, calling for a paradigm shift toward environmental sustainability. Traditionally, the concept of security has been regarded as sacrosanct, especially in the post-World War II era, when the international community prioritized goals like peace, sovereignty, and political independence.[97] Yet, in the contemporary era, humanity is confronted with existential threats that cannot be resolved through narrow or antiquated understandings and soft instruments. Climate change, driven predominantly by human activity over the last two centuries, affects ecosystems globally—both animate and inanimate. As such, the path to resolution lies within human agency, requiring a focus on sustainability and proactive engagement. Although the issue has generated extensive debate, concrete progress has been minimal. This paper contends, based on scientific evidence of climate change's sweeping effects, that despite conceptual and practical obstacles, climate change has the capacity to replace traditional notions such as security and become the new *Grundnorm* (basic norm) of international law.[98] This transformation marks a vital turning point necessitating comprehensive reform and a reconceptualization of the global legal order. Ultimately, the emergent normative status of climate change presents a critical opportunity to reshape law and governance in the service of life and long-term sustainability.

[97] Sarkawt Jalil, 'Toward an International Grundnorm for Climate Change: Ensuring Sustainability Away from Traditional Notion of Security' (2025) 17(3) Sustainability 1034. https://doi.org/10.3390/su17031034.

[98] Ibid.

BIBLIOGRAPHY

Abbott KW and Snidal D, 'Hard and Soft Law in International Governance' (2000) 54(3) International Organization 421-456.

Abbott KW, Keohane RO, Moravcsik A, Slaughter AM and Snidal D, 'The Concept of Legalization' (2000) 54(3) International Organization 401-419.

Abnett K, 'Opinion Polls Signal EU Election Result Could Hamper Climate Action – Research' Reuters (January 24, 2024) <https://www.reuters.com/world/europe/opinion-polls-signal-eu-election-result-could-hamper-climate-action-research-2024-01-23/?utm_source=Sailthru&utm_medium=Newsletter&utm_campaign=Sustainable-Switch&utm_term=012524&user_email=04d064c1ed3d0d3822a34481a5d7d6fecfd0772269d328a3e24ebef1b1a9f60c> accessed 26 January 2025.

Acheampong AO and Opoku EEO, 'Environmental Degradation and Economic Growth: Investigating Linkages and Potential Pathways' (2023) 123 Energy Economics 106734.

Agreement on Environmental Cooperation between the Government of the Republic of India and the Government of the People's Republic of China, 7 September 1993.

Agreement on Great Lakes Water Quality, November 22, 1978, Canada-US, T.I.A.S. No. 10, 789.

Ahmed A and Mustofa J, 'Role of Soft Law in Environmental Protection: An Overview' (2016) 4(2) Global Journal of Politics and Law Research 1-18.

Alimuddin SZ and Muhammad A, 'Soft Law and Protection of Climate Migrants: A Case Study of Bangladesh' (2023) 6(1) Nation State: Journal of International Studies 18-33.

Aoláin FN, ''Soft Law', Informal Lawmaking and 'New Institutions' in the Global Counter-Terrorism Architecture' (2021) 32(3) The European Journal of International Law 919-941.

Asselt HV, 'Managing the Fragmentation of International Environmental Law: Forests at the Intersection of the Climate and Biodiversity Regimes' (2012) 44 International Law and Politics 1205-1278.

Barsalou O and Picard MH, 'International Environmental Law in an Era of Globalized Waste' (2018) 17(3) Chinese Journal of Environmental Law 887-906.

Bell S, Donald McGillivray and Ole W Pederson, *Environmental Law* (8th edn, OUP 2013).

Bodansky D, 'Customary (And Not So Customary) International Environmental Law' (1995) 3(1) Indiana Journal of Global Legal Studies 105-119.

Bodansky D, 'The Paris Climate Change Agreement: A New Hope?' (2016) 110(2) American Journal of International Law 288-319.

Bodansky D, *International Environmental Law: Mapping the Field* (OUP 2008).

Bodansky D, *The Art and Craft of International Environmental Law* (Harvard University Press 2010).

Bodleian Libraries, University of Oxford, 'Environmental law: Treaties (MEAs/IEAs)' <https://libguides.bodleian.ox.ac.uk/law-env/treaties> accessed 22 January 2024.

Cartaxo TDM, 'Theories of Legal Sources and Soft Law: of the Unbearable Lightness of Ought' (2016) Faculty of Law, NOVA University Lisbon 1-26.

Chamon M, 'Soft Law and Challenges to Access to Justice' in Melanie Fink (ed), *Redressing Fundamental Rights Violations by the EU: The Promise of the 'Complete System of Remedies* (CUP 2024) 366-390.

Chinkin C, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38(4) The International and Comparative Law Quarterly 733-752.

Clark K, 'The Paris Agreement: Its Role in International Law and American Jurisprudence' (2018) 8(2) Notre Dame Journal of International & Comparative Law 108-130.

Corlett RT, 'The Anthropocene Concept in Ecology and Conservation' (2015) 30(1) Trends in Ecology & Evolution 36-41.

Crutzen P and Stoermer E, 'The Anthropocene' (2000) 41 IGBP Newsletter 17.

Dupuy PM, 'Prosper Weil's Article: A Stimulating Warning' (2020) Symposium on Prosper Weil, Towards Relative Normativity in International Law <https://www.cambridge.org/core/journals/american-journal-of-international-

law/article/prosper-weils-article-a-stimulating-warning/5E242326306B0F0202D98EC0018C789F> accessed 12 April 2022.

Dupuy PM, 'Sof Law and the International Law of the Environment' (1999) 12(2) Michigan Journal of International Law 420-435.

Eckersley R, 'Soft law, hard politics, and the Climate Change Treaty' in Christian Reus-Smit (ed), *The Politics of International Law* (CUP 2004).

Esty D and Arriba-Sellier ND, 'Zeroing in on Net-Zero: From Soft Law to Hard Law in Corporate Climate Change Pledges' (2023) 94(3) University of Colorado Law Review 635-679.

Etemire U, 'Insights on the UNEP Bali Guidelines and the Development of Environmental Democratic Rights' (2016) 28(3) Journal of Environmental Law 1-21.

Ferris E and Bergmann J, 'Soft Law, Migration and Climate Change Governance' (2017) 8(1) Journal of Human Rights and the Environment 6-29.

Friedrich J, International Environmental soft law (Springer 2013).

Guruparan K and Zerk J, 'Influence of Soft Law Grows in International Governance' (Chatham House, August 2021) <https://www.chathamhouse.org/2021/06/influence-soft-law-grows-international-governance> accessed 22 February 2025.

Guzman AT and Meyer TL, 'International Soft Law' (2010) 2(1) Journal of Legal Analysis 171-225.

Hanson CA, 'Hard and Soft Law in the Paris Climate Agreement' (2021) 925 Student Publications <https://cupola.gettysburg.edu/student_scholarship/925> accessed 18 April 2022.

Hart HLA, *The Concept of Law* (2nd edn, Clarendon Press 1994).

Hillgenberg H, 'A Fresh Look at Soft Law' (1999) 10(3) European Journal of International Law 499-515.

Honkonen T, *The Common but Differentiated Responsibility Principle in Multilateral Environmental Agreements: Regulatory and Policy Aspects* (Kluwer Law International 2009).

ILA, New Delhi Declaration of Principles of International Law Relating to Sustainable Development, ILA 70th Conference, A/CONF.199/8 (New Delhi, India, 2-6 April 2002) <http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-070850.pdf> accessed 24 December 2021.

International Court of Justice, Advisory opinion on Legality of the Threat or Use of Nuclear Weapons, 8 July 1998.

IPCC, Climate Change 2021: The Physical Science Basis (Geneva 2021).

IPCC, 'Sixth Assessment Report (AR6) "Climate Change 2023" – Synthesis Report' (WMO & UNEP, Geneva 2023) <https://www.ipcc.ch/site/assets/uploads/2023/03/Doc5_Adopted_AR6_SYR_Longer_Report.pdf> accessed 22 February 2025.

Jalil S, 'Toward an International Grundnorm for Climate Change: Ensuring Sustainability Away from Traditional Notion of Security' (2025) 17(3) Sustainability 1034. https://doi.org/10.3390/su17031034.

Jolly S and Trivedi A, 'Principle of CBDR-RC: Its Interpretation and Implementation through NDCs in the Context of Sustainable Development' (2021) 11(3) Washington Journal of Environmental Law & Policy 309-348.

Kerkhof MVD, 'The Trail Smelter Case Re-examined: Examining the Development of National Procedural Mechanisms to Resolve a Trail Smelter Type Dispute' (2011) 27(3) Merkourios 68-83.

Kim RK, 'Unravelling the Maze of Multilateral Environmental Agreements: A Macroscopic Analysis of International Environmental Law and Governance for the Anthropocene' (2013) PhD thesis, Australian National University.

Kotzé LJ, 'A Global Environmental Constitution for the Anthropocene?' (2019) 8(1) Transnational Environmental Law 11-33.

Lamotte KR, 'Mechanisms for Global Agreement' in Martella RR and Grosko JB (eds), *International Environmental Law: The Practitioner's Guide to the Laws of the Planet* (American Bar Association 2014) 965-975.

Lawrence P and Wong D, 'Soft Law in the Paris Climate Agreement: Strength or Weakness?' (2017) 26(3) Review of European, Comparative & International Environmental Law 276-286.

Miler RA, 'Pandemic as Transboundary Harm: Lessons from Trail Smelter Arbitration' (20230 55) International Law and Politics 259-337.

Nadarajah H, 'Fewer Treaties, More Soft Law: What does it Mean for the Arctic and Climate Change' in Heininen L, Exner-Pirot H and Barnes J (eds), *Climate Change and the Arctic: Global Origins, Regional Responsibilities?* (Akureyri, Iceland: Arctic Portal, Arctic Yearbook 2020) 1-14.

Natarajan U, 'Third World Approaches to International Law (TWAIL) and the environment' in Philippopoulos-Mihalopoulos A and Brooks V (eds), *Research Methods in Environmental Law: A Handbook* (Edward Elgar Publishing 2017) 207-236.

OECD, Regulatory Co-operation for an Interdependent World (Paris 1994) <https://www.anu.edu.au/fellows/jbraithwaite/_documents/Articles/Lessons%20for%20Regulatory%20Co-operation.pdf> accessed 21 December 2021

Orellana MA, Typology of Instruments of Public Environmental International Law, United Nations ECLAG Environment and Development series no. 158 <https://www.cepal.org/sites/default/files/publication/files/37186/S1420605_en.pdf> accessed 13 December 2021.

Paulo Otero, *Legalidade e Administração Pública: O Sentido da Vinculação Administrativa à Juridicidade* (Almedina 2007).

Petropoulou ID and Eliantonin M, 'Soft Law Behind the Scenes: Transparency, Participation and the European Union's Soft Law Making Process in the Field of Climate Change' (2023) 14(2) European Journal of Risk Regulation 292-312.

Pickering J, McGee JS, Karlsson-Vinkhuyzen SI and Wenta J, 'Global Climate Governance between Hard and Soft Law: Can the Paris Agreement's 'Crème Brûlée' Approach Enhance Ecological Reflexivity?' (2019) 31(1) Journal of Environmental Law 1-28.

Pulp Mills on the River Uruguay (Arg. v. Uru.), Merits, 2010 ICJ REP. 14, (Apr. 20).

Rajamani L, 'The Increasing Currency and Relevance of Rights-Based Perspectives in the International Negotiations on Climate Change' (2010) 22(3) Journal of Environmental Law 391-429.

Raustiala K, 'Forms and Substance in International Agreements' (2005) 99(3) The American Journal of International Law 581 ss.

Ruiz B, 'No Forest Convention but Ten Tree Treaties' (FAO 2001) <http://www.fao.org/3/y1237e/y1237e03.htm> accessed 09 May 2022.

Shelton D, 'Soft Law' in JD Armstrong (ed), *Routledge Handbook of International Law* (Routledge 2009) 68-80.

Stone S, 'Common but Differentiated Responsibilities in International Law' (2004) 98(2) American Journal of International Law 276-301.

UNEP, 'Multilateral Environmental Agreements' <https://wedocs.unep.org/bitstream/handle/20.500.11822/21491/MEA-handbook-Vietnam.pdf?sequence=1&isAllowed=y> accessed 27 December 2021.

UNEP, 'Putting Rio Principle 10 Into Action' (2015) <https://wedocs.unep.org/bitstream/handle/20.500.11822/11201/UNEP%20MGSB-SGBS%20BALI%20GUIDELINES-Interactive.pdf?sequence=1&isAllowed=y> accessed 26 January 2024.

UNEP, Training Manual on International Environmental Law (Nairobi 2006).

UNFCCC, 'Global Climate Action' (2024) <https://climateaction.unfccc.int/> accessed 25 January 2024.

Voigt C and Gao X, 'Accountability in the Paris Agreement: The Interplay between Transparency and Compliance' (2020) 1 Nordic Environmental Law Journal 31-57.

Wanner M, 'The Effectiveness of Soft Law in International Environmental Regimes: Participation and Compliance in Hyogo Framework for Action' (2021) 21 Int Environ Agreements 113-132.

Weber M (trans. Talcott Parsons), *The Protestant Ethic and the Spirit of Capitalism* (first published 1930, Routledge 1992).

Weil P, 'Towards Relative Normativity in International Law?' (1983) 77 The American Journal of International Law 413-442.

Weiss EB, 'International Environmental Law: Contemporary Issues and the Emergence of a New World Order' (1993) 81 The Georgetown Law Journal 675-710.

Wiersema A, 'The New International Law Makers? Conferences of the Parties to Multilateral Environmental Agreements' (2009) 31(1) Michigan Journal of International Law 231-287.

Yilmaz D and Isinkaralar O, 'Climate Action Plans in Under Climate-Resilient Urban Policies' (2021) 7(2) Kastamonu University Journal of Engineering and Sciences 140.