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# The Future of Multinational Accountability within the Environmental Policy Nexus

Lauren Beasley  
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The Future of Multinational Accountability within the Environmental Policy Nexus

By Lauren Beasley

Spring 2022

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**Abstract**

The purpose of this paper is to examine current international environmental policy shortcomings regarding multinational accountability, explore future legally binding options, and offer a resolution towards effective accountability mechanisms. To do so, it uses a two-part methodology composed of a comprehensive engagement with existing secondary sources from the academic literature and four interviews with experts in the field. The paper builds out considerations in seven key areas for normative consideration regarding the future of legally binding environmental policy. These considerations are hard law considerations in: International Law, International Human rights law, International Humanitarian Law, and International Environmental Law and procedural options through domestic, regional, and international accountability mechanisms. It concludes that through integration and harmonization of hard law policies in all four legal regimes and an employment of procedural enforcement through exhaustion of local remedies that includes both home and host binding policies that Multinational Corporations will face legal accountability through effective means.

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**List of Abbreviations**

ACHPR: African Charter on Human and People's Rights  
CEOBS: Conflict and Environment Observatory  
CFC: chlorofluorocarbon  
FAO: Food and Agriculture Organization  
G7: Group of Seven  
HRC: Human Rights Council  
IO: International Organization  
ICC: International Criminal Court  
ICCPR: International Covenant on Civil and Political Rights  
ICJ: International Court of Justice  
ICRC: International Committee of the Red Cross  
IEEP: Institute for European Environmental Policy  
IEL: International Environmental Law  
IGO: International Government Organization  
IHL: International Humanitarian Law  
IHRL: International Human Rights Law  
IISD: International Institute for Sustainable Development  
ILC: International Law Commission  
ILO: International Labour Organization  
IMF: International Monetary Fund  
LOS: Law of Seas  
MARPOL: International Convention for the Prevention of Pollution from Ships  
MEA: Multilateral Environmental Agreement:  
NATO: North Atlantic Treaty Organization  
OECD: Organisation for Economic Co-operation and Development  
OEIGWG: Open-Ended Intergovernmental Working Group  
OHCHR: Office of the United Nations High Commissioner for Human Rights  
OPEC: Organization of the Petroleum Exporting Countries  
PPP: Private Public Partnerships  
UNEP: United Nations Environment Programme  
UNESCO: United Nations Educational, Scientific and Cultural Organization  
UNFCCC: United Nations Framework Convention on Climate Change  
UNHCR: United Nations High Commissioner for Refugees  
WHO: World Health Organization  
WTO: World Trade Organization

## **Introduction**

### **Research Question and Framework**

On June 26, 2014, the Human Rights Council took a decisive step by announcing the plans to establish a process to create a legally binding instrument on transnational corporations and other business enterprises. This was not the first recognition of multinational corporations' actions causing harm to the point of necessary regulation, but it was one of the first internationally binding instruments that facilitated the question of if multinationals should be regulated further in other areas. The argument for regulation in other areas, particularly against environmental harms is a strong one. Since 1988 only 100 companies are responsible for 71% of global greenhouse gas emissions, and they currently lack any form of international mechanism on regulation that is binding (Griffin, 2017). As of now binding international law allows for significant protection to foreign companies and those that are victim of the harm caused by these entities are only able to rely on voluntary national instruments (Morgera, 2020). Those voluntary standards are no longer enough regarding environmental policy and the question of effective multinational accountability mechanisms is in play.

To provide a comprehensive solution this paper first explores the integration of the private sector into international environmental policy before looking in depth towards the foremost progressive policy currently under consideration, the ILC draft principles on environmental protection in armed conflicts. While the extent of application of the ILC draft principles towards corporate responsibility appears limited, the principles that do address this issue are currently the only in the world to connect the different legal

regimes in this way and thus vital towards the future of effective policy towards multinational actions.

To keep this study brief seven different key areas will be explored as possible avenues for plausible future implementation before offering a solution. These areas fall under the category of law creation or implementation. This study attempts to give a more general overview of the possibilities and most pressing issues with the solutions that are currently posed.

### **Research Methodology and Ethics**

This research project was conducted using a two-part methodology composed of a comprehensive engagement with existing secondary sources from academic literature and four interviews with experts in the field. Due to the changing nature following COVID-19 two of the four interviews with regionally based experts in Europe occurred through virtual platforms while the others were conducted in person in Geneva, Switzerland.

The experts interviewed come from a variety of different backgrounds including private public sector international integration, environmental peacebuilding, international environmental law, international human rights law, global governance, sustainable development policy, and community coordination. This variety of backgrounds was a necessary component of the research process due to the complex nature of current environmental policy and the integration of the private sector within the policy space.

Outside of primary resources which were heavily utilized due to the recency of several drastic changes in the policy nexus, the foundation of research for this paper



relied on thorough qualitative analysis of scholarly peer reviewed journals and official documentation and publications from international organizations.

On the topic of ethical considerations respecting the School of International Training (SIT) ethical guidelines was paramount while also respecting accurate representation of sources and right to anonymity if requested. Outside of the four named experts within this paper a few informational informal interviews were conducted throughout the semester from that guided the direction of the paper and some of the opinions presented within. Those experts wished to remain anonymous and therefore remain so.

### **Literature Review**

Due to the complex nature of environmental policy integration that is currently underfoot in the international space as well as the mixed perspective on private sector integration or regulation the literature regarding the topic of this research paper is severely limited. While there are expansive papers regarding environmental policy, or about private sector integration into the IO space the majority lacks any kind of impactful overlap. Further, there is an additional issue of the broad nature that environmental policy holds in the international realm as papers and works tend to focus in on one area of the environment from carbon emissions to fishery practices as opposed to a wholistic approach to the area of policy in general. With that though, there are several institutions that are instrumental in exploring the history of environmental policy on an international scale and help build out the basis of understanding the current environmental policy nexus as well as a book that specifically investigates this issue.

The foremost piece of literature regarding this topic would be the second edition of Elisa Morgera's Book "Corporate Environmental Accountability in International Law." The first edition was published in 2009 and the second updated edition published in 2020. As the first and for several years only book to examine all international sources of corporate accountability standards with reference to environmental protection as well as elaborate on their theoretical and practical implications for international and environmental law, it was a primer piece for this paper (Morgera, 2020). Morgera explores the nexus of emerging international environmental law in extensive depth as well as thorough examination of monitoring mechanisms and reporting mechanisms. She argues that in the absence of state intervention international organizations can be a driving force in establishing a series of standards for corporate accountability that allow for normative benchmarks to be set that states can apply within their own borders.

Other than Morgera's book and the subsequent literature that followed in its footsteps that look at the parallel international development of business and human rights on the inter-relationship between human rights and the environment are the international organizations that exist to report on sustainability and environmental standards. These institutions would be the UK based Conflict and Environment Observatory (CEOBS), the International Institute for Sustainable Development (IISD), and the Institute for European Environmental Policy (IEEP) all with policy position papers and long form articles that help further inform on the current environmental policy space. These papers would be the IEPP's "Environmental Governance in the EU Member States: status assessment" and "Closing the gap: implementing environmental policy," the IISD's Brief #12 "The Evolution of Private Sector Action in Sustainable Development" and the CEOBS 84

different policy briefs relating to the environmental law and armed conflict but especially Dr. Taygeti Michalakea's paper "How do the International Law Commission's draft principles on corporate conduct compare to the UN Guiding Principles on Business and Human Rights". While there are by no means an exhaustive look at the literature that exists surrounding the entirety of environmental law it is a series of papers and research that helped inform the framework and basis of this paper.

## **Analysis**

### **IGO historic precedent**

The consideration for private and public sector integration and partnership is not a new idea and under the theoretical framework posed by Dijkzeul and Gordonker that international organization interdependence is a given makes the consideration a necessary one (Eberwein, 2005). The first instance of acknowledged integration and partnership between the private sector and the United Nations took place at the one hundredth and sixtieth session of the UNESCO World Heritage Executive Board where a 1999 UN Joint Inspections Unit report (JIU/REP/99/6) on the discussion of private sector involvement and cooperation within the UN system was discussed (Mezzalama, 1999). Though the United Nations was lagging other IGOs, as the OECD has had a series of guidelines for Multinational Enterprises – a framework on nonbinding principles and standards- since 1976 (OECD, 1976). This came only four years after the 1972 Stockholm Conference on the Human Environment which is largely attributed to be the start of international recognition of human impact on of the role humans play in global ecological systems (Hestad, 2021). While there are other examples of private sector integration into IGO

frameworks prior to the new millennium, the start of 2000 marked a shift towards partnership and deeper integration with the release of the United Nations Millennium Declaration where the private sector is explicitly mentioned twice (United Nations, 2000). These mentions were under Article III Development and Poverty Eradication Subsection 20 stating the purpose to, “ develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication” and Article VIII Strengthening the United Nations Subsection 30.11 notes the desire of the UN to, “ give greater opportunities to the private sector, non-governmental organizations and civil society, in general, to contribute to the realization of the Organization's goals and programmes” (United Nations, 2000).

Over the next two decades these desires were realized in direct accordance with the growing focus of the international community on environmental action and sustainable development and deeper recognition of human rights. The United Nations Guiding Principles on Business and Human Rights was endorsed by The Human Rights Council in June of 2011 marking a shift in recognition of non-state entities responsibility to uphold international human rights standards (OHCHR, 2011). This recognition of business involvement and partnership with IGOs was further cemented by the Marrakech Partnership which was established in 2016 (UNFCCC, 2016.1). The Marrakech Partnership, first discussed in the lead up to the 2015 Paris Climate Accords, is meant to act as an opportunity for private sector stakeholders to partner up with cities, regions, and states to enact the Paris Climate Accords and focus on environmental, economic, and social transformation (UNFCCC, 2016.2) There was a precedent for this partnership and the originators were no doubt hoping for a repeat of DuPont’s actions in 1988. Prior to

the passage of the Montreal Protocol on Substances that Deplete the Ozone Layer, DuPont announced a complete phase-out of their production of chlorofluorocarbons (CFCs) which resulted in the ability to negotiate what is widely considered the most successful environmental treaty passed to date (Grey, 2018).

On the topic of the Montreal Protocol there is one key difference in its passage as compared to the other historical examples that are presented as background to understanding the current IGO Environmental Policy Nexus. The Montreal Protocol was a legally binding treaty that had the enforcement procedure of pre negotiated terms by the largest CFC producers globally and a naming and shaming protocol for the states that did not adhere (DeSombre, 2000). The legally binding aspect is where the largest difference is. All the other frameworks mentioned rarely set regulations on corporate business and those that do outline themselves as “guiding principles” as opposed to any hard law proclamation. This lack of binding law has created a lack of procedure in holding the private sector accountable for their environmental harms only further exacerbated by the failure to create accountability mechanisms for the few soft law procedures that are in place. Peter Wetherbee, a current graduate student at the Geneva Graduate Institute currently working in partnership with the Swiss UNHCR noted in conversation that most UN bodies lack two distinct frameworks, one to integrate the private sector into partnership opportunities within these organizations and a second framework that regulates and standardizes what interactions with the private sector look like (Wetherbee, 2022). This has created a precedent that has made the current foremost agreements regarding the private sector and hard law policy face steep journey to passage and more often than not still lack any strong procedural accountability mechanisms.

## **Current Statute**

Prior to discussing the most current agreement that is under consideration for passage in the field of private sector policy it is important to note that this document does not directly address the role of multinational accountability regarding general environmentally harmful actions. There is currently not any principle or treaty in discussion that accurately encapsulates the need for Multinationals to be regulated and thus the discussion of the most adjacent agreements is necessary as a steppingstone to get to an agreement that addresses these issues.

## **ILC Draft Principles on the Environment in Armed Conflict**

Nine years ago, in 2013 the International Law Commission, a sub body of the UNGA that makes recommendations on legal policy, included “Protection of the Environment in relation to armed conflicts” as a topic for discussion (ILC, 2015). This discussion was predicated by a report by the UNEP titled “Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law” which focused on the necessity of a more coherent legal framework for the protection of the environment in armed conflict (Mrema et. al, 2009). The protection of the environment in armed conflict was a topic that had been building steam in the international community for a few years as the ICRC notes, “Environmental effects of armed conflicts do not only result from the conduct of hostilities but also from toxic or hazardous remnants of war, excessive exploitation of conflict resources, unsustainable survival strategies of affected populations, or institutional collapse” (LehtoFinnish, 2021). The discussion in 2013 resulted in a multi-year discussion that finished with the adoption on a first reading of a

set of 28 draft principles with commentaries in 2019. These 28 draft principles are to face a second reading this week in Geneva where upon adoption under the ILC will go to the General Assembly of the United Nations.

There are several key points with the ILC draft principles that make them an important factor in the future of all international policy in regard to the environment. The first is that from the beginning the ILC has made it clear that they are not attempting to create a legally binding treaty with this set of principles. This fact was reiterated in a report by Special Rapporteur to the ILC draft principles, in their final official report before the opening session where they noted on page 108 paragraphs 32 A and B that the Assembly has a final recommendation to the General Assembly to take note of the ILC's final principles and recommend them to states and other actors (Pantazopoulos, 2022). The ILC has avoided asking the assembly to convene an intergovernmental conference or to adapt or negotiate a treaty of any kind based upon these principles. This means that the work of the ILC will not enter any legally binding law, but rather will exist as a set of soft law principles that could be referenced or could become binding later.

One of the reasons that this might be the case was answered by Dr Stavros Pantazopoulos who is a former legal and Policy Analyst of the Conflict and Environment Observatory. He noted that the ILC principles are the most progressive document in any legal existence – hard or soft law – so far that is directly related to corporate conduct in fragile settings (Pantazopoulos, 2022). Articles 10 and 11 of the draft principles are the main reason for corporate consideration regarding the principles as they are directed as “corporate due diligence” and directly address the harms that the private sector can do to the environment in a fragile setting (Mrema et. al, 2009). This is not the only agreement

of its kind addressing businesses and conflict zones as the OEIGWG is currently working on the third draft of a legally binding instrument on business activities and human rights.

While this is progressive, there is a major glaring flaw in the ILC principles. There are seven different occasions when the word “shall” is used in the principles dictating a higher level of obligation than the suggestive nature of “should” or even “are recommended to” (ILC, 2019). While this is inherently not a bad piece of language if the principles were to pass into binding law, articles 10 and 11 that directly deal with corporations and due diligence are still only addressing their regulatory language towards states. With the phrasing “states should...” the principles fail to directly implicate the very entity that is in the title of the principle.

What sets the draft principles apart from other progressive works is its direct addressing of the home vs host state accountability loophole. There is a long-standing precedent that some countries uphold that does not deign legal ramifications towards a corporate entity’s actions in foreign lands. The ILC goes against this notion as throughout its paper it tends to impose obligations to regulate corporate conduct through home states (ILC, 2015). This is very important to host states as now when a corporation enters a host state territory then the actions that would be reserved by the host states traditionally in terms of trial and procedural rights are then able to be transferred over to the home state so that in times where a host state is unable to try a corporation due to conflict or lack of resources it is the responsibility of the home state to then hold that organization legally accountable.

The final aspect of the ILC principles that need to be addressed is the co-applicability of different legal regimes within the same framework. CEOBS points out in



their report on the General Assembly debate on the protection of the environment in relation to armed conflicts that the structure of the draft principles lends a complimentary relationship between International Humanitarian Law (IHL), international environmental law (IEL), and international Human Rights Law (IHRL) (Pantazopoulos, 2020). Within the draft principles this enhances the protection of the environment regarding armed conflicts exclusively, but the precedent passing these principles would create for the future of interaction between these three bodies of law would bode well for the creation of accountability mechanisms for multinational corporations and their actions towards the environment.

### **Legal Culpability**

With a better understanding of the background and current drafts of law in play one must now consider the various avenues that exist for binding agreements for multinational corporate accountability. There is a series of normative thought exercises one can do to investigate the possibilities for this accountability. There are two prongs to an effective mechanism that must be considered. The first is a hard law principle. While current soft law does exist regarding the environment, and human rights Dr. Vicente Paolo Yu, a Senior Legal Adviser with the Third World Network, believes that hard law and binding policy are often necessary to create the public good that international organizations are obligated to try and achieve (Yu, 2022). After considering the hard law that is to be signed into a policy instrument the second prong to create this effective mechanism is to consider the different enforcement options of the law. From courts to

advisory bodies the law itself doesn't matter if there is not a system in place to uphold it. Regarding environmental policy options there are six key considerations between these two prongs to consider as future possibilities for the accountability of multinationals in the environmental space.

### **International Law**

International law, which is a series of norms, standards, and agreements recognized as binding between nations, was first introduced by Jeremy Bentham in 1780 in his essay "Introduction to the Principles of Morals and Legislation" (Bentham, 1780). In the centuries since Bentham's use of the phrase it has evolved into a series of norms that is upheld through series of international organizations from the United Nations to the WTO, NATO, G7, OPEC, FAO, WHO, ILO, and a few others. While International Law is traditionally only applicable to countries there are two such instances of International Law have been able to directly regulate corporations or regulate corporate entities outside of the state's jurisdiction.

The first is with the IMF and the World Bank through their use of "Standardized PPP contracts" in their bidding documents for any projects that they fund (World Bank, 2021). These standardized bidding contracts are directly between an international organization and a corporation which means no state is directly named. Dr. Stavros Pantazopoulos noted that this creates a hybrid area between soft law and hard law as this is a legally binding instrument as it falls under contractual law so the corporation must abide by these rules, but there is no court that exists that could try a case if those contracts were disregarded by the companies that signed them (Pantazopoulos, 2022).

This is even more interesting as a question regarding environmental policy as the World Bank has standard corporate environmental sustainability policy which will often be annexed into these contracts (Ali et, al, 2017). This then dictates that there are currently contractually binding legal obligations that are active right now under the World Bank's policies that are dictating Environmental regulatory policies on multinational corporations. The ability to prove or uphold these standards falls apart when looking at the enforcement mechanism which ultimately makes it a failure in creating effective policy.

The IMF and World Bank are an instance of an exception to the rule. In Dr. Stavros Pantazopoulos own research, the only other instance of direct regulation and legal duty on a corporation would be the nuclear nonproliferation treaties of the 1970's (Pantazopoulos, 2022). Even in those treaties though the international community and civil society at large view the binding clauses of the treaties as state-to-state binding as opposed to binding on the corporations themselves.

Annika Erickson-Pearson who helped execute the White Paper on Environmental Peacebuilding presented at the 2<sup>nd</sup> International Conference on Environmental Peacebuilding this February gave perspective on why there might only be two instances of international law and corporate entities interacting in this way. Erickson-Pearson notes that there are three distinct groups that interact in this scenario being civil society, state-based governance, and the private sector (Erickson-Pearson, 2022). Within this trifold of relationships there is not a space for civil society to interact with the private sector as there is a lack of trust between parties and further, a question of partnership vs regulation

and the balance between entities governing each other and themselves (Erickson-Pearson, 2022).

This creates a difficult avenue for hard law standards to be set and applicable towards multinationals at any point in the future. The overall weight that International Law holds in the global community for recognition of norms means that even without any enforcement mechanism or historical precedent that the inclusion of environmental regulation policy is important and needs to occur. This could be done with further recognition of the World Bank corporate social responsibility standards on a wider scale, through a soft law General Assembly treaty on multinational environmental action, or through the WTO which already has the power to create binding decisions.

### **International Human Rights Law / International Humanitarian Law**

IHRL is not bounded by the Universal Declaration of Human Rights as it does not create binding international human rights law, but by a the “human rights instruments” based mainly around the International Bill of Human Rights which was passed by the UN General Assembly in 1966 (Humphrey, 1975). International Humanitarian Law (IHL) on the other hand is applicable to state and non-state actors in times of armed conflict and dictates the rules of war through several conventions, though most recognized is the Geneva Conventions (Pictet, 1952). While international law scholars’ debate on the distinction between IHRL and IHL for the sake of clarity in this paper a systemic perspective will be used dictating that IHL is a function of law within IHRL that enacts specialized norms that apply in times of armed conflict (Koskenniemi, 2002). Both IHRL and IHL have binding legal hard law in place through various signed treaties as well as mechanisms for pursuit of accountability through quasi-judicial bodies like the

Human Rights Committee (HRC) under the ICCPR or the International Criminal Court (ICC) (Buergenthal, 1988). These international bodies are only able to offer recommendations though they can be upheld nationally through National Human Rights Institutions which give binding jurisdiction in over 110 countries (Koo et. al, 2009). While these international bodies hold jurisdiction over IHRL and IHL cases the two are still technically recognized under different legal regimes.

There is current research that links Climate Change and Environmental policy in direct relation to IHRL and IHL specifically in regard to actions that pertain to active conflict zones (Al-zahrani, 2018). Through consideration of applying a substantive law or policy regarding conflict zones and the environmental degradation that happens within them there is a future potential to pull environmental law outside of conflict zones towards a general set of substantive rules and regulations regarding corporate harm on the environment. The reason that IHL or the avenue of “human rights” is seen as an attractive path towards enacting policy is that Human Rights is the current *lingo franca* in the international community as it is one of the few international law policies that has outlined binding law (Pantazopoulos, 2022). Under the ILC draft principles 10 and 11 corporate due diligence could be noted as a connection point for future reference for environmental policy that regulates the private sector but relying only on IHRL or IHL for environmental policy actions sets a dangerous precedent. Human Rights are based on the individual and are hard to quantify for evidence purposes and often environmental harms are caused by a group harming another group (Bothe et. al, 2010). This dictates that there is not currently a system in place that could try a group against a group under the IHRL or IHL legal regime.

Even with those difficulties there is recognition of environmental harms within IHL and IHRL doctrine that grants a steppingstone towards subsequent policy that is only spurred on by the current ILC draft principles. IHL recognition of Corporate environmental harms during times of armed conflict, and recognition of Environmental and Climate safety as a human right under the determined human rights instruments would be a positive step towards binding recognized law.

### **International Environmental Law**

International Environmental Law (IEL) is a set of standards recognized through soft law documents such as the Rio Declaration on Environmental Development and a series of multilateral treaties that cover a bevy of areas from the UNFCCC to the International Convention for the Prevention of pollution from Ships (MARPOL) to the Kyoto Protocol, the Law of the Sea (LOS) and the Montreal Protocol (Georgetown, 2022). Unlike the three other areas of law discussed today IEL does not have a set of direct governing principles or an overarching series of treaties that encompasses the mandates set forth under its purview. Instead IEL follows a much broader scope of complex MEAs, treaties, and protocols making it much harder to properly define and explore starting its short history under the 1972 Stockholm Declaration (Maljean-Dubois, 2013).

In the half century since the Stockholm Declaration the perspective of involving and regulating the private sector through IEL has evolved greatly. While states are directly addressed in most international environmental obligations, the MARPOL Convention is one example where the international environmental regime defines

standards for private conduct directly by establishing design and construction standards for oil tankers (Bodansky, 2012). In this instance states directly apply the MARPOL Convention to their flag vessels without any change in policy.

While this example is the epitome of what environmental law might look like when actively applied to multinational action, it is a single instance in the thousands of IEL protocols and agreements that does develop hard law regulations (Kim, 2013). The IEL field is currently overwrought with policy that follows a broad array of topics and creates a web of regulation that has many overlapping and dissonant policies (Rajamani, 2021).

For IEL to be an effective means of implementing multinational accountability on environmental action treaties and protocol that align with the MARPOL Convention standards will be necessary along with a better standardization of the MEAs, International treaties, and agreements that currently make up the field of IEL so the navigation of the body of law has a distinct hierarchy of regulation as opposed to where it currently sits now.

### **Procedural Accountability**

Even if a law is passed then there is still the second option of enforcement which is the main issue with current legally binding mechanisms that exist in any one of the four bodies of law. If a law exists under the purview of international law that is technically a hard law statute there is currently no court or council for the case to be tried in (Yu, 2022). There is no enforcement mechanism that exists for many of these laws hard or soft. When looking into the viability of creating accountability mechanisms for

Multinationals there are three distinct levels that could be applicable, domestic, regional, and international.

### **Domestic**

There are two prongs to domestic accountability that could be pursued, home and host court. As already mentioned in discussion with the progressive policies of the ILC draft principles there is a precedent that is currently set that does not require home states to hold their corporations accountable for foreign action, particularly as it relates to environmental harm (Seck, 2008). This is an important aspect to multinational regulation as international law does not take a clear stance on this, but the ILC might pave the way for more stringent policies in relation to institutions harming foreign environments and not facing the consequences (Pantazopoulos, 2022). Having both home and host environmental policy regulation allows for a fallback mechanism if the host state is unable to try the offending corporation due to any number of reasons.

All four interviewees noted that domestic and local policy implementation is preferred over any other form due to expenses, logistics, the ability to transfer evidence, and the effectiveness that domestic policy can have over the bureaucracy of international or regional trial mechanisms (Yu, Wetherbee, Pantazopoulos, Erickson-Pearson, 2022).

While domestic trial and accountability is preferred there are some issues that arise when looking at the history of the largest multinational corporations' actions across various states the question of where jurisdiction exists between individual states bringing the next level of procedural accountability.

### **Regional**



Regional Courts do currently exist under current human rights doctrine that allow for a quasi-judicial mechanism of procedural accountability. The Human Rights Committee has a series of regional systems that supplement international human rights law in specific areas of the world, like African Charter on Human and People's Rights (ACHPR), yet the Court of Justice of the African Union intended to be the organ for judicial law of the Union has yet to be established officially since the ACHPR went into force in 1986 (ACHPR, 2022). The protocol establishing the court to uphold the ACHPR entered into force in 2004 but the court has yet to be established (ACHPR, 2022). This is just one regional court as the European Court of Human Rights and the Inter-American Court of Human rights preside over and enforce regional human rights law.

These regional courts are examples of what possible enforcement could exist when the environmental harms cross transnational boundaries. There are issues with effectiveness of enforcement in regional courts as the only reason courts like the European Court of Human rights has any power is that all 47 states have signed the European Convention on Human Rights and are under the court's jurisdiction (IJRC, 2021). As such, it is the only international court with jurisdiction currently to try individuals rather than states, but the backlog of current cases is over 70,000 long and would take decades to clear (ECHR, 2021).

While a court or council issuing regional declarations and decisions towards multinationals in theory might seem like a solution towards effective policy implementation when looking at the current regional court systems that exist, their ineffectiveness, and rarity in being able to answer to anything more than a recommendatory decision rather than a binding repercussion, it becomes clear that a

regional court system would not be able to effectively manage the issues that multinational accountability would impose.

### **International**

In the same vein of regional court issues, the same issues behold any form of international court system that could be created to implement any hard law policy that is created within the environmental policy nexus. Dr. Vicente Yu doesn't believe any form of international court could be possible or effective for multinational or corporate accountability due to the jurisdiction issue of who would be able to enforce on companies as all current international courts like the International Criminal Court or the International Court of Justice offer recommendations or actions against individuals or for individuals as opposed to group to group (Yu, 2022).

While a binding decision are not issued by the ICJ, they offer advisory opinions that do bolster international law policy and implementation around the world and there is a current case for ICJ climate change opinions. In September of 2021 the island state of Vanuatu began pursuit of an advisory opinion from the ICJ to protect the rights of current and future generations from the impacts of climate change (Gerrard, 2021). This would set a precedent of recognition from an international body that could help advance recognition in other international bodies and on regional levels and would be the most authoritative and direct statement to date on the obligations that international law imposes on states for their climate actions or inaction (Gerrard, 2021). If the ICJ does issue an opinion, the future of advisory recognition on the necessity for Multinationals to be held

legally accountable through any of the four international law regimes is much closer to reality.

### **Solution Recommendations**

After consideration of the possible avenues that might exist to create and implement policy that directly impacts private sector harms on the environment there are a few different solutions to be posed. The first and most necessary step is the passage of the ILC draft principles on the protection of the environment in relation to armed conflicts. As the foremost progressive body of law currently in discussion relating to the environmental policy nexus it is imperative for the future of effective law that it becomes a soft law mechanism for future reference. The next step in a solution for this series of laws would be a successful pursuit from Vanuatu of an ICJ advisory opinion on the human right for protection of climate change. This would allow for both the soft law policy to be in place under the ILC and a hard law recognition from a governing body (the ICJ). With the passage and recognition of these two items the groundwork would be laid for the pursuit of policy directly related to the mitigation of environmental harms caused by multinationals and the private sector.

To access the various legal regimes that the environmental policy nexus falls under it is necessary for the future policy to be ratified through multiple systems for it to aptly apply to multinationals in an effective hard law manner as opposed to a soft law suggestion. Using the successful passage of the ILC draft principles, starting another set of draft principles on environmental law directly relating to private sector accountability through the expansion of principles 10 and 11 as they relate to corporate social responsibility. Unlike the ILC draft principles the purpose of binding treaty should be

pursued from the first draft to be passed through the GA for approval upon completion of the document. Following the international recognition by a governing body such as the GA it will be important to host an international compendium or accord to have international states sign off on the laws like the MARPOL Convention creating hard law that is implemented on the national level when broken.

Regarding enforcement the most important aspect of enforcement within the nexus is to have stipulation that both host state regulation and home state regulation exist for multinationals to create a layered series of accountability mechanisms if the host state is unable to try the offending organization within their own jurisdiction. While a regional court or international body existing to issue recommendations would be a nice form of recognition of the necessity of climate change accountability, it is likely an unnecessary step that would create more complexity as opposed to solve any problems. If there is a dual series of mechanisms that puts the responsibilities of home states to try multinational organizations through the exhaustion of local remedies principle, then effective accountability is possible.

While the creation of these laws and procedural mechanisms is a few years off experts in the field believe that the international community has matured to a position beyond raising awareness towards the next step in creating written procedure and binding law (Pantazopoulos, 2022). This poses a step in a positive direction and a strong suggestion of an optimistic view that creating multinational accountability mechanisms for environmental harms is has a plausible future within the environmental policy nexus.

## **Conclusion**

With any kind of drastic change to the normative workings of the international community especially in the field of law incremental steps over a period will be the only way to effectively implement policy that moves forwards as opposed to remaining stagnant. The necessity for policy that regulates and holds the private sector of the world accountable for their actions specifically in their environmental harms is paramount and that policy has a plausible path forward that starts with the ILC draft principles on human rights that is being discussed for passage this summer. With a progressive documentation passed it will be a step in the right direction to fix the complicated system of trial and error that has faced the international community so far when determining how to create binding legal culpability for the ever-changing landscape on sustainability and the environment. While it might seem easier to move forwards with an integration of Environmental policy through IHRL it is necessary to build legally binding instruments that directly address environmental harms outside of conflict zones and the current framework that IHRL exists in. Though it should be noted that through the notion of “corporate due diligence” that is named under article 10 and 11 of the ILC draft principles there is an option for harmonization between these two entities that the community should move forward with to not ignore the links and importance of integrating environmental issues into IHRL standards while also building up a case for IEL to stand on its own. It is through integration of the three bodies of law exhibited in this paper and an employment of procedural enforcement through exhaustion of local remedies that includes both home and host binding policies that Multinational Corporations will face legal accountability.

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