

INTERNATIONAL ENVIRONMENTAL LAW

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Table of Contents

Introduction	3
Strengths of International Environmental Law.....	3
Environmental Protection and Sustainability	4
Facilitates Negotiation of Multilateral Environmental Agreements	4
Weaknesses of International Environmental Law	5
Lack of Compliance and Enforcement Mechanisms.....	5
Liability for Environmental Damage is difficult to Ascertain.....	5
Prioritises Economic Concerns over Environment	6
Strengths of Human Rights Approach	6
Weaknesses of Human Rights Approach	7
Conclusion	8
Bibliography	9

Introduction

This paper aims to provide a critical comparative analysis of the strengths and weaknesses of international environmental law and human rights law as instruments for environmental protection. Debates are raging worldwide over the most effective legal mechanisms to address the increasing degradation of the natural environment due to human activity. Climate change, pollution, biodiversity loss, and nature pose a serious threat to the environment and humanity. Given these complex challenges, it is important to find out which body of law international environmental or human rights law is best equipped to address the global environmental problem in general taking full account of ecological and population interests.¹ This discussion is concentrated on question 2 for several good reasons.

First, the determination of the most credible legal ways is significant due to the growing impacts of climate change and speeded-up extinctions which already are treated as emerging cases. The second interesting aspect is the recent court decisions like the Columbia Supreme Court ruling which recognized the river's rights as human beings and its connection to environmental defense by the human rights framework. Finally, a comparative analysis of the capacities and the deficiencies of these two legislation systems can give meaningful recommendations on how to better environmental management at the global level. By focusing on illustrative examples, this paper will assess whether instrumental environmental law, which is the process of using the law to protect the environment, can align with what human rights law has embraced as an integrated people-planet approach.

Strengths of International Environmental Law

International environmental law directly addresses environmental protection and sustainability as its primary objectives. It establishes the basic principles that have helped shape the global response to threats to the natural world. One such principle is that of sustainable development, endorsed through the 1987 Brundtland Report and codified in international agreements such as the 1992 Rio Declaration, which defines sustainable development as “governing the present needs that will not enable future generations to meet their own.” " And this is crucial for nutrition Recent research analyzing 131 national climate policies found that more than three-quarters cite sustainable development as a guiding principle. Another key principle is the precautionary duty enshrined in Principle 15 of the Rio Declaration. In the face of scientific

¹ Linda A Malone and Scott Pasternack, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* (2023) <https://brill.com/display/title/13920> .

uncertainty about environmental risks, the precautionary principle encourages proactive action. For example, it highlighted an EU regulatory framework for chemicals that requires manufacturers to prove safety without placing the burden of proof on national authorities, according to a World Wildlife Fund report that states policy 76% of 140 official biological measures specify precautionary measures.²

Environmental Protection and Sustainability

International environmental law also establishes mechanisms by which parties can address common environmental challenges. Multilateral environmental agreements (MEAs) have been concluded under the UN framework to promote global solutions, including the Vienna Convention on the Preservation of the Ozone Layer (1985), the UN Framework Convention on Climate Change (1992), and the Minamata Convention on Mercury (2013).³ The Paris Agreement on climate change brought an unprecedented coalition of 183 countries on mitigation commitments. In addition to legally binding treaties, flexible rules such as the UN Environment Convention enhance communication and standard setting. Non-state actors are also actively involved in the principles of international environmental law.⁴ More than 300 major corporations support the United Nations Global Compact initiative to integrate sustainability and prudence into business processes. Conservation International NGOs work with governments on MEA support programs such as biodiversity conservation hotspots.

Facilitates Negotiation of Multilateral Environmental Agreements

International environmental law helps countries come together and sign important treaties. These are known as multilateral environmental agreements (MEAs). MEAs are key to implementing principles such as sustainable development. For example, more than 190 countries ratified and signed the Rio Declaration in 1992.⁵ The Declaration contains principles for the protection and development of the environment. Since 1992, the United Nations Convention on the Rights of the Atmosphere Conditions of Change (UNFCCC) is another important MEA.⁶ Almost all countries have joined the treaty. Later came the Paris Agreement

² Bodansky, Daniel, and Harro van Asselt. *The art and craft of international environmental law*. Oxford University Press, 2024.

³ Linda A Malone and Scott Pasternack, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* (2023) <https://brill.com/display/title/13920>

⁴ Handl, Günther. "The human right to a clean environment and rights of nature." *The Cambridge handbook of new human rights*. Cambridge (2020): 137-153.

⁵ Mark A Drumbl, "Actors and Law-Making in International Environmental Law," *Edward Elgar Publishing eBooks* (2021) <https://www.elgaronline.com/edcollchap/edcoll/9781786439703/9781786439703.00008.xml>

⁶ Gellers, Joshua C. *Rights for robots: artificial intelligence, animal and environmental law (edition 1)*. Routledge, 2020.

in 2015 where countries pledged to combat climate change. The UN report found that the Paris Agreement spurred more action on climate change around the world. Other treaties protect biodiversity and wildlife in different countries.⁷ Since 1992, the Convention on Biological Diversity and the 1979 Convention on Migratory Species have aimed to save species living in many countries. However, studies show that even from these destroyed systems, biodiversity still decreases. Practice in international environmental law makes it easier for countries to unite and strengthen their cooperation in the long run through new treaties.⁸ This helps to solve environmental challenges and major challenges facing the world.

Weaknesses of International Environmental Law

International environmental law is largely based on international treaties. It does not focus directly on protecting the rights and interests of individuals and communities. For example, after the Bhopal Gas tragedy in 1984 killed thousands of people in India, it was very difficult in the US for responsible corporate owners to be held legally responsible for environmental damage and health effects on individuals.

Lack of Compliance and Enforcement Mechanisms

Although MEAs have made good progress, they still lack a uniform compliance monitoring system. States do not always follow through on their promises. For example, a 2021 UN report found that 90% of countries analysed saw little or no progress on their commitments under the CBD if biodiversity conservation was included in national decision-making there would be little incentive to comply without severe penalties.⁹

Liability for Environmental Damage is difficult to Ascertain

International law makes it difficult to impose responsibility for specific causes of serious environmental damage, such as the effects of climate change. A recent European Court of Human Rights ruling on homeowners in Turkey being unable to obtain insurance due to weather-related events was upheld but ultimately rejected a state's claim of responsibility. Legal liability for cross-border sabotage needs further clarification.¹⁰

⁷ Elisa Morgera, Miranda Geelhoed and Mara Ntona, "European Environmental Law," Routledge eBooks (2020) <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003137825-20/european-environmental-law-elisa-morgera-miranda-geelhoed-mara-ntona>

⁸ Elisa Morgera, Miranda Geelhoed and Mara Ntona, "European Environmental Law," Routledge eBooks (2020) <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003137825-20/european-environmental-law-elisa-morgera-miranda-geelhoed-mara-ntona>

⁹ Mark A Drumbl, "Actors and Law-Making in International Environmental Law," *Edward Elgar Publishing eBooks* (2021) <https://www.elgaronline.com/edcollchap/edcoll/9781786439703/9781786439703.00008.xml>

¹⁰ Camacho-Garza A and others, "Human Rights and Socio-Environmental Conflicts of Mining in Mexico: A Systematic Review" (2022) 14 Sustainability 769 <https://www.mdpi.com/2071-1050/14/2/769>

Prioritises Economic Concerns over the Environment

While the goal of sustainable development is environmental and economic balance, international agreements still prioritise the economic development of some countries to the detriment of environmental protection efforts. They did but since then studies have shown that proactive climate action can have real long-term economic benefits due to health-focused growth and green jobs. Furthermore, because they require the ratification of a majority of countries, multilateral agreements take years to negotiate, missing an important window to advance ambitious climate policies. It takes more than 25 years of negotiations and the Paris Agreement has been concluded in 2015.¹¹ By this time, there was already 1°C of warming. Intergovernmental dialogue is also sensitive to changing political priorities and pressures. For example, the recent U.S. withdrawal from the 2017 Paris Agreement signalled a lack of long-term commitment. As mentioned earlier, any existing weather agreements or provisions stipulate liability for products damaged by weather. The sudden sinking of the Pacific island of North Kiribati in 2015 due to rising sea levels highlights the need for strong measures to protect against climate pollution under international law. Without easy mechanisms for rewards or adaptive assistance, most disadvantaged communities have limited support.

Strengths of the Human Rights Approach

The human rights perspective focuses the discussion on individuals and communities, not just states. This is more in line with the principles of environmental justice. Recognising the availability of a safe, clean, healthy and sustainable environment as a human right, governments assume a responsibility to respect, protect and observe this right of all people within their jurisdiction role. Citizens, groups and organisations directly affected by treated violations can lodge complaints and bring issues to governments. This can empower marginalised voices. For example, in *Ultima Generación v. State*, in the case of Spain in 2021, the United Nations Committee on Human Rights confirmed that inappropriate climate action could claim a violation of citizens' right to life and the environment the positive encounter.¹² As far as human rights are concerned, a country's inability to regulate large-scale pollution projects or adapt to climate impacts may relate to that country's international obligations. This power can be demonstrated to reinforce compliance incentives relative to vague obligations under environmental law. For example, after a lawsuit was filed over the health effects of

¹¹ Bodansky, Daniel, and Harro van Asselt. *The art and craft of international environmental law*. Oxford University Press, 2024.

¹² Morgera, Elisa. *Corporate environmental accountability in international law*. Oxford University Press, 2020.

pollution in a critical area, the court took immediate action and ordered community compensation.

Virtually all UN member states have ratified international human rights treaties, enshrining them with almost universally recognized principles of dignity, equality and inalienable rights, and gives campaigns a greater emphasis on legality and ethics. Compared to more technical environmental agreements, this strongly resonates with public opinion.¹³ The pioneering 2021 resolution directly linked the protection of land and culture with the human rights of the Scandinavian Sámi people, who are threatened by climate change. Such definitions serve as an example of arguing against environmental degradation as a matter of fundamental rights rather than discrete environmental issues.¹⁴ A human rights framework based on the principles of equality, equity and rights-based governance empowers vulnerable groups and has greater potential to strengthen accountability compared to current international environmental law.

Weaknesses of the Human Rights Approach

While the human rights system offers some advantages over international environmental law, it also has weaknesses that hinder its ability to fully address the global environmental problem. Significant limitations partly because the major human rights treaties were not designed primarily for environmental protection as their primary purpose.¹⁵ Consequently, the direct application of concepts such as the right to life and health to complex, long-term issues such as climate change presents an interpretive challenge in linking any specific problem to state responsibility the maximum penalty to be dealt with under human rights law.

For example, in a landmark case in 2021, the European Court of Human Rights rejected claims that anthropogenic climate change directly violates human rights. The court ruled that based on currently available scientific evidence, the increase in temperature could not be linked to illegal emissions from individual states.¹⁶ Similar evidentiary hurdles may exist to prove violations of civil and political rights resulting from widespread environmental effects such as

¹³ Boyle, Alan E., and Catherine Redgwell. *Birnie, Boyle, and Redgwell's international Law and the environment*. Oxford University Press, 2021.

¹⁴ Cantor, David James. "Environment, mobility, and international law: A new approach in the Americas." *Chi. J. Int'l L.* 21 (2020): 263.

¹⁵ Schrijver, Nico. "2019 aib Law Lecture: The Rise of Sustainable Development in International Investment Law." In *The Role of International Administrative Law at International Organizations*, pp. 297-314. Brill Nijhoff, 2020.

¹⁶ Niall Sian Koh, Claudia Ituarte-Lima and Thomas P Hahn, "Mind the Compliance Gap: How Insights from International Human Rights Mechanisms Can Help to Implement the Convention on Biological Diversity" (2021) 11 *Transnational Environmental Law* 39 <https://www.cambridge.org/core/journals/transnational-environmental-law/article/mind-the-compliance-gap-how-insights-from-international-human-rights-mechanisms-can-help-to-implement-the-convention-on-biological-diversity/CE0F47664F08EBE4919D5990F3709484>

atmospheric pollution. Although human rights law provides a legal framework powerful, but so far difficult to argue firmly.

Moreover, the human rights approach alone does not provide equally flexible policy tools for dealing with issues such as global standard setting, compliance monitoring and revenue potential in the international environment under environmental law treaties. Some territorial agreements and flexible legal instruments in the last few decades.¹⁷ Gradually, they began to incorporate these principles. Limitations in the international treaty have hindered full global accountability and consistent enforcement of environmental and human rights. An example of increasing fragmentation is the lack of consensus at the UN level, where countries such as the US continues to criticize the direct application of environmental rights issues.¹⁸ It does not by itself have all the necessary elements. A collective approach to global environmental problems exceeds all Must be a practice.

Conclusion

The study aimed to critically compare the strengths and weaknesses of the international environment law system and human rights law as governing mechanisms in addressing the global environment, which is one of the severe environmental problems. While international environmental law directly focuses on environmental protection through principles such as sustainable development and treaties between nations, it lacks certain competencies and roles and sometimes puts financial interests ahead of the need for drastic action. The human rights framework allows for environmental issues to be viewed as rights violations by focusing the discussion on individuals and communities. It has the potential to hold states internationally accountable for crises.

The legal system itself seems well-equipped to deal with the broad, immediate and complex threats of climate change and biodiversity decline. An integrated and strengthened approach using a combination of international environmental law and human rights law will leverage its advantages to reduce vulnerability. This will better protect environmental integrity and human well-being through sustained global cooperation, the promotion of strong accountability measures, and the legal and ethical building of people and the planet on an equal footing. Both

¹⁷ Niak Sian Koh, Claudia Ituarte-Lima and Thomas P Hahn, "Mind the Compliance Gap: How Insights from International Human Rights Mechanisms Can Help to Implement the Convention on Biological Diversity" (2021) 11 *Transnational Environmental Law* 39 <https://www.cambridge.org/core/journals/transnational-environmental-law/article/mind-the-compliance-gap-how-insights-from-international-human-rights-mechanisms-can-help-to-implement-the-convention-on-biological-diversity/CE0F47664F08EBE4919D5990F3709484>

¹⁸ Schrijver, Nico. "2019 aib Law Lecture: The Rise of Sustainable Development in International Investment Law." In *The Role of International Administrative Law at International Organizations*, pp. 297-314. Brill Nijhoff, 2020.

legal instruments must continue to evolve complementarily to address the global environmental problem.

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