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SCAN ARTICLE

# Appraising the Role of Key Actors in International Environmental Law-Making Process: Essence and Constraints

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## Abstract

*This paper examined Actors and Law-Making Processes under International Environmental Law. The development and implementation of international environmental law involved a complex interplay of diverse actors, including states, international organizations, non-governmental organizations (NGOs), the scientific community, and the private sector. This paper adopted the doctrinal method of research with primary of information derived from international conventions, protocol, charters, and treaties, while the secondary sources were derived from journal articles and internet sources. This paper explored the roles and interactions of these actors in shaping environmental law on a global scale. International environmental law emerged prominently in the later half of the 20<sup>th</sup> century, with milestones such as the 1972 Stockholm Conference and the 1992 Rio Earth Summit. These events set the stage for a series of treaties and agreements aimed at addressing transboundary environmental issues and promoting sustainable development. The paper found out that each issue required coordinated action across national borders, highlighted the need for robust legal frameworks and effective implementation mechanisms. The paper concluded that the effectiveness of international environmental law depends on the active participation and cooperation of all relevant actors. The paper recommended amongst others the need to enhance international cooperation through more inclusive and transparent negotiation processes, develop more robust mechanisms for monitoring and enforcing compliance with international agreements, ensure fair distribution of responsibilities and resources between developed and developing nations.*

**Keywords:** Actors, Essence, Constraints, International Environmental Law

## Introduction

International Environmental Law has developed as a response to the growing recognition of environmental issues that transcend national boundaries and require global cooperation.<sup>1</sup> The evolution of this legal field can be traced back to the mid-20<sup>th</sup> century, with several key milestones and actors shaping its current framework. The roots of international environmental law can be traced back to the 1972 United Nations Conference on the Human Environment held in Stockholm. This conference marked the first major international gathering focused on global environmental issues, leading to the Stockholm Declaration. This declaration

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<sup>1</sup> D Bodansky, 'The Art and Craft of International Environmental Law' [2011] (1) *Harvard Environmental Law Review* 10-30.

articulated 26 principles concerning the environment and development, laying the groundwork for future environmental governance.<sup>2</sup>

The 1980s saw a significant expansion in international environmental agreements. The Vienna Convention for the Protection of the Ozone Layer (1985) and its subsequent Montreal Protocol (1987) are landmark treaties that demonstrated successful international cooperation in addressing environmental issues.<sup>3</sup> The 1992 United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, held in Rio de Janeiro, further solidified global commitment to sustainable development.<sup>4</sup> The conference produced key documents such as the Rio Declaration on Environment and Development and Agenda 21, a comprehensive plan for global sustainable development. States remain the primary actors in international environmental law, negotiating treaties and implementing international agreements within their jurisdictions.<sup>5</sup> They play a crucial role in both the creation and enforcement of international environmental norms.<sup>6</sup>

Organizations such as the United Nations Environment Programme (UNEP) and the International Union for Conservation of Nature (IUCN) facilitate cooperation and provide platforms for dialogue and negotiation. UNEP, established following the Stockholm Conference, has been instrumental in coordinating global environmental efforts. NGOs have increasingly become influential actors in the development of international environmental law.<sup>7</sup> They contribute by providing expertise, advocating for stronger environmental protections, and monitoring compliance with international agreements. Notable NGOs

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<sup>2</sup>*Ibid.*

<sup>3</sup> J Brunnee and S Toope, 'Interactional International Law and the Practice of Legality: Reflections on the UN Declaration on the Rights of Indigenous Peoples' [2010] (28) (3) *American Journal of International Law* 621-640.

<sup>4</sup>*Ibid.*

<sup>5</sup>*Ibid.*

<sup>6</sup> J Steffek and C Kissling, 'Civil Society Participation in International Governance: The UN and the Global Compact' [2006] (13) (2) *European Journal of International Relations* 335-362.

<sup>7</sup>*Ibid.*

include Greenpeace and the World Wildlife Fund (WWF). The scientific community plays a critical role in informing international environmental policy. Scientific research and assessments, such as those conducted by the Intergovernmental Panel on Climate Change (IPCC), provide the evidence base for international agreements and action.

The private sector, particularly multinational corporations, has a significant impact on the environment and thus has become a key stakeholder in international environmental law.<sup>8</sup> Corporate responsibility and sustainable business practices are increasingly being integrated into international legal frameworks. International environmental law continues to evolve, addressing emerging issues such as climate change, biodiversity loss, and plastic pollution. However, challenges remain, including ensuring compliance, achieving equitable solutions for all nations, and integrating environmental concerns with economic and social development goals. The dynamic interplay between these diverse actors and the legal mechanisms they utilize is crucial for the ongoing development and effectiveness of international environmental law.

## **Conceptual Clarification**

### **Actor**

In the context of International Environmental Law, the term “actor” refers to any individual, group, organization, or entity that plays a significant role in influencing, shaping, or implementing environmental policies and agreements.<sup>9</sup> These actors are involved in various capacities, from negotiating treaties to conducting scientific research and advocating for policy changes. They are integral to the functioning and effectiveness of the international environmental governance system. Sovereign nations that negotiate, ratify, and implement international environmental agreements. Bodies such as the United Nations and its

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<sup>8</sup>*Ibid.*

<sup>9</sup> K Backstrand and E Lovbrand, ‘The Role of Non-State Actors in Climate Change Governance: Understanding in the Post-Paris Agreement’ [2016] (16) (1) *Global Environmental Politics* 74-91.

specialized agencies that facilitate international cooperation and provide platforms for negotiation and policy development.

### **Law Making**

Law making, also known as the legislative process, is the procedure through which legal norms, rules, and regulations are formulated, enacted, and implemented by authorized bodies or institutions.<sup>10</sup> It involves a series of steps and mechanisms that result in the creation of binding legal standards that govern the behaviour of individuals, organizations, and governments within a given jurisdiction.<sup>11</sup> The process often begins with the identification of a need for new legislation or the amendment of existing laws. This can be initiated by legislators, government agencies, interest groups, or citizens. A bill or draft legislation is then prepared, detailing the proposed legal provisions. The proposed legislation is introduced to a legislative body, such as a parliament or congress, where it is subject to discussion, debate, and scrutiny. This phase may involve multiple readings, committee reviews, and public hearings to gather input and refine the proposal. For the proposed legislation to become law, it must be approved by the legislative body. This typically involves a voting process, where a majority vote is required for passage.

### **International Environmental Law**

International Environmental Law is a body of legal principles, treaties, conventions, protocols, and customary rules that govern the behaviour of states and other international actors in their interactions with the natural environment.<sup>12</sup> Its primary purpose is to address

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<sup>10</sup> D G Victor, 'The Collapse of the Kyoto Protocol and the Struggle to Slow Global Warming' [2001] (1) (1) *Princeton University Press Journal* 45-62.

<sup>11</sup>*Ibid.*

<sup>12</sup>*Ibid.*

transboundary environmental issues, promote sustainable development, and protect global environmental resources.<sup>13</sup>

### **Treaty**

A treaty is a formally concluded and legally binding agreement between sovereign states or international organizations<sup>14</sup>. Treaties are intended to establish rights and obligations among the parties and can cover a wide range of subjects, including peace, trade, defence, and environmental protection. Once ratified, treaties have the force of law in the signatory states.

### **Protocol**

A protocol is an additional legal instrument that supplements, amends, or clarifies a previous treaty or international agreement.<sup>15</sup> Protocols are often used to address specific issues or details not covered in the original treaty or to update its provisions. They must be ratified by the parties to the original treaty to become legally binding.<sup>16</sup>

### **Convention**

A convention is a type of treaty that is usually negotiated under the auspices of an international organization and is intended to establish general principles or standards in a particular field. Conventions are open for signature by many states and often require ratification to become legally binding. They frequently address issues of global concern, such as human rights, environmental protection, and public health.<sup>17</sup>

### **Charter**

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<sup>13</sup>*Ibid.*

<sup>14</sup>*Ibid.*

<sup>15</sup> F Yamin and J Depledge, 'The International Climate Change Regime: A Guide to Rules, Institutions and Procedures' [2004] (1) (1) *Cambridge University Press Journal Publications* 78-105.

<sup>16</sup>*Ibid.*

<sup>17</sup>*Ibid.*

A charter is a founding document that establishes and defines the structure, functions, and principles of an international organization or institution.<sup>18</sup> Charters serve as the constitution of these organizations, outlining their objectives, membership, and operational procedures. Examples include the Charter of the United Nations and the Charter of the African Union. Charters are typically adopted by the member states of the organization and are legally binding on them.

### **Role of Sovereign States in Negotiating and Implementing International Environmental Agreements**

Sovereign states play a crucial role in identifying environmental issues and setting the agenda for international negotiations. They can initiate the process by proposing new treaties or amendments to existing ones.<sup>19</sup> Some states take on leadership roles, often forming coalitions with other countries to promote specific environmental goals. For example, the European Union has been a leader in climate change negotiations. States send delegates to international conferences and negotiations. These representatives advocate for their country's interests and negotiate terms that are acceptable to their governments. Through diplomacy, states negotiate the terms of treaties, conventions, and protocols. This involves bargaining, compromise, and often extensive discussion to reach a consensus among diverse parties.

Therefore, once an agreement is reached, it must be ratified by each participating state according to their national procedures. This often involves approval by the legislative body (for instance National Assembly, Parliament, or Congress) and sometimes requires amendments to domestic laws. Also, states are responsible for incorporating the provisions of international agreements into their national legal frameworks.<sup>20</sup> This involves drafting and

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<sup>18</sup>*Ibid.*

<sup>19</sup>K N Scott, 'International Environmental Governance: Managing Fragmentation Through Institutional Connection' [2011] (12) (3) *Melbourne Journal of International Law* 30-58.

<sup>20</sup>*Ibid.*

enacting new legislation or amending existing laws to comply with international obligations. Establishing regulatory frameworks to ensure that the new laws are enforced.<sup>21</sup> This includes setting standards, creating regulatory bodies, and developing enforcement mechanisms. States must monitor compliance with international agreements and report on their progress. However, States must balance their domestic economic and political interests with their international environmental commitments, which can sometimes conflict, implementing international agreements can be resource-intensive, and many states, especially developing countries, face significant financial and technical challenges, ensuring compliance with international agreements can be difficult due to limited enforcement mechanisms and varying levels of political will and states may lack the scientific and technical expertise required to effectively implement and monitor environmental agreements.

### **Analysis of the Influence of Developed States as Against Less Developed Nations in International Environmental Law Making**

The dynamics of international environmental law-making are heavily influenced by the power disparities between more developed, powerful states and less developed nations.<sup>22</sup> These disparities impact negotiation processes, implementation capabilities, and overall effectiveness of environmental agreements.<sup>23</sup> Powerful states, such as the United States, the European Union, and China, often take the lead in setting the agenda for international environmental negotiations.<sup>24</sup> Their economic and political influence enables them to prioritize issues that align with their interests and capabilities. These states have significant resources to conduct research, develop technologies, and propose new standards. For example, the EU has been instrumental in promoting stringent climate policies and emissions

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<sup>21</sup>*Ibid.*

<sup>22</sup> P Sands, 'Environmental Protection in the Twenty-First Century: Sustainable Development and International Law' [1994] (1) (1) *British Yearbook of International Law* 33-64.

<sup>23</sup>*Ibid.*

<sup>24</sup>*Ibid.*

reductions. Powerful states can allocate substantial financial and technical resources to support their positions in negotiations.<sup>25</sup> They often provide funding for international environmental initiatives and contribute to global funds, such as the Green Climate Fund (GCF). With advanced institutional frameworks and technological capabilities, powerful states are better positioned to implement international agreements effectively.<sup>26</sup> Powerful states can exert diplomatic pressure on other countries to align with their environmental policies. They often engage in bilateral agreements and leverage their positions in multilateral organizations to shape outcomes. They can form and lead coalitions of like-minded states to strengthen their negotiating power. For example, the EU often acts as a bloc in climate negotiations, amplifying its influence.

However, less developed nations often lack the economic resources to influence negotiations effectively.<sup>27</sup> Their priorities may be overshadowed by the interests of more powerful states. Many less developed nations depend on financial aid and technology transfer from powerful states, which can limit their bargaining power and lead to unequal agreements, these nations often face significant challenges in implementing international agreements due to limited financial, technical, and human resources, weak institutional frameworks and lack of infrastructure can hinder effective enforcement of environmental laws and regulations, less developed nations are often more vulnerable to the adverse effects of environmental degradation and climate change.<sup>28</sup> This exacerbates their challenges in advocating for their interests and securing necessary support, less developed nations may have less representation and influence in international forums, which can lead to their interests being

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<sup>25</sup> PH Sand, 'The Evolution of International Environmental Law: Lessons Learned and Future Challenges' [1991] (1) (2) *Environmental Policy and Law* 85-97.

<sup>26</sup> K Conca, 'The Rise of Environmental NGOs: Global Norms and US Political Context' [1996] (9) (1) *Voluntas: International Journal and Non-Profit Organizations* 271-290.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

underrepresented or neglected and there is a need for capacity-building initiatives to empower these nations to participate more effectively in international environmental law-making.<sup>29</sup>

Thus, mechanisms like the Green Climate Fund (GCF) and the Global Environment Facility (GEF) aim to support less developed nations in implementing environmental initiatives and adapting to climate change, also debt-for-nature swaps, initiatives where part of a developing country's debt is forgiven in exchange for commitments to environmental conservation, agreements often include provisions for technology transfer to help less developed nations adopt sustainable practices and build capacity for environmental management and international programmes and partnerships focus on building the technical and institutional capacity of less developed nations to participate in environmental governance effectively, principles of Common but Differentiated Responsibilities (CBDR), recognized in international agreements, this principle acknowledges the different capabilities and responsibilities of states based on their historical contributions to environmental problems.<sup>30</sup>The influence of powerful states in international environmental law-making is substantial, often shaping the agenda, norms, and outcomes of negotiations. In contrast, less developed nations face significant challenges due to limited resources, negotiating power, and implementation capacity.<sup>31</sup>

In terms of enforcement, some agreements allow for the imposition of economic sanctions on non-compliant states. For example, the Convention on International Trade in Endangered Species (CITES) can impose trade restrictions on states that fail to comply with its provisions. In some cases, non-compliance can result in fines or other financial penalties. This is more common in regional agreements where enforcement mechanisms are more

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<sup>29</sup>PH Sand, 'The Evolution of International Environmental Law: Lessons Learned and Future Challenges' [1991] (1) (2) *Environmental Policy and Law* 85-97.

<sup>30</sup>*Ibid.*

<sup>31</sup>*Ibid.*

stringent. International environmental agreements often include provisions for dispute resolution through arbitration or adjudication. The International Court of Justice (ICJ) and other international tribunals can be involved in resolving disputes. These mechanisms involve neutral third parties helping states resolve disputes amicably. They are less formal and adversarial than arbitration and adjudication. Non-compliant states may face the suspension of rights or privileges under the agreement.

For instance, under the Kyoto Protocol, states that do not meet their emissions targets can lose their eligibility to participate in emissions trading mechanisms. Non-compliant states may face public shaming and diplomatic pressure from other states, international organizations, and NGOs. This can be a powerful tool in encouraging compliance, especially for states that are concerned about their international reputation. Diplomatic efforts and negotiations can be used to persuade non-compliant states to fulfil their obligations. This can involve bilateral or multilateral discussions and agreements.<sup>32</sup>

### **Contributions of International Organizations in Formulating Environmental Policies and Standards**

Stockholm Conference, 1972, the UN Conference on the Human Environment, held in Stockholm, was a landmark event that led to the creation of the United Nations Environment Programme (UNEP) and set the stage for future international environmental cooperation. The UN has organized significant conferences like the Rio Earth Summit, 1992 and the Johannesburg Summit, 2002, which have produced key documents such as the Rio Declaration, Agenda 21, and the Johannesburg Plan of Implementation.<sup>33</sup> Paris Agreement 2015, the UN Framework Convention on Climate Change (UNFCCC) facilitated the Paris

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<sup>32</sup> PH Sand, 'The Evolution of International Environmental Law: Lessons Learned and Future Challenges' [1991] (1) (2) *Environmental Policy and Law* 85-97.

<sup>33</sup> P Pauw and Others, 'Subnational Involvement in Nationally Determined Contributions' [2019] (19) (3) *Climate Change Policy* 350-361.

Agreement, which aims to limit global warming to below 2°C and pursue efforts to limit the temperature increase to 1.5°C. Convention on Biological Diversity (CBD) initiated under the UN, aims to conserve biological diversity, promote sustainable use of its components, and ensure fair and equitable sharing of benefits arising from genetic resources.<sup>34</sup> The UN adopted the 2030 Agenda for Sustainable Development, which includes 17 SDGs. Several goals, such as SDG 13 (Climate Action) and SDG 14 (Life Below Water), directly address environmental issues and set targets for global action.<sup>35</sup> UNEP is the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development, and serves as an authoritative advocate for the global environment.<sup>36</sup> UNEP publishes the (GEO) Global Environment Outlook report, which provides comprehensive assessments of the state of the global environment, policy responses, and future outlooks.<sup>37</sup> This annual report assesses the gap between anticipated emissions and levels consistent with limiting global warming to 1.5°C or 2°C. UNEP played a crucial role in negotiating the Montreal Protocol, 1987 which has successfully phased out the production and consumption of ozone-depleting substances. Minamata Convention on Mercury, 2013, UNEP facilitated this convention, which aims to protect human health and the environment from anthropogenic emissions and releases of mercury. Also, UNEP's regional offices implement environmental projects, provide technical assistance, and build capacity in developing countries. For example, UNEP's work in Africa focuses on issues like biodiversity conservation and climate change adaptation.

The UNFCCC, under the auspices of the UN and with significant input from UNEP, facilitated the negotiations leading to the Paris Agreement. UNEP's scientific assessments and reports, such as the Emissions Gap Report, were instrumental in highlighting the urgency

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<sup>34</sup> J Galperin, 'International Law and Climate Change' [2018] (9) (1) *Human Rights Quarterly* 10-35.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

of climate action.<sup>38</sup> UNEP was central to the negotiation and implementation of the Montreal Protocol, which has been successful in phasing out ozone-depleting substances. The protocol is often cited as one of the most effective environmental agreements to date. Clean Seas Campaign, launched by UNEP in 2017, this campaign aims to engage governments, the public, and the private sector in the fight against marine plastic pollution. Over 60 countries have committed to reducing plastic waste, with some enacting policies to ban or reduce single-use plastics.<sup>39</sup>

UNEP facilitated the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which aims to protect human health and the environment against the adverse effects of hazardous wastes. Rotterdam Convention (1998), UNEP, along with the Food and Agriculture Organization (FAO), facilitated this convention, which promotes shared responsibilities and cooperative efforts among parties in the international trade of certain hazardous chemicals and pesticides.<sup>40</sup> Therefore, organizations like the UN, UNEP, and the World Bank have significantly influenced the formulation and implementation of international environmental policies and standards. Through their leadership in global environmental governance, financial and technical support, scientific assessments, and advocacy for sustainable development, these organizations have played critical roles in addressing global environmental challenges.<sup>41</sup>

The World Bank integrates environmental sustainability into its development projects and policies, providing financial and technical assistance to developing countries. The World Bank manages Climate Investment Fund CIF, which supports developing countries in their efforts to mitigate and adapt to climate change through initiatives like the Clean Technology Fund

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<sup>38</sup> T Stephens, 'International Courts and Climate Change: A View from the Bench' [2015] (1) (1) *Environmental Policy and Governance* 8-28.

<sup>39</sup> *Ibid.*

<sup>40</sup> E Louka, 'International Environmental Law: Fairness, Effectiveness, and World Order' [2006] (1) (1) *Cambridge University Press Journal Publication* 34-59.

<sup>41</sup> *Ibid.*

and the Strategic Climate Fund.<sup>42</sup>The World Bank is a partner in (GEF) Global Environment Facility, which provides grants for projects that address global environmental issues such as biodiversity loss, climate change, and land degradation. Furthermore, the World Bank's Environment and Social Framework ESF sets out the mandatory requirements for all investment projects, including environmental and social risk assessments and management plans. These standards aim to promote sustainable development by ensuring that projects minimize environmental and social harm.<sup>43</sup>

The World Bank publishes the WDR, which often focuses on environmental issues. For example, the WDR 2010 focused on climate change and development, providing insights and recommendations for policymakers. Partnership for Market Readiness (PMR), this initiative helps countries prepare for carbon pricing mechanisms by providing funding, technical assistance, and a platform for sharing experiences and best practices.<sup>44</sup>Furthermore, the World Bank's Climate Change Action Plan outlines how it will support countries in achieving their climate targets and transitioning to low-carbon, resilient economies. Between 2021 and 2025, the World Bank Group has committed to aligning its financing flows with the goals of the Paris Agreement, aiming to double its current climate financing to around \$200 billion over this period.<sup>45</sup>

Inter-governmental Panel on Climate Change Established by the UN in collaboration with the World Meteorological Organization (WMO) in 1988, the IPCC provides scientific assessments on climate change, its impacts, and potential future risks, as well as options for adaptation and mitigation.<sup>46</sup> The IPCC's assessment reports are critical in shaping

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<sup>42</sup>*Ibid.*

<sup>43</sup>*Ibid.*

<sup>44</sup> P Cullet, 'Differentiated Responsibilities and Growing Capacities: Climate Change Law and Policy' [2014] (14) (3) *Journal of International Environmental Agreements* 249-267.

<sup>45</sup>*Ibid.*

<sup>46</sup> D Esty and M Ivanova, 'Global Environmental Governance: Options and Opportunities' [2002] (1) (1) *Yale Centre for Environmental Law and Policy* 101-127.

international climate policies. For instance, its Fifth Assessment Report (AR5) significantly influenced the Paris Agreement by highlighting the need for urgent and ambitious climate action. UN Convention to Combat Desertification (UNCCD) adopted in 1994, the UNCCD is the sole legally binding international agreement linking environment and development to sustainable land management. The UNCCD supports efforts to restore productivity to degraded land, improve the livelihoods of affected populations, and reduce the impacts of drought.<sup>47</sup>

### **Role of Non-Governmental Organizations in International Environmental Law-Making Process**

NGOs conduct global campaigns to raise awareness about environmental issues. They use social media, traditional media, and grassroots movements to educate the public and mobilize support for environmental causes.<sup>48</sup> NGOs publish research reports, policy papers, and position statements that highlight the need for stricter environmental regulations. These documents often inform and influence policy debates at national and international levels. For instance, Greenpeace, known for its high-profile campaigns and direct action, Greenpeace has successfully raised global awareness about issues such as whaling, deforestation, and climate change, pushing for stricter regulations.<sup>49</sup> World Wildlife Fund (WWF), WWF's reports on biodiversity loss and climate change have been influential in shaping environmental policies and advocating for stricter protections.<sup>50</sup>

Furthermore, NGOs engage directly with policymakers at national and international forums to advocate for stronger environmental regulations.<sup>51</sup> This includes participating in negotiations, submitting policy recommendations, and lobbying for legislative changes. NGOs

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<sup>47</sup>*Ibid.*

<sup>48</sup>*Ibid.*

<sup>49</sup>*Ibid.*

<sup>50</sup>P Cullet, 'Differentiated Responsibilities and Growing Capacities: Climate Change Law and Policy' [2014] (14) (3) *Journal of International Environmental Agreements* 249-267.

<sup>51</sup>*Ibid.*

often form coalitions with other civil society organizations, businesses, and government agencies to strengthen their advocacy efforts. Friends of the Earth International, his network of environmental organizations engages in advocacy and lobbying efforts at major international negotiations, including UN climate conferences, to push for stronger environmental commitments. Sierra Club, in the United States, the Sierra Club has been instrumental in lobbying for national environmental regulations, influencing policies on clean air, water protection, and climate action.<sup>52</sup>

Furthermore, NGOs conduct independent field investigations to monitor compliance with environmental laws and agreements. They gather data, conduct audits, and publish findings that hold governments and corporations accountable.<sup>53</sup> Many NGOs engage the public in monitoring environmental conditions through citizen science programs, where volunteers collect and report data on issues such as pollution and biodiversity.<sup>54</sup> EIA conducts undercover investigations and publishes reports on illegal wildlife trade, deforestation, and pollution, exposing non-compliance and advocating for enforcement actions. Global Witness, this organization investigates and exposes environmental and human rights abuses linked to natural resource exploitation, such as illegal logging and mining, pressuring authorities to enforce regulations.<sup>55</sup> In terms of strategic litigation, NGOs use legal action to enforce environmental laws and challenge non-compliance.<sup>56</sup>

They file lawsuits against governments and corporations for failing to adhere to environmental regulations and international agreements. NGOs often submit amicus briefs in legal cases to provide expert opinions and support for stricter interpretation and enforcement of environmental laws. Earthjustice, this public interest law organization uses the power of

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<sup>52</sup>*Ibid.*

<sup>53</sup>*Ibid.*

<sup>54</sup>*Ibid.*

<sup>55</sup> E Louka, 'International Environmental Law: Fairness, Effectiveness, and World Order' [2006] (1) (1) *Cambridge University Press Journal Publication* 34-59.

<sup>56</sup>*Ibid.*

law to enforce environmental protections. It has been involved in numerous legal cases advocating for stronger environmental regulations and holding violators accountable. Client Earth, a group of environmental lawyers who use litigation to address environmental issues across Europe. They have taken legal action to improve air quality, combat climate change, and protect biodiversity.<sup>57</sup>

### **Private Sector and Corporation in the International Environmental Law-Making Process**

The private sector plays a significant and increasingly influential role in the development and implementation of international environmental law. Businesses and industry groups engage in law-making processes through direct participation, partnerships, and advocacy, often shaping policies that affect global environmental governance.

### **Participation in International Negotiations and Forums**

Companies and industry groups often participate in international environmental negotiations and forums, either directly or through industry associations.<sup>58</sup> They provide input on policy proposals and advocate for regulations that align with their interests. For instance, World Business Council for Sustainable Development (WBCSD) represents the interests of its member companies in international forums such as the UNFCCC, advocating for market-based solutions to climate change,<sup>59</sup> participates in various environmental negotiations, promoting business-friendly environmental policies.<sup>60</sup> The private sector engages in public-private partnerships to address environmental challenges. These collaborations often result in the development of policies and standards that influence international environmental law. For instance, UN Global Compact, a voluntary initiative where businesses commit to aligning

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<sup>57</sup>*Ibid.*

<sup>58</sup>*Ibid.*

<sup>59</sup> K Hochstetler, 'Greening Brazil: Environmental Activism in State and Society' [2007] (1) (1) *Duke University Press* 93-118.

<sup>60</sup>*Ibid.*

their operations with universal principles on human rights, labour, environment, and anti-corruption.

### **Role of Local Communities in Environmental Decision-Making Processes and Law Making**

Local communities are integral to effective environmental governance, as they are often the most directly affected by environmental policies and projects.<sup>61</sup> Their representation in decision-making processes ensures that their knowledge, needs, and rights are considered. Below, we discuss the importance of local community involvement, the mechanisms that facilitate their participation, and provide global examples illustrating their impact. Local communities, particularly indigenous groups, possess valuable traditional ecological knowledge that can enhance environmental management and conservation efforts. Inclusive decision-making processes ensure that the rights and interests of local communities are protected, promoting environmental justice, and reducing conflicts. Several international agreements and national laws mandate the inclusion of local communities in environmental decision-making.

For instance, Aarhus Convention (1998) grants public rights regarding access to information, public participation in decision-making, and access to justice in environmental matters. Convention on Biological Diversity (CBD) recognizes the role of indigenous and local communities in biodiversity conservation and promotes their involvement in policy development. Governments and organizations often establish consultative processes to engage local communities in planning and decision-making.<sup>62</sup> Community Forestry in Nepal, local communities are given legal rights to manage forests, leading to improved forest conservation and livelihoods. The Maasai community in Kenya has historically coexisted with wildlife in

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<sup>61</sup>*Ibid.*

<sup>62</sup> E Cameron and Others, 'Building Climate Resilience through Urban Infrastructure Management' [2015] (5) (1) *Journal of Urban Planning and Development* 45-60.

their rangelands. However, increasing human-wildlife conflicts and habitat loss prompted the need for collaborative conservation efforts. The Maasai Mara Wildlife Conservancies Association (MMWCA) involves Maasai communities in managing conservancies, ensuring they benefit from tourism revenues and conservation activities.<sup>63</sup>

Also, the India's Forest Rights Act, 2006 aims to rectify historical injustices faced by indigenous and local communities by recognizing their rights to forest lands and resources. The act grants forest-dwelling communities legal rights to land and resources, empowering them to manage and protect their forests. Despite international agreements, legal and institutional frameworks at the national level may still restrict community participation. Local communities often lack the financial and technical resources needed to effectively participate in decision-making processes, there can be significant power imbalances between local communities and other stakeholders, such as governments and corporations, leading to unequal influence. Local communities' involvement in environmental decision-making processes and law making is crucial for achieving sustainable and equitable environmental outcomes. Through legal frameworks, consultative processes, and community-based management, local communities can contribute valuable knowledge, ensure their rights are protected, and enhance the effectiveness of environmental policies. Global examples demonstrate the positive impact of community involvement, highlighting the need for continued efforts to strengthen their representation in environmental governance.<sup>64</sup>

### **International Negotiations and Conferences**

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<sup>63</sup>*Ibid.*

<sup>64</sup>T Lenton, 'Tipping Points in the Earth System' [2023] (105) (6) *Proceedings of the National Academy of Sciences* 1786-1793.

Conference of Parties (COP) is the supreme decision-making body of United Nations Convention on Climate Change.<sup>65</sup> All States that are Parties to the Convention are represented at the COP, at which they review the implementation of the Convention and any other legal instruments that the COP adopts and take decisions necessary to promote the effective implementation of the Convention, including institutional and administrative arrangements. Therefore, a key task for the COP is to review the national communications and emission inventories submitted by Parties. Based on this information, the COP assesses the effects of the measures taken by Parties and the progress made in achieving the ultimate objective of the Convention. The COP meets every year unless the Parties decide otherwise. The first COP meeting was held in Berlin, Germany in March 1995.

The COP meets in Bonn, the seat of the secretariat, unless a Party offers to host the session. The COP 3 was held at Kyoto, Japan, 1997, COP 4, Buenos Aires, Argentina, 1998, COP 5, Bonn, Germany, 1999, COP 6, The Hague, Netherlands, 2000, COP 6-2, Bonn, Germany, 2001, COP 7 Marrakech, Morocco, 2001, COP 8, New Delhi, 2002, COP 9, Milan, Italy, 2003, COP 10, Buenos Aires, Argentina, COP 11, 2004, Montreal, Canada, 2005, COP 12, Nairobi, Kenya, 2006, COP 13 Bali, Indonesia, 2007, COP 14 Poznan, Poland, 2008, COP 15 Copenhagen, 2009, COP 16 Cancun, Mexico, 2010, COP 17, Durban, South Africa 2011, COP 18, Doha, Qatar, 2012 COP 19 Warsaw, Poland, 2013, COP 20, Lima, Peru, 2014, COP 21, Paris, France 2015, COP 22, Marrakech, Morocco, 2016, COP 23 Bonn, Germany, 2017, COP 24, Katowice, Poland 2018, COP 25 Madrid, Spain, 2019, COP 26, Glasgow, UK, COP 27 Sharm el-Sheikh, Egypt, 2022, COP 28, Dubai, United Arab Emirates, 2023.<sup>66</sup>

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<sup>65</sup>*Ibid.*

<sup>66</sup> T Lenton, 'Tipping Points in the Earth System' [2023] (105) (6) *Proceedings of the National Academy of Sciences* 1786-1793.

The COP 28 was particularly momentous as it marked the conclusion of the first ‘global stocktake’ of the world’s efforts to address climate change under the Paris Agreement. Having shown that progress was too slow across all areas of climate action from reducing greenhouse gas emissions, to strengthening resilience to a changing climate, to getting the financial and technological support to vulnerable nations, countries responded with a decision to accelerate action across all areas by 2030. This included call on governments to speed up the transition away from fossil fuels to renewable energy such as wind and solar power in their next round of climate commitments.

Reaching consensus among stakeholders with various interests has been a persistent challenge throughout the history of COP conferences. North-South divide (COP 1-5) disagreements between developed and developing countries over emission targets, financing, and technology transfer, Kyoto Protocol (COP 3-7) debates over binding emission targets, sinks, and flexibility mechanisms, Post-Kyoto negotiations (COP 8-15), disagreements over the future of the Kyoto Protocol and the development of a new global climate agreement, Copenhagen Accord (COP 15) lack of consensus on a legally binding agreement led to a non-binding accord, Durban Platform (COP 17) debates over the scope, structure, and timeline for a new global climate agreement, Paris Agreement (COP 21) challenges in reaching consensus on ambition, financing, and differentiation, Rulebook negotiations (COP 22-24) disagreements over implementation guidelines for the Paris Agreement, Ambition and NDCs (COP 25-26) debates over increasing ambition and improving Nationally Determined Contributions (NDCs), Financing and support (COP 25-27) disagreements over climate finance, technology transfer, and capacity-building support and Loss and damage (COP 25-27) challenges in reaching consensus on addressing loss and damage from climate-related disasters.

### **International Legal Frameworks through Law Making Process**

### **The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987**

Mandates the phase-out of ozone-depleting substances (ODS) such as chlorofluorocarbons (CFCs) and halons. Establishes binding control measures for the production and consumption of ODS. Ensuring that all countries comply with phase-out schedules, especially in the face of illegal trade in ODS. Developing countries may face challenges in accessing alternative technologies and securing adequate funding for implementation.<sup>67</sup>

### **The Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), 1997**

Sets legally binding emission reduction targets for developed countries (Annex I countries) for the period 2008-2012. Introduces mechanisms like Emissions Trading, the Clean Development Mechanism (CDM), and Joint Implementation (JI) to help countries meet their targets cost-effectively. Establishes robust monitoring, reporting, and verification (MRV) requirements to track progress. The United States did not ratify the protocol, and Canada withdrew in 2011, limiting its global impact. Developing countries are not subject to binding targets, leading to debates about fairness and equity. The transition to a more inclusive and ambitious global climate agreement, resulting in the Paris Agreement, highlighted the protocol's limitations.<sup>68</sup>

### **The Convention on Biological Diversity (CBD), 1992**

Promotes the conservation of biological diversity through in-situ and ex-situ measures. Advocates for the sustainable use of biodiversity components to ensure that

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<sup>67</sup> K B Mantlana and Others, 'A Perspective on the Significance of Reporting Climate Change Adaptation Information to the United Nations Framework Convention on Climate Change' [2024] (24) (2) *Journal of International Environmental Agreements and Economics* 85-100.

<sup>68</sup> *Ibid.*

biological resources are used in a way that does not lead to long-term decline. Establishes a framework for fair and equitable sharing of benefits arising from the use of genetic resources, including the Nagoya Protocol (2010). Requires parties to develop national biodiversity strategies and action plans (NBSAPs). However, lack of comprehensive data and monitoring systems to track biodiversity trends and assess progress.<sup>69</sup>

### **The Paris Agreement, 2015**

Aims to limit global temperature rise to well below 2°C above pre-industrial levels, with efforts to limit it to 1.5°C. Nationally Determined Contributions (NDCs) requires countries to submit and update their NDCs, outlining their emission reduction commitments and adaptation plans and conducts a global stocktake every five years to assess collective progress towards the agreement's goals. Ensuring that countries increase the ambition of their NDCs over time and implement them effectively. Mobilizing adequate financial resources to support climate action, particularly in developing countries.

### **The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), (1973)**

This Convention lists species in three appendices based on their conservation status and the degree of protection they need. Appendix I includes species threatened with extinction, Appendix II includes species not necessarily threatened but that may become so, and Appendix III includes species protected in at least one country. Regulates international trade in listed species through a system of permits and certificates. Requires parties to designate scientific and management authorities to oversee the implementation of CITES regulations.

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<sup>69</sup> K B Mantlana and Others, 'A Perspective on the Significance of Reporting Climate Change Adaptation Information to the United Nations Framework Convention on Climate Change' [2024] (24) (2) *Journal of International Environmental Agreements and Economics* 85-100.

However, trade regulations do not negatively impact the livelihoods of communities that depend on wildlife resources.<sup>70</sup>

### **Mechanisms for Monitoring and Ensuring Compliance with International Environmental Laws**

Ensuring compliance with international environmental laws is critical for achieving global environmental goals. Various mechanisms are in place to monitor adherence and enforce regulations.<sup>71</sup> These mechanisms range from treaty-specific arrangements to broader international cooperation frameworks. Many international environmental treaties establish specific compliance mechanisms to monitor and enforce adherence to their provisions. Established to review parties' compliance with treaty obligations and recommend corrective actions. Parties are often required to submit regular reports detailing their implementation efforts and progress. Periodic reviews of national reports by treaty bodies or expert panels to assess compliance and identify gaps. For instance, the Kyoto Protocol, the Compliance Committee is composed of two branches: the Facilitative Branch, which provides advice and assistance, and the Enforcement Branch, which has the authority to determine non-compliance and impose consequences.<sup>72</sup>

Treaties often require parties to submit national implementation reports to monitor progress and ensure compliance. Reports typically include information on legislative, regulatory, and policy measures taken to implement treaty obligations. Reports are submitted at regular intervals, as stipulated by the treaty. Reports are reviewed by treaty secretariats, compliance committees, or expert panels to assess implementation status and compliance. For instance, Convention on Biological Diversity (CBD) parties submit National Biodiversity Strategies

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<sup>70</sup> K B Mantlana and Others, 'A Perspective on the Significance of Reporting Climate Change Adaptation Information to the United Nations Framework Convention on Climate Change' [2024] (24) (2) *Journal of International Environmental Agreements and Economics* 85-100.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

and Action Plans (NBSAPs) and periodic national reports detailing progress in implementing the CBD. The Global Carbon Project and other independent organizations monitor greenhouse gas emissions and provide verification of national reports.<sup>73</sup>

### **Role of International Courts and Tribunals in Environmental Law-Making Process**

Advisory opinions are non-binding legal opinions provided by international courts and tribunals at the request of states or international organizations. Advisory opinions clarify and elaborate on principles of international environmental law, guiding states and international organizations in their interpretation and application. Although non-binding, advisory opinions carry significant weight and influence international environmental policy and practice.<sup>74</sup>

### **Challenges in Enforcing International Environmental Agreements**

Enforcing international environmental agreements is essential for addressing global environmental issues such as climate change, biodiversity loss, and pollution. However, several challenges hinder effective enforcement. These challenges are complex and multifaceted, encompassing political, economic, legal, and technical dimensions.

### **Sovereignty and National Interests**

States prioritize their sovereignty and national interests, which can conflict with international environmental obligations. Governments may be reluctant to implement or enforce agreements that they perceive as threatening their economic development or political stability. Some countries, like the United States, chose not to ratify the Kyoto Protocol, citing concerns over economic impacts and perceived unfairness in obligations.<sup>75</sup>

### **Lack of Binding Enforcement Mechanisms**

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<sup>73</sup> L R and Savaresi, 'International Human Rights Bodies and Climate Litigation: Don't Look Up?' [2023] (32) (2) *Review of European, Comparative and International Law* 267-278.

<sup>74</sup> *Ibid.*

<sup>75</sup> L R and Savaresi, 'International Human Rights Bodies and Climate Litigation: Don't Look Up?' [2023] (32) (2) *Review of European, Comparative and International Law* 267-278.

Many international environmental agreements lack robust enforcement mechanisms and rely on voluntary compliance. Sanctions for non-compliance are often weak or non-existent, reducing the incentives for countries to adhere to their commitments. Convention on Biological Diversity (CBD), the CBD primarily relies on voluntary national reporting and lacks strong enforcement provisions to ensure compliance with biodiversity targets.

### **Financial Constraints**

Developing countries often face financial constraints that limit their ability to implement and enforce environmental agreements. Insufficient funding for environmental programs and infrastructure hampers progress in meeting international obligations. While the Multilateral Fund assists developing countries in phasing out ozone-depleting substances, financial challenges still impede some countries' compliance efforts.

### **Technical and Capacity Limitations**

Many countries, especially developing and least-developed countries, lack the technical expertise, infrastructure, and institutional capacity to effectively implement and enforce environmental agreements. Capacity-building and technology transfer are critical but often insufficiently addressed. The need for capacity-building support and technology transfer is recognized, but actual implementation varies significantly among countries.

### **Monitoring and Verification Issues**

Accurate monitoring and verification of compliance are essential but can be technically challenging and resource intensive. Discrepancies in data collection, reporting standards, and verification processes undermine the reliability of compliance assessments. For instance, the

UNFCCC, monitoring greenhouse gas emissions requires sophisticated technologies and methodologies, which not all countries possess.<sup>76</sup>

### **Political and Economic Pressures**

Political instability, economic crises, and competing domestic priorities can divert attention and resources away from environmental commitments. Governments may prioritize short-term economic gains over long-term environmental sustainability. Countries with significant forest resources may struggle to enforce deforestation agreements due to economic pressures from agriculture, logging, and mining.

### **Transboundary Environmental Issues**

Environmental problems often cross-national borders, requiring coordinated international action. Disputes over shared resources, such as rivers or air quality, complicate enforcement, and cooperation. Agreements like the Convention on Long-Range Transboundary Air Pollution (CLRTAP) address cross-border pollution, but effective enforcement requires robust cooperation among neighbouring countries.<sup>77</sup>

Enforcing international environmental agreements faces significant challenges, including issues of sovereignty, financial and technical constraints, political and economic pressures, monitoring and verification difficulties, and the complexity of legal frameworks.

### **Conclusion**

The process of law-making in international environmental law is complex and multifaceted, involving a diverse array of actors who each play crucial roles. These actors include sovereign states, international organizations, non-governmental organizations (NGOs), the

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<sup>76</sup> L R and Savaresi, 'International Human Rights Bodies and Climate Litigation: Don't Look Up?' [2023] (32) (2) *Review of European, Comparative and International Law* 267-278.

<sup>77</sup> *Ibid.*

private sector, and local communities. As primary actors, states have the authority to negotiate, ratify, and implement international environmental agreements. Their national interests, capacities, and political will significantly influence the effectiveness of international environmental law. Powerful states often drive the agenda, while less developed nations advocate for equity and support in addressing environmental challenges.

These organizations help coordinate global efforts and ensure that international environmental law remains responsive to emerging challenges. NGOs are instrumental in advocating for stronger environmental regulations, raising public awareness, and holding governments accountable. Their participation in international conferences and treaty negotiations ensures that civil society's voice is heard, and they often push for more ambitious and inclusive environmental policies. The private sector contributes to law-making by engaging in corporate responsibility initiatives, adopting sustainable practices, and participating in market-based mechanisms like carbon trading.

## **Recommendations**

Recommendations for Enhancing Actors and Law-Making in International Environmental Law:

### **Strengthen Multilateral Cooperation and Coordination**

Effective international environmental law-making requires robust cooperation and coordination among all actors. Enhanced multilateral cooperation can help address transboundary environmental issues and ensure coherent policy implementation. The Paris Agreement, under the UNFCCC, exemplifies successful multilateral cooperation where countries collectively commit to reducing greenhouse gas emissions and adapting to climate impacts. Strengthening platforms like the UNFCCC can improve global response to climate change. Establish and support mechanisms for regular dialogue and cooperation among states,

international organizations, and other stakeholders to ensure coherent and coordinated actions.

#### Enhance Capacity Building and Financial Support for Developing Countries

Many developing countries lack the financial resources and technical capacity to implement international environmental agreements effectively. Capacity building and financial support are crucial for ensuring that all countries can meet their obligations. The Global Environment Facility (GEF) provides grants to developing countries for projects related to biodiversity, climate change, and other environmental issues. Expanding such initiatives can bridge the gap between developed and developing nations. Increase financial contributions to international funds like the GEF and establish targeted capacity-building programs to assist developing countries in meeting their environmental commitments.

#### Promote Greater Inclusion of Non-State Actors in Decision-Making

Non-state actors, including NGOs, the private sector, and local communities, offer valuable perspectives and resources. Their inclusion in environmental law-making processes ensures that diverse viewpoints are considered and enhances the legitimacy and effectiveness of policies. The Aarhus Convention promotes public participation in environmental decision-making and access to justice. Encouraging similar frameworks globally can empower non-state actors. Develop and enforce frameworks that mandate the participation of non-state actors in international environmental negotiations and decision-making processes.

#### Implement Stronger Monitoring, Reporting, and Verification (MRV) Mechanisms

Effective monitoring, reporting, and verification (MRV) mechanisms are essential for ensuring compliance with international environmental agreements. Transparent MRV processes enhance accountability and trust among actors. The Kyoto Protocol's MRV system

includes national inventories of greenhouse gas emissions and annual reporting, providing transparency and accountability. Establish and enforce robust MRV frameworks for all international environmental agreements, with clear guidelines for data collection, reporting, and independent verification.



#### ARTICLE INFORMATION

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