



Stabilization  
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# Legal Perspectives in Environmental Peacebuilding



For peace process practitioners transboundary environmental issues such as water, climate change and desertification present a broad array of potential peace initiatives, from international declarations to guiding principles to treaties to shared management and diplomatic contact.

The Stabilization Mechanism Research Brief Series contributes more widely to the overall field of knowledge for environmental cooperation in the service of peace.

# Legal Perspectives in Environmental Peacebuilding

The paradigms, formal structures, rules and procedures in international law is vital for environmental peacebuilding as it sets norms, promotes collaboration, and creates accountability systems. This brief looks at the legal perspectives that have emerged at the interface of environment and peacebuilding with a particular focus on the emerging gaps and challenges in these existing legal perspectives.



## Legal Perspectives in Environmental Peacebuilding

There are a range of synergies and tensions that exist between environmental peacebuilding and environmental rule of law. Environmental peacebuilding aims to improve environmental governance within and across States to prevent conflict. It is important to protect the environment and natural resources against damages and illegal exploitation during and after armed conflict, as well as recover environmental damage that results from armed conflict. At the same time, in post-conflict recovery contexts, distrust of institutions of governance, asymmetrical political representation and differing visions of the state and society may lead to a collapse in the ability to implement environmental rule of law.

The significance of legal perspectives in environmental peacebuilding lies in their ability to establish a structured and just approach to managing environmental resources, mitigating potential conflicts, and promoting resilience in the face of ecological uncertainties. This brief looks at the legal perspectives that have emerged with a particular focus on the emerging gaps and challenges in these existing legal perspectives.

### The Efficacy of International Legal Frameworks

The links that exist between the environment, peace and rule of law are present throughout the conflict lifecycle but alter at different stages (prevention, peacemaking, resolution, and post-conflict peacebuilding) [1]. The crucial role that legal frameworks play in the multifaceted arena of environmental peacebuilding, emphasizes the need for a comprehensive and adaptive legal infrastructure to address the evolving challenges at the nexus of environmental sustainability and conflict resolution. International legal frameworks play a crucial role in environmental peacebuilding by providing a normative foundation, encouraging cooperation, and establishing accountability mechanisms.

## Advanced Normative Foundations

The International Law Commission (ILC), as a subsidiary body of the United Nations General Assembly, plays a crucial role in the development and codification of international law. While its primary focus is on the progressive development of international law and its codification, including the identification of new norms, the ILC indirectly contributes to normative guidance in various fields. For instance, for environmental peacebuilding, the ILC's work on the topic of protection of the environment, in relation to armed conflicts, stipulates principles of international law for the protection of the environment before, during and after armed conflict. These principles are informed by various dimensions of international law, encompassing not only international humanitarian law but also incorporating pertinent elements from international environmental law, international human rights law, international criminal law, and other related fields.

Although the ILC does not negotiate or draft treaties, the principles and normative guidance it advances influence the development of conventions and treaties in the field of environmental law. For example, the important legal standards inspired by intragenerational equity that have become embedded into international legal frameworks such as the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC).

The principle of common but differentiated responsibilities (CBDR) is a key concept within the Convention on Biological Diversity (CBD) [2]. This principle recognizes that while all nations share a common responsibility for the conservation of biological diversity, they also have different capabilities and resources. As a result, the CBDR principle acknowledges that developed countries, which historically have had a greater impact on the environment, should take on a greater share of the responsibility for addressing biodiversity loss and providing financial and technological support to developing countries.

Similarly, the CBDR is a fundamental principle enshrined in the UNFCCC [3]. The principle has been a cornerstone of international climate negotiations and agreements, including the Kyoto Protocol and the Paris Agreement. It reflects the understanding that a fair and effective global response to climate change must consider the historical contributions and different capabilities of nations in addressing the issue.

The CBDR principle has its roots in international environmental law and has been applied in various environmental agreements. It aims to promote fairness and equity in addressing global environmental challenges while recognizing the diverse capacities of different countries.

## Advanced Mechanisms for Cooperation and Accountability

In addition to advancing normative foundations for environmental peacebuilding, international legal frameworks offer strong incentives for cooperation. Shared environmental challenges, such as transboundary water, pollution or resource depletion present opportunities for peacebuilding efforts. Treaties can often offer benefits for states that engage in cooperative measures, fostering a sense of shared responsibility and encouraging the pooling of resources for sustainable solutions. The Convention Establishing the Organization for the Development of the Senegal River (OMVS) in 1972 is a clear example. The treaty outlines the organizational structure, objectives, and responsibilities of the member states within the framework of the organization. It has supported periodic communication, meetings and joint project planning and implementation by all member states. Additionally, the OMVS has established a framework for dispute resolution, ensuring peaceful coexistence among riparian nations and reducing the potential for conflicts over water resources. This also highlights how the legal frameworks that underpin the environmental rule of law may support conflict prevention and resolution. Provisions within treaties often mandate dispute resolution mechanisms, encouraging states to resolve environmental disputes through dialogue and negotiation rather than resorting to conflict.



Another example of joint planning and implementation is the Senegal River Basin Development Plan, which coordinates irrigation and agricultural projects across the member countries, enhancing food security and livelihoods [4]. The incentives for institutionalized cooperation also advance accountability mechanisms and these structures hold states responsible for their environmental commitments. Coordinated and shared reporting across states on shared environmental resources sets procedural norms for reporting that stand to improve transparency, foster trust and encourage compliance with environmental norms.

Legal mechanisms have been used to address transboundary environmental damage that has occurred as a result of armed conflict including the ICJ court hearing on Uganda vs DRC. Under the 2022 hearing, Uganda is held to account for breaches of humanitarian international law in DRC including the illegal exploitation of its natural resources [5]. Similarly, after the large-scale environmental damage during Iraq's invasion of Kuwait, the United Nations Compensation Commission was created in 1991 to process claims and pay compensation. large-scale [6].

## Shortcomings of International Legal Frameworks

Despite noticeable advancements, environmental peacebuilding remains embedded in a fragmented area of international law. Although various siloed areas of law contribute to environmental peacebuilding, none are designed for the primary purpose of environmental peacebuilding. This has made advancing an integrated approach toward environmental peacebuilding challenging from a legal perspective. Challenges around enforceability, power imbalances, juridical fragmentation and inclusivity remain areas to navigate and strengthen in environmental peacebuilding.

## Enforceability Changes

Enforcement remains a significant challenge in environmental peacebuilding. International law lacks a centralized enforcement mechanism, making it difficult to ensure compliance with environmental agreements. Weak enforcement mechanisms may diminish the effectiveness of these legal instruments, as states may not face significant consequences for violating their environmental commitments.

Consider, for, instance, the 1997 UN Convention on the law of the non-navigational uses of international waters, also known as the UN Watercourses Convention. The UN Watercourses Convention legally binds signatory states to cooperate within international law, for instance, it has ultimately been ratified by relatively few states and its framework does not provide much in the way of enforcement capabilities for those who are signatories. In addition, the convention lacks a central authority or international body with the power to ensure compliance, which can limit its effectiveness in addressing disputes and conflicts. There is an over-reliance on diplomatic and negotiated solutions to disputes. This may hinder its ability to address non-compliance effectively.

It is also worth noting, when considering enforceability, that political agreements are more easily ignored than legally binding agreements. Revoking a legal agreement, such as withdrawing from a treaty, requires following the relevant legal procedures, whether at the domestic or international level. Political agreements, on the other hand, are appealing because they allow parties to circumvent the binding nature of legal commitments [7]. For either political or legal agreements to emerge, good faith between the respective parties must be established.

## Inclusivity Challenges

Inclusivity or a lack thereof, may impede institutions where certain stakeholders are not included in the decision-making processes, thus making substantive environmental peacebuilding aims unachievable. Furthermore, unless political will and a commitment to collective action are inclusively ascertained from all riparians, enforcement of legal frameworks remains impaired.

The Mekong River Commission (MRC) highlights the limitations of addressing inclusivity in such frameworks. Established to manage the Mekong River basin, the MRC includes only four out of six riparians. Despite its robust legal and institutional framework with emphasis on equitable and sustainable principles, and a clear dispute resolution mechanism, with China and Myanmar not included in the formal agreement its effectiveness is limited. This makes any transboundary water-related policy challenging to implement procedurally even if strong substantive norms exist.

While the MRC offers substantial data and information, it has made limited efforts to mitigate the disparities in capacity, financial incentives, and political stances among its member states. Consequently, divergent objectives have surfaced. The absence of China further complicates the achievement of consensus and mediation in handling potentially contentious decisions. Additionally, joint fact-finding missions or collaborative monitoring initiatives lack critical data from the upstream country [8]. The MRC's legal mechanism is thus restricted by China as an upper riparian hegemon, and Myanmar not being included in the broader framework.

Weak inclusion is not only evident in stakeholder representation in the MRC. It is also apparent in the scope and scale of the MRC's remit which means the framework does not adequately address environmental concerns, resulting in negative impacts on ecosystems and fisheries. This is also evident in the Danube River Basin Convention. While successful in promoting cooperation among riparian states, the Danube River Basin Convention established in 1991 initially gave insufficient attention to environmental protection.

Pollution from industries and agriculture in upstream countries has caused environmental degradation downstream, affecting water quality and ecosystems. In light of this, the 2015 Danube River Basin Management Plan was adopted with enhanced focus on ecological protection and sustainable water use. Efforts to include greater environmental protection continue.

## Next Step Considerations

Much of the focus across the field of environmental peacebuilding has been on the efficacy of international legal frameworks and mechanisms in supporting environmental rules of law that also underpin environmental peacebuilding. It is worth recognizing the hindrance that emerges from the multiplicity of international environmental agreements and overlapping jurisdictions. States may prioritize certain agreements over others, leading to inconsistencies in environmental policies. Harmonizing frameworks at the national level with regional and international frameworks to ensure coherence and effectiveness remains a challenge.

In warfare, the causal link between acts and harm is difficult to prove. Damage is not always just the result of warfare but also the absence of functioning governments to enforce environmental protection, and lack of Rule of Law and control. There are frequent calls for the creation of a free-standing wartime environmental compensation mechanism that could enhance environmental peacebuilding [6]. From a legal perspective, reparations are a useful entry point to advancing environmental peacebuilding with enforceability. This can vary from restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition. Establishing what is considered a breach of international law, however, is difficult. Recent initiatives, such as those by the International Committee of the Red Cross and the International Law Commission have enhanced environmental protection during armed conflict by adopting guidelines or draft principles [9]. This work has spurred more engagement on the topic of environmental peacebuilding from legal practitioners.

Legal perspectives on environmental peacebuilding need to better include cross-sectoral understandings.

Greater inter-agency coherence and cohesion need to be advanced at the intrastate and regional levels of environmental cooperation alongside legal mechanisms. Inclusive legal frameworks that consider the perspectives and rights of as many stakeholders as possible and at multiple levels is more likely to lead to sustainable peace.

Multilateral environmental agreements (MEAs) also present a legal mechanism entry point for environmental peacebuilding. They establish treaty systems and treaty bodies that act rather autonomously with open-ended obligations and legal frameworks. Informal regional dialogue between conflict actors mediated by neutral third parties offer an opportunity to determine pathways for MEAs [1].

Addressing politics is crucial in transboundary environmental initiatives and environmental peacebuilding because environmental issues are inherently intertwined with political dynamics. Solutions necessitate navigating political interests, fostering cooperation, and ensuring equitable resource allocation, which are all critical for both environmental sustainability and conflict prevention. Neglecting politics may hinder initiatives and escalate tensions.

Legal frameworks can provide a structured basis for conflict resolution and resource management in environmental peacebuilding. Nonetheless, their efficacy faces constraints, notably the inadequacy of enforcement mechanisms and sluggish adaptation to dynamic environmental and political circumstances. To advance and strengthen multilateral coordination, cooperation, and accountability within the realm of environmental peacebuilding, it becomes imperative to diligently investigate and put into action inventive and adaptable solutions that effectively consider the existing gaps within legal frameworks. Whilst there has been notable advancement in this, much more is needed.

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## Stabilization Mechanism Project



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