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The Legal Normative Overlap of Environmental Agreements
(A study of legal contradiction of environmental norms within and without institutional mandate)

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ABSTRACT
Without a central authority or overarching international institution, environmental regimes and institutions have evolved independently and in a fragmented way. Although some debates exist regarding legal overlap on specific subject matters within international law, no study carried out or proposed legal taxonomy or criteria to identify the sources of legal overlap and conflicts within environmental law. This research aims to elucidate the types of overlap by providing an argument to recognize how such overlaps arise within environmental appliances, and it identifies both states and international institutions as the main sources of legal conflict within the environmental framework. These findings contribute to recognizing the barriers that hinder conflict resolution and to proposing practical solutions for managing legal conflicts. This study can assist policy-makers in enhancing the effectiveness of environmental legal instruments by refining the text to avoid contradictions within Multilateral Environmental Agreements (MEAs) during the negotiation phase. Accordingly, the study and its findings aim to address existing gaps in the environmental legal system, particularly concerning the issue of congested rules. This can be achieved by adopting the criteria and basis of overlap proposed in this study and applying them to address the extensive fragmentation across environmental fields. Ultimately, this research provides a legal method to foster synergies and offers recommendations for managing overlaps within congested MEAs.

Keywords: Legal Contradiction, Legal Overlap, Conflict Taxonomy, Institutional Overlap, criteria of MEAs.

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1- Introduction:

Multilateral Environmental Agreements (MEAs) emerged as a means to tackle environmental degradation; however, their overall structural design has seen little transformation. The growing number of MEAs supports the view expressed by Rakhyun and Mackey1 who argue that international environmental law during this period developed in a fragmented and unsystematic fashion.. As a result, MEAs have emerged as a fragmented collection of independent international institutions and agreements. This development reflects the traditional understanding of fragmentation. Since the industrial revolution, human activities have significantly altered global environmental conditions. Jakob [2] examined how the exploitation of natural resources has increased rapidly over the past few centuries, driven by factors such as population growth, rising wealth, and technological advancement.

F Zelli, H Van Asselt 3 have asserted that the fragmentation of international environmental law is an unavoidable outcome. In response to the global challenge of environmental degradation, the international community has created numerous institutions and legal frameworks. These actions have led to the existence of more than 700 Multilateral Environmental Agreements (MEAs) to date.4 The expansion in the amount of environmental commitments rules has led to overlaps among both norms and institutions. This definitly contributed to the perception that international environmental law is not only untidy and multifaceted due to the proliferation of legal instruments and entities, but also because the sheer volume of rules creates numerous implications. This, in turn, results in overlaps and conflicts within the body of environmental law.

This phenomenon is also evident at the national level among MEA member states. Situations persist where a single rule below a particular environmental agreement conflicts with alternative rule from a different agreement, regardless of whether these rules impose rights or obligations. This underscores the isolation and lack of coordination between regimes and institutions. It is especially relevant to international environmental law, a complex regulatory field composed of multiple regimes and institutions, which often results in overlapping and sometimes conflicting legal and policy mandates.

Therefore, it is essential to examine the mechanisms of contradiction in order to develop appropriate criteria. First, this research will explore the types and methods

[1] Kim, Rakhyun E., and Brendan Mackey. "International environmental law as a complex adaptive system." International Environmental Agreements: Politics, Law and Economics 14 (2014): 5.

[2] Skovgaard, Jakob. "The devil lies in the definition: competing approaches to fossil fuel subsidies at the IMF and the OECD." International Environmental Agreements: Politics, Law and Economics 17 (2017): 341.

[3] Zelli, Fariborz. "Institutional fragmentation." Encyclopedia of Global Environmental Governance and Politics". Edward Elgar Publishing, 2015. 469-477.

[4] Woods, Ngaire. "Multilateralism in the twenty-first century." Global Perspectives 4.1 (2023): 68310.

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through which commitments to regulate state obligations under one environmental treaty may come into conflict with restrictions imposed by another environmental agreement. Subsequently, the study will delve into the criteria for identifying institutional overlap as the second focus. The paper will then present its findings and offer necessary recommendations based on the analysis.

2- Taxonomy of Legal contradiction

The fragmentation of international environmental law has led to the overlap and conflation of its instruments and rules. In this section, the research aims to identify specific criteria to distinguish between various types of legal conflicts. This theoretical framework will primarily draw on examples from "United Nations Beyond the State? Interactions of Intergovernmental Treaty Secretariats in Global Environmental Governance" by Philipp to demonstrate the defining characteristics of each category of conflict. The study will define and illustrate the core types of regime conflicts, differentiated based on their manifestation and degree of directness.[5] Thus, it is important to distinguish between latent (tacit) legal conflicts and manifest (explicit) types of legal conflicts. This distinction will also serve as an analytical tool for evaluating hypotheses concerning the effects of MEA overlaps.

A- Tacit Conflict (latent)

Latent conflicts refer to legal incompatibilities that do not result in observable conflictual behavior or directly predictable actions by actors. Drawing from the common notion of contradiction between regimes, a latent conflict can be defined as: "a functional instrumental overlap amongst international regimes taking form of a significant contradiction of rules, but without being manifesting these to a contradicting behaviour of actors."[6] Latent conflicts have long been examined by scholars, particularly within the field of international law. These conflicts often exist before what will later be identified as manifest conflicts. Therefore, it is unsurprising that several examples of latent conflicts discussed in this context are commonly found in relation to the topics addressed earlier.

The most notable tensions occur between MEA trade-related measures and the regulations under the General Agreement on Tariffs and Trade (GATT). In 1996, the WTO's Committee on Trade and Environment (CTE) identified around 20 Multilateral Environmental Agreements in this context. Among these, three were identified as containing procedures that explicitly violate GATT rules through the use of Trade-Related Environmental Measures (TREMs). These include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the

[5] Elsässer, Joshua Philipp. United Nations beyond the state? Interactions of intergovernmental treaty secretariats in global environmental governance. Diss. Universität Potsdam, 2023.

[6] Hickmann, T., et, al. (2020). Institutional Interlinkages. In F. Biermann & R. E. Kim (Eds.), Architectures of Earth System Governance: Institutional Complexity and Structural Transformation (pp. 119-136). Cambridge University Press. https://doi.org/DOI: 10.1017/9781108784641.006

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Montreal Protocol—along with its related protocols and annexes under the Vienna Convention for the Protection of the Ozone Layer—and the Basel Convention, which governs the cross-border movement and disposal of hazardous waste. Each of these frameworks has points of friction with GATT provisions. "by banning the import of numerous substances on the basis of the status of the country of origin (e. g. states that are not members to the MEA, member to the MEA that fall into particular categories, and member not in obedience with the MEA)."[7] Despite these overlaps, there has yet to be a formal challenge by the World Trade Organization (WTO) against any trade-related measure adopted under an MEA. This rather unexpected outcome supports the classification of such irreconcilabilities as merely "latent conflicts."

B- Explicit Conflict

In contrast to latent conflicts, manifest conflicts are not limited to legal incompatibilities; they are reflected in actual conflicts or observable behavioral discrepancies between actors. Therefore, a manifest conflict can be defined as: "a functional overlap within international regimes manifested in clashes between actors that referring to thus regimes".[8]

The term remains undefined in terms of when, during a regime's life cycle (e.g., during negotiations or after entry into force), where (whether within regime bodies or before third-party tribunals), and most importantly, under what circumstances or why (for example, due to efforts to amend the regime or due to compliance or non-compliance with conflicting rules), conflicts may arise between certain actors. Additionally, the term does not specify who the actors are—whether states, institutions, or others. This highlights the need for further clarification through more specific criteria, which will be presented below.

At this stage, it is essential to draw a primary distinction based on another dimension, namely, the extent to which manifest conflicts are preceded by latent conflicts, which is the degree to which they are connected to an existing incompatibility or contradiction between regime laws.

3. Further Distinctive Criteria

This section presents new criteria aimed at enhancing and clarifying the current classification of legal conflicts between regimes in the field of international environmental law, as previously examined. These further criteria can likely be categorized into two groups: the first group concerns overlaps between environmental regimes involved in normative conflicts, that is, those sharing similar functions or

[7] The assumption offers three possible explanations for the absence of manifest disputes in the three cases: 1. the self-restraint by WTO members that are also Parties to these MEAs; 2. The broad participation on both sides (all three MEAs have a high number of parties); 3. the minor economic impacts of the trade in endangered species, ozone-depleting substances (ODS) and hazardous waste.

[8] Alter, K., J., & Meunier, S. (2009). The Politics of International Regime Complexity. Perspectives on Politics,7(1), 13.

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subject matter. The second group relates to overlaps that result in institutional conflicts, such as conflicting mandates, overlapping jurisdiction, or conflicts regarding the place or arena in which authority is exercised.

This research proposes a taxonomy of legal conflicts within the body of environmental law, grounded in the idea that the primary actors in the international community capable of creating universal environmental instruments are states and international institutions. In identifying which actors are primarily involved in manifest regime conflicts, the evidence thus far points to bureaucracies, particularly organs, secretariats, specialized committees, and working groups, as well as states. This section will distinguish between legal overlaps involving institutions and those involving states. While this is an analytical distinction, in practice, such congestion often involves both types of actors to varying degrees.

3.1 Normative Overlap Without Institutions Mandate.

Most instances of normative overlap occur without incident and are, in many cases, largely benign. However, from a functional perspective, the coherence of the international legal framework may be undermined by fragmented normative systems and independent developments. These overlaps also increase the risk of contradictions with established international environmental law standards applied to the same act or omission, as well as inconsistencies among the various subject areas and principles to which these legal standards are bound.

A- Classification of Norms Conflict

When legal obligations intersect, they often reflect underlying value conflicts9. A core concept in legal interpretation is that norms generally fall into four types: those that require action (prescriptive), those that forbid action (prohibitive), those that allow certain actions (permissive), and those that excuse from action (exemptive).10 This classification plays a key role in differentiating environmental norms from those outside the environmental domain, and in examining internal inconsistencies among environmental norms. The main distinction is between rules that create duties—either to act or to refrain—and those that grant rights, whether by allowing or excusing certain behaviors. In the first scenario, a state is obligated to act in a specific manner, either by performing a positive duty (an action) or by observing a negative duty (restraint). In the second scenario, the state has the discretion to exercise or not exercise a right. However, for a right to be recognized as such, it must be capable of being exercised. The exercise of a right may be subject to inherent limitations stemming from the nature or status of the right-holder or contingent legal restrictions. For instance, the right to freedom of speech may be limited by legal provisions such

[9] Biermann, F., & Kim, R. E. (2020). Architectures of Earth System Governance: Setting the Stage. In F. Biermann & R. E. Kim (Eds.), Architectures of Earth System Governance: Institutional Complexity and Structural Transformation (pp. 1-34). Cambridge University Press. https://doi.org/DOI: 10.1017/9781108784641.001(accessed on 7 May 2024).

[10] Ibid.

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as hate speech regulations. Finally, the State maintains the inherent right to conduct, as mentioned in the Lotus principle[11], in the absence of any norms awarding a right, either positive or negative, or imposing a duty.

The norms within MEAs arise from their distinct objectives, goals, implementation mechanisms, and ecological processes, and can be expressed either as behavioral commitments or as rights-conferring norms. As an example of the former, prescriptive rules most treatment standards establish positive duties for member states. For instance, Article 8(j) of the Convention on Biological Diversity (CBD) obliges parties to undertake three specific actions:

i) "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;"

ii) "promote their wider application with the approval and involvement of the holders;" and

iii) "encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices."[12]

As an example of prohibitive norms, many performance standards serve to restrict certain actions. For instance, Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) permits members to exclude the following from patentability:

i) plants and animals other than micro-organisms; and

ii) essentially, biological processes for the production of plants or animals other than non-biological and microbiological processes.[13]

An example of exemptive norms can be found in Article XIV.2 of CITES, which allows member states to exercise their right to adopt any measures that align with their specific conservation goals and trade policies.

"The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession or transport of specimens which is in force or subsequently may enter into force for any Party including any

11 The Case of the S.S. Lotus (France and Turkey), Judgment, 7 September 1927, PCIJ, Ser. A., No. 10, 1927, III: 'International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims.

12 Available on: https://www.cbd.int/doc/legal/cbd-en.pdf. (accessed on 7 May 2024).

13 Available on : https://www.wto.org/english/tratop_e/trips_e/art27_3b_background_e.htm. (accessed on 7 May 2024).

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measure pertaining to the Customs, public health, veterinary or plant quarantine fields".[14]

B- Implication of Normative Conflict, How Legal norms Conflicting?

As discussed in previous sections, normative conflicts between environmental regimes reflect a deeper legal conflict—not merely differences in goals, obligations, or objectives, but in the underlying values that those legal rules and instruments are meant to uphold. Therefore, such overlaps are primarily the result of: (1) a flawed understanding of the certainty or clarity of those values, (2) the relationships among them, or (3) the ways in which they are articulated and interpreted within legal practice.

The first type of hypothesis can be referred to as "valuable values." In situations where two values appear to be in conflict, the contradiction becomes apparent only if both are assumed to be equally valid. However, if only one of them represents a real, actual, or valuable principle, then the conflict effectively dissolves. In such cases, the appropriate legal course of action is to follow the norm that upholds the truly valuable value. For instance, in the case mentioned above, which is considered as latent,[15] the tension between the trade-related provisions of MEAs and the GATT rules concerning environmental measures—would dissolve if one accepts that only environmental protection constitutes a true value, while trade measures related to environmental protection do not. In such a scenario, the principles outlined in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),[16] the Montreal Protocol and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal[17] will prevail on GATT by exclusion the import of certain imports based on the environmental status or regulatory regime of the country of origin.

The second type of hypothesis, which may be termed "hierarchical values," suggests that a proper understanding of the relationship between two conflicting values can resolve the issue. Through sound legal reasoning, it becomes clear that there is no real ambiguity as to which value holds greater weight. A relevant example of this form of conflict is the case in which India, Pakistan, Malaysia, and Thailand challenged the United States at the WTO over its ban on the import of shrimp harvested without turtle excluder devices (TEDs). The United States contended that the shrimp originated from countries that failed to adopt adequate measures to protect endangered species, such as turtles, as required under various multilateral

[14] Available on: https://www.cites.org/eng/disc/text.php. (accessed on 7 May 2024).
[15] See section 2.1.
[16] See Article 4 Para (2,3,4: available on https://www.cites.org/eng/disc/text.php#IV. (accessed on July 7, 2024).
[17] See Article 4 parah (1) clauses A,B,C. available on https://www.basel.int/Portals/4/Basel%20Convention/docs/text/BaselConventionText-e.pdf. (accessed on July 7, 2024).

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environmental agreements.[18] The WTO Appellate Body ruled that the United States may restrict trade for environmental reasons, particularly to safeguard human health, plant life, and endangered species. In its decision, the Appellate Body stated: " We have not agreed that appropriate steps to protect endangered species, such as sea turtles, should not be introduced by independent nations that are member of the". It can be reasonably argued that trade restrictions may, in some cases, be counterproductive to environmental conservation. Moreover, one might contend that reforming the property regimes governing public fisheries and ecosystems represents a more effective legal approach to ensuring the protection of endangered species.[19]

However, the nature of normative conflict remains weakly defined and subject to variation in form. This is because there may be cases in which one of the conflicting values is neither valuable nor hierarchical, as the case study in the following chapter will illustrate. For any given moral value, there are multiple legal pathways to achieve it, of which some are more effective than others. Additionally, the relationship between values and law involves a degree of contingency, meaning that how a value is translated into legal norms can depend on specific contexts and conditions.

In summary, the myth of normative conflict lies in the belief that values themselves are inherently prone to conflict, whether latent or manifest, and whether that conflict is direct or indirect. In some cases, changes to the relevant legal norms or the broader legal framework in which the dispute arises may help resolve the overlap. However, normative conflicts cannot be entirely avoided. They inevitably generate friction when multiple principles are incorporated into law and implemented in different ways. For this reason, many scholars recognize that overlaps do not signify a legal anomaly. Instead, studies on congestion argue that regulatory overlap is a common and persistent feature of both international and domestic law, especially in the field of environmental law[20].

Moreover, the above discussion illustrates that the legal overlaps identified in the previous examples represent genuine collisions within MEAs, particularly those operating in the absence of strong institutional frameworks. While some of these environmental regimes may contain minor organs, their roles are limited and primarily focused on coordinating the interests of member states. Therefore, this research proposes to introduce legal solutions and techniques to address and overcome such legal conflicts, as will be discussed in the following sections.

[18] Panel Report, United States-Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (Oct. 12, 1998) [hereinafter Panel Report, Shrimp 2]; The United States was ordered however to temporarily lift the ban on grounds of discrimination.

[19] Panel Report, Shrimp 2, supra note 17, para. 185. The WTO Appellate Body referred in its decision to a number of international treaties in order to interpret the notion of "exhaustible natural resources" at the heart of this debate.

[20] Sources included the Rio Declaration and Agenda 21, the Biodiversity Convention of 1992, and the United Nations Convention on the Law of the Sea. Fragmentation Study, supra note 7, para. 168.

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3.2 Institutional Conflict

In the creation of environmental legal instruments, international environmental institutions play a peerless role. So, in sake to further the criteria of legal conflicts that exist in the environmental body, this research proposes to approach the diverse situations of institutional conflict. The analytical approach count on theoretical contributions from the field of institutionalism, more precisely, institutions and implementation literatures and studies. institutions are often defined as "an entities created by implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given issue area."[21] The term 'implementation' refers to the level of international implementation at which more international agreements on protocols and procedures of enforcement and the operation of legal rules are involved. This is a main concern when dealing with interlinkages between institutionsin term of approaching the criteria of institutional conflict.

A- Institutional Interlinkage

Institutional overlap and the principle of linkage have arisen as a solution to the problem of addressing global issues in a chaos world that run through poor and disjointed international institutions. The principle of Linkage for Thomas, et al,[22] it can help in managing with this governance defects in regimes by releasing buried synergies among thus regimes, so establishing more active governance structures. Institutions function and Linkage on a various of stages and may appear as an outcome of a designed governance strategy or as a result of ecological, sociological or functional interdependence.

Assuring that one of the most inclusive approaches at grappling with institutional connections, the describing the concepts of embedded, nested, clustered, and overlapping in situations. This part is mostly concerned with the fourth linkage kind of overlapping institutions. According to this, overlap occurs when one regime or institution's functional scope extends beyond the functional scope of another. Unlike the other three, this fourth type of connection may take into account an externality, resulting from unplanned and unexpected consequences of choices. But this description presented was a bit general, it offered a perspective at highest level when every institution are eventually linked by the fact that they operating within the world of public international law.

Moreover, there are two dimensions in which institutional conflict can be researched in detail. First, there may be an excessive number of sub items within a certain issue area, allowing for many sets of functional overlap between two contrasting regimes and institutions, such as Human Rights Law., Trade Law and Environmental Law, this shall be excluding from the thesis area. These items may have a wide range of

[21] Hale, Thomas. "Transnational actors and transnational governance in global environmental politics." Annual Review of Political Science 23.1 (2020): 203.

[22] Hickmann, Thomas, et al. "Institutional interlinkages." Architectures of earth system governance: institutional complexity and structural transformation (2020): 119.

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economic, environmental, and social consequences. Second, there may be multiple regime conflicts concurrent with the first, all of which are inside the same issue area and regime. The later represent such a complex situation that need to conclude in comprehensive survey.

The second dimension might be described as functional, dynamic or, more specific overlapping.[23] This occurs when the regime's functional concerns or subject matter are linked or overlap in "bio-geophysical or socioeconomic terms" and, whilst they might criss-cross with each other on a de facto base,[24] there may be minimum intentional intersect among them. The functional linkage may be suitably describing the present relationship between the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and 1995 United Nations Fish Stocks Agreement (UNFSA). When the latter provides in Article 7(2) impose management procedures for straddling fish stocks and highly migratory fish stocks for the high sea, and that conflict with UNCLOS regulatory, this the case when Article 297(3)(a) offers that the "coastal state shall not be obliged to accept the submission to binding dispute settlement procedures of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone (EEZ) or their exercise."[25] Of course, functional linkage or the symmetry of overlaps among regimes and institutions would repeatedly deliver the origin for further, deliberate interaction.

B- Criteria of Institutional Conflict

To address the numerous instances of institutional conflict, it shall distinguish between the norms established by an institution and the explicitly stated rules to which states members of that institution may be bound. Norms denote to the overall policy objectives and principles of the institution that incline to take a legitimacy among participating member actors to this institution. The explicit rules provide specified regulations for state conduct, at implementation phase. such identification among norms and rules is made mainly to grab the dynamics of environmental institutions contradiction and conflict. The normative effect of institutions is likely to be obvious from the initial phases of regime creation. while explicit rules typically emerge later in the regime formation process.

Currently, many MEAs incline to be establish as institutions, where, within well-nested protocols, more precise policy-oriented rules are defined next. According to

[23] Ivanova, Maria. "The Untold Story of the World's Leading Environmental Institution." (2021).

[24] Ibd.

[25] As the exercise of such sovereign rights by the coastal state is one of the key elements of article 7, article 297(3)(a) of the LOS Convention seems to restrict the possibilities for compulsory settlement of disputes concerning compatible measures or the indication of provisional measures significantly. See Alex G. Oude Elferink," The Impact of Article 7 (2) of the Fish Stocks Agreement on the Formulation of Conservation and Management Measures for Straddling and Highly Migratory Fish Stocks." (1999):2. available on http://www.fao.org/3/a-bb037e.pdf. (Accessed on Jun 9 2024).

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the same memo, a conflict situation is not inevitably static. As negotiation parties become aware of the tensions produced by divergent standards or convention, this may give rise to constructive negotiations and efforts to produce logical taxonomy. So, this research amount on a criterion to distinguish the institutional overlap that suite the congesting of environmental institutions. Hence to determine the suitable taxonomy that fit with the concept of legal institutional conflict.

Type I of institutional conflict shows the overlap between dissimilar norms, and agreed or settled rules in term of implementation, but in different subject-matters. More clearly, this kind of overlap create a legal conflict on phase of institutional negotiations and before interring into force. An instance of this typology is the case study of United States-Shrimp that mentioned earlier.[26] In the depth of this case there is a conflict between norms of international institution, and similarities between rules that created to implement legal norms adopted by same institutions. The institution namely are WTO and environmental institutions that protect the integrity of ecosystems, natural resources, animal and plant life, and human health such as UNFSA.

Thought WTO is established for trade purposes, but it operates in way to envisaged environmental damage, for that WTO adopt environmental measures to avoid any environmental degradation.[27] On the one hand, the WTO reinforcing trade liberalization as a way to economic growth. Open trade would give more guarantees for developing countries to the huge markets. Trade is sponsored by the WTO as a means to provide well employment prospects, to grant to underdeveloped and developing countries a chance of access to education and medicine, and to increase the values of living and enhance overall human well-being. Sikina [28] asserted that MEAs maintain the integrity of natural resources, ecosystems, animal and plant life, and human health. So, numerous MEAs with trade measures have multiple objectives, to all of which trade measures might not be matched.

The institutional overlap in type II describes the overlap between institutions with both differ norms and rules, regarding to the several different issue-area. This may be expected to depict the situation with the maximum opportunity for conflict. The situation may arise when multilateral agreements, such as two agreements target the trade and environment, contradict within a single-issue area. This is a situation of the relationship between Basel Convention 1992 on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal that adopted by UN, and GATT principles that adopted by WTO. Both treaties belong and refer to different objectives and different rules in application. The free trade principles applied by GATT lead to many jeopardies due to the unsuitable handling have been the impact to human health by leakage of toxins into ground water, the atmosphere, or the soil etc. Basel

[26] See section 3.1.

[27] An in-depth overview of trade measures in several MEAs is contained in WTO document WT/CTE/W/160/Rev.2 of 25 April 2003.

[28] Jinnah, Sikina. “Overlap management in the World Trade Organization: Secretariat influence on trade-environment politics.” Global Environmental Politics 10.2 (2010): 54.

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Volume (67) August 2025
IJOHSS

Convention impose a complete ban on trade in hazardous waste among member parties to the Convention and non-parties and it specifically gives right of any party to exclude the import, export of hazardous waste.[29]

In type III of institutional overlap, institutions face an overlap situation with compatible or agreed norms and different or divers rules in application. This situation exists when an institution has been created on compatible basis of goals and objectives, but ultimately their explicit rules are divergent in application. Examples are the relationship between conservation treaties such as UNCLOS[30] and some resource management treaties, such as the whaling regime under which the International Whaling Commission IWC 1949 operates. When the IWC was established, the whale has been seen as an economic resource by organization. The main reason for protection imposed by this convention was to secure a stable and long-term income for the whaling industry. This overall policy objective, as stated in the preamble to the International Convention for the Regulation of Whaling ICRW.[31] recently, IWC regulations have been importantly changed to reflect due to the international presser represent by UNCLOS under Article 56.[32] Later, a much higher focus by ICW on pure conservation instead of economic purposes. Against this typology, the institutional overlap suited to the third type. It represents a legal conflict of mandated within environmental issues that aim to protect the ecosystem and lifecycle in various matters.

4. Discussion and Finding

This research examined how and when the congested instruments of MEAs overlap on specific subject matters. The findings demonstrate that when two regimes share overlapping objectives, approaches, principles, and norms, it is possible—at least to some extent—that they may influence each other's overall performance.

In general, a logical classification has been proposed that suits the reality of a congested environmental legal framework, based on the understanding that the central entities capable of legislating and creating environmental rules are limited. A review

[29] Articles 6 Para 1,2,3,4 and 5, of Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal outline the modalities for transboundary movement of hazardous wastes. Available on https://www.basel.int/Portals/4/Basel%20Convention/docs/text/BaselConventionText-e.pdf. (accessed on July 7, 2024).

[30] Article 65 came from an American proposal made in 1979. The provision has as its key elements the goals of conservation of marine mammals and cooperation to achieve that conservation.

[31] The preamble to the Convention states that its "purpose is to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry". Available on https://www.loc.gov/law/help/us-treaties/bevans/m-ust000004-0248.pdf. (accessed on July 11, 2024).

[32] See Article (56) of UNCLOS. Available on https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf. (accessed on July 11, 2024).

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of the fundamentals of fragmentation in general international law confirms that both states and international institutions are the primary international actors. Consequently, norms are predominantly developed through interactions between these two actors. This implies that there is no universal legislature or administrative authority with a comprehensive mandate. Only states and institutions possess such rule-making capacities.

It is evident that the congestion of MEAs poses a threat to the harmony, coherence, and accountability of the environmental legal system, ultimately leading to the inevitable outcome: conflict. Generally, identifying the main actors in international law provides a foundation for constructing a basic categorization of the environmental legal framework, particularly in relation to fragmentation and the resulting conflicts. Typically, the processes of law-making and implementation are carried out by states and institutions. However, in theory, environmental legal norms can be classified into two main types: functional norms and institutional norms.

Building on this introduction, the categorization adopted in this research serves as a tool to diagnose existing conflicts within the environmental legal framework. Norms originating from states to address environmental issues typically lack institutional mandates and are often defined by the specific activities or functional roles they are meant to perform. These norms are shaped entirely by the will and consent of states. This research refers to them as changeable norms, reflecting the diverse and often competing interests of member states within each convention. These norms are further classified based on the conditions of their creation and implementation, both of which are determined by the states themselves. In contrast, norms that arise through institutional sources are governed by procedures managed by the institution from the drafting stage to implementation, with the institution acting on behalf of its member states.

The research highlights that, from the perspective of legal congestion, it is crucial to determine whether a conflict should be classified as a normative conflict or an institutional conflict. A true conflict, in the legal concept, will give rise to a diversity of legal problems, but the main actors of environmental regime are still the sole source that can influence the mechanism of conflict

In practical terms, this research aimed to distinguish between the two dimensions of legal fragmentation and conflict within the body of environmental law, and the main findings are as follows:

1- For legal instruments directly managed by state actors without an institutional mandate, overlap in the sharing of subject matter has been present throughout the entire lifecycle of these regimes—from creation and operation to implementation. This pattern was evident in several examples discussed in the research.

2- For environmental legal instruments operating under an institutional mandate, the conventions are characterized by rigid and fixed objectives. This means that these institutions function based on predetermined and stable goals. As a result, overlapping of certain subject matters tends to occur primarily during the creation and implementation phases, rather than during the operational phase.

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IJOHSS

3- Consequently, legal instruments managed directly by state actors without an institutional mandate will continue to evolve as long as states actively participate in decision-making processes through conferences and other governing bodies of the conventions. As a result, ambiguity and divergence are likely to persist and expand due to the intersection of legal activities driven by the multiplicity of state interests.
4- In contrast to overlaps involving environmental legal instruments managed directly by states, those operating under an institutional mandate place limits on state authority, as such restrictions are established at the time of the institution's creation. As a result, institutional organs become the primary actors influencing decisions on environmental matters. This centralized structure makes post-creation changes more difficult, and any resulting overlaps tend to be smaller, more clear-cut, and typically arise only during the creation and implementation phases.

5. Recommendations

This research offers the following recommendations to contribute to the existing body of knowledge:

1- Concerning the first method of managing conflicts through legal techniques—specifically, avoiding and resolving conflicts as outlined in VCLT 1969, this study highlights the limitations and challenges of these mechanisms in effectively addressing legal overlaps within MEAs. The research hereby, recommends various additional techniques to makes them adequate. (1) revising how states decide which contradiction are worthy of attention; (2) taking a proactive approach to treaty drafting in order to avoid potential conflicts; (3) using purposivist interpretation more frequently; (4) using assurance in an expanded and more formalized manner; (5) institutionalizing safeguards against treaty conflicts, particularly for institutional one; (6) incorporating better background rules for instances where safeguards and other techniques are not effective; and (7) refining the processes states use to build the international legal system. These techniques require negotiators to think of the international environmental legal system as a web of related agreements that can affect one another. Consequently, not only will these techniques prevent conflicts, but it will also have the salutary effect of spurring international lawyers, and policy makers, who profess to be working within an international environmental legal system, to more carefully consider the shape and operation of that system as a whole.
2- With regard to the second method of conflict management (coordination and cooperation), such method has been mandated for conference of parties COPs, Secretariats and other entities created by MEAs, whether those operating within and without institutional mandate. Here, this research recommends the existence of such method and initiatives in proactive steps instead of creating them after conflict manifestation. This could be achieved if different MEAs have certain areas overlapping in regulations however, it necessitates the establishment of a second-order institution or entity in advance that can coordinate the overlap.

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IJOHSS

3- Taken together, these methods and techniques do not offer a straightforward solution to the overlaps resulting from the congestion of MEAs. Due to these limitations, this research recommends that it is better, however, to focus on minimizing the effects of a treaty overlap, rather than covering it over with a formalistic solution that does not address the underlying problems. Thus, there are two basic requirements for an effective response to treaty conflicts: (1) default rules that give better predictability as to which treaty would be enforceable in the case of conflict; and (2) standard procedures for treaty negotiators and drafters to maximize the probability of avoiding conflicts. If international lawyers and policy maker wish to claim that international environmental law functions as a coherent system, they must treat it as such. Fostering the habits and procedures that build coherence-from how clauses are drafted to the underlying rules governing state practice with respect to treaties-is of primary importance.

6. Conclusion

This assessment of legal overlap within the international environmental law debate was needed, firstly, to reinforce the direction of this research with regards to its objectives of examining the contradictions caused by the congested of MEAs legal instruments. The large number of environmental instruments is one of the main features of the international environmental law's development and the aforementioned law's huge expansion over the last thirty years has drawn attention to the various tensions among the various norms of the environmental regimes. The notion of overlap that raised and discussed in this research emphasized the incoherence and contradictions that exist with the establishment of MEAs as a result of environmental fragmentation. It also emphasized the inevitable normative and institutional legal conflict.

Secondly, the examination of the legal overlap within and without the institutional mandates in this research support the argument to adopt the main actors as the standard to identify between the conflict within the rules created by the state's efforts through more projects, avenues and from those settled by the institutions that were acting on behalf of member states. As described earlier, the conventions run by the member states', The operations carried out through COPS and ad hoc groups were often marked by inconsistent rule application. This inconsistency stemmed from the evolving needs and interests of member states in Multilateral Environmental Agreements (MEAs) that function without a formal institutional mandate. In contrast, institutions with defined mandates tend to operate more rigidly, strictly adhering to established rules. This distinction is important, particularly in the context of legal overlap as examined in this research. From an international law perspective, it is crucial to determine whether an overlap is normative or institutional in nature. True legal overlap can lead to various liability concerns. Although some international legal scholars may have exaggerated the risks associated with the fragmentation of international law, these issues remain significant.

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IJOHSS

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IJOHSS

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