# The Role of Norms as a Solution for the Legal Problems Caused by the Overlapping Subject Matters of the Provisions under Multilateral Environmental Treaties
# บทบาทของบรรทัดฐานในฐานะแนวทางแก้ไขปัญหาทางกฎหมายอันเกิดจากการทับซ้อนกันของเนื้อหาสาระแห่งบทบัญญัติภายใต้สนธิสัญญาพหุภาคีด้านสิ่งแวดล้อม

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## Abstract

Examining the problem of overlapping subject-matters of provisions under Multilateral Environmental Treaties (METs), this study posits that an international legal norm can serve as the mechanism to resolve the resulting conflicts of METs obligations. The study proceeds from the observation that the Vienna Convention on the Law of Treaties 1969 (VCLT) does not provide adequate provisions to address all scenarios of substantive overlap due to the METs successively concluded at different times and regions but addressing the same subject-matters, eventually leaving states in a legal problem, namely, a condition of compliance uncertainty that risks treaty breach and undermines effective global environmental governance. The findings illustrate that the existing remedial efforts reliance on the norms of Common Heritage of Mankind and Common Concern of Humankind, and various modes of treaty interpretation prove either legally indeterminate or practically constrained. With the objectives of resolving the aforementioned problem despite there being no effective solutions available, this study employing a mixture of doctrinal and normative legal research methodologies – therefore draws on Lon Fuller's theory of the Internal Morality of Law, the theory of Interactional Law, Christine Korsgaard's theory of Practical Identity, and the normativity theories of David Hume and others in order to propose a formulation of a new international legal norm as a solution to the mentioned legal problem. The study proposes an intentional construction of a new international legal norm through a structured, multi-stage process of inter-state communication facilitated by United Nations bodies. With the relevant theories used in framing, the proposed international legal norm, built through the mechanisms described in this study would generate in states an internalised sense of obligation that leads states to comply not from fear of sanction but from a perception of legitimacy, thereby not only sustaining the feasibility and efficiency of the norm itself, but also securing effective and voluntary compliance of the states, so that the legal problem caused by the overlapping subject-matters under the METs can be resolved by the international legal norm. This also ultimately strengthens the architecture of global environmental governance.

***Keywords:*** Overlapping Subject-Matters under Multilateral Environmental Treaties; International Legal Norms; Vienna Convention on the Law of Treaties 1969; Interactional Law; Internal Morality of Law

## บทคัดย่อ

การศึกษานี้มุ่งตรวจสอบปัญหาการทับซ้อนกันของเนื้อหาแห่งบทบัญญัติภายใต้สนธิสัญญาพหุภาคีด้านสิ่งแวดล้อม (Multilateral Environmental Treaties) โดยตั้งสมมติฐานว่าบรรทัดฐานทางกฎหมายระหว่างประเทศสามารถทำหน้าที่เป็นกลไกในการระงับความขัดแย้งระหว่างพันธกรณีที่เกิดจากสนธิสัญญาพหุภาคีด้านสิ่งแวดล้อมได้ การศึกษาได้ดำเนินการจากข้อสังเกตที่ว่าอนุสัญญากรุงเวียนนาว่าด้วยกฎหมายสนธิสัญญา ค.ศ. 1969 มิได้บัญญัติบทมาตราที่เพียงพอสำหรับการแก้ไขสถานการณ์ทั้งปวงอันเกิดจากการทับซ้อนกันในเนื้อหาสาระ ซึ่งเป็นผลมาจากการที่สนธิสัญญาพหุภาคีด้านสิ่งแวดล้อมได้รับการทำขึ้นต่อเนื่องตามลำดับในห้วงเวลาและภูมิภาคที่แตกต่างกัน แต่กลับมุ่งกำกับดูแลเรื่องเดียวกัน จนท้ายที่สุดทำให้รัฐประสบปัญหาทางกฎหมายที่เรียกได้ว่าเป็น "ความไม่แน่นอนในการปฏิบัติตามพันธกรณี" ซึ่งก่อให้เกิดความเสี่ยงต่อการละเมิดสนธิสัญญาและบั่นทอนประสิทธิภาพของการธำรงรักษาไว้ซึ่งธรรมาภิบาลของสิ่งแวดล้อมโลก ผลการศึกษาชี้ให้เห็นว่าความพยายามในการแก้ไขปัญหาที่มีอยู่ในปัจจุบัน ไม่ว่าจะเป็นการอาศัยบรรทัดฐานมรดกร่วมของมวลมนุษยชาติ (Common Heritage of Mankind) และความห่วงกังวลร่วมของมวลมนุษยชาติ (Common Concern of Humankind) รวมทั้งวิธีการตีความสนธิสัญญาในรูปแบบต่าง ๆ นั้น ล้วนปรากฏว่าขาดความแน่ชัดทางกฎหมาย หรือมีข้อจำกัดเชิงปฏิบัติที่ขัดขวางการนำไปใช้อย่างได้ผล ด้วยเหตุนี้ เพื่อบรรลุวัตถุประสงค์ในการแก้ไขปัญหาดังกล่าวในเมื่อยังปราศจากแนวทางแก้ไขที่มีประสิทธิผล การศึกษานี้โดยอาศัยระเบียบวิธีวิจัยทางกฎหมายแบบผสมผสานระหว่างแนวทางหลักนิติศาสตร์ (doctrinal) และแนวทางเชิงบรรทัดฐาน (normative) และการประยุกต์ทฤษฎีศีลธรรมภายในของกฎหมาย (Internal Morality of Law) ของลอน ฟูลเลอร์ (Lon Fuller) ทฤษฎีกฎหมายปฏิสัมพันธ์ (Interactional Law) ทฤษฎีอัตลักษณ์เชิงปฏิบัติ (Practical Identity) ของคริสทีน คอร์สการ์ด (Christine Korsgaard) และทฤษฎีบรรทัดฐานนิยม (Normativity Theories) ของเดวิด ฮูม (David Hume) ตลอดจนของนักคิดคนอื่น ๆ เพื่อเสนอการกำหนดโครงสร้างของบรรทัดฐานทางกฎหมายระหว่างประเทศบรรทัดฐานใหม่อันเป็นทางออกสำหรับปัญหาทางกฎหมายดังกล่าว การศึกษานี้เสนอให้มีการสร้างบรรทัดฐานทางกฎหมายระหว่างประเทศใหม่ผ่านกระบวนการสื่อสารระหว่างรัฐที่มีโครงสร้างชัดเจนและดำเนินไปเป็นลำดับขั้น โดยอาศัยองค์กรของสหประชาชาติเป็นตัวกลางอำนวยความสะดวก ด้วยกรอบทฤษฎีที่ใช้ในการกำหนดทิศทางดังกล่าว บรรทัดฐานทางกฎหมายระหว่างประเทศที่เสนอและสร้างขึ้นโดยผ่านกลไกที่อธิบายไว้ในการศึกษานี้จะก่อให้เกิดความรู้สึกแห่งพันธกรณีที่ถูกกลืนให้เป็นส่วนหนึ่งของจิตสำนึก (internalised sense of obligation) แก่รัฐ อันจะนำพาให้รัฐปฏิบัติตามมิใช่ด้วยความหวาดกลัวต่อบทลงโทษ หากแต่เป็นเพราะรับรู้ถึงความชอบธรรม (legitimacy) ของบรรทัดฐานนั้น อันจะไม่เพียงธำรงรักษาความเป็นไปได้และประสิทธิภาพของบรรทัดฐานดังกล่าวเองเท่านั้น แต่ยังรับประกันการปฏิบัติตามอย่างสมัครใจและมีประสิทธิผลของรัฐต่าง ๆ เพื่อให้ปัญหาทางกฎหมายอันเกิดจากการทับซ้อนกันของเนื้อหาสาระภายใต้สนธิสัญญาพหุภาคีด้านสิ่งแวดล้อมสามารถได้รับการแก้ไขโดยบรรทัดฐานทางกฎหมายระหว่างประเทศดังกล่าว กล่าวในท้ายที่สุด การสร้างบรรทัดฐานใหม่นี้ยังเป็นการเสริมสร้างความมั่นคงแห่งสถาปัตยกรรมของธรรมาภิบาลสิ่งแวดล้อมโลกอีกด้วย

***คำสำคัญ:*** การทับซ้อนกันของเนื้อหาสาระภายใต้สนธิสัญญาพหุภาคีด้านสิ่งแวดล้อม; บรรทัดฐานทางกฎหมายระหว่างประเทศ; อนุสัญญากรุงเวียนนาว่าด้วยกฎหมายสนธิสัญญา ค.ศ. 1969; กฎหมายปฏิสัมพันธ์; ศีลธรรมภายในของกฎหมาย

## Introduction

The contemporary landscape of international environmental law is characterised by a peculiar complexity: a multitude of Multilateral Environmental Treaties (METs), each fashioned at different historical junctures to address distinct yet deeply interrelated environmental concerns, operates simultaneously upon the same states, covering the same or overlapping subject-matters (Bodansky, 2010). The protection of biodiversity, the mitigation of climate change, the regulation of hazardous substances, and the pursuit of sustainable development are not discrete problems they are facets of a single planetary crisis and it was perhaps inevitable that the legal instruments designed to address them would themselves become entangled.

The root of the difficulty lies in the convention-protocol approach that dominates METs drafting (Bodansky et al., 2007). Conventions are typically drawn in broad, aspirational terms, calculated to attract the widest possible state participation. The concrete obligations the legally binding teeth of the regime are deferred to protocols, adopted at a later stage once sufficient ratification has been secured. The consequence is a layered and fragmented legal architecture: states may be party to a convention but not its protocol; or they may be simultaneously bound by multiple treaty sets whose provisions overlap in subject-matter, pulling their compliance obligations in different directions.

The Vienna Convention on the Law of Treaties 1969 (VCLT) is the foundational instrument for managing such conflicts (Shaw, 2003). Yet, as this study demonstrates, Article 30 of the VCLT[1] the principal provision on the application of successive treaties

[1]Article 30 Application of successive treaties relating to the same subject matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.
4. When the parties to the later treaty do not include all the parties to the earlier treaty: (a) as between States parties to both treaties the same rule applies as in paragraph 3; (b) as between a State party to both treaties and a State party to

on the same subject-matter does not furnish a complete or reliable solution to the range of scenarios that arise in the context of overlapping METs. The interpretative tools developed by scholars and practitioners carry their own limitations, and the environmental norms that have emerged to fill the gap remain insufficiently concretised to resolve operational treaty conflicts.

This study thus realises the difficulty of states in application and compliance with METs with respect to the issues where the regimes of the rules of law relevant are overlapping, thus, confusing. The states are unfortunately left with nothing to abide by. This study consequently aims to resolve this legal problem by initially examining the existing norms and finds that they are not of assistance since there are many norms regarding the same environmental subject-matter and there is no hierarchy of them in order for the states to know which one to overrule the others and which one is to be applied to the subject-matter.

Whilst there are neither the concrete treaty law nor the existing norms appropriate to be a solution, this study argues that the solution must be sought not in yet another treaty-making, but in the deliberate construction of a new international legal norm, crafted through a principled process of inter-state communication grounded in legal philosophy.

## Research Assumption

The central assumption of this research is that an international legal norm can serve as an effective solution to the legal problems caused by the conflict of provisions arising from overlapping subject-matters under METs. This assumption proceeds from two foundational observations: first, that the existing instruments of treaty law most notably the VCLT leave a structural gap that cannot be remedied by treaty interpretation alone; and second, that norms, when properly constructed through a

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only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

process that satisfies the criteria of legal legitimacy, can generate a binding force that is both practically effective and durable.

## Research Objectives

The research pursues five objectives, each building upon the preceding:

(i) To examine and evaluate the conflict of the existing METs, identifying the legal problems arising from their overlapping provisions

(ii) To investigate the METs and their protocols to determine whether the treaties concluded by the convention-protocol approach causes contradiction between treaty regimes themselves

(iii) To evaluate the effectiveness of the norms currently applied to the legal problem of the study

(iv) To study the principles of international law and norm theories to determine whether norms can be a solution to the legal problem of the study

(v) Based on the foregoing findings, to propose a solution grounded in the role of international legal norms, with a view to resolving the legal problems of the study and, particularly, the loophole left by the VCLT, which can be a stepping stone to a further academic contribution to the field of international law.

## Scope of the Research

The study's scope is defined along four dimensions. First, in terms of subject-matter and purpose, the study is principally grounded in international law both its general rules and particular rules of relevant treaty law, most notably the VCLT. Philosophies and legal theories from the legal, environmental, and economic disciplines are consulted and applied where they are functional and beneficial to the analysis. Second, the legal problems to be identified and the solution proposed are confined to the international regulatory regimes under international environmental instruments and norms, and to METs in terms of effective treaty-making, legal implementation, compliance, and state cooperation. Third, the study is oriented toward the benefit of METs, global environmental governance, and the environment at large. Fourth, while the study is a work of legal scholarship, it is of an interdisciplinary character and may be of value to cognate fields including political science and international relations.

## Expected Benefits

The study is expected to benefit international environmental law and international law generally, contributing to effective global environmental governance through a novel normative framework for resolving METs conflicts. It may be of practical value to states, international organisations, legal scholars, and practitioners engaged in environmental treaty compliance and global environmental governance reform.

## Key Terms

Multilateral Environmental Treaties (METs): International treaties concluded among multiple states for the protection or management of the global environment.

Overlapping Subject-Matters: The situation in which two or more treaties address the same or related subject-matter, generating potentially competing obligations upon states parties to both instruments.

International Legal Norm: A principle or standard of conduct that, through sustained state practice, opinio juris, or the structured process described in this study, acquires binding force in international law.

Fidelity to Law: An internalised disposition of states to comply with legal norms on the basis of perceived legitimacy, as distinguished from mere external coercion.

Common Concern of Humankind (CCH): An environmental norm treating global environmental problems as matters of legitimate concern to the entire international community, irrespective of domestic jurisdiction.

Common Heritage of Mankind (CHM): An environmental norm reconfiguring certain resources as common property beyond the exclusive jurisdiction of any state.

## Research Methodology

This study is conducted using doctrinal and normative legal qualitative research methodologies (Neuman, 2014). Three distinct streams of documentary research are employed (Scott, 2006).

The first stream is documentary research through the assessment of the content of existing METs including their obligations, protocols, and compliance mechanisms together with the broader body of international environmental law (both

treaty and customary), general international law, case law, action plans, and institutional documents.

The second stream is documentary research on norms particularly environmental norms including theories on norms, the roles of norms in regulatory systems, environmental ethics, and the philosophies and concepts of the legal, environmental, and economic disciplines.

The third stream is documentary research on the philosophical theories and conceptual frameworks of other disciplines relevant to the environment, insofar as they inform the design of the legal solution proposed by this study.

Together, these three streams of documentary research are integrated through legal analysis directed at a single practical end: to propose a normative framework that resolves the conflict of overlapping METs provisions and that satisfies the conditions of legal legitimacy required to generate durable state compliance.

## Theoretical Framework

The theoretical foundation for formulating an international legal norm is Lon Fuller's theory of the Internal Morality of Law and Interactional Law, supplemented by Korsgaard's theory of Practical Identity and the normativity philosophy of Hume and Pufendorf as to be explicated below.

### 1. Lon Fuller's Theory: The Internal Morality of Law

The theoretical architecture of this study rests primarily upon Lon Fuller's *The Morality of Law* (1969). Fuller defines law as 'the enterprise of subjecting human conduct to the governance of rules' a formulation that treats law not as a completed product but as a continuing challenge, shaped through the interactions of actors within a community.[2] Fuller's most important contribution is his theory of the Internal Morality of Law: the proposition that eight criteria of legality must be satisfied for a rule to function as law and to generate genuine obligation:[3]

[2]"Fidelity" as access to reasons and meaning is a central tenet of pragmatic social theory from Taylor (1993), where a shared understanding of the meaning of certain kinds of acts is a precondition for meaningful action.

[3]Fuller: "What I have called the internal morality of law is a procedural version of natural law ... concerned not with the substantive aims of legal rules, but with the ways in which a system of rules

(i) Law must direct conduct by permitting, prohibiting, or requiring specific behaviours.

(ii) Law must be promulgated so that subjects can know its content.

(iii) Law must be intelligible.

(iv) Law must be prospective, not retroactive.

(v) Law must be internally consistent, free from self-contradiction.

(vi) Law must not require the impossible.

(vii) Law must be relatively constant over time.

(viii)There must be congruence between the promulgated law and its administration by officials.

When a norm satisfies all eight criteria, it generates what Fuller terms *fidelity to law*: an internalised sense of obligation that leads subjects to comply not from fear of sanction but from a perception of legitimacy. H.L.A. Hart and Joseph Raz — notwithstanding their positivist reservations accept that when the criteria are not met, law ceases to function as law, thereby conceding the functional indispensability of Fuller's conditions.[4]

**2. Interactional Law and Shared Understanding**

Fuller's account of lawmaking rests on the concept of interaction. Brunnee and Toope, in their major study *Legitimacy and Legality in International Law* (2010), developed this insight into the theory of Interactional Law, demonstrating empirically that when states participate in open interactional processes, the communities of practice that emerge generate stronger normative regimes.[5] The depth of shared understanding determines the robustness of the norm: only when actors engage in sustained communication reasoning together about their purposes, concerns, and

for governing human conduct must be constructed and administered if it is to be efficacious and at the same time remain what it purports to be."

[4]Hart and Raz take Fuller's criteria as purely instrumental, not moral; nonetheless they agree that when certain criteria are not met, law ceases to be law.

[5]See Brunnee and Toope (2010). Fuller's "interactionism" is central to the upholding of autonomy; law guides human action by addressing reasons for action to agents who must reason further with the norms to apply them in specific contexts.

interests does a norm acquire the legitimate authority that produces genuine compliance.[6]

**3. Theories of Normativity**

To understand how a norm acquires binding force, this study examines four theories of normativity (Korsgaard, 2003, pp. 18–20):

***(i) Voluntarism*** traces obligation to the command of a legitimately accepted authority (Pufendorf, 1990, p. 171).

***(ii) Realism*** holds that agents themselves determine normativity through their own capacity for reasoned judgment (Korsgaard, 2003, pp. 31–32).

***(iii) Reflective Endorsement*** locates normativity in the general point of view adopted by a perceiver evaluating conduct (Hume, 1985, pp. 581–582).

***(iv) The Appeal to Autonomy*** holds that obligation springs from the values endorsed through rational reflection (Korsgaard, 2003, p. 89).

Each theory illuminates a dimension of the norm-building process and informs the design of the proposed framework.

**4. Practical Identity**

Korsgaard's concept of Practical Identity completes the theoretical architecture. A state constructs an identity through commitment to certain principles; it is this identity that generates the obligations by which the state is bound (Korsgaard, 2003, p. 89). When a state participates in the creation of a norm and comes to regard that norm as an expression of its own values and principles of what it stands for in the international community its Practical Identity becomes engaged (Korsgaard, 2003, pp. 100–101). Compliance follows not from coercion but from self-expression. This is the deepest form of fidelity to law, achievable only through a process of norm creation in which states are genuine participants.

[6]Brunnee and Toope (2010): fidelity is generated, and obligation is felt, because adherence to the eight criteria of legality — a “practice of legality” — produces law that is legitimate in the eyes of the states to which it is addressed.

## Research Framework

The research framework integrates three theoretical pillars: (1) Fuller's Internal Morality of Law and Interactional Law, which provides the criteria by which any proposed norm must be assessed and the communicative process through which it must be constructed; (2) Korsgaard's theory of Practical Identity, which explains why and how states come to feel genuinely bound by norms that they have participated in creating; and (3) theories of normativity (Voluntarism, Realism, Reflective Endorsement, and the Appeal to Autonomy), which together illuminate the philosophical foundations of normative obligation in international law.

Applied to the problem of overlapping METs, the framework generates a model in which: shared understanding (produced through structured inter-state communication) generates fidelity to law (the internalised sense of obligation) which in turn produces obligatory quality (formal legal binding force). The three properties are mutually reinforcing and must operate together for the norm to be effective.

## Research Findings

### 1. Legal Problems Caused by Overlapping Subject-Matters under METs

#### 1.1 The Phenomenon of Overlapping Subject-Matters

It is useful to begin with concrete illustrations. The Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on Prior Informed Consent both address the regulation of hazardous chemicals, generating overlapping obligations regarding their safe handling and disposal. The Paris Agreement and the Convention on Biological Diversity (CBD) overlap in the domain of climate mitigation: reforestation and ecosystem management, prescribed under the Paris Agreement as emissions-reduction measures, simultaneously engage the biodiversity obligations of the CBD. More broadly, the sustainable development frameworks under Agenda 21 and the United Nations Sustainable Development Goals share common subject-matter with numerous specific environmental agreements. A comparable pattern of interaction arises between the Antarctic Treaty System and the other conventions applicable to the Antarctic area (Vigni, 2000).

These overlaps are not accidental. Global environmental issues are rarely isolated: climate change affects biodiversity; ecosystem degradation accelerates climate

change. The overlapping subject-matters of METs reflect the interconnected nature of the problems they address. Yet what appears synergistic from a policy perspective becomes legally problematic when states are required to identify which obligation governs their conduct and the answer is not readily discernible from the treaties themselves.

**1.2 The Convention-Protocol Approach as a Source of Conflict**

The convention-protocol approach aggravates these difficulties in two ways. First, there is the internal conflict within a treaty regime: states party to a convention but not its protocol may find that the protocol's obligations modify or supplant the convention's terms in ways that affect their rights. The CBD and its Cartagena Protocol on Biosafety offer a pertinent example.[7] Second, there is the external conflict between treaty regimes: states simultaneously party to the TRIPS Agreement and the Nagoya Protocol face obligations in the domain of genetic resources and intellectual property that are not merely distinct but potentially irreconcilable. The TRIPS Agreement, in protecting intellectual property, may stimulate what scholars have termed 'biocapitalism', while the Nagoya Protocol seeks to ensure equitable benefit-sharing a tension that is structural, not merely interpretive (Suebprasertkul, 2018).

**1.3 The Insufficiency of Article 30 of the VCLT**

Article 30 of the VCLT applies the principle of *lex posterior derogat legi priori* to successive treaties on the same subject-matter.[8] Its application, however, raises several unresolved difficulties: the threshold requirement of 'the same subject-matter'

[7]Article 28 CBD (Adoption of Protocols): 1. The Contracting Parties shall cooperate in the formulation and adoption of protocols to this Convention. 2. Protocols shall be adopted at a meeting of the Conference of the Parties. 3. The text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before such a meeting.

[8]Article 30 VCLT (Application of successive treaties relating to the same subject-matter): Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the latter treaty. As between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

is contested; the interplay with Articles 4[9] and 59 is unclear[10]; the International Court of Justice (ICJ) has applied both *lex posterior* and *lex specialis* without consistently distinguishing them;[11] and doubt persists as to whether certain treaty types are subject to different conflict rules entirely.[12] The most acute difficulty arises when two treaties each contain integral obligations  obligations whose breach necessarily affects every other party's enjoyment of its rights. Where both the UNFCCC and the CBD contain such obligations, no hierarchy can be established under Article 30. The risk of treaty breach and consequent state responsibility is therefore structurally embedded in the current system of overlapping METs.

## 2. Existing Attempts to Address the Problem and Their Limitations

### 2.1 Common Heritage of Mankind and Common Concern of Humankind

Two environmental norms have emerged as potential grounds for resolving conflicts between METs: Common Heritage of Mankind (CHM) and Common Concern of Humankind (CCH). CHM reconfigures certain environmental resources as a form of common property, outside the exclusive jurisdiction of any single state (Birnie & Boyle, 2002, pp. 523–533). CCH, associated with the work of Edith Brown Weiss, treats global environmental problems as a matter of legitimate concern to the international community, irrespective of domestic jurisdiction (Brown-Weiss, 1989, p. 49, 1990). Both norms provide a normative baseline but share a decisive limitation (UNEP, 1990): neither has evolved into a concrete, enforceable rule of international law with a settled

[9]Article 41 VCLT (Agreements to modify multilateral treaties between certain of the parties only): Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if: (a) the possibility of such a modification is provided for by the treaty; or (b) the modification in question is not prohibited by the treaty and does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations.

[10]Article 59 VCLT: A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty, or the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

[11]These rules are to be treated, when applied to the conflict of treaties, not as rules of interpretation but rather as general rules of law accepted by all legal systems.

[12]This question often arises with respect to human rights treaties that create the so-called integral obligations.

hierarchy relative to other environmental norms (Kiss & Shelton, 1999, p. 251). They supply the background of environmental governance but not the circuit breaker needed when two specific treaty obligations directly collide. As Wolfrum and Matz have argued, what is required is a hierarchy of environmental norms  an establishment that has not yet materialised at the international level (Wolfrum & Matz, 2003, pp. 209–213).

**2.2 The Conflict-of-Norms Problem**

A further irony compounds the difficulty. The norms invoked to resolve overlapping METs are themselves in potential conflict with each other. Before any norm can serve as the solution, its own position in the normative hierarchy must be resolved a circularity that confirms no existing norm can serve as the solution in isolation. A new norm, standing apart from and above the matrix of conflicting provisions, is therefore required.

**2.3 Treaty Interpretation and Its Limits**

Treaty interpretation  whether policy-oriented, teleological, or textual under Article 31(1) of the VCLT  offers a second line of response. Yet interpretative approaches, however sophisticated, operate within the bounds of the existing treaty system. They can adjust the application of treaty provisions but cannot create an authoritative rule governing which obligation prevails when integral obligations under two treaties are in equipoise (Fitzmaurice & Elias, 2005, pp. 343–348). And any attempt to resolve the problem through a new treaty risk generating yet another layer of overlapping provisions. The solution must therefore lie outside the treaty mechanism altogether.

## 3. The Role of Norms as a Solution to the Legal Problem

**3.1 The Suitability of International Legal Norms**

The analysis so far establishes that the deficit is not entirely in the law as such but in the normative framework that governs the application of overlapping treaty provisions. The VCLT leaves a gap; existing environmental norms do not fill it; and treaty interpretation cannot bridge it. The solution is the construction of a new international legal norm one that stands outside the conflicting treaty provisions, establishes a principled hierarchy, and commands compliance because it has been produced through a process that generates fidelity (Payne, 2001; Stoeva, 2020, p. 4).

The analogy of war drones is instructive. The use of military drones presented a legal vacuum: no existing rule of international humanitarian law specifically addressed their deployment (Koh, 2010). The US government constructed a normative framework from existing legal materials, asserting legitimacy through principled legal reasoning in

the absence of an explicit rule (Zenko, 2015). The *Lotus* case and the ICJ's Nuclear Weapons Advisory Opinion confirm that in areas of legal vacuum, states are free to define the normative framework for their conduct, subject to general international law (Hurd, 2019, pp. 56, 102). The present problem is analogous: the absence of a rule governing priority among overlapping MET provisions creates a space and a necessity for new norm construction.

**3.2 The Role of the International Court of Justice**

The ICJ serves four distinct functions in the proposed framework: providing authoritative advisory opinions on the interpretation of environmental instruments and applicable principles of general international law; setting precedents through contentious case judgments, as in *Pulp Mills on the River Uruguay*; incentivising treaty compliance by the mere availability of judicial settlement; and elaborating the content of environmental obligations through its treatment of environmental impact assessments. The relationship between the Communication Centre and the ICJ is symbiotic: the Centre generates the shared understanding from which the norm's content is derived; the Court affirms the norm's legal authority and contributes to its progressive development (Besson, 2010, pp. 175–176).

**3.3 Shared Understanding, Fidelity to Law, and Obligatory Quality**

Three essential properties must converge in the new norm. *Shared understanding* is the foundation produced through successive conferences and sustained inter-state dialogue until states converge on a common normative vision. *Fidelity to law* is the product of that understanding, mediated by Fuller's eight criteria: when the norm satisfies all eight, states perceive it as legitimate and feel genuinely obligated to comply. *Obligatory quality* is the formal legal expression of binding force, secured through ICJ advisory opinions, ILC reports, and eventual recognition as customary international law (Besson, 2010, p. 176). Together, these three properties ensure that the new norm is not merely existent but effective capable of resolving METs conflicts and securing the durable compliance of states. In the following is the brief detail of these mentioned essential properties.

*Shared understanding* is the foundational condition upon which both *fidelity to law* and *obligatory quality* depend. It does not arise spontaneously from the mere existence of a legal text; it must be cultivated through a sustained communicative process among states a social practice, in the constructivist sense, within which states

come into contact, exchange their concerns and interests, and gradually converge on a common normative commitment.[13]

*Fidelity to law* is the psychological dimension of legal effectiveness the internalised sense of obligation that leads states to comply with a legal norm not because of the threat of external sanction, but because they perceive the norm as legitimate. In Fuller's framework, this quality emerges directly from adherence to the eight criteria of legality.[14] The International Law Commission (ILC)'s monitoring and facilitation role is essential: it is through the systematic satisfaction of Fuller's criteria of legality that the norm acquires the fidelity-generating authority that distinguishes genuine legal obligation from mere political aspiration.

*Obligatory quality* is the formal legal capacity of the norm to impose binding obligations on states and to attract the sanction-backed authority of international law. *Obligatory quality* is secured incrementally: as state practice consistent with the norm accumulates, the ILC conducts research into the norm's status, and the ICJ may deliver an advisory opinion confirming its character as a rule of customary international law. The endorsement of a General Assembly resolution transforms political affirmation into a formal signal of legal authority. These three properties must interact and reinforce one another only then does the international legal norm acquire the effectiveness that the conflict of overlapping MET provisions urgently demands.

## Conclusion

This article has demonstrated that the legal problems caused by the overlapping subject-matters of METs problems rooted in the inadequacy of the VCLT, the indeterminacy of existing environmental norms, and the limits of treaty interpretation can be resolved through the deliberate construction of a new international legal norm.

The research hypothesis has been confirmed: such a norm is both conceptually possible and practically achievable. The key insight, crystallized from the findings, is

[13]See Brunnee and Toope (2010). The term “Constructivism” from international relations theory explains Fuller’s first idea about interaction and norm formation. Fuller’s “interactionism” is central to the upholding of autonomy; law guides human action by addressing reasons for action to agents who must reason further with the norms to apply them in specific contexts.

[14]Brunnee and Toope (2010): fidelity is generated, and obligation is felt, because adherence to the eight criteria of legality — a “practice of legality” — produces law that is legitimate in the eyes of the states to which it is addressed.

that the solution must be found outside the treaty system with no convention-protocol approach applied since a new treaty concluded would merely replicate the problem at a higher level of abstraction. Thus, the required solution is a norm constructed through a principled, structured, and inclusive inter-state process compatible with Fuller's criteria so that the quality of fidelity to law can exist in states in response to the norm. As explicated and considered as necessary in terms of making the norm legitimate to the states by Brunnee and Toope, such norm with the power of making the states feel obligated to comply with the norm will ensure their compliance with the norm, and, ultimately, the legality of the norm itself. The norm formulated under this study in consequence stands above the conflicting treaty provisions, and provides a stable, authoritative legal framework for resolving priority disputes between them.

With respect to formulating the norm, the study purports that the norm constructed through the proposed process will carry genuine normativity: it will generate fidelity to law in the states that participated in its making, securing the voluntary compliance that legal enforcement mechanisms alone cannot guarantee; indeed, such voluntary compliance by states is built through the concept of shared understanding which can be achieved by the states' self-expression of their value towards the norm as illustrated in the Practical Identity concept by Korsgaard. Such concept serves as an architecture or structure of the norm to be built upon and is possibly and hopefully deemed as practically applied in legal reality to form one humble model in the field of international law to resolve the study's legal problem.

Law's effectiveness does not rest ultimately on force. Rather, it rests on legitimacy and legitimacy is produced through the quality of the process whose essential elements are shared understanding, fidelity to law and obligatory quality by which, in turn, law is made. The stakes are not merely technical. The fragmentation and conflict of METs is an obstacle to effective environmental governance at the very historical moment when the earth's systems face their gravest stress. A norm that resolves this fragmentation enabling states to comply coherently with their environmental legal obligations is a contribution both to the science of international law and to the irreplaceable cause of planetary sustainability.

## Suggestions

Having identified, in the foregoing sections, the inadequacy of Article 30 of the Vienna Convention on the Law of Treaties in resolving conflicts arising from the over-lapping subject-matters of multilateral environmental treaties ("METs"), and having

proposed the gradual construction of a new international legal norm grounded in Fuller's internal morality of law, the interactional account of international law advanced by Brunnée and Toope, and the concept of practical identity articulated by Korsgaard, this study now translates its theoretical findings into the suggestions addressed to three distinct audiences: practitioners who must act within the present legal architecture, the institutions capable of reshaping that architecture, and the scholarly community that will carry the inquiry forward, and also into the suggestion of the seventeen-stage process for the intentional construction of the required norm.

**1. Practical Suggestions**

1.1 States and their legal advisers need not await an entirely new institutional apparatus before acting. As a first and most accessible step, the conferences proposed in this study may practically be convened on the margins of existing Conferences of the Parties to major METs the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity, and comparable regimes — where states already assemble and where the marginal cost of a side-event devoted to norm coherence is modest.

1.2 Treaty negotiators drafting future METs should, as a matter of professional practice, insert explicit conflict or savings clauses identifying which instrument is to prevail in case of inconsistency, rather than relying as the drafters of the CBD and the UNFCCC regrettably did on the silence that gave rise to the very problem this study addresses.

1.3 Fuller's eight desiderata of legality promulgation, clarity, non-contradiction, prospectivity, and constancy among them may usefully serve negotiators and the International Law Commission alike as a practical checklist against which any proposed Code of Norms ought to be measured before it is placed before states for endorsement.

1.4 The secretariat function to record state communications need not be built from nothing; it could practically be housed within the United Nations Environment Programme or attached to the Commission's existing secretariat, so that established administrative capacity is used rather than incurring the delay of constructing an entirely new body.

**2. Suggestion for a Proposed Framework of Stages for Constructing the International Legal Norm**

Drawing on the theoretical framework developed above, this study proposes a structured, seventeen-stage process for the intentional construction of the required norm:

(i) The United Nations General Assembly convenes an international conference, open to all states, to address the legal vacuum created by the inadequacy of the VCLT in resolving conflicts arising from overlapping METs provisions.

(ii) The United Nations Secretariat issues invitations accompanied by preparatory factsheets setting out the nature of the problem and the objectives of the conference.

(iii) States engage in negotiations directed at identifying the normative framework within which competing treaty obligations are to be ranked.

(iv) A Communication Centre is established under UN auspices as the hub for sustained inter-state engagement, recording the concerns and interests of all participating states and commissioning analysis by international lawyers.

(v) The International Court of Justice (ICJ) functions as a subsidiary body to the Centre, providing advisory opinions on questions of international law relevant to the norm-building process.

(vi) The International Law Commission (ILC) works in coordination with the Centre, researching the emergence of state practice and contributing to norm drafting.[15]

(vii) Successive conferences allow states to consider the advisory opinions of the ICJ and the ILC's reports, gradually converging on a shared understanding.

(viii) A Code of Norms is drafted as a written instrument setting out the norm in clear terms, for use as a reference guide when overlapping METs provisions conflict.

(ix) The Code of Norms is subject to periodic revision to reflect evolving state practice.

(x) The Communication Centre operates as a permanent body, potentially incorporated within the ILC to serve norm development across international law broadly.

(xi) Every participating state has the right to nominate an international lawyer as its representative to the Centre, ensuring universal participation and democratic legitimacy.

(xii) Funding for the Centre is secured through a mechanism within the

[15]North Sea Continental Shelf Cases: the ILC and its drafters of the Geneva Convention on the Continental Shelf of 1958 expressed hesitation on the inclusion of Article 6; the ICJ relied on this hesitation in determining whether that rule had crystallised as customary international law.

UN system.

(xiii) The norm's status is evaluated on a rolling basis; once widespread and consistent state practice is established, the ICJ is invited to deliver an advisory opinion and the ILC to report on its status as customary international law.

(xiv) A UN General Assembly resolution formally endorsing the norm provides institutional affirmation of its normative authority.

(xv) The norm is applied by states as the authoritative framework for resolving MET provision conflicts, with the Code of Norms as the reference instrument.

(xvi) Fidelity to law generated by the process is reflected in voluntary state compliance and incorporation of the norm into domestic legal instruments.

(xvii) The process and its outcomes are subject to regular academic review, ensuring the norm remains effective, relevant, and responsive to evolving challenges.

**3. Policy Suggestions**

3.1 This study recommends that the ILC place the coherence of environmental treaty norms expressly on its long-term programme of work, in fulfilment of its mandate of progressive development and codification of international law.

3.2 Because Article 30 of the VCLT was drafted chiefly with reciprocal, bilateral-type obligations in mind, and offers no settled rule of priority where competing treaties impose integral or common-concern obligations owed collectively to all parties, states and regional organizations should consider supplementing the Convention whether by protocol or by a General Assembly resolution of interpretative guidance rather than allowing the gap to be filled piecemeal by inconsistent practice.

3.3 The General Assembly should likewise make fuller use of its power to request advisory opinions from the ICJ on questions of systemic treaty conflict, building on the precedent-setting role the Court has already performed in cases such as the *North Sea Continental Shelf* judgments.

3.4 Any newly drafted Code of Norms should follow a deliberate soft-law-to-hard-law trajectory: treated initially as non-binding guidance, reviewed periodically, and elevated toward customary status under Article 38(1)(b) of the ICJ Statute only once consistent, widespread state practice and the requisite *opinio juris* can genuinely be demonstrated  a sequencing that respects state sovereignty while still working toward the binding capacity this study identifies as ultimately necessary.

**4. Suggestions for Future Research**

4.1 Empirical and quantitative research is needed to map how often Article 30 of the VCLT is actually invoked, or quietly sidestepped, across the corpus of multilateral environmental treaties; the doctrinal account offered in this study would benefit from being tested against such a dataset.

4.2 Comparative research should examine whether the interactional and practical-identity framework developed here for environmental norms can be transposed to other regimes that presently lack settled normative hierarchies, most urgently the governance of cyberspace and artificial intelligence, where the absence of agreed norms is becoming as pressing as it once was for the environment.

4.3 Future scholars might undertake discourse-analytic research on the records of United Nations General Assembly debates and state submissions to test, rather than merely assert, whether something resembling Korsgaard's practical identity can be observed in state behaviour  a study that would build a long-overdue bridge between international legal theory and constructivist scholarship in international relations, of the kind pioneered by Adler. Such research would not only refine the theoretical apparatus proposed in this study but would also indicate whether the seventeen-stage process suggested in this study is realistic in practice or requires recalibration in light of how states actually behave.

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