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**Environmental human rights: exploring the relationship between
international organizations, social activism and transnational
corporations**

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This was Frodo and Sam's own country, and they found out now that they cared about it more than any other place in the world. Many of the houses that they had known were missing. Some seemed to have been burned down. The pleasant row of old hobbit-holes in the bank on the north side of the Pool were deserted, and their little gardens that used to run down bright to the water's edge were rank with weeds. Worse, there was a whole line of the ugly new houses all along Pool Side, where the Hobbiton Road ran close to the bank. An avenue of trees had stood there. They were all gone. And looking with dismay up the road towards Bag End they saw a tall chimney of brick in the distance. It was pouring out black smoke into the evening air.

J. R. R. Tolkien, The Return of the King

Climate change is real and is happening right now. It's the most urgent threat facing our entire species and we need to work collectively together and stop procrastinating. We need to support leaders around the world who do not speak for the big polluters or the big corporations, but who speak for all of humanity, for the indigenous peoples of the world, for the billions and billions of underprivileged people, who'll be most affected by this, for our children's children and for those people out there whose voices have been drowned out by the politics of greed. I thank you all for this amazing award tonight, let's not take this planet for granted, I do not take this night for granted, thank you so very much

Leonardo Di Caprio, Acceptance speech

Enfin à l'écologie

J'm'initie, j'm'initie

Et loin de la pollution je vais tondre mes moutons,

Et loin de la pollution je vais tondre mes moutons,

Et loin de la pollution je vais tondre mes moutons!

Mes moutons, mes moutons, mes moutons!

Zaz, La parisienne

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Introduction

On 30th November 2015 when hundreds of heads of State and government, representatives, and other high ranked State officers met in Paris at the opening of the 21st yearly session of the Conference of the Parties to the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and the 11th session of the Meeting of the Parties to the 1997 Kyoto Protocol.

COP21's magnitude is a rarity, both in terms of size and importance, and such characteristics bear a considerable symbolic value. Indeed, it could be said that humanity as a whole, with very few exceptions was represented in the French capital.

The conference was prepared in order to develop new international rules, aimed at reorganizing some of the ways anthropic activities impact on the ecosystems and the atmosphere, pursuing the specific goal of limiting global warming to less than 2 Celsius degrees (°C) compared to pre-industrial temperatures. In other words, to set a world-wide common defense against a very particular entity – the phenomenon of climate change – recognized as a real threat to human species. So much emphasis isn't out of place, since the drafters of the Paris Agreement appear to share the same view, showed in the very first page of the document, where they assert that “climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response”.

It is not the first time that international authorities identify a common threat, and these formulations may even resemble the old notion of *hostes humani generis* – enemies of the human kind – an expression of ancient origins, which was used in modern age to define pirates and slavers, criminals that could be dealt with by the authorities of any nation of the world.

Of course, we must pay close attention to this formulations, especially when used by men of power outside strict philosophical and juridical context: the act of putting “humanity” in the political arena or in official documents, identifying some persons or organizations as a menace for all, is very often no more than a rhetorical mean: whatever the conflict, after all, it is always a matter of States or other groups, and the self-proclaimed defenders of humanity have invariably had their very particular interests.

However, despite these considerations, I dare say that the vaunted words used in the Paris Agreement may have been even more high-sounding without losing in realism. Climate change is really part of a threat of entirely new kind, linked to the pollution, consumptions and degradation of ecosystems, atmosphere and waters of Earth, as every one of these phenomena is a cause or symptom of a general ecological crisis that is affecting the planet we inhabit. And this crisis really challenges humanity as one entity.

This crisis is different from an economic or military one, as it regards primarily the way we humans interact with the elements of our territory but, on the other hand, it mustn't be compared to calamities of natural origin like earthquakes or epidemic diseases, since ecology is also a matter of how we interact between us.

Clearly, in this chain of interactions the responsibilities for the disaster are definitely not equally shared among nations, peoples and communities; the economies of the “developed States” have severely overexploited the common resources of our planet, accumulating toward the peoples of the Global South an ecological debt which is impossible to calculate in monetary terms, but it's still immediately visible in numerous devastated lands which suffered extreme pollution or desertification.

Also the merely physical and geographical characteristics of territory and location of peoples are of great importance when dividing the costs of the ecological crisis. For example, an average 2 Celsius degree increase in temperatures may mean a 5 degree increase in some, already torrid regions, while even a limited rise of the sea levels could guarantee the disappearance of entire archipelagos and coastal countries.

And not only between countries, but also within them, differences among social groups usually play a role, as class, race and ethnicity might determine how the burden of this crisis is shared among humans. The poor, black people of New Orleans, for example, took on much more serious harm from the hurricane Katrina than the white, rich élite of the city, which disposed of more means to ensure or relocate their properties, and this kind of extreme weather events are thought to be one of the consequences of climate change.

The fact that the ecological crisis affect groups differently depending of their characteristics means that the various human societies will face it in different ways and with different efforts. Nonetheless, every one of them is simply obliged to face it, or doomed to meet its most severe consequences. After all, the atmosphere is (more or less) the same for the rich and the poor, and albeit they may have contrasting interests in the measures to adopt and the temptation to leave the more exposed groups alone may be strong, the fact that we live all together in a global economy and in an increasingly interconnected world oblige us to take action coordinately, making attempts to free-ride the others' commitment or to simply avoid hazards illusory at best, self-destructive at worst.

When common measures have to be taken, every political player will try his best to impose his own, partial, point of view. In my opinion, even if recent UNFCCC negotiations gave us good material to quantify the variety of interventions that different States may be willing to take, they also gave us a bright illustration of the fact that the more extreme contrast in intentions and objectives is between institutional and non-institutional actors.

This was made clear at 29th November, the day before the inauguration of COP21, when French *zadistes*, environmental activists and social movements had launched an “anti-COP” demonstration in the capital, with a meeting point at *Place de la République*. The demonstration hadn't been authorized, due to the general ban imposed by the authorities after the terrorist attack of 13th November, so that a wide popular participation was strongly dissuaded. The police forces tried to prevent the people from moving from the square, and in the end of the day, after clashes had verified, three hundred people was put under arrest, out of the only three thousand

militants which had gathered. This is an extremely high number for the standards of western Europe.

During the same day, a high number of demonstrations took place all around the world, launched by numerous environmental associations, social movements, parties and civil society organizations in order to exercise political pressures to their political representatives reunited in Paris. Many groups of this kind (ranging from Marxist social movements to Catholic associations) had also previously scheduled a series of initiatives organized to take place during the negotiations, but both the participants and the actions were drastically reduced by the establishment of the *état d'urgence* by the French government. In this situation, some clear headed observers noticed how the environmental movement had been the first political victim of the terrorist attacks and, especially, of the security measures taken after them by the legitimate authorities.

On the other hand (and on the other side of the barricade, it could be said) coalitions of CEOs of dozens of multinational corporations were sending reports and issuing opinions on the measures to adopt, that would have been listened during the negotiations, while some of them were also sponsoring the Conference, paying for its organization.

Those events of 29th November are only the last of a long series, as there is always been a harsh confrontation between environmental social movements and States, civil society and politicians, and authorities backing economic powerhouses against disadvantaged groups of people. Nevertheless, during the decades, this dialectic has also produced valuable outcomes, as movements have managed to partially influence political agenda on environmental issues, important treaties have been concluded, NGOs are represented in different UN offices and conferences, and in general some basic ecological principles are officially recognized by global authorities.

Even the biggest multinational corporations appear to have assumed some ecological principles, producing documents of social responsibility involving environmental commitments, certificating themselves in this direction and through other ways, more or less sincere and effective.

The objective of this work is to explore this dialectic, developed around the confrontation of political authorities, economic actors and grassroots social movements about the administration, management and governance of ecological resources, their scarcity and the consequent global crisis.

In the first part of the thesis I will focus on the institutional history of international environmental law, in the resulted regulations of governance of the environment at the global level and on the way human rights jurisprudence and doctrine is involved in such issues.

In particular, I will concentrate on the emergence of new interpretations of the corpus of human rights law, from which a set of “environmental human rights” seems to be emerged, especially thanks to the jurisprudence of human rights bodies and the work of analysis of certain Special Rapporteurs.

A special focus will be on multination corporations, which are clearly the most crucial non-State actor in ecological issues, as they are the first exploiters of the planet’s resources, being so the principal objectives of every new rule related to environmental protection. The way they are regulated by international law, how they regulate themselves participating to voluntary initiatives like the UN Global Compact, and the current state of the international jurisprudence about their environmental obligations will be analyzed.

In the second part, I will concentrate my research on the critical voices, exposing the crucial aspects of ecological critical theories on environmental justice and injustice, exploring the various social and institutional frameworks in which some social groups may suffer from environmental harm and degradation. The aim of this analysis will be also to verify the coherence of ecological theories with the nascent jurisprudence and doctrine of environmental human rights, trying to assess how and how much of this “new” set of rights has been influenced by the practical and theoretical work of environmental civil society organizations.

After this, I will concentrate on the theory and practice of the political conflicts triggered by environmental matters. The purpose will be to analyze the phenomenon of such environmental

conflicts in deep, identifying the relation between their emergence and violations of environmental human rights.

Finally, a database on environmental conflicts, the Environmental Justice Atlas, will be utilized to evaluate certain aspects of the efficiency of the Global Compact in making companies comply with the provisions of environmental human rights.

So that, the red line of this work will be the analysis of environmental human rights, the reconstruction of their emergence, their application by States and non-States actor, their coherence and reciprocal influence with environmental critical theories and the political responses of social groups to their violations.

I. Elements of international environmental law and human rights law defining obligations of States and transnational corporations with respect to ecological issues

1. A brief history of State promoted environmentalism: emerging principles of international environmental law and ecological governance

1.1 First steps

In the first article of the United Nations Charter of 26th June 1945, environmental protection isn't listed amongst the duties of the Organization¹. The measures taken in this ambit by States during XIX century and the first half of the XX were extremely few and timid, reflecting the fact that a widespread environmental awareness wasn't still developed. But this situation was about to change during the '60.

In fact, during the last years of this decade, environmental concerns start to influence international institutions. In this period was founded an important civil society organization, the Club of Rome, a non-governmental association composed by scientists, economists, businessmen and politicians of various level. The Club paved the way for the activism of the scientific community, publishing in 1972 an innovative research, *The Limits to Growth*²(also

¹ Charter of the United Nations
<http://www.un.org/en/sections/un-charter/chapter-i/index.html>

² Meadows, D. H.; Meadows, D. L.; Randers, J.; Behrens III, W. W. a report for the Club of Rome's project on the predicament of mankind, 1972
<http://www.donellameadows.org/wp-content/userfiles/Limits-to-Growth-digital-scan-version.pdf>

known as the Meadows report), first document of international relevance to deal with the unsustainability of the economic model. The study used computer simulation of population and economic development in a system with finite resources, and contained alarming conclusions about the consequences of these two patterns on growth to the Earth ecosystems.

The analysis focused on the planet's physical limits, in term of resources, for anthropic activities, contributed to till the soil for the Stockholm Conference on the Human Environment, held in 1972 too. The political representatives reunited at the Sweden capital adopted two documents, a *Declaration*³, containing 26 principles and the *Action plan for the human environment*⁴. With the latter's recommendations (adopted by consensus), the international community expressed the seriousness of environmental degradation with clarity, and the necessity for States to face it through adequate international policies aimed to prevent pollution, stressing the relationship between development and environment as well as the social and cultural aspects of environmental issues.

In the declaration, the principle 21, destined to be repeated and redefined in following documents, posed the first limitation to the internationally recognized right of the State to exploit their natural resources, affirming that States also have the "responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction". The document recognized also the different responsibilities to developing countries, which would have been a fundamental principle for following documents just as much as the 21st, but differently, becoming a cardinal element of sustainable development⁵. The text shows also other contents which would have become characteristics of institutional environmentalism, most notably the attention to "future generations" (Principle 6).

³ Declaration of the United Nations Conference on the Human Environment
<http://www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503>

⁴ Action plan for the human environment
<http://www.unep.org/documents.multilingual/default.asp?DocumentID=97&ArticleID=1504&l=en>

⁵ Cordini G., Fois P., Marchisio S., Diritto Ambientale. Profili internazionali europei e comparati, Giappichelli editore, Torino, 2005

In 1972 of the United Nations Environment Program (UNEP)⁶, based in Nairobi was founded. Its principal duties consist in “Assessing global, regional and national environmental conditions and trends; developing international and national environmental instruments; strengthening institutions for the wise management of the environment”, with the mission “To provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations”⁷.

1.2 The principle of sustainable development

During the following years, the concept of “sustainable development” became a successful keyword and a resuming claim for environmental discourses. This happened not only at the theoretical level but also in international documents: in 1980 UNEP, IUCN⁸ (International Union for Conservation of Nature) and WWF⁹ (World Wide Fund for Nature) launched the World Conservation Strategy¹⁰, which is the first international document to enunciate “sustainable development” in its title. The document promotes the application of a sustainable human development, giving it absolute priority amongst global policies. Its principal objectives were the maintenance of fundamental ecological processes, the safeguard of animal and vegetal biodiversity an sustainable use of ecosystems.

⁶United Nations Environment Program
<http://www.unep.org/>

⁷ Ibidem
<http://www.unep.org/about/>

⁸ Founded in 1948, it is now the greatest international network of environmental organization, governmental (around 200) and non-governmental (around 900)
<http://www.iucn.org/>

⁹ Founded in 1961, it is one of the greatest NGOs working on environmental issues. Its mission consists primary in opposing biodiversity losses and the unsustainable use of resources
www.wwf.org

¹⁰ World Conservation Strategy. Living Resource Conservation for Sustainable Development, 1980
<https://portals.iucn.org/library/efiles/edocs/WCS-004.pdf>

In 1983, in line with this principles and with the aspiration of setting the global environmental agenda, the United Nations founded the WCED – World Commission on Environment and Development – which in 1987 managed to publish *Our Common Future*¹¹, the so called “Bruntland report”, which contributed to the nascent international environmental law providing the definition of “sustainable development”, that is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”¹².

The report opened a second phase in the history of institutional environmentalism, which would have had its first great event in 1992, with the United Nations Conference on Environment and Development¹³.

1.3 The great value of the 1992 Rio Conference

The Conference, held in Rio de Janeiro from 3rd to 14th June 1992, had a participation of 172 governments, 108 heads of State and 2400 delegates of social organizations. A specific forum for NGOs was organized too, to which 17000 people took part. It was the first UN conference held after the fall of the Berlin wall.

Organized in the wake of the Bruntland report and years of preparatory works, the Conference purpose was to make the imperatives of economic development and environmental protection compatible, facing three emergencies in particular: biodiversity loss, desertification and climate change, which would have become the greatest environmental issue (perhaps, the greatest world issue in absolute terms) and an overall reference to the ecological crisis. The general questions which emerged concerned the need for a systemic examination of the models of

¹¹ World Commission on Environment and Development, *Our Common Future*, 1987
<http://www.un-documents.net/our-common-future.pdf>

¹² Ibidem, Part I, Chapter 2: Towards Sustainable Development

¹³ UNCED – UN Conference on Environment and Development (1992)
<http://www.un.org/geninfo/bp/enviro.html>

production, to implement resources in the substitutions of fossil fuels and to reduce toxic emissions, to take actions against the growing water scarcity.

The UNCED produced five documents: Principles on Forests, Convention on biological diversity, Agenda 21, Rio Declaration on Environment and Development and the Framework Convention for Climate Change. Within these texts there are elements of the greatest importance for future developments of environmental treaty law.

Among those, the Rio Declaration¹⁴ have a very special role, since thanks to it international environmental role assumed a connotation for *general principles*, aimed at harmonizing the great variety of its objects, becoming a concrete conventional regime. From Rio, the discipline acquired a dynamic vision of results to be achieved¹⁵. It express 27 (non-binding) principles on rights and duties of nations in pursuing development and human wealth, with the aspiration to reflect the global consensus on the matter. It has been a law-developing resolution, concurring to the formation of consuetudinary environmental norms and as a reference for following agreements¹⁶. Some principles have been particularly relevant in this sense:

- 1st principle: it confirms the anthropocentric conception of precedent documents, asserting that “Human beings are at the center of concerns for sustainable development”.
- 2nd principle: it embraces Stockholm path too, repeating the importance of avoiding transnational pollutions.
- 3rd principle: it binds the right to development together with intergenerational responsibility to safeguard the planet’s resource.
- 7th principle: States have the duty to cooperate in the conservation of the Earth ecosystem, on the basis of a *common but differentiate* responsibility: the wealthiest nations recognize their greater obligations.

¹⁴ Rio Declaration on Environment and Development
<http://www.unep.org/documents.multilingual/default.asp?documentid=78&articleid=1163>

¹⁵ De Sadeler N., *Environmental Principles: From Political Slogans to Legal Rules*, Oxford University Press, Oxford 2002, in Cordini G., Fois P., Marchisio S., op. cit. p. 11

¹⁶ Cordini G., Fois P., Marchisio S., op. cit. p. 12

- 8th principle: being strictly connected to the seventh, it affirms the incompatibility of the models of production and consumption of industrialized States with sustainable development.
- 10th principle: it states that environmental issues are re best handled with participation of all concerned citizens, and that appropriate access to all concerning information must be guaranteed.
- 11th principle: it enunciated the importance of national legislations, specifying that they cannot produce discrimination in commercial law. This principle and its development must be read in conjunction with other international norms, like those coming from World Trade Organization.
- 15th principle: it defines the *precautionary principle*, which affirms that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. This principle is a corollary to already-established principle of prevention, extending its reach.

It must be noted that this Declaration didn't clearly set forth the existence of a fundamental human right to a clean environment, despite the fact that, following the Stockholm Conference, this right had been recognized by some national constitutions and international treaties¹⁷.

The Convention on Biological Diversity¹⁸, instead, concerned the conservation of ecosystems, genetic resources and species. Competence on this matter was attributed to State parties, and the aim was to allow an equitable distribution of costs and benefits of these protection duties among States, considering also economic and technological transfers between countries¹⁹.

¹⁷ Cordini G., Fois P., Marchisio S., op. cit. 13

¹⁸ United Nations, Convention on Biological Diversity, 1992
<https://www.cbd.int/doc/legal/cbd-en.pdf>

¹⁹ Cordini G., Fois P., Marchisio S., op. cit. p. 23

The Framework Convention for Climate Change²⁰ originated from the General Assembly Resolution 43/53 of 6th December 1988²¹, which recognized climate's evolution as a common concern for humanity. The UN General Assembly created an intergovernmental committee to negotiate a framework convention on the matter in 1990. Its definitive form was discussed in New York between April and May 1992.

The Convention pursued the stabilization of atmospheric concentration of greenhouse gasses deriving from human activities, in order to prevent their dangerous effects. The treaty, as originally stipulated, didn't pose obligatory limits for emissions to individual nations, as it wasn't legally binding. In this case too, the principle of differentiate responsibilities between "developed" and "developing" nations was asserted, and it would have been followed and further developed in the future.

1.4 Following developments

The convention on biological diversity entered into force on 23rd December 1993, while the convention on climate change on 21st March 1994.

In the same period, another development occurred, during the 4th United Nations World Conference on Women²² of Beijing, when the Beijing Plan for Action²³ was compiled. It listed 12 areas which needed action to improve women conditions, and one of them was specifically about "Women and environment"²⁴. The document envisaged measures like "Involve women

²⁰ United Nations Framework Convention on Climate Change, 1992
<https://unfccc.int/resource/docs/convkp/conveng.pdf>

²¹ A/RES/43/53, 70th plenary meeting, 6 December 1988
<http://www.un.org/documents/ga/res/43/a43r053.htm>

²² Fourth UN World Conference on Women, Beijing, 1995
<http://www.un.org/womenwatch/daw/beijing/>

²³ Platform for Action, Beijing, China - September 1995 Action for Equality, Development and Peace
<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

²⁴ Platform for Action, Beijing, 1995, Women and Environment
<http://www.un.org/womenwatch/daw/beijing/platform/environ.htm>

actively in environmental decision-making at all levels”, “Integrate gender concerns and perspectives in policies and programs for sustainable development”, and “Strengthen or establish mechanisms at the national, regional, and international levels to assess the impact of development and environmental policies on women”.

Another important development was realized, as anticipated, during December 1997, when the Third Conference of the Parties of UNFCCC (COP3) adopted the Kyoto Protocol²⁵, which was the implementing tool of the Framework Convention on Climate Change of 1992.

The Framework Convention had only fixed some general measure regarding limitations of carbon dioxide, waiting for more specific scientific studies on the effects of climate-changing gas emissions. The implementing measures contained in the Protocol required industrialized Western States and Eastern European ones in transition economies to overall reduce, within 2010, the principal anthropic emissions of gas capable of altering the natural greenhouse effect of the planet by 5%. But this reduction wasn’t equal for all States: following the principle of differentiate responsibilities, the European Union as a whole had to implement an emission cut of 8%, while 7% was required by the United States of America and 6% from Japan²⁶.

The Protocol entered into force only after Russian ratification, occurred in 2005. USA, instead, have never ratified the Protocol, affirming their opposition to a system of compulsory reductions, preferring a framework of voluntary self-regulations from enterprises. They also expressed contrary opinions to the precept of differentiate responsibilities among countries²⁷. The fact that the first economy of the world, as well as the first polluter, didn’t joined the rules established at Kyoto clearly reduced by far its value and effectiveness.

²⁵ Kyoto Protocol, Third Conference of the Parties of UNFCCC, 1997
<http://unfccc.int/cop3/>

²⁶ Cordini G., Fois P., Marchisio S., op. cit. p.21

²⁷ Ibidem, p.22

1.5 Rio+10 and Rio+20: the 2002 Earth Summit and the 2012 United Nations Conference on Sustainable Development

After a decade from the Rio Conference of 1992, representatives from States, institutions and civil society reunited at Johannesburg, in a moment of renewed reflection and clarification of the environmental agenda. The summit took place from 26th August to 4th September 2002, in the attempt to identify new objectives and renovate their commitments from the previous meetings.

The 2002 Earth Summit²⁸ was a severe delusion for the international ecological movement: environmental organizations denounced that this particular conference marked a negative difference from the previous ones, as it was characterized by the surrender to the pressures coming from the United States and oil producing countries, considering that it didn't fix any deadline for the elimination of States' subsidies to traditional sources of energy, which represents one of the first obstacles to the development of cleaner fuels from renewable sources.²⁹

The Conference, anyhow, adopted two documents: the Johannesburg Declaration on Sustainable Development³⁰ and a Plan of implementation³¹. The Declaration reaffirmed the responsibility of all nations "to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development - economic development, social development and environmental protection - at the local, national, regional and global levels" (art. 5) and to

²⁸ World Summit on Sustainable Development, Johannesburg, 2002
<http://www.earthsummit2002.org/>

²⁹ Cordini G., Fois P., Marchisio S., op. cit. p.28

³⁰ Johannesburg Declaration on Sustainable Development World Summit on Sustainable Development, Johannesburg, 2002
<http://www.un-documents.net/jburgdec.htm>

³¹ Plan of Implementation of the World Summit on Sustainable Development, World Summit on Sustainable Development, Johannesburg, 2002
<http://www.un-documents.net/jburgpln.htm>

realize the objectives of “poverty eradication, changing consumption and production patterns and protecting and managing the natural resource base for economic and social development” (art. 11). The Plan of implementation, instead, was based on the program of Agenda 21, but with the specification of the primary measures to implement³².

In the following ten years no crucial development of the environmental treaty law was made, and the same critics directed toward the results of the Johannesburg’s Conference addressed also the United Nations Conference on Sustainable Development³³, also known as “Rio 2012” or “Rio+20”, held in 2012, again at Rio de Janeiro.

The Conference of 2012 more than ever lacked in ambition and effectiveness, since the economic concerns were much more pressing than the environmental ones, especially for political authorities. This was symbolically represented by the fact that a number of G8 heads of States and governments, like United States President Barack Obama, German Chancellor Angela Merkel, and UK Prime Minister David Cameron, didn’t even go to Rio in order to attend the Conference (being nonetheless criticized for this choice)³⁴.

The final document of the Rio 2012 Conference, “The future we want”³⁵, reflects the weakness of the summit from which emerged, and some of the principles it declared show the political choice of letting the economic forces deal more freely with environmental issues, entrusting the market without governing production with compulsory objectives. Some examples may be found in paragraph 110 of the document – “Noting the diversity of agricultural conditions and systems, we resolve to increase sustainable agricultural production and productivity globally,

³² Priorities were: protection of the seas and oceans, their resources and coastal zones, internal waters, technological cooperation and formation of internal capabilities of developing States

³³ United Nations Conference on Sustainable Development, Rio de Janeiro, 2012
<http://www.uncsd2012.org/>

³⁴ Vidal J., *David Cameron criticised for skipping Rio+20 Earth summit*, The Guardian, 11 June 2012
<http://www.theguardian.com/environment/2012/jun/11/david-cameron-rio-earth-summit>

³⁵ The Future We Want, outcome document adopted at Rio+20, 2012
<http://www.uncsd2012.org/content/documents/727The%20Future%20We%20Want%2019%20June%201230pm.pdf>

including through improving the functioning of markets and trading systems” – in paragraph 118 – “We reaffirm that a universal, rules-based, open, non-discriminatory and equitable multilateral trading system will promote agricultural and rural development in developing countries and contribute to world food security” – or in paragraph 260 – “Further, the interplay of development assistance with private investment, trade and new development actors provides new opportunities for aid to leverage private resource flows”.

1.6 Some considerations about the 2015 United Nations Conference on Climate Change (COP21)

The 2015 21st yearly session of the Conference of the Parties to the 1992 United Nations Framework Convention on Climate Change (UNFCCC) came at the end of a tormented sequence of meetings, which didn’t suffice to reach final understandings of particular importance. Cop21 showed signs of difficulties and disagreements too, and years will pass until the Paris agreement will enter into force. The reached final agreement deserve some considerations, even if it’s impossible to tell already which provisions will be of greater importance for the doctrine, jurisprudence, and future treaty law.

The Paris Agreement³⁶, adopted by consensus on 12 December 2015, will enter into force when ratified by 55 States which produce at least 55% of greenhouse gas emissions. The principal aims of the *accord* are very well resumed in the first clause of art. 2, which states as follows:

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: (a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and

to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

³⁶Paris Agreement, Conference of the Parties, Twenty-first session, Paris, 30 November to 11 December 2015
<https://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf>

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production;

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development.

To achieve these results, as stated also in the second clause of the same article, the long-established treaty law principle of differentiated responsibility is still honored, as showed in the second clause of the same second article:

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

While Article 4, first clause, states as follows:

In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties [...].

The anthropocentric point of view is also maintained, as the concern for climate change is not referred in general terms to the protection of “nature”, but of humans, and is in fact strongly linked to the eradication of poverty.

Again in Article 4, it is explained that each country will contribute to the established goals in ways to be decided independently, so that the commitment is voluntary, and the requirement for it to be “ambitious” doesn’t contain any specification.

Not only the amounts of emissions reduction is voluntary, but the treaty doesn’t envisage any enforcement measure to make the independently declared actions compulsory.

2. Ecological issues meeting human rights: the path toward the recognition of environmental human rights

2.1 Recognizing interconnections between human rights and environment

2.1.1 The absence of new, specific rights

Among the vast body of international agreements dedicated to human rights, the most important document is clearly the 1948 Universal Declaration of Human Rights, which enunciates the existence of all human beings' right to life, to a decent standard of living, to liberty, to personal security, freedom of opinion and expression, as well as political participation³⁷.

That document, as well as in the two successive International Covenants entered into force in 1976, one covering Civil and Political Rights and the other Economic, Social and Cultural Rights, don't contain specific provisions aimed at establishing environmental rights, considered as something having their own specificity. As said above, the official recognition of a link between human and environmental rights was made at Stockholm in 1972, while the normative framework was furtherly developed at the 1992 Rio Conference, with Agenda 21 and the Plan for action.

But the corpus of international treaty law regulates especially the States behavior and their relation and reciprocal obligations, while currently still no treaty on specific individual environmental right has been drafted. By now, legislation and jurisprudence have followed a different path, which sets relations of environmental issues with existing rights, which can be defined as the "greening of human rights law":

³⁷ The Universal Declaration of Human Rights, United Nations, 1948
http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

It is self-evident that insofar as we are concerned with the environmental dimensions of rights found in avowedly human rights treaties – the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the European Convention on Human Rights (ECHR), the American Convention on Human Rights (AmCHR), and the African Convention on Human and Peoples’ Rights (AfCHPR) – then we are necessarily talking about a ‘greening’ of existing human rights law rather than the addition of new rights to existing treaties. The main focus of the case law has thus been the rights to life, private life, health, water, and property. Some of the main human rights treaties also have specifically environmental provisions, usually phrased in relatively narrow terms focused on human health, but others, including the ECHR and the ICCPR, do not.³⁸

2.1.2 The presence of vague provisions

There are cases in which human rights treaties contain some kind of environmental provisions, albeit phrased in vague terms, or only focused on human health. Examples can be found in different documents³⁹. One is the 1981 African Charter of Human and Peoples’ Rights (AfCHPR)⁴⁰, which states, in its 24th article, that “All peoples shall have the right to a general satisfactory environment favorable to their development”.

A narrow indication is made in article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights, that contains a reference to “The improvement of all aspects of environmental and industrial hygiene”⁴¹, while another provision of this kind can be found in article 11 of 1988 Additional Protocol to the 1969 American Convention on Human Rights: “everyone shall have the right to live in a healthy environment and to have access to basic

³⁸ Boyle A. E., Human Rights and the Environment: Where Next?, *The European Journal of International Law* Vol. 23 no. 3, 2012, p. 614

³⁹ See Churchill, ‘Environmental Rights in Existing Human Rights Treaties’, in Boyle and Anderson (eds), *supra* note 2, at 89.

⁴⁰ African Charter of Human and Peoples’ Rights, Organization of African Union, Banjul, 1981 http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

⁴¹ International Covenant on Economic, Social and Cultural Rights, United Nations, 1966 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

public services” and “The States Parties shall promote the protection, preservation, and improvement of the environment”⁴². Finally, two references to environmental risks and relative harm are made also in Article 24 of the 1989 Convention on the Rights of the Child:

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

[...]

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.⁴³

The vagueness of the provisions contained in these documents, with the partial exception of the one contained in the 1981 ACHPR, reflects the ambiguities of the relation between human rights and environmental issues, and the lack of firm points on this matter.

2.2 The development of human rights and the protection of the environment

2.2.1 Greening adaptations

The “greening” process lived by existing human rights law is based on the recognition by UN institutions of the environmental implications of civil, political, economic, social and cultural

⁴² Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, Organization of American States, 1988.
<http://www.oas.org/juridico/english/treaties/a-52.html>

⁴³ Convention on the Rights of the Child, United Nations, 1989
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

rights. But this is a recent phenomenon, as it has not been clear until the last decade how far the UN human rights community takes environmental issues seriously⁴⁴.

One early example of the greening process, but nonetheless very explicative, is provided by the Council of Europe, which in 2005 adopted a “Manual on Human Rights and the Environment”⁴⁵, consisting in a review of existing case law on the matter aimed at setting some general principles.

The Manual’s introduction affirms:

[...] the environment has become a prominent concern, which has also had an impact on international law. Although the main human rights instruments (the 1948 Universal Declaration of Human Rights, the 1950 European Convention on Human Rights, the 1961 European Social Charter, the 1966 International Covenants), all drafted well before full awareness of environmental issues arose, do not refer to the environment, today it is commonly accepted that human rights and the environment are interrelated.

From this interrelation doesn’t follow the institution of new human rights, with a specific environmental character, but rather the adaptation (“greening”) of existing rights to situation of environmental risk or harm. So that every Manual’s chapter is dedicated to a single fundamental right, among those recognized by European institutions and States in the 1950 European Convention on Human Rights, the 1961 European Social Charter and the 1996 revised European Social Charter, and to the investigation of its environmental implications. The first section, dedicated to the Principles derived from the European Convention on Human Rights, regards the relation of environmental issues with the rights to life, to private life, property, information and communication, political participation and access to justice. The second section instead, which discuss “Principles derived from the European Social Charter and the revised European Social Charter”, contains a chapter dedicated to the protection of health and the environment.

⁴⁴ Boyle A., op. cit., p. 617.

⁴⁵ Manual on Human Rights and the Environment, Council of Europe Publishing, 2005
<file:///C:/Users/ASUS/Desktop/Tesi/HR%20and%20Env/2005ManualHRandEnv.pdf>

At the international level, also the highest institutions of United Nations have participated to the discussion. The UN Secretary General, for example, expressed his opinion in a report issued in 2005, dedicated to “Science and Environment”, as well as to Human rights and the environment as part of sustainable development:

The report concludes that since the World Summit on Sustainable Development, there has been growing recognition of the connection between environmental protection and human rights. The work carried out by human rights treaty bodies and the special procedures of the Commission on Human Rights, as well as several multilateral environmental agreements adopted in recent years, provide several examples of this connection [...] ⁴⁶

Again in 2005, this matter has been discussed in more specific terms too, acquiring an economic dimension next to the social and juridical ones, by the UNHRC Resolution 2005/60, which elaborates on the relation between sustainable development and human rights law. The text of the resolution recalls in the first place the principles expressed in the Stockholm and Rio Declarations, in Agenda 21 and the connected measures and plans of action and then make some relevant statements, taking note that...

...respect for human rights can contribute to sustainable development, including its environmental component,

Considering that environmental damage, including that caused by natural circumstances or disasters, can have potentially negative effects on the enjoyment of human rights and on a healthy life and a healthy environment,

Considering also that protection of the environment and sustainable development can also contribute to human well-being and potentially to the enjoyment of human rights,

[...] Reaffirms that peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity are

⁴⁶ Human rights and the environment as part of sustainable development - Report of the Secretary-General, Economic and Social Council, 2005
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/103/71/PDF/G0510371.pdf?OpenElement>

essential for achieving sustainable development and ensuring that sustainable development benefits all, as set forth in the Plan of Implementation of the World Summit on Sustainable Development;

Calls upon States to take all necessary measures to protect the legitimate exercise of everyone's human rights when promoting environmental protection and sustainable development [...]⁴⁷

The resolution then goes on stressing, in particular, the importance for States, to take into account how environmental degradation may affect all members of society, and in particular women, children, indigenous people or disadvantaged members of society, showing *de facto* to have absorbed environmental justice reasoning, and with it the awareness of the frequent intersection among different forms of discrimination, so different human rights violations, and the unequal distribution of environmental harm among social groups with different political power and representativeness.

2.2.2 Human rights facing climate change

Climate change, the most troublesome aspect of the ecological crisis and the most treated by environmental treaty law, poses its own set of challenges to the corpus of human rights law. To face the issue, the Human Rights Council, with resolution 7/23 of 2008, requested "the Office of the United Nations High Commissioner for Human Rights, [...], to conduct, within existing resources, a detailed analytical study of the relationship between climate change and human rights, to be submitted to the Council"⁴⁸.

⁴⁷ Human Rights Resolution 2005/60: Human Rights and the Environment as Part of Sustainable Development,, Office of the High Commissioner of Human Rights, 2005
<http://www.refworld.org/docid/45377c759.html>

⁴⁸ Human rights and climate change – Resolution 7/23, Human Rights Council, 2008
http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf

The request has been met with the compilation of the 2009 Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights⁴⁹, which is the first but also the most comprehensive document on this matter, containing the basic principles and insights which lays the basis for the more recent and specific reflections.

Its more analytical section opens with the recognition of the fact that global warming will “have implications for a wide range of human rights”, before proceeding in the investigation of such implications, related both to specific rights and specifically affected groups, and to specific issues like displacement, the aggravation of conflicts and security risks, and the adequate response measures.

What have been said above about the greening process of human rights law is valid here too, as the first recognized links between this corpus of law and environmental issue is again found in the right to life and health – specified by the fact that “right to health extends to its underlying determinants, including a healthy environment” – with interesting additions, especially regarding the rights to adequate food⁵⁰, to water⁵¹ and to housing, reflecting the different environmental harm and risks suffered by populations in Europe and in the global South. A specification on the right to health let the report tackle this issue with higher clarity: “Overall, the negative health effects will disproportionately be felt in sub-Saharan Africa, South Asia and the Middle East”.

⁴⁹ Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, Human Rights Council, 2009
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>

⁵⁰ “Elements of the right to food include the availability of adequate food (including through the possibility of feeding oneself from natural resources) and accessible to all individuals under the jurisdiction of a State. Equally, States must ensure freedom from hunger”

⁵¹ Concentrating on the climatic issue helps specify the potential or effective obstacles for the enjoyment of this right too: “Loss of glaciers and reductions in snow cover are projected to increase and to negatively affect water availability for more than one-sixth of the world’s population supplied by meltwater from mountain ranges. Weather extremes, such as drought and flooding, will also impact on water supplies”

Furtherly, the investigation of the relation between climate change and the right to adequate housing, which consists also in security of tenure, protection against forced evictions, availability of services, materials, facilities and so on, makes clear that hazards coming from global warming aren't just coming in the near future, but already present and manifest in different forms, "as evidenced by the millions of people and homes affected by flooding in recent years", so that "Many will move to urban slums and informal settlements where they are often forced to build shelters in hazardous areas. Already today, an estimated 1 billion people live in urban slums on fragile hillsides or flood-prone riverbanks and face acute vulnerability to extreme climate events".

Interestingly enough, phenomena like the threat to habitability and to territorial existence of low-lying island States, as well as the threats to traditional territories and sources of livelihoods of indigenous peoples, are considered related to the right to self-determination. The choice is perhaps motivated by the traditional relation of this right with States' territories: "The disappearance of a State for climate change-related reasons would give rise to a range of legal questions, including concerning the status of people inhabiting such disappearing territories and the protection afforded to them under international law".

The Report keep making differences between groups differently affected by climate change-related harms, and identify gender, age and ethnicity as factor of differentiation. So that, for starting, it is noticed that women are particularly exposed to environmental risks and weather-related disasters due to the widespread sexual discrimination and inhibiting social and economic roles⁵², while children face all the same possible risks of adults, but in aggravated form, due to their less robust built, so that "the health burden of climate change will primarily be borne by

⁵² On the other hand, the Report adds that "Studies document how crucial for successful climate change adaptation the knowledge and capacities of women are. For example, there are numerous examples of how measures to empower women and to address discriminatory practices have increased the capacity of communities to cope with extreme weather events", referring to IPCC AR4 WGII Report, p. 398; International Strategy for Disaster Reduction, Gender Perspectives: Integrating Disaster Risk Reduction into Climate Change Adaptation. Good Practices and Lessons Learned, UN/ISDR 2008.

children in the developing world [...] Moreover, like women, children have a higher mortality rate as a result of weather-related disasters”⁵³.

Finally, a special remark shall be made to the condition of indigenous peoples, already marginalized and obliged to live in reserves or in fragile and polluted territories. The Report refers to another document, drafted in 2008 by the Permanent Forum for Indigenous Issues. In this text, to indigenous peoples is recognized a special role in ecosystems’ and biodiversity’s safeguard, in their relation with climate change:

indigenous peoples’ traditional livelihoods and ecological knowledge can significantly contribute to designing and implementing appropriate and sustainable mitigation and adaptation measures. Indigenous peoples can also assist in crafting the path towards developing low-carbon release and sustainable communities⁵⁴.

On the other hand, as evidenced above about coastal lands and low-lying islands, for indigenous peoples climate change keeps to be “an urgent and immediate threat to human rights”⁵⁵.

Climate change isn’t only related to the rising sea-level, but also to desertification, water scarcity, storms. Every one of these phenomena, the Report recalls, are likely to force people to migrate. In general, four main climate change-related displacement scenarios are identified: weather-related disasters, such as hurricanes and flooding; gradual environmental deterioration and slow onset disasters, such as desertification; increased disaster risks resulting in relocation of people; social upheaval and violence attributable to climate change-related factors. Regarding this issue, the Report recognize that the measures to implement in order to avoid

⁵³ And again, as for women, children are recognized to have quite a crucial role for fighting climate change, if only empowered and protected from human rights violations: “Education on environmental matters among children is crucial and various initiatives at national and international levels seek to engage children and young people as actors in the climate change agenda”.

⁵⁴ Permanent Forum of Indigenous Issues, Report of the Seventh Session, Economic and Social Council, 2008, p.2 <file:///C:/Users/ASUS/Desktop/Tesi/HR%20and%20Env/2008ForumIndigenousPeoples.pdf>

⁵⁵ Ibidem, para. 23

violations and to care on forcibly displaced persons are still not clear, stressing the fact that the figure of “environmental refugee” is still not regulated by human rights law.

2.2.3 Economic obligations for States

Finally, the 2009 Report addresses the issues of conflict and security risks caused by climate change, noting that “recent reports and studies identify climate change as a key challenge to global peace and stability”⁵⁶, and to human rights implications of response measures.

This last section is of particular interest, especially considering the next section of this work, dedicated to the obligations of economic actors in environmental matters. First, it contains a reference to the Kyoto Protocol, article 2, para. 3:

The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects [of climate change], including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties [...].⁵⁷

While a related reference is made to UNFCCC article 4, para., where “actions related to funding, insurance and the transfer of technology” are mentioned, in order “to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change”.

Secondly, and more specifically, at §66 the Report take on the problem of land expropriations, introducing the matter of food-fuel competition:

⁵⁶ On this matter, the Report refers to two studies: Government of the United Kingdom of Great Britain and Northern Ireland, *The National Security Strategy of the United Kingdom: Security in an interdependent world*, 2008 and German Advisory Council on Global Change, *World in Transition – Climate Change as a Security Risk*, 2008.

⁵⁷ Kyoto Protocol, Third Conference of the Parties of UNFCCC, 1997
<http://unfccc.int/cop3/>

Whereas agro-fuel production could bring positive benefits for climate change and form farmers in developing countries, agro-fuels have also contributed to increasing the price of food commodities “because of the competition between food, feed and fuel for scarce arable land”⁵⁸.

About this, it is stressed that the human right to food obliges to implement policies that could effectively fight hunger, also in the act of contrasting climate change, which is usually opposed by the production of energy from agriculture. To avoid human rights violations and unwanted consequences related to land exploitation and land grabbing phenomena, awareness-raising and access to information are critical, applying the human right to political participation in all its forms.

The relation between the distribution of economic wealth among different groups as well as different States, poses of course its own set of challenges to human rights law, and the ecological crisis adds a new dimension to this problem, related to environmental risk of harm. In general, in programming economic policies and monitoring activities of enterprises, policymakers of both States and international institutions must remember that:

[...] climate change will be felt most acutely by those segments of the population who are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status and disability⁵⁹.

2.2.4 Discussing the relationship

In 2011, the United Nations Human Rights Council issued the resolution 16/11 on human rights and the environment. After having recognized “that environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights”, and that, as

⁵⁸ The quote comes from the Statement of the Special Rapporteur on the right to food, 22 May 2008, at the special session of the Human Rights Council on the global food crisis

⁵⁹ Human Rights Council Tenth Session Resolution 10/4. Human rights and climate change http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf

said above, “while these implications affect individuals and communities around the world, environmental damage is felt most acutely by those segments of the population already in vulnerable situations”⁶⁰, the resolution requests the Office of the United Nations High Commissioner for Human Rights to conduct an analytical study on the relation between human rights and environment. The result is OHCHR resolution 19/34 of 2011 (“on the relationship between human rights and the environment”), which shall be analyzed here.

The most relevant points of interaction identified are the following:

- (a) Sustainable development and the protection of the environment can contribute to human well-being and the enjoyment of human rights;
- (b) Environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights;
- (c) While these implications affect individuals and communities around the world, environmental damage is felt most acutely by those segments of the population already in vulnerable situations;
- (d) Many forms of environmental damage are transnational in character and that effective international cooperation to address such damage is important in order to support national efforts for the realization of human rights;
- (e) Human rights obligations and commitments have the potential to inform and strengthen international, regional and national policymaking in the area of environmental protection and promoting policy coherence, legitimacy and sustainable outcomes.⁶¹

The study select three major approaches found in the literature regarding the relation between human rights and environment, which do not necessarily exclude one another, being perfectly

⁶⁰ UNHRC res.10/11, Human Rights and the Environment
http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.11_en.pdf

⁶¹ UNHRC res. 19/34, Analytical study on the relationship between human rights and the environment
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-34_en.pdf

capable to coexist. The first one starts from the fact that particular right, such as health, food and life, can be realized only within an environment with some minimal qualities. If air, ground and water pollution aren't avoided, human dignity is simply not possible. In this sense, a safe environment is a precondition for the enjoyment of human rights.

The second approach underscores the environmental dimension of certain fundamental rights, concentrating on the fact that environmental issues can be addressed with human rights tools, both procedurally and substantively. "This approach emphasizes the possibility of using human rights to achieve adequate levels of environmental protection. From a procedural perspective, rights such as access to information, participation in public affairs and access to justice are central".

The third approach concentrates on sustainable development, widening the meaning of this concept in order to make it integrate the human rights and environmental issues. In this view, only following the precept of sustainability it is possible to unite economic, environmental and social justice issues within integrate and coherent policies.

This section of general discussion ends certifying that these three visions have enriched a global perception of the matter to which both jurisprudence and policymaking have referred to. Moreover, they have also elevated the debate over the recognition of a new human right to a healthy environment, which is "the second central issue of theoretical and practical importance". This particular issues is debated in the first place in terms of usefulness and opportunity, stressing the importance to define eventual new human rights with clarity. In the second place...

Another issue widely debated in legal literature is whether international law already recognizes a right to a healthy environment. This debate rests on an analysis of the traditional sources of international law. Some commentators note that the recognition of a right to a healthy environment in national constitutions sets the stage for a discussion focused on an emerging rule of custom.⁶²

⁶² *ibidem*, para.12

[...]

Yet another question concerning the legal implications of the recognition of a right to live in a healthy environment is who are the right-holders and duty-bearers? This is particularly relevant where environmental degradation results from the activities of private actors, such as legal entities and transnational corporations⁶³

This particular issues will be addressed furtherly in this work but, as will be showed, seem to be a growing concern in human rights institution, influencing also the work of Special Rapporteurs.

2.3 The work of the Special Rapporteurs on the relation between human rights and environment

2.3.1 Uneasy relations of special rapporteurs with international institutions

The above analysis shows that the relation between human rights and environment is widely considered as an important matter, and discussions on this issue do in fact influence the conduct of both States and human rights institutions. But it must be noted that, if treaty bodies, national courts and other kind of tribunals have played a great role orienting the human rights interpretation and development in this sense, an important part has been played also by the professors, activists and other personalities who in these last decades have fulfilled the mandate of United Nations Special Rapporteurs.

Special Rapporteurs, Special Representatives of the Secretary-General, or simply Independent Experts are an interesting figure, able to operate at the frontier between institutional mandate and activism, between their official role and their affinity to grassroots movements. Being opposed by the States hosting their mandate, which are usually objects of investigation, is quite common for them, and a difficult relation with institutions is typical also the special rapporteurs engaged in mission of environmental character.

⁶³Ibidem, para. 13

States have needed their time to recognize environmental issues as a matter related to human rights and to the Human Rights Council monitoring role. A clarifying example of this fact has been provided by the Okechukwu Ibeanu, which in 2008 had the role of Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights:

The Special Rapporteur remains discouraged by the lack of attention paid to the mandate. During consultations with Member States, the Special Rapporteur is often confronted with arguments that issues of toxic waste management are more appropriately discussed in environmental forums than at the Human Rights Council. He would like to remind Member States that the transboundary movement of hazardous toxic and dangerous products and wastes has far-reaching human rights implications [...]He calls on the Human Rights Council to take this issue more seriously. He is discouraged by the limited number of States willing to engage in constructive dialogue with him on the mandate during the interactive sessions at the Human Rights Council.⁶⁴

En passant, it may be interesting to note that, while even Special rapporteurs can have problems in dealing with States, human rights defenders with no official role face far greater risk for their engagement.

2.3.2 “Who defends the defenders?”

In its 2011 report, the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, identify defenders working on land and environmental issues as a specifically threatened group of human rights defenders, together with journalists, media workers and youth and students defenders. Referring to the 2007 report of the Special Representative of the Secretary-General on human rights defenders dedicated to defenders working on economic,

⁶⁴ UNHRC, Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, UN Doc. A/HRC/9/22, 13 Aug. 2008, at para. 34.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/150/56/PDF/G0815056.pdf?OpenElement>

social and cultural rights (A/HRC/4/37), she specifies that “not only are the rights upheld by this group an inalienable part of the international human rights framework, but also that their activities are fully protected by the Declaration on Human Rights Defenders”⁶⁵ .

The human rights defenders active on environmental issues are in a certain sense particular, because their commitment is dedicated to the activism on economic rather than political activity. This choice determines also the type of threats they have to face:

The Special Rapporteur is aware of the particular risks that these defenders face, often at the hands of non-State actors or unknown individuals acting in collusion with them. She has received, and continues to receive, allegations indicating that security guards employed by oil and mining companies allegedly use death threats, acts of intimidation and attacks against defenders who denounce the perceived negative impact of the companies’ activities on the enjoyment of human rights by local communities (A/65/223, paras. 9–12).⁶⁶

Extractive industries, construction and development projects are perhaps the most striking examples of economic activities with a great environmental impact and they are also especially opposed by human rights defenders working for the rights of indigenous and minority communities, rather than by proper environmentalists only. According to the information collected by the Special rapporteur, defenders working on such issues are threatened by a high risk of violations, “such as death threats, attacks, attempted killings, intimidation, harassment, as well as stigmatization and discrediting campaigns”.

Among the recommendations given to States of the conducts to following order to avoid and prevent these things to happen, the report list the recognition of the important work carried out by defenders working on land and environmental issues in trying to find a balance between economic development and respect of the environment, the admonition to not tolerate the stigmatization of the work of these defenders by public officials or the media and, finally, to

⁶⁵ UNHRC resolution A/HRC/19/55, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 2011 para.22.
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/21/17

⁶⁶ Ibidem, para 63.

combat impunity of the responsible of human rights violations against defenders, especially ensuring the liability of non-State actors, which will be object of further analysis in a next chapter.

2.3.3 The latest appointment

On April 2012 the Human Rights Council “decides to appoint, for a period of three years, an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment”⁶⁷. The role have been performed by John Knox, the first Independent Expert on human rights and the environment.

Its personal view seems to be mostly coherent with the first of the three approaches listed above about the relation on human rights and environment, with an influence also from the second one. As it can be read on its official webpage:

All human beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity. At the same time, protecting human rights helps to protect the environment. When people are able to learn about, and participate in, the decisions that affect them, they can help to ensure that those decisions respect their need for a sustainable environment.⁶⁸

During his mandate, he has produced three reports: a “Scoping report” in 2013, a “Mapping

⁶⁷ UNHRC resolution 19/10 Human rights and the environment, p. 2
<http://srenvironment.org/wp-content/uploads/2013/05/1910-PDF.pdf>

⁶⁸ Special Rapporteur on human rights and the environment (former Independent Expert on human rights and the environment), OHCHR webpage
<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx>

report in 2014” and a “Good practices report” in 2015⁶⁹. These works perfectly summarize the whole discussion about the relation between human rights and environment, representing the points of arrival reached by human rights law’s jurisprudence and doctrine on the whole question.

2.3.4 The three reports of the Special Rapporteur John Knox on human rights and environment

At this point, it is very useful to analyze some of the arguments, leaving others to the specific discussion about the obligations of non-State actors like transnational corporations and other enterprises.

The first Report places the mandate in a historical context, presenting the most important issues relevant to the relationship between human rights and the environment, noting that even if the matter has been widely discussed by many different forums, there are still points needing clarification⁷⁰. It adds relevant insights to the right to a healthy environment, the relation between it and existing human rights law, and the discussion of human rights vulnerable to environmental harm and of those vital to environmental policymaking.

On the existence of such a right to a healthy environment, the Report take notice of the 90 States which have adopted similar rights in their national constitutions, adding to the list the already mentioned regional charters from the African and American continent, admitting nonetheless that no “global agreement sets out an explicit right to a healthy (or satisfactory, safe or sustainable) environment”, and that the most similar provisions contained in international treaty law have to be searched in the Stockholm and Rio declarations. The path taken has been the study of the relationship between environment and existing human rights,

⁶⁹ United Nations Mandate on Human Rights and the Environment John H. Knox, UN Special Rapporteur <http://srenvironment.org/>

⁷⁰ UNHRC Resolution A/HRC/22/43 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox Preliminary report <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx>

and the “greening” process they have been subjected to. Nonetheless, the recognition of this new right by national constitutions and regional bodies and the contemporary development of the greening process seems to suggest that the two approaches are not inconsistent with one another, even if their relation is still unclear.

Summing up the conclusions of the great number of documents and statements analyzed, the special rapporteur argues that

This effort... has identified two sets of rights closely related to the environment: (a) rights whose enjoyment is particularly vulnerable to environmental degradation; and (b) rights whose exercise supports better environmental policymaking. At the risk of oversimplification, many of the rights in the first category – that is, those at risk from environmental harm – are often characterized as substantive rights, while many of the rights in the second category – those whose implementation supports stronger environmental policies – are often considered procedural rights.⁷¹

In particular, some rights are recognized as especially relevant for environmental policy-making, like “rights of freedom of expression, freedom of peaceful assembly and association, participation in government and effective remedies for violations of rights”, all recognized by many human rights instruments, starting from the Universal Declaration. These rights can evidently have an environmental dimension when deciding for State policies. This is also coherent with the Rio Declaration which, in its article 10, promotes participation of all concerned citizens, in order to handle environmental issues. Of course, the protection of these procedural rights is particularly crucial when vulnerable groups are involved, since their civil and political rights are already threatened independently from the environmental dimension of policy-making.

⁷¹ UNHRC Resolution A/HRC/22/43 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Preliminary Report, 2012
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf

The fact that the procedural rights of information, participation and access to remedy can “benefit environmental policymaking, resulting in better environmental protection and, as a consequence, greater protection of the human rights that may be threatened by environmental degradation” is one of the firm points established regarding the relation between human rights and environment. The other one is simply that environmental degradation, in its different forms and appearances, especially threaten the enjoyment of a certain set of rights, consisting in the right to life, health, food and safe drinking water.

In conclusion, the best way to respect the set of substantive rights is actually to respect procedural rights. Furthermore...

Making this connection can create a kind of virtuous circle: strong compliance with procedural duties produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to life, health, property and privacy. The converse is also true. Failure to meet procedural obligations can result in a degraded environment, which interferes with the full enjoyment of other human rights.⁷²

The fact that some fundamental aspects of the relationship between human rights and environment are firmly established is made clear also by the Mapping report completed in December 2013, supporting the Statements of the scoping one.

Specifications are added regarding the most vulnerable groups, like children, women and indigenous peoples, which may suffer more serious harm from environmental due to their stricter relationship of dependence from nature.

States have a duty to recognize the rights of indigenous peoples with respect to the territory that they have traditionally occupied, including the natural resources on which they rely. Secondly, States are obliged to facilitate the participation of indigenous peoples in decisions that concern them. The Special Rapporteur has stated that the general rule is that “extractive activities should

⁷² Ibidem, para.42

not take place within the territories of indigenous peoples without their free, prior and informed consent,”⁷³

Regarding the procedural obligations of States, it is observed that regional bodies have stated multiple times “that in order to protect human rights from infringement through environmental harm, States should provide access to environmental information and provide for the assessment of environmental impacts that may interfere with the enjoyment of human rights”, as a necessary precondition for public participation. States shouldn’t limit to not violate procedural rights, but they must also actively intervene to protect the life, liberty and security of single individuals and activists exercising those rights. In particular, a disproportionate burden is sustained by women, which also face greater difficulties to access to information and to participate to decision-making processes.

In relation to the duty to provide access to legal remedies, but also with broader implications, States have an obligation to adopt adequate legal frameworks “that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights”. In general on this aspect, State have a very strong duty to protect their citizens by the environmental harm caused by the economic activities of extractive industries or other business enterprises and non-State actors.

The last report, submitted in 2015, consists in a list of good practices, applied by some governments or regional organizations in order to intervene in environmental issues protecting human rights (or vice versa) following the areas of connection between human rights and environment identified in the former two reports. The best practices adopted by authorities to protect the environment are consistent the safeguard of minorities and in the greater

⁷³ UNHRC Resolution A/HRC/25/53 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Mapping report 2013

<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx>

application of democratic principles of information and political participation⁷⁴: in conclusion, the defense of the environment proves to be equivalent to the protection of people from arbitrary powers and from the excessive exploitation of their means of survival.

2.3.5 Human rights approach to climate change after COP 21

As already noticed, the last conferences of the parties of UNFCCC haven't produced great innovations in the last decades, and COP 21 hasn't conducted to particular improvement either. The general framework is mostly unchanged from the already cited resolution A/HRC/10/61, so that the new report⁷⁵ produced by the Special Rapporteur mostly walk along the same path, characterized again by the recognition of the threat posed by climate change to the enjoyment of some human rights, especially for the vulnerable groups. Nonetheless, some good signs are registered in the growing attention being devoted to the relationship between human rights and climate change.

The Report restates that States have obligations to take steps to protect human rights from the harmful effects of climate change, appreciating the fact that “the attention to climate change and human rights reached a crescendo at the twenty-first session of the Conference of the Parties” (perhaps showing too much confidence in the effectiveness of the Paris conference in terms of concrete results and legal obligations for States), stressing that the Paris one is the first climate agreement to explicitly recognize the relevance of human rights:

Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable

⁷⁴ UNHRC Resolution A/HRC/28/61 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Compilation of good practices, 2015
<http://srenvironment.org/good-practices-report-2015/>

⁷⁵ UNHRC Resolution A/HRC/31/52 Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Climate Change and Environment, 2016
<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx>

situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.⁷⁶

Despite the lack of binding obligations, the document produced by the last COP “actually signifies the recognition by the international community that climate change poses unacceptable threats to the full enjoyment of human rights and that actions to address climate change must comply with human rights obligations”⁷⁷, implicitly recognizing at the highest possible level what the special rapporteurs mandated to investigate these issues. “This is a real achievement”.

The human rights recognized to be particularly affected by climate change are again the rights to life, health, water, food, housing, development and self-determination, but there is an innovation in the identification of the 2° degree rise in temperatures as a limit that, if surpassed, would prove to be disastrous for the enjoyment of such rights.

The protection of human rights depend primarily on States duty to protect and to cooperate at the international level, participating to the struggle according to their common but differentiated responsibilities and respective capabilities. For national authorities, the nature of their obligations to consist in protecting citizens against environmental harm in general. They have to follow some procedural rule, such as assessing and providing environmental information, facilitating public participation in decision-making processes related to climate policies, and providing for effective remedies in case of climatically driven human rights violations.

From a substantive point of view, States shall balance their policies “between environmental protection and other societal goals, such as economic development and the promotion of other human rights. But the balance struck cannot be unreasonable or result in unjustified, foreseeable infringements of human rights”. They have a duty to adapt their national

⁷⁶ From the Preamble of the Paris Agreement

⁷⁷ UNHCR resolution A/HRC/31/52, op. cit. para. 22

jurisdiction to face the unavoidable effect of global warming and to fully implement the commitments they have made in the Paris Agreement.

2.3.6 The next phase?

The most clearly established links between environmental issues and human rights law are now firmly embedded in the rights of information, political participation and access to effective remedies in case of violations, but environment as such doesn't appear among these human rights provisions.

One big exception of course is the recognition of the human right to a healthy environment. The Special Rapporteur on human rights and the environment had to notify that such right is far from being recognized (not to talk about application) by the majority of States in the world, so that it is impossible to affirm the existence of international obligations in that sense.

Nonetheless, a great number of the States which have recognized the right to a healthy environment are from Latin America and the Caribbean, hence there is a regional coherence in such an innovation, and it is not to be excluded that, starting from there, this legal instrument may prove useful and spread toward the other continents.

Latin American has proven to be an interesting laboratory in environmental law, experimenting new juridical tools, the most innovative of them is perhaps the recognition of the rights of Nature, considered as the *Pacha Mama*, Mother Earth. Her rights are established in different articles of the 2008 new Ecuador's constitution, but especially in its Title II, Chapter VII, article 71:

Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.⁷⁸

The Special Rapporteur himself, speaking about human rights law developments in Southern American region, has showed sincere appreciation for this recent trends, speaking about the right to a healthy environment:

...this region has extensive experience with this right. Many of the countries engaged in this project have long-standing records of accomplishment in implementing this right. So no one here need be alarmed at the prospect of giving this right a legally significant role in the agreement you are preparing! On the contrary, your own experiences with it should help clarify how the right can be used and what its role can be.

I encourage you to draw on those experiences, and learn from one another as you go forward, and then find common ground on which to build a right to a healthy environment into the agreement. This is one of the many ways that the agreement can become a model for other countries and other regions.

[...]

So I want to close by thanking all of the participants in this project for your efforts. By developing clear legal norms for the implementation of access rights, you are strengthening democracy and human rights, as well as sustainable development generally. There is no more important task in the world today⁷⁹.

⁷⁸ Constitution of Ecuador, 2008
<http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

⁷⁹ Statement by John H. Knox, Independent Expert on Human Rights and the Environment at "The Development of Environmental Human Rights", Fourth meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, Santiago, Chile, 6 November 2014
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15274&LangID=E#sthash.ifhICn7U.dpuf>

2.4 A comprehensive concept: “Environmental Human Rights”

In the last pages, the question of relation between human rights and environment has been analyzed deeply, understanding its multiple aspects and its development during time. It is now the case to resume to point of arrival reached by international institutions and Special Rapporteurs. In particular, also for pragmatic concerns, it may be useful to encompass these points of arrival in a unique expression, so that, giving a single and comprehensive definition to the concept of environmental human rights.

The most important source is still the Special Rapporteur on the relation between human rights and environment, John Knox, which has found the internal coherence of the jurisprudence and doctrine produced by the different tribunals, human rights bodies, States and non-State actors.

John Knox, instead of referring to human rights related to environmental issues, referring in general to them or to some particular provision, he refers directly to environmental human rights, as a unique set of provisions. He has done so in its 2015 Report on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, where he compiled the relative good practices. In particular, he referred many times to “environmental human rights defenders”⁸⁰.

Also his 2016 Report on the relationship between climate change and human rights use the expression of environmental human rights: referring to the fact that State are required to protect against human rights violations within their territory and/or jurisdiction by third parties, including business enterprises, to take appropriate steps to prevent, investigate, punish and redress them, and to provide access to remedies, Knox qualifies these abuses as “environmental human rights abuses”, including also to the violations caused by or related to the phenomenon of climate change.

Of course, using this expression he refers to the mix of substantive rights related to the rights to life, health, food, water and property, civil and political (“procedural”) rights as the rights of expression and information, to political participation and self-determination, together with

⁸⁰ John Knox, 2015 Report, Compilation of good practices, op cit. Paragraphs 6, 7, 15, 51, 52, 53, 107.

specific provisions related to the protection of vulnerable groups. These are the rights he specifically linked to environmental issues in its reports. In particular, he resumed all the passages of its analysis on the relation between human rights and environment in this way:

Duties to provide information and to facilitate public participation in decision-making are often considered to correspond to civil and political rights, such as the right to freedom of expression and the right to take part in the government of one's country. But in the environmental context, these duties have been derived from the full range of human rights whose enjoyment is threatened by environmental harm, including rights to health, food, and water. In other words, human rights bodies have said that in order to protect rights to a healthy environment, to life, to health, to property, to an adequate standard of living, it is necessary to protect the environment; and to protect the environment, it is necessary to provide rights of access to information about the environment, to participation in environmental decision-making, and to remedies for environmental harm. Human rights law thus recognizes that human rights and environmental protection depend on each other.⁸¹

So that, the set of environmental human rights consists of those substantive and procedural rights whose violations are likely to both cause or to be caused by environmental harm, while whose enjoyment is especially coherent with environmental protection, with access to environmental policy-making and with the relative access to remedies.

⁸¹ Statement by John H. Knox, Independent Expert on Human Rights and the Environment at "The Development of Environmental Human Rights", Fourth meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, Santiago, Chile, 6 November 2014
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15274&LangID=E#sthash.ifhlCn7U.dpuf>

3. Transnational corporations and the respect of environmental human rights

3.1 From States' to transnational corporations' involvement and commitment

Until now, the focus of this work has been concentrated on international treaty law, which binds States with obligations towards other States, and human rights law, which instead obliges States to respects a set of individual rights and to protect them from situations or actions both of State and non-State actors which may breach of those rights. The non-State actors most involved in environmental issues, as it is already emerged from the questions already addressed, are transnational corporations, and now that the general legal framework in which they operate is clear, they will be the center of the analysis.

The aim of this last chapter of the first section will be to understand if there are legal obligation coming from environmental treaty law and human rights law which binds transnational corporations directly, considering them as subjects of international law, on par with States and individuals. This matter is still far from clear, and most is based on case law of international or regional treaty bodies. But, basing especially on human rights law, there is also a nascent opinio juris about this issue, based on some statements of UNHCR Special Rapporteurs and on voluntary guidelines for enterprises operating in areas and sectors characterized by an high risk of environmental harm and degradation, as well as human rights violations.

Besides this, the opinio juris related to the matter of how transnational corporations should deal with the environment is also enriched by the development of the Corporate Social Responsibility, which consists in a set of rules which enterprises voluntary choose to respect, proving their compliance to them in different ways, especially by submitting to verifications operated by international reporting agencies. Many standards which enterprises decides to comply with are related to commitment in sustainability and protection of the environment. To analyze this issues means

From private actors self-regulation, investigating how they have assumed environmental principles and precepts or, at least, how and how much they declare to do so, it is possible to

discover their opinio juris about their belief to be bound to comply with a set of rules dedicated to protect the environment.

3.2 Responsibility to respect

3.2.1 Transnational corporations' involvement

Most commonly, violations of human rights in situations related to environmental harm and degradation are connected to the activities of extractive industries and with construction and development process. "The main context in which these violations occurred was ongoing land disputes with both States and non-States actors, including multinational corporations and private security companies"⁸².

This is a matter of fact, and both international and human rights law are dealing with this remark, adapting to the situation. As we have seen, the protection of human rights is primarily an obligation for States, because of their specific "duty to protect" individuals who are entitled of those rights. But since the activity of transnational corporations is so much pervasive in environmental matters, and since these actors are often very powerful if confronted with some of the States of the Global South in which they may operate they have been involved in environmental governance.

The legal framework in which transnational corporations are involved comprehends the figure of the "responsibility to respects", that we already encountered in the reports of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, for example when he affirmed that that "corporations themselves have a responsibility to respect human rights".⁸³ John Knox based this statement on

⁸² UNHRC resolution A/HRC/19/55, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 2011 para.66.
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/21/17

⁸³ UNHRC Resolution A/HRC/25/53 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Mapping report 2013, para. 59
<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx>

the a United Nations document, the Guiding Principles on Business and Human Rights, emanated in 2011, which will now be object of further analysis.

3.2.2 The Corporate Responsibility to Respect Human Rights

It is now clear that the link between human rights and environment lay in a set of substantive procedural rights that, even if they weren't thought to be directly related to ecological issues, can nonetheless prevent situations of environmental harm and risk if respected by States.

The reason is that environment is never "only" environment, it is also a territory which has to be governed respecting participation in decision making, a resource to which the people shall have access to, and the public policies which affect it can affect also the health, life, access to food and water of members of groups, also vulnerable ones, which are in turn affected by those policies, and must have access to information about them.

Because of these strong links, a set of rules aimed at making the economic sector responsible for the protection of human rights would also make it more responsible toward the environment. In fact, the 2011 Guiding Principles on Business and Human Rights⁸⁴ are related to environmental matters in different ways.

First of all, as Stated in the 11th paragraph, "Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved". The respect of human rights is considered as a global standard of business conduct, placed above national laws and regulations.

To address human rights impacts means taking measures to prevent them and effective means of remediation, when it is the case. This is very coherent with the precautionary principle stated

⁸⁴ United Nations, Office of the High Commissioner on Human Rights, Guiding Principles on Business and Human Rights, 2011
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

by environmental international treaties, as well as with the necessity of access to effective remedy in case of environmental damages suffered by communities or vulnerable groups, emphasized by the Special Rapporteurs.

This precautionary principle is stressed especially in paragraph 24, where it states that “business enterprises should first seek to prevent and mitigate those [human rights impacts] that are most severe or where delayed response would make them irremediable”.

Bearing in mind the strong relation between environmental and human rights impacts, the relevance of paragraph 13 is immediately clear too, where it affirms that business enterprises should:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

The said activities here refer both to actions and omissions which could, for example, comprehend the adequate disposal of toxic wastes.

Paragraph 17 introduces the principle of human rights due diligence for private enterprises “In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts” and “The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed”. Companies must monitor the implication of their activities and make these information public for people and authorities, in other words they have to be able to respond for these implications, to be accountable for them.

These statements introduce already the principle of the accountability of private companies, which is furtherly specified by paragraph 21, where it affirms that:

In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them.

This has to be done respecting some standards of frequency and accessibility of these communications, which shall provide adequate information for stakeholders to evaluate enterprises operations. These considerations have wide implications in environmental terms.

3.3 UN instruments on transnational corporations environmental accountability

3.3.1 Partnership with business

“The internationalization of production of goods and services by TNCs increases the likelihood of any related environmental damage to a greater number of countries and to a larger part of the world’s environment”⁸⁵. It is from the recognition of this fact that the United Nations have started processes of partnerships with private, non-State actors in order to better address environmental issues. Only the most recent developments will be analyzed here, especially since past approaches, like the UN Draft Code of Conduct for Transnational Corporations, have ended in failures.

From 1990, due to political and more general historical circumstances related to the fall of the Berlin Wall and to the crisis of the Soviet economic model, in the international community and also within the United Nations, the attitude towards transnational corporations and generally toward business changed fast: State control over resources and over economic operations was no more considered a viable option, and international institutions like the World Bank and

⁸⁵ United Nations Conference on Trade and Development (UNCTAD), Environment, UNCTAD Series on International Investment Agreements (UNCTAD/ITE/IIT/23, 2001), at 7.
<http://unctad.org/en/Docs/psiteiitd23.en.pdf>

World Trade Organization saw their acknowledgement, together with their influence⁸⁶. This of course had consequences on UN approach toward corporate accountability in respecting and protecting human rights.

A new trend of promoting UN–business partnerships developed to become an ‘integral part’ of the work of the UN, which seems increasingly relevant for the environmental sector. UN partnership initiatives with corporations are characterized by a multi-stakeholder model, in which also NGOs and business sector as a whole could be included. It may have been a somewhat obligated choice by the United Nations, as it is “based on the reflection that traditional power relationships are changing within an increasingly complex system of governance, where non-State actors play a more and more decisive role”⁸⁷.

3.3.2 The Global Compact

The Global Compact is the most important project of partnership launched by United Nations with the business sector. Its aim is to realize an organizational framework to assist companies in the development and promotion of a management globally based on values instead only on profits.

From an environmental point of view, which also encompasses other related issues, its aspirations are definitely high. On its official webpage, the Compact is defined as “The world's largest corporate sustainability initiative. A call to companies to align strategies and operations

⁸⁶ A.A. Fatouros, ‘Looking for an International Legal Framework for Transnational Corporations’, quoted in Morgera E., ‘Significant Trends in Corporate Environmental Accountability: The New Performance Standards of the International Finance Corporate’ (2006) 18 Colorado Journal of International Environmental Law and Policy 147.

⁸⁷ Morgera E., ‘Significant Trends in Corporate Environmental Accountability: The New Performance Standards of the International Finance Corporate’ (2006) 18 Colorado Journal of International Environmental Law and Policy 147, p. 6

with universal principles on human rights, labour, environment and anti-corruption, and take actions that advance societal goals”⁸⁸.

The Compact foresees a set of partnerships between the United Nations and the private sector based on basic principles of corporate citizenship: respect for human rights and labor standards, commitment toward sustainable development and contrast to corruption. It was firstly proposed in 1999, in Davos, by the United Nations Secretary-General of the time, Kofi Annan. It was to be official launched the following year within ECOSOC.

Specifically, the GC builds on ten principles which companies are expected to integrate in their core business. The ten principles are the following:

1. Businesses should support and respect the protection of internationally proclaimed human rights; and
2. make sure that they are not complicit in human rights abuses.
3. Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
4. the elimination of all forms of forced and compulsory labour;
5. the effective abolition of child labour; and
6. the elimination of discrimination in respect of employment and occupation.
7. Businesses should support a precautionary approach to environmental challenges;
8. undertake initiatives to promote greater environmental responsibility; and
9. encourage the development and diffusion of environmentally friendly technologies.
10. Businesses should work against corruption in all its forms, including extortion and bribery.⁸⁹

These principles are all taken from UN documents, namely the Universal Declaration of Human Rights; the International Labour Organization’s Declaration on Fundamental Principles and

⁸⁸ Global Compact website
<https://www.unglobalcompact.org/what-is-gc>

⁸⁹ Ibidem, The ten principles
<https://www.unglobalcompact.org/what-is-gc/mission/principles>

Rights at Work; the Rio Declaration on Environment and Development; and the UN Convention against Corruption.

Nonetheless, they are spelled in extremely vague terms, not referring to any specific provision. Companies are expected to pursue concrete initiatives that advance their implementation. Adhering companies have a duty to provide a balance sheet, one a year at least, on the Global Compact website, in the form of a Communication on Progress, in which they explain the measures taken to respect the ten principles and what they have learned about the way to apply them. They also have to work transparently, not hiding any of their data and activities from States' and NGOs' eventual monitoring activities.

Once these conditions are met, companies are free to publicize their participation to the program. Initially, no mechanism for monitoring or assessing performance was in place. "From the environmental activists' perspective, the Global Compact has been characterized as an ideal 'greenwash' instrument"⁹⁰. A positive step taken in this sense is the collaboration undertaken by United Nations with the Global Reporting Initiative⁹¹, made in order to make corporations' commitment more credible. Moreover, a renewed governance structure envisages now the possibility to submit complaints of 'systematic or egregious abuses' of the aims and principles of the GC to the Global Compact Office. If the interested company is the object of a complaint, then it must provide information on the actions taken to address the situation. If it doesn't, it can be labelled as "inactive" in the Compact's website, or removed by it.

This structure of corporate social responsibility initiatives has multiple environmental implications:

The Compact contains important indicators for the delineation of the environmental responsibility of businesses, by implying the direct applicability of international environmental

⁹⁰ Morgera, E. op. cit. pp. 8

⁹¹ The Global Reporting Initiative (GRI) was founded in Boston in 1997. Its roots lie in the US non-profit organizations the Coalition for Environmentally Responsible Economies (CERES) and the Tellus Institute. <https://www.globalreporting.org/Pages/default.aspx>

principles to private enterprises. Its most prominent feature is the application of the precautionary principle to adhering companies⁹²

In this context, companies are expected to implement certain measures, like carrying out assessments of their environmental impacts, or invest in environmental friendly products and technologies. They also have to undertake a serious multi-stakeholder dialogue with the groups affected by their activities or with NGOs defending their human rights.

3.3.3 Accountability as a procedural obligation

The Global Compact can be considered as the widest and most comprehensive instrument in the field of corporate social responsibility: the way it is structured consents it to address very different human rights law issues and to include all private companies in its list of well-behaving enterprises.

This of course came at the cost of immediate effectiveness, since it is no more than an instrument of soft law, and also a particularly soft one. Nonetheless, it may contribute to the construction of environmental legal standards, a sort of benchmark, that the international community and other actors may use to critically appraise corporate conduct⁹³.

Within this non-compulsory code of conduct which makes for environmental accountability, its deep but simple meaning seems to be the need more open to monitoring activities of governmental and non-governmental actors and a generally higher transparency to make this monitoring possible in the first place:

Accountability has been defined as a 'system of power control', as a means to furnish substantial reasons or a convincing explanation of one's actions, a system of 'quasi-judicial' answerability based on standards that are internationally defined and implemented [...]In a nutshell, corporate

⁹² Morgera, E. op. cit. pp. 13.

⁹³ Morgera E., Corporate Accountability in International Environmental Law, OUP 2009, Conclusions <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199558018.001.0001/acprof-9780199558018>

environmental accountability refers to a pragmatic approach to ensure that private companies be more transparent, participatory, and proactive in their efforts to contribute to the protection of the environment, thus responding to the expectations of the international community in this direction.⁹⁴

It is now the case to define the content of this accountability, in order to avoid confusion in making concluding observations. The environmental measures that corporations have to follow, if they decide to comply with these standards of soft law, are:

- Provide for environmental impact assessment, taking into account environmental concerns before and during their operations.
- Respect the precautionary principle.
- Disclose of environmental information, particularly if related to hazardous products and processes or emergency situations.
- Realizing public consultations: private companies are expected to properly assess environmental concerns and integrate them in their operation management and decision-making processes.
- Use resources coherently with sustainability principles.⁹⁵

Taking these considerations in mind, it is my neat impression that it is possible to draw a parallel between the points of arrival reached by this field of international law and the conclusions reached by John Know on the relation between human rights and environment.

More specifically, my concluding observation is that there is a surprising coherence between the contents of corporate environmental accountability and the civil and political human rights

⁹⁴ Morgera E., Human Rights Dimensions of Corporate Environmental Accountability, 2011, in Dupuy P., Petersmann E., Francioni F., Human Rights in International Investment Law and Arbitration, Oxford Scholarship Online

⁹⁵ Morgera, 2009, op. cit.

which, in Knox's opinion, have to be respected in order to protect people and groups from environmental harm and risks which would end up in violating human rights.

This is because the measures that enterprises are expected to take in order to respect accountability principles are based on their transparency regarding the technologies and materials they use, their impacts on the enjoyment of human rights and of a decent environment, as well as on their willingness to be monitored by States, NGOs, Unions and Environmental Justice Organizations, during all phases of their activities. This is the same of what is required to States, which must respect the rights to information of all citizens and groups, in order to make transparent their environmental policies, letting everyone to participate in the decision-making processes which could affect the environment.

3.4 An overview of the case law on environmental human rights violations

3.4.1 National courts and international principles: Ecuador v. Texaco-Chevron

I will first refer to a case of a national court which tried to bring a transnational corporation to trial applying international rules and human rights law on environmental issues.

The accused corporation is US based Chevron (formerly Texaco), for the damages resulted from the extracting activities that have been carried out since 1964 in over 1.5 million hectares in the Ecuadorian Amazon. The company admittedly spilled over 60 billion litres of toxic waste and approximately 650,000 barrels of oil in the area.⁹⁶

The Ecuadorian government had ordered a reparation in the past, it was poorly carried out, and had practically no effects on the polluting effects caused by company.

The area interested by the extracting activities was inhabited by several groups of indigenous peoples that, as we have seen, should be especially protected from environmental harm as it

⁹⁶ Chevron-Texaco oil extraction and legal case, Ecuador, Environmental Justice Atlas <http://ejatlas.org/conflict/chevron-texaco-ecuador>

can constitute a violation of human rights, being the environment directly related to their natural means of survival. Now, due to Texaco-Chevron activities, the tribal peoples Tetetes and Sansahuari are now extinct, while the Cofanes, Sionas and Siekopai risk a similar fate, having fled to other regions (constituting a case of forced displacement for environmental reasons. Moreover, the cancer rates result extremely high, and also local farmers had lost their livestock and the fertility of their lands.

For these reasons, in 2013,

the Supreme Court of the Republic of Ecuador condemned Chevron to pay 9.5 billion dollars of damages, thus recognizing that the company's activities violate the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, the International Covenant of Economic, Social and Cultural Rights, as well as the Constitution of the Republic of Ecuador – the first in history to recognize the rights to nature.⁹⁷

It was the first time that indigenous people have successfully sued a multinational corporation in the country where the pollution took place, but actually the case is still pending: until now, the corporation has simply refused to pay, considering the sentence illegitimate and claiming to be victim of an “extortion scheme”.

3.4.2 Citizens and NGOs claiming justice: Friends of the Earth and four Nigerian farmers v. Royal Dutch Shell

The Royal Dutch Shell, one of the “seven sisters” greatest world oil companies, operates since decades in Nigeria, extracting crude oil in a southern region of the country, the Ogoniland, inhabited by the Ogoni people, an indigenous people whose farmers and fishers depend on the safeness of the Niger Delta, which lays in this region.

Between 2004 and 2007, oil spills from Shell facilities variously impacted communities and fisherfolk in the Niger Delta, destroying their fish ponds and farmlands. Some of these incidents

⁹⁷ Ibidem.

arose as a result of poor facility maintenance, lack of supervision and protection of facilities, third party interference, or at times as incidents beyond human anticipation, generally termed as 'acts of God' in law. Chief among these was incidence of oil spills. Oil spills pollute the environment, destroy farmland and pollute watercourses. As a direct consequence of spills, Niger delta residents, predominantly fishermen and farmers, lose their livelihood sources with attendant problems of health, economic and social dislocation.⁹⁸

Shell's pipelines run across all the Delta's area, but nevertheless the company has historically denied any remediation for their invasive activities, especially for the pollution caused by the several oil spills incidents.

In 2008, four fishermen from the villages of Ikot Ada Udo in Akwa Ibom State, Goi in Rivers State, and Oruma in Bayelsa State sued Shell directly in Netherlands. They did so with the aid of the big environmental NGO Friends of the Earth, whose Netherlands based section, called Milieudefensie, took part at the process along with the Nigerian citizens. They asked for declaratory judgments about Shell's liability towards the four plaintiffs and liability for the environmental degradation of the Niger Delta; for compelling orders to Shell regarding the action to be taken against the direct causes of incidents near to the plaintiffs' villages, and regarding the clean-up of the pollution caused by the oil spills, to waters in particular so that this would comply with the international and local environmental standards. In the end, the lawyers present at Le Hague selected three resuming claims for the Shell:

- a. Maintain her pipelines to guarantee no more oil spills in the future,
- b. Clean up the oil pollution in their communities, and
- c. Pay adequate compensation to the farmers for the damages suffered as a result of the spills.

The trial ended in 2013 and brought up some contradictory results:

⁹⁸ Greyl L., Ojo G., Ejolt Report n. 9, Digging Dee pinto Corporate Liability - Environmental Justice strategies in the world of oil, 2013
<http://www.ejolt.org/2013/10/digging-deep-corporate-liability-environmental-justice-strategies-in-the-world-of-oil/>

The judgment was rather surprising to the plaintiffs, and drew mixed reactions. While holding Shell Petroleum Development Company Ltd. - the Nigerian subsidiary - liable to Friday Alfred Akpan [one of the plaintiffs] for its negligence in failing to take reasonable steps to stop a foreseeable sabotage from occurring on their crude oil wellhead (called Christmas tree in local parlance) and spilling onto Friday Alfred Akpan's farmland and fishponds, the court exonerated the parent company, Royal Dutch Shell, from any liability [regarding the three plaintiffs left]. This was rather surprising in light of the fact that direct and indirect links had been established between the Shell in the Netherlands and Shell in Nigeria being two cooperating firms of one single entity.⁹⁹

On one hand, the Dutch Court did set an important precedent, bringing a multinational corporation before a court of law in its home country. Holding Shell liable in a Dutch court was defined as a “commendable” judgement, a huge procedural victory for villagers and activists, especially considering that multiple Nigerian trials against Shell ended up because of procedural technicalities linked to the country of jurisdiction, which effectively prevented citizens to access justice in order to seek remedies for the human rights violations they suffered.

On the other hand, the Court of The Hague denied to the litigating parties the access to Shell private documents, which could have the veracity of their claims. This choice was clearly against the very meaning of corporate accountability and right to information, and it was motivated by considerations on the economic turmoil suffered by the European Union. The fact that economic meltdown could mean protectionism, and also protection of transnational corporations in the course of fair trials, is a factor not to be ignored.

Regarding the enforcement measures (related to take steps to better control the spilling of oil and preventing “sabotage) and the new course that Shell should take while operating in Nigeria, many local community members are skeptical regarding the chance of concrete changes to occur, considering the strong hold that Shell keeps having on Nigerian local and national authorities.

⁹⁹ Ibidem, pp. 40

3.4.3 Regional human rights bodies against national violations: African Commission on Human Rights and the Economic Community of West African States on the Ogoniland case

Concluding this observation of case law, the situation of a sentence or decision issued by a regional or international court about environmental human rights violations shall be mentioned. Among these, the 2001 communication¹⁰⁰ emanated by the African Commission on Human Rights, made after a complaint lodged by two non-governmental organizations in 1996. They were the Social and Economic Action Center (SERAC), based in Nigeria, and the Center for Economic and Social Rights, based in the U.S.A.

Communication 155/96 (2001) of the African Commission issued by the African Commission affirmed that Nigeria had violated articles 2, 4, 16, 18, 21 and 24 of the African Charter of Human and Peoples' Rights¹⁰¹. The perpetrator of these violations was identified in the Nigerian National Petroleum Company (NNPC), which acted within a consortium with Shell Petroleum Development Corporation (SPDC).

Article 21 of the African Charter affirms that "All peoples shall have the right to a general satisfactory environment favorable to their development". With regards to this, the cited Communication stressed the Nigerian State's duty to protect (paragraph 57), adding that "in the present case, despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland", and that "the Nigerian Government has given the green light to private actors, and the oil companies in particular, to devastatingly affect the well-being of the Ogonis" (paragraph 58).

The Communication also claimed violations of the right to food. It is interesting to note that it also affirmed a relation of this right with other ones, included the right to political participation: "The right to food is inseparably linked to the dignity of human beings and is therefore essential

¹⁰⁰ The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples' Rights, Comm. No. 155/96 (2001).
http://www.achpr.org/files/sessions/30th/comunications/155.96/achpr30_155_96_eng.pdf

¹⁰¹ African Charter on Human and Peoples' Rights
http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

for the enjoyment and fulfilment of such other rights as health, education, work and political participation” (paragraph 65).

Of course, the case is related with violations of Ogoni people’s right to life, not only for the consequences of the occurred pollution. From paragraph 67:

Given the wide spread violations perpetrated by the Government of Nigeria and by private actors (be it following its clear blessing or not), the most fundamental of all human rights, the right to life has been violated. The security forces were given the green light to decisively deal with the Ogonis, which was illustrated by the wide spread terrorisations [sic] and killings. The pollution and environmental degradation to a level humanly unacceptable has made it living in the Ogoni land a nightmare.

Finally, paragraph 69 required “a reconsideration of the Government’s attitude to the allegations contained in the instant communication”. However, after more than a decade, in December 2012 also the Court of Justice of the Economic Community of West African States (ECOWAS), recognized ongoing violations of environmental human rights committed by Nigerian government:

[...] the devastating activities of the oil industries in the Niger Delta continue to damage the health and livelihoods of the people of the area who are denied basic necessities of life such as adequate access to clean water, education, healthcare, food and a clean and healthy environment.¹⁰²

In this case so, it is clear that the regional body didn’t have the power to oblige Nigerian State (and the multinational corporations related to it, Shell in particular) to comply with human rights law and its environmental provisions.

¹⁰² Court of Justice of the Economic Community of West African States (ECOWAS), SERAP v. Federal Republic of Nigeria, 14th December 2012
http://www.courtecowas.org/site2012/pdf_files/decisions/judgements/2012/SERAP_V_FEDERAL_REPUBLIC_OF_NIGERIA.pdf

3.4.4 Some concluding observations

In countries interested by important phenomena of pollution and widespread environmental risk, it is very rare for the governments to effectively promote accountability for the responsible actors, may they be transnational corporations, or agencies related to government itself. One thing is certain, at the end of this analysis on accountability: government and companies should be held accountable for their decisions which may affect the environment and the enjoyment of related human rights, but they rarely are, and the case in which they are obliged to act that way are considered exceptional successes.

In the end, it is difficult not to see that despite the progress that juridical instruments may achieve, their interpretation and real enforcement will be always bind to concrete relations of force, which means, in one word, to politics.

Politics is a matter of conflict between opposing interests, and the same applies in environmental issues. As we have seen, environmental human rights are often aimed at protecting particular groups of people, like indigenous groups, which are most often victims of pollution and have the best interest in protecting the environment. We have also seen that other protected groups, like women, children, ethnic minorities and the poor are more endangered by phenomena related to climate change.

It must also be noted that both environmental treaty law and environmental human rights law are based on the assumption, implicit or explicitly expressed, that the richest and most powerful countries and corporations have greater responsibilities in environmental degradation. In political terms, it clearly means that their wealth and power is also grounded on unsustainable environmental exploitation, which produces harm and hazards for the groups cited earlier.

What emerges with clarity is that different strata of the society are differently related to environmental degradation. Of course there is no such a thing as a straight division between polluters and victims, but existing corpora of law recognize nonetheless that responsibilities and dangers aren't equally distributed. Which means that also the interests toward a strict and

effective application of environmental human rights are equally distributed, and this bring us back to the realm of politics.

Political participation on environmental issues has a long history, which have influenced and often anticipated national and international juridical developments around ecological matters. This is especially true for the development of environmental human rights, as will be demonstrated in the next part of this work.

So that, having described and analyzed the development of environmental human rights law and its specific provisions, and how these provisions should apply to non-State economic actors, I will try to show how much of their content has been originated within civil society and social movements. In particular, the thesis asserted will be that the latest developments of environmental human rights law, with a special emphasis on the last reports of the Special Rapporteur John Knox, are in debt to a series of concepts belonging to theory of environmental justice and injustice. Besides this, I will concentrate on the fact that, on environmental issues, innovative theories and practice of protest have developed together, in the context of a certain type of political struggles described as environmental conflicts. The efficiency on international instruments like the Global Compact, aimed at ensuring companies' commitment towards human rights protection, will also be evaluated analyzing corporations' involvement in environmental conflicts.

II Environmental exploitation and the ecological struggles against racism, injustice and inequality: environmental conflicts as a symptom of the global green regime's inadequacies

1. The theory of environmental justice and its relation with environmental human rights

1.1 Reciprocal influences between ecological theories and human rights law

1.1.1 Civil society and international institutions

Besides the scientific community, it is evident from the history of environmental treaty law that civil society organizations, Non-Governmental Organizations and social movements managed to have a great role in influencing States and exerting pressures on institutional policy choices. The political power of these other actors is showed in many different ways, the most evident of them is the participation of NGOs and civil society organizations to the various Earth summits and UNFCCC Conferences of the parties.

On the other hand, the ambit in which activists and institutions can cooperate the most is often at the grassroots level, where the differences between political militants, protesters and human rights defenders start to fade. Environmental organizations and movements, among the others, are completely aware of this fact, so that they intentionally campaign with the objective of making new rights recognized by institutions, or in order to make the authorities apply already recognized rules.

This dialectic between the struggles against violations of already established human rights and the campaign for the establishment of new rights is particularly dynamic in environmental matters:

We must recognize that existing enshrined rights are the fruit of the efforts of communities that have historically resisted violations and demanded their rights, and that we can only move further if we join the resistance of those whose rights are being violated today. For this reason, our alliances with

social movements, both on the ethical and political levels, must form a basis for our campaigns. We plan to debate, define and promote national and international legal instruments in order to support the enforcement and protection of our rights, and we will strive for environmental justice in all that we do.¹⁰³

Within this dialectic, the claim for “environmental rights” pass through the boundaries between human rights of “first generation”, so the civil and political ones, “second generations” of economic, social and cultural rights and the nascent “third generation” of collective rights. Human rights law is challenged at all these levels. It shall adapt its doctrine and jurisprudence to deal with new kind of violations that may be related to existing provisions, and will need to develop new instruments to deal with concerning situations caused by the ecological crisis:

environmental rights include political rights like rights for indigenous peoples and other collectivities, the right to information and participation in decision-making, freedom of opinion and expression, and the right to resist unwanted developments. We also believe in the right to claim reparations for violated rights, including rights for climate refugees and others displaced by environmental destruction, the right to claim ecological debt, and the right to environmental justice.¹⁰⁴

1.1.2 The concept of environmental justice

The expression “environmental justice” is now widespread in public statements and notices drafted by NGOs and civil society organizations, and it is also present in documents coming from official human rights defenders working for international institutions, as will be showed onward.

Nonetheless, it was originally a claim coming from social movements addressed to political and economic power, before the necessity of its application started to be recognized. It can be defined with these words:

¹⁰³ Our environment, our rights - standing up for people and the planet, Friends of the Earth International, August 2004, p.4

¹⁰⁴ Ibidem, p.5

A condition of environmental justice exists when environmental risks, hazards, investments and benefits are equally distributed without direct or indirect discrimination at all jurisdictional levels and when access to environmental investments, benefits, and natural resources are equally distributed; and when access to information, participation in decision-making, and access to justice in environment-related matters are enjoyed by all.

Whereas environmental injustice...

...exists when members of disadvantaged, ethnic, minority or other groups suffer disproportionately at the local, regional (sub-national), or national levels from environmental risks or hazards, and/or suffer disproportionately from violations of fundamental human rights as a result of environmental factors, and/or denied access to environmental investments, benefits, and/or natural resources, and/or are denied access to information; and/or participation in decision-making; and/or access to justice in environment-related matters.¹⁰⁵

Environmental justice cannot be considered a human right (albeit the relationship between this principle and human rights law is an object of investigation), but it is still listed amongst the objectives to be achieved by States as well as regional and international organizations in order to apply the rights to life, health, political participation, and to make sure that violations don't come from wrong environmental policies.

John Knox for example, in his Report on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment¹⁰⁶, lists as example of good practices “the series of judicial symposiums on environmental decision-making, the rule of law and environmental justice that have been hosted by the Asian Development Bank since 2010” (§63) and the Executive order, issued in 1994 by USA's President, “with the goal of achieving ‘environmental justice’ for all communities. The Executive Order requires agencies of the Government to address any potentially adverse human health or environmental effects of their activities on members of minority or low-income populations” (§96).

¹⁰⁵ Ceu Center for Environmental Policy and Law; The Health and Environment Alliance; The Coalition for Environmental Justice, Making the case for environmental justice in Central and Eastern Europe, March 2007, p. 10

¹⁰⁶ Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human Rights Council, Twenty-eighth session, 2015

Actually, the clear recognition of environmental issues as potential vectors for human rights violations is connected to the intellectual production of NGOs and social movements by many more elements. It is now the case to discuss more deeply the ways in which injustice can manifest itself when connected to environmental issue, and then show how many of these concepts have been translated in human rights reports and documents related to the environment and relative policies.

1.2 Pollution, color and ethnicity: the multiple forms of environmental injustice and racism

1.2.1 On environmental racism

Nationally, three out of five African Americans and Latino Americans live in communities with abandoned toxic waste sites. Discrimination influences land use, housing patterns, and infrastructure development [...]The U.S. General Accounting Office estimates that there are between 130,000 and 450,000 brownfields (abandoned waste sites) scattered across the urban landscape from New York to California. Most of these brownfields are located in or near low-income, working class, and people of color communities.¹⁰⁷

There are currently diverse researches where the collected data are coherent with this sentences, which refer to the overlapping intersections of lines of class and color for groups of people which disproportionally suffer from environmental hazards. In the United States, as showed, the groups most targeted by the imposition of waste deposits and other impacting infrastructures and projects are the African Americans, Latinos, as well as natives. This kind of phenomena are considerably widespread around the world and are the essence of what is called environmental racism.

The actors which cause these forms of discrimination, related to the presence of dirty air and polluted drinking water, to the location of noxious facilities such as municipal landfills,

¹⁰⁷ Bullard R., Poverty, Pollution and Environmental Racism: strategies for building healthy and sustainable community, Clark Atlanta University, 2010 p. 10

incinerators, hazardous waste treatment, storage, and disposal facilities, are private firms, and public institutions, coupled by the military ones.¹⁰⁸

These kind of considerations are very well known by human rights defenders, activists, but also by officials and rapporteurs, as we have seen. When referring to systematic human rights violations suffered by vulnerable groups, we may be inclined to think that such circumstances may regard only developing States of the Global South, or richer States with big and visibly disadvantaged minorities, like the United States, who have also a much more recent serious commitment in environmental protection, if compared to European countries (but also to Japan or Russia, for certain aspects).

Countries of Western Europe, instead, show very similar practices, so that despite the fact that the territory of European Union is perhaps the place with the more advanced environmental law, its member States may be still involved in practices consistent with environmental racism¹⁰⁹. It occurs in particular in the form of hazards exportation, which is a situation in which big companies of richer States sends their toxic wastes in poorer countries, where it is easier and less costly to dispose them, due to less strict environmental laws or because of less efficient controls from the authorities. Sometimes, is environmental law itself to produce contradictions:

In recent decades, richer countries have also used poor countries as a 'sink' for pollution and waste. Ironically, improvements in environmental quality resulting from the enactment of stricter environmental standards in the global North sometimes have contributed to the growth of polluting industries and the dumping of toxic wastes in the South, as corporations and entire industries actively seek sites with fewer environmental regulations. While the 1992 Basel Convention on the Control of Transboundary Movements of Hazardous Waste regulates the

¹⁰⁸ Westra L., Wentz P., *Faces of Environmental Racism: Confronting Issues in Global Justice* (1995) cit. in Robert D. Bullard, *Poverty, Pollution and Environmental Racism: strategies for building healthy and sustainable community*, Clark Atlanta University, 2010.

¹⁰⁹ There would be very much to say about the various forms of racism present in EU member States, about their relation with human rights violations and on their level of institutionalization, of course.

export of waste, its 'recycling' clause has permitted toxic waste to be labeled as recyclable material and hence exportable.¹¹⁰

In Europe, this phenomenon take the form of exportation of wastes from western to central and eastern countries. But the same racism is showed within the countries' borders too:

In Germany, immigrants and less economically viable communities seem to bear the brunt of environmental injustices. Turkish immigrants, for example, work in unsafe conditions and subsequently live near highly polluting factories. In another German town, Wuppertal, a number of mobile telephone transmission towers are located on tops of schools attended largely by immigrant students.¹¹¹

1.2.2 Environmental racism in the Global South

Environmental racism in the South can take different forms, as it can be related to discriminations occurred along the North-South axis, or on an "horizontal" South-South basis, while Intersections of the two cases may verify too.

a) The North-South axis

Regarding the first situation, the territory of the (former) Somalian State proves to be an interesting case to prove these theories. Moreover, it also shows the relevance that organized crime, black markets and informal economy can have in relation to pollution and connected human rights violations:

Investigations in the 1990s linked the dumping of toxic waste to European front companies associated with the Italian mafia, a claim that was again made in 2012 and which the European Union is reported to be investigating. A 2005 United Nations Environmental Programme (UNEP) report says most of the waste has been dumped on seashores in containers and disposable leaking barrels. And former United Nations Envoy to Somalia, Ahmedou Ould-Abdallah, told

¹¹⁰ Ceu Center for Environmental Policy and Law; The Healt and Environment Alliance; The Coalition for Environmental Justice, Making the case for environmental justice in Central and Eastern Europe, March 2007, p.16

¹¹¹ Ibidem, p.15

Aljazeera in 2008 that the world body had reliable information that European and Asian firms were continuously dumping hazardous waste off Somalia.¹¹²

These toxic wastes comprehended radioactive material and NGOs like Common Community Care have stated that, even in the short period, an unspecified number of fishermen have died because of these incidents¹¹³.

b) Southern cases

Some striking evidence of environmental racism comes from developing southern countries, like Brazil and South Africa where, despite the recent economic growth, there are still enormous social inequalities, mostly structured along racial lines.

In Brazil, racial inequalities translate in environmental injustice especially due the geographic distribution of the people. During Brazilian history, the white élite took possession of the most appealing parts of the cities, leaving the black population in much harsher settlements. It is common for the global rich élites to segregate poor populations in the peripheries on the urban environments, but Brazil is one of the countries in which this phenomenon is more evident, and it is also strongly related both with environmental issues and with the enjoyment of different human rights, life and health included:

The densely populated favelas are cities within the city where sanitation, water, fire, police, hospitals and health, and transportation services are not guaranteed. Most of the favelas also lack drivable roads and adequate infrastructure (Hart, 2000; Gewertz, 2000). Racism harms the

¹¹² Patrick Burnett, Somalia toxic waste dumping, Environmental Justice Atlas
<http://ejatlas.org/conflict/somalia-toxic-waste-dumping-somalia>

¹¹³ For a more complete report of this argument, see also The toxic ships, the Italian hub, the Mediterranean area and Africa, Greenpeace, 2010
<http://www.greenpeace.org/italy/Global/italy/report/2010/inquinamento/Report-The-toxic-ship.pdf>

environment and the favela inhabitants. Residents build flimsy houses on the hillsides where the terrain is fragile. Many are killed and injured by frequent landslides.¹¹⁴

Something very similar happens in South Africa. Here, despite the fact that apartheid has been eliminated decades ago, the white minority is still highly privileged at the expenses of the black majority, whose subaltern condition is also characterized by “a combination of poor land, forced overcrowding, poverty, importation of hazardous waste, inadequate sewage, dumping of toxic chemical into the rivers, strip mining of coal and uranium, and outdated methods of producing synthetic fuels”¹¹⁵.

However, the South African case is better explained by the concept of internal colonialism, which will be analyzed next.

c) Racism between and within countries

The already mentioned Nigerian case is a perfect example of environmental injustice, and this particular injustice is shaped around more than one racial discrimination.

The first, evident, racial discrimination regards the fact that Netherlands law and the Shell oil company treat Nigerian citizens differently than white, western ones, showing less concerns in violating their rights and threatening their conditions of life. This behavior is common amongst richer countries, as we have seen in the Somalian case.

But the Nigerian situation is more complex, because racism is exercised not only by a foreign nation and its companies, but also within Nigerian borders. The Ogoni people has to endure the manifest discriminatory policy operated by the central government, which guarantees the interest of dominant ethnic groups, leaving the less represented groups of the population alone in facing the social and environmental costs of the most important economic activity of the country, which is oil extraction.

¹¹⁴ Bullard R., op. cit. p.7

¹¹⁵ Ibidem, p.8

The activities connected to oil extraction realize, in fact, 65% of national GDP, while oil exports make for 95% of all the exported goods. The enormous profits remain first of all in the hands of the extractive industries, while a smaller part is allocated between the élites of the dominant ethnic groups¹¹⁶.

In short, the economic exploitation of the Rivers State, coupled with the lack of political representation of its inhabitants and of their right to political participation, demonstrated by the violent means adopted to repress the indigenous people mobilizations, confirms that the members of the Ogoni people aren't considered citizens with full rights (it was the Nigerian State to execute Ken Saro Wiwa, after all, certainly not the Shell).

It is interesting to note that, in extreme cases like this one, strictly environmental claims related to territorial political campaigns, are inextricably linked also to other struggles, aimed to obtain higher degree of self-determination for the local people¹¹⁷. The strong relationship between political participation and the human rights to health and life, find again an environmental basis. The issues of land government and its ecological exploitation have indeed a long relationship, which may often find its origin in colonial conquests and their developments.

1.2.3. Internal colonialism

The Ogoni case shows the interconnections between simple racism and colonial issues, together with the other cases of Brazil and South Africa. With colonialism, we refer to

What is interesting here, which makes the injustice immediately clear, is the difference with traditional colonialism: in situations of internal colonialism, the authoritarian administration of the colony, conquered to extract its resources, doesn't regard a country situated far off the homeland, but a portion of its own territory and population.

¹¹⁶ For a complete discussion of the history of Shell exploitation of Nigerian territory and in particular of Ogoniland and its relation with the company and the central government in different phases of the country's history, see Omoweh D., *Shell. The Petroleum Development Company, the State and Underdevelopment of Nigeria's Niger Delta - A Study in Environmental Degradation*, Africa Research & Publications, 2006

¹¹⁷ This matter is especially related to the concept of "Internal colonialism", which will be now discussed in relation to environmental issues.

These colonized peoples are mostly natives, indigenous groups, already disadvantaged on social and economic basis. In this sense, the African continent doesn't actually provide the only, and neither the best, examples of coexistence of different population, ended in situations of domination and racism.

In numerous American countries, in fact, there are cases of environmental racism which took the form of internal colonialism. With a still alarming frequency, many native populations of the new world suffer from a *de facto* institutionalized form of violent discrimination exercised by the States, both in the Northern, in the Central and Southern part of the continent.

American natives have indeed withstood genocidal practices during the formation of modern States in these regions. This is certainly true for all American States which was previously inhabited by these groups but, referring to modern times, it may be wrong to generalize: as we have seen, recent developments have improved the living conditions of many indigenous peoples of Latin America, incorporating the right to a healthy environment and even *Pacha Mama's* rights at the constitutional level. Nonetheless, this happened only in some countries of South America, and only in very recent times. In general, environmental policies have been much different:

Radioactive Colonialism and Threatened Native Lands. There is a direct correlation between exploitation of land and exploitation of people. It should not be a surprise to anyone to discover that Native Americans have to contend with some of the worst pollution in the United States. Native American nations have become prime targets for waste trading. [25] The vast majority of these waste proposals have been defeated by grassroots groups on the reservations. However, "radioactive colonialism" is alive and well. Winona LaDuke sums up this "toxic invasion" of Native lands as follows:

While Native peoples have been massacred and fought, cheated, and robbed of their historical lands, today their lands are subject to some of most invasive industrial interventions imaginable. According to the Worldwatch Institute, 317 reservations in the United States are threatened by environmental hazards, ranging from toxic wastes to clearcuts. Reservations have been targeted as sites for 16 proposed nuclear waste dumps. Over 100 proposals have been floated in recent years to dump toxic waste in Indian communities. Seventy-seven sacred sites have been

disturbed or desecrated through resource extraction and development activities. The federal government is proposing to use Yucca Mountain, sacred to the Shone, a dumpsite for the nation's high-level nuclear waste.¹¹⁸

1.3 The influence of environmental justice theory and civil society activism on the UN approach to the relation between human rights and environment

1.3.1 A very coherent theoretical content

Now that some of the multiple facets of environmental injustice have been analyzed, it is the case to summarize the information acquired, in order to confront these ecological theories with the content of the reports produced by the Special Rapporteur on human rights and environment John Knox. The objective is to verify the similarities between the violations of human rights related to environment listed by the Special Rapporteur and the description of environmental injustice and, symmetrically, to confront the provisions and remedies which should be implemented in Knox's opinion with the precepts that would realize environmental justice.

First of all, the concept of environmental injustice, as intended by NGOs, social movements and civil society organizations is based on discrimination, in terms of disproportionate suffering from environmental harm and hazards. It is clear that discrimination on whatever basis is contrary to the principles of human rights law, especially if related to the enjoyment of the rights to life, health, to access to food and water, to information, association and political participation, which are the rights especially connected to environmental issues, according to John Knox's reports.

More specifically, the interrelation of class conditions, gender and race with environmental injustice is clearly connected to Knox's warnings about the fact the groups of persons already recognized as vulnerable by international human rights law, like women, minorities and indigenous groups, are also the principal subjects at risk of violations of their environmental

¹¹⁸ Bullard R. op. cit. p.10

human rights in situations of environmental risk, especially regarding their rights to life and health.

Moreover, striking cases of environmental racism like the Nigerian one and, in general, every case of injustice which may be identified with internal colonialism, is described by environmental justice theory as a form of institutionalized discrimination. This discrimination is connected to the rights of association and political participation of the inhabitants of areas targeted by highly impacting environmental policies. If their rights to information and access to legal remedies would have been respected, together with their right to participate in environmental decision-making processes, environmental injustice couldn't have occurred in the first place. Cases like the execution of the activist Ken Saro-Wiwa by Nigerian government make this connection especially clear.

Finally, it shall be noted that the relation between ecological and human rights discourses is also recognized by John Knox himself, which refers multiple times to civil society organizations and to their contribution in human rights defense, promotion and development in his reports.

1.3.2 Recognition of the role of civil society participation in environmental human rights defense

When the Human Rights Council requested a report from John Knox on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment with the resolution 19/10 adopted on 22 March 2012, it specifically requested the Special Rapporteur to take into account not only the views of "Governments, International bodies, national human rights institutions", but also to consult "civil society organizations, the private sector and academic institutions"¹¹⁹.

In his reports, in fact, John Knox testify multiple times that a considerable contribution on the development and protection of human rights came from non-institutionalized actors, like NGOs and other kinds of associations. The combined contribution from institutional, social, academic

¹¹⁹ John Knox, 2012 Report, Paragraph 2

and economic actors take into account a rich variety of different perspectives and, indeed, “This diversity of perspectives demonstrates the importance that international organizations, States, civil society organizations and scholars place on these issues and their relevance to a wide range of actors in the fields of human rights and environmental policymaking”¹²⁰.

In particular, civil society organizations’ role in human rights protection is especially stressed in the list of good practices about human rights protection and environment redacted by the Special Rapporteur. The good practices carried out by non-institutionalized actors are also coherent with the “procedural” interpretation of environmental human rights given by Knox: “Civil society organizations have also engaged in exemplary practices designed to facilitate the exercise of procedural rights to information, participation and remedy. One of the most notable is The Access Initiative (TAI), a global network of more than 150 civil society organizations that work together to promote procedural rights”¹²¹.

It is also worth considering that “Civil society organizations can also play an important role in facilitating public participation”, showed for example by Namati, a non-profit organization that “has trained ‘community paralegals’ to empower individuals and communities to protect their lands and national resources. For example, in Myanmar, Namati and a local partner organization have trained more than 30 paralegals to help families to register and protect their land rights”¹²².

Finally, we can follow John Knox in concluding that: “From the 1960s to the present, the modern environmental movement has transformed our relationship with the environment”¹²³. Of course, not only civil society organizations but also States have participated to this movement, using their multiple means, powers and authority. But factual evidence shows that they are not the most convinced supporters of human rights related to environment. More often than not,

¹²⁰ John Knox, 2012 Report, Paragraph 37

¹²¹ John Knox, 2015 Report, Paragraph 85

¹²² John Knox, 2015 Report, Paragraph 47

¹²³ John Knox, 2012 Report, Paragraph 8

hazardous situations are created by States, which actively threaten the individuals and groups which try to prevent human rights violations. So that, for example: “There is an urgent need for good practices in the protection of environmental human rights defenders. A number of international institutions and civil society organizations (but not, unfortunately, States) have provided examples of such practices.”¹²⁴

2. The social response to environmental human rights violations. An analysis of environmental conflicts’ theory and practice

2.1 Introductory remarks

It has been showed that the idea of environmental human rights and, in general, the relation between the protection of the environment and the prevention of human rights violation comes from the civil society, its organizations and social movements, which have influenced institutions with their campaigns and protests, but also realizing a considerable number of exemplary good practices in environmental human rights protection.

As we have seen, one of the human rights often violated in situation of environmental harm is the right to political participation, connected to the rights to information, expression and association. When these rights aren’t respected by authorities that establish environmental policies, or by non-State actors which operates on a territory without considering the ecological impacts of their actions, the affected groups can react trough political mobilization, in order to have access to remedies for the harm suffered and to participate to political process.

In these cases, the arising social conflict takes the name of environmental conflict. One of the aims of the following analysis is to provide a definition for this phenomenon, observing it from different points of views, from the lens of security studies as well as ecological theories.

It is important to note that political claims made by groups and organizations operating within environmental conflicts are not always expressed in human rights terms. So that, another

¹²⁴ John Knox, 2015 Report, Paragraph 52

objective will be to stress the coherence between environmental human rights provisions and ecological activists claims, treating a wide number of cases where these similarities emerged with greater clarity.

2.2 The political dimension of environmental protection

It has been previously observed and explained how environmental protection and sustainable development cannot be separated by other elements of policymaking, like the adequate information of the population interested by hazardous economic activities or particular projects, as environmental human rights are composed by some very important procedural obligations, in addition to substantial ones. These provisions are related to the possibility for citizens to effectively participate to decision-making processes in environmental matters, valued the same as other political and economic decisions, if not more.

When special rapporteurs, activists and human rights defenders refer to the right to political participation, and about its relation with environmental policies, we shall always remember that these issues can be related to situations of grave violations, caused by decades of discrimination suffered by indigenous peoples, other vulnerable groups, different ethnicities or inhabitants of a particular region. In these context, the activism of human rights defenders cannot be easily separated from political mobilization and, actually, the distinction between political and juridical claims is often not possible at all.

There are some very explicative cases which proves the inherently political nature of environmental human rights. One is the already mentioned case of the Ogoni people, the indigenous people of the Niger Delta afflicted by the “ecological war”¹²⁵ moved by Shell and other big oil companies. In this case, it is possible to clearly see the succession of a typical human rights motivated activism and of a violent kind of political strife. “Tactics have ranged

¹²⁵ Temper L., Crude Justice & Ecocide in the Niger Delta
<http://www.ejolt.org/2013/04/crude-justice-ecocide-in-the-niger-delta/>

from peaceful resistance such as the MOSOP (Movement for the Survival of the Ogoni people) led by Ken Saro-Wiwa to guerrilla military uprisings such as the MEND movement”¹²⁶.

Saro-Wiwa, a poet, writer and television producer, has been executed by the Nigerian government in 10 November 1995, at Port Harcourt, together with other eight members of his organization. Instead, the MEND, the Movement for the Emancipation of Niger Delta, is a big and armed ecoterrorist militia which is still strong enough to launch attacks on refineries and extractive oil sites.

MEND does not principally claim to defend human rights, as MOSOP did, as it positions itself outside the law, so that its environmental claims aren't expressed in juridical terms. But even a non-violent human rights defender like Ken Saro-Wiwa has been considered a criminal by Nigerian authoritarian government and, more importantly, claims coming from MOSOP and MEND doesn't differ: we could say that both desire the application of environmental human rights in the Niger Delta, as they are a matter of Ogoni sovereignty over its territory, their means of production and living, their rights to health and life.

When these rights are claimed in situations of environmental degradation, it is often because a political conflict is taking place around such issues. These political, environmental conflicts, fought to claim the application of environmental human rights (even if the claims may be not expressed in these terms) can take a variety of forms, and it is now the case to investigate them with more attention.

2.3 A realist interpretation of environmental conflicts

2.3.1 Trials as a strategy

We have seen that trials issued both by national and international tribunals may play a role in preventing or punishing violations of human rights related to environmental harm and degradation. Their value, nonetheless, can be fairly limited, and a lot of time is usually needed in order to arrive at a verdict. On the other hand, the juridical instrument may be used by NGOs or

¹²⁶ Ibidem

social movements to raise awareness about their struggles and on the conditions of life of the populations afflicted by cases of intense pollution.

The use of international trials can be chosen by human rights defenders not only on juridical, but also on communicative and strategic grounds:

Nonetheless, in recent years, some events [...] have confirmed that civil society, by enforcing existing legal provisions or asking for the elaboration of new ones, is increasingly able to attract public attention to oil-related crimes, demanding the acknowledgement of human rights violations and environmental or ecological disasters caused by the negligent or malicious behaviour of oil companies.¹²⁷

This consideration moves us from the realm of law to the political arena, where law is constantly changed, interpreted, ignored or violated by the various players.

The already cited case of the Ecuadorian trial to the firm Texaco-Chevron is really enlightening about the relation that law entertains with politics, so that with matters of communication and, especially, power: the company can ignore the court's decision since the Ecuador supreme court simply has not the power to punish the company outside of the country borders, and even within those there are limits, political limits posed by the company's wealth and power, and by the fact that its home country won't cooperate with Ecuador on this matter, and the reasons for this choice is clearly not just a juridical one.

Politically speaking, and from the communities' perspective, one may say that to resort to Ecuadorian national court came with gains and losses: the verification and confirmation of violations of human rights law helped the battle of the indigenous peoples, but the impossibility to really prosecute the company caused a sense of powerlessness.

When equilibria of power matter, it makes sense not simply to resort to law, but also to the strongest possible court which can enforce juridical decisions, especially considering that firms

¹²⁷ Greyl L., Ojo G., Ejolt Report n. 9, op. cit. pp.7

show little concern to take advantage of weaker States and ex colonies, usually with more corrupt establishment.

Another Ecuadorian case can shed light on the power relations between courts, firms and States:

In 2002 the company CGC Argentina (Compañía General de Combustibles), accompanied by the Ecuadorian army illegally entered the territory of Sarayaku and buried 1500 Kg of pentolite, explosives used in seismic exploration for oil.

The case was brought before the Inter-American Commission of Human Rights, creating a historical precedent in the defense of indigenous rights. The Constitution and the ILO Convention 169 determined to have prior, free and informed consent of indigenous peoples before starting exploitation. The people from Sarayaku won the case.¹²⁸

The Sarayaku people must still face a situation of serious environmental harm, but the government of Ecuador is not trying to evade its obligations coming from the participation to the Inter-American Commission.

Until now, we have only analyzed conflicts happened within opposing parties in tribunals, happened because of human rights violations. But the causes can be much different, and even if they may be interpreted as violations, they aren't always expressed in these terms. It is now the case to address the question of what environmental conflicts are, and to interpret them with political and social sciences instruments.

¹²⁸ Ejolt project's Blog, November 20th, 2012

<http://www.ejolt.org/2012/11/watch-an-ejolt-movie-on-the-sarayaku-v-ecuador/>

See also the documentary about this matter, made by Arturo Hortas :

http://www.youtube.com/watch?v=6Rj4dNxwQ_4

2.3.2 Conflicts for what causes?

Climate change, acid rains, ozone depletion, biodiversity reduction, pollution of soils and waters, the consequent land fertility losses, are all environmental questions which are strictly related to our level human welfare, our economic activities and levels of health.

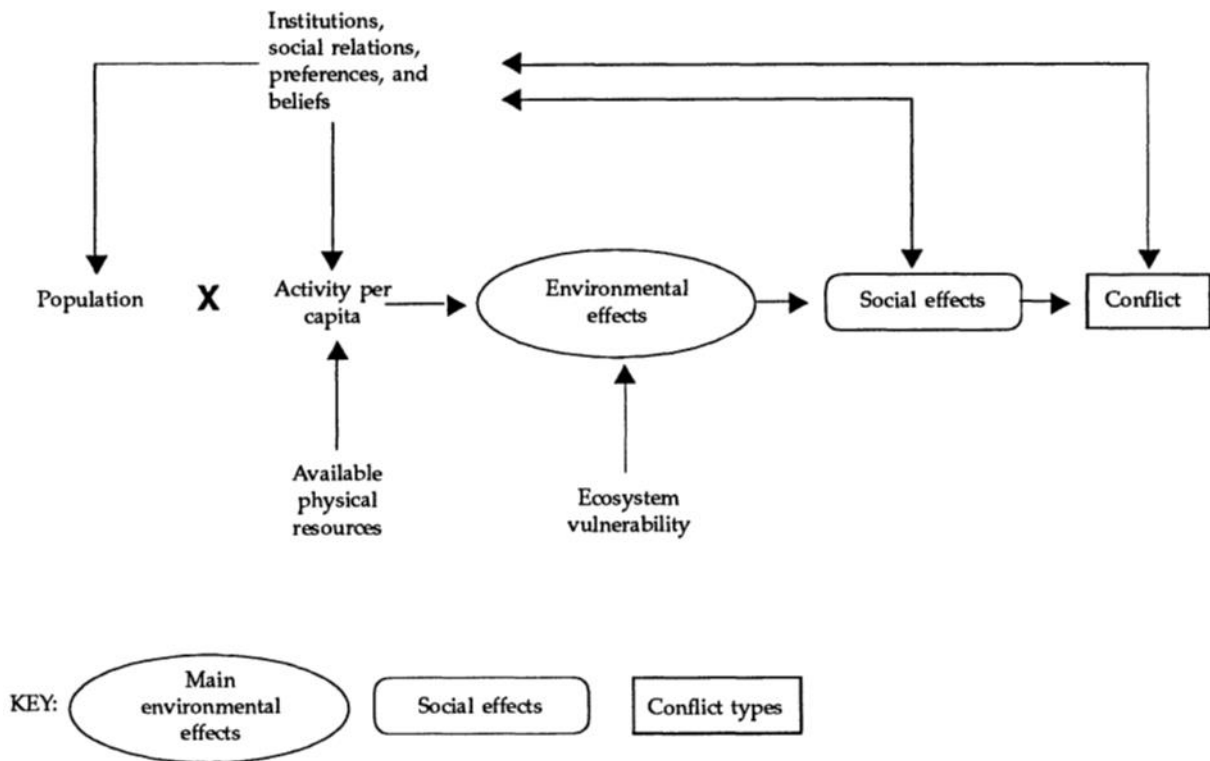
In this situation, it is simply normal that those kinds of environmental degradation lead to social strife and political conflicts. What is now to be investigated is the relation and transitions that connect these environmental causes to their social effects.

The ways in which ecological hazards can traduce in political conflicts are multiple, and multiple schemes of this relation have been realized. One of the most complete has been produced by the political scientist Thomas Homer-Dixon which, from more than a decade by now, is proposing a complex and multidisciplinary approach to the study of conflicts generated by environmental causes.

The center of the scheme is the dialectic between human activity and ecosystems. Humans act on the environment, and their acts return to them under the different forms that environmental degradation may take¹²⁹:

¹²⁹ Homer-Dixon T., *On the Threshold: Environmental Changes as Causes of Acute Conflict*, International Security, Vol. 16, No. 2, 1991, p.86

Figure 1. Environmental Change and Acute Conflict.



What produce environmental effects in the first place is the combination of population and activity per capita, which is itself determined by material elements – the available physical resources – and by social and political factors – namely institutions, social relations, preferences and beliefs.

The quantity and quality of environmental effects doesn't depends simply and directly by the human activities, but also by the characteristics of the ecosystem they impact on, which can be more or less vulnerable, and in different ways.

The dialectic of the system of production and the environment then return to impact on the society side, when the effects produced on ecosystems become causes of social effects. These can assume a variety of shapes:

For example, the degradation of agricultural land might produce large scale migration, which could create ethnic conflicts as migratory groups clashes with indigenous populations. There are important feedback loops from social effects and conflicts to the ideational factors and thence back to activity per capita and population. Thus, ethnic clashes arising from migration could alter the operation of a society's market and thereby its economic activity¹³⁰.

There are four specific social effects identified in these scheme, consisting in reduction of agricultural production, economic decline, population displacement and disruption of legitimate authorities and social relations¹³¹. It is interesting to note the relations between these phenomena and the environment-related human rights identified by Knox the other rapporteurs and human rights documents.

- The losses in agricultural production are likely to damage especially the more vulnerable groups of the population, the poor but also the women, children and indigenous peoples which may depend on the primary sector. On a higher level, grave consequences may arise in the form of threats to the food security, so to individuals' right to food and to health too.
- Economic decline is a too much wide category to be related to a few particular human rights issue, but it is obvious that in such situation the most vulnerable groups of the society are likely to suffer from ulterior deterioration of their conditions of life, which would prevent them from enjoying most of their social and economic rights. Furtherly, when the economy of a country decline, States may have to face shortages of their budgets, with consequences to their ability to provide services related, for example, to the human rights to education and health.
- As we have seen, displacement is listed among the causes of human rights violations related to human rights, and also among the effects of climate change, as it can be caused by desertification or extreme weather events. In particular, both reports on human rights and climate change and these political science studies on environmental

¹³⁰ Thomas Homer-Dixon, op. cit. pp.86-87.

¹³¹ Ibidem, pp. 90-98.

conflicts argue that displacements of populations or groups are likely to pose serious security issues, as it can aggravate existing conflicts by enhancing the relative scarcity of resources in host territories.

- Disruption of authorities and social relations is again, of course, related mostly to security issues. These social effects are the most likely to impact directly on the individuals' right to life.

Every one of these social effects consist in impacts on societies and can (and do) cause conflicts of diverse kind. But it must be always stressed that, despite the phenomenal variety of environmental and social causes and effects, in spite of the variety of conflicts that may arise, it still holds true that ecological crisis poses a challenge to societies which just can't be faced addressing issues one by one, without changing their root causes, as the problems are all interrelated and can keep aggravating one another: "human kind will face multiple resource shortages that are interacting and unpredictable, that grow to crisis proportions rapidly, and that will be hard to address because of powerful commitments to certain consumption patterns"¹³²

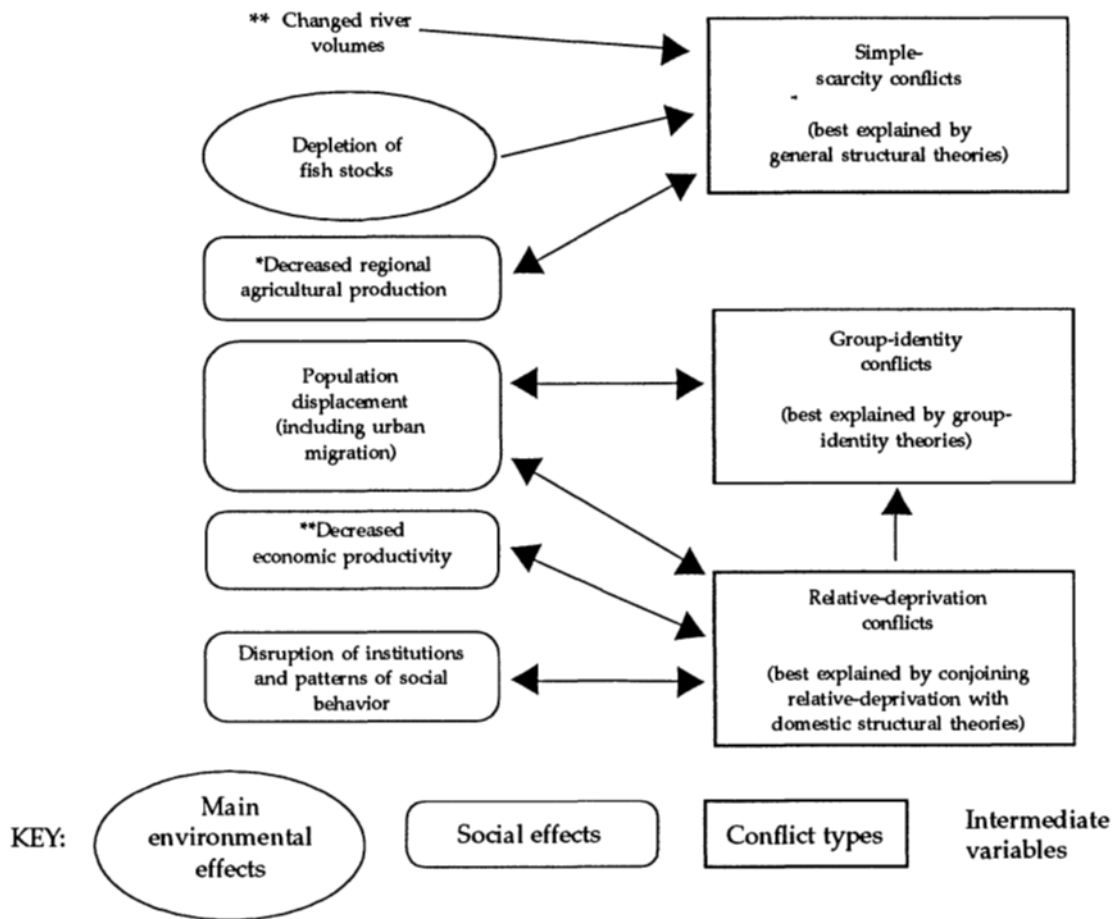
2.3.3 Different types of conflicts

Thomas Homer-Dixon continued his reasoning providing for a detailed scheme of how social effects can result in different types of conflicts¹³³:

¹³² Homer-Dixon T., op. cit. pp. 101.

¹³³ Homer-Dixon T., op. cit. pp. 107.

Figure 4. Types of Conflict likely to Arise from Environmental Change in the Developing World.



The social and political conflicts which belong to the category of “simple scarcity” are mostly interpreted by the classic realist paradigm, so they are likely to receive attention by experts of security studies. The figure suggest that they may be provoked by environmental causes, or by environmentally-driven economic causes, like changes in rivers volume, depletion of fish stocks, decreases in agricultural production.

These resources are all renewable, so that their use could be organized coherently with sustainable development principles. On the other hand, they are actually exploited in ways that increase their scarcity, so the likelihood that conflicts arise in order to access them keeps growing, together with the consequent human rights violations.

Homer-Dixon made an explicative example of simple scarcity conflicts arisen due to environmental causes referring to Turkish dam projects on the Tigris and Euphrates rivers. He was mostly interested in investigating the social effects and relative conflicts in terms of relations among States, but also other aspects of the issue present interesting elements for the analysis of environmental conflicts.

This Turkish project is now much more advanced in its realization, and it is worth verify the actual consequences it has caused while monitoring its development:

The project foresees the construction of 22 dams and in those already completed, there have been some conflicts regarding displacement and resettlement issues. Moreover, regarding cultural assets, urgent excavations took place in areas that would submerge under dam lake waters. Furthermore, during the construction of some of the dams, certain settlements claimed the depletion of their groundwater (for example Suruc).¹³⁴

The consequences in terms of human rights violations are self-evident, especially regarding the access to water for rural population, but they are not the only ones. This Southeastern Anatolia Project (GAP), has one particularly important component, the Ilisu dam project on the Tigris, which is about to be concluded. Its implementation comes with a series of harmful environmental impacts, like biodiversity loss (wildlife, agro-diversity), desertification, drought, loss of landscape/aesthetic degradation, soil erosion, deforestation and loss of vegetation cover, groundwater pollution or depletion, large-scale disturbance of hydro and geological systems, reduced ecological / hydrological connectivity, but also air pollution, fires, floods (river, coastal, mudflow), and food insecurity due to damages to crops¹³⁵.

All of these elements concur in causing social consequences, like displacement of the Kurd rural populations that inhabits those territories. Displacement is, indeed, identified by Homer-Dixon as a social cause of “group-identity conflicts”: when large masses of people are obliged to move

¹³⁴ Southeastern Anatolia Project (GAP), Turkey, Ejatlas
<http://ejatlas.org/conflict/southeastern-anatolia-project-gap-turkey>

¹³⁵ Ilisu Dam Project, Turkey, Ejatlas
<http://ejatlas.org/conflict/ilisu-dam-project-turkey>

from one place to another due to environmental changes, hostilities between the indigenous group and the newcomers are among the possible outcomes. When racial strife breaks down, this situations are likely to result in discriminatory practices on ethnic, religious or national bases.

Population displacement has been also identified as one of the possible causes of relative-deprivation conflicts, together with decreased economic productivity and disruption of institutions and patterns of social behavior. In situations characterized by overall economic crisis and widespread environmental hazards, the economic and political élites are expected to do their best to maintain their high standards of living. This can be only achieved through the appropriation of the major parts of the shrinking resources available for society and such an objective can be only realized through systematic violations of many civil and political rights, in addition to social and economic ones. On the other hand, it can also be argued that, in situations of serious environmental degradation, opposing groups may be favored by the growing anger and frustration of the population, utilizing these emotional elements to challenge the current establishment.

2.4 The relation of environmental conflicts and other types of conflicts

2.4.1 “The worse to come”

The conflicts identified up until now have a clear environmental component, by they don't appear to have a particular character because of this fact. Their environmental cause, in other words, doesn't make them especially different from other conflicts. A long time have passed since peoples and States have started to fight over resources, after all, and environmental degradation appears as an aggravating more than a characterizing factor:

Violence usually arises indirectly from the economic and institutional dislocation caused by resource stress.

We argue that these conflicts are interesting because they represent early indications of worse to come. We do not claim that the types of conflict themselves are new: insurgency, ethnic

clashes, and rebellion are ancient forms of violence. We do, however, claim that because environmental stress is worsening, we can expect an increase in the frequency of conflicts with an environmental component.¹³⁶

This prediction is a good omen for remembering that environmental issues won't just stay environmental, and that ecological issues are also social and political ones, as they regard the distribution of resources, the access to them by different sectors of society, and the participation to policy decisions related to them.

2.4.2 Multiple interrelations

It may be possible to argue that, one of the reasons behind the fact that both environmental treaty law and, especially, Special Rapporteurs' documents testify for the multiple relations entertained by environmental issues with political and economic ones, and with very different sets of human rights, can be the fact that environmental conflicts themselves often don't show a very specific character, since the environmental element tend to be inextricably linked to many others.

The previously mentioned Turkish project of the Ilisu dam on the Tigris river strongly support this consideration: the river's waters are clearly an environmental resource, and a part of an ecosystem, and their management can imply serious environmental impacts, as it has been showed. But it is impossible not to see, for example, that the dam would be constructed in Kurdish territory, in a context characterized by extreme political violence in many moments of the last decades, and where in this very moment (March 2016) military repression from the government is reaching new levels of violence.

Besides this, the management of Tigris and Euphrates waters has also a great geopolitical value, since both Iraq and Syria strongly depend on them for water supply and agricultural production. These two countries, in fact, have recently experienced rising tension, which escalated in a

¹³⁶ Homer-Dixon T., Marc A. Levy, Correspondence. *Environment and Security*, International Security, Vol. 20, No. 3 (Winter 1995/96), pp. 189–198.

harsh military conflict, also for environmental reasons. It is still rare to interpret conflicts in middle east also through environmental lens, but from recent analysis and investigative reports some interesting insights are emerging. In Syria, for starting, “a devastating drought beginning in 2006 forced many farmers to abandon their fields and migrate to urban centers. There’s some evidence that the migration fueled the civil war there”¹³⁷.

Similar phenomena have happened and are still in course in Iraq, where dropping water levels showed relations with rising tensions. “In Iraq, the absence of a strong government since 2003, drought and shrinking aquifers have led to a recent spate of assassinations of irrigation department officials and clashes between rural clans”¹³⁸.

It must be stressed, on the other hand, that there is by no means a necessary link between governmental inefficiencies and environmental degradation: one may cause the other and vice versa, but also the opposite is true, as a regularly functioning government can of course provoke great environmental impacts on certain territories, also voluntarily. Iraq’s recent history can be utilized again to show this fact: in 1991 Saddam Hussein tried to enforce his domination over the Ma’dan, arab population of the marshlands, diverting the course of Tigris and Euphrates rivers. He considered those territories a perfect hiding for enemies and opposing forces.

After the second Gulf war many barrages have been demolished, and water started to flow again¹³⁹. In normal situations, drought wouldn’t be a problem in the Mashreq region: it is because of States’ policies that water scarcity became a problem.

Another very peculiar case of ethnic and interstate conflict related to environmental matters comes from the Senegal river, where the growing scarcity of an environmental resource

¹³⁷ Hammer J., Is a Lack of Water to Blame for the Conflict in Syria?, Smithsonian magazine, 2013
<http://www.smithsonianmag.com/innovation/is-a-lack-of-water-to-blame-for-the-conflict-in-syria-72513729/?no-ist>

¹³⁸ Ibidem

¹³⁹ Tocchetto D., La Mezzaluna non è più fertile, La nuova ecologia, 2015
<http://lanuovaecologia.it/la-mezzaluna-non-e-piu-cosi-fertile/>

impacted on centuries old equilibria, worsening the relation between different cultures and segments of the interested societies:

Normally, the broad floodplains fringing the Senegal River support productive farming, herding, and fishing based on the river's annual floods. During the 1970s, however, the prospect of chronic food shortages and a serious drought encouraged the region's governments to seek international financing for the Manantali Dam on the Bafing River tributary in Mali, and the Diama salt-intrusion barrage near the mouth of the Senegal River between Senegal and Mauritania. These dams were designed to regulate the river's flow to produce hydropower, expand irrigated agriculture, and provide river transport from the Atlantic Ocean to landlocked Mali, which lies to the east of Senegal and Mauritania.

But the plan had unfortunate and unforeseen consequences. Anticipation of the new dams sharply increased land values along the river in areas where high-intensity agriculture would become feasible. The elite in Mauritania, which consists mainly of white Moors, then rewrote legislation governing land ownership, effectively abrogating the rights of black Africans to continue farming, herding, and fishing along the Mauritanian riverbank.

There has been a long history of racism by white Moors in Mauritania towards their non-Arab, black compatriots. In the spring of 1989, the killing of Senegalese farmers by Mauritians in the river basin triggered explosions of ethnic violence in the two countries. In Senegal, almost all of the 17,000 shops owned by Moors were destroyed, and their owners were deported to Mauritania. In both countries several hundred people were killed and the two nations nearly came to war.¹⁴⁰

2.4.3 Traditional conflicts and environmental degradation

The analysis of the kind of conflicts listed above should pertain to the field of security studies, and nonetheless they have a clear environmental component. It is interesting to note that, in a similar way to what happened in the juridical realm, where already existing rights have started to be interpreted in new ways, related to environmental issues, "there has been a greening

¹⁴⁰ Homer-Dixon, Thomas, "Environmental Scarcities and Violent Conflict: Evidence from Cases," *International Security* 19, No. 1 (Summer 1994): 5 – 40.

process in this research field, environmental issues becoming on the one hand part of a widened concept of security and being on the other hand assumed to play a rapidly increasing role as *causes of violent conflicts*¹⁴¹

The reasoning conducted until now about the fact that environmental conflicts are related to issues, claims and contrasting interests well beyond strictly ecological questions, can be condensed in the definition that Stephan Libiszewski gave to them, around two decades ago:

Environmental Conflicts manifest themselves as political, social, economic, ethnic, religious or territorial conflicts, or conflicts over resources or national interests, or any other type of conflict. They are traditional conflicts *induced by an environmental degradation*.

Environmental conflicts are characterized by the principal importance of degradation in one or more of the following fields:

- Overuse of renewable resources;
- Overstrain of the environment's sink capacity;
- Impoverishment of the space of living.¹⁴²

This is a very comprehensive definition for environmental conflicts, as it may adapt both to conflicts of international scope and to local ones, triggered by the implementation of smaller scale policies and projects, where the populations have to confront local institutions. In short, this definition contests the very fact that environmental conflicts exist as a separate category. What really change here are not the inherent characteristics of conflicts, but the way they are understood and interpreted, stressing the relevance of environmental processes related to social and political contrasts.

But when environmental issues are investigated as possible threats to security, it is just normal to interpret the relative conflicts as not so distinct from traditional conflicts over resources. If

¹⁴¹ Libiszewski S., *What is an Environmental Conflict?*, Center for Security Studies, ETH Zurich/Swiss Peace Foundation, Zurich/Berne 1995, p. 1

¹⁴² *Ibidem*, p. 14.

the center of the analysis is security, than the interested subject is the State, and from its point of view environmental conflicts are just another problem of public order. To complete this analysis, it is now necessary to shift the focus on the social actors who mostly suffer from environmental degradation, and for which engaging in environmental conflicts against the States' and corporations' power is not even a choice.

2.5 Taking sides on environmentalism: victims and perpetrators of environmental injustice and human rights violations

2.5.1 A specific discipline of environmental conflicts

For States, it is quite evident that a social conflict, triggered by environmental causes or not, presents itself first of all as a problem to be resolved. For government personnel, and in the point of view of security forces, a political opposition coming from civil society is rarely considered as an opportunity for constructive dialogue and for experiment new solutions, but rather as an obstacle to be surpassed. The means to achieve this objective change depending of the degree of authoritarianism of the interested government, as well as on the levels and characteristics of social mobilizations.

This is especially true for conflicts arisen because of specific choices related to environmental governance, as environmental resources and their management can regard goods of high strategic value, as it has been showed above, and of high economic value too: oil extraction, gold or copper mines, intensive agriculture, are all economic sectors in which a high business volume coexists with serious environmental concerns.

What is lacking, from State's and corporate's point of view, so from the point of observations of who has the power to manage the territory, is an understanding of environment as something closely connected to the life of communities, instead of a simple source of resources to be extracted. That is, a discipline able to study ecological issues *taking the side* of the ethnic groups, indigenous peoples, or any sector of the society which suffer from environmental

impacts, so has an interest in opposing the environmental policies, in contrast to the State interest to simply implement those policies overtaking oppositions.

The discipline which studies environmental conflicts in declared contrast to the State's security perspective is political ecology:

[...] a field created by geographers, anthropologists and environmental sociologists. The unrelenting clash between economy and environment, with its ups and downs, its new frontiers, its urgencies and uncertainties, is analysed by ecological economics, another new field of study created mainly by ecologists and economists who endeavour to 'take Nature into account', not only in money terms but also in physical and social terms.¹⁴³

Political ecology studies ecological distribution conflicts. By ecological distribution is meant the social, spatial and inter-temporal patterns of access to the benefits obtainable from natural resources and from the environment as a life support system, including its 'cleaning up' properties. The determinants of ecological distribution are in some respects natural (climate, topography, rainfall patterns, minerals, soil quality and so on). They are clearly, in other respects, social, cultural, economic, political and technological.¹⁴⁴

Clearly, this definition coming from Joan Martinez-Alier diverges from the one proposed by Libiszewski for its degree of comprehensiveness: instead of stressing the cause of environmental degradation, from which any kind of traditional conflict can emerge, here the author tries to grasp the environmental specificity of this conflict, which is seen as more related to the social conflict between classes studied by some political economists than to international conflicts studied by security studies.

Besides this, degradation of ecosystems and the impoverishment of their resources aren't seen a necessary component of environmental conflicts. This depends by the emphasis put on distribution of ecological goods: even if not damaged, they may be privatized, or enclosed by the public authority for some particular reason, de facto damaging and making poorer the

¹⁴³ Martinez-Alier J., *The Environmentalism of the Poors*, Edward Elgar Publishing, Inc., 2002 p. vii

¹⁴⁴ *Ibidem*, p. 73

groups prevented from accessing those goods. This may legitimately trigger a political mobilization of these groups, aimed at removing the enclosure, which means to produce an environmental conflict.

2.5.2 A functional definition of environmental conflicts

All the definitions and understandings proposed until now present a certain degree of abstraction, as they move from the characteristics of single environmental conflicts in order to investigate the general characteristics common to every case study.

A different approach is possible, and has been experimented, here in Italy, starting from the framework of political ecology. With this method, the definition is as much adherent as possible to the concrete reality of environmental conflicts (or, at least, to a certain species of them, with a local character, stressing the role of civil society):

In practice, an environmental conflict manifest itself when projects of public or private works (of energetic, infrastructural character, related to production or waste disposal), or national or international policies with relevant environmental impacts meet – or, perhaps, clash with – the opposition of civil society: residents, associations, committees etc. In our case, furtherly specifying the landmark framework, when we talk of environmental conflicts we intend all the situations which comprehend the concurrence of these two elements:

- Qualitative and/or quantitative reduction of environmental resources or commons present on a certain territory (arable lands, water, biodiversity, plants and animals, minerals, or other raw materials of finite character);
- Presence of opposition/resistance from civil society (involved communities, social or environmental organizations, groups of stakeholders) which organize and mobilize themselves in defense of their rights and their territory.¹⁴⁵

¹⁴⁵ Di Pierri M., Introduzione: I nuovi conflitti ambientali come fenomeno globale. In *Conflitti Ambientali, biodiversità e democrazia della terra*, a cura del CDCA, Edizioni Ambiente, 2011. Translation from the original text: Nella pratica, un conflitto ambientale si manifesta quando progetti di opere pubbliche o private (energetiche, infrastrutturali, produttive o di smaltimento) oppure politiche nazionali o sovranazionali con rilevanti impatti ambientali incontrano – o meglio si scontrano con – l’opposizione della società civile: residenti, associazioni,

The reference to commons together with environmental resources make it clear that this definition too refers to distribution of ecological goods, not simply to their presence and quality. In this view, there is no need to pay attention to the environment if changes of environmental processes don't impact on the wealth and welfare of some sector of society. It is important to stress this point: if the central point is not the distribution of ecological goods between individuals and groups, and the access to these goods, a focal point of the chain of causes and effects which triggers environmental conflicts would be lost.

Indeed, without the reference to the commons, this last definition would appear very similar to the one proposed by Libiszewski, where emphasis was put on environmental degradation instead. But this functional definition is furtherly specified, in a way that makes its specific character clearer:

Basing on the definition that [...] we have accepted for "environmental conflict", a conflict is defined as such when there is an opposition and/or resistance from the communities which inhabit the territories affected by projects which modify the traditional patters of usufruct of environmental services.¹⁴⁶

The emphasis on degradation is far off this view, as what matters are not environmental resources for themselves, but their distribution, the way the members of a society can legitimately access to them, if their pattern of access is adequate to their needs and to what

comitati ecc. Nel nostro caso, precisando ulteriormente il quadro di riferimento, quando parliamo di conflitti ambientali intendiamo tutte quelle situazioni che vedono la concorrenza di due elementi:

- riduzione qualitativa e/o quantitativa delle risorse naturali o beni comuni presenti su un dato territorio (terre coltivabili, acqua, biodiversità, flora o fauna, minerali o altre materie prime di carattere finito);
- presenza di opposizione /resistenza da parte della società civile (comunità coinvolte, organizzazioni sociali o ambientaliste, comitati locali, gruppi di stakeholders) che si organizzano e si mobilitano in difesa dei propri diritti o del proprio territorio.

¹⁴⁶ Greco L., Conflitti ambientali e loro composizione: risposte, proposte alternative. In Conflitti Ambientali, biodiversità e democrazia della terra, a cura del CDCA, Edizioni Ambiente, 2011. Translation from the original text: Secondo la definizione che [...] abbiamo accolto come definizione di "conflitto ambientale", un conflitto è definito tale laddove vi sia un'opposizione e/o resistenza da parte delle comunità che risiedono nei territori investiti da progetti che modificano l'assetto tradizionale di usufrutto dei servizi ambientali.

degree. With this definition, conflicts over accessibility and property of ecological resources are positioned at the center of the analysis.

It is interesting to note that in the situations described by this definition, the conflict may also arise preventively to the implementation of the project which would affect the community, in order to access to the relative information and to participate to political decisions. In environmental conflicts of Western Europe, in particular, it is actually the norm to start a mobilization in order to make the rights to information and political participation respected, with the aim of exercising popular sovereignty over environmental policies.

2.5.3 “Environmentalism of the poor”: a socially rooted point of view on environmental policies and conflicts

“Today, the environmental movement worldwide continues to be dominated by two main currents, the cult of wilderness and (increasingly) the gospel of eco-efficiency. However, a third current, called ‘environmental justice’, ‘popular environmentalism’, or ‘environmentalism of the poor’, is growing, and it is increasingly aware of itself”¹⁴⁷.

These sentences come from 2002 and, as we have seen, much have changed in the understanding of what is environmentalism and about its relation with other economic, political (and human rights) issues. On the other hand, notwithstanding the most recent human rights report, and despite the references made by the Paris Agreement about to the various and multifaceted relations between ecological issues and human rights protection, it still holds true that in terms of policy making and compulsory provisions, the cult of wilderness and ecological efficiency are practiced much more than any “environmentalism of the poor”, of the most vulnerable groups, of the already disadvantaged peoples.

That is to say, things like the protection of endangered species of turtles and the construction of wind power stations are seen as more “properly environmental” by existing law (and, usually,

¹⁴⁷ Martinez-Alier J. op. cit. p. vii

also by current political ideologies) than the struggles of who suffer disproportionately from environmental harm and hazards.

But as much as the extinction of an incredible number of species is a terrifying phenomenon and as much as it is crucial to substitute fossil fuels with renewable sources, turtles and frogs are still not persons, and economic activities marked as “green” can still prove disastrous for poor and vulnerable groups. Perhaps, the most efficient way to really protect the environment is really to change perspective and assume the point of view of an environmentalism of the poor, especially considering its relation with environmental conflicts: from this perspective, an intensification of the social conflict may lead to a solution to an environmental problem¹⁴⁸. This is in perfect contrast with a security approach:

In international political conflicts without real substance, such as a dispute between States over a strip of useless territory, by reaching a peace agreement and drawing a new frontier, both the conflict and the problem disappear. Sometimes, as in the last 20 years with the threat by CFC to the ozone layer, or with transboundary sulphur dioxide emissions in Europe, agreements are reached which lead to regimes which resolve both the conflict and the problem. In many other environmental cases, resolving the conflict is not equivalent to solving the problem. On the contrary, resolving the conflict may lead to perpetuating the problem. Both internal and international conflicts are solved by establishing pollution regimes (or regimes of access to natural resources, such as water or fisheries); that is, some sort of agreement is reached on environmental standards and on the rules of behaviour of actors. The standards are not necessarily sustainable.¹⁴⁹

Taking into account both this approach coming from political ecology, which is quite coherent from the point of arrival of environmental human rights theory presented by John Knox, environmental conflicts can be interpreted as the (legitimate) form of mobilization coming from the groups which disproportionately suffer from environmental harm, degradation and privatization. These differences in the harm and risk suffered by discriminated groups are based

¹⁴⁸ Martinez-Alier J. Op. cit. p. 67

¹⁴⁹ Ibidem, pp.67-68

on class, gender and race, as stressed by environmental justice theory as well as by the cited reports on human rights and environment.

2.6 Evidencing intersections between political claims in environmental conflicts and environmental human rights

The relation between political ecology and political economy is furtherly specified by Martinez-Alier:

“ecological distribution conflicts”—conflicts about the access to environmental services and to natural resources, and about the burdens of pollution. Such ecological distribution conflicts sometimes overlap with economic distribution conflicts. For instance, poor people are sometimes unable in urban situations to get access to sufficient water, and their health and environment suffer as a consequence. An increased income would allow them to buy water in the market.¹⁵⁰

The fact that this words, which come from a discourse pronounced within the context of United Nations in 2002, are so coherent with the contents of the most recent human rights reports on environmental issues, suggest that we are in front of a double set of interconnections: first of all, following also the analysis conducted on the various forms of environmental injustices, it is clear that environmental issues are strongly related with economic matters, with racial discrimination and with the standards of living of the most vulnerable groups, which disproportionately suffer from environmental harm. In second place, there is a clear intersection between the claims of NGOs, organizations, social movements, groups of the civil society and the provisions established by human rights law: when people engages in environmental conflicts, claims can be expressed in very different forms, and can be related to very different issues. But in the end, what protestors want is always to participate in the

¹⁵⁰ Martinez-Alier J., The Environmentalism of the Poor, Paper prepared for the conference on: The Political Economy of Sustainable Development: Environmental Conflict, Participation and Movements, United Nations Research Institute for Social Development (UNRISD) and University of Witwatersrand, Johannesburg, 2002.

environmental decision-making processes, claiming their sovereignty on their territory, to receive and communicate information on the ecological condition of their lands and waters, to defend themselves from hazards which threatens their health, life, social and economic conditions coming from environmental pollution, and to receive compensation for the already suffered harms.

It means that, whether they express their claims in human rights terminology or not, it is a fact that their claims corresponds to the set of environmental human rights identified by John Knox. What they denunciate, de facto, is the disapplication of such rights, the inadequacies of States and non-State actors in complying with them.

3. An evaluation of transnational corporations commitment toward environmental human rights protection: confronting data from the Environmental Justice Atlas with transnational corporations' participation to the Global Compact

3.1 Objectives of the analysis

From the analysis conducted here on environmental conflicts theory and practice, and on their conceptual relation with environmental human rights, it is possible to conclude that the insurgence of this kind of social struggles could be considered not only a political symptom of the ecological crisis, but also an indication of environmental human rights violations or, at least, insufficient application.

We have seen that corporations play the greatest role in causing environmental conflicts, producing situations of widespread environmental harm and degradation, which threatens the rights to life, health, property, food and water of the populations which inhabits the territories interested by their operations. The examples made in the previous analysis of particular cases of environmental conflicts regarded mostly transnational corporations, specialized in the extractive sector, but there are countless examples of conflicts triggered by smaller firms operating in different economic sectors, even if these conflicts are less likely to interest international human rights bodies, and have a minor exemplary value.

Both big and medium or small sized companies can join the Global Compact, the “call to companies to align strategies and operations with universal principles on human rights, labour, environment and anti-corruption, and take actions that advance societal goals”, participating to the “the world's largest corporate sustainability initiative”.¹⁵¹ When a company joins the Compact, it is supposed to begin to integrate corporate sustainability into its strategies and operations, and to meet reporting requirements in this sense.

¹⁵¹ Global Compact official website
<https://www.unglobalcompact.org/what-is-gc>

The content of this corporate sustainability is defined by the Global Compact ten principles. Among them, the first two¹⁵² are inspired by the 1948 Universal Declaration on Human Rights, and substantially declare that companies should comply with human rights provisions and not commit violations. Of course, it is now recognized that the corpus of human rights law regards environmental issues. Nonetheless, other three principles¹⁵³ of the Global Compact, based on the 1992 Rio Declaration on Environment and Development, are especially aimed at ensuring environmental protection commitments by companies.

In the next pages, I will try to provide insights and indications about the efficiency that this UN instrument, the Global Compact, has in preventing the insurgence of conflicts related to environmental issues. Which means, considering the relation between human rights and environmental conflicts, to assess if the companies which joined the Global Compact show or not a trend toward an higher respect for environmental human rights.

3.2 Method used: data crossing with the Environmental Justice Atlas. Limits and potentialities

In order to make assessments on this question, I will show a data crossing between the Global Compact website and Environmental Justice Atlas¹⁵⁴ realized by Ejolt, “a global research project bringing science and society together to catalogue and analyze ecological distribution conflicts and confront environmental injustice”¹⁵⁵, whose data have already widely utilized in this work.

¹⁵² Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

¹⁵³ Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

¹⁵⁴ <http://ejatlas.org/>

¹⁵⁵ <http://ejolt.org/>

More specifically, I will verify if the companies inserted within the global map of environmental conflicts have joined or not the Global Compact, trying in this way to evaluate the seriousness of their commitment and the efficiency of the Global Compact instrument to avoid insurgence of conflicts triggered by environmental degradation caused by companies.

Of course, the Ejabatlas map has several limits and biases:

- Geographic coverage: Ejabatlas doesn't have a homologous coverage for all States and regions of the world. This is caused by the fact that its global map of environmental conflict is the result of a social mapping project realized by scholars, activists, organizations, journalist, which are not equally distributed on Earth, and have also very different material capacities to work and contribute to the map. This means, for example, that the difference between the 54 environmental conflicts reported in Spain and the 12 reported within the Russian Federation could be caused by an higher number of Spanish-speaking people among environmental activists and scholars, and not by the fact that Spanish environmental policies are much worse than Russian ones. This problem of over or under-representation could be also relative to different regions of a single country.
- Data aren't normalized: the environmental conflicts reported in Ejabatlas have very different level of intensities, evaluated trough a scale of different values (low, medium, high). This standardization is based on objective elements, like the presence of mass mobilizations during the conflict, of arrests and violence used by the authorities, but there isn't a single entity monitoring this standardization, so that the evaluation of the conflicts' intensity is left to researchers and organizations which contribute to the map. The intensity of the conflict won't be included in the data crossing with the Global Compact but, in general, it must be noted that the map is produced by many different minds, whose idea in terms of what shall be reported may differ. Also, the way reported cases are organized can differ too, as some contributor may decide to resume a regional

conflict in a single voice of the map, while others could decide to report all the single local protests.

- Uncomplete data: the map reports 1705 cases of environmental conflicts. This is a very good result, but of course the existing environmental conflicts are much more numerous than the reported ones. Researchers and activists aren't everywhere, as already noted, and only a part of them participates to Eجاتlas. Also, in many countries, civil society organizations which defends human rights are victims of abuses and violence committed by the local authorities. Paramilitary forces, organized criminality and multinational corporations play a role in putting obstacles to the diffusion of news and information on environmental conflicts.
- Not generalizable data: a company involved in more than ten cases of environmental conflicts may appear particularly carefree about the environmental harm produced by its operations but, depending of its size, the reported cases could be not representative of the real behavior of the firm, which may perhaps show compliance with environmental standards in the great majority of its plants and activities. Of course, the opposite is also true.

In short, the database of Eجاتlas is limited, and limited will be the conclusions too. Nonetheless, the whole project of global a map of environmental conflicts has a value, and it was projected to be a research tool in the first place. The social character of the mapping activity is what makes it especially effective, as it permits the cooperation of multiple points of observations, operating on the field. A centralized agency couldn't show the same readiness in reporting the developments of the different local situations, and couldn't have the same level of specific knowledge of the single cases.

Also, the environmental justice atlas is the first and only one global map of environmental conflicts. National maps of this kind existed already¹⁵⁶, but the type of data crossing realized here was possible only with an atlas of the whole planet.

3.3 Results

In the following table, the first column comprehends the selected list of companies. The second column provides the number of environmental conflicts registered in the Environmental Justice Atlas in which the company is involved, followed by the data regarding participation (signed as “P” in the table) or non-participation (“N”) to the UN Global Compact. The last column contains the date in which the interested company joined the Global Compact, if it did so. Some companies considered by the Environmental Justice Atlas are actually part of greater holdings, or belong to multinational groups composed by a parent company and many controlled firms. This cases are signed by a note, and the joining date is relative to the main company.

Company	Documented environmental conflicts in the Environmental Justice Atlas	Participation to the Global Compact	Joining date
Nigerian National Petroleum Corporation	41	N	
Royal Dutch Shell	40	P	2000-7-26
Shell Petroleum Development	27	P	2006-06-12

¹⁵⁶ One good example is provided by the Italian CDCA – Centro di Documentazione dei Conflitti Ambientali, which also cooperated with Ejolt in producing Ejatlas. Before this cooperation took place, it had already produced an Italian map of environmental conflicts, now included in the global Atlas: <http://atlanteitaliano.cdca.it/>

Company			
Chevron Corporation	24	N	
Nigeria Agip Oil Company	21	N	
Vale S.A	21	N	
Monsanto Corporation	20	P	2009-09-17
Rio Tinto Alcan	18	N	
AngloGold Ashanti Colombia	17	P	2011-04-13
ExxonMobil Corporation	15	N	
BHP Billiton ¹⁵⁷	14	P	2003-07-21
Sacyr	12	P	2007-12-14
ENEL Group	12	P	2004-03-12
Barrick Gold Corporation	12	P	2005-06-02
Total	11	N	
Sinohydro Corporation Limited	10	N	
Glencore International AG	10	P	2014-06-30
Dow Chemical Company	10	P	2007-05-24

¹⁵⁷ 2 companies

https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=%E2%9C%93&search%5Bkeywords%5D=bhp+billiton&button=&search%5Bper_page%5D=10&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc

Endesa ¹⁵⁸	10	P	2002-06-24
Anglo American	9	P	2015-01-09
Iberdrola	9	P	2002-06-24
Goldcorp Inc	9	P	2009-06-09
Agip Group	8	N	
Petroecuador	8	N	
Petrobras ¹⁵⁹	8	P	*
National Thermal Power Corporation	7	N	
Newmont Mining Corporation	7	P	2004-06-09
Vattenfall	7	P	2008-07-16
Wilmar International	7	P	2008-07-25
Union Fenosa	7	P	2002-03-22
Jaypee Group	7	N	
Corporacion Minera de Bolivia	6	N	
GDF Suez	6	P	2008-11-27
Siemens ¹⁶⁰	6	P	2003-11-26
Repsol ¹⁶¹	6	P	2002-11-01

¹⁵⁸ 5 companies

https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=%E2%9C%93&search%5Bkeywords%5D=endesa&button=&search%5Bper_page%5D=10&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc

¹⁵⁹ 6 companies

https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=%E2%9C%93&search%5Bkeywords%5D=petrobras&button=&search%5Bper_page%5D=10&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc

¹⁶⁰ 9 companies

https://www.unglobalcompact.org/what-is-gc/participants/search?button=&page=1&search%5Bkeywords%5D=Siemens&search%5Bper_page%5D=10&search%5Bsort_direction%5D=asc&search%5Bsort_field%5D=&utf8=%E2%9C%93

Chevron Nigeria Limited	6	N	
Coca Cola Company ¹⁶²	6	P	2002-08-31
B2 GOLD Corp	6	N	
Odebrecht ¹⁶³	6	P	2015-03-31
Ecopetrol	6	P	2009-05-13
Eni Group	6	P	2001-07-01
Lukoil	5	P	2008-06-17
Alcoa	5	P	2009-09-23
Rosatom	5	N	
Ecopetrol Corporate Group	5	P	2009-05-13
Damodar Valley Corporation	5	N	
Vinci Group	5	P	2003-04-03
Vedanta ¹⁶⁴	5	P	2008-07-24

¹⁶¹ 3 companies

https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=%E2%9C%93&search%5Bkeywords%5D=Repsol&button=&search%5Bper_page%5D=10&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc

¹⁶² 21 companies

https://www.unglobalcompact.org/what-is-gc/participants/search?button=&page=1&search%5Bkeywords%5D=coca+cola&search%5Bper_page%5D=10&search%5Bsort_direction%5D=asc&search%5Bsort_field%5D=&utf8=%E2%9C%93

¹⁶³ 5 companies which take part to the Odebrecht group have joined the Global Compact. Ejatlas isn't completely clear on this, but it seems that environmental conflicts are mostly related to Odebrecht Ambiental, a Brazilian company, whose joining date has been inserted in the table

https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=%E2%9C%93&search%5Bkeywords%5D=Odebrecht++&button=&search%5Bper_page%5D=10&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc

¹⁶⁴ 2 companies

https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=%E2%9C%93&search%5Bkeywords%5D=Vedanta&button=&search%5Bper_page%5D=10&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc

Areva	5	P	2003-03-20
Statoil	5	P	2000-07-26
Alstom	5	P	2008-03-18
Halliburton	5	N	
National Hydroelectric Power Corporation of India	5	N	

3.4 Conclusions on Global Compact and Environmental Conflicts

Out of 53 companies included in this dataset, 33 participate to the Global Compact (around 62%). The size of the companies, the number of environmental conflicts related to them and participation to the Global Compact don't seem to influence each other. All the interested companies are registered as active in the Global Compact website.

So, always considering all the limits that the selected dataset have, it is possible to conclude that participation to the UN Global Compact doesn't prevent companies to cause social conflicts for environmental issues, and that the Compact appears as a very weak instrument to ensure compliance with environmental human rights.

The inefficiency of the Global Compact instrument to prevent pollution and human rights violations appears with greater clarity from a qualitative analysis: among the listed companies the one which joined first is Royal Dutch Shell, which declared to undertake a path toward the adaptation of its business strategy to the ten principles of corporate sustainability already on 26 July 2000, date of the Global Compact formation. This same company, as showed by empirical evidence and international trials, has committed human rights violations after that date, and both local and international environmental activists consider it amongst the worst polluters in the world.

Conclusions

I. Points of arrival of this work

This work has started with the reconstruction of the different phases of development of environmental treaty law. With the 1972 Stockholm Conference, started a period of great and long lasting juridical innovations, during which an important role was played by the civil society and, in particular, by the scientific community, which raised serious concerns over the sustainability of the economic model, pushing environmental concerns on the international agenda.

The 1992 Rio Conference resulted in a great success that, deluding optimistic expectations, is still unparalleled, since after its organization many States of the world entered in a period of disengagement from environmental allegiance. In the next years, it will be clear if the 2015 Paris Conference will achieve relevant results or not, and if a renovated global commitment toward the environment will emerge from it.

About the Accord de Paris, it has been noted that a long time may have to pass before it will enter into force, especially considering some precedents of environmental treaty law, like the Kyoto Protocol, when the opposing views of different States and, in particular, the conservative position taken by the United States slowed down the process of its implementation.

In addition to this, a concerning element has been individuated in the lack of mechanism of binding enforcement. The amounts of emissions reduction that States will have realize will depend from States' independent decisions. And once these decisions will be officially declared, the Agreement doesn't envisage any means to ensure compliance. Apparently, the commitment toward the maintenance of global warming within the limits of 2 Celsius degrees is based on little more than promises.

On the other hand, one promising signal is that the 1992 Rio Declaration and the 2015 Paris Agreement appear to have an important, common characteristic, as they are both particularly relevant for environmental human rights law. As noted by the Special Rapporteur on Human Rights and Environment John Knox in its report from February 2016, the document redacted in

the French capital is the first which explicitly recognize the existence of a relation between climate change-related phenomena and the enjoyment of human rights. The importance of the Declaration of principles drafted at Rio is also strictly related to the development of environmental interpretation of human rights, as it came mostly from the tenth of the affirmed principles, which stated that

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.

This principle had the merit to strongly connect environmental issues to the already recognized human rights to information and political participation.

Right now, the civil and political content of environmental treaty law and environmental human rights law has been clearly assessed by jurisprudence and doctrine, and emerged as the most important juridical development of recent times regarding ecological issues. It connects substantive obligations for States about the protection of the rights to health, life, food and water to the procedural rights to information, political participation and access to remedies.

This evolution hasn't been realized through the recognition of new rights, but rather through a "greening" process undertaken by the existing laws and provisions, which have been interpreted in innovative ways by different human rights bodies, in order to more efficiently tackle environmental issues.

With the new conception of environmental human rights, whose complete definition come from John Knox's work of analysis and reporting, the anthropocentric point of view that was present in the first international environmental documents is renewed, and developed to a point in which is impossible to consider environmental issues independently from their connection to

political processes, to the enjoyment of civil and political rights together with social, economic and collective ones.

Following the reasoning proposed by John Knox, this work intercepted the theories of environmental injustice. The content of his reports on the relation between human rights and environment revealed a high degree of coherence with these critical theories, which descends from the fact that, historically, the first conceptualizations regarding the protection of human rights in connection to situation of environmental harm and hazards have originated within civil society organizations and social movements, which were also the same actors who individuated and described situations of environmental injustice.

One of the initial purposes of environmental treaty law was to make States cooperate in order to avoid the greatest environmental risks that the international economic system may cause. The unsustainability of the current economic model is still one of the starting assumptions of the international conferences on environment and climate change, and environmental justice theories contributed a lot to this acknowledgement, revealing how the populations which bear less responsibilities for atmospheric, land and water pollution are the ones to suffer the greatest harm.

Environmental injustice – defined as the disproportionate suffering of ethnic minorities, indigenous peoples or other disadvantaged groups from environmental degradation and risks, and/or disproportionate suffering caused by violations of fundamental human rights as a result of environmental factors – has also been individuated within countries, where it can take many forms, manifesting itself in situations of discrimination and human rights violations which affects certain groups because of their class, race, gender or a mix of these factors.

The phenomenon of environmental racism, and the particular form taken by it in situations of internal colonialism, has been very well understood by environmental human rights law. This is emerged from the reports of the Special Rapporteurs Okechukwu Ibeanu (toxic wastes and human rights) and John Knox: the disadvantaged groups that environmental injustice theories believe to be particularly vulnerable to environmental harm are considered the same way by

the various human rights documents regarding the relation between human rights law, environmental issues and climate change.

Those ecological theories have been shaped by the campaigns and protests of social movements and civil society organizations. Their activists and non-institutional human rights defenders still hold an important role of promoters and innovators of new practices of environmental human rights protection, sometimes even more than States and international organizations, as the Special Rapporteur John Knox recognized.

It has also been showed that the set of environmental human rights can be a good paradigm for the interpretation of environmental conflicts. Within this conflicts, which are first of all social and political struggles, claims and requests of the different parties are rarely expressed in strictly juridical terms. Nonetheless, the juridical framework has revealed to be adequate to describe reality and prescribe solutions to harmful and conflictual situations. Given these connections, the emergence of environmental conflicts in a certain area have been interpreted as a symptom of environmental rights violations or abuses.

This connection is furtherly strengthened by the fact that environmental conflicts are a form of political struggle, and the set of environmental human rights directly tackles the issues of political participation to the decision-making processes from which environmental policies originate, and to the self-determination of the peoples that inhabit the territories affected by highly impacting economic activities and invasive infrastructure projects.

The respect for environmental human rights would mean a complete access to the environmental information held by authorities regarding the ecological risks connected to the various policies, and the possibility to diffuse them, letting grassroots political processes to start and develop, free from any form of repression. If the people of affected territories had the chance to decide on the environmental policies which would impact on them, through processes of real participatory democracy, environmental conflicts would simply not exist, since the democratic processes would pacifically remove the causes which trigger them.

From the analysis of environmental conflicts has emerged that the parties on the field have very different views and opinion on the struggle they are participating to. For the authorities, these conflicts are considered as problems of local, national or international security, depending on the situation, and are interpreted through the realistic lens of security studies, in which the environmental variable is considered only as another potential threat to political institutions.

As I tried to show, this approach is not really consistent with the protection of environmental human rights, nor with the solution of the environmental problems: suppressing a social movement and removing its causes (pollution, climate change-related phenomena, abuses and human rights violations connected to these environmental issues) are radically different matters.

So that, the act of organizing and starting a political mobilization against the authorities can be viewed as the form to apply the environmental right to political participation to the determination of environmental policies in contexts where such a right is not guaranteed. Environmental conflicts are triggered by the inadequate or absent application of the political and “procedural” environmental rights, in situations where State or non-State actors are threatening the enjoyment of the substantive component of these rights, which means the rights to life, health, food, water and property of the affected populations.

In this context, what really legitimates the engagement in environmental conflicts is their ability to “force” the normative framework, challenging its inadequacies in directions that are nonetheless coherent with the corpus of human rights law. Environmental conflicts have been a growing phenomenon in the last decades, and in the end the organizations and groups which animated them in these years have been proven right by the most recent interpretations of the relation between human rights law and environmental issues.

Clearly, the application and interpretation of human rights provisions also depend, at least in part, from the outcome of these conflicts, from how national or regional courts can be involved in these processes, from how human rights bodies would adapt and react to the outcomes. The dialectic between juridical formulations and political developments never stops to move, and to produce new paradigms.

It has been noted and stressed that environmental human rights protection shall not only be guaranteed by States and other public authorities, but also by non-State economic actors, such as transnational corporations, by virtue of companies' "responsibility to respect" human rights law.

From an overview of the actual case law regarding situations of highly polluting economic activities, the protection from environmental human rights violations and abuses has been found insufficient, as even trials and sentences considered really important has brought scarce concrete results. Companies find many ways to shield themselves from the application of law and, in the territories in which they operate, they entertain informal and not transparent relations with authorities, which could use their power against the citizens they should instead protect.

Besides the case law, the most important instrument that United Nations ideated to make firms socially and environmentally sustainable, the Global Compact, has been put through analysis. The Compact is a soft-law tool with the aim of mainstreaming principles extrapolated from international treaty law and human rights law into business activities, leaving complete autonomy to the firms about the way to apply such prescriptions. One of the aims of these work has been also to evaluate its efficiency in term of environmental human rights protection, and the results haven't been really encouraging.

The evaluation of the Global Compact's efficiency has been carried out through the Environmental Justice Atlas realized by Ejolt, the global research project which brings scholars and civil society together to catalogue and analyze ecological distribution conflicts and environmental injustice. Given the connections identified between these conflicts and the violations of environmental human rights, the presence of a company within Ejatlas has been interpreted as a signal of at least partially inadequate commitment toward environmental protection and compliance with human rights provisions.

Among the selection of companies reported to be part of at least five environmental conflicts registered in the Environmental Justice Atlas, almost two thirds of them have also joined the Global Compact. Despite the different limits that the Ejolt method of social mapping have, this

result can nonetheless be interpreted as a sign that participation to the Global Compact by companies doesn't prevent them from triggering conflicts related to environmental human rights violations.

II. Final considerations

On 24th November 2015, the government of France notified to the Secretary-General of the Council of Europe that, in response to the terrorist attack occurred eleven days before, special legislative measures may have been taken, due to the extension of the state of emergency for three months. Such measures were considered to imply possible derogations from the provisions and obligations coming from the European Convention on Human Rights.

As I already recalled in the introduction of this work, it is in the context of the *état d'urgence* that the Conference of Paris conducted its works, a situation in which political participation of people was limited by a series of extraordinary prohibitions, which included the ban to public demonstrations. The day before the official opening of COP 21, there was actually a demonstration held in *Place de la République*, which was indeed dispersed by the police after a few hours of clashes with the protesters.

The distinction between the ecological policies decided by States and official representatives, lobbied by multinational corporations, on one hand, and the claims of ecologists belonging to grassroots social movements, on the other, couldn't really have been represented better, but in the end of this work I may have managed to show that institutions aren't really so intangible, especially in relation to environmental issues: the Paris Agreement, like many other preceding documents, contains words, concepts, ideas which have made their way to the rooms of international organizations only after decades of harsh political struggles.

It is not possible to foresee which direction will be taken by environmental treaty law and environmental human rights law in the next years, but those radical militants, *zadistes* and other ecological activists may prove to be more influencing than the governors they were contesting.

What is sure is that the most recent juridical developments related to environmental issues have recognized that the most effective way to protect the environment and to prevent violations of human rights coming from situations of environmental harm is to give the people the chance to participate to the management of the environments and ecosystems they live in, and to let them contribute to the determination of environmental policies related to them.

That is, ecology is now a matter of democracy. If, how and to what degree this democracy will be applied is the issue towards whom States, international organizations, human rights bodies, civil society organizations and social movements are going to deal with in the next future.

Bibliography

A/RES/43/53, 70th plenary meeting, 6 December 1988

<http://www.un.org/documents/ga/res/43/a43r053.htm>

Action plan for the human environment

<http://www.unep.org/documents.multilingual/default.asp?DocumentID=97&ArticleID=1504&l=en>

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", Organization of American States, 1988.

<http://www.oas.org/juridico/english/treaties/a-52.html>

African Charter of Human and Peoples' Rights, Organization of African Union, Banjul, 1981

http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

Atlante Italiano dei Conflitti Ambientali

<http://atlanteitaliano.cdca.it/>

Boyle A. E., Human Rights and the Environment: Where Next?, The European Journal of International Law Vol. 23 no. 3, 2012

Bullard R., Poverty, Pollution and Environmental Racism: strategies for building healthy and sustainable community, Clark Atlanta University, 2010

Burnett P., Somalia toxic waste dumping, Environmental Justice Atlas

<http://ejatlas.org/conflict/somalia-toxic-waste-dumping-somalia>

Ceu Center for Environmental Policy and Law; The Health and Environment Alliance; The Coalition for Environmental Justice, Making the case for environmental justice in Central and Eastern Europe, March 2007

Charter of the United Nations

<http://www.un.org/en/sections/un-charter/chapter-i/index.html>

Chevron-Texaco oil extraction and legal case, Ecuador, Environmental Justice Atlas

<http://ejatlas.org/conflict/chevron-texaco-ecuador>

Churchill, 'Environmental Rights in Existing Human Rights Treaties', in Boyle and Anderson (eds), supra note 2, at 89.

Constitution of Ecuador, 2008

<http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

Cordini G., Fois P., Marchisio S., Diritto Ambientale. Profili internazionali europei e comparati, Giappichelli editore, Torino, 2005

Declaration of the United Nations Conference on the Human Environment

<http://www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503>

Di Pierri M., Introduzione: I nuovi conflitti ambientali come fenomeno globale. In Conflitti Ambientali, biodiversità e democrazia della terra, a cura del CDCA, Edizioni Ambiente, 2011

Ejolt project's Blog, November 20th, 2012

<http://www.ejolt.org/2012/11/watch-an-ejolt-movie-on-the-sarayaku-v-ecuador/>

Fourth UN World Conference on Women, Beijing, 1995

<http://www.un.org/womenwatch/daw/beijing/>

German Advisory Council on Global Change, World in Transition – Climate Change as a Security Risk, 2008.

Greyl L., Minguet A., Ejolt Report n. 17, A legal guide for communities seeking environmental justice, 2014, pp.82

<http://www.ejolt.org/2014/11/legal-guide-communities-seeking-environmental-justice/>

Greyl L., Ojo G., Ejolt Report n. 9, Digging Deep into Corporate Liability - Environmental Justice strategies in the world of oil, 2013

<http://www.ejolt.org/2013/10/digging-deep-corporate-liability-environmental-justice-strategies-in-the-world-of-oil/>

Global Compact webpage

<https://www.unglobalcompact.org/what-is-gc>

Government of the United Kingdom of Great Britain and Northern Ireland, The National Security Strategy of the United Kingdom: Security in an interdependent world, 2008

Greco L., Conflitti ambientali e loro composizione: risposte, proposte alternative. In Conflitti Ambientali, biodiversità e democrazia della terra, a cura del CDCA, Edizioni Ambiente, 2011.

Hammer J., Is a Lack of Water to Blame for the Conflict in Syria?, Smithsonian magazine, 2013

<http://www.smithsonianmag.com/innovation/is-a-lack-of-water-to-blame-for-the-conflict-in-syria-72513729/?no-ist>

Homer-Dixon T., Marc A. Levy, Correspondence. Environment and Security, International Security, Vol. 20, No. 3 (Winter 1995/96), pp. 189–198.

Homer-Dixon T., On the Threshold: Environmental Changes as Causes of Acute Conflict, International Security, Vol. 16, No. 2, 1991

Homer-Dixon, Thomas, “Environmental Scarcities and Violent Conflict: Evidence from Cases,” International Security 19, No. 1 (Summer 1994): 5 – 40.

Human rights and climate change – Resolution 7/23, Human Rights Council, 2008

http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf

Human rights and the environment as part of sustainable development - Report of the Secretary-General, Economic and Social Council, 2005

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/103/71/PDF/G0510371.pdf?OpenElement>

Human Rights Council Tenth Session Resolution 10/4. Human rights and climate change

http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf

Human Rights Resolution 2005/60: Human Rights and the Environment as Part of Sustainable Development,, Office of the High Commissioner of Human Rights, 2005

<http://www.refworld.org/docid/45377c759.html>

Ilisu Dam Project, Turkey, Eجاتlas

<http://ejatlas.org/conflict/ilisu-dam-project-turkey>

International Covenant on Economic, Social and Cultural Rights, United Nations, 1966

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

International Monsanto Tribunal

<http://www.monsanto-tribunal.org/why-a-tribunal/>

International Union for Conservation of Nature

<http://www.iucn.org/>

Johannesburg Declaration on Sustainable Development, World Summit on Sustainable Development, Johannesburg, 2002

<http://www.un-documents.net/jburgdec.htm>

Kyoto Protocol, Third Conference of the Parties of UNFCCC, 1997

<http://unfccc.int/cop3/>

Land Matrix

<http://www.landmatrix.org/en/about/>

Libiszewski S., What is an Environmental Conflict?, Center for Security Studies, ETH Zurich/Swiss Peace Foundation, Zurich/Berne 1995, p. 14.

Martinez-Alier J., The Environmentalism of the Poors, Edward Elgar Publishing, Inc., 2002

Martinez-Alier J., The Environmentalism of the Poor, Paper prepared for the conference on: The Political Economy of Sustainable Development: Environmental Conflict, Participation and Movements, United Nations Research Institute for Social Development (UNRISD) and University of Witwatersrand, Johannesburg, 2002.

Meadows, D. H.; Meadows, D. L.; Randers, J.; Behrens III, W. W. a report for the Club of Rome's project on the predicament of mankind, 1972

<http://www.donellameadows.org/wp-content/userfiles/Limits-to-Growth-digital-scan-version.pdf>

Morgera E., Corporate Accountability in International Environmental Law, OUP 2009, Conclusions

<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199558018.001.0001/acprof-9780199558018>

Morgera E., Human Rights Dimensions of Corporate Environmental Accountability, 2011, in Dupuy P., Petersmann E., Francioni F., Human Rights in International Investment Law and Arbitration, Oxford Scholarship Online, 2010

Morgera E., 'Significant Trends in Corporate Environmental Accountability: The New Performance Standards of the International Finance Corporate' (2006) 18 Colorado Journal of International Environmental Law and Policy 147

Omoweh D., Shell. The Petroleum Development Company, the State and Underdevelopment of Nigeria's Niger Delta - A Study in Environmental Degradation, Africa Research & Publications, 2006

Our environment, our rights - standing up for people and the planet, Friends of the Earth International, August 2004

Paris Agreement, Conference of the Parties, Twenty-first session, Paris, 30 November to 11 December 2015

<https://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf>

Permanent Forum of Indigenous Issues, Report of the Seventh Session, Economic and Social Council, 2008

<file:///C:/Users/ASUS/Desktop/Tesi/HR%20and%20Env/2008ForumIndigenousPeoples.pdf>

Plan of Implementation of the World Summit on Sustainable Development, World Summit on Sustainable Development, Johannesburg, 2002

<http://www.un-documents.net/jburgpln.htm>

Platform for Action, Beijing, China - September 1995 Action for Equality, Development and Peace

<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

Platform for Action, Beijing, 1995, Women and Environment

<http://www.un.org/womenwatch/daw/beijing/platform/envIRON.htm>

Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, Human Rights Council, 2009

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>

Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human Rights Council, Twenty-eighth session, 2015

Sassen S., Expulsions – Brutality and Complexity in the Global Economy, Harvard University Press, 2014, pos. 1260.

Southeastern Anatolia Project (GAP), Turkey, Ejatlas

<http://ejatlas.org/conflict/southeastern-anatolia-project-gap-turkey>

Special Rapporteur on human rights and the environment (former Independent Expert on human rights and the environment), official webpage

<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx>

Statement of the Special Rapporteur on the right to food, 22 May 2008, at the special session of the Human Rights Council on the global food crisis

Statement by John H. Knox, Independent Expert on Human Rights and the Environment at "The Development of Environmental Human Rights", Fourth meeting of the focal points appointed by the

Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, Santiago, Chile, 6 November 2014

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15274&LangID=E#sthash.ifhLCn7U.dpuf>

The Future We Want, outcome document adopted at Rio+20, 2012

<http://www.uncsd2012.org/content/documents/727The%20Future%20We%20Want%2019%20June%201230pm.pdf>

The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples' Rights, Comm. No. 155/96 (2001).

http://www.achpr.org/files/sessions/30th/comunications/155.96/achpr30_155_96_eng.pdf

The toxic ships, the Italian hub, the Mediterranean area and Africa, Greepeace, 2010

<http://www.greenpeace.org/italy/Global/italy/report/2010/inquinamento/Report-The-toxic-ship.pdf>

Temper L., Crude Justice & Ecocide in the Niger Delta

<http://www.ejolt.org/2013/04/crude-justice-ecocide-in-the-niger-delta/>

Tocchetto D., La Mezzaluna non è più fertile, La nuova ecologia, 2015

<http://lanuovaecologia.it/la-mezzaluna-non-e-piu-cosi-fertile/>

UNCED – UN Conference on Environment and Development (1992)

<http://www.un.org/geninfo/bp/enviro.html>

UNHRC, Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, UN Doc. A/HRC/9/22, 13 Aug. 2008, at para. 34.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/150/56/PDF/G0815056.pdf?OpenElement>

UNHRC resolution 19/10 Human rights and the environment, p. 2

<http://srenvironment.org/wp-content/uploads/2013/05/1910-PDF.pdf>

UNHRC resolution A/HRC/19/55, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 2011

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/21/17

UNHRC Resolution A/HRC/25/53 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Mapping report 2013

<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx>

UNHRC Resolution A/HRC/28/61 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John Knox

UNHRC Resolution A/HRC/31/52 Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Climate Change and Environment, 2016

<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx>

UNHRC Resolution A/HRC/22/43 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Preliminary Report, 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf

Knox, Compilation of good practices, 2015

<http://srenvironment.org/good-practices-report-2015/>

UNHRC res.10/11, Human Rights and the Environment

http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.11_en.pdf

UNHRC res. 19/34, Analytical study on the relationship between human rights and the environment

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-34_en.pdf

UNHRC Resolution A/HRC/22/43 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox Preliminary report

<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx>

United Nations, Convention on Biological Diversity, 1992

<https://www.cbd.int/doc/legal/cbd-en.pdf>

United Nations Conference on Sustainable Development, Rio de Janeiro, 2012

<http://www.uncsd2012.org/>

United Nations Conference on Trade and Development (UNCTAD), Environment, UNCTAD Series on International Investment Agreements (UNCTAD/ITE/IIT/23, 2001)

<http://unctad.org/en/Docs/psiteiitd23.en.pdf>

United Nations Framework Convention on Climate Change

<https://unfccc.int/resource/docs/convkp/conveng.pdf>

United Nations Mandate on Human Rights and the Environment John H. Knox, UN Special Rapporteur

<http://srenvironment.org/>

United Nations, Office of the High Commissioner on Human Rights, Guiding Principles on Business and Human Rights, 2011

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Universal Declaration of Human Rights, United Nations, 1948

http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

Vidal J., *David Cameron criticised for skipping Rio+20 Earth summit*, The Guardian, 11 June 2012

<http://www.theguardian.com/environment/2012/jun/11/david-cameron-rio-earth-summit>

World Commission on Environment and Development, Our Common Future, 1987

<http://www.un-documents.net/our-common-future.pdf>

World Summit on Sustainable Development, Johannesburg, 2002

<http://www.earthsummit2002.org/>

World Wild Fund for Nature

www.wwf.org

