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Soft Law, Hard Consequences: The Challenges of Non-Binding Environmental Norms in Shaping State Behavior

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Abstract: The issue of soft law is one of the controversial but at the same time very important components of the structure of international environmental governance. In this respect, the problem statement of this paper is in the fact that while non-binding norms create opportunities for reaching agreements, their voluntary nature may lead to symbolic law and inconsistent use of those norms in crisis periods. Hence, the objective of this research is to study the influence of the relationship between declarations/guidelines and binding legal sources on the behavior of states regarding their "hardness". This research is conducted via a doctrinal methodology which involves a systematic review of primary environmental legislation and secondary sources of law and the study of the hardness of norms from three different aspects: obligation, precision and delegation. Based on the obtained findings, it can be concluded that soft law creates "hard" effects through network effects, domestic internalization and hardening into customary international law.

Keywords: Soft Law, Hard Consequences, Environmental Norms, State

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1. INTRODUCTION

The term "soft law" refers to rules of conduct in instruments that lack any legal binding force but still have the potential to yield practical consequences. Traditionally, the 1972 Stockholm Declaration and 1992 Rio Declaration played the role of landmark documents in IEL, developing such notions as the "polluter pays" and "precautionary" principles[1]. The non-binding nature of these documents formed the normative program for the world community, having an impact on state practice and eventually being codified in binding treaties or customary law[2]. This trend was due to the structural reaction to the growing interdependence among states and the never-ending development of science and technology. States use soft instruments because they can be quickly adopted and changed and are better fitted for technical issues that need multiple revisions. Soft law lacks the constitutional requirements typical of hard

[1] Dinah Shelton, Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System (Oxford: Oxford University Press, 2003).

[2] Jon Birger Skjærseth, Olav Schram Stokke, and Jørgen Wettestad, "Soft Law, Hard Law, and Effective Implementation of International Environmental Norms," *Global Environmental Politics* 6, no. 3 (2006): 104–20.

law, such as the ratification process[3]. Therefore, it gives negotiators more freedom during international conferences. In this regard, soft law has been transformed from the "twilight" of law and politics into its core in the modern process of law-making. Today, soft law offers an analytical category for the continuously developing discourse aimed at influencing international actors. This new approach recognizes that law is no longer just what is authorized by a legislature supported by sanctions[4].

Soft law plays a very important role in influencing state behavior through various techniques such as "naming and shaming" and "rhetorical entrapment." It is also because of the reputational damage that states suffer as a result of noncompliance. Soft law helps create common understanding in the international community[5], and the repetition of such standards gradually results in them becoming part of the mainstream; if states ignore them, they become challenges to state sovereignty. Legal standards are also subject to network externalities, whereby the value of the standard becomes higher if more states adopt it[6]. There is thus a spontaneous "snowball effect" toward harmonization of standards. Even if they are not binding, norms generate expectations of compliance because states are expected to "keep their word" having committed themselves to an international instrument. Soft law is also catalytic in the sense that it influences hard law by applying pressure to the "laggards" in negotiations. The reporting guidelines for national communications in the climate regime have been effective in pressuring parties to increase their transparency without any enforcement mechanism[7]. Soft law also assists in solving coordination games by providing focal points for state cooperation.

A basic issue is the problem of commitment failure which occurs when the soft law instruments are not able to contain concrete objectives and timetables needed to be implemented. According to the critics, since the instruments are non-binding, there is no accountability to facilitate transformative actions[8]. Instead, there will be a race to the bottom whereby the states prioritize economic development over environmental protection. As a result, there arises a legal protection gap for new emerging issues, for instance, environmental displacement. In addition, fragmentation and decentralization of environmental laws, coupled with the lack of international delegation to institutions capable of coordinating environmental efforts, make the laws weak[9]. Persuasion rather than imposition of sanctions by the states means that the laws will only remain symbolic without any internal implementation. Moreover, the soft law provisions are often ambiguous and vague, which makes the obligations unclear. This makes the states uncertain and gives rise to normative confusion in the process of environmental governance. The weakness is even higher in the Anthropocene due to the dynamic and fast nature of ecological crises.

"Soft Law, Hard Consequences" is unique in its departure from the conventional approach to classifying law as either strictly binding or non-binding. The new perspective in

[3] Jürgen Friedrich, International Environmental "Soft Law": The Functions and Limits of Nonbinding Instruments in International Environmental Governance and Law (Cham: Springer, 2013).
[4] Dinah L. Shelton, "Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System (Introduction)," in Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System, ed. Dinah L. Shelton (2000).
[5] Dinah Shelton, "Soft Law," in Routledge Handbook of International Law (2009), 68–80.
[6] Osikemekha A. Anani, Abel Inobeme, Osayomwanbo Osarenotor, Frances Ngozi Olisaka, Paul Atagamen Aidonojie, Emmanuel Olusegun Olatunji, and Aishatu Idris Habib, "Application of Microorganisms as Biofactories to Produce Biogenic Nanoparticles for Environmental Cleanup: Current Advances and Challenges," Current Nanoscience 19, no. 6 (2023): 770–82.
[7] Andrew T. Guzman and Timothy Meyer, "Soft Law," in *Economic Analysis of International Law* (2016), 123–54.
[8] Léticia Villeneuve, Soft Law, Hard Stakes? State Commitment to Non-Binding International Instruments and the Case of the UN Declaration on the Rights of Indigenous Peoples (University of Oxford, 2017).
[9] Masika Sarah Bino and Paul Atagamen Aidonojie, "Achieving Environmental Sustainability through Carbon Neutrality in Uganda: Legal Issues and Strategic Solutions," Cogito: Multidisciplinary Research Journal 17 (2025): 72.

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studying soft law will be through the lens of legalization as a continuum, particularly the processes of "hardening" which take place without any reiteration of state consent[10]. In addition, the topic aims to establish how non-binding commitments could become binding through domestic incorporation, treaty formation, and crystallizing of customary international law. While previous literature considers soft law to be of no consequence, "Soft Law, Hard Consequences" recognizes the fact that states realise the future implications of their commitments, such as increases in sovereignty and implementation costs. Another innovative aspect in studying this topic is the use of network effect theories to understand how voluntary standards achieve coercive powers through adoption[11]. Deviant cases such as the resistance to the Declaration on the Rights of Indigenous Peoples demonstrate that states have developed a fear of unexpected hardening of soft law. Overall, soft law has evolved to become more than a troublemaker. Rather, it is an instrument for majoritarian rule in a fragmented international order.

The main aim of this study will be a critical evaluation of the adequacy and feasibility of using soft law as a tool in filling legal protection gaps in environmental governance. The research will seek to explore the effect of non-binding rules on state conduct in terms of norm internalization and reputation incentives. It will be aimed at understanding under what circumstances soft law tools become “hardened” into binding obligations through legislation and customary international law. The study will also analyze the advantages and disadvantages of hard and soft law, looking for reasons why states use non-binding tools, despite them being unenforceable. Finally, the ability of using network effects and “naming and shaming” in strengthening the power of non-binding environmental norms will be assessed. The objective of the research will be to develop a hybrid approach to environmental governance by combining the advantages of soft and hard law.

2. METHOD

The research employs a doctrinal methodology in analyzing the topic, based on a systematic review of primary and secondary legal literature. The primary materials include identification of the official sources of international law, which comprise texts of important MEAs such as UNFCCC, Kyoto Protocol, and Paris Agreement. The non-legally binding instruments include UN General Assembly Resolutions, declarations adopted at international meetings, and judicial decisions of the ICJ. The secondary materials have been sourced from reliable legal databases like JSTOR, HeinOnline, and Oxford Public International Law. The databases will enable access to peer-reviewed journals, academic writings of eminent publicists, and PhD dissertations dealing with the correlation between the non-binding rules and state practice. This is aimed at ensuring thorough analysis of the existing “black letter law” and its development over time.

This type of analysis is characterized by a qualitative doctrinal analysis which will concentrate on how soft law "hardens". This process needs a careful interpretation and analysis of the texts of legal instruments in order to measure their structures, degree of precision, and mechanisms of normative diffusion. In this respect, the analysis used in the research will be based on the normative interpretive analysis of opinio juris and state practice in relation to the role played by continuous references to soft law by international organizations in making soft law binding over time. The content analysis technique will be applied in order to apply environmental rules to the criteria of hardness – obligation, precision, and delegation. Moreover, the research will use the case study methodology, especially process-tracing that

[10] Sarkawt Jalil, “A Review of the Role of Soft Instruments in International Environmental Law,” *Hacettepe Hukuk Fakültesi Dergisi* 15, no. 2 (2025): 824–68.

[11] Rhiani Salamon Reis Riani, Francisco Campos da Costa, Cássius Guimarães Chai, Mônica Fontenelle Carneiro, Débora Gomes Galvão Basílio, and Glaucia Fernanda Oliveira Martins Batalha, “Private Regimes and Global Environmental Governance: Soft Law as an Instrument to Address Common Environmental Issues,” *Beijing Law Review* 14 (2023): 1523.

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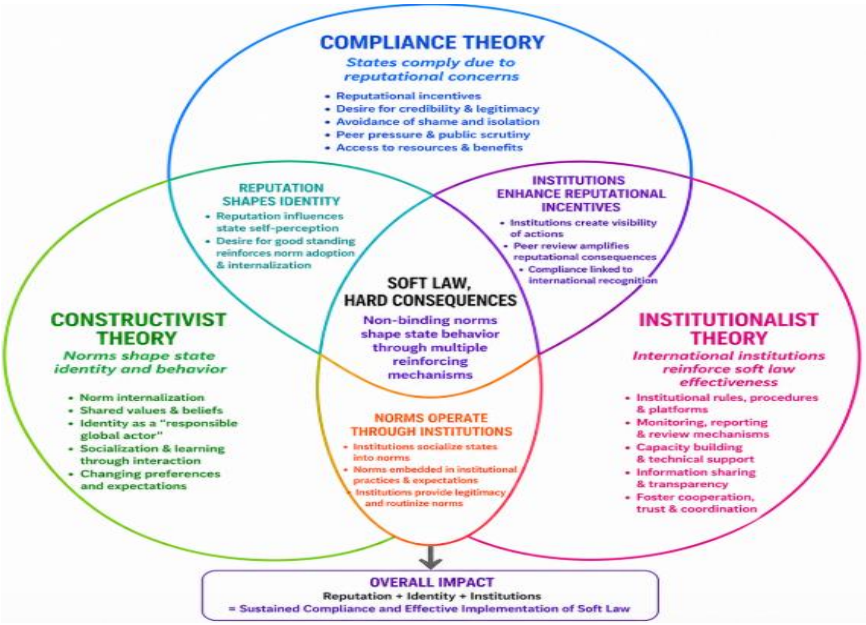
explains state decisions and determines the effect of the potential future costs of adherence to non-binding norms.

3. RESULT AND DISCUSSION

3.1. Theoretical Perspectives

One of the most prominent features of modern international environmental governance is the existence of soft law, which influences the actions of states in dealing with global environmental problems even though they do not have legal binding effect[12]. The Rio Declaration on Environment and Development and some elements of the Paris Agreement are examples of how the non-binding norms are able to direct state behavior, inform policy-making processes and shape international cooperation. How is it possible that non-binding rules lead to real consequences? The above question brings up the problem of the theoretical underpinning of compliance of states with norms that do not have legal binding effect. Several approaches have been developed by scholars to explain this issue[13]namely, compliance theory, constructivist theory and institutionalist theory. The main purpose of each approach is to provide an explanation of how the international community functions in terms of soft law.

Figure 1: theoretical framework



Source: Designed by author based on data obtained

Compliance theory is considered one of the most realistic theories explaining compliance with voluntary environmental norms. It suggests that states do not comply because of any legal obligations but because of their reputations and willingness to preserve their reputation within the international community. In compliance theory, states try not to be perceived as irresponsible and uncooperative actors, especially in influential environmental regimes. Even though soft law does not have any enforcement tools, it creates expectations of responsibility for other states, international organizations, and NGOs, which monitor states' actions. For example, commitments made within such frameworks as the Paris Agreement depend greatly on transparency and reporting[14]. This makes states subject to global monitoring.

[12] Mariachiara Tallacchini, "To Bind or Not Bind? European Ethics as Soft Law," in Science and Democracy (2015), 156–75.

[13] Emily Crawford, Non-Binding Norms in International Humanitarian Law: Efficacy, Legitimacy, and Legality (Oxford: Oxford University Press, 2021).

[14] Nasser Alreshaid, Katarzyna Ludwichowska-Redo, and Leonardo Sempertegui, "The Importance of Soft Law in Shaping the Future of Energy," *Journal of Energy & Natural Resources Law* (2026): 1–20.

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Lack of compliance can lead to diplomatic pressure, lack of international funds, or reduction of their influence during international negotiations. Therefore, reputational costs can be viewed as a great motivation for complying with soft law norms.

Constructivist theory, on the other hand, emphasizes internalization of norms and their impact on the identity and behavior of states. From this perspective, soft law is influential since they help shape the perception of states about themselves as well as about their role in the international arena[15]. Norms concerning environmental protection outlined in documents such as the Rio Declaration on Environment and Development get incorporated into the values, policies, and laws of states. Consequently, states increasingly act not only because of rational calculations but also because their compliance with the norm reflects positively on their identity as responsible members of the global community. Regular interaction with peers in international fora, networks of transnational advocacy groups, and other processes usually aids the process of internalising norms. With environmental protection becoming a common global value[16], states have been increasingly motivated to voluntarily adopt and apply principles of soft law.

The institutionalist approach supplements both the above views with its focus on the importance of international institutions to strengthen the efficiency of soft law. Institutions offer the means, mechanisms, and venues for creation, diffusion, and monitoring of soft law norms. Through means like reporting schemes, peer reviews, and capacity-building initiatives[17], institutions serve as instruments to convert non-binding commitments into concrete actions. The institutional support for the implementation of the Paris Agreement contributes to creating an environment characterized by transparency, capacity building, and ongoing engagement among states. This way, compliance is encouraged, and any deviation becomes visible. Institutions also promote cooperation by lowering uncertainties, exchanging information, and creating mutual trust among states[18]. Thus, they serve as a bridge between soft and hard law, reinforcing the practical effect of non-binding norms. In this way, institutionalism underscores the importance of institutions in addition to content to make soft law efficient[19].

3.2. Conceptual and Evolution of Soft Law in Environmental Governance

In current legal literature, environmental soft law is defined as a set of behavioral prescriptions established in instruments that are not endowed with legally binding force yet capable of creating substantial practical and legal effects. As often labeled, such non-binding instruments resolutions, declarations, and guidelines operate in the so-called "grey zone" or "twilight" between law and politics, becoming an important means of connecting states when consensus in a binding treaty proves unattainable. Traditional legal positivists used to regard the concept of soft law as a "conceptual weakness"; however, in the age of the Anthropocene, it has become a symbol of necessity, offering flexibility and problem-solving ability needed in modern environmental law[20]. This transformation is demonstrated by representatives of international organizations; for example, in spite of the dramatic decrease in the number of new multilateral treaties adopted per decade (from thirty-five before 1950 to almost none in 2011), soft law instruments have gained increasing significance for managing complicated

[15] Gregory C. Shaffer and Mark A. Pollack, "Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance," *Minnesota Law Review* 94 (2009): 706.
[16] Gregory Shaffer, Mark A. Pollack, and Jeffrey L. Dunoff, "Hard and Soft Law," in International Law and International Relations: Insights from Interdisciplinary Scholarship (New York, 2012), 197–222.
[17] John J. Kirton and Michael J. Trebilcock, Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance (London: Routledge, 2017).
[18] Luis Arroyo Jiménez, "Beyond Bindingness: A Typology of EU Soft Law Legal Effects," in The Legal Effects of EU Soft Law (2023), 9–32.
[19] Fabien Terpan, "Soft Law in the European Union—The Changing Nature of EU Law," *European Law Journal* 21, no. 1 (2015): 68–96.
[20] Niko Soininen and Seita Romppanen, "The Relative Normativity of International Environmental Law," in Research Handbook on Fundamental Concepts of Environmental Law (2022), 205–27.

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interrelations at the global scale[21]. In addition, it should be mentioned that nowadays international law is not only what is authorized by proper legislation and enforced by sanctions; it also involves these soft-law norms.

The emergence of soft law represents a realistic approach in addressing the issue of state sovereignty since it bypasses the need for domestic constitutional and legislative formalities that are involved in the formation of international treaties. Governments tend to shy away from the use of formal regulatory tools due to the "consequences flowing from legal obligations" and legal liability[22]. The advantage of soft law is that it enables states to indicate their respect for high standards and "ambitious norms" without necessarily binding themselves to them, hence guaranteeing wider participation. Soft law represents a "safety valve" in the international legal system whereby states can engage in cooperation with respect to certain issues without necessarily committing themselves to particular terms of action. This characteristic of soft law becomes even more important in light of the fact that the number of sovereign states has quadrupled since the early twentieth century[23]. Moreover, soft law deals with the problem of scientific uncertainty and the need for quick international cooperation. In the "age of global boiling", when the planet experiences the highest temperatures in 174 years, the international community needs to act promptly, but the scientific confirmation of particular climate effects may take many years to be concluded. Thus, soft law enables a "learning period" or a "road-test" of policies, as in the case of the 1992 Forest Declaration, in which the parties experiment with certain principles before their legalization[24]. Unlike hard law, which is known for its cautiousness and slow pace, non-binding agreements can be more prompt to adopt and change, thus continuously incorporating new scientific evidence. This "norm-filling" role allows lawmakers to respond to the uncertainties of scientific research by adopting a precautionary principle and formulating flexible norms, which can be adjusted according to emerging scientific information.

The most important landmarks in this process include the 1972 Stockholm Conference, considered to be the beginning of IEL as an autonomous field of law. The non-binding declaration formulated 26 principles, among which is an extremely important Principle 21, according to which states possess sovereign rights to their resources[25], but at the same time, they bear the duty not to cause damage beyond their borders. It is noteworthy that the principle was so significant that it was recognised by the International Court of Justice as part of customary international law. Twenty years later, the 1992 Earth Summit (UNCED) in Rio de Janeiro took place, giving rise to the Rio Declaration and Agenda 21, incorporating such concepts as "sustainable development" and "the polluter pays". The significance of this period can be judged from statistics indicating that 106 multilateral environmental agreements were signed only between 1990 and 1992, using soft declarations as their normative basis[26]. The most recent paradigm shift is the 2015 Paris Climate Conference, which adopts a "hybrid approach" with procedural obligations being binding while the substantive obligations remain soft. The success of this paradigm can be seen in its near universal state membership comprising 195 parties, compared to the Kyoto Protocol with only 83 parties, which focused on the hard law

[21] Jutta Brunnée, The Rule of International (Environmental) Law and Complex Problems (Oxford: Oxford University Press, 2019).
[22] Timothy Meyer, "Soft Law as Delegation," Fordham International Law Journal 32 (2008): 888.
[23] Hema Nadarajah, "Fewer Treaties, More Soft Law: What Does It Mean for the Arctic and Climate Change?" Arctic Yearbook (2020).
[24] Muhammad Mutawalli Mukhlis, Maskun Maskun, Muhammad Saleh Tajuddin, Andi Tentri Yeyeng, and Paul Atagamen Aidonojie, "The Crisis in Red Sea Region: Legal and Socio-Economic Impact on International Commerce," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 24, no. 2 (2024): 17–35.
[25] Thomas A. Mensah, "Soft Law: A Fresh Look at an Old Mechanism," *Environmental Policy and Law* 38 (2008): 50.
[26] Barnali Choudhury, "Balancing Soft and Hard Law for Business and Human Rights," *International and Comparative Law Quarterly* 67, no. 4 (2018): 961–86.

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approach. As of 2016, the Paris Outcome was responsible for contributions which covered 98.9% of global carbon emissions, taking advantage of the "network effects" principle where a standard becomes more valuable as more states join, thus creating a "snowball effect" of harmonization. Although it does not have mandatory targets for emissions reduction, it has increased costs of non-compliance through its transparency obligations and "naming and shaming" tactics both from states and civil societies[27].

3.3. Challenges of Non-Binding Environmental Norms

The contemporary system of environmental governance at the international level has become one that relies on soft law, which refers to a range of quasi-legal instruments such as resolutions, declarations, and guidelines. Despite lacking legal enforceability, these instruments have strong moral and political weight, thus constituting an important link in the era of global boiling when mobilization becomes urgent, but reaching agreement through multilateral treaties is impossible[28]. This trend is very obvious as the creation of new multilateral treaties declined from 35 per decade since the 1950s to practically nothing in 2011, whereas soft law has emerged as a fast-growing phenomenon aimed at filling the "legal protection void". However, there is a built-in paradox in the nature of soft law, as it is considered to be a "trouble maker". Soft law is said to reside in the "twilight" zone between law and politics, offering flexibility at the cost of behavioural rigidity that is characteristic of hard law[29]. Although soft law may "harden" into customary law or treaties eventually, its voluntary nature poses a number of challenges regarding state behavior. These challenges are listed below:

Challenge	Description
Weak Enforcement	Lacks coercive power and formal sanctions, leading to selective compliance based on state interest.
Ambiguity & Vagueness	Broadly framed provisions cause normative confusion and conflicting interpretations of obligations.
Lack of Accountability	Reliance on self-reporting and a lack of reparative actions result in minimal consequences for non-compliance.
Implementation Gaps	Inconsistent domestic incorporation and a lack of a "conveyor belt" to turn norms into national policy.
Sovereignty Risks	Initial non-binding commitments may "harden" into binding customary law without renewed state consent.
Greenwashing	States may adopt "symbolic law" to satisfy public pressure while delaying substantive regulatory action.
Causal Complexity	Difficulty in legally defining and proving that specific harms are attributable to climate change rather than natural causes.
Network Effects	Potential for "lock-in" where sub-optimal or inefficient standards become entrenched and resistant to improvement.

[27] Tim Höflinger, "Non-Binding and Therefore Irrelevant? The Global Compact for Migration," *International Journal* 75, no. 4 (2020): 662–72.
[28] Simon Ejokema Imoisi and Paul Atagamen Aidonojie, "Legal and Socio-Economic Issues Concerning Black Marketers' Activities of Petroleum Products in Nigeria," *Yuridika* 38, no. 2 (2023): 61–84.
[29] Bryan H. Druzin, "Why Does Soft Law Have Any Power Anyway?" *Asian Journal of International Law* 7, no. 2 (2017): 361–78.

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Asymmetric Vulnerability	Risk of creating "exclusive clubs" of victims as major emitters may avoid joining due to high implementation costs.

3.4. Soft Law and State Behavior: Practical Impacts

Soft laws exert an enormous impact on domestic legislation through the provision of "ready-made sets of standards" that allow states to internalize them without having to go through the tedious process of formal treaty ratification[30]. The internalization process usually results in the entrenchment of non-binding norms into domestic legislation, which then serves as a guide for the behavior of national courts and administrative bodies. One good example of this is the Bali Guidelines adopted in 2010 by the UNEP, which aim to assist states in developing domestic legislation about access to environmental information and justice. Although non-binding, these guidelines have proven to be "inspiring and powerful" in promoting environmental democratic rights across the globe; and indeed, nations like Turkey have managed to establish their internal legal foundations through compliance with soft international laws. This exemplifies the "layering" phenomenon wherein domestic and EU laws include obligations that emanate from international environmental laws[31]. What is more, the domestic internalization of norms acts as an excellent "barometer" for measuring the qualitative commitment of states to these norms, showing whether or not they will comply in reality.

In the field of international negotiation, soft law plays the role of a crucial "stepping stone" or prelude that assists in achieving consensus when hard law fails at first due to political considerations[32]. Soft law operates as a "safety valve" within the international legal system, enabling states to pursue cooperation while retaining control over the timing of implementation. Thus, soft law measures can serve as a means of "paving the way" for the future adoption of binding treaty through the gradual creation of certain norms, as is seen in many UN General Assembly resolutions that led to hard law. The norm-filling role enables lawmakers to act amid uncertainty in science by creating flexible standards that may be adjusted according to technological developments[33]. For example, the principles laid down in the 1972 Stockholm Declaration, such as Principle 21, have been so important that they are now considered a part of customary international law by the ICJ. As a result of adopting "programmes of action", states can make invitations for material or regulatory actions on a national level without having the "shadow of legal responsibility"[34]. Thus, soft law is an analytical concept for a constantly developing discourse aiming to influence international actors.

The Paris Agreement stands out as the best example of the impact of soft law principles, employing the "hybrid approach" by incorporating both binding procedural requirements and soft substantive rules. Its success is demonstrated through its almost universal membership involving 195 parties, which is more than twice the 83 parties in the Kyoto Protocol that relies heavily on hard law. Although it does not have any strict mandatory emission requirements[35], it takes advantage of the "network effects," whereby the value of the standard increases as more states adopt it, thereby setting off a process of harmonization called the "snowball effect." In 2016, contributions from the Paris Outcome accounted for 98.9 per cent of global carbon

[30] Marion Panizzon, Kathryn Allinson, and Maja Grundler, "Forms and Functions of Soft Norms and Informal Law-Making in International Migration Law: A Different Frontier," *Frontiers in Human Dynamics* 6 (2024): 1368925.
[31] Francesco Luigi Gatta, "From Soft International Law on Business and Human Rights to Hard EU Legislation?" in Legal Sources in Business and Human Rights (2020), 248–75.
[32] Ibid
[33] Paul Atagamen Aidonojie, "Environmental Hazard: The Legal Issues Concerning Environmental Justice in Nigeria," *Journal of Human Rights, Culture and Legal System* 3, no. 1 (2023): 17–32.
[34] Danai Petropoulou Ionescu and Mariolina Eliantonio, "Words Are Stones: Constructing Bindingness through Language in EU Environmental Soft Law," in The Legal Effects of EU Soft Law (2023), 76–110.
[35] Cecilia Bailliet, Non-State Actors, Soft Law and Protective Regimes: From the Margins (Cambridge: Cambridge University Press, 2012).

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emissions. It raises the costs of non-compliance by providing for an open reporting system that employs "naming and shaming" tactics in pressuring lagging states[36]. This reporting mechanism ensures that states can call out other states that do not fulfill their respective national contributions. In addition, the agreement eliminates the need for negotiating tough international emission standards since it emphasises "nationally determined contributions."

The Convention on Biological Diversity (CBD) provides another example of how the soft law approach contributes to effective biodiversity governance[37]. The CBD has resulted in the adoption of various protocols, such as the Nagoya Protocol on access and benefit-sharing, whose adoption was preceded by soft law standard-setting. In case where big differences prevent treaty drafting from producing clear terms of an agreement, for instance, with regard to traditional knowledge in Article 8(j), a soft law instrument such as the Bonn Guidelines is developed to resolve the matter definitively[38]. This approach facilitates the development of technical guidelines that enhance the application of a particular treaty obligation and thereby expand the scope of international environmental law. Moreover, the CBD often uses programmatic guidelines under which activities are conducted at the national level. Such soft law frameworks play an important role in bringing together states to deal with problems such as increased rates of biodiversity loss and marine ecosystem breakdown[39]. Through its regime, the CBD demonstrates that even where there is a treaty, soft law is essential to "flesh out" international obligations. Due to the provision of detailed technical guidance, soft law enables states to manage shared natural resources through due diligence.

Beyond particular treaties, soft law influences state behavior through the principle of reputational incentives and “naming and shaming.” Though these norms are not legally binding, adhering to them creates “an expectation of compliance” since states are forced to “keep their word” in the highly interdependent world community[40]. The failure to adhere to the principles of soft law typically leads to political and economic penalties since social disapproval encourages a greater level of cooperation between peers. For instance, the U.S. decision to leave the Paris Agreement in 2017 during the Trump era was followed by harsh condemnation by the international community and threats of imposing carbon tax levies on the country by its allies such as France and Canada. These informal sanctions clearly indicate that soft law has a peculiar “compliance-pull” feature that replicates the impact of binding law[41]. Moreover, legal standards can be subject to network effects since there is an inherent tendency towards the spontaneous emergence of a standard due to the increase in its value to one state in proportion to the number of other states adopting it. Thus, soft law becomes uniquely designed for voluntary adoption and compliance without relying on any coercive mechanisms[42].

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[36] Ibid

[37] Kingsley Eghonghon Ukhurebor and Paul Atagamen Aidonojie, “The Influence of Climate Change on Food Innovation Technology: Review on Topical Developments and Legal Framework,” *Agriculture & Food Security* 10, no. 1 (2021): 50.

[38] Hema Nadarajah, Soft Law and International Relations: The Arctic, Outer Space, and Climate Change (University of British Columbia, 2020).

[39] Ilias Bantekas and Katerina Akestoridi, “Sustainable Development Goals, between Politics and Soft Law: The Emergence of ‘Political Normativity’ in International Law,” Emory International Law Review 37 (2022): 499.

[40] Abubakar Bature Lawal, Enabling Soft Law Initiatives to Regulate the Environmental and Social Impacts of Mining Investments in Sub-Sahara: A Case Study of Nigeria and South Africa (Newcastle University, 2018).

[41] Mukhlish Mukhlisha, Paul Atagamen Aidonojie, Muwaffiq Jufri, Mercy Osemudiame Okpoko, and Eregbuonye Obieshi, “Legal and Regulatory Issues Concerning the Concept of Cloud Seeding in Climate Change Mitigation,” *Indonesian Journal of Environmental Law and Sustainable Development* 121, no. 9 (2025): 4877–93.

[42] Ryan Hagemann, Jennifer Huddleston Skees, and Adam Thierer, “Soft Law for Hard Problems: The Governance of Emerging Technologies in an Uncertain Future,” Colorado Technology Law Journal 17 (2018): 37.

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In conclusion, the true significance of soft law lies in its potential to "harden" over time to become legally-binding obligations without the need for re-expressed consent from the states. Hardening can take place through the process of recognizing customary international law (CIL), whereby the consistent practices and opinio juris of states change non-binding norms into enforceable rules. States know that soft law could have such consequences since the CANZUS states were initially opposed to the Declaration on the Rights of Indigenous Peoples because of the possibility of its provisions hardening to become customary law[43]. This is what the "legalization continuum" implies, namely that soft law is not really "non-law" but a "trouble maker" which transcends the traditional boundaries of the legal domain. The soft law instrument can also have legal consequences directly in that it could bind states internally to an international organization or even create new subjects of international law with international personality, like the Arctic Council. The "hard consequences" clearly indicate that states should assess non-binding agreements with as much seriousness as binding ones.

3.5. Bridging the Gap: Strengthening Soft Law Effectiveness

Enhancing the effectiveness of soft law would need a strategic combination of hybrid legal frameworks that blend the benefits of soft law (flexibility) and those of hard law (stability). The success of the Paris Agreement shows the effectiveness of such an approach, whereby binding procedural obligations (such as the obligation to prepare and report NDCs) ensure accountability while substantive obligations are made soft for maximum state participation. The "mixture of different laws" gives the regime a chance to be flexible enough to accommodate different interests of states and changes in scientific knowledge[44]. The hybrid approach is instrumental in creating "a bridge between state sovereignty and the minimum needs of the international legal order". Through the binding treaty law of goals and principles, the international community would be able to deal with the complex and polycentric problems through orchestration rather than regulation. This strategy will ensure near-universal participation as well as a process through which obligations become increasingly stringent over time.

Another important mechanism through which soft law may become more effective in terms of compliance is that of institutional integration. Bodies such as the UNEP and the UN General Assembly offer institutional stability in the process of the iterative and cumulative diffusion of soft norms. Soft law incorporated into institutional practice will facilitate the creation of 'shared expectations' and 'norm cascade'[45]. Thus, for example, the UN Commission on Sustainable Development oversees the implementation of Agenda 21 in much the same way as treaties, with the same enforcement mechanisms. The institutionalization process also allows for the provision of the necessary technical assistance for the states to incorporate international findings into their regional context. Creation of subsidiary bodies for expert advice, such as the IPCC, enables a treaty regime to reach agreement on the pressing nature of certain environmental problems. Finally, the reference to soft law by international institutions increases its practical efficacy and the belief in its legal status.

Soft law works well when there are high levels of transparency and reporting mechanisms that would make compliance attractive via peer pressure and public scrutiny. The reporting mechanism in the Paris Agreement, known as the “transparency framework,” is an excellent example of such a breakthrough that requires all signatories to report on their emissions and compliance with the agreement. In doing so, the cost of non-compliance increases because countries have to inform the whole world about their failure to properly implement the commitments they undertook, which would automatically mean that they incur

[43] Daniel Bradlow and David Hunter, Advocating Social Change through International Law: Exploring the Choice between Hard and Soft International Law (Leiden: Brill, 2019).
[44] Marianna Naicker, The Use of Soft Law in the International Legal System in the Context of Global Governance (University of Pretoria, 2014).
[45] Mariolina Eliantonio, “Soft Law in Environmental Matters and the Role of the European Courts: Too Much or Too Little of It?” *Yearbook of European Law* 37 (2018): 496–524.

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reputational costs. With transparency mechanisms, it becomes possible to evaluate both collective performance as well as individual states' performance. Moreover, transparency makes it possible to "confront other states who are not meeting their set contributions." For instance, monitoring and verification of compliance can become much easier using peer-based accountability mechanisms such as the Universal Periodic Review that ensures "congruence" of a state's actions with its international obligations. With codification and transparency of rules, soft laws create focal points for markets and state action.

Domestically incorporating non-binding international norms into national legislation constitutes perhaps the most tangible step in reinforcing soft law. Through this process of "domestication," the normative power of soft law gets enhanced, and the scope of its application broadened beyond the international context. For instance, the UN Guiding Principles on Business and Human Rights (UNGPs) have led to the creation of mandatory human rights due diligence laws in France and Germany. Since soft law norms do not necessitate ratification, they tend to offer "a ready-made set of standards" which can be more quickly adopted by the national legislature compared to treaties. Another important step in reinforcing soft law is taken by the national courts in interpreting constitutional protections or defining the obligations of the state based on soft law provisions[46]. In South Africa, for example, the Constitutional Court resorted to soft law to interpret the rights of the citizens to socio-economic rights with regard to housing. Such judicial openness contributes to aligning international and domestic rights discourses.

Civil society and NGOs are necessary for improving the effectiveness of soft law regimes when it comes to accountability and legitimacy. Such actors engage in the process of "naming and shaming" the states that fail to comply with the rules, ranking them with independent rankings such as Climate Action Tracker to assess the state's performance in comparison to the global standard. NGOs also provide "factual and technical information" regarding compliance as well as disseminate the norms with the help of "a whole-of-society approach". When it comes to the Bali Guidelines, the tool was developed by expert panels with the aid of civil society in order to strengthen the legal systems of developing countries. Some examples of soft law are also negotiated by non-state actors, thus creating a model of "private governance" that may serve as a starting point for national legislation[47]. For example, the Global Reporting Initiative applies shareholder activism in order to force businesses to adopt environmental standards. With the help of non-state actors, voices of the affected Right-holders are heard beyond the limits of international legal order.

Lastly, reinforcing soft law amounts to confronting causal complexity and ambiguity, which would entail increasing the levels of both precision and delegation within the non-binding instruments. The more precise soft law norms are likely to function better, as they define the necessary actions in a clear manner, leaving little room for interpretation and thus facilitating intrusive compliance activities[48]. Moreover, delegation of certain activities related to implementation of soft law norms to expert organizations and international secretariats can facilitate compliance by reducing the status quo bias associated with inter-state negotiations. In the case of North Sea environmental regulation, soft law proved instrumental, to some degree, in helping regional states come up with rather precise standards. As a result, compliance activities became easier. On the contrary, ambiguous and broad-provision norms might lead to normative confusion, allowing states to evade taking any substantive action. Reinforcing the hardness of soft law through increased obligations and delegation could be achieved by

[46] Xiaofan Hu, "On the Soft Law Governance of Environmental Rights Protection in the Belt and Road Initiative," *Journal of Human Rights* 24 (2025): 749.

[47] Gunther F. Handl, W. Michael Reisman, Bruno Simma, Pierre-Marie Dupuy, and Christine Chinkin, "A Hard Look at Soft Law," Proceedings of the Annual Meeting of the American Society of International Law 82 (1988): 371–95.

[48] Kati Kulovesi and María Eugenia Recio, "Fighting a Hard Battle with a Soft Weapon: Is International Climate Change Law Softening?" in Research Handbook on Soft Law (2023), 320–36.

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establishing COPs and other similar institutions with legislative-type functions where legal form is sacrificed in exchange for substantive obligations. What is more important, such institutions provide a stable platform for incorporating scientific discoveries into soft law, thus making it a living tool for handling

4. CONCLUSION

Overall, this study suggests that despite its conceptual weaknesses, soft law plays an important role as a crucial link in the system of international environmental governance, which may produce "hard" results via the network effect and internalization at the national level. The main issue highlighted is the "legal protection void" created by the voluntary character of soft law, which may result in inconsistency and the problem of "symbolic law". Nonetheless, the development of mechanisms such as the Paris Agreement shows that the combination of a binding procedural requirement and a soft substance is capable of ensuring nearly universal participation of states and effective measures. It is suggested that states and international organizations continue moving toward polycentric models of governance that involve non-state actors and experts. In addition, states need to have established procedures for translating non-binding norms into national law. In order to tackle the transboundary problems of the Anthropocene era, it is necessary to increase the hardness of soft law.

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