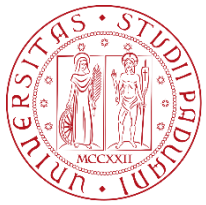
UNIVERSITÀ DEGLI STUDI DI PADOVA

DEPARTMENT OF POLITICAL SCIENCE, LAW
AND INTERNATIONAL STUDIES

Master's degree in
Human Rights and Multi-Level Governance



Environmental Democracy:

An international instrument to increase multinational corporations' accountability and liability for environmental degradation and human rights violations

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Matriculation No. : 2078579

A.Y. 2023/2024

Abstract

This research explores the intersection of climate change, environmental degradation, multinational corporations (MNCs), and human rights (HR) violations within the framework of international law. It argues that economic activities, particularly those of MNCs operating within global value chains, significantly contribute to environmental degradation and HR abuses. Despite a well-developed regulatory framework, gaps persist, allowing MNCs to evade accountability for their actions. One potential avenue for addressing these gaps is through the lens of environmental democracy, a relatively new concept that has yet to be fully explored in the context of corporate liability and accountability.

The research begins by examining the shortcomings of the current regulatory system, highlighting the lack of state incentive to regulate MNCs and protect citizens from their negative impacts effectively. It then turns to an analysis of environmental democracy, tracing its development and considering its potential implications for addressing corporate environmental degradation and human rights violations. By leveraging environmental democracy as an instrument to pressure states into stronger protections of environmental human rights, the thesis suggests that it can indirectly contribute to greater accountability of MNCs.

However, while environmental democracy offers promise as an international instrument for promoting corporate liability and accountability, it is not a panacea. The thesis concludes by identifying other potential improvements to the current regulatory system, emphasising the need for a comprehensive approach to addressing the complex challenges posed by MNCs in the context of environmental and HR protection.

Keywords: natural environment, democracy, MNCs, human rights, accountability

Acknowledgements

I want to express my heartfelt gratitude to my supervisor, Prof. Paolo de Stefani, for his invaluable guidance, knowledge, and encouragement, which were instrumental in the successful completion of this research paper. I am equally grateful to my co-supervisor, Prof. Alberto Lanzavecchia, whose lectures deepened my interest in areas such as environmental protection, human rights, and the role of the private sector. I would also like to thank all of the other professors, both at the master's and the bachelor's study, who have imparted the necessary knowledge and skills to me through their lectures.

Furthermore, I would like to thank my family, especially my mother Mirjana Levanić, aunt Biserka Levanić – Horvat and uncle Vlado Horvat, for their unconditional love and support. Thank you for your advice and intellectual and financial support, without which my studies would not have been possible. Thank you for every kind word, even in the most challenging moments, which helped me to find the motivation needed to continue my education in numerous situations.

Last but not least, I would like to especially thank all other family members, family friends and all other close friends in Croatia, Slovenia and Padova who were by my side during my education. In numerous moments, you gave me the impetus to find motivation. I could not even hope to meet such good people, full of support and understanding, whom I can proudly call my friends.

Želim izraziti svoju srdačnu zahvalnost svom mentoru, prof. Paolu de Stefaniju, na njegovom neprocjenjivom vodstvu, znanju i ohrabrenju, koji su bili ključni u uspješnom završetku ovog istraživačkog rada. Jednako sam zahvalan svom sumentoru, prof. Albertu Lanzavecchiji, čija su predavanja produbila moje zanimanje za područja kao što su zaštita okoliša, zaštita ljudskih prava te uloga privatnog sektora u istima. Zahvaljujem i svim ostalim profesorima, kako na diplomskom tako i na preddiplomskom studiju, koji su mi svojim predavanjima prenijeli potrebna znanja i vještine.

Nadalje, želim zahvaliti svojoj obitelji, a posebno majci Mirjani Levanić, teti Biserki Levanić – Horvat i tetku Vladi Horvatu na bezuvjetnoj ljubavi i podršci. Hvala Vam na savjetima te intelektualnoj i financijskoj potpori bez koje moj studij ne bi bio moguć. Hvala Vam na svim lijepim riječima, čak i u najizazovnijim trenutcima, koje su mi pomogle da u brojnim situacijama pronađem motivaciju za nastavak obrazovanja.

Naposljetku, želim posebno zahvaliti svim ostalim članovima obitelji, obiteljskim prijateljima i svim osobnim prijateljima u Hrvatskoj, Sloveniji i Padovi koji su bili uz mene tijekom mog školovanja. U brojnim trenucima dali ste mi poticaj da pronađem motivaciju. Također, nisam se mogao ni nadati da ću sresti tako dobre ljude, pune podrške i razumijevanja, koje s ponosom mogu zvati svojim prijateljima.

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Abbreviations

Aarhus Convention	The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matter
ACHR	American Convention on Human Rights
BIT	bilateral investment treaty
CEO	chief executive officer
CJEU	Court of Justice of the European Union
COP	Conference of the Parties
CSR	corporate social responsibility
ECtHR	European Court of Human Rights
EHRD	environmental human rights defender
EHR	environmental human rights
Escazu Agreement	The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean
ESG	environmental, social, and governance
EU	European Union
EUCJ	European Union Court of Justice
FDI	foreign direct investment
GDP	gross domestic product
GSC	global supply chain
GVC	global value chain
HR	human rights
HRC	Human Rights Council
IACtHR	Inter American Court of Human Rights
IASHR	Inter-American system of human rights
IC	international community
ICC	International Criminal Court

ICJ	International Court of Justice
IEL	international environmental law
IEP	international environmental protection
IEPL	international environmental protection law
IGO	international governmental organisation
IHRL	international human rights law
ILO	International Labour Organization
IMF	International Monetary Fund
IPCC	International Panel for Climate Change
LAC	Latin America and the Caribbean
MNCs	multinational corporations or multinational companies
NGO	non-governmental organisation
NHRI	national human rights institution
OECD	The Organization for Economic Cooperation and Development
OHCHR	The Office of the High Commissioner for Human Rights
SDGs	Sustainable Development Goals
UK	United Kingdom
UN	United Nations
UN ECLAC	United Nations Economic Commission for Latin America and The Caribbean
UNECE	The United Nations Economic Commission for Europe
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
US	United States
USA	United States of America
VSS	voluntary standard setting
WTO	World Trade Organization

Introduction

It is now beyond doubt that human activities, especially economic ones, are responsible for the rapid climate changes, catastrophic consequences, and violations of environmental and human rights (HR) that humans are experiencing. However, at the same time, the international community (IC) is facing a paradox: indeed, international structures are insufficiently adapted to address these challenges. States are considered to be the main actors also in this realm; however, other actors, such as private businesses, accumulate wealth and power, giving them more influence than the states themselves possess, and are not legally bound by international law. This imbalance of duties, obligations, and responsibilities results in persistent issues of insufficient regulation and a lack of regulatory frameworks that are not capable of addressing the complex issues that are omnipresent in the current Anthropocene era.

Multinational corporations (MNCs) thus become the most influential actors of the IC, and at the same time, their operations are also one of the biggest causes of HR violations and environmental degradation. The complexity of MNCs business shaped by transnational operations leads to frequent circumvention and insufficient attribution of accountability and liability for such corporate crimes. Part of the problem, among others, is the persistence of the capitalistic-based economy that still focuses primarily on economic gains. Thus, there is a presence of two still irreconcilable extremes. On the one hand, the seriousness of the problem and the negative influence of the MNCs on the areas of HR and environmental protection; and on the other hand, the regulatory framework concerning this exact area that appears insufficient and full of omissions that enable the continuation of this problematic situation. As it will be presented, the regulatory framework in this case is woven from many directions from which the regulation of MNCs comes. One of them is precisely the push that comes from individuals and civil society organisations. This direction will be the primary focus of this research, precisely the notion of environmental democracy, its analysis, and possible implications, especially in the context of this research.

In order to properly approach such a demanding topic and try to answer the complex questions that concern the IC itself, this thesis is divided into four large parts, which in turn

are divided into smaller units. Part A of this research will serve as an extensive introduction to the issue. Critical issues of interconnection between climate change, environmental human rights (EHR) and international environmental protection (IEP) will be discussed. This part is crucial not only in order to understand the extent of the problem but also in order to make a connection with the later discussed instrument of environmental democracy through the presented growing implementation of EHR and resulting climate justice litigations. In the B part, the focus changes to MNCs as the most powerful actors in IC. The abovementioned claims about their negative impact on HR and the environment and the shortcomings of their business based on the global value chain operations will be explained and backed up by scientific data. Furthermore, this part presents an extensive analysis of primary documents and academic literature regarding the existing regulatory framework concerning MNCs and their influence on the environment and HR. This will clarify why IC is in such a paradoxical situation and identify the existing deficiencies in the regulatory system that enable constant omissions. Also, in this part, an initial introduction to the notion of environmental democracy will be made to explain why it is the main focus of this research, and with the help of theoretical frameworks, how it can fit into the larger picture of possible solutions to the recognised issues.

Part C of this research will focus entirely on environmental democracy. Relying again upon primary and secondary sources, this part of the research provides a comprehensive overviews of this specific notion. It takes into account a large quantity of literature focusing on this field. This part, although the main focus of this paper, was also the most difficult for the analysis, precisely because of the very reason that will be discussed, which is still the lack of development of environmental democracy on various levels of multi-level governance, the lack of scientific literature, but also often misunderstanding while implementing the same. This part analyses the very development of this notion, primarily focusing on the regional context, highlighting the Aarhus Convention and Escazu Agreement, which helps in understanding various aspects of environmental democracy. This part also offers insight into the current implementation by analysing additional case law on various judicial levels. Part C arguably represents the most significant added value of this research overall, which is precisely the application of environmental democracy to the central identified gap, which is

insufficient regulation and insufficient implementation of international law provisions imposing obligations on nation-states. This part of the research thus gives the answer to the main research question, which is: is environmental democracy one of the international regulatory instruments that could be used to ensure a higher level of responsibility and accountability of MNCs for crimes and misbehaviours attributable to them?
As it will become evident while reading this research, it is difficult to draw a conclusive answer to the proposed question. Therefore, Part D aims to provide solutions for the identified issues within the environmental democracy framework. These problems have been recognized by analysed authors and the IC as a whole. The analysis proposes different approaches for both national governments and MNCs to concentrate on in order to effectively tackle the problem. This part can be understood as a final part in which additional research directions are offered in order to see more sides of environmental democracy itself, but also to finally fix many of the loopholes that continue to enable MNCs' environmental degradation and HR violations.
As stated, this extensive research tries to answer one main research question, namely, to what extent can we consider environmental democracy as an unused international instrument to achieve a higher level of liability and accountability for MNCs' environmental and HR violations? However, as summarised above, numerous other aspects are also analysed that help to understand the issue.
Even at this introductory point of the following research paper, some of the main obstacles encountered in the analysis of such an extensive issue should be highlighted. The entire research is based primarily on the analysis of available primary and secondary documents, and many problems arise in this regard. Before starting the preliminary research, it was impossible to imagine the extent of the issue, the fragmentation of the regulatory regimes, overlapping international regulations and rules, as well as the magnitude of the scientific literature regarding the field in focus. Also, the very fact that it is quite difficult to find comprehensive sources concerning ‘environmental democracy’ does not make the overall situation any easier. Furthermore, the implementation dimension, primarily addressed through court practice, and the difference in understanding this notion from IGOs, NGOs and academics make it difficult to fully understand and analyse the possible implications of this

approach. In doing so, through the process of research, numerous other issues related to MNCs negative influence on HR and environment were identified, which will also be presented. Therefore, in addition to the main focus on environmental democracy, other possible solutions will be offered that can, among others, also be useful as a starting point for further research in this area.

Part A: Introduction to the complexity of the current situation; climate change, environmental human rights and international environmental protection regime

1. Climate change and its effects on environmental human rights

Humanity is facing never-before-seen scales of climate change and, consequently, increasingly dangerous levels of climate change consequences. Frequent droughts, weather extremes, floods, and other phenomena destroy the world's food supply, damage infrastructure necessary for providing human needs such as water and sanitation, energy, and transport, and consequently threaten the entire ecosystem's survival. At the same time, although there are numerous efforts to prevent even worse scenarios, many warn that they are not enough and point out that we will not reach the set goals, such as the one of preventing the warming of the atmosphere significantly above the 1.5 degrees Celsius agreed in the Paris Agreement (United Nations General Assembly, 2022, p. 5-7).

Some of the indicators confirming the seriousness of the situation are summarised by the World Meteorological Organization and the International Panel for Climate Change (IPCC). The average global temperature in 2019 was 1.1 degrees Celsius higher than in the pre-industrial era. The year 2019 was also the hottest year since tracking began. In the same year, total greenhouse gas emissions reached a new high of 59.1 gigatonnes of carbon dioxide equivalent. All of this has influenced the ever faster melting of the ice caps and the highest rise in the level of the world's seas (UN Environment Programme, n.d. a).

The latest United Nations Environmental Programme (UNEP) *Emissions Gap Report* issued in November 2023 indicates once more the seriousness of the situation and the need for additional efforts. Just some of the report's main conclusions are that the scenario of a temperature increase of 2.9 degrees Celsius is increasingly inevitable, showing that the goal set until 2030, i.e. 1.5 degrees Celsius, is hard to reach. This scenario is unavoidable precisely because of the insufficient regulation by the states and the inadequate reduction of exhaust

gases by industrial actors, which indicates a severe need for investing additional efforts and rethinking current policies (UNEP, 2023a).

With such clear scientific evidence, it cannot be anymore denied that precisely people and their activities are the main culprits for such devastating environmental degradation. Many scientists even call the period from the beginning of accelerated industrial development since 1950 the Anthropocene period precisely because of people's catastrophic effects on the environment and, consequently, on themselves. In the Anthropocene, humans are thought to have altered geological forces on Earth. The level of CO_2 in the atmosphere is one of the best indicators that industrial activities are the most responsible for environmental problems (Averill, 2009, p.139; Welcome to the Anthropocene, n.d.). We need to reconfirm thus that we have clear scientific evidence that although changes in the climate have been present throughout the existence of the planet Earth, the rate of changes that we encounter in modern times has reached catastrophic proportions because of harmful human practices.

1.1. International environmental protection regime and development of international environmental law

The beginning of the idea of IEP goes back to the distant past, and the initial ideas can already be seen in indigenous cultures. However, the structured approach is attributed to the development of the international environmental law (IEL) framework (Mcgregor, 2004, p. 385-386). As knowledge about the negative impact of humans grew and the consequences of climate change became increasingly noticeable, the development of the regime of IEP and its main component, which is the development of IEL, began accordingly. Although it never came into force, already in 1900, there were efforts to implement the London Convention, which sought to protect African wildlife (AIDA, 2020). Furthermore, IEP flourished again after the war years, and additional momentum was made possible when attention was paid to the link between environmental pollution and HR (AIDA, 2020).

Although we can look at the development of the IEP through different lenses, one of the most referred ones is the approach of Daniel Bodansky, who tried to present the complicated development of the IEP in a comprehensive way, using the division into three main stages

the conservationist, the pollution prevention, and the sustainable development stage (Bodansky, 2010, p. 21).

The Conservationist stage lasted from the late 19th century to the early 20th century. This phase is remembered as the first period in which incredible changes in the environment by humans have been noticed. For example, many plant and animal species have become extinct due to excessive consumption. Accordingly, the first national parks were established. Also, one of the first key judicial cases that set one of the main principles of the IEP, the transboundary principle, which shows that environmental problems are universal and require international cooperation, dates back to that period. In 1893, the Bering Sea Fur Seal Arbitration between the USA, Great Britain, and Canada resulted in the order for the USA to pay considerable compensation to the damaged countries. It also established the international protection of seals from uncontrolled fishing and hunting activities. This case even resulted in the signing of the 1911 North Pacific Sealing Convention[1], which confirmed the previous conclusions (Bodansky, 2010, p. 21-25).

In this period, the first enacted multinational environmental treaty was also signed in 1902. 12 European countries signed the Convention to Protect Birds Useful to Agriculture[2]. They decided to protect certain species of birds useful for agricultural activities, thus indirectly recognising in an international document the importance of the link between the environment and humans (Bodansky, 2010, p. 24).

The Pollution prevention stage, which lasted from mid-1950 to 1975, as the name suggests, mainly dealt with the issue of pollution of nature. The judicial case that marked the beginning of this phase was the Trail Smelter Arbitration Case in 1941 between the USA and Canada. In this case, along with reaffirming the principle of transboundary responsibility, another fundamental principle of IEP was established, namely the polluter-pay principle. The USA's soil, air and crops were damaged by the fumes produced by a smelter on the Canadian side of the border. Thus, it was decided that a country, in this case, Canada, is responsible if the economic activity of that country endangers the inhabitants of another state. This case is, as

[1] North Pacific Sealing Convention, signed on July 7, 1911 in Washington, adopted on July 24, 1911.
[2] Convention for the Protection of Birds Useful to Agriculture, signed on May 19, 1902 in Paris, ratified on June 27, 1902.

we will see later, a reference principle that speaks of the transboundary responsibility of the state for environmental harm (Bodansky, 2010, p. 26-28).

As will also be explained later, the introduction of the HR approach to environmental protection slowly began in this phase. In 1962, Rachel Carson published her book *Silent Spring*[3], in which she clearly explained the link between heavy chemical pollution and human health. Also, in that period, some examples of dangerous sea pollution with oil and petroleum took place, which are also connected with human health and the broader ecosystem (AIDA, 2020).

All this led to increased attention of IC to the environmental protection area. Thus, a significant step took place in 1972, the Stockholm Conference on the Human Environment, which resulted in the Stockholm Declaration[4]. This declaration is particularly important because, as we will see later, is the first global instrument setting a clear link between the environment and HR. Although no legally binding document followed, the Stockholm Declaration is an essential soft law instrument and also one of the foundations of IEL (Bodansky, 2010, p. 28-29).

The Stockholm Conference is also important because of other peculiarities that marked the further development of the IEP regime. For example, in addition to the states, more than 400 NGOs participated in the conference. Furthermore, the UNEP, a UN agency that had the most significant influence on the further development of the IEP at the global level, was founded simultaneously (Bodansky, 2010, p. 29-30).

The Sustainable development stage, which is focused on the issue of global warming and its consequences, began around 1980, and the attention of IC increased again in 1985 with the discovery of the Ozone hole. For the first time, the IC reacted urgently regarding environmental problems and, in 1987, adopted the Montreal Protocol[5] controlling and banning chemicals causing ozone damage. In 1987, *Our Common Future* [6], also known as

[3] Carson, R. (1962). *Silent spring*. New York, Fawcett Crest.
[4] Stockholm Declaration on the Human Environment, adopted on June 16, 1972 in Stockholm.
[5] Montreal Protocol on Substances that Deplete the Ozone Layer, adopted on September 16, 1987 in Montreal.
[6] Our Common Future: Report of the World Commission on Environment and Development, published in 1987 by the United Nations, New York.

the Brundtland Report, by the World Commission on Environment and Development, was published, which once again emphasised the importance of the environment for HR through the establishment of a sustainable development approach, developmental activities that simultaneously lead to economic, social and environmental sustainability (Bodansky, 2010, p. 30-35).

In 1992, the largest international environmental UN conference was held after the Stockholm one, the UN Conference on Environment and Development, also known as Earth Summit in Rio de Janeiro, the result of which was the Rio Declaration on Environment and Development[7], also crucial for the introduction of the very idea of EHR, but also presenting repetition of fundamental principles such as transboundary responsibility for environmental protection. The Rio Conference also adopted the non-binding Agenda 21, the origin of the later formulation of the Sustainable Development Goals (SDGs). The Rio Conference adopted two essential treaties, the UN Framework Convention on Climate Change (UNFCCC)[8] and the Convention on Biological Diversity[9], the two most famous and ratified treaties of IEL (Bodansky, 2010, p. 30-35).

Countries that joined the UNFCCC, i.e. state parties, have committed to take voluntary actions to prevent 'dangerous anthropogenic', i.e. human-made interference with the climate system. UNFCCC parties meet annually at a forum known as the Conference of the Parties or just COP (Lindsey, 2022).

For this research, it is important to highlight two COPs and their primary goals: the 1997 Kyoto and the 2015 Paris COPs and their following Agreements. The Kyoto Protocol[10], which was adopted in 1997 and entered into force in 2005, represents the first legally binding international climate treaty. The main achievement of the Kyoto Protocol was to require developed countries to reduce their emissions by an average of 5% below the levels of 1990. The disadvantages are that developing countries such as India or China did not commit

[7] Rio Declaration on Environment and Development, adopted on June 14, 1992 in Rio de Janeiro.
[8] United Nations Framework Convention on Climate Change (UNFCCC), adopted on May 9, 1992 in New York.
[9] Convention on Biological Diversity, opened for signature on June 5, 1992 in Rio de Janeiro, entered into force on December 29, 1993.
[10] Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted on December 11, 1997 in Kyoto, entered into force on February 16, 2005.

themselves to the Agreement, claiming that they were still not developed countries, and the USA initially signed but later did not ratify and eventually withdrew its signature. The Paris Agreement[11], perhaps the most well-known among the general public, in 2015 obliged all countries to set emission-reduction pledges. In addition to aiming to reach global net zero emissions by the second half of the century, the famous goal of preventing the global temperature from rising above 1.5 degrees Celsius was set (Bodansky, 2010, p. 30-35).

Returning to the chronological overview of development, although the Rio Conference did not focus too much on HR, it was vital and somehow paved the way for further conferences. Two years after that, the World Summit on Sustainable Development in Johannesburg followed. It was not as celebrated as the Stockholm Conference but was important because it reaffirmed previously agreed principles (Bodansky, 2010, p. 30-35).

In 2012, the last global environmental conference with significant global outcomes took place, again in Rio, the Rio +20 Meeting. It resulted in a political outcome document focused on measures to implement the SDGs[12] (Bodansky, 2010, p. 30-35). States decided in the year 2016 to launch the SDGs themselves, the successors of the Millennium Development Goals. Thus, 17 SDGs were formed, which in turn developed guidelines for governments on how to shape their policies following the 'sustainable development' approach. The sustainable development approach can also be seen as the approach that finally clearly highlights the link between economic development and HR in general but also sets the focus of IC on environmental rights (United Nations Department of Economic and Social Affairs, n.d.).

The goal of this short analysis of the IEP development, using individual phases of the IEL development itself, was not only to prove the claim that the IEL and, therefore, the IEP regime itself is very complex and divided but also to observe the main components and norms as well as the shortcomings. As will be seen later in practical examples, we must once again emphasise the main principles of IEL. The first is undoubtedly the principle, i.e., the question of sovereignty and responsibility. Still, as we will see, the discussion itself is about which actors precisely it refers to, i.e. whether environmental protection goes beyond the states

[11] Paris Agreement, adopted on December 12, 2015 in Paris, entered into force on November 4, 2016.

[12] SDGs were fully developed and finalised in the UN General Assembly resolution 70/1, Transforming our world: the 2030 Agenda for Sustainable Development, adopted on September 25, 2015 (A/RES/70/1).

themselves or not. Furthermore, the precautionary principle, which will also be helpful for us in the analysis, points out the pre-emptive duty of the actors to assess actions that could be harmful to the environment or HR. As we have seen, the polluters pay principle refers to the liability of actors who perform actions that have negative impacts and, in many cases, includes remedies via judicial channels for the victims. Additionally, some emphasise sustainable development itself as a core principle of both IEP and HR protection. In contrast, others add the transboundary principle, but as we will see, it can also be connected to the principle related to the responsibility of actors (Depuy and Vinuales, 2018, p. 62-90; European Parliament, 2023).

Furthermore, the IEL and, therefore, the IEP regime contains some important peculiarities that will be shown in this analysis. Indeed, one of them is the significant involvement and complexity of non-state actors, such as NGOs, IGOs, private entities or even individuals (Birnie, Boyle and Redgwell, 2009, p. 268-334). Furthermore, some point out that the regime itself is very fragmented, an issue that can be analysed through both positive and negative aspects that can be connected with the topic of this research. The regime itself is ramified and covers numerous subareas. Only a few of them are the protection of flora and fauna, the protection of EHR, the economic dimension or the limitation of polluting substances. Still, all of them have as their ultimate goal the protection of the environment itself. Some aspects and principles are common with international law in general, but those principles are sometimes even more prominent and important in IEL. For example, as this brief overview has shown, the IEP regime itself primarily consists of non-legally binding documents, which, without further explanation in certain situations, can lead to severe shortcomings when we talk about the actual implementation of certain agreed norms and regulations (Birnie, Boyle and Redgwell, 2009, p. 12-37).

1.2. Development of environmental human rights on the international level

EHR essentially represent a ‘Human Rights Based Approach’ to environmental problems. Such an anthropological approach is built upon the human-based causes of climate change mentioned at the beginning of this chapter and its very impact on people, their health and

well-being (Boyle & Anderson, 2010, p. 573-575; Pathak, 2014, p. 17). Although there was a current through the development of the IEP, i.e. the aspect of environmental protection based on an ecocentric approach, whose focus was not necessarily primarily on people, the anthropological approach prevailed. An example of an ecocentric approach, which is coming into focus again, could be seen at the international level in the World Charter for Nature, adopted by the United Nations General Assembly (UNGA) in 1982[13], which focused on the protection of nature in itself and not only for human benefit. Although this non-binding document succeeded in promoting awareness, i.e. it pushed governments to focus on many overlooked aspects of IEP, it is easy to conclude that it did not achieve such attention and success as the EHR-based approach and related international documents (Washington, 2017, p. 36).

As will be shown after this initial review, it soon became clear to the advocates of environmental protection that IC does not care too much about the same issue if the problems are not clearly reflected and connected with the well-being of the people. Shortly after the beginning of the development of IEL, the idea of the 'construction' of EHR began. It can be already seen how the efforts that followed the publication of Rachel Carson's study gained so much attention precisely because of a clear link that was made between the use of harmful chemicals and the effect on human health (Brown Weiss, 1993, p. 677; AIDA, 2020).

This resulted in an increased focus in the international arena. Thus, in 1968, UNGA expressed explicit concern about the consequences of environmental degradation on the condition of humans, their physical, mental and social well-being, individuals' dignity and enjoyment of basic HR, both in developing and developed countries (United Nations General Assembly, 1968, p. 2, paragraph 2398).

Although it is, therefore, a long way to the gradual introduction, even for the mere idea of EHR to be included on the international agenda, we can say that the whole concept is relatively new and that significant steps have occurred in recent years. EHR were thus somehow not included in the global constitutional movement as other HR groups, following

[13] World Charter for Nature, adopted by the United Nations General Assembly (UNGA) on October 28, 1982.

the Universal Declaration of Human Rights from 1948[14]. Nevertheless, in recent times, the right to a healthy environment has expanded rapidly worldwide and, as can be observed, even more nationally than internationally. However, even so, there were some crucial changes in the approach on a global level that fostered a favourable environment on regional and national levels (Knox, 2017a, p. 251).

The United Nations (UN) shifted its focus, and in 1994, one of the most important reports on this specific area was published. Fatma Zohra Ksentini, then Special Rapporteur to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, published and presented in an accompanying document to the report called Draft Principles on Human Rights and the Environment[15] an explicit link between the two areas. This provided substantial proof of the connection between the two fields but also laid the foundation for further development of the normative aspect of EHR (Boyle, 2012, pp. 615-616; United Nations, Economic and Social Council, 1994).

The following crucial international document leading to the codification of the idea of EHR on the international level was the previously mentioned Stockholm Declaration. It was the first global document, although non-binding, which clearly recognised the links between the environment and HR and thus paved the way for the development of EHR on an international level (Boyle, 2012, p. 622). Although without explicit recognition of the 'right to a healthy environment' in Principle 1, there is an explanation of the same and, in a certain way, its recognition;

> 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations' (Stockholm Declaration on the Human Environment, 1972, Principle 1, p. 1).

The Rio Declaration that followed was, to some extent, a drawback since EHR were not mentioned even in an implicit form, and the 2002 Johannesburg Declaration on Sustainable

[14] Universal Declaration of Human Rights, adopted by the United Nations General Assembly (UNGA) on December 10, 1948, entered into force on December 10, 1948.

[15] Draft Principles on Human Rights and the Environment, prepared by the UN Special Rapporteur in 1994.

Development[16], which also did not include EHR in its provisions, could have achieved much more than it did. However, with the declaration, the Plan for implementing the World Summit on Sustainable Development was adopted. In its 168 paragraphs, it linked environment and HR. It stated that states, in the implementation phase, must consider 'the possible relationship between environment and HR, including the right to development' (Boyle, 2012 p. 629).

In a groundbreaking move, on July 28, 2010, the UNGA adopted a historical resolution[17] that recognises the right to safe and clean drinking water and sanitation as an HR that is essential for the enjoyment of life and other HR. Such right derives from the right to adequate living standards under Article 11 of the International Covenant on Economic, Social and Cultural Rights. Building on this decision, in 2015, the UNGA even made a decision, i.e. recognised that although interconnected, the right to safe drinking water and the right to sanitation are distinct HR (United Nations Office of the High Commissioner for Human Rights, n.d. a).

In 2012, the UN extended its efforts, so the United Nations Human Rights Council (HRC) decided to establish a mandate on HR and the environment, whose main task would be to study HR obligations related to the employment of a safe, clean, healthy and sustainable environment. In addition, the goal was to promote the use of HR in the area of environmental policymaking. Professor John Knox was appointed as the mandate holder, and in 2015, his mandate was extended for a further three years, and his status was raised to Special Rapporteur on Human Rights and Environment. In 2018, his place was taken by David Boyd. Along with legally non-binding reports, their work immensely helped promote EHR at all levels of multi-level governance, as well as in the judicial sphere (United Nations Office of the High Commissioner for Human Rights, n.d. b).

In addition to all this, in this review, we must also mention SDGs' remarkable achievements, which, although without explicitly mentioning EHR themselves, have great significance for their promotion, understanding and implementation. SDG 13 and its targets are the only ones that explicitly deal with Climate Action. However, if we look at the bigger picture, especially by applying the EHR approach, we can see the link between several goals, i.e. conclude that

[16] Johannesburg Declaration on Sustainable Development, adopted on September 4, 2002 in Johannesburg, South Africa.

[17] United Nations General Assembly. (2010, July 28). Resolution A/RES/64/292.

they mutually influence each other (Knox, 2015a, p. 8-12). For example, SDG 6 talks about ensuring access to water and sanitation for all. However, there is another peculiarity of the SDGs, which will be much more apparent to us when we talk about the responsibilities for implementing and protecting the EHR themselves (United Nations, n.d.). This is, of course, SDG17, called Partnership for Goals, which speaks precisely about the fact that if we want to have a comprehensive implementation, all actors, not just the state, should get involved and, with joint efforts and cooperation, focus on the implementation of sustainable development, the components of which are the protection of HR and environment (The Global Goals, n.d.).

As the last step in the gradual introduction of EHR on the international level, the recent UNGA declaration from 2022 must be specially pointed out. On July 28, 2022, the UNGA finally adopted resolution[18] that now clearly declares a healthy environment as a fundamental HR. As many as 161 countries voted for this resolution, and only 8 of them abstained; even the UN Secretary-General, António Guterres, described it as a significant historical moment and pointed out that this is the most significant milestone for EHR and the IEP regime since the Stockholm Conference of fifty years ago (UN News, 2022, July 28).

1.3. The substance, nature and importance of environmental human rights

As can be concluded from the previous analysis of the development of the IEL and the EHR, there is still no legally binding international document that would codify the EHR. Nevertheless, as we will also see in the next sub-chapter, there are legally binding instruments that codify them indirectly, at least providing guidance for understanding them and helping in their codification at regional and national levels. Therefore, we can draw important general conclusions about the same and see the main characteristics and importance of such a relatively new group of HR and such an approach to environmental protection (Pathak, 2014). EHR must be looked at from a much broader perspective precisely because of the many interests they provide to humans, from environmental quality to the right to sustainable

[18] United Nations General Assembly. (2022, July 28). Resolution A/RES/76/300.

development. Therefore, it can be said that EHR are connected with other HR, i.e. the principle of inviolability can be observed. EHR cannot be approached individually, but this can be done so through interrelations with other groups. Moreover, as it will be presented, it can also be noticed that EHR are a prerequisite for the enjoyment of other rights. They are related to human-environmental interests and, therefore, also include political rights, such as equality, human dignity, and moreover the right to life. The link can also be drawn with socio-economic rights, such as housing, right to sanitation or access to water. If the EHR are broken into constituent units, i.e. if the procedural aspect is observed, EHR are also intertwined with rights to participation, access to information and judicial justice (Lambert, 2020, p. 26-29).

Even the UN itself points out the same logic for recognising the right to a healthy and sustainable environment on the international level. The UN points out that many legally binding international documents indirectly reference the right to a clean and healthy environment, even those predating the focus of IC on the IEP. The first one is the 1966 International Covenant on Economic, Social and Cultural Rights[19]; more specifically, Article 12, which provides for the highest attainable standard of physical and mental health and furthermore calls on state parties to take necessary steps to improve all aspects of environmental and industrial hygiene. The following document is the 1989 Convention on the Rights of the Child[20]. Article 24 calls for the state parties to take appropriate measures to combat children's disease and malnutrition by providing adequate nutritious foods and clean drinking water, considering also the dangers and risks of environmental pollution. Although not further pointing out to other international documents, the UN confirms how UN HR bodies, through their case law and other declarations, make much effort in 'greening' of international human rights law (IHRL) and, therefore, HR themselves, by further arguing how many HR depends on a healthy environment, such as the right to life, water, property, health or private life (European Parliamentary Research Service, 2021, p. 1). Therefore, even from such an oversight, we can conclude how complex the EHR are.

[19] International Covenant on Economic, Social and Cultural Rights, adopted on December 16, 1966 in New York.

[20] Convention on the Rights of the Child, adopted on November 20, 1989 in New York.

With such an approach, we see how the already codified HR from other generations can be perceived as part of EHR. However, this research focuses on EHR, which have recently been the focus of actors at different levels of global governance, namely the 'right to a healthy environment'. However, as we have already mentioned, even though there is still no legally binding codification of the same right at the international level, it often appears in different forms, such as the right to a clean, harmonious or adequate environment (European Parliamentary Research Service, 2021, p. 2). Regardless of minor differences in naming, i.e. classification, the goal is the same, and EHR thus have shared components. To better understand the EHR and to later see the possibilities of their implementation and implications, all of their elements must be taken into consideration. EHR are thus composed of substantive rights, fundamental rights and procedural rights, i.e. 'tools' used to achieve substantial rights (UN Environmental Programme, n.d. b).

When talking about substantive aspects, we are talking about substantive state responsibilities for the protection against environmental harm and the exact responsibility, i.e. needed response, depending on specific harm. Some of the foremost common grounds also agreed upon on the international level include the following rules or principles. First of all, although the protection of the environment and EHR must be a priority, states have the discretion to make a judgement to decide upon the balance between the protection of the environment and other important societal issues such as economic development. Regarding this, such compensations in decisions must not create dangerous and unreasonable infringements of HR. In fact, it is essential to point out that IHRL generally does not obligate the state to prohibit all activities that affect the environment and create environmental harm. For purposes of the topic of this paper, which will also be presented later, state obligations also apply to regulate and protect HR against private entities and companies that create environmental damage (Anton and Shelton, 2011, p. 436-437; UN Environmental Programme, n.d. b).

Although, as will also be presented in the next sections, states have different approaches to shaping environmental protection law and the codification of EHR at the national level, there are certain fundamental principles that are somehow agreed upon and implemented into state policies. There is general agreement that states are obligated to implement legal frameworks

that ensure protection from environmental degradation that could thus harm HR. Even the UN Human Rights Committee in 1982, as part of General Comment No. 6 on the Right to Life[21], pointed out how the 'right to life cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures '. Additional legal support for promoting an open approach to the right to life and its correlation with a clean environment can be found in the recommendations made by the European Court of Human Rights (ECtHR). The court emphasised the primary obligation of states to establish a legislative and administrative framework that safeguards against and responds to violations of the right to life stemming from natural disasters and hazardous activities, such as those carried out by chemical factories and waste sites (Anton and Shelton, 2011, p. 436-437; UN Environmental Programme, n.d. b).

On the other hand, procedural aspects of the EHR imply the numerous states' procedural obligations to protect their citizen's HR against environmental harm. States thus have several fundamental duties, such as assessing the environmental impacts of proposed actions to make environmental information public. Furthermore, states shall facilitate public participation in environmental decision-making, including the protection of the rights of freedom of expression and association. Accordingly, citizens should have access to environmental information and, finally, an aspect which is especially connected with the focus of this work, i.e. climate litigation, and that is that states shall provide access to justice so that the environmental disputes can be resolved, and finally, so that effective remedies for environmental interference with the enjoyment of HR are provided (Anton and Shelton, 2011, p. 356-359).

Presented state obligations can also be translated into the following fundamental individual rights. Therefore, the right to access environmental information, the right to participate in environmental decision-making, and the right to access remedies for environmental harm are crucial HR that can, therefore, also be understood as EHR. These state duties and so also these rights are impeded in IEP instruments, and these are the Rio Declaration, i.e. its

[21] United Nations Human Rights Committee. (1982, April 30). CCPR General Comment No. 6: Article 6 (Right to Life). Adopted at the Sixteenth Session of the Human Rights Committee.

Principle 10, the 1998 Aarhus Convention[22] and the 2018 Escazu Agreement[23]. These duties and rights will be analysed in detail in the C section of this text, when the notion of environmental democracy and related state responsibilities will be analysed (Anton and Shelton, 2011, p. 356-359).

EHR, i.e. the 'Human Rights Based Approach' to environmental protection, although sometimes criticised by some experts, provides important positive aspects regarding the IEP itself. The first one can be connected with the previous successes in which HR contributed to improving and preserving human life. Therefore, experts hope that first, by connecting environmental issues with HR it raises the level of human understanding of the importance of environmental protection and, secondly, that such protection will be approached from a much higher level of importance (Boyd, 2011).

The second one comes from the pure state of matter, and that is the aforementioned connection between the environment and humans. International law experts argue that the existing legal framework needs to consider such a relationship more. We can no longer approach any issue concerning humans without including the environmental dimension. Humans are part of nature; therefore, the state of the environment directly influences the practice and enjoyment of all HR, starting with the fact that there is no life without a healthy environment. As many scholars point out, EHR are actually a prerequisite and basis for the enjoyment of all other HR (Boyd, 2011).

The following argument is based on the argument of the need for a stronger enforcement nature of environmental law. As it was seen, environmental law has been developed at all levels of multi-level governance, international, regional, national, and local. However, there is still a need for a binding judicial framework. The IEL framework is not practised and utilised enough, which is why we have insufficient environmental protection today.

[22] United Nations Economic Commission for Europe. (1998, June 25). Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), adopted on June 25, 1998 in Aarhus, Denmark.

[23] Escazú Agreement. (2018, March 4). Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), adopted on March 4, 2018 in Escazú, Costa Rica.

Therefore, approaching the IEL from the HR dimension could also help enforce the principal norms of environmental law (Boyd, 2011).

The fourth reason that supports this approach has already been presented in the previous chapter, which is that we are currently in a unique socio-ecological moment of the existence of our planet and humanity (Boyd, 2011). It is somehow impossible to practise an approach that is not based on the convergence of HR and the environment precisely because of the extent of climate change consequences that surround all individuals every day. The effects of humans on our environment are undeniable, and it is time to find a solution before it is too late. People in different parts of the world are affected differently by climate change, and the ruthless core of this problem is that underdeveloped communities are affected more than developed ones, which are more responsible for pollution. This is due to the inability of underdeveloped communities to adapt and mitigate. Thus, people around the world deserve environmental and social justice that can be comprehensively achieved only through the enforcement and implementation of EHR and all its aspects (Boyd, 2011).

An additional positive aspect that will especially be seen later in the examples of incorporation of EHR in national legislation is that EHR are open-ended rights. That would mean that there is a wide possibility of implementing such rights, and they can thus protect individuals from harms that may come in the future, which were not necessarily taken into consideration while initially considering their codification (Boyd, 2011).

Of course, as already pointed out, many criticise such an approach, the use of EHR, i.e., the 'Human Rights Based Approach' to solving environmental problems. So the first criticism is directed at the fact that such an approach is too anthropological, i.e. too human-centred, and that, as such, automatically puts the notion of the environment in a subordinate position to people who have the right to treat it in a way that they use it for their own benefits. As it was seen, as a response to such a position towards EHR in the past, an increase in interest in the development of an ecocentric approach can be noticed even now. One example is giving the right back to nature itself, making the environment itself a subject and not an object, even in the legal aspect. However, despite this criticism, proponents of EHR argue that the goal of the HR approach is not to put nature in a subordinate position but to achieve the best possible level of protection for nature itself (Boyd, 2011).

Furthermore, precisely because of the lack of overlapping consensus and codification at the international level, many point out that EHR are very vague and that the deviations in the interpretation and formulation of the right to a 'healthy, clean or adequate environment' essentially differ from each other, thus creating additional disparities in implementation. However, despite these comments, experts warn that regardless of the differences in the formulation of the same right, the ultimate goal is the same and that such a comment is unfounded (Boyd, 2011).

Another criticism that must be addressed is that the implementation of EHR, especially the aspect of judicial litigation, could open the door to the unstoppable process of overbroad interpretation and, thus, at the same time, dilute the effect of already codified and well-established groups of HR. The concern is that it would undermine the already established HR system and that such an approach would remove the focus from the already codified HR groups, which, despite of being strongly codified, still deserve great attention in order to improve their implementation further. However, this criticism is easy to refute. Namely, the codification and implementation of EHR would open completely new doors, especially in court litigation, but that is undoubtedly a significant vivacious aspect. Innovative interpretations and court practices would benefit not only the EHR themselves but also the other groups of HR precisely because of the fact that was pointed out before, which is that it is impossible to separate certain groups of rights and that the positive implementation of some has a positive effect on respecting others (Boyd, 2011).

Thus, as discussed, there are specific criticisms of EHR, but it can be concluded that their practice brings more advantages than disadvantages. Although these criticisms are legitimately supported, if the practice of EHR is approached with good intentions, it can improve the overall situation of HR compliance and, even more, raise the level of environmental protection itself. Moreover, although there are two approaches to environmental protection, it can be concluded that it would be best to combine both approaches, i.e. anthropocentric and ecocentric ones, but for the purposes of this work, the focus will continue to be on the anthropocentric approach in order to try to understand the benefits that are currently not necessarily used to the fullest extent (Boyd, 2011).

1.4. Examples of good practice regarding the implementation of environmental human rights at the regional and national levels

As already pointed out, no legally binding global document still obliges states to protect environmental rights (PACE, 2003). However, especially in the last few years, efforts have been made to 'use' the existing HR regime for more straightforward implementation of the same rights, especially on the regional and national levels. As mentioned, numerous international guidelines and documents already help states interpret, implement and protect EHR (Lambert, 2020).

One of the clear examples can be seen on regional levels, of which the European region is the most advanced in this regard. Namely, although the European Convention on Human Rights[24] does not explicitly mention environmental rights, in just the last few years, the ECtHR has so far ruled on some 300 environment-related cases, applying basic HR such as the right to life, free speech and family life to a wide range of environmental issues including pollution, man-made or natural disasters and access to environmental information (Council of Europe, n.d.). It is obvious that European countries are fully aware of this particular problem, i.e., the need to codify EHR at the regional level. Thus, on 29 September 2021, the Parliamentary Assembly of the Council of Europe recommended drafting an additional protocol regarding EHR (European Parliamentary Research Service, 2021, p.1).

The same was argued by the ECtHR itself. In October of 2023, the ECtHR published a Factsheet on Climate change and another one on the Environment and the ECtHR. In the second Factsheet, ECtHR offered a short overview of the majority of cases so far that can be referred to as the practice of EHR themselves. Moreover, it was confirmed exactly what we have pointed out so far, which is the use of existing legislative HR frameworks to implement the EHR, just as the preface states;

> 'Even though the European Convention on Human Rights does not enshrine any right to a healthy environment as such, the European Court of Human Rights has been called upon to develop its case-law in environmental matters on account of the fact that the exercise of

[24] Council of Europe. (1950, November 4). European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on November 4, 1950 in Rome, Italy, entered into force on September 3, 1953.

> certain Convention rights may be undermined by the existence of harm to the environment and exposure to environmental risks.' (European Court of Human Rights, 2023).

Therefore, most of the judicial decisions are made on the legal basis of Article 2 of the Convention, which is the right to life. The overview of cases is grouped under categories that refer to the type of environmental damage, such as Dangerous industrial activities, Dumping of toxic waste, Exposure to nuclear radiation and other forms. However, some of the judicial arguments also go further from the Right to life and refer to the other articles of the convention and use other rights, such as the Right to a fair trial or the right to liberty and security. It must be noted that in most of the cases, the plaintiffs are groups of citizens who, in most cases with the help of NGOs, seek environmental justice against the states. In many cases of successful verdicts in favour of the plaintiffs, the states are also obliged to pay financial remedies with recommendations to change their national legislation (European Court of Human Rights, 2023).

Regarding the Court of Justice of the European Union (CJEU), and therefore regarding the EU itself, things get more complicated due to the jurisdiction and operating procedures of the Court itself. According to the UN Global Climate Litigation Report, only 2 of such cases have been handled in front of the CJEU, and both of them have been dismissed due to the lack of standing (UN Environmental Programme, 2023 c, p. 33-34). However, this claim will be partially refuted in the assignment of this research after the discussion on the overlapping of the concepts of climate justice, EHR and environmental democracy and upon pointing out how there is still a lack of differentiation and understanding between the concepts.

Only European regional legally binding documents making references to the EHR or dealing with its components are the Aarhus Convention and the Charter of the Fundamental Rights of the European Union. This part of the research will not explain the Aarhus Convention dealing with procedural aspects because we will focus on it solely when analysing environmental democracy. However, it needs to be pointed out as one of the few 'internationally' binding documents concerning EHR. However, we can consider it more as a regional one. The Charter of Fundamental Rights of the European Union, more specifically its Article 37, on the other hand, provides that a high level of environmental protection must be integrated into EU policies, and thus in policies of member states, but at the same time, it

does not explicitly recognise the right to a healthy environment of individuals (European Parliamentary Research Service, 2021, p.1).

Although the EU is very advanced in using the existing HR framework to implement EHR, other regional organisations have made an additional effort to codify the same at their levels. Therefore, the claims of many scholars pointing to Europe as the most advanced region can be challenged, and they say that Europe could implement many norms already codified and practised in other regions. Regional organisations that must be pointed out in this regard are the African Union, the Organization of American States and the Arab League (European Parliamentary Research Service, 2021; UN Environmental Programme, 2023).

The 1981 African Charter on Human and Peoples' Rights[25], which has 54 state parties, states in Article 24 that 'all peoples shall have the right to a generally satisfactory environment favourable to their development'. In accordance with this, the African Court also has a relatively high rate of EHR implementation in its court litigation. Experts point out how such a positive approach must also be looked through the wider lens that the right to development has always been the high focus in the African region because of the broader sociological problems, and thus, the environmental aspect was also soon adopted (European Parliamentary Research Service, 2021, p. 2; UN Environmental Programme, 2023 c, p. 32).

The Protocol of San Salvador from 1969, additional to the American Convention[26], unlike the African Charter, recognises individual EHR. In Article 11, states are bound to implement the individual HR that 'everyone shall have the right to live in a healthy environment'. We must also mention the 2004 Arab Charter of Human Rights [27], which also puts focus on individual EHR. Article 38 states that 'Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment'. However, for this research, it was difficult to find available decisions of regional courts that would support the argument about a high level of implementation, but that is why there are many examples

[25] African Charter on Human and Peoples' Rights, adopted on June 27, 1981 in Nairobi, Kenya.

[26] Organization of American States. (1988, November 17). Protocol of San Salvador, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, adopted on November 17, 1988 in San Salvador, El Salvador.

[27] Arab Charter of Human Rights, adopted on May 23, 2004 in Tunisia, entered into force on March 15, 2008.

from the level of national courts in states in the same regions (European Parliamentary Research Service, 2021, p. 2; UN Environmental Programme, 2023 c, p. 31-31).

The highest rate of codification and the implementation of EHR, including judicial litigation, is found at the national level. Thus, many countries already practise 'greening' of their national law regardless of the non-existence of a sufficient international framework and somewhat lacking regional framework to which they can refer. The UN points out that today, 80% of its member nations, therefore 156 out of 193, legally recognise the right to a clean, safe, healthy and sustainable environment. However, because of the lack of international recognition, the EHR practice varies significantly from country to country, and many countries are more successful than others. We can also observe how, despite the existence or non-existence of codification, EHR at the regional level of the country practice the same in different ways within the region (European Parliamentary Research Service, 2021, p. 2).

This is also evident from their codification in the national constitutions themselves. In this regard, it can be seen how, for example, even though there is no codification at the EU level, as many as 19 of its 27 countries have incorporated EHR in their constitutions, although some of them only implicitly, and also 17 EU members have national laws concerning EHR. Some states do not have any form of protection for EHR: Austria, Denmark, Germany, Luxembourg, Malta, Netherlands, Poland and Sweden, but they are, for example, members of the Aarhus Convention and, thus, at least a particular aspect of EHR is protected. Also, some of these countries can boast a high level of environmental protection, even though they do not have legal frameworks for EHR (European Parliamentary Research Service, 2021, p. 2). If we look globally, different analyses yield slightly different figures, but overall, we can also point out that more than 100 countries in the world have included at least part of the EHR aspect in their national constitutions. In his article from 2011, Boyd even points out 150 constitutions if we also count those implicitly expressing it. That, in turn, brings the codification and protection of EHR, as well as the environment in general, to the highest national level (Geneva Environment Network, n.d.; Boyd, 2011). Moreover, when implementing EHR in the state constitution, this could also be useful to the judges, and they could fill their approach to the individual cases, and thus even make recommendations for

the change of national legislation so that legislation is consistent with the constitution (Lambert, 2020, p. 16-20).

John Knox, a former UN Independent Expert on the issue of HR obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, conducted country visits. In 2014, he visited Costa Rica and France and pointed out the following as a good practice of incorporating EHR in the constitutions of these countries. Costa Rica amended the state Constitution, and thus its Article 50 states the following; 'Every person has the right to a healthy and ecologically balanced environment, being therefore entitled to denounce any acts that may infringe the said right and claim redress for the damage caused. The State shall guarantee, defend and preserve that right. The Law shall establish the appropriate responsibilities and penalties.' Constitutional amendment made solid grounds for further legislative development in Costa Rica. Since then, the country has passed a whole series of laws, such as the 1995 Environmental Act[28], which had a whole series of positive effects on both environmental protection and EHR in the country. This made it possible to increase the powers of the Constitutional Court, which, between 1989 and 2012, carried out as many as 85 checks on the constitutionality of individual state laws. Some of the issues dealt with include laws concerning the use of pesticides and dangerous chemicals, deforestation, and even the establishment of national parks. The Constitutional Court broadly interpreted Article 50, applying it even to issues of economy, farming, tourism and others (Knox, 2014b, p. 7-9).

Of particular importance is the approach of the Constitutional Court to the issue of state responsibility, which we can later apply to the case study of this research work. That is how the state has positive and negative obligations regarding HR, which means that the state must refrain from direct violations but also protect its citizens from the violations that third parties could make. It is also important that in its action in this area, the Constitutional Court applied the important principle of the right to a healthy environment called *dubio pro natura* which can be connected with the precautionary principle discussed earlier in this paper. The meaning of this principle in practice would be that if there is a lack of certainty that an

[28] Asamblea Legislativa de la República de Costa Rica. (1995). Ley de Conservación del Ambiente, No. 7554, 1995.

individual activity could cause severe or irreparable damage, one must always act cautiously and in the interest of the environment (Knox, 2014b, p. 7-9).

France, on the other hand, due to the slightly different legal system and its procedures, had a slightly different path of incorporation of EHR into its constitution. France adopted a legislative document called the Environmental Charter in 2004[29], which took constitutional effect in 2005. This is how France placed EHR at the same level as, for example, economic, cultural and social rights from the 1789 Declaration of the Rights of Men (Knox, 2015, p. 5-6).

The first Article of the Environmental Charter reads, 'Each person has the right to live in a balanced environment which shows due respect for health.' Furthermore, Article 7 of the Charter provides that 'each person has the right, in the conditions and to the extent provided for by law, to have access to any information about the environment in the possession of public bodies and to participate in the public decision-making process likely to affect the environment.' It is particularly interesting that in addition to such rights, France also placed obligations on the individuals, not only to the state itself, as in the example of Costa Rica. Articles 2, 3, and 4 state that 'each person must participate in preserving and enhancing the environment' and that 'each person shall, in the conditions provided for by law, foresee and avoid the occurrence of any damage which he or she may cause to the environment or, failing that, limit the consequences of such damage', and that 'each person shall be required, in the conditions provided for by law, to contribute to the making good of any damage he or she may have caused to the environment.' (Knox, 2015, p. 8-10).

The obligations of the state and its institutions are clearly highlighted, and so Article 5 incorporates the precautionary principle: 'When the occurrence of any damage, albeit unpredictable in the current state of scientific knowledge, may seriously and irreversibly harm the environment, public authorities shall, with due respect for the principle of precaution and the areas within their jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of temporary measures commensurate with the risk involved in order to deal with the occurrence of such damage.' Article 6 states: 'Public

[29] République Française. (2004, March 1). Charte de l'environnement, adopted on March 1, 2004 in Paris, France.

policies shall promote sustainable development. To this end, they shall reconcile the protection and enhancement of the environment with economic development and social progress.' Articles 8 and 9 address environmental education and research. Article 10, the final provision, states: 'This Charter shall inspire France's actions at both a European and an international level.' (Knox, 2015, p. 8-10).

As in the previous example, the Constitutional Court of France thus becomes responsible and has the right to watch over the implementation of EHR in the national laws and regulations. It is also interesting that the Constitutional Court has remarked that the state might have a higher level of discretionary decision regarding individual points of the Charter, such as Article 6, which speaks about sustainable development. Namely, the state must find a balance between economic and social development and environmental protection. So, as we have seen through both examples, EHR are placed at the highest level of protection within the national legislation, and their implementation is at an enviable level (Knox, 2015, p. 8-10).

Thus, after pointing out all the positive aspects of the use of EHR, the ultimate goal of which should be to preserve the environment, but also to show the advantages of their codification and implementation at all levels, especially at the national level, the main benefit must be pointed out once again. This is also one of the main focuses of this paper, which is the use of EHR and the opening of the door to a new form of judicial litigation. Therefore, the main proof of the role of HR in addressing climate change is the growing practice of climate litigation, thus trying to implement and achieve climate justice (UNEP, 2023b).

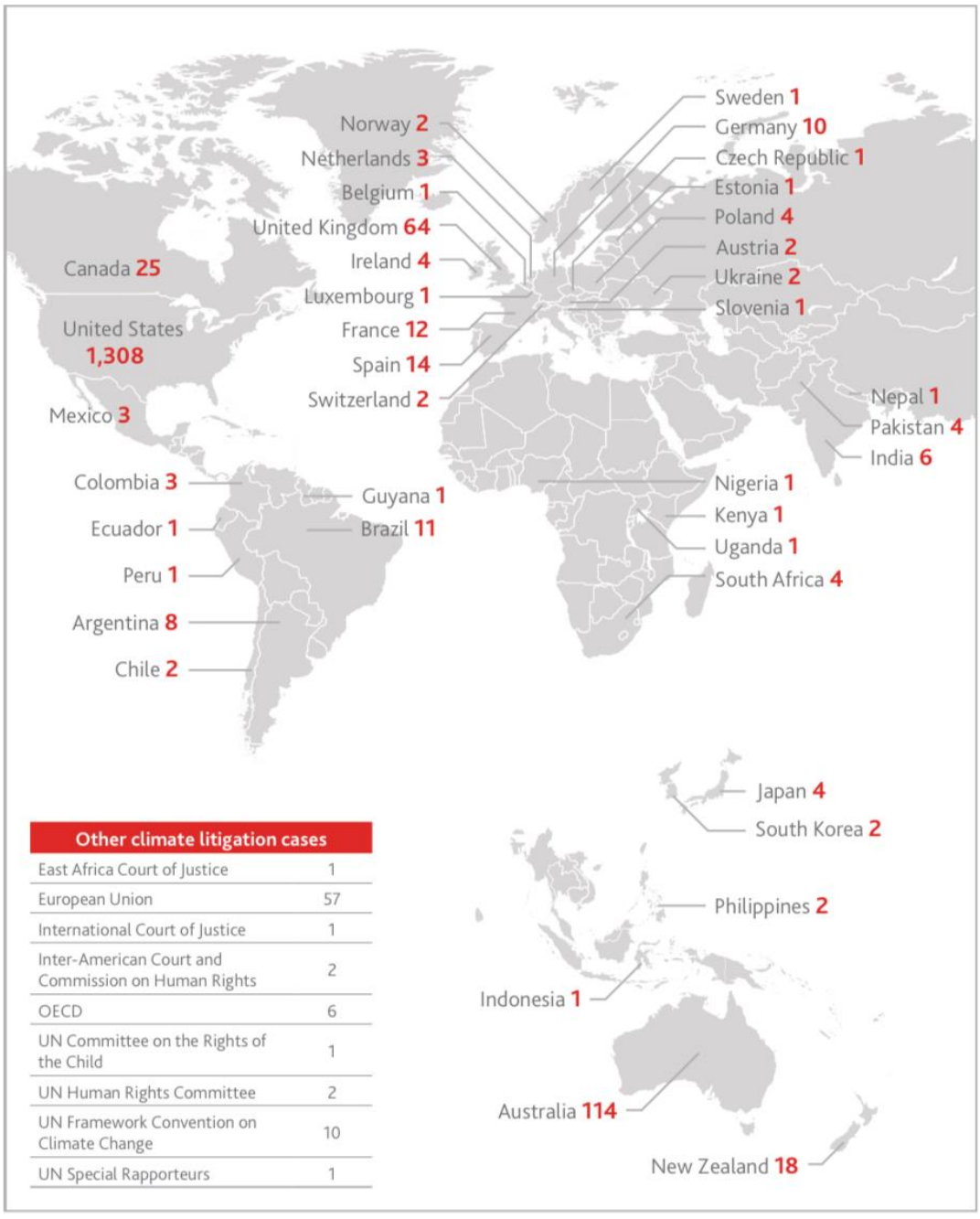
Climate change litigation refers to a wide range of legal actions initiated by individuals, organisations, governments, or communities in order to tackle the challenges posed by climate change. These actions aim to hold responsible parties accountable and seek legal remedies for damages caused by climate change or inadequate climate action. According to Rose and Weheliye (2019), this form of litigation includes cases seeking compensation for climate-related damages, challenges to government policies and regulations, and claims against entities for their contributions to greenhouse gas emissions. Similarly, the Center for International Environmental Law defines climate litigation as a set of legal actions and disputes arising from the impacts of climate change or efforts to combat it, with a focus on addressing its impacts on human rights. In essence, climate litigation is a crucial mechanism

for addressing the complex legal and societal challenges posed by climate change, holding actors accountable, and seeking justice for those impacted by its effects (Peel and Osovsky, 2020; CIEL, n.d. a.; CIEL, n.d. b).

Thus, as said in the definitions themselves, climate change litigation, also known as climate litigation, also involves the proceedings in which plaintiffs often seek remedies for the damage suffered. However, the verdicts of such cases can have deeper implications, which are, for example, pointing to the lack of the existing legislative framework and the need for its change. However, more detail will be presented in the C part of this research when dealing with the case study of environmental democracy (Setzer and Higham, 2023, p. 8). As the Geneva Association points out, climate-related litigation cases are rising with unexpected proportions precisely because of the recent development of legal frameworks and the increase in citizens' awareness. Some use them as a tool to leverage more ambitious climate policies and actions or, on the other hand, to oppose them. Furthermore, it turns out that claims can be brought on different levels of the judicial system, from national to international and claims can be brought by different actors against different actors (The Geneva Association, 2021, p. 4-20).

Claims can be, therefore, brought by governments, businesses, NGOs and individuals, and they can be raised against governments and corporations. It is also pointed out that most cases are raised against governments, mainly because citizens demand that their home countries adopt necessary measures to mitigate climate change consequences. Detailed analysis shows that from 1986 to 2020, there were 1,727 cases worldwide, of which 419 were outside the USA (The Geneva Association, 2021, p. 13-16). The following examples will support the claims by providing a brief summary of two commonly cited cases against governments. The focus will be then shifted to cases targeted against companies in the following case study example.

Figure 1. Representation of 1,727 cases of climate change litigation in the period between years 1986-2020 based on their geographical distribution



Other climate litigation cases	
East Africa Court of Justice	1
European Union	57
International Court of Justice	1
Inter-American Court and Commission on Human Rights	2
OECD	6
UN Committee on the Rights of the Child	1
UN Human Rights Committee	2
UN Framework Convention on Climate Change	10
UN Special Rapporteurs	1

(Source: The Geneva Association, 2021, p. 16)

The first case that is going to be briefly discussed is the case from South Africa, *Earthlife Africa v. Minister of Environmental Affairs and Others* from 2017. South African Pretoria High Court considered the decision regarding South Africa's construction of a new coal-fired power station in the northern part of the country, which is already known as an ecologically sensitive and water-scarce area. Environmental NGO Earthlife Africa holds the claim that such a move is not sustainable to get energy and that such a plan would cause more environmental damage than benefits the economy. Also, the NGO used the international argument about how coal power plants should be allowed because they contribute to the rise of CO2 emissions globally. According to the law of South Africa, the investor must, prior to construction, deliver proofs of elaborate environmental assessment, but the problem was that at that time, it was not necessary to include climate change assessment in such a process (Southern African Legal Institute, 2017; Climate Change Litigation Database, n.d.).

In 2015, upon the passing of the environmental impact assessment, the environmental authority granted permission to start construction. Earthlife Africa acted promptly and argued that deeper climate change concerns had to be taken into account in the environmental assessment itself, which was not done. The High Court agreed with this claim and, when making the decision, relied precisely on the Constitutional right to a healthy environment, specifically Section 24 a and b, which speak about the importance of the interrelationship between the environment and development and the need to achieve socio-economic and environmental balance to achieve sustainable development. Thus, the court decided in favour of the plaintiff, ordered a halt to construction and demanded that a broader study on the impact of climate change be taken into account first. The court considered all international environmental documents of which South Africa is a party state and directly referred to the UNFCCC. In its verdict, the court also pointed out once again that climate change is a global problem that requires all states' cooperation and confirmed the state's precautionary principle and transboundary responsibility (Southern African Legal Institute, 2017; Climate Change Litigation Database, n.d.).

Another case worth mentioning is the 2019 case from the Netherlands called *Urgenda*, in which the Dutch Supreme Court upheld the previous decisions of lower courts, which held that the government of the Netherlands has obligations to significantly and urgently reduce

emissions in line with its HR obligations. The main point of the case was that both the state government and the Urgenda Foundation, a Dutch NGO, must drastically lower its CO2 emissions and recognise that such action has positive benefits for the enjoyment of HR by the citizens. The problem was that the two sides had different claims about speed, i.e., the time frame and intensity of which such actions must be taken. The Dutch State stuck to the argument, i.e. the EU target for 2020 of a 20% reduction compared to 1990 levels. Urgenda, on the other hand, believed that, given the severe risks of climate change, more than the Dutch State's target and efforts are needed. Urgenda demanded a reduction in Dutch emissions by at least 25% in 2020 compared to 1990 levels. The District Court in Hague agreed with Urgenda in 2015 and ordered the government to take immediate action to reduce CO2 emissions by 25% until 2020 compared to 1990. The state appealed against this decision, but in 2018, the Dutch Supreme Court upheld this verdict and informed the decision from 2015. Also, in its decision, the Dutch Supreme Court referred to numerous scientific evidence, to the UN Climate Convention and the Dutch government's legal duties in such regard, but also to the European Convention for the Protection of Human Rights and Fundamental Freedoms, he explained so that acting contrary to the verdict could have numerous negative effects on the HR of citizens (Klimaatzaak Urgenda, n.d.; Urgenda, n.d.). This case is very significant in the area of climate litigation, and many point out that it can be considered one of the precedent cases in this area that promised many other recent, similar court cases around the world. The Urgenda Climate Case against the Dutch State is considered by many to be the first such case in the world in which citizens established that their national government has a legal duty to prevent dangerous climate change consequences (Urgenda, n.d.).

The last couple of years have been especially significant for the development of the climate litigation case and, thus, for the recognition of EHR through case law, especially on the European level. Just at the time of writing this research paper, significant news echoed about a case that has been followed for a long time by the general public as well as the academic community itself and is considered to be one of the most important precedent cases concerning EHR in the European region. On the 9th of April 2024 Strasbourg Court, i.e. The ECtHR published a final judgement and press release concerning several environmental

cases, but the one that received the most attention was the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*. This case is especially significant for multiple reasons, but one of the main ones must be the revolutionary approach of that court to the interpretation of the fundamental HR recorded in the provisions of the European Convention on Human Rights and its related protocols and the state duties which arise as the consequence of implementation of the same HR (European Court of Human Rights, 2024).
In the case, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, four women and an association, Verein KlimaSeniorinnen Schweiz, raised concerns about the impact of climate change on their health and living conditions. They argued that Swiss authorities were not taking adequate measures to mitigate these effects. The Court acknowledged a right to protection from the serious adverse effects of climate change under the Convention. However, it ruled the individual applicants' complaints inadmissible under Article 34 of the Convention due to insufficient victim status. Nevertheless, the Court found the complaint brought by the applicant association to be admissible. Thus we can also see how EHR are still considered as group rights (European Court of Human Rights, 2024; European Court of Human Rights. Registrar of the Court, 2024).
Furthermore, the Court determined that there had been a violation of the right to respect for private and family life as guaranteed by the Convention. Additionally, it concluded that Switzerland had breached the right to access the Court. The Court held that Switzerland had not fulfilled its positive obligations under the Convention regarding climate change. This ruling highlighted the obligation of state authorities to protect individuals from the adverse impacts of climate change effectively and emphasised the importance of access to justice in environmental matters. This is highly significant because the Court implemented a new approach to the interpretation of already existing, codified HR, thus proving our previous argumentation about how all HR are interrelated or, moreover, how none of the HR cannot be detached from the environmental dimension and thus, how healthy environment is prerequisite to any individual or group HR fulfilment (European Court of Human Rights, 2024; European Court of Human Rights. Registrar of the Court, 2024).
These cases help to understand how climate litigation works in practice and also to see the possible advantages of the approach, i.e., the use of EHR in reaching a higher level of

environmental protection. Climate litigation cases can thus have profound positive outcomes for the society in question. It can be observed how, in this way, it is possible to influence the improvement of state legislation in the area of EHR and environmental protection, as well as to influence its establishment if it was non-existent until then.

Moreover, the above-analysed cases have also brought into focus the complexity of dealing with IEP and EHR cases in front of national and international courts. The complexity of the implementation of the fundamental principles of IEPL, analysed in this part of the research, was confirmed based on concrete examples of national policy. Therefore, it is necessary to point out the obstacles that arose while dealing with the mentioned cases. For instance, in the case of *Earthlife Africa v. Minister of Environmental Affairs and Others* 2017, it was possible to see how difficult it is to consider the fundamental principles of sustainable development, according to which, as previously pointed out, states still maintain a significant level of independence in deciding upon leveraging between economic development and environmental and EHR issues. In this case, the Court decided to take a huge step forward and stand up to the government itself and remind them of their obligations and agreed goals to which they were bound through various international treaties and other documents (Southern African Legal Institute, 2017; Climate Change Litigation Database, n.d.).

Furthermore, the *Urgenda* 2019 case in front of the Dutch Supreme Court followed the same reasoning, and it can also be said that the court 'stretched' its powers to the highest level. Therefore, in a certain way, it has interpreted the IEP goals and evaluated the previous set-up state politics, concluding that the state is not making enough efforts. Furthermore, the Court confirmed the principle of the state's responsibility for the well-being of its citizens and the protection of their HR and, thus, the EHR. Connecting this case with the previous one, it was also confirmed that the population is obviously asking the state for a higher level of environmental protection, especially in relation to economic development itself (Klimaatzaak Urgenda, n.d.; Urgenda, n.d.).

Case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* 2024 is perhaps the most interesting in this regard since the case was held in front of the ECtHR, i.e. international Court. Although Switzerland itself argued that it could not be responsible for the global, transboundary issue of climate change, the Court just followed the basic principles of the IEP

and justified its opposite opinion. The Court alone confirmed the arguments of the applicants and relied on principles such as the transboundary nature of environmental issues and shared responsibility, but also reminded the states, in this case, Switzerland, that they committed themselves to them through international pledges and entering into international binding and non-binding documents. Also, this decision was conducted in the light of interpreting the same European Convention on Human Rights, and it was once again confirmed that although it does not explicitly contain the notion of EHR, they can no longer be treated as distant to the already codified HR in the Convention (European Court of Human Rights, 2024; European Court of Human Rights. Registrar of the Court, 2024).

Considering the above analysed and other relevant legal principles, it can be seen how the courts reacted by 'stretching their jurisdiction' in order to deal with the issues in the cases adequately. Thus, during the analysis of these cases, the same problem arises that was represented above while analysing obstacles to the implementation of jurisdiction by the individual courts. Thus, as mentioned before, it can be seen again how the IEL field is difficult to implement at the national and international levels. One of the issues that arose was territorial jurisdiction and how to approach a case that does not actually represent an individual event. Climate change issues are occurring issues that cannot be limited on a temporal or territorial basis. Furthermore, it was difficult to determine whether the applicants themselves actually represented 'damaged parties' as such. This also shows how difficult it is to make a distinction between individual and group rights when it comes to the EHR.

Thus, as presented, cases dealing with climate change consequences, EHR, and climate justice, but as will also be seen later, ones dealing with environmental democracy cause currently, and will even more in future, more and more problems both for judicial bodies and for the states themselves. These topics also fall into the realm of the political aspect of state policy, so it will be hard for courts to evaluate and order the states to change their policies. Thus, many principles and aspects of both judicial channels, law principles and state policies must be changed and improved to facilitate such cases in general. This would also mean the very basic and fundamental principles of law, as well as political principles such as state sovereignty, shared responsibility principle concerning HR protection and many more.

Part B: Multinational companies and international regulatory framework concerning their negative influences on the environment and human rights

1. Multinational companies as actors of new global governance and their impact on the environment and human rights

The very definition of multinational companies, i.e. multinational corporations (MNCs), differs slightly among some of the authors, but they all point out that they are firms that conduct direct business activities and own assets in at least two countries (Qiang, Liu and Steenbergen, 2021, p. 64). Some of the authors point out already in the very definition that the way MNCs operate enables them to take advantage of supply chain production in order to maximise their absolute gains, which causes them to operate in different countries under the auspices of different national laws (Hosseini Moghaddam and Zare, 2019, p. 78).

A more comprehensive definition can be drawn from numerous academic texts and the jurisprudence of the European Union Court of Justice (EUCJ) , which states that;

> 'MNC is constituted by a matrix society created according to the legislation of a specific country that manages production or delivers services at a global scale through affiliated societies, according to the legislation of the host countries where those processes take place. Therefore, it is not just that large corporations operate across many different countries. However, they have also developed a vast net of offices, branches, contractors, and manufacturing plants acting through different legal regimes and under the jurisdiction of diverse national courts and tribunals[30]' (Calatayud, Candelas and Fernandez, 2008, p. 171-172).

The development of MNCs, the scope of their activities, and the accumulation of wealth and 'power' can be traced back to the very beginning of the 18th century, in fact, to the beginning of the development of the globalisation process (Qiang, Liu and Steenbergen, 2021, p. 64).

[30] Although some economists insist in pointing out the differences in categorization, in this paper, when talking about multinational companies, it is also referred to the transnational corporations (TNC) and multinational enterprises (MNE). Unclear differentiation and equalisation of terms is also evident in Article 20 of United Nations Norms of the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights, in which the term Transnational company refers to an economic entity operating in more than one country, thus providing the same definition as for MNCs (Calatayud, Candelas and Fernandez, 2008, p. 171).

Just as the process of globalisation itself runs at an unprecedented speed, we can point out that it is precisely due to that, especially in the current period, many more MNCs rise each day, at the same time, containing a large amount of power concentrated in the hands of individuals (Gilpin and Gilpin, 2003, p. 278–279).

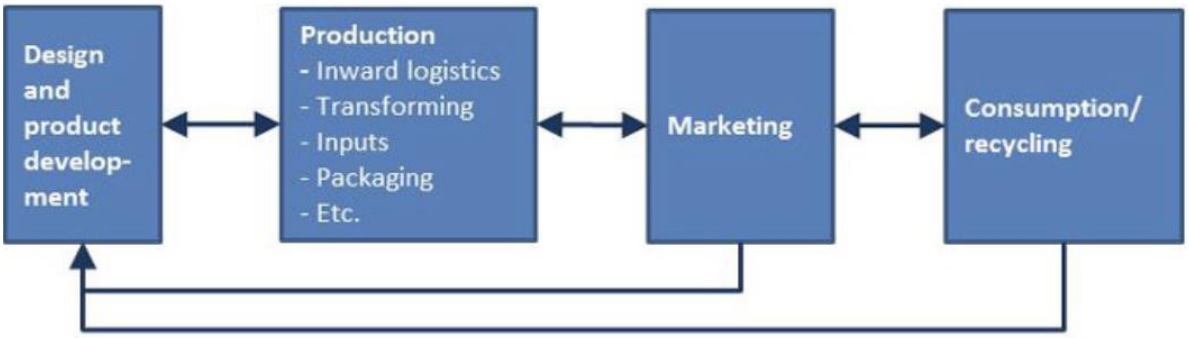
The operation of MNCs from an economic standpoint is very complicated and complex, and this research aims to provide only some details regarding such aspects. However, some critical aspects need to be pointed out to understand the whole picture, especially when individual stages of global chains will be mentioned later. First, we need to point out how the primary form of global expansion for MNCs is foreign direct investment (FDI). In 1977, the IMF set a threshold of 10% as the minimum equity ownership necessary for a parent company to be considered to have a controlling interest in a foreign affiliate. FDI can consist of equity capital, such as assets and liabilities, reinvested earnings and other capital, such as company loans. The very status of the foreign investment portfolio and the relationship between the company and its foreign equities depends on the FDI. According to the Organization for Economic Cooperation and Development (OECD) classification from 2010, Depending on the share of FDI, an enterprise can be; a) a subsidiary (enterprise of which foreign investor owns more than 50%), b) an associate (enterprise of which foreign investor owns between 10 and 50 percent) or c) a branch (unincorporated enterprise wholly or jointly owned by a foreign company) (Qiang, Liu and Steenbergen, 2021, p. 64-65).

In addition, over the years, they have developed additional ways of foreign investment and MNC expansion, such as non-equity models, which are contractual models such as licensing, franchising or management contracts. In the last few years, new entry forms of MNCs into foreign markets have been spreading without, for example, even having to own property in a foreign country officially. An example is the so-called asset-light forms of investment that technology companies use to build their digital channels and increase their presence in foreign markets (Qiang, Liu and Steenbergen, 2021, p. 65).

1.1. Multinational companies and global value chains

The above-described mode of operation of MNCs is based on the so-called Global Value Chains (GVC). The GVC definition is connected to one of the MNCs, and as we have seen, sometimes it is even included in the MNC definition. GVC is based on the production process where different stages are located in different locations, i.e., countries, to lower production costs and increase productivity. Different companies, i.e. subcontracting manufacturers, thus deal with different production stages for final products and services (OECD, n.d.). Although it seems very complex, it is necessary to highlight these basic principles to understand the problem's scope and how much effort is needed if one wants to establish control over the activities of MNCs. For example, for successful control, it is necessary to cover all of the stages of the production circle, especially those that are sometimes not so obvious. Only one such example is the flow of investment, defined previously also as FDI, but in this case, taking the domestic finances into account as well, thus not only the 'material' aspects (The World Bank, 2021).

Figure 2. Model of different stages of individual Global Value Chain



(Source: Kaplinsky and Morris. (2021). In University of Cambridge. Cambridge Institute for Sustainability Leadership (CISL), n.d.)

In this part, it shall also be explained why the term GVC is used instead of Global Supply Chain (GSC). Although these terms may be considered the same in many cases, there are

differences that have led most experts to prefer the use of GVC. GVC encompasses the definition and economic theories of GSC but also takes into account the conceptual aspect. This means that it examines how the values, business policies, and practices of companies are distributed throughout the entire GSC. The term GVC has become even more popular and thus replaced the notion of GSC in recent times when discussing the need to take into account the approach based on sustainable development in all phases of companies' business operations (University of Cambridge, n.d.).

There are numerous reasons cited as benefits that encourage companies to expand their presence in the markets of other countries and 'become' MNCs, thus operating based on the principles of GVC. Some of the reasons that could result in a competitive advantage for MNCs are that setting up production in other countries, especially those with developing economies, provides access to lower production costs due to the lower price of materials or simply lower cost of the workforce. The following reason could be that by setting up a business in a country where the targeted consumers are, MNCs gain the advantage of proximity to targeted international markets, and so by adhering to the regulations of the country they come to, it is easier to place their products on the country market. MNCs could opt for establishing subsidies and examples due to access to a larger talent pool, meaning that MNCs often need highly skilled workers that may not be accessible in their home country. The last reason cited is that when a company produces its products in another country where it also intends to sell them, they are exempt from tariffs and quotas and thus successfully avoids them. Among other reasons, it is also stated that such a way of doing business naturally increases the company's efficiency, development, employment rate and innovation inside the company (Corporate Finance Institute, n.d.).

On the other hand, numerous negative aspects come with the activities of MNCs themselves, although the positive aspects outweigh the negative. By expanding their operations in other countries, MNCs may put themselves in a situation with increased tax compliance because operating in more countries requires and is subject to different tax systems. Furthermore, MNCs must invest a large budget in building positive public relations in order to build a positive image in the country where they come from, but also in the home country, where they often face criticism for relocating work that would otherwise belong to the domestic

population. Furthermore, there is always the possibility of political instability, especially if the MNC expands to developing countries, and thus the danger of losing their funds. The last reason that should be highlighted among the many pointed out by experts is the problem of increased legal burden. Different nation-states have different laws and regulations that MNCs must comply with, from those concerning the economy to environmental and HR legislation (Corporate Finance Institute, n.d.). However, as this paper will later show, this is not the case because MNCs successfully find ways to circumvent this problem.

An extensive amount of literature and scientific analysis is available, mainly from the economic field, which focuses on the development opportunities that MNCs' activity and presence on a particular country's territory brings. The first positive one is that with MNCs, their investments and capital, as well as the money that comes from taxes, come to the market of the national state. So-called improvement of the balance of payments has positive aspects on the wealth of the host country that would likely also result in improving the quality of life in general, higher GDP and higher rate of export of national products. The following reason is that MNCs coming to a new market provide numerous employment opportunities, which also affects the aforementioned benefits for the population. The local population also gets an increasing choice of available products on the market. MNCs also provide technology and knowledge transfer that can help the general economy and population of the host country. Finally, overall national reputation tends to increase; thus, other MNCs might choose the same location for their expansion (St. Paul's School Sao Paulo, n.d.; Giuliani, 2013, p. 4-11).

There are multiple adverse effects of MNC activities. However, we will focus on those environmental ones, especially connected to the violation of EHR, often viewed from the side of companies only as a mere negative externality of production (Canepari, 2017, p. 32–33). Among other negative impacts, the ones that need to be pointed out are increased competition for the national companies of countries where MNCs come from and the difficulty of doing business for national companies. In addition, MNCs will always find ways to influence the domestic economy to decrease taxes so that they work in their favour. MNCs also create uncertainty for the national market since the domestic economy becomes too dependent on them as employers and taxpayers. Thus, if they decide to switch countries, the

host country's economy might be in danger (St. Paul's School Sao Paulo, n.d; Grezegorzek, 2021).

MNCs operating through the GVC are making very calculated moves, and with the help of their significant power, they can also have many negative influences on the politics of the host country and also on the state of workers and of broader society's enjoyment of their HR (St. Paul's School Sao Paulo, n.d; Grezegorzek, 2021; Doz and Prahaland, 1980). MNCs have the ability to take advantage of domestic laws, especially in underdeveloped or developing countries. Often, these countries are willing to give MNCs a more relaxed legislative approach due to economic benefits and the desire for progress. This leniency can extend to environmental issues, which can have negative consequences. This is often referred to as 'environmental dumping'. Therefore, MNCs deliberately choose countries where they will be able to avoid accountability for their acts due to the corrupt society or government, inefficiency of state and law services, and weak and insufficient regulation (Hosseini Moghaddam and Zare, 2019, p. 78).

Furthermore, the big problem is that for a long time, MNCs have been viewed primarily as economic actors, and that is how MNCs have been safeguarded and given a certain privileged position within the international arena itself. This is thus made possible, in fact, under the very regulation of the WTO. Developing countries, in order to attract and protect FDI, often conclude with MNCs bilateral investment treaties (BITs), which allow MNCs to turn easily and arbitrate against the state if they claim their rights have been violated. Regulations related to environmental protection, which aim to reduce the impact of MNCs on the environment, have, in many cases, been seen by arbitrators as excessive encroachment on the property of MNCs by states (Birnie, Boyle, and Redgwell, 2009, p. 326).

1.2. Multinational companies as the actors of new global governance

In order to comprehensively observe the problem, we have to move away from thinking about MNCs as sole economic actors, even if we want to analyse their economic operations themselves. Here, we shall first briefly discuss the position of the individual actors in the global, transnational governance system, more specifically, the differences, as some authors

call it, 'new global governance' to the 'traditional or old forms of the global governance'. Such a discussion can also be linked to the basic ideas of realism and more liberal views of the IC (European Environment Agency, 2011; Ruggie, 2014; Babic, Fichtner and Heemskerk, 2017).

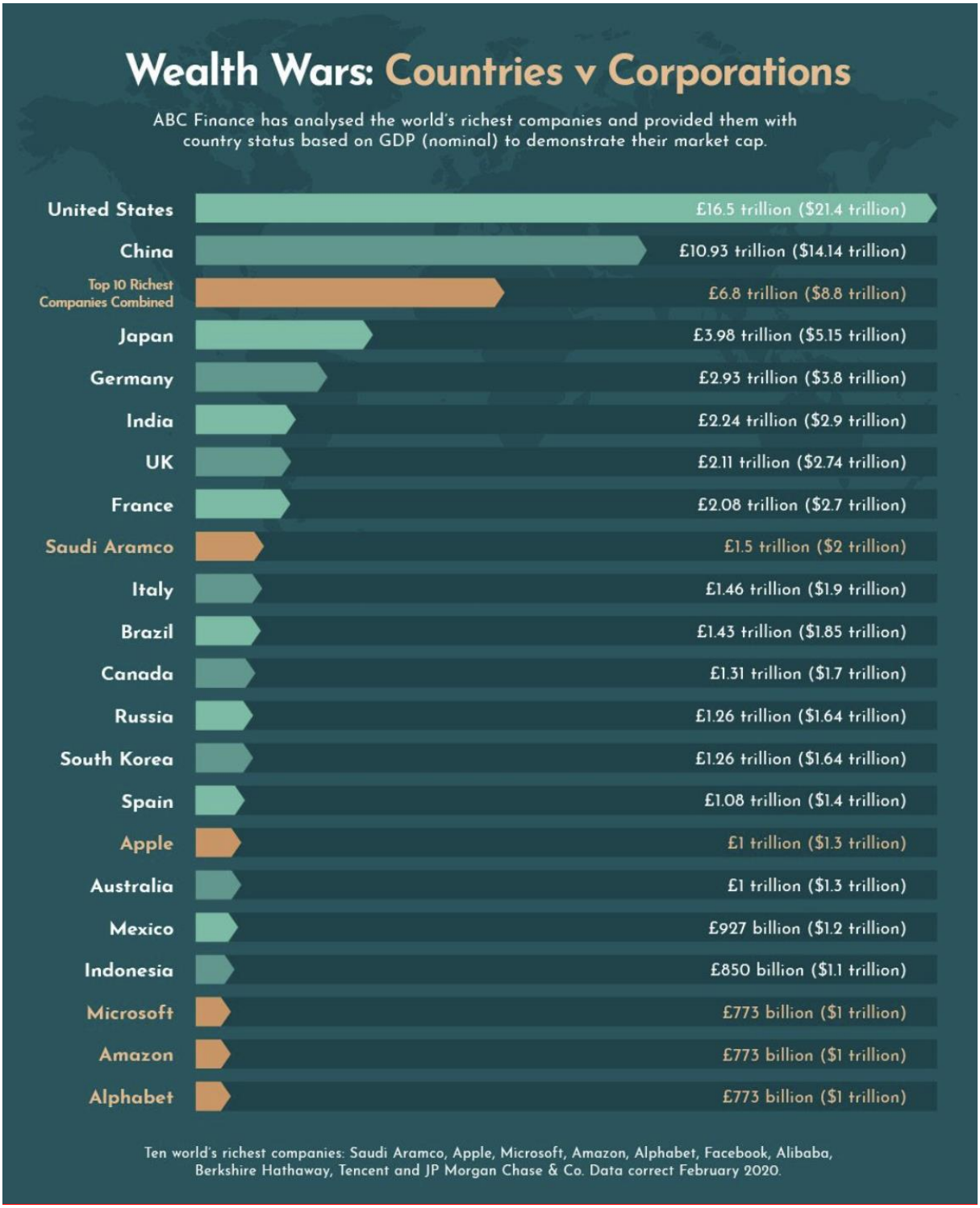
The question of the actors and their interrelations is particularly interesting in these debates for this analysis. While the traditional view of global governance relies on the realistic theory of the state-centric approach, the advocates of the new forms of global governance lean towards liberal theories of international relations, pointing out that only the state-centric theory is not compatible with today's power relations and lays importance on to other non-state actors such as citizens, NGOs, but also the most important corporations, especially MNCs. Precisely because of globalisation-driven forces, Breten Woods foundations and the increase of international financial flows, MNCs' power has risen to an unimaginable level, and many point out that we have gone beyond the time of 'national state capitalism' and the power and importance of the state are not at the same level as ago. The question of the governance of the private actors has already, for a long time, preoccupied many international relations experts and caused many disparities in positions to the mentioned question. The main disagreements revolve around the very importance of the state versus, for example, private actors (Babic, Fichtner and Heemskerk, 2017, p. 21-23; Detomasi, 2007, p. 322-324; Yamamoto, 2008).

Needless to say, it is not easy to answer whether we can straightforwardly characterise MNCs as 'stronger actors' in the IC than the states. However, we cannot deny their substantial power, mainly because of the evidence of the great scale that their negative actions can have, which will be analysed below. This also raises the question of the meaning of the actors' power. Different scholars agree that in this regard, we must first focus on the economic power of MNCs. As the primary and biggest economic actors accumulating wealth globally, MNCs embody true capitalist values, i.e. the accumulation of enormous wealth in the hands of a handful of individuals (Cox, 2024; Detomasi, 2007, p. 326-333; Babic, Fichtner and Heemskerk, 2017, p. 20-31). Furthermore, when we talk about the notion of power, many experts agree that although hard power can still be attributed primarily to the nation-states, MNCs hold a significant level of structural power precisely because of their economic power,

which also results in political power. Just some of the examples of such influence of MNCs on the states were highlighted in the previous subchapter while talking about the benefits and negative side effects of MNCs on the host country (Detomasi, 2007, p. 326-333; Babic, Fichtner and Heemskerk, 2017, p. 20-31).

To visualise the economic power resulting from the structural power, it is interesting to observe recent data studies concerning the comparison of the earnings and value of the MNCs themselves with the GDP of the individual nation-states. As the table below shows, numerous MNCs exceed the economic strength of individual countries, making them more powerful in this respect (Babic, Fichtner and Heemskerk, 2017, p. 27). An excellent example is the company Apple, whose market value is almost equal to the GDP of Australia, i.e. 1.3 trillion US Dollars (ABC Finance, 2020).

Figure 3. Comparison of state's GDP and MNCs' economic power resulting from their financial earnings



(Source: ABC Finance, 2020)

Numerous models have been created to showcase the interdependence of the MNCs with other IC actors such as civil society, IGOs and NGOs. Regarding the relationship between nation-states and MNCs, the models vary according to the basic principles of the aforementioned realist and liberal theories. Therefore, some authors continue to focus on the state's hard power, further explaining that MNCs are still subordinated to the states, especially their home state regulations. According to such models, MNCs do not have too much freedom of action. However, some of the representatives of this theory emphasise the existence of the political power of MNCs within these models. However, it cannot be separated from the domestic and external policy of the host state. According to this, MNCs can only be seen as an 'extended' hand of the nation-states, and thus, MNCs themselves can be, for example, part of the foreign policy strategy of the state (Babic, Fichtner and Heemskerk, 2017, p. 23-31; European Environment Agency, 2011, p. 14-16).

On the other hand, some view MNCs as almost independent actors in the global capitalist economy with very strong political power. According to these views, MNCs, due to their power, exceed their host state's power and actually make the host state and the home state dependent on them. For example, the home state economy can be increasingly dependent on the revenues of the MNC, but the same goes for the host states themselves, as we have already pointed out. Therefore, both home and host states are reluctant to interfere in the operations of the MNCs themselves, as some say, because of the very principles of a free economy. However, what is more essential for this research is that both states reluctantly intervene when corporate misconduct occurs, precisely because of the fear of losing MNCs on their territory and, therefore, possible damage to the state economy (Babic, Fichtner and Heemskerk, 2017, p. 23-31; European Environment Agency, 2011, p. 14-16).

Furthermore, scholars point out that it must be taken into account how the primary goal of the MNCs as economic players is to increase their revenues as much as possible. Therefore, many point out that we need to be careful about the structural and political power of the MNCs themselves because they, as actors who have bargaining power against nation-states, will always try to use their power to influence state legislation in order to create a more favourable business environment regarding investment conditions, changes in trade policies and other economic advantages for themselves. Such a situation can cause the loosening of

regulation policies concerning the MNCs and, therefore, negatively affect numerous areas, from environmental protection, safety regulations, workers' rights and many others (Babic, Fichtner and Heemskerk, 2017, p. 20-31; Terzi and Marcuzzi, 2019).

As with all theoretical discussions, one can agree with the majority of claims of both approaches and thus highlight the moderate way of approaching the topic that combines the determinants of both extremes. Adherents of the moderate approach emphasise once again the complicated relationship between states and MNCs. These two actors thus possess mutual power and are thus dependent on each other. For example, it is the states that can offer the infrastructural solutions that the MNC needs for uninterrupted operations, and it is the state that serves as a shield for the MNC, especially at the international level. On the other hand, we have already pointed out the state's dependence on MNCs. The element of knowledge, expertise and technological progress that MNCs can offer in return is also interesting, and for example, for which the state itself does not have sufficient funds for development or implementation (Babic, Fichtner and Heemskerk, 2017, p. 20-31; Detomasi, 2007, p. 322).

Therefore, as it was seen, in addition to the ongoing debate on the power relations between states and MNCs, there is a debate about to what extent it is beneficial or dangerous to allow MNCs as private actors to practise their power at national and international levels. Some claim that interference of the MNCs, and therefore overstepping their primary economic position, can be very harmful to the state and the society, while others also point out positive aspects of giving the MNCs a bigger stage (Detomasi, 2007, p. 322-324; Kim and Milner, 2019, p. 6-12).

In addition to the already mentioned negative aspects of the interference of MNCs on the state policy and state society, such as economic policies, workers' rights and environmental degradation, many claim that states need to be careful even if states' actions may be seen at first glance as positive ones and still maintain its role as the rights holders protectors. Although the issue of Corporate Sustainable Responsibility will be considered in the following chapters, it is worth mentioning an example in this part as well (Kim and Milner, 2019, p. 6-12; Detomasi, 2007, p. 324).

Critics, for example, warn of the increase in public campaigns by MNCs, which can cause many negative effects. Along with the observed practices of socially responsible lies or many

examples of greenwashing, certain MNCs penetrated deeper into community affairs with their actions. There are also several examples of MNCs, especially the ones that deal with the oil and energy sector, which, as part of their Corporate Sustainable or Social Responsibility strategies, invest a large amount of money in improving state infrastructure to help the local population. Only some of them are direct financial aid to the responsible ministries, thus actually replacing the role of the state, which for various reasons is unable to deliver improvements to citizens, or contracts with local governments in which MNCs directly initiate projects such as the construction of schools or hospitals to improve local population. However, although some point out this as a good practice, others point out that this kind of strategy is very corrupt and that MNCs are very aware that with this kind of action, they create even greater dependence of the government on MNCs and use this kind of strategy to deceive the public and show their actions. as socially responsible and beneficial for local communities. On the other hand, they actually only cover up their negative impact on local communities. Without going into additional details, it must be mentioned that there are also numerous cases of giving massive amounts of bribes to local or national political structures in order to MNCs also present the operation as a benefit for a specific country (Kim and Milner, 2019, p. 6-12; Pellegrino, 2023; Segal, 2015).

On the other hand, there are undoubted benefits of increased involvement of private sector actors, especially MNCs, in national and international policy development. This is especially true when we talk about the area of environmental and HR protection. As already stated before, the SDGs themselves, i.e. SDG 17, Partnership for the Goals, emphasise the importance of the participation of all actors, including private ones, in order to achieve agreed goals, but also the overall design of effective policies and their implementation (Maccari, 2021, p. 35-40; Eang, Clarke and Ordonez-Ponce, 2023). A great example is thus the area of environmental protection, which many critics point out as necessary to include MNCs as actors with more rights in international organisations or forums precisely to ensure their more significant level of responsibility. As critics point out, it is impossible to resolve the issue if the biggest polluters are omitted. Thus, there is the preposition of granting private actors at least observer status, as is the case with NGOs within the UN system. In this way, MNCs would not have decision-making powers, which is why state control over their actions would

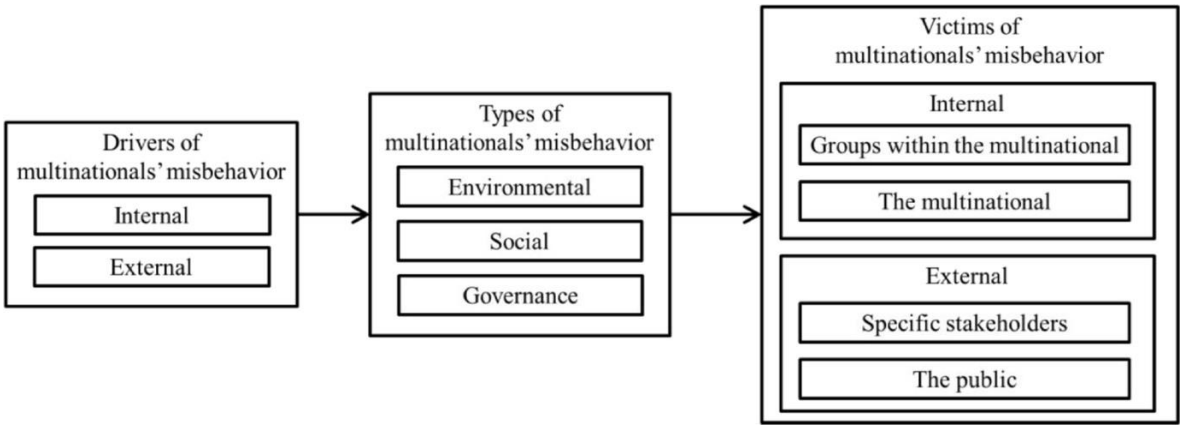
be retained. Still, at the same time, they would be directly involved in the discussion of the creation of new policies, which would increase the level of adherence to the same regulations by MNCs. Although many also point out the issue of lobbying done by the MNCs if such a step were to be taken, on the other hand, the MNCs are already doing it now without being involved in direct discussions (European Environmental Agency, 2011, p. 15-16; Detomasi, 2007, p. 324-332; Eang, Clarke and Ordonez-Ponce, 2023).

2. Multinational companies as environmental polluters and human rights abusers

As already established in the introductory chapters, according to all scientific facts, human activity has adverse effects on the environment, which are responsible for the ever-increasing scale of climate change. It is thus easy and logical to conclude that the industry is the sector that contributes the most to such actions, and much data also supports all this. Furthermore, all the data support the claim that MNCs, as the strongest economic actors, are the biggest polluters and, accordingly, the biggest environmental HR abusers. Precisely because of this, it is an ironic paradigm that despite the extensive regulation of MNCs in this area, we encounter numerous omissions and shortcomings (Riley, 2017; Hosseini Moghaddam and Zare, 2019, p. 78–79).

Before diving into specific examples and cases, the notion of corporate crimes needs to be defined and explained. Corporate crimes refer to crimes committed by any kind of company, regardless of its size or whether it is governmental or multinational. Corporate crimes, thus, in the perspective of this research, indicate illegal activities initiated by MNCs. MNCs can thus commit many different types of corporate crimes. Only some of them are financial crimes, corporate manslaughter, political interference, bribery and corruption, but also those that will be focused on below, human and employment rights violations and environmental pollution (Wijesinghe, 2018, p. 2).

Figure 4. Model explaining Multinational Crimes or Misbehaviours



(Source: Cuervo-Cazurra, Dieleman, Hirsch, Rodrigues, Zyglidopoulos, 2021)

Depending on the region, different branches of industry contribute the most to environmental pollution. However, as we concluded, environmental problems are transboundary, so the analyses focus on the global level. The biggest polluters can be classified in industries related to the energy sector, such as energy extraction and processing, transport, heavy metal processing energy, food processing (including also farming sector and practices such as usage of pesticides or deforestation), and producing material goods. Such industries have the most significant influence on the industrial regions in which they are located and the rest of the world (European Environment Agency, n.d.). We cannot entirely blame individual regions of the world, and the companies concentrated in them, for the greatest contributions to the pollution of nature because the demand for products from other regions directly affects this. Nevertheless, this kind of mapping is helpful in knowing which parts of the world need the most effort to solve the problem. However, as already pointed out, in order to take proper action, a contribution must be made in every step of the global supply chain (European Environment Agency, n.d.; The World Bank, 2021). As already pointed out in the introduction, environmental damage can negatively impact the ecosystem itself. However, the most worrying impact is on human health, which is being significantly deteriorated due

to air pollution, water and food contamination and other factors (European Environment Agency, n.d.).

The most commonly used indicator when measuring the environmental impact is the concentration, i.e. the release of dangerous gases, such as CO2, into the atmosphere during the production process responsible for global warming. Different studies have been conducted that have brought shocking results but also created different inputs for policymakers at different levels of IC. It is, therefore, clear to everyone that this particular area and these actors must be controlled more strongly if the global goal of stopping the rise of the climate from 1.5 degrees Celsius is to be achieved or to reach the SDGs (European Parliament News, 2023; European Industrial Emissions Portal, n.d.).

Dr. Paul Griffin from the environmental non-profit Carbon Majors Database conducted extensive research with a team of researchers and with the support of other institutes and, in 2017, published the first report listing the 100 most polluting companies around the world. According to the report, these 100 companies were the source of more than 70% of the world's greenhouse gas emissions. Furthermore, since 1988 and the establishment of IPCC and structured measurements of environmental damage and, more precisely, green gas emissions, it can be seen that the release of more than half of global industrial emissions can be traced to just 25 corporate and state-owned entities. It is easy to conclude that all the mentioned MNCs are big oil and energy companies (CDP, 2017; Riley, 2017).

In the following years, more studies followed, and although some ranking data changed slightly, the names of the primary pollutants remained almost the same. Moreover, many of them built up to the exact study. In 2019, a new study was published, analysis by Richard Heede from the Climate Accountability Institute. Data and research outcomes have mostly stayed the same. The study focused directly on big oil companies and their vast negative contribution to greenhouse gas concentration in the atmosphere. According to the study that formed the clear MNC list, 20 companies on the list have contributed to 35% of all energy-related carbon dioxide and methane globally, a total of 480 bn tonnes of carbon dioxide equivalent in the atmosphere since 1965. Furthermore, some of the conclusions are that companies do not worry too much about this problem; although the companies take all the necessary steps to reduce their negative impact on paper, the results do not follow their

promises. Just some of the oil MNCs that were on the list according to ranking order are; Saudi Aramco (59.26 billion tonnes of carbon dioxide), Chevron (43.35 billion tonnes), Gazprom (42.23 billion tonnes), ExxonMobil (41.90 billion tonnes), National Iranian Oil Co. (35.66 billion tonnes) and many others (Taylor and Watts, 2019; Climate Accountability Institute, n.d.).

These studies are helpful, especially in calling the biggest polluters to account. However, there are hidden dangers since they are based only on official, reported data, which can sometimes be inaccurate. In 2020, the research magazine Bloomberg, in its study, just referred to what they called 'Gaping Loopholes' in the reported amounts of emissions created during production, criticising, among other things, the international emissions trading schemes themselves. Namely, the whole system is based on national reporting, which is then aggregated at the global level, and in many cases it happens that the projections and reported data are far from the right ones for many reasons. There is also a problem in national reporting, from sheer ignorance or corruption to deliberate concealment of facts by MNCs. Also, it is difficult to take into account all stages of GVC and to sum them up and assign them to one specific company, for example, not the production itself but also the transportation of raw materials (Fickling and He, 2020).

According to the same research, one of the many interesting discoveries is the examples of individual MNCs and their intermediation with numbers. For example, the oil MNC Shell's self-disclosed reporting of the emissions deviates from the actual figures, and through further research, it was discovered that the reported figure could be as much as 61% lower than the real one. This is just one of many examples that do not include not only oil companies but also other branches of industry. This is, of course, a big problem because without real data, it is difficult to know the accurate scale of the damage, and there is also the need to pay attention to how to at least try to mitigate this issue (Fickling and He, 2020).

In terms of greenhouse emissions, numerous indications support the claim that MNCs are keen to conceal their true scale of negative impacts. Although there are no concrete figures, many point to millions, if not billions of dollars, spent annually by MNCs to influence decision-makers and investors, carry out a campaign based on greenwashing strategies, and create a positive image for their companies. Also, many investigative journalists mention

over 200 million dollars that were spent by oil MNCs in order to lobby to delay, control or block policies addressing climate change. Namely, the fact that should be included is that MNCs are not the only ones responsible for such 'failures'. The public, governments and investors have today clear numbers at their disposal but still choose to invest in specific industries, especially in the energy sector, precisely because of the enormous profits that come in return (Conmy, n.d.).

Although this short review mainly focused on the specific implications of the effects of energy, i.e. big oil MNCs, primarily because they have the worst effect on nature, we can generalise these conclusions and apply them to other sectors to varying degrees. Thus, we see how this degrading action directly impacts the extent to which individuals can enjoy their environmental and other HR (Duke, 2000, p. 339; Uliah and all, 2020, p. 1-4).

If the focus is shifted to the now well-known approach to environmental degradation measuring, so-called Planetary boundaries, first created in 2009 by the Stockholm Resilience Center director Johan Rockström and a group of 28 international scientists[31], it can be said that analysing MNCs' greenhouse gas emission only affects a few aspects of 9 areas in which people degrade the environment. Thus, in addition to the apparent negative impact of MNCs on Climate Change, Stratospheric ozone depletion and Atmospheric aerosol loading, there are other groups of negative impacts of human activity and, thus, MNCs themselves. They can be divided into measurable boundaries of Biosphere integrity, Land-system change, Freshwater use, Biochemical use, Ocean acidification and Novel entities (Stockholm Resilience Centre, n.d.; Steffen and all, 2018; Boston Consulting Group, n.d.).

After pointing out the MNC's negative impact on the environment and, thus, consequently, on the EHR, once again, it needs to be mentioned in more detail how MNCs' operations have many negative consequences on other groups of HR. Corporate crimes thus vary from worker rights abuses to fundamental HR, such as the right to life. We can actually say that it is the *modus operandi* of the MNCs to exploit existing weak points in the national legislation, especially in developing countries, where because of the living conditions, they can also benefit in terms of high profit, low wage markets and provision of humane and safe working

[31] Rockström, J., Steffen, W., Noone, K. et al. (2009). A safe operating space for humanity. *Nature, 461*, 472–475. Available at https://doi.org/10.1038/461472a

conditions. There have also been reported many cases of forced slavery and child labour, women workers mistreatment and others in developing countries, in the facilities in some way connected to the MNCs, whether they were their branches or subcontractors (Duke, 2000, p. 339; Amnesty International, n.d.).

Human Rights Watch produced multiple reports concerning HR abuses by the MNCs, highlighting numerous specific cases. Just some of the recent cases with a global impact is the case from 2019 in Brazil when the Brumadinho tailings dam collapsed and 250 people were killed, primarily workers, and at the same time, a wave of toxic sludge was unleashed. The dam that, among other functions, collects waste from a mine that extracts iron ore is used globally in different production branches such as engineering, automotive, construction, and others. The next case that had a strong global impact was in December 2019 in the capital of India, Delhi, when more than 40 workers died in a factory fire, primarily due to poor maintenance of the building itself. In addition, due to the inhumane working conditions, exhausted workers slept on the job, so they failed to react in time and save themselves (Roth, 2020).

MNCs can also indirectly support serious HR violations committed by the host states, again, all for the sake of lowering production costs and thus obtaining higher profits. One of the most famous examples is the recent exposure of the fashion industry and the use of forced labour in their facilities or in the contractors' facilities in China. The story of the inhumane treatment of the Uyghur minority in the province of Xinjiang in China is widely known; otherwise, the province where most of the textile production in China takes place is focused on processing cotton. China's crimes, according to the Uyghur Community, include actions that many actors accuse and characterise as acts of genocide, from the separation of families, forced sterilisation, bans on culture and language, and forced labour. The coalition that published the extensive report consists of more than 180 HR groups, and thus, they publicly called textile MNCs to account and expose them in public for supporting genocide. Only some MNCs published on the extensive list are brands such as Gap, Adidas, Calvin Klein and many others (Kelly, 2020).

Extensive reports and studies have also been made on the influence of the activities of MNCs, especially those dealing with the energy sector, on the impact of life, i.e. endangering the

indigenous way of life. One example is the accelerated melting of the ice in the Arctic area, which caused the increased interest of oil corporations of different countries that claim part of the territory to expand their activities and start extraction precisely in the Arctic area. Their action soon began to cause apparent environmental degradation that had rapid effects on the life of Indigenous people in the Arctic Circle, the possibility of practising their culture and way of life (Hanaček and all, 2022; Roth, 2020). The following example is the action of oil MNCs in the Amazon forest territory, which also hurt the domestic indigenous population, among others. Although the oil industry presented its work as beneficial to the local community, from providing job opportunities to investment in the lack of basic infrastructure, the numerous adverse effects of the industry on the area soon became apparent (Roth, 2020). Corporate crimes tend to stand later uncovered since the states often participate, at least indirectly, in their coverups. However, because of this, NGOs play a significant role in debunking such cases. Without going into further specific cases, it is worth highlighting the main conclusions of the analysis made in the year 2020 by the group of school researchers on corporate crimes. Using multiple data and reports from various NGOs and primarily Human Rights Watch that focused on the timeline between 2002 and 2017, a detailed list of 273 violations committed by 160 MNCs, mostly from developed countries, was compiled. Among the main conclusions of the analysis, it was pointed out that the vast majority of crimes were committed in developing countries for the various reasons this work has already pointed out. Also, the conclusion that confirms the statement from the beginning of this subparagraph, as well as the later analysis, is that almost all MNCs that committed corporate crimes also had a detailed system of internal corporate sustainable responsibility, but also that they declared that they were complying with all international standards, including the compliance with the International Labor Organization. Still, they were also signatories to the UN Global Compact[32], which additionally confirms the continuation of this work, which is seriously questioning the effectiveness of the regulatory system itself (Ullah, Adams, Adams and Attah-Boakye, 2020).

[32] United Nations. (2000, July 26). United Nations Global Compact: The Ten Principles of the UN Global Compact. Adopted on July 26, 2000 in New York.

3. Multinational companies' regulatory framework regarding their possible negative impacts on the environment and human rights

Just as John Gerard Ruggie points out, the ongoing struggle to regulate MNCs internationally dates back to the 1970s and is still a burning issue. There have been many initiatives coming from different directions to create a single overarching treaty-like document that would constrain the waste power and regulate the influence of MNCs in a legally binding way (Ruggie, 2015, p. 1-2). To understand how it is still possible for the previously analysed MNCs' misconducts resulting in HR violations and severe environmental degradation to occur, this chapter briefly analyses the existing regulatory framework, starting from the international level itself, concerning precisely our focus, i.e. MNCs' negative influence on the environment and HR. In addition to the existing regulation, the latest IC developments concerned with the mentioned issue will also be considered.

3.1. International regulatory regime; multinational companies in the international human rights protection framework

Although numerous attempts to strengthen the regulation of MNCs at the international level failed miserably, precisely because of the previously analysed power with which MNCs implement their ability to influence the decision-maker actors in IC, such attempts also developed many fragmented regulatory 'packages' that together form today's regulatory regime. The strongest efforts were eventually institutionalised within the UN, its agencies and organisations, and the OECD. It has also been noted how, precisely because of the very character of these institutions, efforts were initially focused primarily on the economic aspect of regulating MNCs and gradually, with the very increase in the obvious negative consequences of their business, on other areas such as their impact on HR or environmental (Wouters and Chane, 2013, p. 9-11). Thus, this section, while analysing regulation on the international level, focuses specifically on the International Labor Organization Tripartite

Declaration of Principles concerning Multinational Enterprises and Social Policy[33] (ILO MNE Declaration or ILO Tripartite Declaration); OECD Guidelines for Multinational Enterprises[34] and the UN Global Compact. The decision to focus precisely on those documents is partially because they are often also seen as part of the International Human Rights Regime. Thus, they are moving away from a strict focus on the economic aspect of MNC operations (Wouters and Chane, 2013, p. 9-11).

The first part of the regulatory framework that must be highlighted is also the first significant progress in the IC regarding MNCs' regulation, viewed from the aspect of HR protection. ILO Tripartite Declaration of Principles concerning multinational enterprises and social policy is a non-binding instrument adopted in 1977 after the extensive tripartite negotiations between workers and employees unions and state government representatives under the supervision of ILO, which has become a UN specialised agency in 1946 and was primarily founded in 1919. The Tripartite Declaration was amended in 2000, 2006, 2017 and 2022 and is still one of the most important documents regarding labour standards and social issues (International Labour Organization, n.d.). Some of the areas that are focused on are employment, training, industrial relations, and conditions of work and life, which governments, employers, and workers' organisations are advised to follow voluntarily. It is also important to point out how, even though it had and still has many positive influences, the Declaration does not provide a complaint mechanism in case of companies' misconduct or crimes. The Declaration only provides the procedure of periodic surveys to measure its effectiveness and clarification process, thus offering the parties the possibility of submitting requests to receive ILO interpretation of issues contained in the Declaration (Wouters and Chane, 2013, p. 15).

Although the Tripartite Declaration is legally non-binding, it has created the foundations of the ILO work, which has further developed additional Treaties and Protocols, which, on the other hand, are legally binding and thus, states that decided to adopt them have a legal obligation of implementing them in national legislation. Many also cover the issues regarding

[33] International Labor Organization. (1977, November 21). Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Adopted on November 21, 1977 in Geneva, Switzerland.

[34] Organisation for Economic Co-operation and Development. (2011). OECD Guidelines for Multinational Enterprises

national companies and MNCs with subsidiaries in different countries (Wouters and Chane, 2013, p. 15; International Labour Organization, n.d.). The ILO Tripartite Declaration and its Tripartite working structure also represent the significant element of inclusion of the representatives of unions of private entities, i.e. companies, in the decision-making process of UN machinery, and some experts claim that direct cooperation also results in the larger level of adherence and implementation of standards (Wouters and Chane, 2013, p. 15; International Labour Organization, n.d.).

Additional strengthening of the regulatory regime, which also had numerous positive effects, can be found in the form of OECD Guidelines for Multinational Enterprises, a set of non-binding recommendations for conducting responsible business conducts that participating state governments address to MNCs operating in or from their territory (OECD iLibrary, n.d.). The first set of recommendations was adopted in 1976, aiming to improve the FDI climate by strengthening cooperation between state members and addressing and reducing difficulties arising from MNCs' extraterritorial operations. More memorable progress was achieved with revised versions, the first of which was adopted in 2000, explicitly recommending that MNCs 'respect the HR of those affected by their activities' for the first time. In 2011, the latest version focused even more on this aspect and introduced a whole chapter on HR. It expanded its previous recommendations by calling MNCs to avoid causing or contributing to adverse HR impacts, address and seek to prevent or mitigate such impacts, have the explicit company policy commitment to respect HR, carry out HR due diligence, and finally provide for remediation of adverse HR impacts. The most recent 2011 version also extended the focus to the whole supply chain management, thus extending MNCs' obligations to their relations with subcontractors or franchises (Wouters and Chane, 2013, p. 14-15).

Implementation of the Guidelines is based on the obligation of the states of their implementation in national legislation and the will and efforts of the MNCs themselves. Each member state must set up National Contact Points (NCPs) that are tasked with promoting goodness, handling inquiries and solving possible disputes. NCPs' power was extended by the 2011 amendment and thus extended their duties, especially in inquiries and dispute settlement processes. If the issues exceed NCPs’ capabilities, they can be referred to the

Investment Committee, which also provides advice on interpreting Guidelines. However, it should be mentioned that the outcome of such mitigation procedures is not necessarily binding, and the names of companies involved, thus HR abusers, are not disclosed in order to protect confidential information, thus causing the whole procedure to have rather commercial than legal character (Wouters and Chane, 2013, p. 14-15).

The last part of the main documents creating the basis of the legal regime concerning MNCs must be the Global Compact. The Global Compact is based on the Universal Declaration of Human Rights, the ILO's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the UN Convention Against Corruption[35]. Officially launched in the year 2000, it represents a soft law policy initiative for businesses which voluntarily commit to respect and support ten main principles in the areas of HR, labour, environment and anti-corruption. Today, it counts more than 10,000 participants from over 130 countries; thus, not only states but also private actors can be direct members of the initiative, and it represents the largest non-binding corporate responsibility initiative globally (Wouters and Chane, 2013, p. 15-16; United Nations Global Compact, n.d.).

Companies that decide to become members have to submit annual reports on implementing these ten principles, which are not subject to any review mechanism and have consequently been labelled merely as a 'good public relations' instrument. Regardless of these aspects, supporters often point out how the Global Compact has even more positive results than previously mentioned documents precisely because of the direct participation of MNCs and its strength in raising awareness of the main issues. On the other hand, critics point to the main issue as the lack of monitoring and auditing of both current and potential candidates (Wouters and Chane, 2013, p. 15-16).

Besides these three focal documents, as was already pointed out, there were many more efforts by HR protection institutions that had varying degrees of success. Serious attempts to create binding international HR obligations for MNCs and thus elevate their status to duty bearers failed in 2003. The Draft Norms on the responsibilities of transnational corporations

[35] United Nations Office on Drugs and Crime. (2003, October 31). United Nations Convention against Corruption.

and other business enterprises concerning HR[36] (Draft Norms), drafted by the UN Sub-Commission on the Promotion and Protection of Human Rights, were adopted in 2003 in the form of a result by the latter but then were substantially rejected by the United Nations Commission on Human Rights stating that such a draft was never requested and had no legal standing. In this document, once again, the primary duties of states were recognised, but MNCs' responsibilities to 'promote, secure the fulfilment of, respect, ensure respect of and protect' towards HR were elevated on almost the same level as states themselves. Among many criticisms that eventually led to the downfall is the question of responsibility itself. Critics claimed that in this way, MNCs indirectly impose responsibility for fulfilling and implementing all of the HR instruments previously signed by the states. Moreover, in such a way, critics argued that the primary role of states is being deluded and that such a movement could disturb the main principles of state sovereignty (Wouters and Chane, 2013, p. 11-12).
However, even though this initiative ended ingloriously, it has sparked further initiatives in the direction of imposing legally binding norms to the MNCs in particular. Thus, shortly after the failure of the Draft Norms, the United Nations Commission on Human Rights established the mandate of a Special Representative of the UN Secretary-General on the issue of HR and transnational corporations and other business enterprises (SRSG) tasked with first identifying and clarifying existing standards and practices and then proposing further developments. For the first mandate, lasting from 2005-2007, John Ruggies was appointed to the function and was later reappointed. He was also appointed to be one of the main drafting authors of the Global Compact and was one of the main critics of the Draft Norms (Wouters and Chane, 2013, p. 12-14; Ruggie, 2015, p. 1-4).
Among all of the memorable accomplishments, the ones having the most considerable influence must be the development of the so-called 'Protect, Respect and Remedy Framework' or otherwise called 'Ruggie Framework' consisting of 3 main pillars that will be discussed in detail during the upcoming discussion about the responsibility itself regarding HR abuses and environmental degradation from the side of MNCs. During his last mandate, from 2008 to 2011, Ruggie managed to elaborate specific recommendations and combine

[36] UN Sub-Commission on the Promotion and Protection of Human Rights. (2003). Draft Norms on the responsibilities of transnational corporations and other business enterprises concerning human rights.

previous work, which resulted in the development of the non-binding Guiding Principles on Business and Human Rights, which were endorsed by the HRC on June 16, 2011 (Ruggie, 2015, p. 2-4; Wouters and Chane, 2013, p. 12-14).

In this part, it must also be pointed out that the efforts to create a legally binding treaty-like document that would be the pivotal stone in this regime are still ongoing, although progress is slow. First, thanks to the aforementioned HRC efforts, a Working group was created to promote implementing and disseminating the Guiding Principles. It launched the annual Forum on Business and Human Rights to strengthen dialogue and cooperation. This resulted in robust results, so the 2012 Forum recorded participation from 1000 participants from over 80 countries and coming from different sectors, governmental bodies, civil societies and companies themselves in order to discuss trends and challenges in the implementation of Guiding principles (Wouters and Chane, 2013, p. 14). This resulted in further efforts in the direction of a legally binding path, so in June 2014, the UN HRC took steps to elaborate an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises with a specific focus on the issue of HR due diligence implementation in every phase of the global supply chain (BHRRC, 2023). In October 2023, the ninth session of the Working Group was also held, which at the same time shows that the efforts are still continuing, even though they currently have limited results (BHRRC, 2023).

BOX 1. Lack of legally binding instruments and the 'corporate veil'

The lack of a legally binding regulatory framework is the main cause of corporate crimes and misconduct related to the environment and HR. Even with developed international, regional, and national regulatory frameworks, persistent shortcomings allow MNCs to commit corporate crimes and avoid responsibility. Unfortunately, MNCs are the biggest environmental and HR violators, and their unclear international subjectivity makes it difficult to hold them accountable and increase their criminal liability.

Numerous experts recognise this issue as a crucial problem for today's IC. Here, it is necessary to introduce and briefly explain the term 'Corporate Veil', which describes the problem. Just as the author Robert B. Thompson points out already in 1991, 'Piercing the Corporate Veil' represents the most litigated issue in corporate law precisely because of

the fact that even today, it is not easy to find a solution for it (Thompson, 1991). As the author states;

> 'Corporate obligations remain the liability of the entity and not of the shareholders, directors, or officers who own and/or act for the entity. Piercing the corporate veil refers to the judicially imposed exception to this principle by which courts disregard the separateness of the corporation and hold a shareholder responsible for the corporation's action as if it were the shareholder's own.' (Thompson, 1991, p. 1036).

As we can already see from this claim, but also from further discussion, the author himself actually points out that precisely states and national courts fail in their duty of respecting their citizens and use all of their capabilities in order to blame the culprits themselves (Thompson, 1991).

Furthermore, through the previous analysis but also the following sub-chapters of the regulatory framework itself, it is presented how MNCs' regulatory framework can also be seen as an interdisciplinary approach that offers a lot of opportunities regarding how to establish stricter regulation of MNCs, but the overlapping nature of the approach also imposes a lot of confusion and issues for MNCs themselves, and not only for the lawmakers. Not only that, but confusion in approach also often leaves numerous areas and directions for stronger regulation undiscovered or overlooked. Therefore, we cannot necessarily look at MNCs themselves as a complete group; there are some honourable exceptions that cannot be simply categorised as bad actors, but even they are often lost in the vortex of overlapping international rules and regulations that require rethinking, rewriting and restructuring.

Thompson points out that the issue of 'Corporate Veil' arises from the lack of liability and accountability, which is not solely the responsibility of multinational corporations (MNCs). Although MNCs may take advantage of regulatory loopholes to protect their shareholders' liability and increase their earnings, it is the inadequate regulation and insufficient efforts by nation-states that have made this issue persist. These shortcomings exist not only in the law system itself but also in the overall relationship between the private economic and all other IC actors (Thompson, 1991). Therefore, as pointed out in this subsection, it is evident that the nature of most of the primary regulatory documents concerning the negative impacts of multinational companies on the environment and HR is not legally binding. The primary duty of implementing its provisions remains with the states, which opens up an issue where MNCs easily find ways to escape their responsibility.

3.2. International regulatory regime; multinational companies in the international environmental law and international criminal law framework

Besides the analysed HR-based framework of regulating MNCs and their possible HR violation, to comprehensively analyse the MNCs regulation regarding this exact area, the main determinants of the framework itself based on international environmental and criminal law must also be included. As can be seen, the primary focus on the HR aspect of MNC activities has gradually started to shift to the environmental aspect, especially with the increase in the problem that was analysed at the beginning of this paper, the increase in negative human impacts on the environment, therefore especially industry (Wouters and Chane, 2013; Boyle and Anderson, 2010).

IEL is based on the multilateral environmental agreements, which are once again focused primarily on the states. However, some parts of the IEP regime also indirectly affect MNCs and their operations. As was already pointed out in the previous chapter regarding the IEP, the most prominent principle in this regard must be the 'polluters pay' principle, when applied to the specifically grave environmental damage caused by the MNCs, such as for example, oil or nuclear leaks. The main identified issues of the IEP lens of MNC regulation must definitely be the same as the HR-based one, and that is that the primary focus is again set on the nation-states, which then must implement such provisions in domestic legislation. Therefore, the introduction of the sustainable approach to environmental protection, as already stated in the previous chapter, combined the environmental and HR aspects of IEP and thus also applied such an approach to the additional aspect of MNC regulation (Wouters and Chane, 2013, p. 18).

Regarding international criminal law, right at the beginning, it must be mentioned that international criminal law has never and still does not provide for jurisdiction over legal persons but instead over individual perpetrators. By further analysis, we can point out how neither ad hoc international criminal tribunal, created through history by the UN Security Council, exercised jurisdiction over corporate entities. Regarding the International Criminal Court on the other side and its 1998 Draft Status, we can see that it was initially intended to include jurisdiction also over legal persons under court jurisdiction. But, such an approach

was later abandoned because of two arguments in particular and that is that it was obvious to the states that such an approach would be cynical, i.e. providing court jurisdiction over all entities except states, and on the other hand, because in the majority of states, the national legal system does not recognise the notion of the corporate criminal accountability, and this would thus create additional issues in the application of a complementary principle. In the next chapter, we will show exactly how the differences in the practice of this principle vary from individual countries (Wouters and Chane, 2013, p. 18-19).

However, it is also important to point out that specific international instruments contain criminal liability provisions for legal persons. However, they are not regarded as core reference documents while discussing the MNC's liability towards HR and environmental protection. Some of these are the European Convention on the Protection of the Environment through Criminal Law[37], the United Nations Convention against Corruption, the United Nations Convention on the Suppression of the Financing of Terrorism[38] and the United Nations Convention against Transnational Organized Crime[39]. All of these mentioned documents put the obligation on the state parties to establish the liability of legal persons, but at the same time, liability is never reduced merely on the criminal liability alone but thus leaves to the states open space for manoeuvre and adopt other administrative or civil measures instead (Wouters and Chane, 2013, p. 18-19).

BOX 2. Question of responsibility: environment and human rights protection framework

The debate on responsibility regarding the IEP and IHRP is a long-lasting debate in the IC, especially in academia. Opinions and approaches differ significantly precisely because of the previously highlighted issue in IC, which is the disparity between the current state in the new global governance and the question of states' subjectivity vis-à-vis other actors, especially MNCs.

[37] Council of Europe. (1998, November 4). European Convention on the Protection of the Environment through Criminal Law.

[38] United Nations General Assembly. (1999, December 9). United Nations Convention on the Suppression of the Financing of Terrorism.

[39] United Nations Office on Drugs and Crime. (2000, November 15). United Nations Convention against Transnational Organized Crime.

In academic articles concerning the IEP and IHRP, we can find two central debates: some attribute the responsibility of protection solely to the nation-states, while others point out the need for an emphasis on the shared responsibility of states and other actors, especially private economic ones, precisely since they are the biggest culprits in violations (Mzikenge Chirwa, 2004, p. 2-4). The shared responsibility approach can also be drawn from the previously analysed SDG17 (The Global Goals, n.d.).

It could be concluded that the notion of shared responsibility is the only way to achieve a full level of HR and environmental protection precisely because states are not able to fully solve these problems alone, precisely because of the very nature of the problem and the fundamental principles of universality of HR and duty of the states to protect HR regarding all individuals globally and the principle of transboundary nature of environmental degradation (Duke, 2000, p. 343-346).

On the other hand, supporters of the approach of state responsibility point out that it is necessary, first of all, to be 'realistic' and to understand that shared responsibility is based on the voluntary basis of non-state actors. Precisely because of the framework of international law, they point out that only states' responsibility is the 'binding' responsibility. This is seen from the previous analysis of the international regulatory framework. International law, especially legally binding documents, places binding responsibility on states, and precisely, they must implement international norms and laws. Positive and negative obligations of the states arise from this responsibility. Positive obligations, among others, require the implementation of norms and the supervision of entities to which individual norms and regulatory laws apply (Mzikenge Chirwa, 2004, p. 2-14).

In this regard, another debate should be highlighted, specifically concerning the field of IEP, IHRP and MNCs activities, especially their transnational crimes. Precisely because of the difficulty of regulation, but also the issue of bringing up the liability and accountability of MNCs for their crimes, the debate based on the assumptions of Host and Home State Responsibility stands out, which can be connected with the later explained issue of the implementation of extraterritorial judicial principle. Host state responsibility can actually be understood as an approach that emphasises that the country to which the MNC comes has the primary responsibility for their supervision and the protection of its citizens. However, as pointed out at the beginning of the research, many countries, especially those in development, often, for various reasons, cannot or do not want to implement timely regulation and fail to protect their citizens. Due to this deficiency, emphasis is often placed on the Home country, i.e. the country where the headquarters of the company is located, and it actually turns out that if a corporate crime caused by an MNC in another country occurs, the Home country bears part of the responsibility for that crime, precisely due to insufficient regulation of actors in their territory. Therefore, the

home country must be the first to impose sufficient regulation on MNCs and ask for due diligence implementation in their entire GVC. However, it should be pointed out that in this respect, responsibility is shared; home and host country must work together, i.e. both invest the greatest possible efforts in the development of sufficient regulatory legislation and in this way, the only way to prevent corporate crimes and the constant exploitation of legal loopholes by old MNCs (Mzikenge Chirwa, 2004, p. 26-30).
In order to understand the debate about Home and Host country responsibility, briefly highlight a case that will be presented in more detail in the upcoming subchapter, which is the case against Shell Company in front of the Dutch Court in Hague in 2012. After the rupture of the Oil Pipe in the Nigerian Gulf, precisely because of the negligence of the Shell Company, a group of NGOs noticed that due to the better-developed legislation and the fact that the Netherlands is the Home Country of the MNC, it was precisely there that the lawsuit should be initiated. In the end, the lawsuit was accepted, and the result was successful. In this case, the Netherlands again showed its commitment to global environmental protection and HR by choosing the Home State responsibility approach, holding Shell accountable for its crimes in its subsidiaries, and reaching the liability level (Mejier, 2020; Sekularac and Deutsch, 2012).

3.3. Regional and national regulatory regime; disparities among implementation

Although we could see how all attempts to regulate the MNCs negative influence on the HR and environment more or less ended at the non-binding level, these advances represent a valuable framework for a uniform approach by the states themselves (Ruggie, 2015, p. 1-2; Wouters and Chane, 2013). As was seen through the analysis of the group of main international regulatory documents, the main obligation is thus placed on the party states themselves to, upon their will and capabilities, set up a national regulatory framework, and as it goes with all implementation of international roles, this short paragraph will briefly present the disparities created by this approach, from state to state, but also from region to region (Calatayud, Candelas and Fernandez, 2008).
For this reason, it is necessary to point out positive examples of states and regions that take this area seriously, which is also reflected in advanced national or regional regulatory frameworks. All of the literature focusing on this area, of course, first turns out the example

of the USA and the so-called Alien Torts Statute, otherwise known as the Alien Torts Act[40] (hereinafter the Act) passed in 1789 by the United States Congress and later codified in 1948 (Congressional Research Service, 2022, p. 1-3). This Act granted the Federal Courts jurisdiction over 'any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States'. According to the Act, the approach is based on civil liability, i.e. in case of a wrongful Act being confirmed, the plaintiff has the right to economic compensation rather than putting the accused under criminal liability. But, despite that, this Act is fascinating precisely because of its core content, which is that even a foreign citizen can bring a lawsuit against an American citizen or MNC even if such an MNC doesn't necessarily have its headquarters in the USA but merely operates there and moreover, even if crime happens in other territories so not necessarily in the USA (Calatayud, Candelas and Fernandez, 2008, p. 179).

On the other hand, it must be kept in mind how the Act does not prescribe substantive law and, therefore, it does not imply that US courts must recognise any tort that violates individual rights provided by international law but instead has a jurisdictional nature, therefore limiting wrongdoings on the scope of norms contained in the international framework that the USA is a state party of (Calatayud, Candelas and Fernandez, 2008, p. 179). This chapter will not go into details of every case that was dealt with under the same Act. However, it should be mentioned that the Act proved relatively successful in solving limited number cases concerning the MNC's violation of international HR and environmental standards. Regardless of that, many of the cases dealt with, became precedent cases internationally. Some of the cases that were brought before the Federal Courts concerned procedures against a wide array of MNCs, from those dealing with energy, more precisely large oil companies, to others (Calatayud, Candelas and Fernandez, 2008, p. 179-183).

Nevertheless, it should also be mentioned that even in such an approach on the part of the USA, there are numerous shortcomings and numerous comments from experts, especially pointing out the biassed approach in the implementation of the Act. It is observed that USA courts rarely impose such an act, even with clear evidence of HR abuses or environmental

[40] United States Congress. (1789). Alien Torts Statute, 28 U.S.C. § 1350 (1789).

degradation, against MNCs that have headquarters in the USA, and thus are often characterised as companies of vital interest to the country and its economy. Also, many politicians, including former USA President Bush, often launched anti-campaigns against the Act, trying to undermine its legitimacy. However, critics claim that we must look for the reasons for this precisely in the hiring processes of large MNCs. It is also important to point out that the scope of the Act is somehow limited regarding HR violations or environmental degradation precisely because the USA cannot boast of being a state party to many legally binding or non-binding regulatory frameworks (Calatayud, Candelas and Fernandez, 2008, p. 179-183).

Focusing on the regions, they differ in terms of institutionality, the level of organisation and the level of legislative alignment between the states in the region. As an example of the advanced region in our case, it is worth highlighting the example of the European Union (EU). The EU can boast that it is a region that has justified its title of 'leader' in terms of HR and especially environmental protection. With its numerous initiatives at the global level, it has stimulated numerous advances at the global level itself (Oberthür and Dupont, 2021, p. 1-3). Thus, it is straightforward to assert that the EU is one of the regions, or rather the regional intergovernmental organisation, that invests the most effort in MNC regulation regarding their negative HR and environmental influences. With its branched institutional network, the EU has developed a broad legislative framework and additional guidance for the EU member states regarding the approach to regulating MNCs in this regard. Moreover, many point out that EU progress can be characterised as an excellent example of the bottom-up approach itself since the request for stricter regulation was motivated by the good practice of individual members, such as Spain, France, the Netherlands, Belgium and others... (Calatayud, Candelas and Fernandez, 2008, p. 183-184).

In this regard, recent advances in the international regulatory framework should be highlighted, precisely in this part of the research, since it concerns the EU itself. According to the latest available from 24 May 2024, the Council formally adopted the EU Due Diligence

Directive[41] (hereinafter the Directive), which represents the last step in the decision-making process. In this regard, it means that the member states need to start implementing its content into national legislation, which, once put into practice, will represent the most advanced regulatory framework directly targeting the MNCs' responsibility for their HR and environmental crimes. This Directive represents a further effort by the EU for good practice spillover since the legally binding directive will oblige all EU companies with a turnover over 150 million euros and smaller companies in sectors such as the manufacture of textiles, agriculture, mineral resources, and construction to finally, they are implementing international norms and rules throughout their GSC. The spillover effect will also occur because, with this approach, the same regulations will be imposed on all companies, products and services that want to enter the EU market (European Parliament News, 2023; KPMG, n.d.; European Council, 2024).

This Directive establishes a civil liability regime for damages caused by the companies, especially targeting MNCs, imposing upon them penalties including naming and shaming and fines of up to no less than 5% of net worldwide turnover. In addition to the need for companies to establish a due diligence approach in their companies' policies in a legally binding way, a mandatory monitoring and reporting process upon CSR and due diligence companies' approaches will also be established. The EU Commission will implement the reporting system itself through special departments established inside the European Network of Supervisory Authorities, which will have the possibility to launch an investigation and, in the extreme, implement a system of remedies in case of violations made by the companies (European Parliament News, 2023).

Therefore, all that remains is the last step of implementation and performance monitoring of the Directive. However, some experts warn of some of the negative aspects of this approach. Although this approach has many positive aspects, experts warn of the true nature of MNCs who will continue to want to protect their economic benefits, so only the EU market could weaken precisely because companies could look for other markets and focus on them. Some

[41] European Commission. (2022, February 23). Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. COM(2022) 71 final, 2022/0051 (COD). Brussels.

go so far as to point out that this approach is not fully aligned with the WTO principles of a free economy. However, supporters of this Directive reject these criticisms, claiming that they go in the direction of defending the MNCs themselves and their wrongdoings (Ellena, 2023; Business Europe, 2022).

As was seen recently, the number of positive examples of implementing the international regulatory framework at the regional and national levels is increasing. However, at the same time, this approach, which leaves it in the hands of individual states to take care of the implementation of domestic legislation, leaves much more significant shortcomings. Here, the focus must be put back to the previous discussion in this paper, which shows that most states are powerless while facing the power of MNCs and, for various reasons, are unable or unwilling to establish stronger regulations on MNCs. In this regard, the whole discussion turns back to the discussion that economic benefits continue to override the very aspect of HR and environmental protection (St. Paul's School Sao Paulo, n.d.; Giuliani, 2013, p. 4-11; Hosseini Moghaddam and Zare, 2019, p.78).

BOX 3. Issues in the implementation of the extraterritoriality principle

Even if the individual state might have developed domestic legislation but also the capacity to decide on a step to persecute the MNCs for their international crimes concerning HR abuses and environmental degradation, in addition to other problems that arise, the most significant is the issue of implementing extraterritoriality regarding national legislation.

The issues related to the principle of extraterritoriality can be understood by examining how individual states interpret the notion of sovereignty. State jurisdiction is a manifestation of state sovereignty. In short, states mostly believe that domestic laws can only apply to subjects and issues within their own territory, and extraterritoriality often infringes on other states' sovereignty (Dover and Frosini, 2012, p. 5-12).

However, this approach contradicts the problem of MNCs being transnational actors, with HR protection being based on the fundamental principle of universality and the state's duty to protect all individuals worldwide. It is also based on the principle of IEP, which states that environmental issues cannot be solved by one country alone but rather require a joint approach (Dover and Frosini, 2012, p. 5-12).

The principle of extraterritoriality depends on several factors, including the willingness of the state to implement it, the strength of the state to defend its position, and the potential

political and economic conflicts that could arise in relation to the accused state or MNC. Additionally, the implementation of the principle of extraterritoriality depends on the branch of law and the focus of each state on a specific area of law. Although this is still an issue today, due to the nature of the problem and the developed judicial practice, states generally agree that the implementation of the principle of extraterritoriality is crucial for the area of IEL and IHRL for successful action and protection (Dover and Frosini, 2012, p. 5-12).

Regarding MNC control, the principle of extraterritoriality can be connected to the earlier debate about the responsibility of home and host countries to regulate MNCs but also hold them accountable for their international crimes (Mzikenge Chirwa, 2004, p. 26-30). However, there are positive exceptions of countries even further developing these principles; for example, the aforementioned case of forced labour of the Uyghur minority in China and the related court case against the textile company Inditex for profiting from such practice and not reacting when this crime in their GVC was discovered. In 2021, an NGO initiated a court case that is still ongoing before the French court, which decided to accept the case. This is particularly interesting because France is a country that is an example of good practice in terms of MNC regulation, IEP and IHRP, and with this decision, it has shown it once again. Recalling the principle of extraterritoriality, the subjectivity of MNCs, and the basic principles of IEL and IHRL, France initiated a case against the company Inditex, even though it is not the host country of the MNC, and the crime did not take place on the territory of France but purely due to the fact that Inditex also carries out its work on the territory of France (BHRRC, 2021). Although the French prosecutor made great efforts, in the end, the lawsuit had to be dismissed precisely because of too much of critique of the lack of jurisdiction in this case, but the story is still developing, so in 2023, a new attempt to hold Inditex accountable (RFI, 2023; Reuters, 2021). This kind of movement shows that there is a way to approach such cases, but only if the states are genuinely ready for it.

3.4. Self-regulation; new forms of global governance

While analysing the regulatory regime concerning MNCs, the self-regulation system must also be considered to understand the regime's complexity. Under the pressure of various IC actors, the MNCs saw the importance of respecting HR and environmental regulations. Thus, for years, extensive regulation has been based on the principle of self-regulation, representing the implementation of international norms and regulations from the old MNCs themselves (European Parliament, 2020, p. 8). In this regard, it is necessary to focus on the regime of

Corporate Social Responsibility (CSR) and Environmental, Social and Governance monitoring, as well as on the other side of the complex network of established Voluntary Standard Setting (VSS) regimes.

3.4.1. Corporate social responsibility and environmental, social and governance impact reporting

We can understand CSR as an umbrella term for the whole array of individual companies' internal policies and strategies, considering precisely aspects of their actions' influence on society and the environment. CSRs thus represent the implementation of the sustainable approach, incorporating the previously analysed documents into their internal policies. The previously analysed international regulatory framework, in addition to placing the primary implementation duties on the state parties, also emphasises only the responsibility of companies for responsible behaviour in their operations (European Parliament, 2020, p. 8).
CSR companies' strategies are becoming more and more advanced, thus including many focus areas, from lowering the business's carbon footprint, corporate volunteering, and improving labour practices to engaging in charity and many others. Thus, through CSR practice, companies finally recognise the possible adverse effects on society and the environment and try to fix such issues. Many companies conduct regular internal monitoring and publish annual reports on their practices and the impact on HR and the environment further to improve their CSR practices (O'Neill, n.d.).
Moreover, the CSR practice itself is recognised as a good and relatively successful practice by the states themselves. Once again, the EU and its member states must be pointed out as examples of good practice. Many of the EU countries started recommending to their MNCs the introduction of CSR practices, and thus, the EU decided to standardise the practice and thus a number of different legislative frameworks regarding regulations and regulation of CSR policies were developed, starting with the European Commission's 2011 strategy for CSR. However, despite this, the implementation of EU recommendations and legislation concerning CSR, especially those that express the introduction of mandatory due diligence on the MNCs, remain fragmented and based on voluntary principles. Precisely because of

this, the EU took a step further, which is reflected in the previously analysed Due Diligence Directive (European Parliament, 2020, p. 9).

However, although many positive aspects of implementing CSR internal policies based on the due diligence principles are highlighted, numerous criticisms and continuing cases of severe HR violations and environmental degradation have shown that this is not entirely the case. So many point out that the main problem of CSR frameworks is precisely the reliance on the goodwill of the companies themselves and that, in fact, we cannot be sure about the reported reports concerning the situation within the GSC, mainly due to the fact that the monitoring itself is carried out within the company itself, and there is a fundamental doubt about that whether companies would deliberately publish possible violations in their operations and thus harm themselves. So many point out that in most cases, CSR practice is just a company's public relations tool for greenwashing (European Parliament, 2020, p. 8; 70-82; O'Neill, n.d).

As this issue became visible, the companies themselves were forced to step up their efforts, which many call a step forward from voluntary to regulated action. Thus, in contrast to CSR, which focuses on internal operations, ESG is the opposite, i.e., increasing companies' accountability by providing external public reports. ESG, standing for the Environment, Society and Governance, follows a similar list of principles as CSR does, but it represents reports based on the quantitative, measurable indicators of companies' practices. The Companies were thus forced to take this step in a unique way because the investors themselves began to consider the companies' positive and negative impacts and their adherence to international norms in the process of international financial actions. An additional positive aspect of this now strengthened approach to self-regulation is that companies often hire external companies that deal with monitoring and reporting variables included in ESG, but on the other hand, critics also point out the lack of accountability of such external monitoring companies since they are liable to those paying for their services, i.e. MNC themselves, which opens many additional problematic aspects such as false monitoring or bribery. Additional criticism of ESG monitoring must also be the lack of a uniform approach at the international level since every company and external monitoring company develops its own set of indicators, thus creating confusion in the approach. Many

international organisations concerned with the global economy and HR protection have recently thus taken steps in preparing the action to harmonise CSR and ESG practices at a global level, but such procedure can still be considered to be in the initial phase (O'Neill, n.d; Kostić and Hujdur, 2023, p.16-17).

3.4.2. Voluntary standard setting regime

Today, numerous studies concern various aspects of VSS, especially because many consider this type of regulation a relatively new phenomenon that has shown great success in a very short time. For the purposes of this paper, the aspects that make it an additional protection within the voluntary international regulatory regime itself will be highlighted. Numerous private companies and various organisations issue VSS certificates, and currently, they practically cover almost all areas, from agricultural products to manufacturing. The main feature is that they cover the regulation of the entire GSC and monitor the implementation of the main international standards even by subcontractors of MNCs (Marx and Wouters, 2018, p. 1-9; Marx and Wouters, 2014, p. 1-5).

Different studies present different numbers, but many show that we are really in the proliferation of VSS, and it is stated that there are around 400 different certificates today. The main feature of this type of regulation, which is essential for our research, is the externalisation of the monitoring and reporting of the implementation of standards. By doing so, it is targeted at increasing the level of accountability of the MNCs. Also in favour of such an approach is the very fact that end consumers have overestimated the weight of this kind of certification, so most of them often consider this aspect when making their purchases. As mentioned, there are numerous certificates; some of the more famous ones are FairTrade International, Forest Stewardship Council and many others. By adhering to international standards in this way, MNCs themselves gain an advantage in the free market, and precisely because of this, numerous national states provide support and initiate companies in their territory to adjust their practices in order to obtain certificates (Marx and Wouters, 2014, p. 1-5; 10-19).

This way of establishing a regulatory regime also has its drawbacks. After numerous studies, it has been proven that the establishment of the VSS, in fact, leads to an improvement in the practices of companies and manufacturers, but in fact not to an excessive extent, and that numerous failures exist precisely because of the fact that although it is based on the external monitoring, such monitoring is challenging to perform in all steps of the GSC. The next issue is related to the accelerated proliferation of VSS, and such a large number of often overlapping certificates often results in confusing end consumers and companies themselves, which often need help to keep up and finance the acquisition of all certificates. Therefore, there is a need for more unification of the VSS companies themselves and all the principles they decide to implement and measure in their reporting mechanism (Fernandez de Cardoba and Marx, 2020). Thus, the United Nations Conference on Trade and Development decided to issue recommendations and frameworks for the VSS providers to improve their practice (UNCTAD, 2020). The last problem that should be highlighted is the lack of accountability of the VSS providing companies. Thus, many point to frequent cases of corruption or false reporting by the VSS companies themselves, which in some instances favour the MNCs themselves (Fernandez de Cardoba and Marx, 2020).

3.5. Civil society: the role of individuals and non-governmental organisations

Although this aspect can hardly be labelled as 'regulation' of MNCs, the important supervision over the implementation and compliance with international and national norms and laws, as well as warning against their violation and the commission of corporate crimes, also enables the constant push that comes precisely from civil society. As it has already been pointed out many times, MNCs themselves, for obvious reasons, are reluctant in many cases to share sensitive data that would indicate omissions or intentional violations of their internal policies and international regulations. As pointed out in the previous paragraph, we cannot completely trust external monitoring or certification companies precisely because, even in that case, there is a lack of sufficient level of accountability on the international level (Rodriguez and Wild, 2021).

Thus, numerous national and international civil society organisations and NGOs are responsible for collecting valuable data concerning corporate crimes and misconducts that are used by international governmental organisations in order to improve supervision and the current regulatory framework concerning MNCs. There are many instances of NGOs collaborating to expose HR violations and environmental damage caused by MNCs (Business & Human Rights Resource Center, n.d.; Council of Europe, n.d.). A perfect example is the already analysed case of the Uyghur minority in China, a case that involved several NGOs, academic research institutes, and prominent research magazines working together to gather information and prepare reports. They later also collectively filed lawsuits against companies that were found to have benefited from forced labour by the Uyghur minority in China, particularly in the raw materials processing sector connected to the textile industry. In 2020, due to the efforts of the association of NGOs known as 'End Uyghur Forced Labor', the world became aware of the atrocities committed against the Uyghur Minority by the Chinese government. Additionally, a list of companies that benefited from this exploitation of cheap labour was published. The reports and subsequent public outrage prompted many companies to sever ties with contractors connected to the Chinese government, and as a result, the characterisation of this practice as a form of genocide has been initiated at the international political level. This case also led to increased attention being paid to the textile sector and textile MNCs. It thus uncovered many more issues related to HR and the environment in the same sector (End Uyghur Forced Labour, n.d.; Business & Human Rights Research Center, 2023a; Business & Human Rights Research Center, 2023b). The power of civil society action should not be underestimated. In recent years, there has been an increase in public awareness about various issues, including corporate crimes committed by MNCs in their operations abroad. These companies often try to justify their actions by claiming indirect responsibility or citing the responsibility of their subcontractors or host country governments, but civil society no longer accepts such an attempt to clean up the reputation. There has been a significant increase in civil action, particularly in the field of environmental activism. Environmental NGOs often support individuals who seek accountability from MNCs for ecological degradation. They do this through public statements, frequently resulting in protests, as well as appeals to national governments for

stronger regulation (Business & Human Rights Resource Center, n.d.; Council of Europe, n.d.).

One of the best-known examples of activism is the protests against oil MNCs due to their negative impact on HR and the environment. These impacts range from greenhouse gas emissions to cases of environmental degradation caused by corporate misconduct and crimes, particularly in underdeveloped countries. A notable example of this is the protests and civil initiatives taken against Shell, which have led to positive actions by governmental bodies. In 2012, after the NGO Friends of the Earth Netherlands brought claims on behalf of four Nigerian farmers who suffered environmental damage due to pipe damage and oil spills in the Nigerian Gulf, The Hague Court implemented the extraterritorial principle and ruled in favour of the plaintiffs. The court ordered Shell to pay compensation to the local population for the damage caused (Sekularac and Deutsch, 2012). Another successful civil initiative occurred in 2020 when a new lawsuit was initiated in The Hague against Shell for excessively high levels of greenhouse gas emissions. After a long protest and ongoing appeals, it was ruled that Shell is obliged to reduce its emissions both in the Netherlands and globally. Interestingly, through this court decision, Shell's emissions are linked to the Netherlands' contributions to greenhouse gas emissions, thus confirming the home country's responsibility for the environmental degradation caused by MNCs that have headquarters in their territory (Meijer, 2020).

The real strength of the push of civil society, including groups of NGOs, prominent layers, and associations of academia, is a series of protests and advocacy in order to promote and solidify the attempt to use criminal law in fighting environmental pollution through the development of the legal notion of 'ecocide'. Although the term was used in the past decades, IC interest has increased again in recent years (Luz Puleo, 2021, p. 163–165). Namely, one of the understandings of the term is unlawful or wanton acts committed with the knowledge that there is a substantial likelihood of severe or widespread or long-term damage to the environment caused by those acts. This represents a desire to increase the implementation of IEL norms since critics believe the current regulatory framework is insufficient or too slow (STOP ECOCIDE International, n.d.).

Significant steps have been taken at the global level, and one of the more interesting ones is the decision of the International Criminal Court (ICC) to declare 'ecocide' as one of the crucial topics to consider. Thus, in 2016, the ICC published a policy paper in which the institution's commitment to consider the possible implementation and development of this legal norm through the Rome Statute[42] is emphasised (Luz Puleo, 2021, p. 163–165). Namely, the implementation of this term is already not strange to certain countries, which already mention it in their legislative frameworks, and, interestingly, one of them is also Russia (ECOCIDELAW, n.d.). Especially in the last few years, growing initiatives led by environmental NGOs have enabled additional progress in the Nordic countries, for example, in Norway, where the notion of 'ecocide' has finally been put on the political agenda and efforts are being made in the development of national legislation, which would follow this trend (Nordic Co-operation, n.d.).

Just as the ICC pointed out, civil society's voices are heard; however, there is still long progress in order to even strongly begin with respect for the codification of the notion of ecocide on the international level. Namely, this approach would open numerous problems since the current international law framework needs to be revised, and the main issue, as already pointed out in this research, is the question of the legal subjectivity of private actors on the international level. The second part of this work focuses precisely on the role of civil society in regulating MNCs and governments themselves in improving their regulations. The potential of this approach is significant, as it addresses a wide range of problems, including access to court for victims, lack of liability of MNCs, extraterritoriality, and access to global justice. NGOs play, as it is shown now, a decisive role in this process, from collecting data to raising awareness among the general public (Business & Human Rights Resource Center, n.d.; Council of Europe, n.d.).

Economists emphasise the importance of end consumers in making decisions when purchasing products and services. The theories of sustainable, green, circular, and degrowth economies highlight the dangers of industrial activities on HR and the environment and the role of educated and aware final consumers in promoting positive development. Public

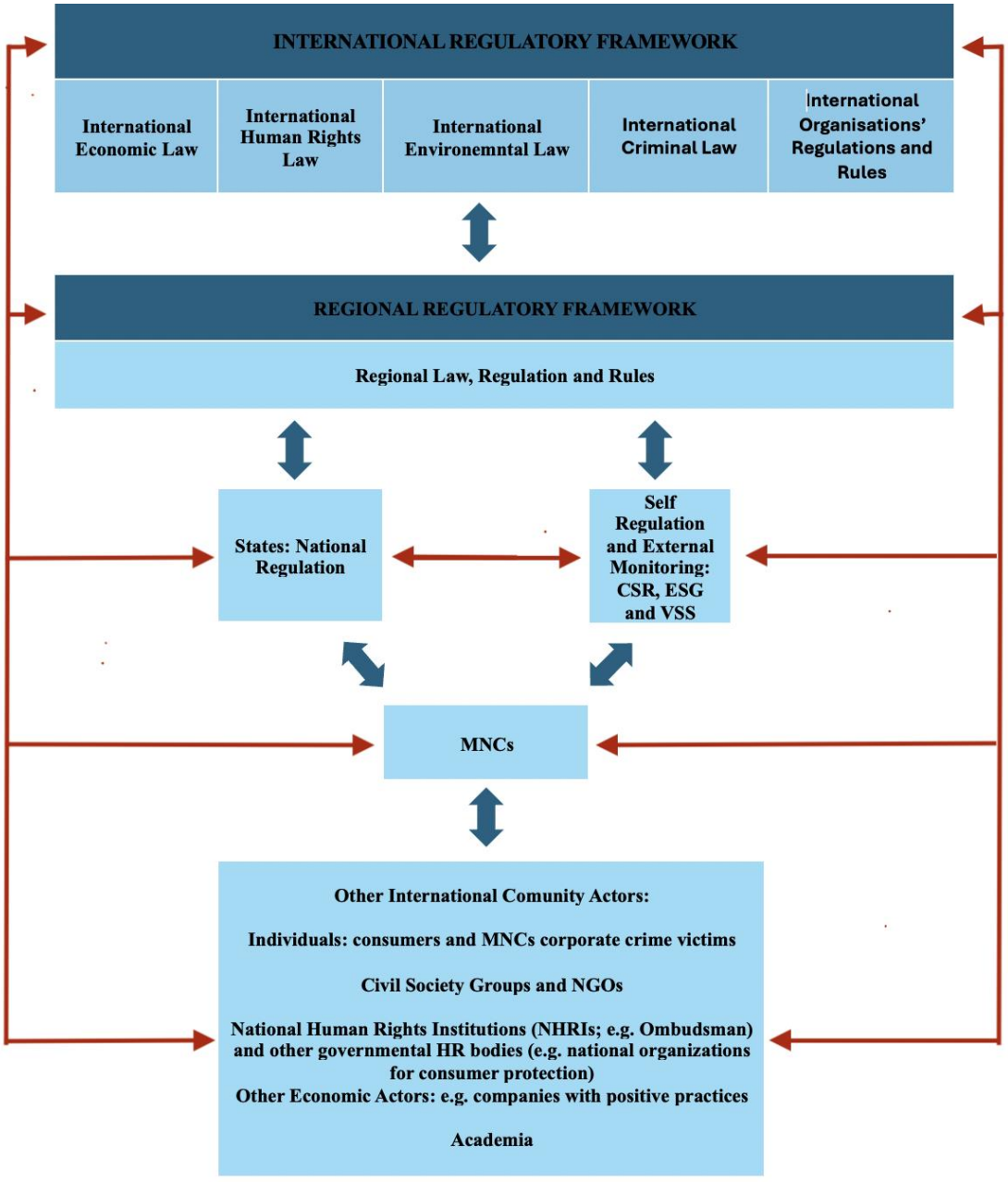
[42] United Nations. (1998, July 17). Rome Statute of the International Criminal Court, adopted on July 17, 1998 in Rome, Italy, entered into force on July 1, 2002.

research confirms that consumers consider numerous factors when purchasing, including the origin of goods and the implementation of due diligence in the global value chains of companies with a focus on HR and environmental protection (Bucur, 2023; European Environment Agency, 2023). Public campaigns are common, calling for boycotts of companies and brands with bad records of HR and environmental practices, especially in the moments when NGOs expose these practices and raise public awareness (Benzkofer and Hillar, 2018).

3.6. Structural overview of the analysed regulatory framework; representation of regulatory elements at different levels of multi-level governance concerning multinational companies and their relations with the other international community actors

The main goal of this subchapter is to concisely present, once again, the analysed relationship within the regulatory framework concerning the MNCs in IC on different levels of the multi-level governance system. Thus, the following model once again reaffirms the many times stated claim of the complexity of the regulatory system itself but also helps us understand how and why, in such a complex network of regulation, there are still omissions, overlapping and insufficient regulation, which in turn still leaves numerous areas uncovered and the same 'holes' in regulation create issues that enable the occurrence of corporate crimes. It should be noted that all recognised issues in the regulatory system will be listed once again in a structured way in the next chapter.

Figure 5. Model representing the position of the MNCs in the multi-level governance regulatory framework and with the other actors in the international community[43]



[43] Note of the author: This model was made using knowledge gathered in previous chapters of this research. Thus, all the information and conclusions in this model were made using information from the same sources used so far. The new source used will be highlighted if new information or claims appear. The main purpose of this model is thus not to replace existing IR Multi-Level Governance models but to summarise comprehensively

As discussed, the international regulatory framework is primarily based on several analysed, non-binding documents and regulations that place primary enforcement responsibility on the states. In this regard, this chapter also highlighted one of the main problems, which is that even though we are in the so-called 'new form of global governance,' states are still primary duty bearers, and the very subjectivity of MNCs and other non-state actors is still unclear and depends heavily on individual interpretations.

Besides the main analysed documents, some responsibilities imposed on MNCs, although non-binding and non-directly imposed, can be found in various branches of international law and different international documents from areas concerning international economics, HR or IEP. Precisely because of the analysed link between the influence of MNCs, sustainable development, HR and the environment, a part of the framework that refers directly or indirectly to MNCs is found in the IEL, IHRL, international criminal law and other regulations and international rules.

In an 'ideal situation', i.e. in the ideal implementation model presented above, the international regulatory framework is first institutionalised in regional international law instruments. Thus, regional laws, rules, and regulations are created to, to a greater extent, take into account the direct implementation of the same rules on the MNCs. However, even at this stage, the individual states remain the primary duty bearers for implementing regulations on economic actors.

Furthermore, the regional regulatory framework is reflected in the national legislation of member states, which in turn is legally binding for economic actors within national borders. In this step, it is emphasised that the primary responsibility of states is to implement an international and regional framework. This involves following international guidelines and regulations while drafting legislation and supervising the work of MNCs. Additionally, if a case of corporate misbehaviour occurs, states should intervene to protect their citizens. Furthermore, the regional regulatory framework, as we have seen, is outlined in numerous regulatory frameworks offered by different private monitoring and certification companies. As we have shown, this type of regulation can also be understood as a type of self-regulation

and present the findings of this research paper concerning the MNCs' relation with other actors of IC and the existing regulatory framework.

precisely because MNCs themselves agree and invest additional finances to establish this type of regulation. However, in the end, they also receive returns if they harmonise their practices and products with such certifications.

The above-described ideal situation isn't always followed and respected, as was shown by the cases presenting the lack of state regulation, failure to protect citizens and numerous corporate crimes. Just as the figure shows, the type of regulation that comes from other directions is thus of essential importance. Just one of them is the pressure coming from civil society; civil society groups, individuals, academia, but also other non-state actors exert 'pressure' on the MNCs to improve their operations.

In the above figure, the blue arrows show the 'ideal way' of implementing international norms and rules and MNCs' regulations. However, as has been proven through the analysis, there is often no ideal situation in everyday activities. Thus, using red arrows, this figure shows the primary complexity of the relationship between different actors and the secondary pathways of implementing international rules and MNCs' regulation. We will not highlight every possible relationship, but this figure, for example, nicely shows how the regulatory framework implementation pathway can vary depending on the level of readiness and strength of individual actors. For example, we have the uneven development of the regional organisations. Because of this, the international framework can bypass the regional IGOs themselves and be automatically implemented by the elders of individual countries. However, in many cases, as this analysis has shown, numerous individual states differ from individual MNCs' power. Thus, the International regulatory framework can be imposed on the MNCs by the private regulatory and monitoring companies or by civil society itself, which in situations of the powerlessness of national states serves as the backbone of protection of citizens, even in other countries then, e.g. individual NGOs are situated, from the very corporate misbehaviours.

Out of all the other issues resulting from such a complex relationship between different actors and levels in the multi-level government regarding the regulation of MNCs, it is essential to point out the most important ones we could see. Several international governmental organisations have created different legally non-binding frameworks, or those with a low level of responsibility primarily targeting states. Moreover, what happens is precisely that

the different regulatory frameworks actually do not differ too much from each other in their substance, so a severe overlapping problem is created, and one gets the impression that the states within the IGOs are constantly revolving around similar issues, while the need for a legally binding instrument that would focus specifically on MNCs is constantly bypassed or cannot be implemented due to dealing with less critical issues.

4. Identified issues and chosen solution for the further of this research; persistent gaps in the analysed framework that allow for the multinational companies to continue to pass 'under the radar' and possible solution on how to tackle them

In this part of the research, all of the most crucial findings of the previous chapters will be summarised and concisely presented in order to identify the main issues and possible solutions. Thus, to facilitate a clear transition to the second part of the research, all issues analysed will be listed in the form of a table while also making connections to the previously presented Figure 5. In the following sub-chapter, the most crucial issues that stand out among the debates of the leading experts in the field will also be pointed out. The most crucial identified issue will also serve as an introduction to the possible solution analysed in part C of this research.

Figure 6. Table summarising the shortcomings in the international regulatory framework of MNCs and enabling factors of MNCs corporate crimes recognised in the previous research analysis[44]

Current shortcomings in the international regulatory framework of MNCs and enabling factors of MNCs' corporate crimes	
Lack of legally binding regulatory framework	Upon analysing the primary international documents related to the regulation of MNCs, including ILO Tripartite Declaration, OECD Guidelines for Multinational Enterprises and the UN Global Compact, it can be concluded that most of the established international norms and regulations concerning MNCs' possible misbehaviours are based on non-legally binding norms and optional obligations. These norms consider the states, rather than the MNCs, as the primary duty bearers of their implementation. Although there are minor 'obligations' directly addressed to MNCs, such as the obligation to report to the National Contact Points under the UN Global Compact, such an obligation does not fully make MNCs accountable. Attempts have been made several times to pass a legally binding declaration addressed to MNCs, but they have failed. However, lately, the interest of the IC in this issue has increased due to numerous examples of MNCs' environmental and HR degradation. As a result, significant positive progress has been observed recently, which is evident through the extensive development of due diligence legislation on the EU level.

[44] Note of the author: This table was made using knowledge gathered in previous chapters of this research. Thus, all the information and conclusions in this model were made using information from the same sources used so far. The new source used will be highlighted if new information or claims appear. The main purpose of this table is thus to summarise previous findings and make the previous analysis more systematic and coherent, and not add new information.

The IC operates on realist premises with states being primary subjects, which in turn causes the unclear subjectivity of MNCs on the international level	Although there are different views, previously analysed principle documents regarding the regulation of MNCs confirm that the IC is still based on realistic premises where the states are considered the main subject. States are reluctant to give up such a position precisely so as not to question their sovereignty. However, as the numbers show, the economic power of large MNCs, which also comes with real power, surpasses the vast majority of countries. Also, according to all the evidence, MNCs can be characterised as one of the biggest, if not the biggest, environmental and HR abusers. Therefore, the real situation does not match the current approach in IC. A high level of adherence to international norms is required from the MNCs, i.e. to abide by international legal obligations, without putting MNCs on the forefront compared to the states. States should be the ones that would supervise the implementation of international norms and regulate the MNCs themselves.
Lack of legal liability and accountability of MNCs at the international level	The lack of a legally binding international framework poses a challenge in terms of holding MNCs accountable and liable for their actions. The aforementioned issue of unclear international subjectivity also means that bringing MNCs before an international court is impossible. For example, the ICJ cannot hold MNCs accountable. Similarly, individuals cannot bring cases against private companies in front of the ECtHR (European Court of Human Rights, n.d.). However, new initiatives in the IC may help to address this issue. These include the development of a legally binding declaration concerning MNCs, the codification of the notion of ecocide on the international level, and the strengthening of the legal liability of MNCs through international corporate law in the area of international finances. The legal liability of private economic actors must be enforced on the national level. However, here we encounter a new problem concerning countries' lack of national legislative systems on a global level, especially while comparing developed and less developed ones. Thus, the

	problem of the imbalance of domestic legislation opens numerous additional problems, such as MNCs choosing developing countries, not only because of cheap labour but also because of the easier possibility of going unpunished if the company or its subcontractors are involved in HR and environment-related crimes.
Lack of the global international HR court	As just reaffirmed, it is currently impossible to hold MNCs accountable before an international court. Regional courts of HR also face complex situations, as exemplified by the ECtHR. The lack of a global HR court has been a topic of discussion in the International Court of Justice debates. This is due to the issue of expanding entities that can be held responsible for HR violations. The aim is to overcome the current obstacles in the operation of the International Court of Justice (ICJ) and broaden its jurisdiction.
Issue of overlapping concerning the current regulatory documents and organisations dealing with the analysed area both on international and regional levels	When examining international documents related to the regulation of MNCs, such as the ILO Tripartite Declaration, OECD Guidelines for Multinational Enterprises, and the UN Global Compact, it becomes evident that many of the norms overlap with each other. This is particularly noticeable when analysing the position of MNCs in the IEPL, especially regarding the self-regulation approach. Different types of regulation, i.e. established business rules, not only overlap within the exact constituents of the international regulatory framework but also when comparing two or more different groups in the regulatory framework, for example, individual rules that refer to MNCs within IEPL and IHRL. Furthermore, the overlapping issue also arises between different international, regional, and national organisations and institutions that deal with this area, such as the World Trade Organization (WTO), UN, or OECD. All this creates confusion on many levels. It makes it challenging for states to implement the rules in national legislation, for individuals

	to understand the level of their personal protection, and for MNCs themselves, who may want to follow the established norms, but due to the issue of overlapping, the implementation process becomes too complex and expensive. One of the most significant problems that hinder the development of the current regulatory framework and prevent its progress is the fact that international intergovernmental organisations consider their knowledge, especially in this area, as a 'goods' to trade with and to gain international advantage. Thus, cooperation between different international organisations is often avoided, resulting in the issue of overlapping.
Lack of state's incentive to improve international and national regulatory framework	As pointed out, attempts to create a legally binding declaration regarding the impact of MNCs on HR and the environment have failed at the international level multiple times. While there are several reasons for this, the primary issue is the lack of incentive and ability from states to regulate MNCs at a higher level. Through analysis, it has become clear that the economic power of MNCs gives them significant influence over governments, often resulting in lobbying tactics being used to maintain the '*status quo*'. Additionally, many countries themselves choose to maintain the privileged position of MNCs, whether they are home or host states, due to the positive economic impact they bring. This creates a dependence on MNCs, and thus, states want to keep them on their territory at any cost. It is important to note that the status of MNCs is complex, as some are separate from their home countries while others can be seen as extensions of them or their national economies. Therefore, when discussing MNCs, it is necessary to consider the individual interests of the state, as they are often inseparable from those of the MNC.

Lack of state's protection of their citizens	The lack of states' incentives to improve their national and international regulatory frameworks often also means prioritising economic benefits over sustainable practices. When states fail to adequately regulate actors proven to be major polluters of the environment and violators of HR, they neglect to provide sufficient protection to their citizens. States often misuse the very fundamental principles of the IEP regime to justify their insufficient action or to defend themselves against accusations of inadequate protection of citizens. However, these principles can clash with each other. For example, the sovereignty and responsibility of states can conflict with the precautionary principle. In such cases, states may claim that the precautionary principle was respected and that any potential adverse effects of a project, such as the entry of MNCs into the territory, were outweighed by the economic benefits for citizens. This argument is often supported also by the sustainability approach to policy development, i.e. waging between benefits and adverse effects of individual projects. Additionally, invoking the sovereignty principle can be seen as a last resort for states, as it conflicts with the need to protect the environment and HR.
Lack of state understanding of the transboundary and international nature of HR abuses and environmental degradation.	Despite the numerous scientific evidence, states seem to misunderstand the universal principles of HR protection and the cross-border nature of environmental protection. The lack of understanding results in states failing to protect their citizens adequately. It is essential for states to realise that they must protect all individuals internationally if they want to protect their national citizens legitimately. The negative activities of multinational corporations abroad can lead to environmental and HR violations even in their own territories, albeit indirectly. IHRL is based on the principles upon which states must be aware that all people deserve the same level of HR protection. Thus, even if, for example, some of the less developed countries fail to protect their citizens, the one with the means and good practice should intervene and

	support the victims of corporate crimes, especially if such crimes are conducted by the MNCs that have their headquarters, or perform business in or with the said country.
Uneven implementation practice of extraterritorial judicial principle by the individual states	It has been pointed out that even when states understand their obligation to protect HR and the environment internationally and have sufficient national legislation, they still encounter additional problems. One of the biggest challenges is the implementation of the extraterritorial principle. It is difficult to hold MNCs accountable for crimes committed in other countries based on their actions in the GVC, even by their home countries. This is so because it is challenging to bring them in front of national courts. The fact that all states do not implement the principle of extraterritoriality in the same way, and many use it hypocritically, exacerbates this issue. While some countries may implement the principle of extraterritoriality when dealing with certain companies, they may not recognise it as legitimate when it comes to companies headquartered in their own countries or that are considered vital for their national economy. As a result, the benefit of extraterritoriality, which should be the protection of individuals living in a country where the protection is often not provided, is not applied. The whole debate then becomes reduced to mere economic and political competition between countries.
MNCs are not dedicated to HR and environmental protection	Although this research acknowledges that not all MNCs should be generalised as bad actors, there are still numerous cases where many of them have been found guilty of wrongdoing. NGOs and other civil society groups regularly report detailed evidence of misconduct committed directly or indirectly by MNCs.

	MNCs often argue that the complexity of supervising their entire operation within their GVC makes it difficult to take responsibility for such corporate misconduct and crimes. However, international norms and rules provide clear instructions on how to conduct responsible business, supervise operations within the GVC, and highlight the responsibility of MNCs and their subcontractors. Despite this, many MNCs continue to circumvent ethical business rules and norms, proving that they are primarily economic actors seeking to increase their profits, regardless of the negative impacts of their business. Even if the current rules and norms are not legally binding, MNCs have a responsibility to follow them and uphold the principles of responsible business.
MNCs' lack of due diligence and precautionary principles implementation in the GVC	Continuing on the previous statement, the meaning of the due diligence approach must be reaffirmed. The due diligence approach implies the precautionary principle itself, i.e., carefully weighing all possible positive and negative outcomes before conducting an action. For example, in the financial sector, this would mean preparing detailed studies on the impact of individual projects on, for example, the local population and the environment before financing the same. The same applies to MNCs that must assess in detail the possible effects, for example, on HR or the environment in their entire GVC (Chen, 2024). However, as we have shown, many MNCs do not consider this and often use the subcontractors themselves to transfer their responsibility for possible misbehaviours to them and clean up their reputation. Precisely, the lack of the application of the due diligence approach in the whole of GVC causes corporate crimes regarding HR and the environment, and precisely because of that, IC started to move forward to create legally binding legislation regarding this issue. The best example might be the analysed Due Diligence Directive at the EU level.

MNCs' lack of monitoring and self-reporting procedures and structures	Lack of monitoring and self-reporting can be connected with the lack of due diligence and precautionary approach of MNCs to their business activities. Misunderstandings about the responsibility for each stage of production or deliberate lack of attention are also reflected in the need for more data gathering concerning the manufacturers and subcontractors. MNCs often argue that the monitoring process itself is expensive, even when it is performed through external monitoring conducted by third parties. However, monitoring and self-reporting are the best ways to spot problematic business practices that can lead to HR violations or environmental degradation. Early problem detection can help improve business policies and see if there is a need to change practices or end manufacturers. Access to different VSS certification schemes is a form of external monitoring that helps companies more easily monitor all individual phases of GVC.
Lack of the bottom-up approach to raise awareness about MNCs' corporate crimes	The bottom-up approach involves efforts that start from lower levels and move up to higher levels of multi-level governance. In the context of this research work, two such relations have been identified. Firstly, there is a lack of initiative from MNCs, as there are very few positive examples where MNCs actively recognize the importance of the Due Diligence approach, self-report their practices, and take corrective action when they discover possible omissions. Individual companies should not fear ruining their reputation if they admit their mistakes, as long as they show willingness to correct them. Only with the full participation of MNCs can the improvement of the business practices be expected. Even international organisations that work to solve the problem cannot make a significant impact if they don't get support and insight from the MNCs themselves. The second relation is the bottom-up approach that comes from civil society groups and individuals. As pointed out, in most cases, NGOs are responsible for exposing and

	reporting companies' wrongdoings. However, they face numerous obstacles in their work, not only from the MNCs themselves but also from the states that may not want to identify the corporate criminals publicly. The lack of state support and education about these issues, especially in developing countries, means a weak civil society that is not able to react promptly against strong economic actors like MNCs.
Not all individuals understand the link between corporate crimes and breaches of their HR, more specifically EHR	Despite the abundance of evidence linking economic activities to HR abuses and environmental degradation, there are still many individuals who deny or are unaware of these issues. This problem is prevalent all over the world, including among decision-makers, but is most prominent among ordinary individuals in civil society, particularly in developing countries where better education on these issues is critical. This is paradoxical because these communities are often the most affected by these issues. This problem is further compounded by the inability to take action against perpetrators of crimes, as well as claims regarding individuals' right to be protected by the state. Many companies' crimes go unnoticed because they are not recognized as crimes, or even when they are exposed, the wider public does not understand that certain companies are violating HR and continue to support them. This is especially true if the crimes do not directly affect them but are happening in another part of the world, and individuals are not aware of the global impact of environmental degradation and HR violations.
Lack of people's understanding of EHR in general and their rights in connection with EHR	It is not just in developing countries, but many people all around the world are still not familiar with the concept of EHR and their rights and that precisely MNCs are among the main violators of their EHR. Part C of this research will discuss this issue in more detail while exploring the potential of using environmental democracy as an

	international tool to increase the accountability and liability of MNCs. It is essential to understand that ignorance of EHR can lead to a reactive response from both individuals and states and thus also prevent improvements in the international regulatory system of MNCs.

4.1. Focus of further research; identified implementation gap and chosen possible solution

To introduce the next part of this paper, the main conclusions that will be the focus of further research must be reaffirmed. As Figure 5 has presented, MNCs operate in a complex environment, forming relations with other actors in the IC on the different levels of multi-level governance. Such a complexity of relations and regulatory correlations, combined with all of the shortcomings in the current regulatory framework presented in Figure 6, forms a 'fruitful' environment for MNCs to escape or simply not be held responsible for their negative influences on the HR and environment.

For a complete solution to the problem of constant MNC misbehaviours, it is necessary to solve all the problems presented in Figure 6. Although there are many possible solutions, i.e. steps that can be taken in order to solve all of the issues, this research will continue its focus on one of the possible directions in order to achieve the solution. The next chapters will thus focus precisely on, as recognised in the previous analysis and as pointed out by most scholars, the crucial relations and issue of the current regulatory regime: lack and insufficient incentive of the nation-states to regulate the MNCs and thus secure the proper level of corporate liability and accountability for their crimes and failure to protect their citizens.

This assumption is supported by previously made conclusions proving that the states have the primary responsibility and duty under international law to implement the international regulations and norms in individual or regional fora. This is additionally confirmed by the discussed home and host country responsibilities not only to regulate MNCs but also to hold

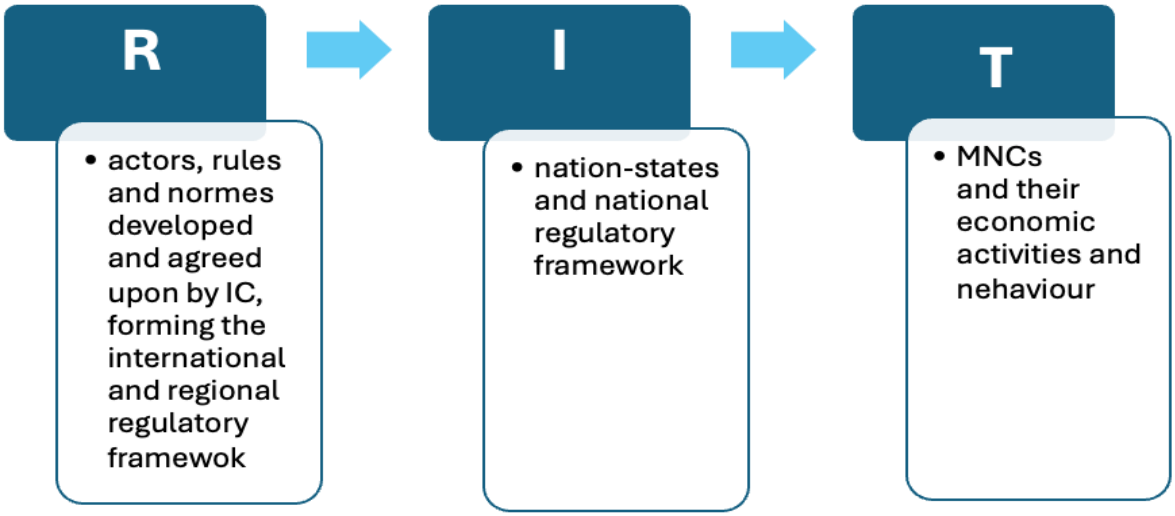
them accountable for their crimes and thus actually create double protection of the citizens, i.e. individuals who are victims and whose HR are violated.

The identified enforcement gap can be best understood while applied to the theoretical framework. In their article *Theorizing Regulatory Intermediaries: The RIT Model,* published in 2017, professors Kenneth W. Abbott, David Levi-Faur, and Duncan Snidal developed the R-I-T model concerning the varieties of regulatory captures that may appear where intermediaries are involved. R-I-T model, standing for Rule-maker, Intermediary, Rule-taker, or shorter regulator-intermediary-target model is actually the extension of the classical understanding of rule make and rule-taker model (R-T) taking into account the complexity of modern multi-level governance where both rule-makers and rule-takers often require various forms of external assistance and resources to accomplish their goals and thus the role of Intermediate cannot be overlooked. Although the authors in their article primarily used this text to explain the relationship between the governmental regulatory bodies and end actors being regulated and also the previously analysed VSS scheme models, they themselves point out that there are no rules about which actors and which connections between actors can be applied to this model. Thus, the authors themselves list the entire array of actors that can be seen as the intermediates and how there can be many actors in the intermediate stage that pass norms one to each other before the norm is finally passed on to the end rule taker (Abbott, Levi-Faur and Snidal, 2017);

> 'Regulatory intermediaries can be private sector actors, such as for-profit certification companies, accounting firms, or credit rating agencies; civil society groups, such as NGOs; or governmental bodies, such as transgovernmental agency networks or international organizations. Even states can be intermediaries, for example, by promoting the compliance of other states with a mandate from the UN Security Council. In principle, any actor—public or private, domestic or international—can act as a regulatory intermediary. Intermediation can be formal and an actor's singular function, but it can also be informal and one of many roles an actor plays' (Abbott, Levi-Faur and Snidal, 2017, p. 15).

Accordingly, in order to confirm the current conclusion of this research and taking into account Figure 5., representing the complexity of the regulatory system concerning MNCs, the R-I-T model can be applied in the following example.

Figure 7. Application of the R-I-T regulatory model to the identified gap in the regulatory system concerning MNCs



In this research, the role of the rule-maker (R) is prescribed to the actors on the international level, i.e. organisations which developed the analysed regulatory documents and dealt with the aspect of MNCs regulation as a topic of their concern and mandate. On the other hand, the intermediate role belongs to the individual states that, through their membership in the international organisations, bear the primary duty, i.e. responsibility to implement the, although often non-legally binding norms, in their domestic legislation. Moreover, as concluded, besides their membership, related to the analysed documents concerning MNC regulation, nation-states bear the responsibility of protecting their own citizens as well as those of other states against possible MNCs crimes. As the last regulatory link, the rule-taker (T) role belongs to the MNCs themselves, which, as presented, do not bear the status of primary duty bearers in the IHRL and IEL regimes. Still, some of the norms refer indirectly to them and, in some cases directly, although on a non-legally binding basis. Therefore, according to the very rule of international and national law, they bear a legally binding responsibility to respect and implement rules, norms and laws imposed on them by national regulatory systems.

However, it can be said that this model of regulatory implementation in the case of this research represents once again an 'ideal model', and through extensive research, it has been shown that in practice, such a relationship is often lacking, which is what enables continuous MNCs crimes all around the world, both in home and host countries. Therefore, both relations can be issues and shortcomings in the R-I-T model (Abbott, Levi-Faur and Snidal, 2017, p. 22-24). In the R-I relationship, states often do not completely implement the international framework in their national legislation. This happens due to a variety of reasons that have already been revealed in this research, varying from reasons that concern the non-membership of states in certain international organisations, the confusion of states caused by overlapping international norms, or taking into account regional organisations, uneven implementation of international frameworks at that level.

Issues can also appear in the second relationship, i.e. between I-T, i.e. the stage of imposing national laws on MNCs and their regulation. And here, there are different reasons for this problem, which have already been revealed in this research. Only some of the reasons are that individual countries implement the international framework without the real intention of practising national laws. This is, as has already been proven, because states deliberately give in to MNCs primarily because of economic benefits, or they are simply unable to because of insufficient knowledge concerning such issues or inadequate state administration and many others.

In the next part of this research, the focus will be on the potential, i.e. the unused power that comes from the civil society itself. As presented in Figure 5, such an approach can also be understood as the bottom-up regulation of the MNCs. Moreover, Part C focuses on exactly one particular notion, which is still somehow in development, and that is Environmental Democracy. Thus, the next part of the research will offer the analysis of environmental democracy, its understanding and level of codification at the international, regional and state levels, but also answer whether we can look at the same as a regulatory instrument that comes from society itself and whether the implementation of environmental democracy can raise the level of liability and accountability of MNCs for their HR and environmental crimes?

Part C: Environmental democracy as an overlooked international instrument in achieving a higher level of multinational companies' liability for human rights violations and environmental degradation

Environmental democracy has become an increasingly important topic for both government and non-government organisations. It is often linked with other concepts such as climate justice, climate litigation, and EHR. However, after the initial research, it can be concluded that there is still no clear definition of environmental democracy, and there is a thin line of distinction between these various terms. This part of the research aims to define environmental democracy and understand how different actors perceive it. Once we have a clear understanding of its development, further research will explore whether environmental democracy can be used as an international instrument at all. The research will also focus on the previously identified gap in states' implementation of international rules, which results in a lack of regulation of MNCs and, thus, insufficient protection of the civilian population. By delving into the research and analysis of many primary and secondary sources this part of the research will investigate if environmental democracy can be utilised to address this issue. Therefore, this part of the paper answers the question of whether we can consider environmental democracy as a strong but also overlooked international instrument that can be used to put pressure on the states themselves and thereby increase the level of MNCs' liability and accountability for their environmental and HR abuses.

1. Defining environmental democracy

After studying various sources, it is essential to note that there is no single, uniform definition of environmental democracy that has been codified at the international level. Many governmental and non-governmental organisations around the world address this topic. As a result, their definitions may differ slightly from each other, but they all share the same fundamental components. Similarly, several international and regional binding and non-

binding documents deal with environmental democracy either entirely or partially, directly or indirectly, and thus, their components may differ slightly when compared.

There have been several attempts to define environmental democracy, and many authors, such as Giulia Parola, have started from the theoretical and normative framework of the concepts of democracy and environment. After analysing their studies, it can be concluded that environmental democracy is the domain of participatory democracy that deals with issues related to the environment, including its protection and the enjoyment of EHR. It also includes both positive and negative obligations of states related to these areas. Environmental democracy can also be considered as part of the anthropocentric approach to international environmental protection, previously discussed in this essay (Parola, 2013).

Authors differentiate between the notions of environmental, ecological and green democracy, but it must be understood that the core of the reconciliation of all of these terms is a normative ideal. So, even though there are normative differences, all of these notions seek to reconcile the need to ensure environmental sustainability while at the same time safeguarding democracy (Pickering, Bäckstrand and Schlosberg, 2020). The Center for International Environmental Law (CIEL) further points out how Environmental democracy is based on the idea that land and natural resource decisions equitably address citizens' interests. Rather than setting a standard for what determines a good outcome, environmental democracy sets a standard for how decisions should be made (CIEL, n.d.).

Furthermore, various sources indicate that environmental democracy comprises three pillars: transparency, participation and justice. This could already be observed when the EHR themselves, the basic points of IEP and states' responsibilities in the IEL area were analysed at the beginning of this essay. The Westminster Foundation for Democracy (WFD) summarised the explanation of these three pillars. Transparency refers to the openness and transparency that are required to help citizens, media, civil society organisations, businesses, and the international community understand what is happening in relation to the environment and how their governments are responding. The second pillar, participation, means that the public, particularly those most affected by climate change and environmental degradation, must be able to voice their concerns and influence policymaking for the right decision to be made and for these choices to have legitimacy. The last pillar, justice, includes the need for

the highest possible level of enforcement of environmental legislation and threats so that EHR are protected everywhere internationally. Moreover, it means that there must be effective mechanisms for challenging the actions or inactions of governments to act as environmental stewards for current and future generations (WFD, n.d.; WFD, 2020).

Figure 8. Environmental democracy and its 3 constitutive pillars

Environmental Democracy		
Transparency; access to information	**Participation;** public participation in the decision making process	**Justice;** access to justice and remedy

(Source: WFD, n.d.; UN Environmental Programme, n.d. b)

Confusion arises when one tries to answer whether environmental democracy itself is a separate international instrument or just one of the aspects of other umbrella notions such as EHR or climate justice. If we look again at the EHR that were analysed in the first part of this research, environmental democracy, as many scholars point out, but also according to the position taken by many international organisations, falls under only one aspect of EHR (WFD, n.d.; WFD, 2020; UN Environmental Programme, n.d. b). Suppose we follow the previously analysed normative framework by UNEP. In that case, three pillars of environmental democracy can be classified as procedural rights, which are one of 2 components or pillars of the EHR themselves, alongside substantive rights. Three main pillars of environmental democracy thus fully match the three main groups of fundamental access rights under the procedural EHR: access to information, public participation and access to justice (UN Environmental Programme, n.d. b).

Figure 9. Environmental Human Rights and its 2 constitutive components

Environmental Human Rights	
Substantive Rights	**Procedural Rights**
Those rights in which the environment has a direct effect on the existence of the enjoyment of the right itself. Substantive rights are composed of various rights belonging to civil and political, economic and social, cultural and social rights.	**Those rights that prescribe formal steps to be taken in enforcing legal rights. Procedural rights include 3 fundamental access rights: access to information, public participation and access to justice.**
Non-discrimination Health Life Women's rights Children's rights Sovereignty over natural resources Water Sanitation Enjoyment of the benefits of scientific progress and its applications Self-determination Indigenous rights Housing Dignity Food Etc.	Access to information Public participation Access to justice Free, prior & informed consent Mandatory environmental impact assessments Effective legal remedies Freedom of peaceful assembly Free expression Freedom of association Etc.

(Source: UN Environmental Programme, n.d. b).

As proof of the claim regarding how the whole topic of environmental democracy is relatively new, is the open call for inputs announced by the Special Rapporteur on human rights and the environment on October 2nd 2023. Research contributions should be then used in order to prepare a first report on the topic of environmental democracy. Special Rapporteur in the open call equates environmental democracy with procedural elements of the HR to a clean, healthy and sustainable environment (United Nations Office of the High Commissioner for Human Rights, n.d. c).

Environmental justice is a concept that aims to address the unequal distribution of environmental burdens and benefits across different communities. It recognises that marginalised communities, such as low-income groups and people of colour, are more likely to be exposed to environmental hazards and pollution than other communities. Environmental justice thus seeks to incorporate social justice principles such as fairness, equity, and inclusivity into the realm of sustainable development. On the other hand, climate justice is a framework that emphasises the need for urgent action on climate change. It recognises that the impacts of climate change are disproportionately borne by the most vulnerable communities, such as those living in poverty, indigenous peoples, and small island states. Climate justice thus advocates for community-led solutions that prioritise the needs and voices of these groups and that ensure that they are not left behind in the transition to a low-carbon economy (College of the Environment. University of Washington, n.d.). Thus, the 3 pillars of environmental democracy are actually an integral part of both environmental and climate justice, but confusion arises when these concepts are equated by certain organisations.

Furthermore, many organisations and civil society groups are focused on climate litigation, which refers to legal cases related to violations of environmental and other groups of HR. These cases can be brought by different parties against third parties and can be conducted on different levels of multi-level governance. However, the use of this term can also sometimes create confusion when studying the development of environmental justice (Yale Sustainability, 2023; UNEP, 2021). Thus, a differentiation was made between these two terms, but after research, it can be concluded that climate litigation is actually only one of the

three pillars of the same environmental democracy, i.e. access to justice, access to the courts and the right to receive remedies and punish the culprits themselves.

It is interesting to note that different organisations that work in the area of environmental democracy prioritise and highlight specific aspects of the same, such as only access to justice, the right to access information, or the right to participate in government decisions that impact the environment and EHR. As a result, certain organisations emphasise the importance of certain aspects over others in their work. For instance, Client Earth organisation points out that access to environmental information is crucial, as it enables civil society to understand what is happening in relation to EHR and hold other actors accountable. Therefore, environmental information is seen as a prerequisite for other aspects of environmental democracy (Client Earth, n.d.). However, regardless of that, all aspects of environmental democracy are interconnected and equally important in achieving the highest possible level of environmental and EHR protection.

When trying to answer our main research question, some of the other advantages highlighted by these organisations will be listed depending on the particular aspect they focus on in their work. This will be particularly visible in the detailed analysis and representative examples of each individual aspect of environmental democracy.

2. Development of environmental democracy at the international level

It is difficult to answer the question of the level of codification of the notion of environmental democracy at the international level. However, a parallel can be drawn here with EHR as a whole. As was shown in the previous parts of the research, the lack of codification itself does not imply the absence of understanding and practising certain international practices or instruments. Just as many international organisations and academia point out, environmental democracy appears in numerous reports of small IGOs and their agencies, but also in the practice of the states themselves, which in itself implies the codification of it through practice (Parola, 2013, p. 37-45).

Since the 1970s, somehow parallel with the sustainable approach, development of EHR and the rise of green politics, the notion of environmental democracy has risen to prominence,

advocating for the active engagement of the public in governmental decisions concerning the environment. Legal frameworks have identified three pivotal procedural rights essential for the effective implementation of environmental democracy: access to information, facilitating transparency; public participation, enabling citizens to contribute to decision-making processes; and access to justice in environmental matters, ensuring accountability and recourse. Central to the concept of environmental democracy is the principle that informed and empowered citizens play a crucial role in shaping environmental policies and governance structures (Parola, 2013, p. 37-45; Peeters, 2020, p. 14).

Numerous scholars highlight that while the concept of environmental participation has been present for quite some time, the emergence of environmental democracy can be primarily attributed to Principle 10 of the 1992 Rio Declaration on Environment and Development (Peeters, 2020, p. 18), that states:

> 'Environmental issues are best handled with the 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. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided (UN Environmental Programme, n.d. d.).'

Thus, although it does not directly mention the notion of environmental democracy directly in those words, Principle 10 aims to guarantee universal access to information, enable participation in decision-making processes, and provide access to justice in environmental affairs. Its overarching goal is to uphold the right to a healthy and sustainable environment for both current and future generations (UN ECLAC, 2015).

2.1. Aarhus Convention

Principle 10, although formally not legally binding, has further articulations in international, regional, and domestic legal frameworks. Thus, we can say that today, we already have the codification of environmental democracy itself in international law despite the earlier

highlighted criticisms about the lack of such codification. In this light, the Aarhus Convention turns out to be the only international document concerning environmental democracy. The analysis of the Aarhus Convention itself will help in the additional understanding of environmental democracy, states responsibilities coming with ratification, but also the way in which it can be used as an instrument of the old civil society. For the purposes of this research, it was actually difficult to judge whether the Aarhus Convention should be qualified as an international or regional convention precisely because of the countries that ratified it. However, the official classification by the UN will be followed. Just as the former UN Secretary General pointed out, the Aarhus Convention, although regional in scope, has global significance and is open for global accession (UN Economic Commission for Europe, 2000, foreword).

The Aarhus Convention, officially known as the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, was developed in the late 1990s as a response to the growing demand for greater environmental transparency and public involvement. It was adopted on June 25, 1998, in the Danish city of Aarhus. The Convention entered into force on October 30, 2001. Developed under the auspices of the UNECE and based on the last information from 3 July 2023, there are 47 Parties to the Convention, 38 Parties to the Protocol on Pollutant Release and Transfer Registers (PRTRs) and 32 Parties to the amendment on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms (GMOs) (United Nations Treaty Collection, n.d. a.).

Based on the information provided by the United Nations Treaty Collection internet page, the Aarhus Convention has been signed and ratified by several countries and the European Union. States parties are Albania, Armenia, Austria, Belarus (Belarus withdrew in 2022), Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kazakhstan, Latvia, Lithuania, Luxembourg, Malt, Netherlands, Norway, Poland, Portugal, Moldova, Romania, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom. More countries have ratified the Convention without previously signing it, including Azerbaijan, Bosnia and Herzegovina,

Estonia, Guinea-Bissau, Kyrgyzstan, Montenegro, North Macedonia, Serbia, Slovakia, Tajikistan and Turkmenistan. At the same time, there are also countries that have signed the Convention but have still not ratified it, such as Liechtenstein and Monaco (United Nations Treaty Collection, n.d. a.).

To show how environmental democracy is indeed a crucial instrument, demonstrates the fact that there are also many reservations and declarations regarding the content of the Convention made by state parties. Austria reaffirmed acceptance of compulsory dispute settlement means, while Denmark declared its self-governing territories may not fully align with the Convention. The European Union expresses satisfaction and commits to applying it within its existing legal framework. Finland clarifies the applicability of Article 9(2), while France pledges to disseminate environmental information while protecting industrial secrets. Germany raises questions about practical implementation. The Netherlands accepts compulsory dispute settlement means. Norway commits to submitting disputes to the ICJ. Sweden lodges reservations on access to review procedures. Switzerland reserves implementation in nuclear energy and radiation protection. The United Kingdom interprets references to the 'right' to a suitable environment as an aspiration rather than a legal right (United Nations Treaty Collection, n.d. a.).

The Aarhus Convention is an innovative approach to protecting the environment and human HR. Although it is once again based on an anthropocentric view it is indeed a huge step forward in the environmental protection area. The negotiation process itself was a testament to participatory democracy, reflecting a shift towards inclusive decision-making mechanisms. The Convention draws from international legal instruments such as the Stockholm Declaration and the World Charter for Nature and builds upon foundational principles of environmental and HR law (UN Economic Commission for Europe, 2000, p. 1-5).

The Convention has three core pillars, the same ones pointed out above while discussing the notion of environmental democracy: access to information, public participation in decision-making, and access to justice. These pillars, encapsulated in articles 4 to 9, ensure transparency, accountability, and citizen engagement in environmental governance. The Convention imposes obligations on Parties and public authorities concerning information

dissemination and public involvement. It envisions a proactive engagement in environmental decision-making, where the public can hold authorities accountable (UN Economic Commission for Europe, 2000, p. 5-6; UN Economic Commission for Europe, 2000, p. 87-91).

Aarhus Convention fosters a holistic understanding of environmental governance by emphasising the interconnectedness of environmental protection, HR, and sustainable development. Initiatives such as the Meeting of the Signatories play a pivotal role in facilitating collaboration and capacity-building, ensuring the Convention's universal applicability and effectiveness in safeguarding our shared environment for generations to come (UN Economic Commission for Europe, 2000, p. 1-6; UN Economic Commission for Europe, 2000, p. 144).

After analysing every article, one can conclude that the content of the Aarhus Convention is comprehensive and covers most of the problematic areas related to the topic. The following sub-chapters analyse in detail the main areas discussed in individual articles. Article 1 of the Convention establishes the primary objective of guaranteeing the rights of access to environmental information, public participation in decision-making, and access to justice in environmental matters. This means that states must implement measures to protect the right of every individual to live in an environment conducive to health and well-being. This highlights the interconnectedness of environmental protection and HR (UN Economic Commission for Europe, 2000, p. 27-29).

Furthermore, the Convention outlines specific obligations of states regarding transparency and public participation. Article 4 guarantees the right of individuals to access environmental information held by public authorities without undue restrictions, promoting transparency in environmental governance. Article 6 emphasises public participation in decision-making processes related to specific activities, ensuring that those affected by environmental decisions have a voice in the process. Additionally, Articles 7 and 8 extend this right to the development of plans, policies, and laws, fostering broader public engagement in shaping environmental policies.

To complement these rights, the Convention establishes mechanisms for access to justice in environmental matters. Article 9 ensures that individuals and groups have effective access to

justice, enabling them to challenge decisions that impact the environment. States are required to establish procedures for judicial or administrative review of environmental decisions and ensure that such processes are fair, equitable, and timely (UN Economic Commission for Europe, 2000, p. 53-137).

Institutional mechanisms play a crucial role in the implementation of the Convention. The establishment of a Committee on Environmental Policy (Article 10) facilitates coordination among parties, while the Meeting of the Parties (Article 11) serves as a forum for reviewing progress, sharing experiences, and adopting decisions to enhance implementation. Additionally, the Convention mandates the establishment of a Secretariat (Article 14) to support administrative and technical aspects, including compliance review and dispute resolution mechanisms outlined in Articles 15 to 22 (UN Economic Commission for Europe, 2000, p. 144-157).

One more aspect that needs to be pointed out is maybe the one that is also the most important since it really brings these states' obligations to an internationally legally binding level. The Compliance Committee is a crucial part of the Aarhus Convention. Its responsibility is to monitor and promote compliance with the agreement's provisions. The Committee was created under Article 15 of the Convention and functions as a platform for resolving alleged violations of the agreement by the Parties (UNECE, n.d. a.; Andrsevych and Kern, 2016, p 153-171).

According to Article 15, the Compliance Committee is mandated to accept and consider public communications regarding a Party's alleged non-compliance with its obligations under the Convention. The Committee works independently and impartially, conducting thorough assessments of the information provided and engaging in dialogue with the concerned Party to seek resolution. If the Committee finds that a Party is not fulfilling its obligations under the Convention, it may issue findings and recommendations aimed at remedying the situation. These recommendations may include measures to bring the Party back into compliance, such as amending legislation, enhancing enforcement mechanisms, or providing remedies to affected individuals or groups (UNECE, n.d. a., Andrsevych and Kern, 2016, p 153-171).

The Compliance Committee is essential in upholding the integrity of the Aarhus Convention and ensuring that Parties adhere to their commitments to promote environmental democracy, transparency, and accountability. By providing a mechanism for addressing potential violations and facilitating dialogue among Parties, the Compliance Committee contributes to the effective implementation and enforcement of the Convention's provisions. In this regard, the Compliance Committee can be thus seen as an additional judicial arena on the international level where individuals and non-governmental organisations can bring claims of non-compliance against the state of which they are nationals or residents (UNECE, n.d. a.). Moreover, the compliance mechanism confirms once again the discussion of fundamental principles in the introductory part of this research, such as the transboundary effect of environmental pollution or universality of protection of human rights and thus, under this procedure, one member state can bring a claim against another member state in front of the Aarhus Compliance Committee for alleged non-compliance (UNECE, n.d. b.; UN Economic Commission for Europe, 2000, p. 1-6).

The success of the Compliance Committee, acting as a 'dispute settlement body', not in the total meaning of this term, and as an interpreting body can be classified as successful, at least if this conclusion is based on the numbers. As of the present day, the Compliance Committee of the Aarhus Convention has recorded approximately 200 cases, encompassing both resolved and ongoing matters. Among these cases, 197 stem from communications initiated by the public, while 3 derive from submissions made by the state parties. Within the subset of submissions by parties, 2 are submissions by parties concerning another party, whereas 1 concerns self-reporting by a party state. Additionally, the Committee has logged 4 requests for advice that extend beyond the confines of pending cases. Furthermore, certain parties have sought specific guidance during the follow-up process subsequent to being identified as non-compliant. Hence, of the nearly 200 cases, the overwhelming majority, 197, originate from public communications, such as NGOs and other public society organisations. This underscores the pivotal role played by public engagement, as the Committee's workload heavily relies on such input. Without these public communications, the Committee's activities would have been considerably lower. Moreover, the scrutiny over the performance of the involved parties and the discourse surrounding participatory rights and access to

environmental matters would have been significantly less debated among stakeholders, including the public (Ebbesson, 2023, p. 2).

Upon analysing the case law of the Aarhus Compliance Committee, it is concluded that the subjects of the cases and state inquiries are various. As already pointed out, in most cases, different civil society groups, primarily environmental NGOs, act in the interest of citizens and so bring cases dealing with the insufficient protection of citizens by states and governmental bodies or litigations concerning the state's prioritisation of economic gains at the expense of environmental and HR protection. Thus, in some cases, the Committee deals with inadequate urban planning, waste management, nuclear waste management, land grabbing, industrial pollution, natural resource extraction, biodiversity conservation and many other issues. Although the issue of state action is diverse, all cases, i.e. their subjects, can be reduced precisely to non-compliance with or violation of one or more of the three fundamental pillars of environmental democracy (Andrsevych and Kern, 2016, p 211-231; UNECE, n.d. c.).

In the year 2012, the UNECE Aarhus Convention Secretariat provided as an input to the report being prepared by the Office of the High Commissioner for Human Rights, its own research on the positive effect that environmental democracy and its three pillars, particularly through the Aarhus Convention, had overall on the area of IEP and HR. Aarhus Convention significantly impacted good governance and the protection of HR by promoting participatory democracy and linking environmental and HR issues. It grants public rights and imposes obligations on Parties and their authorities regarding access to environmental information, public participation in decision-making, and access to justice in environmental cases. This fosters governmental accountability, transparency, and efficiency, contributing to an open administrative culture (OHCHR, 2012, p. 1-2).

Originating from Principle 10 of the Rio Declaration on Environment and Development, the Convention's provisions align closely with various human rights articles, such as the right to life, information, a fair trial, and participation in government. Significantly, these rights are extended to all natural and legal persons, safeguarding them from penalisation or harassment for their involvement. One notable aspect of the Convention is the significant involvement of non-governmental organisations, enhancing transparency and openness in the decision-

making process. It establishes uniform standards for access to environmental information and participation in decision-making by both state bodies and non-state actors performing public administrative functions (OHCHR, 2012, p. 1-2).

The Convention's strength lies in its binding obligations on public authorities, supported by a compliance mechanism, subsidiary bodies, and a strategic plan for its implementation. Since its inception, national implementation reporting and the compliance mechanism have ensured accountability, with over 70 public communications brought before the Aarhus Convention Compliance Committee. Furthermore, education and training initiatives for public authorities are integral to implementing the Convention, aligning with the UNECE Strategy for Education for Sustainable Development. This approach fosters interactive and integrated policymaking, emphasising broad participation and accountability by Principle 10 and the Aarhus Convention (OHCHR, 2012, p. 1-2).

Regarding the positive impact on access to environmental information, the Aarhus Convention enhances environmental democracy through access to environmental information, mandated by Articles 4 and 5. It ensures public access to information upon request and promotes active dissemination by authorities, fostering transparency and accountability. The Convention adapts to technological advancements, emphasising electronic information tools. Delegating information maintenance to private entities is permissible, ensuring practical accessibility. Additionally, the Protocol on Pollutant Release and Transfer Registers under the Convention enhances corporate accountability by making pollutant data publicly available, facilitating informed public participation and pollution prevention (OHCHR, 2012, p. 2-3).

Furthermore, the Aarhus Convention significantly enhances the quality of environmental decision-making by ensuring comprehensive public participation. It establishes key requirements for participatory processes, including access to relevant information, early involvement of the public, transparency, and effective mechanisms for public input. Decision-making on specific activities must involve timely notification of the public, access to relevant information, and consideration of public input in the decision-making process. The Convention emphasises that public participation should be facilitated by public authorities rather than solely relying on project developers, ensuring impartiality and

adherence to Convention provisions. Delegation of administrative functions related to public participation is common, with specialised bodies often involved. Attempts to limit public participation can lead to less efficient procedures and reduced project acceptance, undermining good governance. The Convention also mandates public participation in decision-making on plans, programmes, and policies, emphasising transparency and early involvement. Additionally, it applies to the preparation of executive regulations and other legally binding rules with significant environmental impacts, further promoting inclusive decision-making processes (OHCHR, 2012, p. 3-4).

Finally, regarding the effective access to judicial and administrative review as a guarantee of the other two pillars, the Aarhus Convention ensures effective access to judicial and administrative review, serving as a guarantee for its other pillars. Article 9 of the Convention aims to provide access to justice in three contexts: information requests, public participation in decision-making, and enforcement of environmental law. Procedures in these contexts must be fair, equitable, timely, and not prohibitively expensive, with decisions recorded in writing and made publicly accessible. The Convention also addresses concerns over financial barriers to accessing justice and emphasises the importance of removing or reducing such obstacles. Additionally, the Convention recognises the right to challenge environmental law contraventions through lawsuits against polluting companies or relevant public authorities, highlighting the role of access to justice in law enforcement and good governance. Similar provisions on access to justice are found in the Protocol on PRTRs, further reinforcing the importance of judicial and administrative review in ensuring environmental accountability and transparency (OHCHR, 2012, p. 4).

3. Development of environmental democracy at the regional level

Both the Rio Declaration Principle 10 and the Aarhus convention have had a significant impact on the further development of the regional legislative framework concerning environmental democracy and its three pillars and additional IEL and IHRL in general. In this light, it is necessary to present the EU legislation concerning environmental democracy

and justice, which at a high level reflects the Aarhus Convention but also an example of another key regional, or more over 'trans-regional' instrument, the Escazu Agreement.

3.1. European Union legislation

In this research, the European region, especially the EU itself, is highlighted as a positive example of a developed IEP and HR protection legislation framework and its implementation. It is the same regarding environmental democracy. This is so because, as pointed out above, the EU itself, as well as its 27 member states, are state parties of the Aarhus Convention. Therefore, the Aarhus Convention is further internalised in the EU and then in the member states legislation (European Commission, n.d.).

Aarhus Convention has been internalised into EU legislation through various directives and regulations, shaping the development of EU law concerning environmental democracy. The Access to Environmental Information Directive (2003/4/EC)[45] ensures the systematic provision of environmental information to the public by authorities, both actively and upon request. Similarly, the Public Participation Directive (2003/35/EC)[46] facilitates public involvement in formulating environmental plans and programmes. These directives, along with provisions in other environmental directives like the Environmental Impact Assessment Directive (85/337/EEC)[47] and the Strategic Environmental Assessment Directive (2001/42/EC)[48], underscore the importance of public participation in environmental decision-making processes (European Commission, n.d.).

Access to justice provisions are also integrated into EU law, with directives such as 2003/4/EC and 2003/35/EC including relevant provisions. Although there isn't a specific directive solely dedicated to access to justice across all sectors, the CJEU has developed

[45] European Parliament & Council of the European Union. (2003, January 28). Access to Environmental Information Directive (2003/4/EC), adopted on January 28, 2003 in Brussels, Belgium.

[46] European Parliament & Council of the European Union. 2003, May 26. Public Participation Directive (2003/35/EC), adopted on May 26, 2003 in Brussels, Belgium.

[47] European Council. 1985, June 27. Environmental Impact Assessment Directive (85/337/EEC), adopted on June 27, 1985 in Brussels, Belgium.

[48] European Parliament & Council of the European Union. (2001, June 27). Strategic Environmental Assessment Directive (2001/42/EC), adopted on June 27, 2001 in Brussels, Belgium.

extensive jurisprudence on the matter. Furthermore, newer EU laws, such as the Seveso III Directive (2012/18/EU)[49], include access to justice provisions in cases involving major accidents with dangerous substances. These developments reflect the EU's commitment to aligning its legal framework with the principles of the Aarhus Convention (European Commission, n.d.).

The Aarhus Regulation (Regulation (EC) N° 1367/2006)[50] extends the Convention's principles to EU institutions, ensuring public access to environmental information and participation in decision-making processes. The recent amendment in 2021 (Regulation (EU) 2021/1767)[51] enhances public scrutiny by expanding the scope of decisions subject to internal review by environmental NGOs and the public. This amendment underscores the EU's ongoing efforts to strengthen environmental democracy and ensure compliance with the Aarhus Convention. Through these legislative measures, the EU continues to strive for greater transparency, accountability, and public involvement in environmental matters, aligning its legal framework with international standards of environmental democracy (European Commission, n.d.).

Moreover, the EU has established the Aarhus Expert Group, convened by the European Commission, which comprises experts from EU Member States and the Commission itself. Its primary objective is to address issues related to the implementation of the Aarhus Convention within the EU. The group serves as a platform for discussion and collaboration, allowing experts to exchange insights and best practices regarding compliance with the Convention's provisions. Through the Aarhus Expert Group, the EU endeavours to ensure effective adherence to the principles of transparency, public participation, and access to

[49] European Parliament & Council of the European Union. (2012, July 4). Seveso III Directive (2012/18/EU), adopted on July 4, 2012 in Strasbourg, France.

[50] European Parliament & Council of the European Union. (2006, September 6). Regulation (EC) No. 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (Aarhus Regulation), adopted on September 6, 2006 in Brussels, Belgium.

[51] European Parliament & Council of the European Union. (2021, September 23). Regulation (EU) 2021/1767 amending Regulation (EC) No. 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, adopted on September 23, 2021 in Brussels, Belgium.

justice in environmental matters, as outlined in the Aarhus Convention (European Commission, n.d.).

The next chapter will focus on finding and analysing case law related to environmental democracy and private actors, particularly multinational corporations. However, even for the purposes of this subchapter, it was challenging to find precedent cases that specifically dealt with the implementation of environmental democracy before the CJEU or ECtHR and did involve business actors. This issue has been discussed before, and it is worth noting that although the topic is related to our definition of environmental democracy, the term environmental democracy is not explicitly mentioned. There are emerging cases, some of which are recent or predate the adoption of the Aarhus Convention, that discuss the right to access information regarding the protection of HR and the environment. This can be connected to the information pointed out in the first part of this research, in which the increase in climate litigation cases has already been highlighted, which can be related to this. There are numerous cases concerning the protection of EHR and environmental democracy without explicitly referring to the same, and some of them are pointed out in the following sub-chapter (The Geneva Association, 2021).

3.1.1. Relevant case law concerning the implementation of environmental democracy at the European level with a special focus on the European legal space

One of the notable cases is the case of *Guerra and Others v. Italy* (Application No. 14967/89), from 1998, in which the ECtHR ruled the decision which raised concerns about environmental democracy and HR protection in the context of industrial activities. The case involved residents of Manfredonia, Italy, who were affected by a nearby Enichem Agricoltura chemical factory. They claimed that the factory posed significant risks to their health and environment due to the release of hazardous substances. The applicants criticised the authorities for not taking appropriate action to mitigate pollution risks and provide necessary information about potential accidents, as required by national regulations (InforMEA, n.d. a.; UNEP LEAP, n.d.).

The applicants cited various articles of the European Convention on Human Rights, including Article 2 (right to life), Article 8 (right to respect for private and family life), and Article 10 (freedom of information). The ECtHR's judgement emphasised the need for effective protection of individuals' rights in the face of environmental hazards. It found that Italy had violated Article 8 by neglecting to conduct adequate environmental impact assessments and failing to ensure sufficient public participation in the decision-making process regarding industrial activities. This case indirectly highlights the importance of environmental democracy, stressing the obligation of states to protect citizens' rights to a healthy environment and access to relevant information for informed decision-making, ultimately contributing to the protection of HR (InforMEA, n.d. a.; UNEP LEAP, n.d).

The next case worth mentioning is the 1990 case of *López Ostra vs. Spain* (Application no. 16798/90), in which Gregoria López Ostra filed a complaint with the European Commission on Human Rights. She alleged that the Spanish State's inaction against the environmental pollution caused by a waste treatment plant near her home violated her rights to physical integrity and respect for private and family life under Articles 3 and 8 of the European Convention on Human Rights. The ECtHR upheld the Commission's findings and ruled that the State's failure to address the pollution was a violation of López Ostra's right to respect for her home and private life. The Court emphasised the severe impact of environmental pollution on individuals' well-being and highlighted the connection between civil and political rights and economic, social, and cultural rights (ESCR-Net, n.d. a.).

This case highlights the importance of environmental democracy in ensuring individuals' rights to a healthy environment and access to justice in cases of environmental harm. It demonstrates a successful strategy to address economic, social, and cultural rights through civil and political rights within the regional HR system. The government of Spain complied with the ECtHR's decision by paying compensation to the applicant and fulfilling its obligations under Article 54 of the Convention. This outcome signifies the accountability of states in addressing environmental issues and upholding individuals' rights to a healthy environment and respect for their homes. The significance of the case lies in its demonstration of the interdependence between civil and political rights and economic, social, and cultural rights. It emphasises the need for effective protection of environmental rights within HR

frameworks. This case serves as a precedent for leveraging civil and political rights to protect economic, social, and cultural rights in cases where regional HR systems may lack specific provisions for environmental protection. It highlights the role of environmental democracy, although not mentioning it explicitly, in promoting justice and accountability in environmental matters. Shortly, ECtHR hailed that the state's failure to address environmental pollution amounted to a violation of the right to private and family life (ESCR-Net, n.d. a.).

The following case is before the Court of Justice of the European Union (CJEU). The case C-237/07 *Dieter Janecek v Freistaat Bayern* focuses on access to environmental information under Directive 2003/4/EC, emphasising transparency and access to information in environmental matters. The main aspect of environmental democracy addressed in this case, although again not explicitly mentioning environmental democracy, is the right of individuals to access environmental information held by public authorities. The ruling underscored the importance of this right for effective public participation in environmental decision-making processes. In this case, the CJEU found that the state (Freistaat Bayern) was 'found guilty'. The ruling highlighted the obligation of competent authorities to provide access to environmental information, promoting transparency and accountability in environmental governance and how citizens can challenge the lack of adequate air quality plans (Client Earth, 2019; InforMEA, n.d. b.).

This case set a precedent in the EU case law concerning this area. The CJEU issued its preliminary ruling in Case C-723/17 *Craeynest* on 26 June 2019. The CJEU made some clarifications on EU law principles regarding the review of scientifically complex assessments. This ruling has the potential to enhance access to justice beyond air quality issues in all environmental cases and thus make an even firmer step in the direction of stronger implementation of environmental justice (Client Earth, 2019; InforMEA, n.d. b.).

The next case worth mentioning, which surprisingly scholars don't refer to often and at the same time is perhaps one of the most important in this regard, is the EUCJ case *Ferdinand Stefan v Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft* (Case C-329/13.) or shorter, Case Stefan, decided in 2014. In this case, Mr. Stefan, after unsuccessful attempts in front of the Austrian courts, decided to go before the EUCJ. Mr.

Stefan asked the Austrian authorities for access to information during the construction of a business facility, especially those related to studies on the impact on the environment and HR of the surrounding population. This request was denied by the authorities under the argument that it is confidential information, and therefore, limitations for access to the same were established in order to protect the economic freedoms of business entities, the interests of the state and because the required information was used in the ongoing criminal procedure (EUR-Lex, n.d.).

Even though, as with the other analysed cases, in the judgement itself, there is no explicit mention of terms like environmental democracy or Aarhus convention, this case is extremely important for understanding the aspect of environmental democracy that concerns freedom of access to environmental information. In the judgement itself, the EUCJ made a reference to the exact directives and legislative framework that was highlighted above while analysing the implementation of the Aarhus Convention in the EU legislation. Thus, the EUCJ, in its judgement, pointed out that access to environmental information must be understood in the broad sense and that protection of such a right must be put in front of the economic gains. In this particular case, the court allowed for a limitation to the access to environmental information, but only because the requested information was used in the criminal procedure in front of the national court. However, once more, the court emphasised that the limitation of access to environmental democracy due to putting the right to a fair trial at the forefront is an rare occasion, i.e. rare example of allowed limitation, also contained in the previously analysed EU Directive 2003/4. Apart from this particular situation, the right to access environmental information must be respected at the highest possible level. The EUCJ, through the explanation of the possible limitations and details of the implementation of mentioned EU Directives, has thus put the protection of access to environmental information at the forefront. Thus, even without explicitly mentioning the 'environmental democracy' by means of this decision, the EUCJ reaffirmed to the EU member states the need for the protection of the same and all of its individual pillars (EUR-Lex, n.d.).

One of the other important cases that needs to be pointed out is the 2017 case of the *European Commission v. Federal Republic of Germany* (Case C-142/16) before the European Court of Justice (EUCJ). The dispute centred around Germany's authorisation of the construction of

the Moorburg coal-fired power plant in Hamburg, near the Elbe River. The construction raised concerns because of its potential impact on fish species listed in Annex II of the EU Habitats Directive. The river served as their migratory route. Despite an environmental impact assessment (EIA) conducted by project proponents, which suggested that the project was compatible with conservation objectives through measures like fish ladders, the European Commission alleged violations of the EU Habitats Directive. The Commission argued that Germany failed to ensure the project's compliance with the Directive's requirements, particularly regarding the effectiveness of mitigating measures and the assessment of cumulative effects with other projects (ELAW, 2017).

The ECJ ruled in favour of the European Commission, finding Germany in breach of the Habitats Directive. The court highlighted deficiencies in the environmental impact assessment, noting insufficient evidence to guarantee the effectiveness of the fish ladder and the failure to consider cumulative effects with other relevant projects. The judgement emphasised the importance of robust environmental assessment procedures and availability of information, ensuring that projects do not adversely affect protected areas or species. This case underscores the significance of, among other environmental issues, again not specifically environmental democracy, particularly the right of individuals and authorities to access accurate environmental information and participate effectively in decision-making processes to safeguard environmental protection and biodiversity (ELAW, 2017).

3.2. Escazu Agreement and Inter-American Region

The Escazú Agreement, formally known as the Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean, is a significant treaty aimed at promoting environmental governance and protecting citizens' rights in environmental matters. It was adopted on March 4, 2018, in Escazú, Costa Rica, and is the first environmental treaty in the region to include specific provisions for protecting environmental defenders. The agreement provides a framework for governments in Latin America and the Caribbean to ensure access to environmental information, public participation in environmental decision-making, and access to justice in

environmental matters. It also highlights the importance of cooperation among countries in the region to address transboundary environmental issues effectively (United Nations Treaty Collection, n.d. b.; UN ECLAC, n.d.).

As of January 2022, the Escazú Agreement has been signed by 24 countries and ratified by 12, with several others in the process of ratification. It represents a significant step forward in promoting transparency, public participation, and access to justice in environmental decision-making processes, especially in the concerned region. Based on the information provided by the United Nations Treaty Collection internet page, the following countries have signed and/or ratified the Escazú Agreement. The signatory countries include Antigua and Barbuda, Argentina, Bahamas, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Uruguay. Among these signatory nations, a subset has ratified the agreement, demonstrating their commitment to its principles and objectives. The ratifying countries are Antigua and Barbuda, Argentina, Bolivia, Ecuador, Guyana, Mexico, Nicaragua, Panama, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Uruguay (United Nations Treaty Collection, n.d. b.).

Compared to the Aarhus Convention, the state parties have made fewer reservations or comments upon ratification of the Escazú Agreement. Chile has made several interpretative declarations regarding its acceptance and implementation of the Agreement. Firstly, Chile emphasises that many of the Agreement's requirements are already covered by Chilean laws, specifically laws related to environmental frameworks, community participation, access to public information, and the establishment of environmental courts. Secondly, Chile clarifies that cooperation mentioned in Article 11, paragraph 2, refers to collaboration within the scope of the Agreement for its implementation among the involved countries. Thirdly, Chile commits to undertaking national activities necessary to fulfil its obligations under the Agreement, especially regarding articles related to access to information, public participation, access to justice, and environmental rights, using appropriate means as deemed fit. Lastly, Chile asserts that it does not accept the compulsory means of dispute settlement outlined in Article 19, paragraph 2, unless it explicitly states otherwise in writing, particularly

for disputes not resolved through the initial dispute resolution process specified in paragraph 1 of the same article (United Nations Treaty Collection, n.d. b.).

After reading the Escazu Agreement, it becomes evident that it bears similarities to the Aarhus Convention while also having its peculiarities. This supports the views of NGOs and scholars who suggest that the Escazu Agreement is even more advanced than the Aarhus Convention. The region had ample time to learn from the example of the implementation and monitoring of the Aarhus Convention. However, the peculiarities of the region itself, such as the need for more protection of environmental human rights defenders (EHRDs), were also taken into account when drafting the Escazu Agreement (Client Earth, 2018; Universal Rights Group, 2021).

Thus, the Escazu Agreement shares similarities with the Aarhus Convention in that it aims to promote environmental democracy and protect the rights of EHRDs. Both agreements recognise the importance of providing access to environmental information, public participation in decision-making processes, and access to justice in environmental matters. They both acknowledge the crucial role of EHRDs in environmental protection and seek to ensure their safety and rights (Client Earth, 2018; Medici-Colombo, n.d.).

However, the Escazu Agreement goes beyond the Aarhus Convention in several aspects, making it more advanced in addressing contemporary challenges in environmental governance. One significant difference is the inclusion of more general principles and specific elements related to access rights under its three pillars. The Escazu Agreement incorporates principles of IEL as well as principles of good administration, such as transparency, accountability, and maximum disclosure, even in more detail. This broader scope provides a more comprehensive framework for promoting environmental democracy and protecting EHRDs (Client Earth, 2018; Medici-Colombo, n.d.).

Moreover, the Escazu Agreement includes provisions that are more explicit and detailed than the ones in the Aarhus Convention. For instance, it lists principles to guide the interpretation of the Agreement, covers a broader range of decisions, actions, and omissions affecting the environment, and outlines a comprehensive set of remedies for environmental harm. These provisions offer greater clarity and specificity, making it easier to implement and enforce environmental rights and obligations (Client Earth, 2018; Medici-Colombo, n.d.).

Furthermore, the Escazu Agreement recognises and addresses contemporary challenges faced by EHRDs, such as increasing threats, intimidation, and violence. It obliges States to establish measures ensuring the safety of EHRDs and provides guidelines for protecting their rights. This proactive approach demonstrates a commitment to addressing the specific needs and vulnerabilities of those defending environmental rights in the region (Client Earth, 2018; Medici-Colombo, n.d.).

To conclude, while both the Aarhus Convention and the Escazu Agreement aim to promote environmental democracy and protect the rights of EHRDs, the Escazu Agreement represents a more advanced, direct and comprehensive framework. Its inclusion of broader principles, explicit provisions, and specific remedies make it better equipped to address contemporary challenges in environmental governance and ensure the effective protection of environmental rights in Latin America and the Caribbean (Client Earth, 2018; Medici-Colombo, n.d.).

The Escazu Agreement is a significant achievement in environmental governance in Latin America and the Caribbean (LAC), especially in recognising and implementing environmental access rights in the region. The Escazu Agreement was necessary because LAC lacked a comprehensive effort similar to the European Aarhus Convention. Therefore, the region relied heavily on national efforts that often resulted in incomplete or ineffective environmental access rights, leading to interventions from the OAS-based Inter-American System of Human Rights. The latter recognised environmental access rights as HR and began defining minimum standards to ensure their effective implementation, setting precedents in cases such as Indigenous Peoples' participation in environmental decision-making processes and guidelines on protecting HR defenders (Medici-Colombo, n.d.).

The synergy between the Escazu Agreement and the OAS has been evident since before the EA's adoption. The OAS institutions contributed significantly to the negotiation process, and the Inter-American Court of Human Rights (IACtHR) expressly welcomed the negotiations of the Escazu Agreement. This synergy extends beyond negotiations to the implementation stage, where interactions between regimes are expected to shape environmental rights development in the region. The OAS normative framework plays a crucial role in escorting the implementation of the Escazu Agreement, with domestic legal orders prioritising the American Convention on Human Rights (ACHR). Therefore, national authorities must

consider OAS standards in implementing the Escazu Agreement to avoid international responsibility for ACHR violations. For instance, the IACtHR's standards on access to information, emphasising maximum disclosure and valid exceptions, have influenced the Escazu Agreement implementation, as demonstrated in a recent court case in Argentina regarding access to fracking information (Medici-Colombo, n.d.).

This interaction highlights the significance of HR standards developed by the IACtHR in guiding domestic authorities' implementation of access rights, especially in areas where the Escazu Agreement text may fall short due to government hesitancy in negotiations. Moreover, developments within the Agreement, such as the work of the Committee to Support Implementation and Compliance, have the potential to inform the interpretation of human rights standards by OAS bodies dealing with human rights, further enhancing the synergy between the two regimes and raising the standards of environmental democracy in the region (Medici-Colombo, n.d.).

3.2.1. Relevant case law concerning the implementation of environmental democracy at the level of the Inter-American Region

For the purposes of this research, it was challenging to find information related to case law related to the Escazu Agreement, such as in the case of the Aarhus Compliance Committee. This may be because the Escazu Agreement itself only came into effect in January 2022. Additionally, the specificity of the region may also contribute to this difficulty. As previously mentioned, the IACtHR has taken charge of the further development of legislation and its implementation by state parties following the adoption of the Escazu Agreement. As a result, the IACtHR has become responsible for handling potential disputes and cases, unlike the Aarhus Compliance Committee, as a special set-up instrument (Medici-Colombo, n.d.). To clarify, The Escazu Agreement envisions the creation of an independent committee, but it has not been established yet. There have been two attempts to set-up a special committee similar to the Aarhus Committee, but this has not been put into effect. This has led to one of the main criticisms, which is how the Escazu Agreement must be implemented independently

rather than solely through the existing judicial channels under the IACtHR (Ebbesson, 2023, p. 1).

Nevertheless, just as in the example of the European region and the EU, it is worth mentioning some of the main precedent cases in front of the regional courts, i.e. IACtHR related to environmental democracy. The IACtHR has actively engaged with environmental issues, recognising the imperative of safeguarding environmental rights within the broader spectrum of HR protection. While not exclusively labelled as environmental democracy cases, these instances contribute significantly to the jurisprudential evolution, advocating for public participation, information accessibility, and accountability in environmental affairs throughout the Americas. Moreover, these cases underscore the IACtHR's pivotal role in defending the rights of Indigenous communities and other marginalised groups in environmental contexts. Although not explicitly categorised as environmental democracy cases, they underscore the fundamental significance of public engagement, information availability, and legal recourse in environmental decision-making processes, all integral aspects of environmental democracy. As environmental concerns gain increasing prominence across the region, the IACtHR is expected to persist in addressing them within its jurisprudence, thereby advancing the principles of environmental democracy in the Americas (Inter-American Court of Human Rights, 2023, p. 50-63).

The first case that needs to be pointed out is the case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001), in which the Inter-American Court of Human Rights ruled in favour of the Indigenous community, finding Nicaragua responsible for violating their rights to property and cultural identity. The Awas Tingni Community, lacking formal land titles, protested against the state's concession of logging rights on their ancestral lands without prior consultation or consent. The Court determined that Nicaragua failed to provide effective legal measures for the demarcation and titling of indigenous lands, breaching Article 25 of the American Convention on Human Rights[52] (UNEP LEAP, 2001; Inter-American Court of Human Rights, 2001).

[52] Organization of American States. (1969, November 22). American Convention on Human Rights, Pact of San José, Costa Rica.

Furthermore, the Court found a violation of Article 21, emphasising the need for the state to respect communal property rights and ensure territorial delineation. The judgement underscored the significance of indigenous peoples' participation in decisions concerning their territories, establishing a precedent for environmental democracy and indigenous rights in the region. The ruling highlighted the importance of prior consultation and participation of Indigenous communities in environmental decision-making processes, emphasising their right to protect their lands and cultural heritage (UNEP LEAP, 2001; Inter-American Court of Human Rights, 2001).

The following significant case to mention, which was held before the IACtHR, involved the *Yanomami indigenous peoples of Brazil*. The Yanomami petitioned against the State of Brazil, citing the construction of a highway and mining licences granted on their ancestral lands. The Commission found that Brazil's actions threatened the Yanomamis' lives and caused environmental harm. This highlighted the state's responsibility to prevent environmental degradation that impacts HR. The IACtHR ruled that Brazil failed to protect the Yanomamis' rights to life, liberty, security, residence, movement, and health preservation. It emphasised the importance of indigenous groups' right to special protection for the preservation of their cultural identity. The Commission recommended measures such as demarcating Yanomami Park and implementing education, health, and social integration programs in consultation with the indigenous community (Climate Litigation, 2021; de Paiva Toledo et al., 2023).

This case underscores the importance of indigenous peoples' participation in decisions affecting their territories. The IACtHR's ruling highlights the need for prior consultation and participation of indigenous communities in environmental decision-making processes to ensure the preservation of their cultural identity and well-being. By holding Brazil accountable for failing to protect the Yanomami's rights, the Commission established a precedent for recognising the environmental harm caused by actions that infringe upon indigenous peoples' rights. It also emphasised the interconnectedness between HR and environmental protection. It is important to note how analysing this case is challenging as it involves a recurring problem that occurred over multiple legal procedures spanning from the 1980s to 2001 across various court instances. This signifies the continuous struggle of

indigenous communities against environmental degradation and HR violations caused by industrial development on their ancestral lands. Additionally, it is worth noting that different case analyses by individual scholars may contain varying information (Climate Litigation, 2021; de Paiva Toledo et al., 2023).

The following case that needs to be mentioned is the case of *Pueblo Bello Massacre v. Colombia* (2006), in which the Inter-American Court of Human Rights addressed both HR violations and environmental concerns. Paramilitary groups, under the leadership of Fidel Castaño, orchestrated the forced disappearance of 37 individuals and executed six peasants from the village of Pueblo Bello, with the acquiescence of State agents. Despite significant efforts by various actors, including both civilians and the State, only a fraction of the perpetrators had been brought to justice, and the fate of many victims remained unknown even 15 years after the atrocities occurred. The Court found that Colombia violated the American Convention on Human Rights by failing to address these crimes adequately (LLS, 2006; Inter-American Court of Human Rights, 2006).

Thus, the main subject of this case was the most serious war crimes, but it is interesting in our context because, besides this main aspect, the court also focused on the EHR and, moreover, specific aspects of environmental democracy, although not directly. The case highlighted the environmental damage inflicted by paramilitary activities in the Pueblo Bello region, emphasising the intrinsic link between HR and environmental protection. While the primary focus was on extrajudicial killings, forced disappearances, and displacement, the Court recognised the broader impact of these actions on the environment. This aspect of the case underscored the importance of ensuring access to justice for victims of environmental harm, demonstrating the intersection between environmental democracy and human rights in the pursuit of justice and accountability. This is highly interesting precisely because in most international cases dealing with war crimes, environmental aspects are often overlooked, which is certainly not the case here (LLS, 2006; Inter-American Court of Human Rights, 2006).

The final case going to be mentioned in this aspect, which is also one of the more often cited and discussed cases in the scientific literature, is the case of *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012), in which the IACtHR ruled in favour of the Sarayaku people.

The court found Ecuador responsible for violating their rights to consultation, cultural identity, and community property in the context of oil exploration and exploitation on their ancestral lands. The dispute arose when Ecuador granted a concession for oil exploration and allowed an Argentinean company to conduct seismic exploration within the Sarayaku territory without consulting or obtaining consent from the Sarayaku people. This incursion led to the destruction of sacred sites, confrontations between the Sarayaku and armed forces, and threats against community leaders. The Court found Ecuador guilty of failing to conduct prior and informed consultation, jeopardising the Sarayaku's rights to life, cultural integrity, and fair trial. Moreover, the Court emphasised the State's duty to organise governmental apparatus effectively to ensure meaningful consultation with Indigenous communities, setting standards for future cases involving development projects in Indigenous territories (ESCR-Net, n.d. b.; Inter-American Court of Human Rights, 2012).

The Court's judgement highlighted the intrinsic connection between different pillars of environmental democracy and Indigenous rights, emphasising the importance of consultation, participation, and consent in decision-making processes that affect Indigenous lands and resources. By recognising the Sarayaku people as subjects of collective rights under international law, the Court underscored the significance of indigenous communities' autonomy and cultural preservation. Additionally, the ruling provided guidance on conducting consultations with indigenous groups, stressing the need for culturally appropriate procedures aimed at reaching agreements. The case serves as a precedent for addressing similar violations across Latin America, signalling a shift towards greater recognition of indigenous peoples' rights and environmental protection in the face of development projects that threaten their livelihoods and cultural heritage (ESCR-Net, n.d. b.; Inter-American Court of Human Rights, 2012).

As already concluded before the case analysis, the commonality of the case law of Inter Inter-American and European regions is that we can find specific cases concerning environmental democracy. However, in both cases, it is not explicitly mentioned explicitly as the main subject of the cases. However, through the reading of cases and final judgments, references are also made to certain pillars of environmental democracy itself, so the conclusion can be how, even without explicit emphasis, environmental democracy is practised, which is shown

by the implementation of international and regional documents and state legislative frameworks. Upon the case analysis, one could also say how cases in front of the IACtHR can be marked as more 'advanced' in its understanding of the environmental democracy aspects, especially that of access to information and participation in the decision making processes, thus increasing accountability of states in environmental and EHR decision making and governance.

4. Development of environmental democracy at the national level

Through the gradual analysis of the very definition and main components of environmental democracy, it becomes clear that it is very challenging to find examples of advanced national legislation concerning environmental democracy, especially when referring to it explicitly. However, countries that are signatories to the Aarhus Convention or the Escazu Agreement are expected to have better-developed protection of HR related to environmental democracy since they are obligated to implement these legally binding documents. The difficulty in finding specific national case law concerning environmental democracy is due to the main determinants analysed before. Environmental democracy is an instrument that individuals or groups of individuals can use when states themselves violate it. The Aarhus Convention and the Escazu Agreement determine that this is an issue that should be dealt with before regional or international judicial bodies, as indicated through the previous regional case law analysis. It is thus difficult for the purposes of this research to point out specific countries that could be marked as having particularly developed legislation in this area because this would mean that a comprehensive comparative analysis of all countries would have to be done. Moreover, different areas of individual nation-states legislation would have to be compared, which are very different from each other regarding their law systems. It is, therefore, difficult to reach this conclusion since legislation from different areas should be taken into account, which could then be compared with different aspects of the before mentioned three pillars of environmental democracy. As part of the research, the World Resource Institute's Environmental Democracy Index online platform was planned to be analysed. This platform was expected to provide information about the legislative situation of individual states.

However, at the time of the research, the platform had been inactive for some time and thus unavailable for access (World Resources Institute, n.d.).

However, precisely because of these highlighted difficulties, it is necessary to point out certain noticeable views highlighted by the scholars regarding the issues that arise already in the step concerning the attempts to define and later implement environmental democracy, especially at the national level. On the other hand, the importance of environmental democracy itself, especially the aspects concerning access to information and participation in the decision making process, can be highlighted through the implementation of sustainable development approach and policies. Namely, the IGOs themselves, as well as NGOs that focus on the area of environmental protection and sustainability, point out that the same is best achieved by implementing a bottom-up approach. This would mean the implementation of the main principles of both areas based on local solutions and participation and decisions made by the local community. Applying a simple logical sequence, this would include the implementation of environmental democracy, i.e. all of the three pillars and the rights that derive from them by the local population. Thus, this kind of argumentation supports the thesis of the importance of the development of legislation and the preservation of environmental democracy not only at the national but also at the local level (EEA, 2023; Open Government Partnership, n.d.; Hermelin and Trygg, 2018, p. 97-99).

If a broad definition of environmental democracy and its individual pillars is applied, the threat or deterioration of its implementation, especially at the national level of individual countries, could also be analysed. In this sense, it would be possible to discuss the restriction of many freedoms and rights as an indirect, intentional, or unintentional suppression of environmental democracy. There has also been a long-standing debate within academic circles about to what extent, for example, protesting can be understood as participation in decision-making processes. However, it is undeniable that the end goal of protesting is to influence politics and decision-making processes. Therefore, protesting can be considered one of the ways civil society exercises its right to participate in decision-making processes within a democratic society (Della Porta, 2020). Moreover, preserving the rights and protection of environmental activists is an integral part of the previously analysed Escazú Agreement (Client Earth, 2018; Medici-Colombo, n.d.).

Following this argumentation, we can also discuss a series of political debates in Europe, some of which resulted in the adoption of stricter legislation regarding environmental protesting. For example, in Italy, a new set of laws was passed in January 2024 after a series of moves by environmental activists who, as a sign of protest, threw paint on different cultural monuments. The bill envisages fines of up to 40,000 euros ($43,548) for those who deface monuments, increasing to up to 60,000 euros if cultural heritage is destroyed (Reuters, 2024). Although it is possible to understand the argumentation of both sides to a certain extent, the discussions themselves developed certain statements that tried to bring environmental activism of such form to the level of environmental terrorism (Euronews.green, 2023). In light of this discussion, it is difficult to answer the question that arises of whether such moves by individual governments can be characterised as a threat and violation of environmental democracy itself. Although after all that has been said before, it can be concluded that this analysed case is only one of the ways by which individual nation-states limit environmental democracy and its individual aspects, it is difficult to make such a conclusion with certainty. Namely, neither this example concerning Italy nor similar examples were discussed in front of, for example, the Aarhus Compliance Committee. Thus, for the purposes of this research, the official stance of the Committee regarding this and similar cases in which states refer to their rights to limit freedom of speech and association due to the overriding interest of the public, couldn't be analysed.

To make the final remark in this regard, such discussion can once again be referred to the ones in the various previous parts of this research. Thus, because of the growing concern due to climate change issues and the obvious negative effects of the industry itself on the lives of individuals, civil society demands from states a stronger focus on environmental issues in their national policies. But as it was presented now through the example of Italy, which is just one example among many others, states often react negatively to such requests from civil society. Thus, the space for public participation itself is additionally shrinking, which leads to environmental democracy itself, but also to EHR in general being in danger due to continuation of favouring of economic profits at the national and international level.

5. Environmental democracy as regulatory instrument

This chapter will summarise all of the findings regarding environmental democracy, focusing on applying the same in relation to the MNCs themselves. Thus, the information that has already been highlighted regarding the international frameworks concerning environmental democracy and the case law that has been discussed above will be used. Based on this information, an attempt will be made to answer the main research question itself, which is whether we can consider environmental democracy as an unused international instrument with which we can ensure a higher level of accountability and liability of MNCs for their environmental degradation as well as HR abuses. In order to offer a comprehensive answer to this question and to present the conclusion in an understandable and comprehensive way, environmental democracy will be applied to the already presented R-I-T model and to the graphic representation of the regulatory framework, which is also presented in the subchapter 3.6. of this research.

5.1. Environmental democracy as an unused tool to increase the level of multinational companies' accountability and liability for environmental and human rights violations

If we look at the strict definition from the area of international law, international instruments are understood as all forms of international treaties, regulations and overall binding and non-binding documents that produce guidelines and obligations or can be relied upon in law and policy-making. If this strict definition is followed, environmental democracy is thus the result of the implementation of the previously analysed international documents and can be thus understood as a result of implementing participation, transparency, and accountability in environmental decision-making processes as required by some international instruments, i.e., the Aarhus Convention and Escazu Agreement but also others that have indirectly recognised it and thus provided the foundation of its development.

However, according to various scientific articles and studies by IGOs, democracy itself can be seen as an instrument or a kind of 'tool' that then contains other instruments that, in the

hands of civil society, become a vital form of public participation in the decision-making processes.

A scientific study commissioned by the European Parliament in the year 2023 applies such an approach to the case of participatory democracy. In this study, prepared for the European Parliament by the European Committee of Regions and other institutions and research centres, various citizen-initiated instruments of direct democracy, such as referendums, legislative initiatives, and so on, are seen as designated instruments of democracy (European Committee of the Regions, n.d.).

If we follow this logic, environmental democracy could then be characterised as an international instrument itself. Moreover, as could also be concluded through the analysis of the Aarhus Convention and the Escazu Agreement, environmental democracy is an instrument in the hands of the citizens themselves. However, the following open question arises in this aspect: can civil society use this international instrument to protect the rights that come with it, which are contained in three main pillars of environmental democracy, also against private actors such as in the case of this research, MNCs? Moreover, in what way and at what level, national or international, can such actors be held responsible for their violations if environmental democracy can be invoked against them?

First of all, one of the aspects of this question must be answered, i.e. to clarify upon or against which actors environmental democracy can be used as a regulatory instrument. As pointed out in the analysis of the Aarhus Convention itself and the Escazu Agreement, these international legally binding documents create obligations for the states, governmental bodies or, in the case of the EU, its agencies, bodies, institutions and so on. Therefore, these documents are not revolutionary and are similar to other international documents in terms of deepening legal subjectivity since the rules do not apply, for example, to other actors in IC, such as MNCs. Therefore, for the purposes of this research, it can be concluded that one of the most significant issues recognised in the first part of the research was not overcome, i.e. the lack of legal subjectivity of MNCs at the international level.

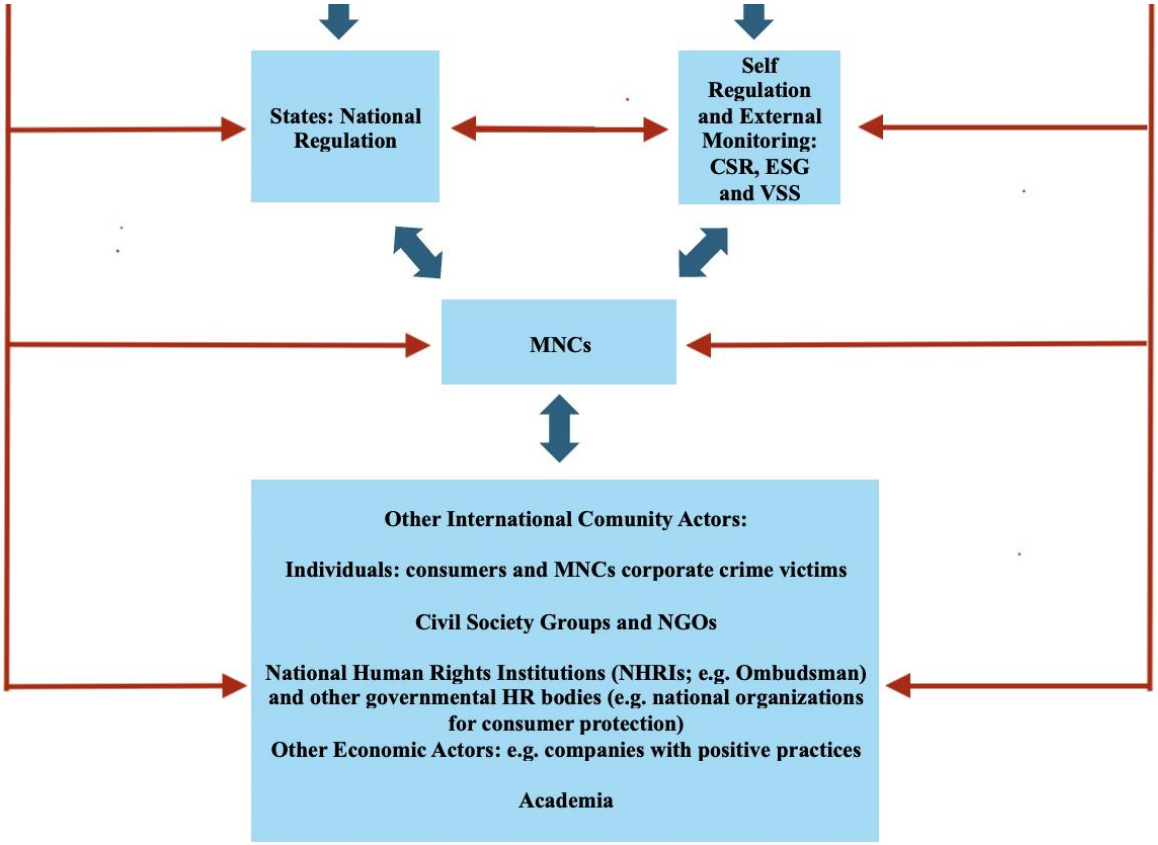
Therefore, we conclude that the next big identified problem has not been solved either, which is that, for example, the violation of environmental democracy principles and related HR cannot be attributed to the MNCs themselves. This means that MNCs still cannot be held

responsible for environmental degradation of HR violations at the international level and cannot be brought before international courts or committees using this instrument. For example, individual MNCs cannot be brought before the Aarhus Compliance Committee because the rules do not directly apply to them either.

This was well proven in some of the cases analysed in the above sections. For example, in the analysis of cases before the Aarhus Compliance Committee, there are cases where the responsibility of the state itself is decided, i.e. the insufficient protection of citizens and their HR resulting from the environmental democracy itself. However, in some cases, decisions are often made about, for example, the territorial positioning of a particular company, the granting of concessions, or the inadequate implementation of the precautionary principle in the form of environmental impact plans and HR of local communities. It is also interesting how often state-owned companies, as well as private ones, are mentioned, thus once again recognising link between states and companies that are still considered not to be 'independent actors' in IC.

Precisely this approach is also present in the analysed cases in front of the regional courts. In the analysed case in front of the ECtHR, *Guerra and Others v. Italy* (1998), it was the local population that challenged the decision of the state to grant permission for the construction of a chemical factory, while the population was not informed of the potential risks and they were denied information and moreover violated numerous other fundamental HR. Similar examples were found in the analysis of cases in front of IACtHR. The most representative is the case of Kichwa Indigenous People of Sarayaku v. Ecuador (2012). In this case, as we have seen, Ecuador was found guilty of violating the fundamental HR of local indigenous people by allowing the concession to an Argentinian company, thus acting as a host country, without a valid environmental impact study, providing sufficient information to the local population and without taking into account the opinion of the local population. This can also be illustrated graphically if we apply the environmental democracy itself as a regulatory instrument to the elaborated Figure 5. in subchapter 3.6.

Figure 10. Excerpt of Figure 5. representing the position of the MNCs in the multi-level governance regulatory framework and with the other actors in the international community presented in subchapter 3.6.



Therefore, environmental democracy, as an instrument that is in the hands of civil society itself, cannot directly influence the actions of MNCs and hold them accountable and liable for their violations. However, according to the findings of this research, environmental democracy is an instrument that can be used to hold MNCs accountable and liable, in an indirect way, through the nation-states themselves (see Figure 10.).

Thus, with the help of environmental democracy, states can be held accountable but also liable before regional and international courts and commissions, i.e. responsible treaty bodies, precisely because of their failure to protect their citizens. As proven in several parts of this research, the states are responsible for regulating and punishing MNCs in case of

misconduct and corporate crimes. Thus, by using environmental democracy and such a form of regulation coming from the civil society itself, it is possible to punish the states and force them to have stronger control of the economic actors, including MNCs. In this way, the states themselves are punished for such omissions, regardless if they are intentional or unintentional. In this way, perhaps the main problem of the current capitalist-based economy, discussed in the introductory part of this research, where economic profit is still in the first place, both for economic actors and for the states themselves, could be solved.

Likewise, in this part, it is necessary to refer to the previously presented R-I-T model. Thus, applying the 'potential unused power' that environmental democracy represents as an international instrument that can be used against the states themselves and indirectly against the MNCs, it can be concluded that it can have positive effects on the attempt to correct the identified issues that may appear both in the R-I and I-T relations. Thus, for example, civil society can push states to stronger implementation of the international obligations to which they have committed by becoming members of individual documents and IGOs concerning the relevant area. Also, by bringing the states themselves before the relevant international courts and committees, it is possible to 'punish the states' not only for this issue but also for the one that appears in another relationship, which is insufficient regulation of MNCs. Thus, using this international instrument, civil society can 'force' countries to form sufficient national legislation and to regulate MNCs, but also to punish them for possible misconduct in their operations.

5.2. Final remarks concerning the environmental democracy

In this part, it is therefore essential to draw certain conclusions regarding environmental democracy itself, as well as if it can be considered an unused international instrument which can achieve a higher level of corporate accountability and liability. First of all, it should be pointed out once again that for the purposes of this research it was relatively difficult to collect a sufficient amount of sources to get the comprehensive answer to the posed question. Environmental democracy itself, although it is somewhat codified at the international level, is a relatively new international instrument, but also a research topic, which results in a

smaller volume of professional literature on this topic if we compare it with some other areas of ILHR or IEP. This is especially the situation if we want to analyse the possible relation to the private sector, as in the case of this research MNCs.

Next to this conclusion is the conclusion that environmental democracy itself is indeed an insufficiently understood and unused instrument. This was also evident from the prominent information that shows that NGOs and IGOs themselves often misinterpret environmental democracy itself and that a clear line of distinction has not been made between these international instruments and concepts such as environmental or climate justice. In a way, this was also evident when the cases of the 'climate litigation' were analysed in the first part of this research and while analysing the case law regarding the environmental democracy itself. Thus, it was observed that the injured parties or the courts themselves do not even refer to environmental democracy itself, at least not explicitly. Because of this, the question arises as to how much the individuals themselves and the governments are aware of their rights that come with this international instrument.

After analysing environmental democracy, all of its aspects and the case law revolving around it, although indirectly, before the European courts, the Aarhus Compliance Committee and the IACtHR, and after comparing them with the analysed cases that are classified as climate litigation cases under the subparagraph 1.4. once again, the same conclusion can be drawn about the confusion and misunderstanding of environmental democracy. Namely, up to a certain level the EHR and the environmental democracy overlap, especially some of their individual aspects. Thus, climate litigation cases can be understood also as the ones indirectly dealing with environmental democracy, or at least some of its aspects. Therefore, they are also significant for the further development of environmental democracy, but all actors of IC, including judicial and dispute settlement mechanisms, must be aware of these interrelations so that this development can be adequately classified and monitored.

Thus, once again, environmental democracy can be considered as an unused and possibly influential international instrument when trying to raise the level of liability and accountability of MNCs. But, as proven in this paragraph, not in a direct way, but in an indirect way, by exerting pressure and calling to account the responsibility of the states

themselves, which are also the main duty bearers for environmental and HR protection and the regulation of MNCs themselves. Moreover, environmental democracy is still an under-researched topic, as evidenced by the prominent fact that the OHCHR is still preparing the first report that will concern environmental democracy and, among others, its relation to private sector actors.

The positive potential of environmental democracy as a regulatory instrument has been proven through its application to the R-I-T model. However, it should be pointed out that if all highlighted shortcomings in the current regulatory framework regarding MNCs (see Figure 6.) are compared with the very potential of environmental democracy presented in this part of the research, it can be easily concluded that environmental democracy, alone, is not a sufficient tool to combat all of the shortcomings. Therefore, environmental democracy in the role of a regulatory instrument must become the focus of more research projects in order to strengthen the tool itself through implementation, while at the same time, other possible solutions cannot be neglected either. Thus, the problem presented in this research, i.e. the lack of MNCs' accountability and liability for their HR and environmental crimes, is a complex issue that will only be solved by a combination of multiple possible solutions, including environmental democracy itself.

Part D: Final remarks and suggested solutions for a comprehensive approach to the analysed problem

1. Observed potential improvements regarding the negative impacts multinational companies have on environmental and human rights protection

This part of the research builds on all the problems recognised in the existing regulatory framework and is summarised in Figure 6. in the B part of the research. It also builds on the conclusions regarding environmental democracy as an international instrument made in the last sub-chapter in part C of the research. Thus, as concluded, environmental democracy is a useful, although not sufficiently implemented, instrument that can indirectly, through raising states' responsibilities, increase the level of accountability and liability of MNCs for their environmental and HR violations. Nevertheless, just as Figure 6 summarised, such a problem that has so many different problematic aspects cannot be solved solely by just one possible solution. Thus, the implementation gap itself, which part C focused on, cannot be solved solely by focusing on environmental democracy. It can be concluded that such a complex issue requires more than one solution.

Thus, before making the final conclusion of this paper, in this sub-paragraph, two tables are presented, which, in addition to the environmental democracy analysed, also offer other possible solutions for the issue analysed in the A and B parts of the research. Suggested directions of focus towards which both MNCs and other IC community actors, primarily states, can turn were offered by various authors during the analysis of the texts in the A and B parts of the research. Just as in the case of environmental democracy, neither of the following proposed solutions can be observed as comprehensive and sufficient solutions individually. Only if they are additionally diluted and implemented together they can fix the issue of MNCs 'passing under the order' for their corporate misbehaviours. Also, the following proposed solutions can be a good starting point for further research projects regarding the presented issue.

By taking also into account the previously presented R-I-T model, with the help of which the main issue was presented, i.e. implementation gap observed through the first part of research,

following listed solutions can be thus helpful in order to solve many presented issues that can appear in both R-I and I-T relations.

Figure 11. Table presenting the possible improvements needed to be made by the states and IGOs based on the previously pointed out shortcomings of current MNCs regulatory framework[53]

Steps needed to be taken by the IC regarding the current shortcomings in the international MNCs regulatory framework; states' and IGOs' responsibilities and capabilities	
Creating a legally binding international regulatory framework concerning MNCs	The current regulatory framework suffers from a lack of legally binding documents that impose direct obligations on MNCs and other private economic actors. This issue can only be resolved by creating a legally binding regulatory framework that is based on international documents, which would establish a set of rules that all companies worldwide must comply with. However, previous attempts to do this at a global level have failed for various reasons. In this research initiatives from the UN, i.e. failed 'Draft Norms', and also other IGOs have been presented. Therefore, there are hopes that stricter regulation at the regional level, such as the recent progress made by the EU, could be a good beginning towards a global solution.
Solving the problem of fragmentation of the global regulatory system	One of the main challenges in the current regulatory system is also the issue of overlapping international norms and rules. This represents a barrier even for individual MNCs

[53] Note of the author: This table was made using knowledge gathered in previous chapters of this research. Thus, all the information and conclusions in this model were made using information from the same sources used so far. The new source used will be highlighted if new information or claims appear. The main purpose of this table is thus to summarise previous findings and make the previous analysis more systematic and coherent, and not add new information.

	that want to comply with due diligence regulations. To address this issue, the regulatory framework should be revised and harmonised at a global level. IGOs, states, NGOs, and private consulting companies should stop considering their expertise and developed norms as 'tradable goods'. They should work together to create a common set of regulatory norms that are easily implementable by both states and economic actors.
Harmonisation of the regulatory framework at regional levels	As previously noted, some regions, such as the EU, have a more advanced regulatory system than others. However, such a situation can lead to imbalances and overlapping issues with legislation in different regions, which can cause ambiguities and problems for states, individuals, and MNCs. Regional initiatives need to be considered from multiple perspectives. While the recent development of EU legislation needs to be considered as an excellent attempt at stricter regulation of companies, including MNCs, it is important to note that such a step, particularly due to the due diligence approach, could also be seen as an attempt to spread good practices or to expand the economic influence of the EU on the markets of other regions. Therefore, attention must be also paid to possible economic and political strategies in the background. Thus, although regional attempts are a great start, it is time for a new and stronger attempt at creating a uniform approach at the global level.
Creating stronger national legislation concerning MNCs	It has been observed that the current regulatory system suffers from a lack of uniform implementation practice by the state. Part B of this research will focus precisely on this issue. As the main duty bearers and having the legal responsibility of implementation and regulation of MNCs, it is the states that must first implement all the existing international legislation, even if it is not legally binding, in

	their domestic legislation. This would standardise the practice of all states in IC and the same rules for MNCs would apply in every state. Thus, there would no longer be an issue of competition between states to uphold MNCs on their territories by lowering the level of regulation and creating 'favourable' conditions for those companies at the expense of their own citizens.
Organising and setting up stronger national monitoring and reporting structures	Many companies, whether in good or bad faith, use the argument of costly monitoring and self-reporting procedures to avoid taking responsibility for possible misconduct caused by a lack of oversight in their GVC. This is precisely why states should take on this task themselves, as the ultimate goal of such operations is to ensure greater protection for citizens. If every country were to impose the obligation of reporting to MNCs, regardless of whether they are home or host countries, data could be reviewed and compared at an international level, enabling detailed regulation of each individual stage of GVC-based business operations. By doing so, specific problems in certain MNCs or certain stages of production could be identified in time, and citizens would be fully protected from corporate crimes.
Strengthening the national judiciary in areas of corporate and commercial law	As this research has proven, many times, regardless of whether the national legislation is particularly developed or not, often actually bringing accusations but also deciding on the responsibility of the MNCs for their misconducts and crimes depends on the national courts themselves. The national judiciary is the only judicial level where the legal liability of MNCs can actually be achieved. However, even when judges decide to use all available instruments, they encounter numerous obstacles from numerous actors, judicial norms themselves, and the very transnational nature of MNCs. Precisely because of this, the state must be the one that will ensure the smooth operation of their judiciary but also respect the judgments of the courts of other

	countries and not try to defend MNCs that are of strategic importance to them by undermining the national judicial branch of their own or other countries.
Focusing on resolving the issue of extraterritoriality in national judicial systems	Even when states are prepared to take legal action against MNCs, the problem of extraterritoriality remains the main obstacle for initiating, conducting, and enforcing judgments, as well as securing acceptance from the part of MNCs themselves and other states. The issue of territorial jurisdiction, along with subject-matter jurisdiction, has been a topic of discussion in the IC for a long time, particularly in the areas of HR and environmental protection. This issue is particularly apparent in cases involving MNCs that commit transnational crimes. Therefore, it is the responsibility of states to standardise their judicial practices regarding this issue, promote uniform implementation across all states, and refrain from behaving cynically when another state fails to implement this principle towards them.
Strengthening the responsibility of individuals inside MNCs' ownership and operating structures	Despite the challenges in holding MNCs accountable for their actions in court, there are still ways for states to bypass these obstacles. It is important to recognize that MNCs are not just abstract entities but are managed by individuals who bear personal responsibility for their actions and corporate procedures. This means that criminal law can be used to punish shareholders, individual CEOs, and department leaders within the MNC. They are the ones who drive the company's strategies and should be aware of corporate practices. Even if they claim that they were unaware of the problems in the GVC, this means that they were negligent in their job, and negligence is punishable primarily under civil but also criminal law (Pirius, n.d.). By doing so, the mystique concerning the Corporate Veil is broken, and the legal liability and responsibility of MNCs can be indirectly increased.

Codification and development of legislation related to EHR at the national level	The international regulatory framework for MNCs is complex and includes various components such as IHRL and IEL. The concept of EHR combines thus the aspects of both HR and IEP. Therefore, the development and codification of EHR and its components at both the national and international levels are crucial for regulating MNCs. States should invest more effort in codifying EHR and developing national legislation to increase corporate liability for any violations of EHR within their territory and internationally.
Facilitating an atmosphere in which the work of NGOs is enabled and their reporting and warnings on corporate crimes committed by MNCs are taken into account	NGOs play a crucial role in uncovering corporate crimes and providing evidence-based reports to bring MNCs to justice and provide remedy to the victims. However, their work is often obstructed by MNCs themselves, as well as by states and other actors. It is the responsibility of states to ensure civil society's freedom by providing uninterrupted work, protection and sufficient funds for NGO operations. States must recognize the importance of NGO work in detecting corporate crimes and stop undermining their efforts. Instead, states should understand the importance of the evidence provided by NGOs and promote their work at the international level (ReliefWeb, 2023).
Education and empowerment of civil society groups as well as individuals carrying the role of the end consumers	It is the responsibility of the states to put an end to the protection of MNCs and make information about their misconduct and crimes available to the public. MNCs often go unnoticed because most consumers are not aware of their corporate crimes. Therefore, it is important to educate citizens about ethical consumerism. This will help them realize their power as end consumers to bring about change in the way MNCs do business. Empowering individuals with this knowledge can be an effective way to regulate MNCs and prevent corporate crimes. By educating the

	public on these ideas, states can strengthen their regulatory power over MNCs and help create a more ethical business environment (Grisewood, 2009, p. 5-7; Grisewood, 2009, p. 17-19).
Rethinking the fundamental ideas of the global economy and turning to a sustainable and green economy	In general, the IC still tends to ignore the fact that a growth-based economy is inefficient and causes more harm than good. The negative effects of this approach include social injustice, forced labour, HR violations, and environmental degradation. Therefore, it is crucial for states to shift their focus away from economic earnings and consider the bigger picture. They must embrace new forms of economy that are based on sustainable, green, circular, and degrowth economy ideas. However, implementing these changes would require a significant shift in the foundations of modern society, including the current free-market capitalist approach that shapes the economy. It will be a long and challenging process, but it is essential for creating a better future (Chertkovskaya, 2024).

Figure 12. Table showing the possible improvements needed to be made by the MNCs themselves based on the previously pointed out shortcomings of current MNCs regulatory framework[54]

Steps needed to be taken by the IC regarding the current shortcomings in the international MNCs regulatory framework; MNCs' responsibilities and capabilities	
Understanding of possible impacts, especially of their corporate crime on society and the environment	As pointed out, it is high time that MNCs, just as all economic actors, stop thinking about HR violations and environmental degradation occurring during their individual GVC production phases in the sense of possible negative externalities. MNCs must remain consistent even when such unprecedented situations occur and acknowledge responsibility because this is the only way to work on improving their practices. Even if it is not possible to immediately improve certain practices, for example, low wages of workers in the manufacturing companies in the developing companies, this problem must also be highlighted by the MNCs themselves at the global level so that the IC together can start an advocacy campaign first in the countries that due to various issues, they have such unfavourable conditions for their workers. Only in this way can sustainable development on the international level be finally ensured. Although they are not primary duty bearers of HR and environmental protection, MNCs must see their strength in achieving positive progress and thus the advantage they get

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	even in the form of increased attraction of investments and loyalty of end customers.
Compliance with the international and national regulatory frameworks	Although the regulatory framework is based more or less on legally non-binding rules and norms, MNCs must approach the implementation of the same with 'pure intentions'. MNCs must understand that the currently developed norms are primarily here to facilitate their business and offer them a detailed overview of all possible negative influences on their business and the possibility of additional improvement of their business without the additional need to invest in individual analysis of the same. Therefore, of course, the first step is to standardise the implementation of regulations by all MNCs and other business actors. By the full implementation, it will be visible to what extent the current regulation is sufficient and in which areas the IC must make additional investment efforts in improvement.
Adherence to and further development of internal strategies and policies concerning HR and environmental protection	First of all, companies must finally understand the full significance and potential of the CSR approach in shaping their GVC business strategies and not look at this approach only as a tool to sustain a good image of the company in front of external actors. Currently, there is a big gap between what is found 'on paper', i.e., in the CSR strategies of individual companies, and their action on the ground (Kasturi Rangan, Chase and Karim, 2015). Although this requires additional investment, strengthening MNCs' CSR departments and strategies undeniably has enormous positive returns for the companies themselves. With improved operations and an ethical approach to business come improvements in the form of the loyalty of customers and other external actors (Kasturi Rangan, Chase and Karim, 2015). Moreover, companies that develop a particularly good approach to protecting HR and the environment in their

	business also get the opportunity to gain a cooperative advantage in this field and thus have the possibility to become the leader in the individual industry compared to other companies, which increases their status compared to other companies (Kasturi Rangan, Chase and Karim, 2015).
Investment in self-reporting and measuring internal structures or employment of independent bodies	Increased investment in CSR departments can lead to increased investment in reporting and monitoring practices by individual companies in the whole of GVC. This is because monitoring and reporting are some of the main tasks of CSR departments. Investing in these areas can provide companies with a detailed insight into their own practices, as well as those of their sub-contractors and manufacturers. If any problems in the whole of GVC are identified, appropriate action can be taken. Recent research has highlighted an accelerated development of ESG monitoring practices and ranking within companies and on a global level. To remain attractive to investors, companies have no choice but to invest in their CSR departments and monitoring practices. Although some companies may outsource these tasks to external actors, such as consulting firms, it is still too early to determine which option is better as there is limited research on the matter.
Withdrawal from the possible greenwashing strategies	The term "greenwashing" refers to the practice of companies deceiving end consumers, investors, and other stakeholders about their business strategies. This is often done with the intention of covering up unethical business practices, violations of HR, environmental degradation and other corporate crimes. Companies may use CSR strategies themselves to falsely represent their data or create the illusion of perfect development strategies. Unfortunately, external monitoring and VSS certifications are also sometimes used by companies to mislead the public about their corporate misbehaviours. Such practices undermine

	the efforts of the entire IC, and the very notion of sustainability is compromised (Hayes, 2024; UNCTAD, 2020, p. 1-4). It is important that companies engaging in such unethical practices are publicly called out. However, companies must also understand the potential dangers of this approach. Engaging in such practices can lead to the destruction of a company's good reputation and, ultimately, the loss of its value and customer loyalty (Hayes, 2024; UNCTAD, 2020, p. 1-4).
Not using companies' economic and real power to undermine the work of civil society organisations and individual activists	At the outset of this study, it was highlighted that MNCs possess immense economic power, which in turn leads to the development of real and political power. To safeguard and promote their interests, which often involve maintaining their current dominance in international cooperation, these companies resort to various strategies, such as lobbying multiple levels of governance, thereby influencing various stakeholders. Often, MNCs indirectly impact the activities of civil society, particularly NGOs, which are primarily responsible for exposing their fraudulent practices. It is imperative that MNCs stop such unethical practices that conceal their probable corporate crimes. Furthermore, these companies must strive to ensure that civil society, particularly NGOs, can function without any hindrance. NGOs can assist MNCs in improving their own operations, as well as those of their subcontractors in the GVC, thereby conserving the resources that companies would otherwise have to allocate to address such issues.
Creating a network of mutual supervision and positive pressure	As observed, in addition to all other benefits represented by company operations based on all existing norms and regulations for all actors, MNCs can also gain an additional comparative advantage over other companies with worse business practices. Just like that, companies that are

	committed to improving the situation in practice bear the additional ethical responsibility of being role models and influencing the way other companies operate. Furthermore, it is to be expected that the MNCs themselves will 'trust' more and follow the instructions of their equals. In this way, a kind of 'Peer Pressure' regulation method is established. Companies must be aware that they do not operate in a vacuum and thus depend on each other, especially those within the same sector. Suppose one company within a particular sector bases its business on unethical methods. In that case, when this news becomes public, it will affect other companies and put them under an increased burden of IC. Therefore, they can expect public boycotts or sanctions in order to ensure their possible corporate crimes are proactively prevented, which is certainly not suitable for their business.
Setting up the GVC based on a multi-sourcing method, especially the raw-material production stage	It is undeniable that supervising the entire GVC is a complex and time-consuming process. The GVC's mode of operation offers both the possibility of implementing ethical ways of doing business from the parent company to its subcontractors and suppliers, as well as strengthening the business of MNCs. Many economists recommend using the multi-sourcing method rather than single-sourcing to maintain the security of the business and build resilience against possible economic shocks. This method involves expanding individual stages of production across different countries and markets. For our context, this method of doing business also offers an additional possibility of easier control of the implementation of the Due Diligence approach in the entire GVC. Every company would benefit from having multiple manufacturers and subcontractors in every individual phase of production who are capable of performing the same job. In this way, even if possible misconducts and crimes were to occur within an individual subcontracting company, MNCs could easily terminate business with such a subcontractor without fear of loss of profit and turn to further business development with one

	that respects all regulations and rules without too much loss of finances regarding rearranging their GVC (Zi Global Product Sourcing, n.d.).

Research conclusions

Almost on a daily basis, society encounters news about the harmful effects of climate change from all over the world. In addition to the apparent evidence, there is also numerous scientific evidence proving that climate change and its effects negatively affect almost every aspect of human life, thus endangering numerous HR. At the same time, it is undeniable that we are currently in the Anthropocene era, in which, comparing it to the previous periods, humanity is causing unprecedented harms to the environment, thus infringing HR and especially EHR. Of all human activities, the economy, i.e. economic activities, is the one causing the most damaging effects on the environment and EHR.

The concept of EHR, as it was presented, encapsulates the need for a 'Human Rights Based Approach' to environmental protection. By connecting HR and IEP, an attempt is made to strengthen the focus on the link between the defence of HR and the preservation of the environment. The notion of EHR, to a certain extent, is an ongoing approach to the IEP but at the same time, a relatively new idea in the iC in terms of codification. This claim was supported by many milestones in the IC and is best supported by the UN General Assembly Resolution A/RES/76/300 adopted on July 28, 2022, which now clearly declares a healthy environment and a fundamental HR. However, even though the codification of EHR is relatively new, through the analysis, it was evident that numerous regions and individual states have been practising EHR for a long time through the interpretation of already existing and well codified HR norms.

It could also be seen how the need and demand for stricter implementation and codification of the EHR, and therefore a stronger IEP, comes precisely from the civil society. Individuals are becoming increasingly aware of the negative impacts of insufficient environmental protection on their basic and fundamental HR precisely because of the negative situations that occur every day. Precisely because of the efforts coming from the civil society, i.e. lover levels of multi-level governance, i.e. bottom-up demand for a stronger regulatory regime, states are being pushed to strengthen the legal frameworks and to change the focus from the orientation towards mere environmental benefits to sustainable development, which will return the focus to the people themselves and the environment. Proof of this is the growing

number of climate litigation cases in which individuals demand a higher level of responsibility and accountability from their states for the same goals that states have repeatedly reaffirmed at the international level, that is achieving sustainable development, IEP and IHRP.

Part B of this thesis focused on the MNCs as the strongest economic actors. In this part, through the analysis of scientific evidence, it was presented how exactly MNCs, through their GVC based operations, in the desire to increase their economic profit, knowingly or unknowingly bypass international rules and standards, which then have negative effects on the environment and HR. In this part, extensive research of the existing international legislative framework concerning the MNCs and areas of HR and IEP was conducted. Thus, it was established that there is a paradoxical situation where, despite all the knowledge about the analysed problem, the current regulatory framework is still insufficient, which leaves numerous gaps that allow MNCs to go 'under the radar' even when their corporate crimes are discovered. This was shown through the debate itself regarding the current foundations of IC, which is still based on a realistic approach, with the states being the main actors and having the main duties and responsibilities. Such current structures are insufficient to approach such a complex problem and the need of 'new forms of global governance'.

Despite the elaborated and complex regulatory regime concerning the MNCs and their negative influence both on the environment and HR, which comes from different directions and levels of multi-level governance (presented in Figure 5.), through a detailed analysis of the presented issue in the light of the regulatory structures, a whole series of problems was observed which are highlighted in Figure 6.. Therefore, already in this part, it became obvious that one direction cannot be solely highlighted, which could achieve a complete solution to the presented issues.

The analysis of the main regulatory documents showed that one of the most pressing issues is precisely the insufficient protection of the environment and HR and the insufficient regulation of MNCs by the states due to various reasons. Nevertheless, the current regulatory framework, although it is not legally binding, is not so inadequate if it is fully implemented. In this regard, the main focal issue recognised, is that the nation-states fail to fulfil their duty as the main duty bearers and subjects of the IL framework. This is also shown through the

application of this identified issue to the R-I-T model of implementation of international rules and regulations, in which states performing the intermediate actor roles do not fully implement international, established norms to which they have committed themselves to the fullest extent and at the same time do not perform the duty of implementing such rules to the end subject, in this case, MNCs, through their national legislation, thus in a legally binding way.

Part C of this research has thus focused solely on environmental democracy, trying to see if it can be characterised as an international instrument and if such can 'fill', i.e. resolve the main recognised gap in the research so far, as shown using the R-I-T model. As it was seen, environmental democracy is a relatively new approach with which it is possible to increase both HR and environmental protection. However, it was expressed that it is often misunderstood or confused with other somewhat similar terms, such as climate justice or climate litigation.

As pointed out in the research itself, environmental democracy still lacks one codified and unified definition at the international level, which is often slightly different when analysing different scientific research and primary documents. However, by comparing them all, it can be concluded that environmental democracy is the domain of participatory democracy that deals with issues related to the environment, including its protection and the enjoyment of EHR. It also includes both positive and negative obligations of states related to these areas. Environmental democracy can also be considered as another form of the anthropocentric approach to international environmental protection.

It was also pointed out that environmental democracy is built of the three main pillars, which include; transparency (access to information), participation (public participation in the decision making process) and justice (access to justice and remedy). Furthermore, it was pointed out that environmental democracy itself can be seen as an integral part of the analysed EHR themselves, more precisely, procedural rights that, together with substantive ones, make EHR. In this regard, it was difficult to answer clearly whether environmental democracy can be considered a single instrument or just a part of the wider system of EHR. However, most of the analysed scholars and primary documents specifically point out environmental democracy as a single, independent instrument.

With further analysis, it was also observed that the codification and implementation of this international instrument is unbalanced if the international level is observed and also if a comparison is made between different regional and national levels. This then leads to further issues in understanding and implementing the same. However, there are international and regional documents that guarantee a certain level of environmental democracy codification, as was proven through the detailed analysis of the Aarhus Convention, the Escazu Agreement and the accompanying regional and national legislation, especially at the level of the EU and the Inter-American Region.

Accordingly, in this section, an extensive analysis of the regional case law and those cases that are conducted under the Committees was carried out. In addition to the primary documents, these cases provided additional insights to the understanding and way of implementing environmental democracy, but also in answering the main research question of this research.

Thus, after all, in this part of the research, the main goal was to see if, with the usage and implementation of environmental democracy, the main identified implementation gap can be 'filled', i.e. if the level of accountability and liability of MNCs for their corporate offences concerning the environmental degradation and HR violations can finally be raised? As already said in the research introduction, this part also contains the biggest added value of this entire research. After a careful analysis of various aspects of environmental democracy, but also taking into consideration everything that was said in parts A and B, it can be concluded that environmental democracy indeed is an specific instrument, which, although it requires more attention and further development, can contribute greatly in raising the level of EHR and environmental protection.

Especially through the analysis of relevant case law, it is evident that the big problem is that environmental democracy is already widely implemented via litigations in regional courts, but without explicitly stating environmental democracy as a main case concern, but further analysis shows that the cases revolve around one or more pillars of environmental democracy. Furthermore, environmental democracy is an instrument that is precisely in the hands of the civil society. Moreover, it is an instrument that can be used 'against' individual national governments or regional institutions, as in the case of the EU, in order to point out

the insufficient protection of the EHR and the environment by the nation-states themselves since, as pointed out, states are still the main subjects, also in the example of the analysed documents that focus on environmental democracy. Thus, it is concluded once again that environmental democracy cannot be considered as an instrument to directly raise the level of corporate liability for environmental and HR crimes, but this thus can be achieved in an indirect way, by holding governments accountable for insufficient implementation of IEL and IHRL norms in the national legislation and insufficient regulation of companies, including MNCs, and thus insufficient protection of the citizens against the negative effects of private economic actors.

Therefore, neither the biggest issue recognised, which is the implementation gap, nor other recognised issues such as other gaps in the current regulatory framework, can be resolved solely by relying upon the somewhat unused international instrument of environmental democracy. Therefore in part D of this research, in a structured way, through the Figure 11. and Figure 12., other solutions are offered that, in addition to environmental democracy, can contribute to the improvement of the existing international regulatory system, but also in general the problem of the negative influence of MNCs, and other economic actors, on the HR and environmental protection. Some of the proposed solutions can be achieved only with the support of states, while others must be fostered by the MNCs, i.e. economic actors.

However, as already pointed out in the case of environmental democracy, none of these other possible steps represents a complete solution to the represented issue. These possible solutions were actually mentioned by experts, NGOs and IGOs as seen in parts A and B of this research, and all sources emphasise the same conclusions, that is that all of these steps need to be taken simultaneously by both private and public actors; all actors must truly embrace a shared responsibility approach towards the complete resolution of the problem, as imagined in the analysed SDG17 that reaffirmed the idea of partnership for the goals.

This thesis research has thus delved into a serious and complex issue trying to present more details of just one of the possible solutions to the same. The complexity of the HR violations and environmental degradation conducted by the MNCs thus requires more focus, more comprehensive solutions and the highest possible level of accountability of both the states and MNCs themselves. Moreover, this topic deserves more attention from the scholars,

experts, NGOs and IGOs themselves in order to put this problem even more in the focus of the IC and finally remove the notorious 'corporate veil'. This, of course, cannot be achieved with only one approach, such as the analysed environmental democracy, but many other positive efforts must be made simultaneously with it.

As the last comments in this research, it is necessary to once again look at the presented problem from a wider perspective. The presented problem of continuation of the exploitation of the environment and violations of HR conducted by the MNCs is only one aspect of a wider issue concerning the structural problems on which the capitalist system is built. Environmental democracy, even though it can be helpful in raising awareness about the issue but also to some extent raises the level of liability and accountability of economic actors, in fact only scratches the surface. Environmental democracy currently serves mostly as an instrument for approaching individual problems. Environmental democracy should be approached with a broader understanding, as democracy itself: as an instrument in the hands of individuals that can help raise the protection of HR and fight structural inequalities.

It is unnecessary to go into all the details of the referred structural issue concerning the IHRP, the IEP and the very exploitative nature of capitalist economy. It is already 'common knowledge', and the possible steps that the state and other actors can take to tackle effectively the challenge of climate change and environmental degradation worldwide are also known. Thus, the only thing missing is precisely the will of actors to tackle the issue in a comprehensive way. At the very end, the structural issue that Anthony Giddens himself refers to in his book *Politics of Climate Change,* and the same claim highlighted on several occasions in this research as well, is that no individual step, nor a combination of several of them can solve the problem of environmental degradation and HR violations that occur as a consequence of the globalised world based on the capitalist economy. The same can only be achieved by changing the very foundations of the capitalist economy, which by itself is not and can never be sustainable, and that all IC actors must finally decide that the primary focus should finally be placed on the protection of the environment and HR and not on mere economic profits (Giddens, 2009).

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