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Draft Framework Treaty for Global Environmental Governance

A Legal Framework to Achieve Net Zero

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Publication date: 22nd July 2022

Version: DRAFT 1.0

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Introduction

This draft framework treaty provides a basis upon which existing national and international legal and economic frameworks can be redesigned to achieve the outcome of 'net zero' degradation to the environment, including net zero greenhouse gas emissions. It has been drafted in a framework format to allow for consultation.

The drafting follows macro legal analysis of the relevant national and international legal and economic frameworks.

Macro legal analysis is a method that has enabled insights into the relationships that different international legal and economic frameworks have with each other. It has assisted in enhancing the understanding of the outcomes that they collectively cause when operating in unison.

This analysis has demonstrated that outcomes for the environment (including greenhouse gas emissions) are dependent on a range of national and international legal and economic frameworks that were established prior to the existing environmental challenges that we now face. It has shown that those legal and economic frameworks can be redesigned to ensure that the outcomes for business and industry achieve net zero degradation to the environment.

Macro legal analysis has demonstrated that the individual legal and economic frameworks in question form part of a broader inter-connected system. It shows that an integrated approach to reform is required if the component parts of that inter-connected system are to function with a common purpose in terms of environmental outcomes. It emphasises that smart redesign can lead to greater efficiency, clarity for business and industry along with a smoother and more rapid pathway to net zero.

This draft framework treaty provides a design of an overarching international legal and economic framework that could, if implemented, achieve the required objectives.

It would require concerted effort to implement and a willingness to depart from aspects of the existing legal and economic frameworks that arguably should be redundant. It would also require significant work to develop appropriate measures and transitional periods appropriate to countries in different stages of development. The development of this draft does not underestimate the scale of the challenges involved in implementation. However, it is premised on the basis that the international community requires greater clarity related to the overarching legal and economic framework that would be required to achieve and sustain net zero degradation to the environment if it is to achieve that goal within a reasonable timescale.

Necessarily, this draft framework treaty is designed to play an important part in the realisation of the right to a safe, clean, healthy and sustainable environment. It is also designed to act as a core component in the realisation of the responsibility of businesses to fully respect and protect human rights.

This draft framework treaty is based on an earlier version formulated in: Turner, *A Global Environmental Right*, (2014) Earthscan for Routledge.

Draft Framework Treaty for Global Environmental Governance

- A Legal Framework to Achieve Net Zero

Preamble

The Parties to this treaty,

Recognizing that all actors whether state or non-state, whether individuals or organisations, have a duty to protect the environment,

Recognizing that all peoples and communities have a right to a system of national and international government and governance in which the duty of all actors to protect the environment is integrated within international legal and economic frameworks,

Recognizing that every form of life is unique, warranting respect regardless of its worth to humankind, and, to accord other organisms such recognition, humankind must be guided by a legal framework for decision-making,

Recognizing that in the redesign and implementation of legal and economic frameworks appropriate transitional measures for states in different stages of development will be required,

Recognizing the principles of the United Nations Conference on the Human Environment at Stockholm 1972,

Recognizing the principles of the United Nations Conference on Environment and Development at Rio de Janeiro 1992,

Recognising that the legal responsibilities of both state and non-state actors should be based on relevant scientific knowledge,

Recognising that a primary responsibility of all trade organizations whether international or regional is to adopt trade rules which ensure that net zero degradation to the environment is achieved throughout the processes of production and trade in goods and services,

Recognising that international investment agreements should be drafted to include rules that require business and industry undertaken under their auspices to ensure that net zero degradation to the environment is achieved,

Recognising that any agreement for finance of business and industry should be framed and interpreted to require that all operations ensure that net zero degradation to the environment is achieved,

Recognizing that the operation of business is a privilege that comes with legal responsibilities towards the environment and human rights,

Recognizing that all businesses, whether incorporated or operating in an alternative form, have a responsibility to achieve net zero degradation to the environment as part of the realisation of the right to a safe, clean, healthy and sustainable environment, and to fully respect human rights.

Have agreed as follows:

Article 1 – Statement of Environmental Duties / Rights

Any decision by a person, group of people, organization or government that brings about or could bring about degradation of the environment, is contrary to the common duty to protect the environment and as such is *prima facie* unlawful. Environmental degradation can be rendered lawful by qualification where other less environmentally degrading alternatives are not viable to achieve legitimate purposes. In the event that such degradation is permitted, it must be accompanied by an equitable form of compensation that in at least equal measure, benefits the environment of the community or the area or aspect of land, air, sea, ecosystem or water that is suffering or would suffer that degradation or risk of degradation in order that net zero degradation is achieved. It is a human right to be able to challenge decisions affecting the environment through democratic processes, courts and tribunals.

Article 2 – Definitions

‘Corporation’ – For the avoidance of doubt, where the word ‘corporation’ is used within the context of this draft, it should be interpreted to include other types of business entities.

‘Operate Internationally’ – refers to the activities of any corporation (or other business entity) that buys or sells goods or services in countries other than those in which it is registered, and/or that operates as

a parent or subsidiary of a corporation in another jurisdiction, or that works as part of a consortium of corporations where any or all are registered in different jurisdictions.

'Net zero degradation' – should be understood to apply to all aspects of environmental degradation including greenhouse gas emissions.

'Responsible International Organisation' – denotes the international organisation appointed or created to fulfil the functions designated to it as a result of the provisions of this treaty.

'International Corporation Registration Body' – denotes the international organisation appointed or created to fulfil the functions designated to it as a result of the provisions of this treaty.

Article 3 – Integration of Duties

(a) Each party shall integrate the legislative measures detailed in this treaty into their domestic law in accordance with the guidance of the Secretariat.

(b) Each party shall report to the Secretariat and the Responsible International Organisation (see Art.13) on the legislative steps that are taken to comply with the treaty.

Article 4 – National Constitutions and Governmental Duties Towards the Environment

(a) Each party shall amend that part (or parts) of its constitution (and where necessary its national legislation) relating to the environment to confirm that local, regional and national governments are not permitted to make any decision/s that *will* or *may* cause degradation to the environment (whether they be through policies, executive decisions or law making) without following the relevant procedures prescribed in sub-sections (b)–(e) of this article.

(b) In the event that a government (whether local, regional or national) finds that it is necessary to make a decision that *will* cause degradation to the environment in order to achieve legitimate objectives (whether that be through policies, executive decisions or legislation), it shall be obliged, in accordance with equitable principles, to compensate that aspect/those aspects of the environment or purchase environmental offsets from a registered supplier to achieve net zero degradation of the environment (see Art. 10).

(c) Each government shall keep a record of any decisions that *will* cause degradation to the environment (see sub-section (b)) and any associated environmental compensation, and a corresponding record of

the compensation that has been purchased through a registered supplier of environmental offsets thus forming part of its environmental accounts (see Art. 5).

(d) In the event that a government (whether local, regional or national) finds that it is necessary to make a decision that *may* cause degradation to the environment to achieve legitimate purposes (whether that be through policies, executive decisions or legislation), it shall be obliged, in accordance with equitable principles, to purchase insurance from a registered supplier to achieve net zero degradation of the environment (see Art. 11).

(e) Each government shall keep a record of any decisions that *may* cause degradation to the environment (see sub-section (d)) and a corresponding record of the insurance that has been purchased through a registered supplier of environmental insurance, thus forming part of its environmental accounts (see Art. 5).

Article 5 – Annual State Environmental Accounting

All states shall, on an annual basis, lodge a copy of their environmental accounts with the Responsible International Organisation (see Art. 13).

Article 6 – Duties of Individuals Towards the Environment

(a) Each party shall amend that part of its constitution relating to the duties citizens towards the environment (whether that be in the national/federal constitutions or state constitutions or the equivalent provisions in legislation) to confirm that they are not permitted to make any decision *that will* cause degradation to the environment without following the procedure prescribed in sub-section (b) or (c) to this article to achieve net zero degradation of the environment.

(b) In the event that a citizen legitimately finds that it is necessary to make a decision that *will* cause degradation to the environment, they shall be obliged, in accordance with equitable principles, to compensate that aspect/those aspects of the environment or purchase environmental offsets from a registered supplier to achieve net zero degradation (see Art. 10).

(c) In the event that a citizen legitimately finds that it is necessary to make a decision that *may* cause degradation to the environment, he/she shall be obliged, in accordance with equitable principles, to purchase insurance from a registered supplier to ensure net zero degradation of the environment is achieved (see Art. 11).

(d) This article does not apply to the purchase of products and food (see Art. 9).

Article 7 – Corporate Environmental Duty

- (a) Each party shall amend that part of its law relating to 'directors' duties' (or its equivalent within its corporate law) to confirm that directors are not permitted to make any decision that would cause degradation to the environment without following the procedure prescribed in sub-section (b) and (c) and/or (d) and (e) to this article to achieve net zero degradation of the environment.
- (b) In the event that a corporation legitimately finds that it is necessary to make a decision that *will* cause degradation to the environment in accordance with national policy, whether that be through an industrial project, business activity, procurement or any other type of activity, it shall be obliged, in accordance with equitable principles, to compensate that aspect of the environment, in equal measure to the level of degradation that will be caused, or to purchase environmental offsets from a registered supplier, to achieve net zero degradation (see Art. 10).
- (c) Each corporation shall keep a record of any decisions that *will* cause degradation to the environment and a corresponding record of the compensation that has been carried out or purchased through a registered supplier of environmental offsets. Such records will become part of their environmental accounts to demonstrate that they achieve net zero degradation (see Art. 8).
- (d) In the event that a corporation legitimately finds that it is necessary to make a decision that *may* cause degradation to the environment, whether that be through an industrial project, business activity, procurement or any other type of activity, it shall be obliged, in accordance with equitable principles, to purchase insurance from a registered supplier to ensure that net zero degradation of the environment can be achieved in the event that an occurrence (or series of occurrences) takes place which would trigger the requirement for environmental compensation. (see Art. 11).
- (e) Each corporation shall keep a record of any decisions that *may* cause degradation to the environment and a corresponding record of the insurance that has been purchased through a registered supplier of environmental insurance. Such records will become part of their environmental accounts to demonstrate that net zero degradation of the environment can be achieved. (see Art. 8).
- (f) The obligations in this article will be extended to all decision-makers in all types of business entities whether they are partnerships, sole-traders, cooperatives, or any other form, to ensure that all businesses are subject to the same legal obligations in relation to the environment.

Article 8 – Annual Corporate Environmental Accounting

- (a) Each party shall enact legislation requiring all corporations (and any other type of business entity, as stated in Art. 7(f)) to lodge environmental accounts annually alongside their financial accounts to the same national body that receives the annual financial accounts. Such environmental accounts shall include the details pertaining to Art. 7(c) and 7(e).
- (b) Each party shall enact legislation requiring all annual environmental accounts to be available to the public on the same basis as a corporation's financial accounts.
- (c) The form of each party's corporate environmental accounts shall be consistent with the style agreed and prescribed by the Responsible International Organisation (see Art. 13).
- (d) All corporations (and all types of business entities to whom this applies as stated in Art. 7(f)) shall lodge a copy of its corporate environmental accounts with the Responsible International Organisation (see Art. 13).

Article 9 – Consumption, Use and Disposal of Goods and Products

- (a) Each party shall enact legislation to ensure that prior to the sale to the consumer of goods or products that will cause degradation to the environment in their consumption or use, environmental offsets are purchased that in at least equal measure will compensate the environment of the community or the area of land, air, sea, ecosystem, or water that will suffer that degradation to achieve net zero degradation.
- (b) Each party shall enact legislation to ensure that prior to the sale to the consumer of goods or products that will cause degradation to the environment in their disposal, environmental offsets are purchased that in at least equal measure will compensate the environment of the community or the area of land, air, sea, ecosystem, or water that will suffer that degradation, to achieve net zero degradation.

Article 10 – Registered Suppliers of Environmental Offsets (EOs)

- (a) Each party will establish a system of registered suppliers of environmental offsets within its own jurisdiction in accordance with the standards agreed by the Responsible International Organisation (see Art. 13).
- (b) Each party will establish a national office to regulate and oversee the registered suppliers of environmental offsets in accordance with the standards agreed by the Responsible International Organisation (see Art. 13).

- (c) Each party will require that registered suppliers of environmental offsets produce annual reports of the offsets provided in each accounting year in accordance with standards agreed by the Responsible International Organisation (see Art. 13).
- (d) Each party shall require that a copy of the annual report provided by the registered suppliers of environmental offsets is delivered to the Responsible International Organisation (see Art. 13).
- (e) Each party shall ensure that the standards of environmental offsets supplied by their registered suppliers of environmental offsets are consistent with standards established by the Responsible International Organisation (see Art. 13).
- (f) Each party will facilitate on-site standards inspections by representatives of the Responsible International Organisation of environmental offsets.
- (g) The Responsible International Organisation will be the final authority on the granting or revocation of the licenses of registered suppliers of environmental offsets and also on sanctions for non-compliance with standards.

Article 11 – Registered Suppliers of Environmental Insurance

- (a) Each party will establish a system of registered suppliers of environmental insurance within its own jurisdiction in accordance with the standards agreed by the Responsible International Organisation.
- (b) Each party will establish a national office to regulate and oversee the registered suppliers of environmental insurance in accordance with the standards agreed by the Responsible International Organisation.
- (c) Each party will require that registered suppliers of environmental insurance produce annual reports of all the insurance provided in the preceding accounting year in accordance with the standards agreed by the Responsible International Organisation.
- (d) Each party will require that a copy of the annual report provided by the registered suppliers of environmental insurance is delivered to the Responsible International Organisation.
- (e) Each party shall ensure that the standards of environmental insurance supplied by their registered suppliers of environmental insurance are consistent with the standards agreed by the Responsible International Organisation.

- (f) Each party will facilitate on-site standards inspections, by representatives of the Responsible International Organisation, of work undertaken by or on behalf of registered suppliers of environmental insurance.
- (g) The Responsible international Organisation will be the authority on the granting or revocation of the licenses of registered suppliers of environmental insurance and also on sanctions for non-compliance with standards.

Article 12 – International Corporation Registration Body

An International Corporation Registry Body is hereby established. Its functions shall be:

- (a) To maintain a register of all corporations (or other business entities) that, 'operate internationally'.
- (b) To provide a license for corporations (or other business entities) to 'operate internationally'.
- (c) To provide standardized sanctions for corporations (and other business entities) that fail to comply with the standards agreed and determined by the responsible international organisation.
- (d) To act as an authority for all parties in relation to the sanctions, including the revocation of licenses to 'operate internationally', for those corporations (and other business entities) that fail to comply with the standards agreed and determined by the Responsible International Organisation.

Article 13 – The Responsible International Organisation

A Responsible International Organisation is hereby established/acknowledged. Its functions shall be:

(a) Standard Setting

- (i) To provide an international authority for environmental standard setting.
- (ii) To agree the standards required for environmental offsets (see Art. 10) and to agree the requirements for environmental insurance (see Art. 11).

(b) Governance

- (i) To receive and monitor the environmental offset reports (see Art. 10).
- (ii) To inspect the quality and adequacy of environmental offsets through a system of international environmental assessors (see Arts. 10 and 16).

(iii) To oversee and license registered suppliers of environmental offsets and registered suppliers of environmental insurance and to revoke their licenses in the event of a failure to provide offsets or insurance that meets the Responsible International Organisation standards (see Arts. 10 and 11).

(c) Transitional Arrangements

(i) To provide a forum to agree the transitional arrangements for both states and non-state actors (see Art. 19).

(d) Dispute Settlement

(i) To provide a dispute settlement body to hear disputes relating to decisions within the ambit of this treaty.

(ii) To provide authoritative advice to the Dispute Settlement Body of the World Trade Organization (WTO) on environmental matters (see Art.14).

(e) Compliance

(i) To receive reports from each party to this treaty relating to the legislative steps taken to comply with it and advise the Secretariat accordingly (see Art. 2).

(ii) To receive copies of each state's environmental accounts and advise the Secretariat accordingly (see Art. 5).

(iii) To receive copies of each corporation and business entity's environmental accounts and to advise the International Corporation Registration Body in relation to compliance with the required standards (see Art. 8).

(iv) To receive the annual reports from the registered suppliers of environmental offsets (see Art. 10).

(v) To receive the annual reports from the registered suppliers of environmental insurance (see Art. 11).

(vi) To use the system of environmental assessors (see Art. 16) to assist in ascertaining levels of compliance.

(vii) To act as an authority on the granting or revocation of the licenses of registered suppliers of environmental offsets and also sanctions for non-compliance with standards (see Art. 10).

(viii) To act as an authority on the granting or revocation of the licenses of registered suppliers of environmental insurance and also sanctions for non-compliance with standards (see Art. 11).

(f) Corruption

(i) To ensure that corporations, or other types of business entities, or other organisations or individuals, are not permitted to influence the decision-making processes of the Responsible International Organisation except through transparent and properly recorded consultation processes open to all sectors of the international community.

(ii) To put systems in place to ensure that corrupt practices relating to the environment are eradicated and national authorities prosecute where appropriate.

Article 14 - World Trade Law

Each party commits itself to:

(a) An amendment to the Charter Establishing the WTO in order that its purposes include the requirement that goods and services traded do not cause degradation to the environment in the manner in which they are produced, in their use, or in their disposal, and that where such degradation is caused, to achieve legitimate purposes, the necessary steps are taken in accordance with this treaty to compensate the environment accordingly, to achieve net zero degradation.

(b) Amendments to the WTO trade disciplines to ensure that all goods and services traded by states, corporations, other business entities, organizations and individuals are compliant with the environmental duties detailed in this treaty.

(c) Amendments to the Agreement Establishing the Dispute Settlement Body (DSB) to ensure that any disputes that involve environmental protection or issues relating to environmental measures will be referred to the relevant organ of the Responsible International Organisation which will investigate and provide advice accordingly (see Art. 13).

(d) Amendments to regional trade agreements consistent with the objectives detailed in (a)–(c) above.

Article 15 – Environmental Assessments

Each party will amend its law relating to Environmental Impact Assessments and Strategic Environmental Assessments to ensure that the following apply:

- (a) Systems shall be developed in accordance with standards agreed by the Responsible International Organisation to ensure that all aspects of environmental degradation and potential degradation are assessed and addressed, using appropriate methodologies and techniques, in accordance with the provisions of this treaty.
- (b) Where an environmental assessment indicates that a decision, arrangement, law, project, plan or policy *will* cause degradation to the environment and no less environmentally degrading alternatives are viable, the assessment will include a report on the quantity and type of environmental offsets (see Art. 10) required to ensure that the individual, government, business or organization that is seeking to carry it out, is informed of the steps necessary to comply with the law.
- (c) Where an environmental assessment indicates that a decision, arrangement, law, project, plan or policy *may* cause degradation to the environment and no less environmentally degrading alternatives are viable, the assessment will include a report on the quantity and type of environmental insurance (see Art. 11) required to ensure that the individual, government, business or organization that is seeking to carry it out, is informed of the steps necessary to comply with the law.

Article 16 – System of International Environmental Assessors

The Responsible International Organisation will establish a system of environmental assessors in accordance with Article 13(b) to:

- (a) Inspect and report on the standards of environmental offsets being provided by registered suppliers of environmental offsets (see Art. 10).
- (b) Inspect and report on the standards of environmental insurance being provided by registered suppliers of environmental insurance (see Art. 11).
- (c) Inspect and report on governments, corporations and any other business entities that make decisions that have or could have impacts on the environment to ensure that correct procedures are followed.

Article 17 – Banks and Financial Institutions

Each party commits itself to:

- (a) Amendments to the charters/constitutions of banks and financial institutions to change their purposes to organizations that will only lend funds to projects that are consistent with the environmental duties detailed in this treaty, at the risk of acting ultra-vires their purposes.
- (b) Amendments to the charters/constitutions of banks and financial institutions to change their operational policies and practices to ensure that projects are consistent with the environmental duties detailed in this treaty, at the risk of acting ultra-vires their policies.

Article 18 – International Investment Agreements

Each party commits itself to:

- a) Amendments to all international investments agreements to which it is party, to facilitate a business environment that is consistent with the provisions of this treaty.
- b) States should not be financially penalised for introducing measures to ensure compliance with the provisions of this treaty.
- c) Corporations should be protected from unnecessary 'expropriation' of their businesses through the introduction of measures to comply with this treaty through appropriate periods of transition that enable adjustment over reasonable periods of time.

Article 19 – Transitional Arrangements

The Responsible International Organisation will coordinate the agreed transitional arrangements, where appropriate, during the incorporation of the obligations required under this treaty.

Article 20 – Compliance

- (a) The Responsible International Organisation will have compliance responsibilities in accordance with Art. 13(e).
- (b) The International Corporation Registration Body will have compliance responsibilities in accordance with Art. 12(d).

Article 21 – Separation of Corporations and the State

Each party will enact legislation to ensure that governments only consult business and industry through formal processes of consultation (provided for by government) on decisions relating to the environment. Such processes are to be made available to other interested parties including civil society and NGOs.

Article 22 – Secretariat

A Secretariat is hereby established. Its functions shall be:

- (a) To organize an annual meeting of the parties.

- (b) To periodically review the terms of this treaty in order that it can be updated in accordance with the requirements of the parties.

Select Resources

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