

## Contractualization of Environmental Protection: Prospects for Post-conflict Recovery of the Formerly Occupied Territories of Azerbaijan

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Since the outbreak of the First Karabakh War back in the early 1990s, numerous instances of environmental damage have been committed by Armenia and by private companies operating under its sovereignty throughout the formerly occupied territory of Azerbaijan. This article aims at providing an overview of the wrongful acts committed by Armenia that have caused severe harm to the natural environment of Azerbaijan, and covers a period from the First and the Second Karabakh wars up to the present. The article further intends to outline the corporate accountability framework in international law for preventing private companies' illicit environmental conduct. The ultimate objective of this article lies in the proposal of a contractual approach to environmental protection, to be applied both to corporate activities and during the reconstruction of the liberated territories of Azerbaijan. This legal solution is characterized as both a means of compensating for the weakness of the international law framework regarding corporate accountability for environmental harm, and as an approach to prevent future environmental hazard committed by multinational corporations operating in the territory of Azerbaijan. It is possible that the contractualization approach could be applied to additional areas of the world affected by corporate environmental damage.

**Keywords:** environmental protection, Second Karabakh War, corporate accountability, contractualization, Azerbaijan, Armenia



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### *Introduction*

This article aims at providing an overview of the severe environmental damage deliberately committed by Armenia and by private enterprises within the formerly occupied territories of Azerbaijan from the First Karabakh War in the early 1990s to the present. Moreover, as the principal focus regards foreign corporations operating under Armenian sovereignty, this study will delineate the international law framework dealing with corporate environmental accountability, with a view to outlining the main legal drawbacks in guaranteeing the environmentally sound conduct of multinational corporations operating in foreign countries. Eventually, this article recommends the consideration of a contractual approach to environmental protection to be applied by Azerbaijan in relation to multinational companies that conduct activities within its territorial borders, which could serve as both a means to prevent future environmental damage, and a way to overcome legal shortcomings in the field of corporate accountability.

For this purpose, the first section of this article will be dedicated to the description of environmental damage committed by Armenia and foreign companies in the formerly occupied territories of Azerbaijan. Particular attention will be dedicated to the subjects of illegal landmine contamination and eco-terrorism activities. The latter include water pollution, the deprivation of water to adjacent districts' inhabitants, and illegal corporate exploitation of mineral resources. These topics will be covered through an analysis of the transboundary pollution of the Okchucay River due to the dumping of waste from Armenian mining enterprises; the denial of access to the water resources of the Sarsang Reservoir (located in the Karabakh region) to Azerbaijani citizens; and an assessment of the recent interstate arbitration raised by Azerbaijan against Armenia on the basis of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention).

Taking into account the environmental damage committed by Armenia, the second part of this article will evaluate the corporate environmental accountability framework under international law, with the aim of outlining a possible approach to be adopted in the future to prevent the perpetration of similar damage on the part of corporations. This includes consideration of the main drawbacks of international law in guaranteeing effective protection of the environment on the part of multinational

corporations due to – among other aspects – the structure of private companies themselves and the difficulties in the identification of which state is internationally required to exercise the control over corporate activities (either the home state in which the enterprise is registered, or the host state in which the company operates). The adoption of this methodology will eventually lead to the development and analysis of tailored solutions to ensure comprehensive governmental action for the protection of the environment, namely the adoption of the approach of contractualization of environmental protection. This includes the transformation of international environmental protection standards and voluntary corporate codes of conduct into binding contractual clauses. Eventually, by overcoming the legal shortcomings in corporate accountability, this approach will be recommended as a solution for the post-conflict recovery of the formerly occupied territories of Azerbaijan and as a preventive methodology to be applied by Azerbaijan in its future relations with multinational companies operating in its territories. This approach could possibly also be applied to further regions of the world potentially affected by corporate environmental damage.

### ***Environmental Damage to the Formerly Occupied Territories of Azerbaijan***

Amid the Soviet Union's implosion in 1991, war erupted between Armenia and Azerbaijan after the former launched an armed occupation of the latter's territories, starting from the former Nagorno-Karabakh Autonomous Oblast and expanding to the adjacent districts. By 1993, the aggression of Armenia against Azerbaijan had resulted in the former's occupation of approximately 20% of the sovereign territory of Azerbaijan and the forcible expulsion of more than 1 million Azerbaijanis from their ancestral lands. During the following year, a ceasefire mediated by Russia, known as the "Bishkek Protocol", left the issue of the occupation of Azerbaijan's territory *de facto* unresolved.<sup>1</sup>

Since the ceasefire in 1994, intermittent clashes, multiple ceasefire violations, and Armenia's unconstructive positions in the diplomatic negotiations prepared the ground for the Second Karabakh War in 2020, during which Azerbaijan liberated the seven districts formerly occupied

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<sup>1</sup> United Nations, "Bishkek Protocol signed between Armenia, Azerbaijan and Russian Federation", May 5, 1994.

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by Armenia since the early 1990s.<sup>2</sup> As a result, a Trilateral Statement was signed among the belligerent parties on November 10, 2020, and a peacekeeping contingent of the Russian Federation was deployed to a specified part of the Karabakh region of Azerbaijan.<sup>3</sup>

The almost 30 years of Armenian occupation of the sovereign territory of Azerbaijan had resulted in devastating environmental impacts, as indicated by numerous investigations conducted at the levels of both international organizations and the national government of Azerbaijan, as well as by the international media and even environmental activist groups in Armenia.<sup>4</sup> Nonetheless, urgent action taken by Azerbaijan to invoke Armenia's international responsibility has not

resulted in any outcome, thus nurturing a feeling of impunity despite the environmental damage committed.

#### *Landmine contamination*

The issue of landmine contamination ranks among the most dangerous humanitarian and environmental consequences of the First and Second Karabakh Wars.<sup>5</sup> These weapons have been responsible for injuring 3,416 Azerbaijanis since 1991. And thus far, 337 Azerbaijani citizens have been victims of landmine explosions since the end of the Second Karabakh War, of whom 65 were killed, while 272 of them received injuries of varying degrees of severity.<sup>6</sup> Furthermore, according to the

2 Council on Foreign Relations, "Nagorno-Karabakh Conflict", updated August 10, 2023, available at: <https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict> (accessed: August 28, 2023).

3 President.az, *Statement by the President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation*, November 10, 2020, Available at: <https://president.az/en/articles/view/45923> (accessed: August 30, 2023).

4 Baghdasaryan, S., Martirosyan, M., Sarukhanyan, V., "Armenia's Artsvanik Tailing Dump: History, Impacts, Dangers, and Uncertain Future", *Hetq*, August 5, 2019, Available at: <https://hetq.am/en/article/105994> (accessed: September 3, 2023).

5 Mustafayeva, N., "Armenia's Obligations under International Law in the Area of Mine Action", *Caucasus Strategic Perspectives*, Volume 3, Issue 1, Summer 2022, Available at: [https://cspjournal.az/uploads/files/Summer%202022/\(9\)%20Najiba%20Mustafayeva.pdf](https://cspjournal.az/uploads/files/Summer%202022/(9)%20Najiba%20Mustafayeva.pdf) (accessed: October 16, 2023).

6 Official website of the Mine Action Agency of the Republic of Azerbaijan, "Risk Education", Available at: <https://anama.gov.az/en/enlightenment-works> (accessed: October 31, 2023).

most recent data published by the Mine Action Agency of Azerbaijan (ANAMA), from November 10, 2020, to October 15, 2023, a total of 101,904 hectares of land in the liberated districts of Azerbaijan have been cleared of explosive ordnance. During this period, 30,318 anti-personnel mines, 17,690 anti-tank mines, and 52,651 items of unexploded ordnance have been identified and safely neutralized.<sup>7</sup>

For decades, international law struggled to provide immediate answers, in terms of either responsibility for mine removal or enforcement of existing regulations, as no verification mechanism to evaluate the implementation of legislation concerning the use of landmines existed. Nonetheless, the optional “Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices” (Protocol II to the 1980 Convention on Certain Conventional Weapons), which entered into force in December 1988, represents one of the first attempts to establish a legal regime for the regulation of the use of landmines in times of war. The Protocol establishes a set of rules for the employment of landmines, despite not forbidding their use.<sup>8</sup> Since humanitarian law does not explicitly prohibit their use, landmines became one of the most devastating and tragic weapons in a great number of conflicts, deployed with a view to preventing access to territories or spreading terror among the population. Indeed, as has been underlined in the case of Azerbaijan, civilians remain the main victims of mines even after the end of hostilities.

It is in this context that states adopted a “Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction” (the so-called ‘Mine Ban Treaty’) and opened this for signature in Ottawa on December 3, 1997.<sup>9</sup> Neither Armenia nor Azerbaijan is party to this convention. Therefore, Azerbaijan could not

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<sup>7</sup> *Ibid.*

<sup>8</sup> “Protocol II to the 1980 Convention on Certain Conventional Weapons on Prohibitions or Restrictions on the Use of Mines, Booby Traps, and Other Devices”, 1980, Available at: [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.40\\_CCW%20P-II%20as%20amended.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.40_CCW%20P-II%20as%20amended.pdf) (accessed: October 14, 2023).

<sup>9</sup> “Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction”, 1997, Available at: <https://legal.un.org/avl/ha/cpusptam/cpusptam.html> (accessed: October 14, 2023).

invoke a breach of the abovementioned Convention by Armenia.

The legal situation notwithstanding, the main problem with the landmine contamination issue in the formerly occupied territories of Azerbaijan continues to be the impossibility of correctly locating mines, as no accurate maps have been shared by Armenia since the signing of the Trilateral Statement on November 10, 2020.

#### *Eco-terrorism activities*

Most of the rivers flowing through Azerbaijan originate either in its Karabakh region or in Armenia.<sup>10</sup> Therefore, the country is in an extremely vulnerable position as all its territories are located downstream on these rivers, making Azerbaijan heavily dependent on the inflow of water from neighbouring Armenia. Unlike Azerbaijan, Armenia is not party to the UNECE “Convention on the Protection and Use of Transboundary Watercourses and International Lakes”.<sup>11</sup> Adopted in 1992 in Helsinki, the Convention plays a fundamental role as a mechanism for strengthening international cooperation and achieving environmentally sound management and protection of transboundary surface and ground waters. As a consequence of the occupation, Azerbaijan was deprived of the opportunity to cooperate with Armenia in the joint management of water resources. Consequently, examples of anthropogenic harm abound in this perspective.

The first case of environmental harm relates to the critical ecological conditions of the Okhchuchay River. The level of pollution appears to be of fundamental importance for Azerbaijan, as it flows into the Araz River, the second largest river in the South Caucasus. From there, it becomes a tributary of the Kura River, the water from which is employed for the irrigation of the farming lands of Azerbaijan. Results from the testing of water samples from the Okhchuchay River retrieved from January to March 2021 revealed high contents of heavy metals,

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10 Karabakh Center, *Ecocide in Karabakh*, Available at: <https://story.karabakh.center/en/ecocide-in-karabakh> (accessed: November 14, 2023).

11 United Nations Economic Commission for Europe (UNECE), “Convention on the Protection and Use of Transboundary Watercourses and International Lakes”, Helsinki, 1992, Available at: <https://sdg12hub.org/take-action/capacity-building-mechanism/convention-protection-and-use-transboundary-watercourses> (accessed: September 2, 2023).

including copper, molybdenum, manganese, and chromium.<sup>12</sup> In light of the presence of several mining areas in the region, there is reason to believe that the dumping of production waste into the Okhchuchay river without any preliminary treatment has been undertaken by some of the large mining enterprises headquartered in Armenia and operating in its southern region.<sup>13</sup>

Therefore, Azerbaijan has tried to raise the question of transboundary environmental damage committed by Armenia at the international level. On January 18, 2023, Azerbaijan commenced the first known inter-state arbitration under the Council of Europe's "Convention on the Conservation of European Wildlife and Natural Habitats" (Bern Convention), adopted in 1979, the aim of which is to ensure the conservation of wild flora and fauna species and their habitats. Azerbaijan's interstate lawsuit is based on the alleged violation by Armenia of its legal obligations under the Convention; Azerbaijan is demanding the cessation of all ongoing violations of the Convention and full reparations for the environmental harm perpetrated in the formerly occupied territories. Before reaching the arbitration panel, however, a standing committee composed of all the contracting parties will have to use its best endeavours to facilitate an amicable settlement of the dispute, as envisaged by Article 18 of the Convention. Only in case of the failure of this can a formal arbitration process be launched before a tribunal. Nonetheless, since this procedure has never previously been activated, any prediction concerning the development of the lawsuit and the kind of compensation states will be able to request does not yet appear to be feasible.

As concerns the issue of deprivation of water to downstream Azerbaijanis, the environmental issues involving the Sarsang Reservoir appear to be worthy of consideration. Built in 1976, the Sarsang Reservoir contains up to 560 million cubic meters of water and has the capacity to provide irrigation water for six districts in Azerbaijan. The

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12 Valiyev, J., "Armenia's ecological invasion of Azerbaijan's Okchuchay", *Daily Sabah*, July 29, 2021, Available at: <https://www.dailysabah.com/opinion/op-ed/armenias-ecological-invasion-of-azerbajjans-okchuchay> (accessed: October 31, 2023).

13 Chiragov, F., "Continuing crimes against the natural environment: the case of Okhchuchay river", in "Neglected Victim of the Armenia-Azerbaijan Conflict, Environmental Impacts of Occupation", *Center of Analysis of International Relations*, Baku, 2021, p. 37, available at: <https://aircenter.az/uploads/8PDGIC23ldxV.pdf> (accessed: October 31, 2023).



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reservoir is located in the part of the Karabakh region that was under the control of the peacekeeping forces of Russia until September 2023, when Azerbaijan restored its territorial integrity. Therefore, until September 2023, Azerbaijan had no proper control over Sarsang's resources.

However, Azerbaijan's regional ecological and economic situation has been severely damaged since the occupation in the early 1990s due to the use of the water reserve by Armenia as a political tool. Azerbaijan has repeatedly complained at the international level that the Armenia-installed proxy regime in the Karabakh region persistently reduced the outflow of water from the Sarsang Reservoir to downstream regions in summer, when water demand for people and agriculture is higher.<sup>14</sup> Conversely, up to 85–90% of the reservoir contents were released in winter, when farming and irrigation do not require a similar quantity of water.<sup>15</sup> As a result, downstream villages were flooded, the agricultural sector seriously damaged, and lands and roads severely eroded.<sup>16</sup> As this situation affected the environmental conditions of the areas affected by the flooding and caused severe damage to the agricultural sector of the region, in 2016, the Council of Europe (CoE) confirmed the distressing level of water-related environmental problems in the formerly occupied territories and pronounced on the issue of the Sarsang Reservoir. Hence, in CoE Parliamentary Assembly Resolution 2085 (2016), the Council stressed that “the lack of regular maintenance work for over twenty years on the Sarsang reservoir, located in one of the areas of Azerbaijan occupied by Armenia, poses a danger to the whole border region”.<sup>17</sup>

<sup>14</sup> Huseynov, V., The environmental costs of the Armenian occupation of Azerbaijani territories”, in “Neglected Victim of the Armenia–Azerbaijan Conflict, Environmental Impacts of Occupation”, *Center of Analysis of International Relations*, Baku, 2021, p. 11, available at: <https://aircenter.az/uploads/8PDGIC231dxV.pdf> (accessed: October 31, 2023).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Parliamentary Assembly of the Council of Europe, “Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water”, Resolution 2085, adopted January 26, 2016, Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22429&lang=en> (accessed: August 30, 2023).



*Illegal exploitation of mineral resources*

The exploitation of natural resources involves hazardous mining activities conducted by Armenian and foreign companies in the formerly occupied territories of Azerbaijan. Of particular importance is the issue of the gold and copper mining operations that were perpetrated (during the presence of the illegal separatist regime) at the Gizilbulag and Damirli deposits located in the Karabakh region and materially carried out by Base Metals, an Armenian company with an office in Khankendi city, but part of the Vallex Group, a holding company registered in Switzerland.<sup>18</sup> The deposits concerned are located on an area of more than 850 hectares of land where protected species and forests are present.<sup>19</sup> For the purposes of the construction of the mine, about 82 hectares of forests were felled in the period 2012–2015.<sup>20</sup>

At the end of 2022, the Azerbaijani authorities detected and recorded the illegal transportation of Azerbaijan's minerals to Armenia via the Lachin road, which led Azerbaijani authorities to express a desire to monitor the deposits located in the part of the Karabakh region controlled by the Russian peacekeeping contingent.<sup>21</sup> Nonetheless, in spite of an agreement reached with the commanders of the Russian peacekeepers in Khojaly town on December 7, 2022, Azerbaijani specialists were unable to gain access to the deposits due to the lack of suitable conditions for the monitoring process.<sup>22</sup> This situation gave rise, on December 12, 2022, to widespread environmental protests on the Lachin–Khankendi road, where activists and representatives of non-governmental organizations demanded the cessation of the illegal exploitation of Azerbaijan's natural and mineral resources.<sup>23</sup>

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18 Detailed information on the company is available from: [https://www.dnb.com/business-directory/company-profiles.base\\_metals\\_cjsc.2155020929b5b578e5a0bec6795bea8c.html](https://www.dnb.com/business-directory/company-profiles.base_metals_cjsc.2155020929b5b578e5a0bec6795bea8c.html) (accessed 5 October 2023).

19 Azertag.az, *Illegal activity and destroyed history at Demirli mineral deposit*, December 17, 2022, Available from: [https://azertag.az/en/xeber/illegal\\_activity\\_and\\_destroyed\\_history\\_at\\_demirli\\_mineral\\_deposit\\_investigation-2413502](https://azertag.az/en/xeber/illegal_activity_and_destroyed_history_at_demirli_mineral_deposit_investigation-2413502) (accessed October 26, 2023).

20 Ibid.

21 Ibid.

22 Ibid.

23 Ibid.

Further evidence of Armenia's harmful environmental conduct and failure to fulfil its duty to prevent environmentally hazardous activities perpetrated by corporate bodies operating under its jurisdiction has been collected by the Azerbaijani space agency Azercosmos. A report published in August 2023 detailed the activities of 24 mines located in Armenia and in the formerly occupied territories of Azerbaijan, observed by the agency's SPOT6 and AZERSKY 7 satellites in 2017 and 2023, and comparisons of the surrounding areas' environmental conditions have been conducted.<sup>24</sup>

### ***Corporate Environmental Accountability in International Law***

The cases of environmental damage analysed in the present article mostly relate to irresponsible corporate environmental behaviour on the formerly occupied territories of Azerbaijan. The present section will focus on the corporate accountability framework in international law, with a view to placing emphasis on the main drawbacks and impediments of the international legal framework regarding corporate environmental responsibility. Specifically, by considering the environmental damage committed by Armenia, this section will place emphasis on the main legal impediments Azerbaijan is facing in directly suing Armenian and foreign corporations for irresponsible environmental behaviour in the formerly occupied territories.

At present, despite decades of debate at the international level, no binding framework directly addressing corporations' responsibility for environmental damage is present in international law.<sup>25</sup> As a result, there exist only multi-stakeholder and voluntary initiatives aimed at enhancing a more transparent attitude of business entities; this includes both non-binding codes of conduct and 'soft law' instruments. This is mainly attributable to a wide set of impediments, which include structural obstacles in the identification of the organizational structure of multinational corporations, the lack of a homogeneous approach in international law with respect to corporate identity, and difficulties

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<sup>24</sup> Apa.az, *Report on space monitoring of mineral deposits on the territory of the Republic of Armenia*, August 25, 2023, Available at: <https://apa.az/en/social/report-made-on-environmental-impacts-of-armenias-mining-industry-410349> (accessed September 1, 2023).

<sup>25</sup> Marquez, D. I., "The scope of codes of conduct for corporate environmental responsibility", *Revista Catalana de Dret Ambiental*, Vol.6, No 2, 2015, p.4.

in attributing the responsibility to prosecute foreign companies at the home-state level (that is, where a corporation has its seats) or at the host-state level (where the company operates).

In particular, even though multinational corporations are characterized by unity at the economic level, their subsidiaries operating in host states are, in contrast, legally separated, meaning that each subsidiary company possesses its own legal identity. Indeed, in spite of the fact that companies are created as legal entities under the domestic law of a particular state, businesses usually outsource their production processes to more than one country. In this regard, a multinational enterprise consists of multiple subsidiaries and affiliates integrated with the parent company, either in a hierarchical form or through contracts aimed at maximizing profits and shareholders' earnings.<sup>26</sup>

Moreover, as concerns the drawbacks of the international legal framework regarding corporate accountability, difficulties arise when it comes to identifying which state is required, under international law, to guarantee the protection of the environment in the presence of transnational activities carried out by business enterprises. More specifically, no clear rule exists when it comes to assessing which state is internationally required to oversee the activities of multinational corporations. Indeed, this concerns the question as to whether it is the host state that has the power to prosecute illegal corporate environmental behaviours occurring within its territory, or whether it is possible to trace some obligations back to the home state where the parent company is incorporated. Furthermore, it is uncertain whether the jurisdiction of the home state to adjudicate a case involving a foreign company operating abroad could be invoked by virtue of the control exercised by the parent company on the overall activities of multinational corporations. Therefore, the difficulties presented also affect the possibility for Azerbaijan to prosecute regarding the environmental damage committed by Armenian and foreign companies due to the shortcomings of international law in the field of corporate environmental accountability.

This also holds true when it comes to soft law and voluntary alternatives, as they do not represent a legally relevant alternative to the drawbacks of international law on this topic. Markedly, even

<sup>26</sup> Calliess, P.G., "Transnational Corporations Revisited", *Indiana Journal of Legal Studies*, Vol. 18, No.2, 2011, pp. 604 -605.

though the approach of corporate social responsibility and the voluntary integration of social and environmental considerations in corporate operations<sup>27</sup> has developed with a view to contributing to the socially and environmentally sound conduct of business enterprises, difficulties with the provision of independent compliance and monitoring systems represent one of the principal drawbacks for the correct functioning of voluntary initiatives at the intergovernmental and firm levels.

***Contractualization of Environmental Protection:  
A Proposal for Post-Conflict Recovery in Azerbaijan***

In light of the difficulties in holding corporations accountable for damage to the environment under the current framework of international law, this section proposes the contractualization of environmental protection as a central approach for the post-conflict recovery of the formerly occupied territories of Azerbaijan. This could effectively translate into the means to support the reconstruction of these areas, while simultaneously accelerating the recovery of the natural environment that has been the target of Armenia's irresponsible behaviour during the First and Second Karabakh Wars and their immediate aftermath. In particular, the contractualization of environmental protection involves the transformation of social and environmental responsibility standards into legal obligations through their incorporation into contractual clauses. Consequently, their observation would be characterized as mandatory for the parties, who would eventually be allowed to invoke the termination of the contract in the event of the violation of these clauses by one of the (two or more) contracting parties.<sup>28</sup>

Therefore, through the use of the contractual instrument, it would be possible to bridge the gap between the absence of a binding international framework and the presence of mere voluntary and soft law initiatives for corporate social responsibility, thereby imposing environmental protection obligations on affiliate companies and subsidiaries operating

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27 European Commission, "Green Paper: Promoting a European Framework for Corporate Social Responsibility", Doc./01/9, July 18, 2001,

28 Marrella, F., *Protection internationale des droits de l'homme et activités des sociétés transnationales*, Recueil des cours de l'Académie de Droit International de la Haye, vol.385, 2017, p. 267.

along the production and supply chain.<sup>29</sup> In this regard, by having the form of a binding legislative instrument, the contract would potentially be able to leverage the behaviour of the contracting parties. While not operating in isolation from national and international law, contracts could perform an important governance function in regulating economic activities that may potentially be harmful to the environment. However, the relevance of investment contracts could be hindered by the difficulties associated with the confidentiality of contractual agreements and their implementation, as well as by the impossibility of providing an adequate response to environmentally harmful behaviour perpetrated by multinational companies.<sup>30</sup>

At present, successful examples of the approach of adoption of contractualization of environmental protection can be identified in international law. Contracts concluded by multinational companies within the World Bank system and, in particular, with the International Finance Corporation (IFC) are a case in point of the incorporation of environmental protection standards into contractual clauses. In fact, the granting and subsequent disbursement of guaranteed financial resources to multinational companies for the implementation of investment projects in developing countries is subject to compliance with the IFC's Performance Standards on Environmental and Social Sustainability. These include, among others, the assessment and management of risks and social impacts; resource efficiency and pollution prevention; the conservation of biodiversity; and sustainable management of natural resources.<sup>31</sup> The eventual violation of the aforementioned rules during the implementation of an investment project could therefore lead to the interruption or termination of the loan. In this sense, the commitment of companies to comply with the IFC's environmental standards is ascertained through an additional compliance mechanism – the Compliance Advisor/Ombudsman (CAO) – established with the goal of providing the affected communities and individuals with the opportunity

29 McCall-Smith, K., Ruhmkorf, A., “From International law to national law: the opportunities and limits of contractual Corporate Social responsibility supply chain governance”, *University of Edinburgh School of Law*, Research Paper Series No.2018/30, 2018, p. 3.

30 Affolder, N., *Beyond law as tools: foreign investment projects and the contractualisation of environmental protection*, Cambridge University Press, 2011, pp 357-378.

31 IFC, “Performance Standards on Social and Environmental Sustainability”, 2012, Available at: <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standards> (accessed: August 30, 2023).

to have allegations related to the application of environmental standards reviewed by an independent monitoring body.<sup>32</sup>

### *A Proposal for Post-Conflict Recovery in Azerbaijan*

In light of the environmental damage committed by corporations in the formerly occupied territories of Azerbaijan, the contractual approach to environmental protection could result in a successful process for the reconstruction and reintegration of the Karabakh region and other liberated territories of Azerbaijan in a post-conflict stage. Indeed, the contractualization of environmental protection could be characterized as a means to both overcome the above-described shortcomings of international law in offering a response to environmental damage committed by corporations, and to prevent the occurrence of future environmental harm in the liberated territories. For this reason, including environmental standards, codes of conduct, and international environmental law principles within contractual clauses in the reconstruction phase would possibly form one of the steps to successfully rehabilitate the ecosystem of the liberated territories after almost 30 years of occupation. Eventually, the same approach could be applied in other regions of the world that have been affected by corporate environmental damage during and after a conflict. With this in mind, some possible concrete applications of the contractualization of environmental protection approach are provided. Most importantly, it should be borne in mind that the contractualization of environmental protection is presented only as a preventive approach to corporate environmental damage, and does not address the wrongful acts committed or the responsibility of Armenia during the period of occupation. Hence, it should be considered as a framing approach that could guide Azerbaijan's relations with multinational companies operating within its borders in the future.

### *Exploitation of mineral resources*

The contractualization of environmental protection in the field of exploitation of natural and mineral resources in the liberated territories

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32 E. Morgera, *Corporate environmental accountability in International law*, Oxford University Press, 2020, p. 257.

may prove fundamental. The contractualization approach could be applied to private companies based in Azerbaijan and, subsequently, to foreign companies willing to acquire shares in such companies for the performance of mining and mineral extraction activities in the liberated territories. When contracts are granted to such companies by the state for the exploitation of such resources, specific environmental clauses should be included in the contract. These clauses could take different forms. For example, they may include international environmental law principles, or indicate international standards or codes of conduct developed at the inter-governmental level. Similarly, reference to an external code of conduct can be made, as well as mention of environmental principles in the general conditions of the contract. Notably, for the contractual clause to be valid and to acquire binding force between the parties, the form, the level of specificity, the accuracy, and the linguistic clarity should be precisely formulated so as to expressly show the intention of the parties to be bound by these clauses.

#### *Reconstruction of infrastructure and transportation lines*

The same approach of contractualization may be adopted for the reconstruction of infrastructure and transportation lines connecting to the liberated territories (including railway connections, airports, and roads). This holds true for the whole spectrum of infrastructure needed in the liberated territories, including in the fields of energy distribution and water management, which appear to be particularly sensitive issues for Azerbaijan. Specific, accurate, and unambiguous environmental clauses may be included in contracts granted by the state to national and foreign companies willing to contribute to the reconstruction phase of the liberated territories. This would, in fact, allow the government to provide oversight and ensure that licensed companies abide by national legislation and international principles of environmental protection during the whole phase of infrastructure reconstruction.

#### *Foreign investment*

The area of foreign investment may prove to be a further flourishing field in which the contractualization of environmental protection could be applied. On the model of the International Finance Corporation



approach, the government of Azerbaijan could exploit the growing attention towards sustainability and environmental protection by linking the attraction of foreign investment to the protection of the environment. In this sense, investment agreements involving foreign corporations or foreign states willing to invest in the liberated territories may contain specific clauses such as the obligation to conduct an environmental impact assessment, and the consideration of the precautionary principle and the principle of prevention before the implementation of reconstruction projects. The government of Azerbaijan would therefore be able to integrate environmental protection objectives with other public policy and economic objectives.

### *Conclusion*

The present research study aimed at investigating the wide variety of activities that have been responsible for severe harm to the natural environment of Azerbaijan in a period including the First and Second Karabakh Wars and their aftermath, and up to the present, with a special focus on environmental damage committed by corporations.

Indeed, the wrongful activities considered in this paper include landmine propagation, eco-terrorism activities, and the illegal exploitation of the mineral resources of the formerly occupied territories of Azerbaijan by corporations of both Armenian and of foreign nationality.

This article further examined the current framework of international law as regards corporate environmental accountability. Remarkably, numerous impediments deriving from corporations' organizational arrangements, and from difficulties in the identification of the state having jurisdiction to rule on cases of environmental harm involving foreign companies, contribute to the relevant shortcomings of international law in guaranteeing the accountability of multinational corporations for damage to the environment.

For the abovementioned reasons, this article has advanced proposals for the adoption of the contractualization of environmental protection approach during the post-war recovery and reconstruction of the liberated territories of Azerbaijan as a potential means of ensuring the prevention of environmental harm and of overcoming the difficulties of international law in this field. Moreover, even though not providing an

answer to the wrongful doings of Armenian and foreign corporations, the contractual approach could possibly guide the future relations of Azerbaijan with multinational corporations operating in its territory. Eventually, the successful application of the contractualization approach in Azerbaijan could spur the employment of the same approach in other regions of the world similarly affected by corporate environmental damage during and after armed conflicts.