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Conflicts of Interest: Private Law Firms in Global Governance

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Abstract:

Conflicting interests for private actors engaging in areas traditionally associated with non-profit actors have been studied for consulting firms, business companies, and philanthropic organizations. Yet, one actor that is gaining importance in global governance has remained largely absent in this literature: private law firms. Their engagement in global governance risks disproportionate influence of corporate interests due to what we conceptualize as firms' positional conflicts of interest – that is, taking a position for one client (a pro bono GGI) at odds with a position taken for another client (a corporate client). This paper asks how private law firms engage with GGIs on a pro bono basis and to what extent positional conflicts of interest are observable. As such, the paper is addressing the absence of private law firms in the literature on global governance. Based on a content analysis of websites and reports from the top 25 global law firms from 2010 to 2024, we find that nearly all of these firms have engaged with global governance institutions on a pro bono basis. They have provided these institutions with legal assistance, research, and advice on global governance issues, such as on human rights and environmental regulation. Our findings call for further research into the implications of private law firms' role in global governance.

¹ The authors appear in alphabetical order and contribute equally to all parts of the research and writing process. The paper is part of the project “PROBONO – Private law firms as transnational advocates” (2025-2029). This work is supported by an ERC Starting Grant 2024.

1. Introduction

One of the top private law firms globally, DLA Piper, advised the Conference of the Parties (COP) to the UNFCCC and other climate agreements on legal matters for two consecutive years in 2021 and 2022. The COPs serve as forums for State Parties to the UN climate change conventions to develop standards and agreements on the operationalization of their climate change obligations. The development of these standards has wide-ranging effects on regulation of climate change and the activities of businesses and other private actors. As a private law firm, DLA Piper takes such public advisory roles on *pro bono* – meaning at no cost. To be able to do so, they depend on revenues from their corporate clients. During a promotional video for COP26, a partner and managing director justified his firm’s shift to proactive leadership on environmental issues because “we need to turn from being traditional lawyers into futurists.”²

Lawyers acting as ‘futurists’ in this manner challenges current scholarship on policy- and lawmaking in global governance. We assume that the firm’s influential network, its clients and access, and its commitment to organizational change are not without consequences for agency in international relations. Traditionally, lawyers focus only on the “letter of the law,” which is associated with inherent conservatism because transformation and social change are not part of the law. Now, firms such as DLA Piper and their lawyers acting as “futurists” are taking on an active role as human rights and environmental defenders. And while traditionally engaging in litigation, *pro bono* lawyers have now expanded towards the full range of activities connected to transnational advocacy (Cummings, De Sa e Silva, and Trubek 2022; Cummings and Rhode 2009). *Pro bono* practiced as legal defense for resource-poor individuals or local civil society organizations is something different than conducting *pro bono* work to shape international laws and regulations. Due to budgetary constraints in global governance institutions (GGIs), *pro bono* work is a welcome opportunity for international organizations to receive expert advice at no cost, allowing private law firms to exert their influence in global governance processes. Furthermore, firms’ influence in global governance can be direct³: they do not need to act through intermediaries like non-governmental organizations (NGOs) and they also do not need to be secretive about their activities, as we would expect from the lobbying literature on private actors (Abbott, Levi-Faur, and Snidal 2017; Dellmuth and Tallberg 2017; Hanegraaff, Beyers, and De Bruycker 2016; Orsini 2011).

Existing accounts of private actors in global governance risk overlooking and thus misunderstanding the new international legal ecology because they have not noticed the growing influence of *pro-bono* lawyers. In contrast to the legal ecology’s traditional actors, like NGOs, social movements and public interest lawyers, private law firms depend on corporate clients for *pro bono* work. *Pro bono* scholars have pointed to the

² The video can be found here: <https://vimeo.com/showcase/8980263>

³ On concept and measurement of influence by non-state actors see: Steffek 2013, Betsill & Correll 2001.

correlation between such work and a firm's financial performance (Cummings 2011, 6). A market-reliant concept of aid is hardly new, neither for the study of pro bono services (Sandefur 2007) nor for global advocacy scholarship (Eikenberry and Mirabella 2018; Schmitz and McCollim 2021). Yet unlike social entrepreneurs or philanthropists, private law firms do not just provide funding or sponsor technologies or infrastructure. They are literally advocates, experts on the law and the judicial process with an influential network and further resources and directly acting on pressing social and environmental issues.

In this paper we argue that private law firms' pro bono engagement poses new challenges for global governance institutions. In contrast to other private actors, private law firms do not claim to present interests (like companies) or advise on organizational strategies (like consultancies). Instead, they advise on law and legal matters, equipped with a professional philosophy that is distinct for the legal profession. Yet, their legal advice is not necessarily neutral. For instance, while providing pro bono advice to the COPs, the firm DLA Piper also represents fossil fuel clients and has been criticised for its litigation of cases exacerbating climate change.⁴ Top law firms represent the top business firms, which are often the ones that challenge global governance issues like the environment and human rights the most. Their engagement in global governance on human rights and environmental issues thus carries a risk of disproportionate influence of corporate interests due to what we conceptualize as firms' positional conflicts of interest – that is, taking a position for one client (in this case a pro bono GGI) at odds with a position taken for another client (in this case corporate clients).

This paper asks how private law firms engage with GGI on a pro bono basis and to what extent positional conflicts of interest are observable. As such, the paper is addressing the absence of private law firms in the literature on global governance. While other private actors and their public activities have been thoroughly analysed, we lack knowledge on the role of private law firms in global governance. This can on the one hand be explained with the traditional pro bono activities taking place at the domestic, often immediate local environment of a firm rather than the international level. On the other hand, their scope of activities has expanded to distant jurisdictions around the world (Cummings et al. 2022), and their corporate clients' actions are increasingly affected by international law and supranational regulations. We assume that pro bono can potentially contribute to positive developments in global governance, but that conflicts of interest in pro bono engagements may also lead to lower standards in human rights and environmental protection. It is therefore important to explore patterns and dynamics in pro bono collaborations with GGIs.

To approach the question, this paper engages in a two-fold analysis. First, using novel empirical data on the pro bono activities of the Top 25 global private law firms, we map these firms' engagements with GGIs to identify patterns in their engagements. Second,

⁴ <https://www.ls4ca.org/scorecard> (See attached dataset)

we draw on these findings to discuss the potential for positional conflicts of interest in firm engagements with GGIs. We explore a dominant pattern of engagement - private law firms engaging pro bono as legal advisors to GGIs setting standards in environmental rights and regulations – through two recent case examples to map the potential for positional conflicts of interest. Our findings show significant pro bono engagement with GGIs by private law firms – of the top 25 firms, 84% have engaged pro bono in global governance, and we have identified 72 cases of engagement from 2010 to 2024. Furthermore, our findings suggest that private law firms are likely to have positional conflicts of interest when engaging pro bono with GGIs. This calls for further research into the implications of private law firms’ role in global governance. We conclude by laying out a research agenda and theorize how conflicts of interests can affect policy- and lawmaking.

2. Conflicts of Interest in Global Governance

GGIs can empower non-state actors and cooperation among them (Faude and Abbott 2020). While the promotion and protection of international norms such as human rights have traditionally been the sphere of civil society together with GGIs, private actors are increasingly pushing into this space. When formal intergovernmental organizations (FIGOs) face budget restrictions, it is often the only way to get projects implemented when working with businesses. Public-private partnerships have been around for decades (Andonova 2017; Beisheim and Liese 2014), and the Sustainable Development Goals have institutionalized this form of cooperation in SDG #17. The forms, dynamics and consequences of the dependency of FIGOs on service procurement by private actors has been highlighted by many scholars (Gadinger and Scholte 2023; Pouliot and Thérien 2023; Seabrooke and Sending 2020, 2022). The balancing act of aligning private with public interests for actors engaged in non-profit activities has been studied for consulting firms (Eckl and Hanrieder 2023), business companies (Scheper 2015; Tamir and Davidson 2020) and philanthropic organizations (Littoz-Monnet and Osorio Garate 2023). Private actors’ key role in global politics has resulted in a marketization of advocacy for human rights and justice (Jurkovich 2020; Schwöbel-Patel 2021). Scholars interested in the role of consultants for global governance have warned that managerialism in global governance institutions transforms them into new forms of informality, opening avenues for hidden private influence with strong implications for power and accountability in FIGOs (Eckl and Hanrieder 2023). Indeed, even in their most cooperative models, collaborative governance with private actors can still foster political marginalization rather than inclusion of different stakeholders (Uribe 2024).

Conflicts of interest in international organizations are usually approached as conflicts between a civil servant’s “loyalty” to their domestic origin and their neutral mandate within the international organization (Heinzel 2022). However, with the rise of private law

firms in global governance institutions, we suggest importing the legal concept of positional conflicts of interest to grasp the distinct lawyer-client relationship at play. Conflicts of interest in law are traditionally understood as the “representation of a client by an attorney or law firm when that attorney or firm also represents or has represented a second client whose interests are materially or directly adverse to those of the first client” (Lardent 1999: 2279). In the context of pro bono, we find that conflicts of interests are less about direct representation conflict of interests and more positional, meaning firms or lawyers “taking a position for one client at odds with positions one has taken on behalf of other clients” (Spaulding 1998: 1395). A law firm representing a global oil or mining company and in their pro bono work advocating for the right to a healthy environment is one such example.

Positional conflicts of interest are often unavoidable yet denied by the firms themselves as they refer to only being legal representatives for the interests of their clients, rather than presenting interests themselves. The consequences of such conflicts of interest are potentially transformative for global governance and international law: advising on the development of legal rules and standards to protect the environment while depending on income from clients whose activities contribute to pollution and climate change could result in lower standards for environmental protection. And even with lawyers committed to the cause, these are actors whose expertise still lies in corporate and not environmental or human rights law. As the future of human rights and environmental advocacy is increasingly shaped by private actors, we need to understand how a position taken for a corporate client is at odds with positions taken on behalf of pro bono clients.

Amid a shrinking civic space in countries around the world and in global governance institutions, budget restrictions force the public sector to engage in partnerships with private actors. As private actors, law firms are not affected by the shrinking space observed for traditional human rights defenders (Chaudhry 2022; Chaudhry and Heiss 2022). Equipped with private-sector resources, firms can strategically choose which actors and projects they support. At the same time, budget cuts and shrinking civic space for NGOs and international organizations create dependencies on and power asymmetries within partnerships with private law firms. Even with the best interests of weaker actors in mind, pro bono advocacy could likely strengthen a US-American, Eurocentric, and corporate perspective on law and justice in global governance.

As the legal profession has distinct definitions of conflicts of interest, we expand this understanding of positional conflicts to include pro bono work as a positional conflict between the corporate clients a firm presents and the causes they support in global governance intuitions. We assume that pro bono in GGI carries with it a risk of influence of corporate interests due to firms' positional conflicts of interest. However, we assume that how this risk plays out depends on different aspects, for example, individual agency of the lawyers. Building on scholarship on the agency of individuals in international organizations (Reiners 2022, 2024), we assume that in case that we find positional

conflicts for a firm's pro bono activities in GGI, individual lawyers have potential to either represent the interests of corporate clients or the causes of the GGI. Individual lawyers in pro bono cases are on average younger than their colleagues, so we assume a generational commitment to combatting climate change and inequalities. Studies on alumni of the top law schools also show that they increasingly engage in internships in the Global South, volunteer for Clinics, and place a greater value on ethical work than previous generations. In short, we assume that private law firms' pro bono engagement with GGIs can potentially contribute to positive developments in global governance but may also potentially lead to lower standards in human rights and environmental protection.

3. Methods and Data

This study draws on original empirical data on the pro bono activities of the Top25⁵ global law firms. Through a structured mapping of these activities, by means of content analysis of the firm's websites, social media channels, and various pro bono reports dating from 2010 to 2024,⁶ we have compiled a database covering information on the scope of these firms' pro bono work.

From this data we have extracted information on the firms' pro bono work with and within GGIs, including (1) which GGIs they have engaged with on a pro bono basis, (2) the issue areas these projects have covered, (3) what type of pro bono services the firms have offered on these projects, and (4) other actors involved as intermediaries in these projects. This has equipped us with a database covering 72 pro bono engagements between Top25 firms and GGIs.⁷

To identify patterns in the law firm's work in global governance, each case of engagement has been coded for each of the four variables as outlined above. For the first variable (which GGIs), we have coded for the name of the institution engaged with. Engagements

⁵ Law firms are ranked based on their gross annual revenue in The Global 200 index at www.law.com, which is updated annually. The Top 25 firms analysed were selected based on the 2022 ranking: <https://www.law.com/international-edition/2022/09/20/the-2022-global-200-ranked-by-revenue/?slreturn=20240810051536>

⁶ Our overview of firm's pro bono activities during this timeframe is not exhaustive, as there is significant variation in access to past data for the different firms. Whereas some firms have reporting libraries with annual reports covering all years from 2010, other firms only have sporadic reports available, and some have no systematic reports on past activities. In addition to output from the firms themselves, we also relied on some other sources to identify our cases. This was typically the case where information found in the firms' own reporting indicated a collaboration with a GGI, but information was limited. In those cases, searches for additional sources of information helped us identify what the case was about.

⁷ Only cases where we find with certainty that the firm's pro bono work has targeted a GGI, either through direct engagement, or by informing advocacy efforts of other actors directed at a GGI have been included. We have also excluded cases where no information on the nature of the engagement is available. For instance, some firms have named a GGI as a pro bono client without providing any information about the nature of the client relationship – these cases have not been included in the data.

within the UN system have been coded by name of the UN agency/body.⁸ The codes for the rest of the variables were developed inductively from the data. Thus, for the second variable (issue area), the cases were coded as covering one of the following issue areas: (1) human rights, (2) environment/climate,⁹ (3) development, or (4) other issues¹⁰. For the third variable (services), each case has been coded as one of the following activities: (1) legal research, (2) advising, (3) legal assistance, (4) trainings, or (5) unspecified services¹¹. For the fourth variable (intermediaries), cases were coded as having either (1) no intermediaries, or as having intermediaries that were either (2) NGOs/non-profit organisations, (3) public interest law organizations (PILOs)/pro bono clearinghouses¹², or (4) other actors¹³.

From this data we can identify patterns in the private law firm's pro bono engagement with GGIs. We look what types of GGIs the firms primarily engage with, what issue areas they engage on, and how they engage in the global governance setting in terms of what services they offer and the extent to which they work through different types of intermediary actors. We draw on these findings to discuss the potential for positional conflicts of interest in firm engagements with GGIs. In a next step, we explore a dominant pattern of engagement in two examples: private law firms engaging pro bono as legal advisors to GGIs setting standards in environmental rights and regulations. We map potential positional conflicts of interests in these case examples by looking at the firms' corporate clients and practice, as well as the client bases and expertise of the lawyers working on the cases. At the firm level we rely on a data published by Law Students for Climate Accountability (LS4CA). LS4CA publishes an annual score card for the Vault top 100 law firms, rating firms based on their role on exacerbating or mitigating climate change. Scores are based on the firms' role in "creating, implementing and safeguarding" fossil fuel projects and the people who profit from continued fossil fuel use. This role is measured across three variables: (1) firms' litigation activities, (2) firms' transactional work, and (3) firms' lobbying activities. The scorecard's data is publicly available,¹⁴ and we use this data to discern potential conflicts of interest at the firm level. At the individual

⁸ For engagements within the UN human rights system (including treaty bodies and special mechanisms) we have coded for the overarching body, namely the Office of the High Commissioner for Human Rights (OHCHR), rather than each sub-body.

⁹ Cases that relate to human rights in the context of climate change and the environment (primarily relating to the emerging human right to a healthy environment) have been included in this category, rather than in the human rights category.

¹⁰ This code has been used to cover a couple of cases that concerned issues that did not fit into the other categories identified. This includes two cases that concerned humanitarian work, three cases that concerned contractual agreements or commercial issues, and one case that concerned legal education.

¹¹ This code was used for two cases where information was not available on the type of service offered.

¹² Whereas pro bono clearinghouses only connect clients seeking pro bono assistance with law firms, PILOs are usually also involved in the projects themselves.

¹³ This code was used for cases that had intermediary actors involved that did not fit in one of the two main categories of intermediaries identified. There was only a couple of such cases. In these cases, a state actor, academic institution, or for-profit private actor was involved.

¹⁴ Scorecard and dataset is available here: <https://www.ls4ca.org/scorecard>

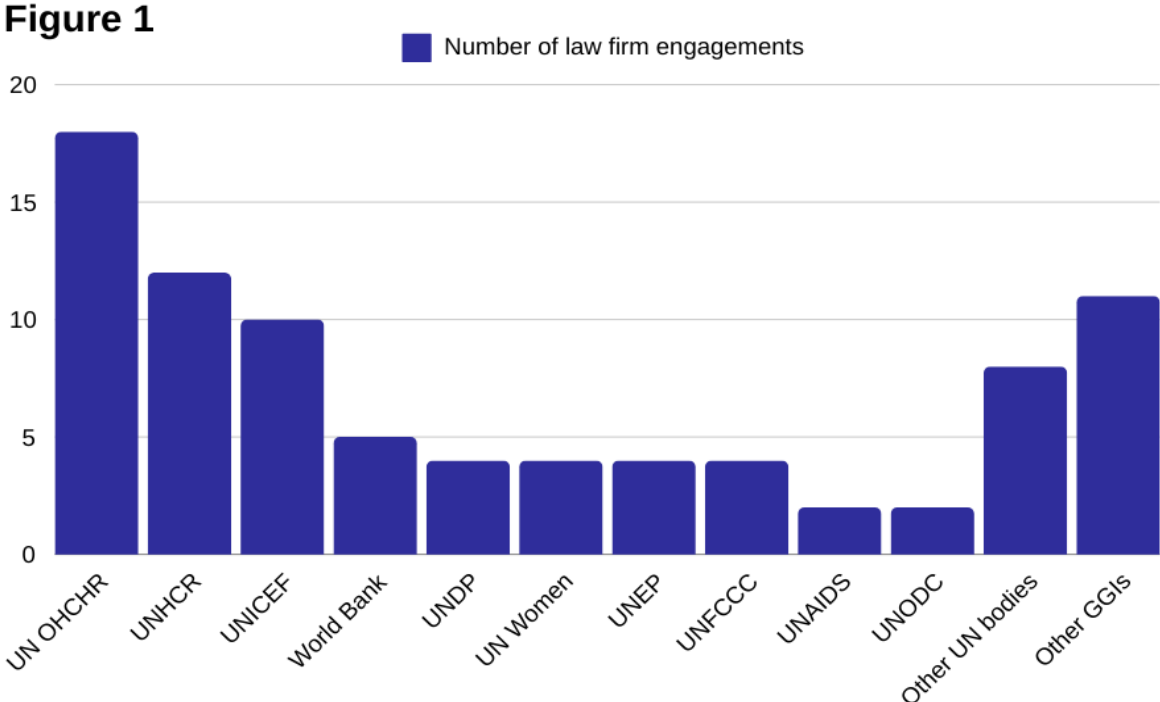
lawyer level, we rely on information published by the firms regarding client bases, expertise and experience to discern potential for positional conflicts of interest.

4. Private Law Firms in Global Governance – Patterns of Engagement

The Top25 law firms’ pro bono activities show that these firms have expanded their pro bono work beyond its traditional sphere of litigation. Of the Top25 global law firms, 21 firms – that is, 84% – have engaged with GGIs on a pro bono basis. Many of these firms have engaged with several institutions and on different projects. In total, we have identified 72 cases of engagement, bearing in mind our findings in all probability do not give an exhaustive overview of the firms’ engagements in the global governance setting¹⁵.

4.1. Which institutions do the firms engage with?

The GGIs that the firms have worked with include regional and international intergovernmental organizations, as well as several bodies and agencies within the UN system. Figure 1 provides an overview of the institutions the firms have engaged with most frequently.



The graph shows the main global governance institutions (GGIs) engaged with on a pro bono basis by the Top25 firms. The number of law firm engagements reflect the amount of firms that have engaged with the GGI listed. If one firm has engaged with the same GGI on more than one occasion, this is still only counted as *one* engagement with that GGI, with the exception of a few cases where a firm has engaged with two different sub-institutions of the UN OHCHR (e.g. a treaty body and a special rapporteur). In those cases, both engagements are included in the count. In some cases, firms have engaged with multiple GGIs under the auspices of the same project. In these cases, all GGIs involved have been included in the coding for that engagement. As such, the total number of engagements in this graph appear higher than the total of 72 engagements we have identified.

¹⁵ This is because we rely solely on information published by firms themselves, and because access to past data is limited for some firms (see footnote 6).

As figure 1 shows, the UN Office of the High Commissioner for Human Rights (OHCHR) is the institution most firms have worked with on a pro bono basis. This includes pro bono engagement with Human Rights Treaty Bodies, and with Special Procedures such as working groups and special rapporteurs. For instance, one law firm worked together with an NGO to raise reproductive rights issues in the UN Committee on Economic Social and Cultural Rights,¹⁶ and two firms advised the UN Committee on the Rights of the Child during preparations of a different General Comments.¹⁷ As an example of collaboration with Special Procedures, three top law firms have worked with the UN Special Rapporteurs on Human Rights and the Environment, assisting the rapporteurs in their work on securing international recognition of the right to a healthy environment.¹⁸ Moreover, two firms have done research and produced reports on behalf of UN Special Rapporteurs on torture,¹⁹ three firms have supported UN Special Rapporteurs on trafficking in persons with filing interventions in high-level court cases,²⁰ and one firm worked with the UN Working Group on Arbitrary Detention to file a petition on behalf of an imprisoned human rights activist.²¹ These are just some examples of the firms' engagements with the OHCHR.

Several firms have also worked pro bono for the UN High Commissioner for Refugees (UNHCR). In many cases, this work has included offering more traditional pro bono services such as establishing pro bono legal clinics for asylum seekers. However, some of the collaborations between private firms and the UNHCR go beyond this, with firms advising the refugee agency on how to further its support for displaced persons worldwide. For instance, the law firm DLA Piper launched a global pro bono partnership with UNHCR in 2022, with the aim of helping the institution “develop innovative responses to the global refugee crisis”, and “advocate for impactful, systemic change.”²²

As figure 1 shows, several firms have also worked pro bono for the UN children's fund UNICEF. Furthermore, many have engaged with the World Bank, the UN Development Programme (UNDP), the UN Entity for Gender Equality and the Empowerment of Women

¹⁶ <https://www.stblaw.com/docs/default-source/cold-fusion-existing-content/publications/pub1258.pdf>

¹⁷ See here: https://www.cliffordchance.com/content/dam/cliffordchance/About_us/responsible-business/2023/2023-responsible-business-report.pdf#page=32, and here: https://www.bakermckenzie.com/-/media/files/about-us/un_cop_2019.pdf?la=en (p. 45)

¹⁸ See here: <https://www.cliffordchance.com/news/news/2020/02/clifford-chance-carries-out-its-most-extensive-pro-bono-project-.html>, here: <https://www.whitecase.com/insight-story/right-healthy-environment>, and here: <https://www.stblaw.com/docs/default-source/Brochures/washington-d-c-office--brochure9c36dc0e743d6a02aaf8ff0000765f2c.pdf?sfvrsn=2> (p. 37)

¹⁹ See here: <https://www.weil.com/publications/Pro-Bono-Annual-2022/28/index.html> and here: <https://www.probono.sidley.com/2023/projects>

²⁰ See here: <https://www.law.com/international-edition/2023/06/30/trio-of-major-firms-act-pro-bono-to-defeat-uk-governments-rwanda-deportation-plan/?slreturn=20240810072321>, and here: <https://www.hoganlovells.com/en/news/hogan-lovells-and-doughty-street-chambers-support-the-united-nations-special-rapporteur-on-trafficking-in-persons-especially-women-and-children>

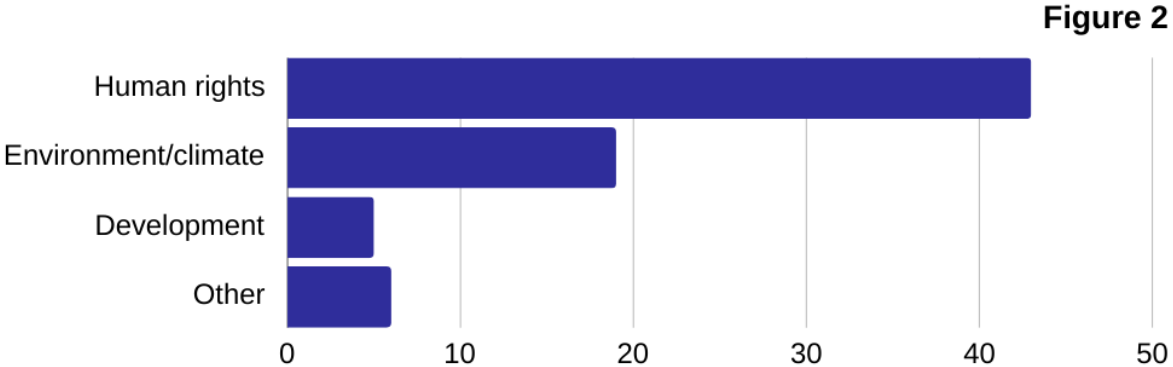
²¹ <https://www.gibsondunn.com/wp-content/uploads/2021/04/ProBonoReport-2020.pdf> (p. 51)

²² <https://www.dlapiper.com/en/news/2022/06/dla-piper-launches-global-partnership-with-unhcr>

(UN Women), the UN climate change framework (UNFCCC) and the UN Environment Programme (UNEP). A couple of firms have also worked with the UN Programme on HIV and AIDS (UNAIDS) and the UN Office on Drugs and Crime (UNODC). Some other UN bodies have also received pro bono support from private law firms, albeit only in one case each. These include bodies such as the UN World Food Programme (WFP), the UN Educational, Scientific and Cultural Organization (UNESCO), and the intergovernmental conference on Marine Biodiversity of Areas Beyond National Jurisdiction (UN BBNJ). Furthermore, some firms’ pro bono projects have targeted international institutions outside of the UN system. These have primarily been regional intergovernmental organizations such as the Council of Europe, the European Union, the African Union, the Organization of American States, and the Organization of Eastern Caribbean States.

4.2. What issues do they work on?

As figure 2 shows, most of the pro bono cases are on human rights issues. This has ranged from supporting UN agencies with legal aid in single human rights cases, to doing research on laws, frameworks and practices affecting the enjoyment of certain fundamental rights, to advising international actors, and advocating within international institutional frameworks for human rights standards. The fact that most of the cases concern human rights issues is not all that surprising, as the three institutions most commonly engaged with by the firms are all UN agencies with a mandate of protecting the human rights of various groups. Furthermore, pro bono work has always been associated with the idea that all persons should have access to justice, including protection of their rights. In addition, the field of international human rights is indeed a legal field, where legal expertise might be more sought after than in other issue areas. As such, it could be expected that private law firms can more easily engage within the field of human rights than in fields where lawyers are not traditionally seen as having the same expert authority.



The graph shows the issue areas covered by private law firm’s pro bono work with GGIs, and the amount of cases covering each issue area.

Yet the figure shows that firms have indeed engaged on issues beyond the realm of human rights and access to justice. Several firms have engaged with international institutions on issues concerning nature, climate change and the environment. In addition, some cases concerned issues in development. These engagements primarily included firms advising regional intergovernmental organizations on development issues, for instance on legal frameworks favourable to economic development or on social impact bonds. A few cases concerned issues like contractual/commercial issues, support for humanitarian work, and one case on education of lawyers.

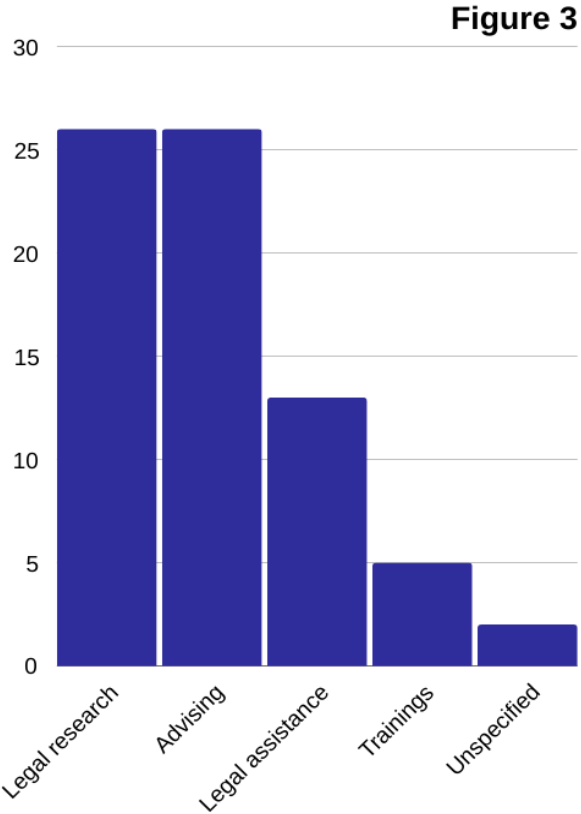
4.3. How do the firms engage with GGIs?

As some of the examples so far have shown, the firms offer services beyond the ones traditionally associated with pro bono work, or the work of law firms for that matter. While traditionally engaging in litigation and legal assistance pro bono, private lawyers now engage in activities connected to transnational advocacy work – and they do it with and within international institutions.

Figure 3 shows the services most commonly offered by private law firms when working with GGIs. It should be noted that several cases of pro bono engagement by a firm with a GGI featured more than one of these services. However, we have only coded for one service per case, based on which service was most prominent in the collaboration.

At the somewhat more traditional end of the spectrum, the third most common service offered was legal assistance. This has for instance included assisting institutions with contracts and regulatory issues, responding to requests to set up legal clinics that provide free legal services to disadvantaged groups, or filing interventions in court cases. However, as the figure shows, several firms offer services that go beyond this traditional sphere.

First, a short note on the trainings service offered by some firms. This service was not very commonly offered, as figure 3 shows, but some engagements did revolve around firms offering trainings as part of projects organized by UN agencies. Whereas



The graph shows the amount of instances where the listed service was the main pro bono service offered by a private law firm to a GGI.

some of the cases concerned firms sharing their experiences as legal practitioners, by offering their services to train lawyers and state authorities in practicing law, some projects saw firms offering trainings on issues beyond their primary fields of experience as law firms. For instance, the firm Greenberg Traurig worked with UNDP to train social entrepreneurs from an indigenous community in Mexico, with the aim of promoting good practices in relation to social labor in the Mexican countryside.²³ In an even more striking example, the firm DLA Piper gave trainings to youth activists in the Philippines on how to advocate for law reform and policy change on sexual and reproductive health rights, as part of a project organized by three UN agencies.²⁴

The two services most commonly offered by firms were legal research and advising. The firms' research support to GGIs has included various mapping exercises, researching legal frameworks on certain issues within various jurisdictions. At first sight, this service is not necessarily a deviation from the traditional work of law firms, as it seems to be focusing on the "letter of the law" as it already exists. However, in several cases the stated purpose of these research activities was to support legal *change*, either through amendments of existing legal frameworks, or through creation of new legal standards. Typically, firms offer their research services to help advocate for such change by identifying gaps in existing laws, or by identifying "best practices" in domestic legal systems to inspire the creation of similar standards in other jurisdictions or in international law. For instance, the law firm White & Case provided research on legal frameworks in 27 countries for the UN-REDD Programme,²⁵ a collaboration between the UN Food and Agriculture Organization (FAO), UNEP and UNDP, to "identify the legal frameworks these developing countries need in order to strengthen their legislation" on deforestation and climate change.²⁶ The three firms that worked with UN Special Rapporteurs on Human Rights and the Environment to secure international recognition of the right to a healthy environment also relied on research on 'best practices' in existing laws across the globe to inform their advocacy efforts.²⁷

This shows that firms are going beyond their role as professionals applying the law as it is, by acting as advocates for legal developments and thus as norm entrepreneurs in global governance. Several firms have also taken on this role by offering advisory services to various international institutions. As figure 3 shows, advising was an equally common service offered by law firms in their engagement with GGIs. In several cases, this has entailed private law firms advising international bodies on the development of legal

²³ <https://www.gtlaw.com/en/professionals/g/gutierrez-elba#Pro%20Bono>

²⁴ <https://www.dlapiper.com/-/media/files/other/2022/dla-piper-sdg-16-report-2019.pdf?rev=-1> (p. 5)

²⁵ United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD)

²⁶ <https://www.whitecase.com/insight-story/2022gcr-carbon-rights>

²⁷ See here: <https://www.cliffordchance.com/news/news/2020/02/clifford-chance-carries-out-its-most-extensive-pro-bono-project-.html>, here: <https://www.whitecase.com/insight-story/right-healthy-environment>, and here: <https://www.stblaw.com/docs/default-source/Brochures/washington-d-c-office--brochure9c36dc0e743d6a02aaf8ff0000765f2c.pdf?sfvrsn=2> (p. 37)

frameworks and standards at the international level, on issues directly within these institutions' mandates. For example, the law firm Freshfields was actively involved in the intergovernmental negotiations for a treaty on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the UN BBNJ Agreement), advising the intergovernmental conferences on the various international law issues that the new treaty raised.²⁸ As another example, the law firm Clifford Chance advised the UN Committee on the Rights of the Child as it was preparing a General Comment – a soft law instrument outlining the obligations of Parties to the Convention on the rights of the Child – on children's rights and the environment, with a special focus on climate change.²⁹

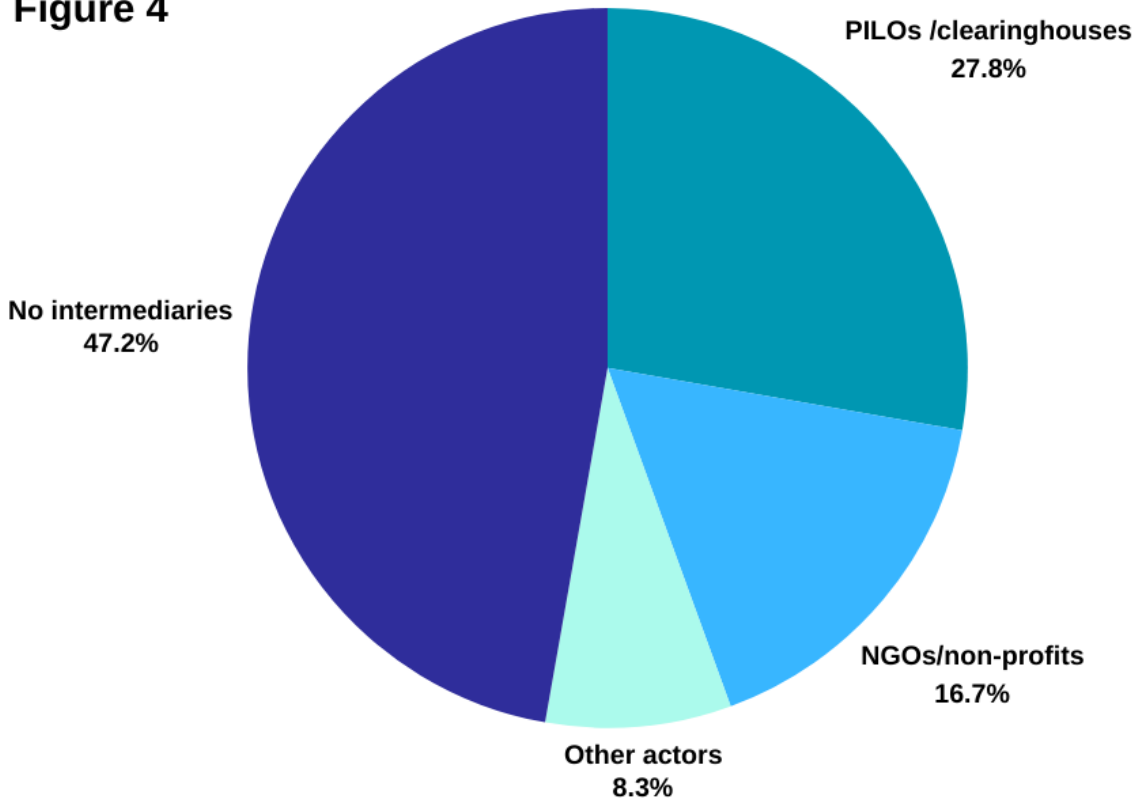
As firms engage with GGIs on issue areas beyond their expertise as private, corporate actors, offering services of an advisory, or even advocacy-like, nature, we might at least expect that the firms are 'invited in' by working in partnership with other actors which are traditionally more associated with global advocacy efforts in international institutions, such as NGOs and public interest organizations. Indeed, as figure 4 shows, in some of the examples identified, the law firms have been given access to international institutions by working collaboratively with NGOs and non-profit organizations. In several other cases, international actors have filed requests for pro bono support with Public Interest Law Organizations (PILOs) or clearinghouses who have subsequently partnered the GGI client with a private law firm or worked the project collaboratively with a private firm.

However, in a surprising number of cases, we have identified a direct client relationship between the private law firm and the GGI. As figure 4 shows, this is the case in almost half of the cases.

²⁸ <https://sustainability.freshfields.com/post/102iaf2/the-new-high-seas-treaty-part-1-what-does-it-provide>

²⁹ https://www.cliffordchance.com/content/dam/cliffordchance/About_us/responsible-business/2023/2023-responsible-business-report.pdf#page=32

Figure 4



The figure shows the percentage of cases where private law firms were engaged with a GGI on a pro bono basis (1) directly (no intermediaries), or through intermediary actors, with these being either (2) PILOs/pro bono clearinghouses, (3) NGOs/non-profit actors, or (4) other actors. In some cases, more than one intermediary actor was involved. In those cases we have coded for the actor that appeared to be most prominent in the collaboration.

As we rely on information published by law firms themselves, there is a risk that this information is incomplete, and that there have in fact been other actors involved that for various reasons are not mentioned on the firm’s websites and reports. Still, the high number arguably suggests that law firms are increasingly building direct client relationships with international institutions and agencies. For instance, the director of DLA Pipers pro bono programme in Europe lists no less than eight UN agencies, as well as the World Bank, as major clients of the programme,³⁰ and the firm has well established pro bono partnerships with both the UNHCR and UNICEF, with the latter enlisted as one of the firm’s “key global clients”.³¹

³⁰ <https://www.dlapiper.com/en/people/k/ozgur-kahale>

³¹ <https://norway.dlapiper.com/en/landing/pro-bono-and-social-responsibility>

5. Law Firms as Law-shapers in Global Governance: Conflicts of Interest

Pro bono has always been connected to social justice and working for a greater public good. However, as our findings show, this has been taken to a whole new level as law firms have moved into the realm of global governance. Traditionally, pro bono work is associated with providing voluntary legal services for marginalized or resource-poor groups or individuals, supporting them with legal aid and access to justice. Now, firms take their pro bono services to a completely different set of clients – global governance institutions – and offer services far beyond legal assistance, including by advocating for, and advising on, developments of international legal frameworks and standards.

The move away from their traditional client base – persons who cannot afford legal aid – raises questions as regards who the law firms in fact represent in their engagements with GGIs. This is especially the case as many of these engagements occur without the presence of intermediary actors. While in some cases, law firms work in partnership with NGOs or non-profits that have a clear profile on the interests they represent, many cases are, as established, characterized by direct engagement between law firms and GGIs. Although the ‘greater public good’ is still the stated purpose of these pro bono projects, the very fact that international institutions themselves become the ‘clients’ on the projects blurs the core question of who the end client is. Whose interests are the law firms working for on these projects?

This question is exacerbated by the services offered by the firms on these projects. While some scholars have argued that lawyers merely apply, rather than generate, legal knowledge (Haas 2008), this can hardly be said about the cases where law firms engage in processes of shaping international legal frameworks. When firms engage in research to identify gaps or best practices in existing laws, or advise institutions on the development of legal standards, it must be assumed that they do in fact generate knowledge on what the legal gaps and needs are. The question is thus what values and interests guide these firms when they generate this knowledge – and the role of knowledge in positional conflicts of interest.

In line with the literature on transnational professionals, we might expect that the actions of private lawyers are embedded in the logics of their respective professional networks (Dezalay and Garth 1996; Dezalay and Madsen 2012; Seabrooke and Henriksen 2017). For top private law firms, these logics may be far removed from the interests of the marginalized groups and individuals that the firms claim to work for through their pro bono activities. In contrast to traditional actors in advocacy and global governance, who are more ideologically anchored, private law firms have a profit-oriented purpose, and they depend on revenues gained from corporate clients. There may thus be a risk that law firms carry with them the logics of profit-oriented, corporate interests, even when engaging for the public interest at the global level. While lawyers working pro bono on the development

of international law and regulations do not necessarily have a hidden corporate agenda, their identification of legal gaps and needs may nonetheless be shaped by their socialization and expertise. This background could lead lawyers to inadvertently adopt a disproportionately corporate-friendly approach to global governance issues.

In many of the cases we have identified where private firms engage in processes of making and shaping international legal frameworks, the firms engage on topics where their corporate clients have significant stakes in the development of new laws and standards. This is arguably particularly so in those cases where law firms provide pro bono advice and support in legal development processes concerning environmental protection and climate change. Emerging legislation on these issues may have a significant impact on the activities of private, corporate actors, many of whom are clients of the very same law firms that advise on the development of these emerging laws and standards. This suggests that firms are likely to have conflicting interests when engaging in global governance processes within this field.

In the following we explore whether such conflicts of interest are observable in firms' pro bono engagements with global governance institutions, through two case examples. The first is the case of three law firms – White & Case, Clifford Chance, and Simpson Thacher & Bartlett - working with the UN special rapporteurs on human rights and the environment, helping them with research to inform their efforts to get international recognition of the human right to a clean, healthy and sustainable environment. The second is the case of the firm Freshfields Bruckhaus Deringer advising during the negotiations of a new treaty on marine biodiversity protection at the high seas (the UN BBNJ Agreement). We map the potential for positional conflicts of interest in these cases at both firm and lawyer level. At the firm level, we rely on data published by Law Students for Climate Accountability (LS4CA) on firms' clients and activities exacerbating or mitigating climate change. At the lawyer level, we rely on information published by the law firms themselves on the client bases, experiences, and expertise of the lead lawyers in the identified case examples.

5.1. Advocating for the right to a healthy environment

The human right to a clean, healthy and sustainable environment was only recently given recognition at the international level. In 2021, the UN Human Rights Council issued a resolution recognizing this right as a human right.³² One year later, the UN General Assembly followed with the adoption of a similar resolution, recognizing at the international level the right to a clean, healthy and sustainable environment as a human right.³³ While not formally legally binding documents, these resolutions constitute significant recognition that states have duties to take measures to protect the environment and combat climate change, particularly when taking into account these

³² A/HRC/RES/48/13, <https://undocs.org/A/HRC/RES/48/13>

³³ A/RES/76/300, <https://undocs.org/A/RES/76/300>

resolutions high level of acceptance (both resolutions were adopted with zero negative votes). Measures taken by states in this regard are bound to have an impact on the activities of corporate actors. Furthermore, the General Assembly resolution explicitly calls on other actors than states, including business actors, to take measures to ensure a clean, healthy and sustainable environment (A/RES/76/300, para. 4).

Two consecutive UN special rapporteurs on human rights and the environment, John H. Knox (2012-2018) and David R. Boyd (2018-2024), both played a crucial role in pushing for the recognition of this right through their reports to the UN. The private law firms White & Case, Clifford Chance, and Simpson Thacher & Bartlett all contributed to this work through their pro bono programmes, by doing research on best practices on environmental rights in various jurisdictions around the world and helping to produce recommendations to the UN for the special rapporteurs.

The firms have presented this work as a way for them to enhance and emphasise their commitment to sustainability, human rights and environmental protection. The lead lawyer on the project at White & Case stated that the project was a good way for the firm to expand on its existing focus on human rights and the environment by giving White & Case lawyers “the opportunity to contribute to an impactful synergy between the two”.³⁴ A lawyer at Clifford Chance emphasised that human rights and the environment is a priority for both the firm and many of its clients, and that the firm’s work on the project reflects its commitment to encourage responsible and sustainable business practices.³⁵ Yet at the same time, preliminary findings at both the firm and lawyer levels suggest the potential for positional conflicts of interest.

- **Law firm level:** Notably, all three firms receive an F from the L4SCA annual climate scorecard, based on their activities in litigation, lobbying and transactional work. F is the lowest grade a firm can receive on the scorecard. Two of the firms (White & Case, and Clifford Chance) are also listed as two of the five worst performers in terms of facilitating fossil fuel transactions.³⁶
- **Individual lawyer level:** The lead lawyer on the project at Clifford Chance is specialised in international commercial and investment arbitration, representing clients working in energy, mining, oil and gas.³⁷ Furthermore, the very same lawyer previously worked for the firm Simpson Thacher & Bartlett, and indeed also led this firm’s pro bono work with the special rapporteurs on the right to healthy environment before transferring to Clifford Chance.³⁸ Investment arbitration and agreements on protection of investors interests are well known to constitute a

³⁴ <https://www.whitecase.com/insight-story/right-healthy-environment>

³⁵ <https://www.cliffordchance.com/news/news/2020/02/clifford-chance-carries-out-its-most-extensive-pro-bono-project-.html>

³⁶ See here:

https://static1.squarespace.com/static/646e3b899493ae261720e957/t/66798b882489016ae073aac5/1719241628165/FINAL_2024_Climate_Scorecard_LSCA.pdf

³⁷ https://www.cliffordchance.com/people_and_places/people/lawyers/us/janet-whittaker.html

³⁸ https://www.stblaw.com/docs/default-source/Publications/probononewsletter_december_2014.pdf (p. 14)

significant hurdle for effective regulation of environmentally harmful activities, and with a client base consisting of private business actors in fossil fuels and mining it seems there is a high risk that this lawyer might have a positional conflict of interest when working to promote rights to environmental protection.

5.2. Advising negotiations on a new treaty on marine biodiversity protection

The adoption of the UN Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (UN BBNJ) in 2023 has been celebrated as a significant milestone for the protection of biodiversity at the high seas. The law firm Freshfields Bruckhaus Deringer advised the intergovernmental conferences (IGCs) negotiating the treaty, since the first IGC took place in 2018. In the firm's own words, the Freshfields team advised on "a wide range of international law topics covered by the BBNJ agreement and its prior drafts."³⁹ The firm itself notes in a blog post published on its website that the agreement will affect all ocean stakeholders, including private sector actors across different industries⁴⁰ – such as mining and shipping, and presumably also fossil fuel industries (at least for transportation purposes). Preliminary findings at both firm and lawyer levels reveal significant engagement with clients from this sector, suggesting that positional conflicts of interest were present at both firm and lawyer level in this case.

- **Law firm level:** Freshfields receives an F score from the LS4CA annual scorecard in 2024, largely based on its transactional work for fossil fuel stakeholders.
- **Individual lawyer level:** Two of the lead lawyers at the firm involved in the negotiations of the UN BBNJ agreement are specialised in investment arbitration, representing big multinational corporations and other major companies, including in the mining, oil and gas sectors.⁴¹

6. Implications of Conflicts of Interest in Firms' Global Governance Engagements: Towards a Research Agenda

This paper asked how private law firms engage with global governance institutions on a pro bono basis and to what extent positional conflicts of interest are observable in their engagements. As our findings show, the potential for positional conflicts of interest when private law firms engage pro bono with GGIs is significant. Our findings confirm that the top 25 global private law firms have become actively engaged in global governance processes on human rights and the environment, working pro bono with and within GGIs

³⁹ <https://sustainability.freshfields.com/post/102iaf2/the-new-high-seas-treaty-part-1-what-does-it-provide>

⁴⁰ Ibid.

⁴¹ See here: <https://sustainability.freshfields.com/u/102ej3v/will-thomas> and here: <https://www.freshfields.com/en-gb/contacts/find-a-lawyer/r/rovinescu-lee/>

to advise and develop legal standards and frameworks within these fields. Our findings also suggest that they can do so directly, seeking influence through direct collaborations with GGIs under the pretext of working non-profit for the public good. Yet these are firms who in their day-to-day practice work with a profit-oriented purpose, representing clients that often challenge the very norms these firms work on in their pro bono engagements. Though denied or downplayed by the firms themselves, conflicts of interest thus appear unavoidable. Indeed, our analysis of two cases where private firms have engaged pro bono in global governance processes on various aspects of environmental protection confirm that positional conflicts of interest are observable – both at the level of the firms themselves, and at the level of the individual lawyers working on these cases.

Based on our analyses we can formulate theoretical expectations for further research on how positional conflicts of interests play out for GGI and human rights and environmental advocacy: first, we expect not every conflict of interest to have immediate negative implications for GGI and the norms they aim to promote. Whether a positional conflict of interest for pro bono engagement with GGIs affects the outcome positively or negatively seems to depend on several conditions. Second, we expect the individual agency of lawyers as important for the normative direction of mitigating positional conflicts of interests. Third, we expect the configuration of partnerships with intermediary actors to matter.

This paper has addressed an actor that is gaining importance in global governance, yet has remained largely absent in the literature on private actors in this context: private law firms. The consequences of positional conflicts of interest are potentially transformative for global governance and international law: advising on the development of legal rules and standards to protect the environment while depending on income from clients whose activities contribute to pollution and climate change could result in lower standards for environmental protection. Shrinking public budgets create not only opportunity for firms to “help” in GGIs, but to define the agenda by virtue of their resources, and the (growing) relative constraints upon public acting alone. Given these firms' expertise on the law and legal procedures, their networks, resources, and their apparent direct access to global governance institutions, they can directly shape the development of international legal frameworks under the pretext of acting for the public good. Thus, our findings call for further research into the implications of private law firms' role in global governance as they are gaining prominence within this field, potentially carrying with them conflicting interests with as of yet unknown consequences.

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