**DEPARTMENT FOR POLICY COORDINATION AND SUSTAINABLE DEVELOPMENT**

# Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development Geneva, Switzerland, 26-28 September 1995

**BACKGROUND PAPER # 3**

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CONTENTS

# I. INTRODUCTION

1. The Expert Group on Identification of Principles of International Law for Sustainable Development was convened in Geneva, from 26 to 28 September 1995, by the secretariat of the United Nations Commission on Sustainable Development, which is the Division for Sustainable Development in the United Nations Department for Policy Coordination and Sustainable Development (DPCSD). The mandate of the Expert Group is rooted both in the concern of Agenda 21 that the "feasibility of elaborating general rights and obligations of States, as appropriate, in the field of sustainable development, ..." be examined (para 39.5) and in the request of the United Nations Commission on Sustainable Development (CSD), at its second session, that further study be made of the concept, requirements and implications of sustainable development and international law.[1]

2. The experts who participated in the meeting are listed in the Annex. It is important to stress that each attended in a personal capacity and that any views expressed during the meeting and reflected in this Report were made in a personal capacity. The Report is based on the deliberations and conclusions of the Expert Group. It represents a broad consensus but may not in every case represent the views of all participants.

3. The objective of the Expert Group meeting was to identify basic principles and concepts of international law for sustainable development, consider possible classifications of such principles and concepts, and assess their potential practical implications in a legal context, including their role in the interpretation and application of existing international law in the field. The principles and concepts considered were not limited to traditional public international law relations, but were also relevant to private international law (conflict of laws with regard to transnational relations between individuals and various kinds of organizations, whether incorporated or not) and international administrative law (with regard to relations between individuals or organizations and public authorities).

4. In carrying out its tasks the Expert Group worked within the framework established by the Rio Declaration on Environment and Development and Agenda 21. It was agreed that these instruments provided the essential basis for identifying and assessing principles and concepts of international law for sustainable development, and that the delicately crafted packages they represent should not be unravelled. Nevertheless, it was clear from the practice of States and other members of the international community since the 1992 United Nations Conference on Environment and Development (UNCED), that certain principles and concepts set forth in those instruments had acquired a particular relevance in their international legal consequences. The Expert Group considered it appropriate to take into account that practice, as reflected in the activities of States and other members of the international community before international legislative fora, international courts, tribunals and other dispute settlement fora, and in developments in national law which sought to implement the Rio principles.

5. Apart from the Rio instruments, the Expert Group also based its deliberations on prior work carried out in the period after UNCED. Reference was made to several documents,

including the report of a Consultation on Sustainable Development: the Challenge to International Law, convened by the Foundation for International Environmental Law and Development (FIELD);[2] the report of the Austrian Government's Symposium on Sustainable Development and International Law;[3] the report of the Committee on Legal Aspects of Sustainable Development of the International Law Association;[4] the Draft International Covenant on Environment and Development prepared by the Commission on Environmental Law of the World Conservation Union (IUCN) in cooperation with the International Council of Environmental Law;[5] and the Earth Charter Initiative.[6] The Division for Sustainable Development of the DPCSD prepared a Discussion Paper for the meeting of the Expert Group, which served as a point of reference throughout the meeting.[7]

6. By way of introduction, the Expert Group recognized that the legal status of each of the principles it considered varies considerably; some of the principles identified are more firmly established in international law, while others are only in the process of gaining relevance in international law. The Expert Group agreed that the discussion and formulation of principles, and their identification and listing in this Report, is without prejudice to the question of whether these are part of customary international law. The experts would like to stress this Report is not aimed at presenting an attempt at codification. Further, the listing of principles in the Report does not represent any hierarchical order.

7. It was acknowledged that some principles appear in global or regional binding international legal instruments, while others can only be identified in soft-law instruments. In the absence of judicial authority and given the conflicting interpretations under State practice it is frequently difficult to establish the parameters or the precise international legal status of each principle. The legal consequences of each principle linked to a particular activity or incident would have to be considered in relation to the facts and circumstances of each case, taking account of various factors, including: its sources; textual context; its language; the particular activity at issue; and the particular circumstances in which it occurs, including the actors and the geographic region. The Expert Group recognized that many of the principles and concepts are stated in differing forms and has not attempted to make a choice as between the varying expressions. Finally, it is the understanding of the Expert Group that each principle or concept is to be interpreted in the light of other relevant principles.

8. The Expert Group sought to focus, in particular, on the practical consequences that principles might play in international law. The Group noted that principles may perform a variety of functions in the international legal process, and welcomed the fact that in various fora, including judicial fora, principles were being relied upon to support substantive legal arguments. The role played by principles included the following:

- to assist in the development of new legal instruments;
- to assist in the interpretation and application of treaty and other obligations;
- to establish norms of a substantive nature, such as Principle 21 of the Stockholm Declaration[8] and Principle 2 of the Rio Declaration;
- to establish obligations of a procedural nature, such as the principle of informed

decision-making, the principle of public participation; and

- to assist in the elaboration of detailed obligations (relating to e.g. levels of emissions of pollutants, time frames for compliance etc.), such as the principle of common but differentiated responsibility.

9. The Expert Group noted that the rules of international law governing the interpretation of treaties and other sources of international obligation, provided in Articles 31-33 of the Vienna Convention on the Law of Treaties, pointed a way towards applying an integrated approach to sustainable development. Article 31, which is to be taken in its entirety, provides in paragraph 3(c) that "any relevant rules of international law applicable in the relations between the parties" shall be taken into account. In this regard, the Expert Group noted that the extent to which one or more principles of international law related to sustainable development might be brought within the scope of Article 31(3), if at all, will depend on two factors, namely whether they are rules of international law, and whether these rules are applicable between the parties to the treaty that is the object of interpretation.[9]

10. Part II of this Report identifies nineteen principles and concepts of international law for sustainable development in the context of the Rio Declaration, Agenda 21, international treaties and additional legal instruments. The principles are organized in five clusters, as follows: (A) one fundamental principle of interrelationship and integration; (B) eight principles and concepts related to the environment and development; (C) three related to international cooperation; (D) three related to participation, decision-making and transparency; and (E) four related to dispute avoidance, resolution procedures, monitoring and compliance. An additional eight sub-principles are also discussed. Part III contains the recommendations of the Expert Group to the Commission on Sustainable Development, which focus primarily on two major issues. The first concerns preparations for the 1997 Special Session of the United Nations General Assembly to review the implementation of Agenda 21. The second suggests means for periodic review of the evolution of the interpretation and application of these principles.

## II. IDENTIFICATION OF PRINCIPLES AND CONCEPTS OF INTERNATIONAL LAW FOR SUSTAINABLE DEVELOPMENT

11. The Expert Group considered, in particular, the principles agreed to in the Rio Declaration on Environment and Development and in Agenda 21, as well as the legal instruments that have been negotiated or entered into force since 1992. On this basis, the Expert Group identified the principles and concepts contained in this report as those which could be considered as constituting the principles and concepts of international law for sustainable development. The order in which the principles appear do not in any way reflect a judgment as to their value or ranking.

12. Principle 1 of the Rio Declaration states that "Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature." This principle reflects the fundamental human right to a life with dignity. The Expert

Group considers that all the principles described in this report should be construed so as to give effect to this principle.

13. Sustainable development will be enhanced if competing legal rules strive as a first step towards compatibility and as a second step towards mutual support. Conflicts between rules should be avoided and/or settled in accordance with relevant provisions such as those contained in the Vienna Convention on the Law of Treaties. Thus, the principle of interrelationship and integration, as discussed in paragraphs 15-18, concerns the consistency of rules and balanced outcomes, which take into account all relevant forces of society. Interrelationship as a principle contributing to the achievement of sustainable development depends on the respect of each legal domain for the scope and content of adjacent bodies of law.

14. The concept of interrelationship and integration also has to do with procedures and with the composition of those bodies mandated to settle conflicts between different laws when the conflict is relevant to sustainable development. In considering specific cases, these bodies should, within the limits of their respective jurisdictions, terms of references and charters, take into consideration rules related to sustainable development. This would suggest that these bodies have the appropriate legitimacy and expertise, e.g., by incorporating experts from applicable areas of law related to sustainable development law. Another possibility would be some kind of overarching jurisdiction including experts from all relevant fields.

## A. PRINCIPLE OF INTERRELATIONSHIP AND INTEGRATION

### (1) Interrelationship and integration

15. The Expert Group considered that the principle of interrelationship and integration forms the backbone of sustainable development. Integration is the underlying theme of the Rio Declaration and Agenda 21. Principles 3 and 4 of the Rio Declaration integrate not only the concepts of environment and development, but also the needs of generations, both present and future. Principle 25 states that peace, development and environmental protection are interdependent and indivisible. The principle of interrelationship and integration is addressed explicitly in chapter 8 of Agenda 21. Interrelationship and integration reflect the interdependence of social, economic, environmental and human rights aspects of life that define sustainable development, and could lead to the development of general rules of international law in which these separate fields retain their distinct characters but are subject to an interconnected approach. However, it is understood that this approach does not subsume the distinct fields of international law into international law for sustainable development.

16. Principle 13 of the Stockholm Declaration urges States to "adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population". The UNGA World Charter for Nature calls for an integrated approach for social, economic and conservation-related activities.[10]

17. The principle of interrelationship and integration is also addressed in treaties relevant to sustainable development. For example, the United Nations Convention on the Law of the Sea, in its third preambular paragraph, states, "...the problems of ocean space are closely interrelated and need to be considered as a whole."[11] The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa stresses the importance of an integrated approach.[12]

18. International law, as well as national law, contribute to sustainable development to the extent that the respective rules are applied in a comprehensive and holistic way. Law-making and interpretation of laws at the domestic and international levels requires coordination among all relevant actors and interests.

## B. PRINCIPLES AND CONCEPTS RELATING TO ENVIRONMENT AND DEVELOPMENT

### (2) Right to development

19. Article 55 of the Charter of the United Nations[13] includes the pursuance of "development" amongst the goals of international economic and social co-operation. Through Article 56 States pledge themselves to contribute, individually and jointly with the Organization, to promote development and respect for human rights.

20. The right to development relates to the basic right of every human person to life as well as the right to develop his/her potential so as to live in dignity. Similarly, it relates to the right of peoples to existence and to develop themselves. In 1986, the United Nations General Assembly (UNGA) adopted the Declaration on the Right to Development[14] which provides that "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

21. Basic elements of a right to development flow from the 1948 Universal Declaration of Human Rights and the 1966 International Human Rights Covenants and include, among other things, the rights to an adequate living, education, housing, work and food. Hence, the right to development is often perceived as the synthesis of existing human rights.

22. Some governments have opposed the existence of a right to development as a human right or principle of international law, while others considered it as of primordial importance. However, in recent years this divergence of opinion seems to be diminishing.[15] References to the right to development are included in, inter alia, the Rio Declaration, whose Principle 3 states: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations", the Vienna Human Rights Declaration and the Copenhagen Social Summit Declaration. In the latter Declaration, Governments agreed

to establish a framework for action to, inter alia, "promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all, including the right to development."[16] Similarly, the Beijing Platform of Action, adopted by the Fourth World Conference of Women, contains various references to the right of development.[17]

23. The right to development as such is also included in some international conventions. An example is the African Charter on Human and Peoples' Rights: "1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind; 2. States shall have the duty, individually and collectively, to ensure the exercise of the right to development."[18]

24. The United Nations Commission on Sustainable Development (CSD) at its third session urged governments to reaffirm, promote and strive to ensure the realization of rights contained in relevant international instruments and declarations, including the Declaration on the Right to Development, as well as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.[19]

25. Reference could also be made to developments outside the United Nations. The Declaration on the Progressive Development of Principles of Public International Law Relating to a New International Economic Order (1986),[20] identified the right to development as one of the principles of public international law in general and of human rights law in particular. The Draft IUCN Covenant also contains a provision on the right to development. Its Article 8 reads: "The exercise of the right to development entails the obligation to meet the developmental and environmental needs of humanity in a sustainable and equitable manner." The article seeks to connote a balance between efforts aimed at development and environmental protection in the sense that "sustainable" brings environmental concepts into the development process, while "equitable" inserts developmental matters into international environmental protection efforts.[21]

### (3) Right to a healthy environment

26. Respect for life is the fundamental premise of the Universal Declaration[22] and Covenants[23] of Human Rights, and of the UNGA World Charter for Nature.[24]

27. Principle 1 of the Rio Declaration expresses that human beings are at the center of concerns for sustainable development and are "entitled to a healthy and productive life in harmony with nature." Chapter 6 of Agenda 21, on protecting and promoting human health, states in its para.1: "Health and development are intimately interconnected. Both insufficient development leading to poverty and inappropriate development resulting in over-consumption, coupled with expanding world population, can result in severe environmental health problems ... Agenda 21 must address the primary health needs of the world's population, since they are integral to the achievement of the goals of sustainable development and primary environmental care."[25]

28. The Stockholm Declaration provides, "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."[26]

29. Since, as the Stockholm Declaration noted, both the natural and the human-made environment are essential "to the enjoyment of basic human rights - even the right to life itself",[27] protection of human life concurrently with nature is an integral component of the right to a healthy environment. Indeed, the Convention on Biological Diversity recognizes in its Preamble the "intrinsic value of biological diversity", its values and its components.[28] The interdependence of the right to a healthy environment and other human rights also has been repeatedly acknowledged.[29]

30. The right to a healthy environment has been frequently referred to,[30] though often in non-legally binding instruments. In treaty law the principle has been recognized with reference to specific sectors, such as labour,[31] migrant workers and their families,[32] trade,[33] indigenous peoples,[34] time of armed conflict,[35] hazardous wastes,[36] and public health.[37] The UN Commission on Human Rights has identified sixty-one national constitutions that include reference to the right to a healthy environment.[38]

31. The right to a healthy environment provides a focus to guide the integration of environment and development. Development is sustainable where it advances or realizes the right to a healthy environment.

**(4) Eradication of poverty**

32. All individuals should be provided with the possibility of earning a living in a sustainable way, in just and decent conditions. Principle 5 of the Rio Declaration encourages all States and people to cooperate in the essential task of eradicating poverty and clearly links this effort with the achievement of sustainable development. Eradication of poverty is a principle that applies to the majority of the people of the world, with special emphasis on developing countries. Chapter 3 of Agenda 21 is devoted entirely to the issue of combating poverty.

33. A number of legally-binding international legal instruments refer to eradication of poverty. These include the United Nations Framework Convention on Climate Change,[39] the Convention on Biological Diversity,[40] and the Desertification Convention.[41] The International Covenant on Economic, Social and Cultural Rights includes the right to an adequate standard of living.[42]

34. Other instruments support the goal of the eradication of poverty as well. These include the Universal Declaration of Human Rights,[43] the Declaration on the Right to Development,[44] and the Stockholm Declaration.[45] The World Commission on Environment and Development (WCED) recognized poverty as a major cause and effect of global environmental problems, and therefore considers it futile to attempt to deal with environmental problems without a broader

perspective that encompasses the factors underlying world poverty and international inequality.[46] The Non-Legally Binding Authoritative Statement of Principles For a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests[47] also identified economic and social development and poverty eradication as the first and overriding priorities of developing countries and essential to meeting sustainability objectives.

35. The sustainable eradication of poverty requires developing the potential of children through education and protection of their health and individual development. The principle thus calls for active measures to protect children.[48] It also includes the right to work and the pursuit by governments of a policy of full, productive and freely-chosen employment, [49]as well as the right for individuals to enjoy free participation in economic activity without discrimination on the basis of race, colour, sex, religion, political opinion, national extractions or social origin; and the need to recognize the aspirations of tribal and indigenous peoples in respect of economic development.[50]

36. The importance of the principle of eradication of poverty and of the role of international organizations, particularly the multilateral financing institutions, have been reaffirmed at the Copenhagen Social Summit.[51]

37. The CSD, at its third session, noted that "in all the major United Nations conferences held since 1990, including the World Summit for Children, the International Conference on Nutrition, the World Conference on Human Rights, the International Conference on Population and Development and the World Summit for Social Development, there has been a recognition of the need to launch a global attack on poverty and commitments made in recognition of that need". The Commission is also "deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development".[52]

**(5) Equity**

38. Under general international law, equity allows the international community to take into account considerations of justice and fairness in the establishment, operation and application of international law. Equity has been invoked as a principle of international law. The application of equity in international environmental affairs long predates UNCED. Apart from its association with the rights of future generations, it has been related to the principle of common but differentiated responsibility[53], and the allocation of shared natural resources,[54] including shared fisheries stocks and freshwater resources. Equity is also invoked in relation to the participation of States in international environmental instruments and institutions,[55] financial and other contributions to activities,[56] and the distribution of the benefits of development.[57]

39. The International Court of Justice (ICJ) described equity as being a "direct emanation of the idea of justice" and a "general principle directly applicable as law" which should be applied as part of international law "to balance up the various considerations which it regards as relevant

in order to produce an equitable result."[58] The ICJ went on to hold there were no rigid rules as to the exact weight to be attached to each element in a case, but that equity was not an exercise of discretion or conciliation or the operation of distributive justice.[59] The Court has also linked equity with principles of acquiescence and estoppel,[60] and with delimitating maritime areas.[61] It has applied equity to the conservation of fishery resources to achieve an "equitable solution derived from the applicable law."[62] Equity can therefore operate as a part of international law to inform the application of a particular rule.

40. In the environmental field, many treaties refer to or incorporate equity or equitable principles. Equity provides a conveniently flexible means of leaving the extent of rights and obligations open to interpretation, to be decided at a subsequent date by international courts or other decision-making bodies. At UNCED, equitable principles were frequently used, and they played a central role in how to allocate future responsibilities for environmental protection between States which are at different levels of economic development, which have contributed in different degrees to particular problems, and which have different environmental and developmental needs and priorities.

41. Equity includes both intergenerational equity (relating to the rights of future generations and our obligations to them) and intragenerational equity (relating to members of generations existing today).

42. The principle of intergenerational equity reflects the view that as "members of the present generation, we hold the earth in trust for future generations," while "at the same time we are beneficiaries entitled to use it."[63] All generations form a partnership that extends across time in relation to their human environment. The principle includes three components: quality, options, and access to the environment. These must be comparable across generations.

43. The first, equitable quality, requires each generation to maintain the quality of the planet so that it is passed on in no worse condition than received. It assumes that economic development will take place, consistent with the element of the access. Hence it does not mean the environment should remain unchanged; rather it recognizes that trade-offs are to be expected and that a framework must be developed in which balancing of interests can take place consistent with maintaining a robust environment.

44. The element of options requires conserving the diversity of the natural and cultural resource base so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values. It also entitles each generation to diversity comparable to that enjoyed by previous generations.

45. Access requires that each generation provide its members with equitable access to the legacy of the past and to the natural environment. It means that members of the present generation have a right of access without discrimination to use the planet's resources to improve their own economic and social well-being provided they do not unreasonably interfere with access of other members to do so.

46. Intergenerational equity is well-known to international law. Early environmental treaties, including the International Whaling Convention[64] and the World Heritage Convention,[65] refer to safeguarding the resources for future generations. Increasingly treaties seek to preserve particular natural resources and other environmental assets for the benefit of present and future generations. These include the African Convention on the Conservation of Nature and Natural Resources,[66] wild flora and fauna;[67] the marine environment;[68] essential renewable natural resources;[69] the environment generally;[70] the resources of the earth;[71] natural heritage;[72] natural resources;[73] water resources;[74] biological diversity;[75] and the climate system.[76] The agreement to protect the high-level ozone layer[77] is inherently intergenerational. The UN Stockholm Declaration on the Human Environment in principle 1 noted a "solemn responsibility to protect and improve the environment for present and future generations." Intergenerational equity is often referred to as an important aspect of the concept of sustainable development.[78]

47. The principle of intergenerational equity has been increasingly recognized in international and domestic courts and in administrative bodies. In the 1995 New Zealand v. France case before the International Court of Justice, Judge Weeramantry noted that the "principle of intergenerational equity" is "an important and rapidly developing principle of contemporary environmental law ... which must inevitably be a concern of this Court."[79] The practical implementation of the principle of intergenerational equity is also reflected, for example, in the legal standing of members of the present generation to enhance their locus standi to bring environmental claims in domestic or international courts.[80]

48. The obligation to use natural resources equitably refers to the obligation to take into account the needs of other users, and can be referred to as "intragenerational equity." This aspect of equity is also contained in the UNCED instruments, which reflect efforts to apply equity to particular issues. Intragenerational equity does not indicate how the burdens and fruits are to be borne by members of the present generation. But if it is assumed that there is no basis for discriminating in favor of one generation at the expense of another and that all generations form a partnership, it can be concluded that intragenerational equity requires a nondiscriminatory bearing of environmental burdens and comparable access to environmental benefits.

49. Examples abound of States committing themselves to the equitable use of, and contributions towards the preservation of, natural resources. The Preamble to the Montreal Protocol reflects the aim of controlling "equitably total global emissions of substances that deplete the ozone layer."[81] Under the Climate Change Convention all the Parties undertake to be guided on "the basis of equity" in their actions to achieve the objective of the Convention, and Annex I Parties agree to take into account the need for "equitable and appropriate contributions" by each of them to the global effort regarding the achievement of the objective of the Convention.[82] The objectives of the Convention on Biological Diversity include the "fair and equitable" sharing of the benefits arising out of the use of genetic resources.[83] And Principle 3 of the Rio Declaration refers to the "right to development" as a means of "equitably" meeting the developmental and environmental needs of present and future generations. Apart from the jurisprudence of the ICJ on fisheries conservation, practical implementation of the obligation to use natural resources equitably is reflected in bilateral and multilateral agreements

to share rights of access in relation to, for example, fisheries and freshwater resources. Also UNCLOS contains a number of references to equitable utilization of resources and equitable sharing of benefits.[84]

50. The principle of equity also includes the rights of all groups to participate in productive activity. It specifically includes the right of workers to organize in order to protect their own interests, and the role of employers and enterprises in social and economic development.[85] Freedom to exercise these rights can be viewed as an aspect of human dignity, and is needed to ensure that overall development planning takes account of the views of those interested, and that conditions of the work and employment which are the basis of productive activity are fair, informed, realistic and applicable.

### (6) Sovereignty over natural resources and responsibility not to cause damage to the environment of other States or to areas beyond national jurisdiction

51. It is a well-established practice, accepted as law, that —within the limits stipulated by international law— every State is free to manage and utilize the natural resources within its jurisdiction and to formulate and pursue its own environmental and developmental policies.[86] However, States have to conserve and utilize their natural wealth and resources for the well-being of their peoples, as provided in the Declaration on Permanent Sovereignty over Natural Resources[87] and common Article 1 of the Human Rights Covenants, and they have the responsibility not to cause damage to the environment of other States or to areas beyond national jurisdiction.[88]

52. Sovereignty over natural resources as a principle of international law has evolved since World War Two in response to claims of colonial peoples and developing countries to enjoy the benefits of resource exploitation. As such it reflects two main concerns of the United Nations: (1) the economic development of developing countries; and (2) self-determination of colonial peoples.

53. Initially, the principle of sovereignty over natural resources served as a source for claims to a series of resource- and foreign investment-related rights which were also said to emanate from other international law principles such as territorial sovereignty and national economic jurisdiction. These rights included the right of a State to possess and determine freely the use of natural resources, the right to regulate foreign investment, and the right to manage and conserve natural wealth and resources pursuant to its own developmental and environmental policies. In later years, an increasing number of duties has been identified as incumbent on States in the exercise of their sovereignty over natural resources as well.[89] These include the duty to exercise resource-related rights in the interest of national development and the well-being of the people, the duty to have due care for the environment and the duty to recognize the correlative rights of other States in transboundary resources.

54. While the exact scope and contents of this principle have given rise to controversy over the years, particularly in relation to oil resources and their nationalization, the Declaration on

Permanent Sovereignty over Natural Resources still serves as a basic instrument on this matter. Further, the Stockholm Declaration was among the first documents which stipulated that sovereignty over natural resources must be exercised in an environmentally responsible way. Especially its Principle 21 calls for the prevention of extraterritorial effects causing environmental damage in other countries or in areas outside national jurisdiction.[90] It may not be easy to determine the exact scope of this obligation and its implications. Certainly not all instances of transboundary damage resulting from activities within a State's territory can be prevented or are unlawful. Important criteria for determining what is permissible and what is prohibited might include: (a) the likelihood of significant harmful effects on the environment and on potential or current activities in another State; (b) the ratio between prevention costs and any damage; (c) the impact on other States' capacity to use their natural wealth and resources in a similar way; and (d) the health of the population of another State.[91]

55. The principle of sovereignty over natural resources and the corollary responsibility not to cause transboundary damage is included in legally-binding instruments, inter alia, UNCLOS,[92] the Climate Change Convention,[93] the Convention on Biological Diversity,[94] the European Energy Charter Treaty[95] as well as many other global and regional conservation treaties.

56. It is also reflected in the 1978 Shared Natural Resources Principles and Principle 2 of the Rio Declaration. The Draft IUCN Covenant incorporates it in its Article 11.1.[96] The Seoul Declaration of the International Law Association also contains a provision on permanent sovereignty over natural resources.[97]

**(7) Sustainable use of natural resources**

57. The principle of sustainable use of natural resources requires States and peoples to pay due care to the environment and to make rational use of the natural wealth and resources of the areas within their jurisdiction.

58. In 1962, before the preservation of the environment per se was perceived as an important international concern, the UNGA adopted two resolutions with early provisions relating to rational use of natural resources. First, paragraph 1 of the Declaration on Permanent Sovereignty over Natural Resources[98] can be interpreted as an injunction to make a prudent, long-term use of natural resources. Second, the General Assembly adopted by consensus a resolution on the relationship between economic development and environmental protection, "Economic Development and the Conservation of Nature".[99] The resolution reflects recognition of the extent to which economic development may jeopardize natural resources, including fauna and flora, and formulates for the first time the objective that natural resources should not be wasted. It endorses an initiative from UNESCO to recommend action and to introduce effective domestic legislation towards, inter alia, the preservation and rational use of natural resources.

59. The Stockholm Declaration points out that careful planning and management are required for safeguarding the natural resources of the earth for the benefit of present and future

generations: "The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments."[100] Principle 13 provides that: "In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population."

60. Ever since the Stockholm Conference, UN resolutions have gradually elaborated standards for nature conservation and utilization of natural resources. For example, reference can be made to the Charter of Economic Rights and Duties of States,[101] and the World Charter for Nature.[102]

61. The Rio Declaration indicates at various places[103] that environmental preservation and the promotion of development are interrelated and that an integrated approach is called for. The principle of sustainable use of natural resources is amply reflected in international conventions. Reference can be made to: regional co-operation treaties;[104] global conservation treaties;[105] and other resource-related multilateral treaties.[106]

62. International jurisprudence and arbitral awards have so far focused mainly on the obligation of a State to prevent significant damage to the environment of other States. There are certain relevant awards such as those in the Trail Smelter and Lac Lanoux cases as well as the ICJ Nuclear Tests Cases.[107]

63. In conclusion, legal development has focused on State obligations with respect to the environment of other, mostly neighboring States, as is clearly reflected in Principle 21 of the Stockholm Declaration. However, a distinct tendency can be discerned from UN resolutions and treaty law to impose duties on States with respect to the management of their natural wealth and resources so as to ensure sustainable production and consumption, in the interest of the peoples of their own and other States and of humankind including future generations. These obligations respond to environmental problems of international if not global concern, both to present and future generations. Gradually, it has become recognized under international law that natural resource management should no longer fall within the exclusive domestic jurisdiction of individual States.

### (8) Prevention of environmental harm

64. The principle of prevention of environmental harm is a major cornerstone of international environmental law. It is based on the idea that protection of the environment is best achieved through anticipatory measures to prevent harm rather than through post-hoc efforts to repair or provide compensation for it. It may in fact be impossible to repair environmental harm once it has occurred. Furthermore, compensation is a poor substitute for clean air or water and cannot make up for the loss of flora, fauna, other resources or entire species. In addition, it is usually more expensive to repair environmental harm than to prevent it.

65. Preventive measures are most effective and efficient when they eliminate the source of environmental harm rather than attempting to manage harmful effects. For example, a change in the production process to eliminate an environmentally harmful substance is preferable to installing a pollution-control device at the end of the process to catch as much of the substance as possible. It is also important that care be taken to prevent the transfer of environmental harm or danger from one area to another and to prevent the transformation of one kind of environmental harm into another.[108]

66. On the national level, the principle of prevention of environmental harm envisages that States will enact and implement effective environmental legislation.[109] While environmental standards and natural resource protection strategies should reflect the environmental and developmental context to which they apply,[110] the prevention of environmental harm means that all States should enact preventive measures (including regulations and economic incentives) that apply to public and private activities subject to their jurisdiction or control that are potentially harmful to the environment.[111] The principle of prevention also implies that proposed activities be evaluated before they are authorized to determine whether they may cause harm to the environment. This is most effectively accomplished through an environmental impact assessment process,[112] in which full participation by the members of the public concerned is permitted.[113] (Reference is also made to environmental impact assessment in a transboundary context, paras 113-115.)

67. On the international level the principle of prevention of transfrontier environmental harm is now generally accepted.[114] The well-known language from both the Stockholm and Rio Declarations relating to this principle provides that "States have ... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."[115] While the word "ensure" might suggest otherwise, this is generally thought to be an obligation of due diligence to prevent transfrontier environmental harm.[116] As is true on the national level, prevention of environmental harm in the transfrontier context is best achieved by evaluating proposed activities before they are authorized to determine what impacts they may have beyond the limits of national jurisdiction.[117] If such an environmental impact assessment indicates the possibility of transfrontier harm, the principle of prevention calls for the State in whose territory the proposed activity would be situated to notify potentially affected States of the plans, provide them with sufficient information to enable them to conduct their own evaluation, and consult with them at an early stage and in good faith.[118] States are, in any event, responsible for making reparation for any transfrontier environmental harm that they do not prevent.[119]

68. Related to the principle of prevention of environmental harm is the question whether States potentially affected by transboundary harm have any rights to defend themselves against imminent and significant threats to their environment. Whereas the right of individual or collective self-defence has so far been restricted to armed attacks in the case of non-action by the Security Council[120], it should be noted that States are entitled to take measures for the protection of their environment against harm caused by certain goods or services by means of specific trade bans.[121] Any defensive action would have to respect the sovereignty and

territorial integrity of the country of origin of such threats or potential harm. The World Commission on Environment and Development (WCED) Draft entitled States to "prevent or abate any transboundary environmental interference or a significant risk thereof,"[122] a statement which would justify defensive action coming from the potentially affected States.

69. There is a connection between the principle of prevention of environmental harm and the **polluter-pays principle**. According to the polluter-pays principle it is important that the environmental costs of economic activities, including costs of prevention of potential harm, be internalized rather than imposed upon society at large. It was developed by the Organisation for Economic Co-operation and Development (OECD) in 1974[123] as a principle to ensure that firms paid the full costs of controlling pollution and were not subsidized by the State. It was meant to be a principle that applies within a State, and not between States. Principle 2 of the Rio Declaration brings the polluter-pays approach outside of a strictly developed country context. It calls upon national authorities to "endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution...." The United Nations Commission on Sustainable Development reiterated this principle at its third session. [124]

**(9) Precautionary principle**

70. The precautionary principle indicates that lack of scientific certainty is no reason to postpone action to avoid potentially serious or irreversible harm to the environment. The principle provides guidance for the development and application of international environmental law. Depending upon the formulation of the principle in international legal instruments, there may also be a requirement that measures taken in application of the principle should be cost-effective.

71. The core of the precautionary principle is reflected in Principle 15 of the Rio Declaration, which states: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." Central to the principle is the element of anticipation, reflecting a requirement that effective environmental measures need to be based upon actions which take a longer-term approach and which might anticipate changes in the basis of our scientific knowledge. At a general level the principle is understood to mean that States should act carefully and with foresight when taking decisions which concern activities that may have an adverse impact on the environment.

72. A more focused interpretation of the precautionary principle could require activities and substances which may be harmful to the environment to be regulated, and possibly prohibited, even if no conclusive or overwhelming evidence is available as to the harm or likely harm those activities may cause to the environment. An even more fundamental interpretation shifts the burden of proof in decision-making to require a person who wishes to carry out an activity to prove that it will not cause harm to the environment.

73. Whereas the preventive principle can be traced back to international environmental treaties and international acts since at least the 1930s, the precautionary principle, which is still evolving, only began to appear in international legal instruments in the mid-1980s, drawing from developments in domestic legal systems, most notably that of West Germany.[125] The first treaty which reflects the precautionary principle was the Vienna Convention for the Protection of the Ozone Layer,[126] followed in 1987 by the Montreal Protocol.[127]

74. The principle has been expressed in at least seven international agreements since 1989, although its precise formulation is not identical in each instrument. Two of these are of global application on environmental matters of broad concern and apply to almost all human activities.[128] The Fish Stocks Agreement has adopted the "precautionary approach".[129] A specific set of guidelines are also annexed to the Agreement for the application of "precautionary reference points" in conservation and management of the stocks concerned. Of particular note are its further application to the marine environment[130] and in the context of the European Union.[131] There are a limited but increasing number of other cases where the precautionary principle is being applied in practice; noteworthy examples are the Directive of the Council of the European Communities on urban waste water,[132] and the Convention for the Protection of the Marine Environment of the North-East Atlantic.[133] New Zealand invoked the precautionary principle in support of its application to the International Court of Justice to review France's decision to recommence nuclear tests.[134]

## C. PRINCIPLES AND CONCEPTS OF INTERNATIONAL COOPERATION

### (10) Duty to cooperate in the spirit of global partnership

75. The duty of States to cooperate is well-established, as exemplified by Chapter IX of the UN Charter and the Declaration on Principles of International Law.[135] It applies on the global, regional and bilateral levels and often requires prior information, consultation and negotiation. The principle of global partnership can be seen as a more recent reformulation of the obligation to cooperate.

76. The duty to cooperate in the context of global partnership is becoming increasingly important. Both the Stockholm and Rio Declarations reflect and signify this trend. The Stockholm Declaration states: "A growing class of environmental problems ... will require extensive co-operation among nations ...";[136] Principle 7 of the Rio Declaration proclaims that, "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem...", and its Preamble refers to the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people.

77. The obligation of States to cooperate forms the subject of chapter 2 of Agenda 21 entitled "International cooperation to accelerate sustainable development in developing countries and related domestic policies" and can be viewed as one of the cornerstones of the whole of Agenda

21 and the concept of sustainable development. It is further embodied in the 27th and last principle of the Rio Declaration: "States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development".

78. A number of international agreements provide for a duty of industrialized countries to contribute to developing countries' efforts to pursue sustainable development and to assist developing countries in protecting the global environment.[137] Such assistance may entail, apart from consultation and negotiation, financial aid, transfer of environmentally-sound technology and cooperation through international organizations.

79. The establishment of the Global Environment Facility (GEF), a joint project of the World Bank, UNEP and UNDP, which entered its Phase II (1994-97), can be seen as the first major step in carrying out this idea. Transfer of technology provisions are most notably included in the Montreal Protocol to the Ozone Layer Convention, the Climate Change Convention and the Convention on Biological Diversity.

80. The principle of cooperation in the spirit of global partnership not only refers to cooperation among States, but should also be extended to non-State entities, ranging from business associations through non-governmental organizations to the academic world.[138]

81. The principle of the duty to cooperate in the spirit of global partnership can be subdivided into three major components: (a) common concern of humankind; (b) common but differentiated responsibilities; and (c) special treatment of developing countries, including small island developing States and countries with economies in transition.

**a. Common concern of humankind**

82. The notion of common concern on the part of the international community, and of States as its principal actors, has traditional roots. It found its original expression in various forms, like common interest and international concern, in fields such as the protection of human rights and self-determination of peoples. The foundation of the concept is the recognition of a legitimate interest of the international community to concern itself with certain issues and values which, by their nature, affect the community as a whole. The scientifically-based reality of ecological interdependence, and the concomitant recognition of the global nature of environmental problems, made it only a logical step to apply the concept of common concern to the environment of the planet, or elements thereof.

83. The concept of the common concern of humankind might signal that the protection of the global environment can no longer be considered to be solely within the competence of individual sovereign nations. The concept could imply the right and duty of the international community, and thus of each State, to act in a manner which reflects this concern.

84. "Humankind" establishes a link between present and future generations, underlining a long-term temporal dimension, while at the same time not confining responsibilities to States, thus suggesting the necessary involvement of all sectors of society. "Concern" implies a focus on both causes and responses; it also marks a departure from the concept of "common heritage of mankind" which, primarily because of its proprietary connotations, made it less applicable in the environmental context. "Common" connotes solidarity in protecting the global environment, and thus implies the sharing of burdens in achieving the pursued goals in a manner which reflects equity. This in turn may imply, in particular circumstances, the acceptance of differentiated treatment in burden sharing, reflecting differentiated responsibilities between the various actors, in particular developed and developing States. "Common" also connotes a spatial dimension in matters of importance to the biosphere as a whole, as well as a superiority of such concerns over those which are not so shared.

85. The Stockholm Declaration already referred to the "common good of mankind", and was followed by a number of internationally agreed instruments which in various terms stressed the responsibility of all States with respect to the protection of the environment.

86. UNGA Resolution 43/53 is the first major document which specifically refers to the concept of common concern of mankind, albeit only in relation to climate change.[139] It was followed by the Langkawi Declaration of the Commonwealth Heads of Government.[140] The principle appeared in a series of governmental statements which followed the Noordwijk Declaration resulting from the Ministerial Conference on Atmospheric Pollution and Climate Change.[141] The UNGA in its Resolution 44/207 (1989) recalled that climate change had been recognized as the common concern of mankind and stated in its Declaration on International Economic Co-operation of its 1990 Special Session that, "The current threat to the environment is the common concern of all".[142]

87. This resulted in the inclusion of the concept in the preambles of the Climate Change Convention and in the Convention on Biological Diversity, both opened for signature during UNCED.[143] These major international instruments go beyond acknowledging the "common concern of humankind" as such in their respective preambles. Their substantive elements embody obligations, related inter alia to burden-sharing, financing, transfer of technology and concerted strategies, which gives the principle concrete application in treaty law. The Draft IUCN Covenant proposes making the principle one of its proposed fundamental principles, applicable to the global environment as a whole.[144]

88. The concept of common concern of humankind interlinks with a number of others relating to global environmental and resources issues. Most prominent among them are the fundamental right to an environment conducive to a life in dignity, and the principle of inter-generational equity. It can, however, also be viewed as a specific manifestation of the overarching duty to cooperate, which constitutes the very anchor of international law.

### b. Common but differentiated responsibilities

89. As expressed in Principle 7 of the Rio Declaration, this principle recognizes that States have common but differentiated responsibilities in the context of the different contributions to global environmental degradation. States whose societies impose a disproportionate pressure on the global environment and which command high levels of technological and financial resources, bear a proportionally higher degree of responsibility in the international pursuit of sustainable development. [145]

90. In practical terms, the principle of common but differentiated responsibilities is translated into the explicit recognition that different standards, delayed compliance time tables or less stringent commitments may be appropriate for different groups of countries.

91. The principle of common but differentiated responsibilities is given concrete expression in the 1987 Montreal Protocol to the Ozone Layer Convention, which establishes a time-table for the reduction of controlled substances that deplete the ozone layer.[146] Developing countries are granted delays in meeting the compliance timetables, and parties undertake to facilitate access to environmentally safe alternative substances and technologies, and to facilitate the provision of financial support.

92. The principle also frames international cooperation under more recent international treaties as the Climate Change Convention,[147] where the principle of common but differentiated responsibilities is stated as the first principle under Article 3. This Convention recognizes the special circumstances and needs of developing countries, and then structures the duties and obligations to be undertaken by States accordingly.[148] The Convention on Biological Diversity[149] has made the implementation of obligations undertaken by developing countries dependent on the effective implementation by developed countries of their commitments to provide new and additional financial resources, as well as to provide access to and transfer of technology on fair and most favorable terms.

### c. Special treatment of developing countries, small island developing States and countries with economies in transition

93. Principle 6 of the Rio Declaration states that priority shall be given to the special situation and needs of developing countries, in particular the least developed and those most environmentally vulnerable. The principle of the special treatment of developing countries finds its elaboration in the principle of global partnership and in the recognition of the differentiated responsibilities among countries.

94. The principle is acknowledged in a wide variety of binding international legal instruments, such as the Climate Change Convention,[150] UNCLOS,[151] the Lomé IV Convention,[152] the Desertification Convention,[153] the Convention on Biological Diversity,[154] and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.[155]

95. The 1995 Implementing Agreement on Fish Stocks devotes one part (Part VII) to the special requirements of developing States in relation to the conservation and management of the fish stocks concerned, and elaborates upon the purposes of cooperation, and the forms it shall take, such as the provision of financial assistance and the transfer of technology, including through joint venture arrangements. Priority areas for assistance are also specified. Moreover, the Agreement envisages the establishment of special funds to assist developing States in its implementation.[156]

96. The special situation of developing countries necessitates the transfer of technology and of financial resources to them, and the strengthening of capacity-building within them. This has been recognized by several conventions. For example, the entire Part XIV of UNCLOS is devoted to the promotion of the development and transfer of marine technology, including the responsibilities of the International Seabed Authority in that regard (see article 274).[157]

97. The special situation of developing countries is reflected in the Montreal Protocol (see para 91 infra), in a number of UNGA Resolutions, inter alia, 44/209 on Protection of Global Climate Change for present and future generations of humankind; 44/228 on UNCED and 44/229 on International Cooperation in the Field of the Environment. The principle is also frequently mentioned in Agenda 21, and has been included in the Forest Principles[158] and in Preamble of the Draft IUCN Covenant. Further, the Washington Declaration on Protection of the Marine Environment from Land-based Activities refers to "countries in need of assistance".[159]

98. Under Chapter 17, section G of Agenda 21, small island developing States and islands supporting small communities are recognized as a special case for both environment and development, because they are ecologically fragile and vulnerable and their small size, limited resources, geographic dispersion and isolation from markets all place them at a disadvantage economically and prevent economies of scale.

99. The Climate Change Convention specifically refers to developing country parties that are particularly vulnerable to the adverse effects of climate change, which are, inter alia, low-lying and other small island countries.[160]

100. The Global Conference on the Sustainable Development of Small Island Developing States (1994)[161] adopted the Declaration of Barbados and a Programme of Action for the sustainable development, aimed at implementing Agenda 21. It is stated that the small size of the islands means that development and environment are closely interrelated and interdependent.[162] The High Level Segment of the Global Conference focussed its debate on the theme "Forging partnerships for sustainable development". It was agreed that human resource development is fundamental to the sustainable development of small island developing States, and expressly highlighted the need to form partnerships at national, regional and international levels, to deal with the problems and challenges facing small island developing States in their achievement for sustainable development.

101. The category of States with economies in transition emerged on the international agenda after the reorganization of the former Soviet Union at the end of the 1980s, at which time the preparatory work for UNCED had already started. However, UNCED recognized their specific environmental and economic problems, including high levels of industrialization, outdated technologies, inefficient and wasteful production patterns, extreme pollution levels in heavily industrialized areas, and widespread public health problems. This led to a special provision in the Climate Change Convention providing "a certain degree of flexibility" in "implementing" particular commitments under the Convention.[163]

102. It can be argued that the principle of special treatment of countries with economies in transition is not well defined and does not imply substantial rights for preferential treatment. The "competitive advantage" of economies in transition appears to be not so much preferential legal rights as a significant potential for investment opportunities to achieve environmental improvements.[164]

### (11) Common heritage of humankind

103. In addition to the principle of common concern of humankind (supra, paras. 82-88) there is the principle of common heritage of humankind. The principle takes root in the concern that the resources of certain areas beyond national sovereignty or jurisdiction should not be exploited solely by those few States whose commercial enterprises are able to do so, but rather constitute the common heritage of humankind, to be utilized for the benefit of all States. The application of the principle to particular areas, and its substantive content, is elaborated in treaty law.

104. Art. 136 of UNCLOS declares the international seabed area as "the common heritage of mankind." The principle is applicable to the natural resources of the deep sea-bed beyond national jurisdiction and the natural resources of the moon and other celestial bodies including orbits leading to and around them.[165] The status of this principle received renewed emphasis through the entry into force of UNCLOS in November 1994, together with the 1994 Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea of 10 December 1982. This Agreement was designed to respond to political and economic changes in the 12 years since 1982, in particular "a growing reliance on market principles" and "the growing concern for the global environment".[166] The common heritage of humankind principle implies, among other things, regulated access to resources, non-alienation, sharing of benefits, reservation for peaceful purposes and due regard to the interests of future generations.

### (12) Cooperation in a transboundary context

105. Cooperation in solving international problems of an economic, social, cultural or humanitarian character is one of the purposes of the United Nations.[167] The entire Chapter IX of the UN Charter is devoted to "International Economic and Social Cooperation", which should at present also include environmental cooperation. All Member States pledge themselves to take joint and separate action for achieving solutions of international economic, social, health and related problems.[168] This cooperation is not only a duty on a global scale but also a fortiori

a duty in the narrower regional and neighborhood context. In the latter the "general principle of good neighborliness"[169] has to be respected. A general obligation to cooperate in good faith in environmental matters was recognized in Article 8 of the WCED principles,[170] which again is based on the "duty of States to cooperate" as recognized by the above-mentioned UN Declaration on Principles of International Law.[171] From a historical perspective, concern for transboundary cooperation in environmental matters preceded the concern for cooperation in favor of the global commons.[172] (Also of relevance to this discussion are paras. 75-102 on the duty to cooperate in the spirit of global partnership, paras 75-102.)

106. The principle of cooperation in a transboundary context includes five main components: a) equitable and reasonable use of transboundary natural resources; b) notification to and consultations with neighboring and potentially affected States; c) environmental impact assessment in a transboundary context; d) prior informed consent; and e) cooperation to discourage or prevent the relocation and transfer of activities and substances that cause severe environmental degradation or harmful to human health.

### a. Equitable and reasonable use of transboundary natural resources

107. Transboundary natural resources must be used by States in an equitable and reasonable manner.[173] The concept of "equitable and reasonable use" includes a number of elements. First, it implies that States using transboundary natural resources will afford them a level of protection that is adequate to sustain resources other than those that are non-renewable.[174] Second, it requires that States participate in the use and protection of transboundary natural resources in an equitable and reasonable manner, including through affirmative measures when necessary.[175] Third, it requires close cooperation by the concerned States. Such cooperation includes such procedures as environmental impact assessment prior to engaging in activities that may adversely affect transboundary natural resources; prior notification and consultation concerning such activities; regular exchange of data and information concerning transboundary natural resources; and immediate notification of emergency situations concerning those resources.[176] And fourth, the principle of equitable and reasonable use of transboundary natural resources requires that States use such resources in a way that avoids causing harm to other States or to areas beyond the limits of national jurisdiction.[177]

108. Equitable and reasonable use of transboundary natural resources is often implemented most effectively through joint institutions established by the States sharing the resources in question.[178] Close cooperation, through such joint institutions where appropriate, will become increasingly necessary as the supply of transboundary natural resources such as fresh water becomes more and more scarce. Joint institutions can facilitate the allocation and development of transboundary natural resources on an equitable basis, the setting of standards concerning those resources and the avoidance or settlement of any disputes that may arise with regard to them. The UNEP regional seas programme as well as different bilateral commissions provide good models for international cooperation. As part of this approach, financial and technology transfers as well as capacity building efforts may serve as important enabling mechanisms for equitable and reasonable use.

109. The principle of equitable and reasonable utilization of transboundary natural resources has been most closely associated historically with international rivers and lakes. But the principle is also applicable to transboundary groundwater and other transboundary natural resources, such as airsheds, fish and other forms of wildlife, and other living resources.

**b. Notification to and consultations with neighboring and potentially affected States**

110. States should provide prior notification and relevant information to neighboring and potentially affected States regarding activities that may have a significant adverse transboundary environmental effect.[179] Notification is an integral part of other implementation and dispute resolution mechanisms, including environmental impact assessments in a transboundary context, consultations between neighboring States, and obtaining prior informed consent.

111. States should also provide immediate notification to other States of any environmental disasters or similar emergencies that are likely to produce sudden harmful effects on the environment of those States.[180] Emergency notification allows affected parties the greatest possible opportunity to prepare for, and mitigate, potential damage. Emergency notification provisions are critical components of international approaches to oil spills,[181] industrial accidents,[182] and nuclear accidents. Examples of this last area are to be found in the Convention on Early Notification of Nuclear Accidents[183] and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.[184]

112. States planning to conduct activities that may harm the environment or natural resources of another State should enter into good faith consultations over a reasonable time in an effort to minimize the transboundary environmental impacts.[185] An example of a treaty that calls for consultation when the activities of one State are likely to affect the environment is the Convention on Long-Range Transboundary Air Pollution.[186] Consultation implies at least an opportunity to review and discuss a planned activity that may potentially cause damage. The obligation to consult is closely related to environmental impact assessment in a transboundary context, as well as to notification and prior informed consent. Increasingly, consultation is being institutionalized at the international level, either through existing international bodies as, for example, the Nordic Council, the European Council and the UN system, or through new institutions created in the framework of specific environmental conventions.[187] Such institutions are critical for building confidence over the long-term and for providing a mechanism for discussing and resolving potential disputes in the field of sustainable development.

113. The principle of notification to and consultations with neighboring and potentially affected States is to be found in Principle 19 of the Rio Declaration, which reflects what many States have recognised as required practice in terms which reflect an obligation of customary international law:[188] "States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith".

### c. Environmental impact assessment in a transboundary context

114. Environmental impact assessment (EIA) is a methodological tool for decision-making. It helps to establish a process that is both participatory and integrative to assess the potential impact of an activity on the environment and, increasingly, on the socio-cultural life of a community as well. It exists largely at the project level, but, as recommended in chapter 8 of Agenda 21, it should be used in policy and programme analysis as well (para. 8.4). In the context of this principle, EIA refers specifically to assessment of activities which might have significant transboundary effects on the environment of another State, and it is directly related to the exercise of sovereignty over natural resources and the responsibility not to cause damage to the environment of other States or to areas beyond national jurisdiction, as well as to the principle on prevention of environmental harm.

115. Various regional conventions reflect the obligation to undertake transboundary environmental impact assessment.[189] The UN Economic Commission for Europe (UN ECE) Convention on Environmental Impact Assessment in a Transboundary Context,[190] (the "Espoo Convention"), illustrates the substantive duty and the procedures for its implementation. It specifies the duties of Parties with regard to transboundary impacts of proposed activities, and it provides procedures, in a transboundary context, for the consideration of environmental impacts in decision-making procedures. The Espoo Convention specifically is recognized in, for example, the Final Declaration of the Ministerial Meeting of the Oslo and Paris Commissions (September 1992), the Ministerial Declaration on Cooperation in the Barents Euro-Arctic Region (January 1993) and the Nuuk Declaration on Environment and Development in the Arctic (September 1993), and others.[191]

116. Elements of environmental impact assessment are also found in other international instruments. These include the UN/ECE Convention on the Transboundary Effects of Industrial Accidents,[192] the Convention on the Protection and Use of Transboundary Watercourses and International Lakes,[193] and the Convention on the Marine Environment of the Baltic Sea Area.[194]

### d. Prior informed consent

117. Prior informed consent is emerging as a principle in specific contexts. According to this principle, international shipment of a chemical, pesticide or hazardous wastes that is banned or severely restricted to protect human health or the environment should not proceed without the agreement or contrary to the wishes of the designated national authority in the importing country.[195]

118. The concept of prior informed consent finds expression in the International Code of Conduct on the Distribution and Use of Pesticides of the Food and Agriculture Organization of the United Nations, the London Guidelines for the Exchange of Information of Chemicals in International Trade of UNEP, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

119. The Basel Convention sets up a strict regime for the control of transboundary movements of hazardous wastes. This regime is mainly based on the principle of prior written notification by the exporting State, as well as prior written consent by the importing State.[196] This same rule applies to the transit State Party to the Basel Convention. In the case of transit, however, the transit State Party can at any time decide not to require prior written consent and so inform other Parties. The requirement of written notification by the exporting State remains and constitutes an obligation which cannot be removed.[197]

120. Attempts are being made for the development of a convention that would make Prior Informed Consent compulsory for all parties. The UNEP Governing Council, at its eighteenth session, authorized the Executive Director to prepare for and convene, together with the Food and Agriculture Organization of the United Nations and in consultation with Governments and other relevant international organizations, an intergovernmental negotiating committee, with a mandate to prepare an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals in international trade.

### e. Cooperation to discourage or prevent the relocation and transfer of activities and substances that cause severe environmental degradation or are harmful to human health

121. There may be an emerging principle of discouraging or preventing the relocation and transfer to other States of harmful activities and substances, as set forth in Principle 14 of the Rio Declaration. This principle addresses the danger that substances and activities with potential to harm human health and the environment may be transferred or relocated to another State. In a context where it is thought that economic incentives favor relocation or transference to States without adequate protection, the principle establishes a norm of international cooperation to discourage or to prevent such relocation or transference and to ensure that any relocation or transference be environmentally safe and done with prior informed consent. At a minimum, the principle requires prior informed consent upon the importing state or state of relocation and imposes a duty on the originating state to ensure that the state to which the hazardous activity or substance is to be transferred has the appropriate capacity to minimize the risks. As a principle of cooperation, it further requires that if a State chooses to ban or restrict the importation of hazardous substances or the translocation of hazardous activities, the ban or restriction be respected by other States.

122. The principle of non-transference of hazardous activities is stated in its most general form as Principle 14 of the Rio Declaration. It also, however, underlies both the Basel Convention and the Bamako Convention,[198] which regulate the trade in hazardous wastes. Further, the principle is implied in the FAO Code of Conduct on the Distribution and Use of Pesticides and the London Guidelines for the Exchange of Information on Chemicals in International Trade.

## D. PRINCIPLES AND CONCEPTS OF PARTICIPATION, DECISION-MAKING AND TRANSPARENCY

123. Sustainable development cannot be achieved without the widespread adoption of good governance principles that ensure broader participation in development decisions and an open and transparent decision-making processes.[199]

124. As stated in paragraph 14, legal institutions mandated to settle conflicts of law when considering specific cases should take into consideration rules of environmental, social, economic, human rights and other sustainable development law applicable to the parties to the dispute, within the limits of their respective jurisdictions, terms of references and charters. In order for these interpretative bodies to take into consideration international law in all fields, it is necessary to ensure cross-fertilization and participation by, inter alia, competent international organizations, relevant major groups and experts.

125. It can be noted that related to principles and concepts of participation, decision-making and transparency is the problem of abuse of public office for personal gain. Corruption can be related to the depletion or degradation of resources and therefore threatens sustainable development. To combat corruption, developed and developing countries should adopt measures to ensure that public and private actors conduct business in a transparent and accountable manner.

### (13) Public participation

126. According to Agenda 21, one of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making.[200] The Rio Declaration, too, confirms that "environmental issues are best handled with the participation of all concerned citizens, at the relevant level" and that each individual shall have "the opportunity to participate in decision-making processes."[201]

127. Both Agenda 21 and the Rio Declaration emphasize the importance of the participation of all major groups, including women, children and youth, indigenous people and their communities, non-governmental organizations, local authorities, workers, business and industry, farmers and the scientific and technological community. Special emphasis has recently been given, including in legally binding international instruments, to ensuring the participation of those major groups that are considered to be politically disadvantaged, such as indigenous peoples[202] and women[203] in decision-making. The Fish Stocks Agreement requires States to provide for transparency in the decision-making process and other activities of regional fisheries organizations,[204] and to afford the opportunity for international organizations and NGOs to participate in meetings of regional fisheries organizations.[205]

128. Public participation also implies freedom of association for workers and employers and democratization towards their full involvement in decision-making on social and development issues.[206] This approach to labour and social issues is described in the ILO Constitution and

numerous ILO Conventions. More generally, the independence of NGOs has also been recognized as a "precondition" of real participation.[207]

129. The principle of public participation is closely linked to public access to information, environmental impact assessment processes, and access to remedial procedures.[208]

130. International institutions must also implement open and transparent decision-making procedures that are fully available to public participation. Examples of this include the newly established World Bank Inspection Panel, which provides citizens affected by World Bank projects the opportunity to request an independent inspection into alleged violations of Bank policies and procedures. The petitioning process under the North American Free Trade Agreement also provides significant new rights for citizens to participate in monitoring domestic enforcement of environmental laws. Non-governmental organizations should be provided at least observer status in international institutions and treaties and should be relied upon for expertise, information and other purposes.[209]

### (14) Access to Information

131. The right of access to environmental information has been increasingly recognized as a critical precondition to public participation in environment and development decisions.[210] Principle 10 of the Rio Declaration states that "... [a]t the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities..."

132. In part, access to environmental information is provided through adequate implementation of environmental impact assessment processes. National pollutant release and transfer registries have also become more important in a number of OECD countries, and the OECD is currently developing a guidance-for-government document that outlines the policy choices underlying implementation of a pollutant registry. Pollutant registries can be a critical mechanism for achieving a number of information gathering, reporting and dissemination purposes. Substantial work is needed in building the capacity to develop, analyze and distribute timely information to governmental and non-governmental users in a form that is useful.[211]

133. Efforts to improve public access to international institutions are also critical. The World Bank and the regional development banks have made some progress in issuing policies and directives on access to information, environmental impact assessment, and consultation. Other intergovernmental economic and financial institutions should make similar progress.

### (15) Environmental impact assessment and informed decision-making

134. There is now a broad recognition that environmental impact assessment is important not only in a transboundary context (paragraphs 114-116), but also on the national level. The EIA process helps to ensure informed decision-making and should provide for participation and access to information by the public.

135. The Rio Declaration declares that "[e]nvironmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse effect on the environment and are subject to a decision of competent national authority."[212] Preventive measures are mandated in international legal instruments in such sectors as stratospheric ozone protection,[213] climate modification[214] and biological diversity.[215] The Fish Stocks Agreement contains a provision regarding assessment of the impact of new or exploratory fisheries on the long-term sustainability of the stocks.[216] Many regional conventions also reflect the obligation to undertake environmental impact assessment.[217]

136. Over a hundred jurisdictions have established procedures for EIA in their national legislation[218] and State practice recognizes this principle. EIA procedures serve both to inform decision-makers of the consequences of their actions for sustainable development, and to integrate environmental considerations into all other spheres of decision-making including economic aspects. The results of an EIA have to be taken into account in the decision-making process, and ensures an informed decision-making procedure. The anticipatory elements reflected in the precautionary approach should also be considered in EIA procedures.

137. The Espoo Convention provides useful guidance as to the scope of the duty to assess possible impacts before taking or authorizing action. The concept of "impact" under that agreement covers "any effect caused by a proposed activity on the environment including public health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors."[219]

138. The principle that EIA be undertaken is basic to the integration of environment and development that is necessary for sustainable development.

139. The principle of informed decision-making finds expression in a number of agreements. For example, Arts. 61(2), 119(1) and 234 of UNCLOS refer to "the best scientific evidence available" in the context of decision-making. Arts. 5(6), 6(3)(a) and (7), 10(f) and 16(1) of the 1995 Implementation Agreement also refer to "the best scientific evidence (information) available." The Fish Stocks Agreement has an elaborate annex setting out "standard requirements" for data collection and sharing, which are considered fundamental to the effective conservation and management measures.

## E. PRINCIPLES AND CONCEPTS OF DISPUTE AVOIDANCE AND RESOLUTION PROCEDURES, MONITORING AND COMPLIANCE

140. In many cases of non-compliance by a State, duties result from the basic obligation "to perform binding treaties in good faith"[220] and from the UN Charter, which contains the principle that "All Members ... shall fulfill in good faith the obligations assumed by them in accordance with the Charter".[221]

141. Dispute avoidance plays an important role in the field of sustainable development because environmental harm is often irreversible and therefore cannot be compensated, or the original situation cannot be reestablished. Furthermore, environmental protection is in most instances about prevention; this basic consideration of avoiding harm instead of repairing it should also prevail in relations among States. Procedures of reporting, monitoring, fact-finding, provision of information and consultation are helpful means of dispute avoidance.

142. Dispute settlement has to be resorted to, if avoidance mechanisms have failed or were never applied. That States shall settle their disputes by peaceful means is a basic obligation already stipulated in Art. 2, para. 3 of the UN Charter. But dispute settlement remains for international law in the field of sustainable development only a second best solution. Among the peaceful means to be used are in particular those mentioned in Art. 33 of the UN Charter: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements.

143. Improving compliance has become one of the most important issues in the post-UNCED process. Compliance, which is dealt with below, has become especially crucial because of two factors: the growing complexity of implementing treaties related to sustainable development, and the increasing availability of highly concrete and sometimes quantified parameters, which permit precise measurement of the relevant degree of compliance. Non-State actors may be important in monitoring and compliance oversight at the local, national and international levels. Compliance and monitoring mechanisms include national reporting requirements, transparency of reports and monitored data, capacity building aimed at improving compliance, verification procedures, on site monitoring, inspection, and sanctions.

### *(16)* Peaceful settlement of disputes in the fields of environment and sustainable development

144. The general principle of peaceful settlement of disputes is, as stated in para. 143, one of the fundamental Principles enshrined in the UN Charter. Regarding dispute settlement in the field of environment and development, a number of significant developments have taken place, including the decision in 1993 of the International Court of Justice to create a Chamber for Environmental Matters.[222]

145. Since UNCED, the Convention on Biological Diversity, the Climate Change Convention and UNCLOS have come into force, among others[223]. Art. 279 of UNCLOS embodies the obligation to settle disputes by peaceful means. The whole of Part XV of UNCLOS is devoted to the settlement of disputes, including the establishment of the International Tribunal for the Law of the Sea and of the Special Arbitration procedure in the fields of fisheries and protection and preservation of the marine environment. The Fish Stocks Agreement has incorporated the UNCLOS dispute settlement procedures.[224]

146. The Climate Change Convention provides: "In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties

concerned shall seek settlement of the dispute through negotiation or any other peaceful means of their own choice."[225] The Convention on Biological Diversity states that in the event of a dispute, the parties concerned "shall seek solution by negotiation."[226] Indeed, most environmental treaties stipulate that the parties involved should first aim to resolve disputes through negotiation. If this is unsuccessful, many treaties provide for further arrangements which may involve the assistance of third parties. For example, Article 11 of the Vienna Convention for the Protection of the Ozone Layer provides for mediation and conciliation. Article 19 of the 1991 Madrid Protocol on Environmental Protection to the 1959 Antarctic Treaty includes the possibility of having resort to either an arbitral tribunal or the ICJ. Other treaties provide that the dispute will be submitted to either arbitration or the ICJ if negotiations have proved unsuccessful.[227] However, in many of these cases, the dispute settlement clauses are optional.[228]

147. Principle 26 of the Rio Declaration calls upon States to resolve their environmental disputes peacefully. Chapter 39 of Agenda 21 has as one of its objectives to study and consider broadening and strengthening the capacity of mechanisms to facilitate the identification, avoidance and settlement of international disputes in the field of sustainable development.[229] States are also called upon to "further study and consider methods to broaden and make more effective the range of techniques available at present ... for dispute avoidance and settlement. This may include mechanisms and procedures ... for effective peaceful means of dispute settlement ... and their inclusion in treaties relating to sustainable development".[230]

148. During UNCED, consideration was given to the concept of dispute prevention as distinguished from that of dispute settlement. Differences of opinion about the implications of the two concepts led to the adoption of the concept of dispute avoidance in chapter 39 of Agenda 21.[231] In literature it has been noted that it would be useful to identify and elaborate a comprehensive list of possible mechanisms that could have a preventive effect, thus implementing, inter alia, chapter 39.[232] The draft articles on international watercourses adopted by the International Law Commission contain a number of provisions relating to dispute avoidance. These include articles on prior notification, consultation, negotiation, and fact-finding.[233]

### (17) Equal, expanded and effective access to judicial and administrative proceedings

149. The principle of equal, expanded and effective access to judicial and administrative proceedings consists of two elements: 1) the obligation to provide effective access to judicial and administrative proceedings including redress and remedy; and 2) the obligation to provide access to any person affected or to be affected by transboundary harm to judicial and administrative proceedings equal to that afforded to nationals or residents of the State wherefrom such harm originates.

150. The first of these elements, whose origins may be traced back to the Universal Declaration of Human Rights[234] and the International Covenant on Civil and Political Rights,[235] is contained in Principle 10 of the Rio Declaration and is also reflected in Agenda

21, paragraph 8.18. Principle 10, although drafted in a comprehensive way, does not necessarily exclude foreigners, but it focusses on domestic proceedings, because the opening sentence refers to the "participation of all concerned citizens." As regards the participation of NGOs in such proceedings, Agenda 21 recommends in paragraph 8.18 that governments should provide access "to individuals, groups and organizations with a recognized legal interest." As for civil remedies, attention should also be drawn to Article 52 of the Draft IUCN Covenant and to the civil responsibility provisions contained in various environmental treaties.[236]

151. The second element relates to the transboundary context. Those in other States, be they potential or actual victims of transboundary harm, should not be discriminated against, i.e., they should have the same standing in these proceedings as nationals or residents of the State of origin of the harm. This principle has emerged in, inter alia, the Nordic Convention for the Protection of the Environment[237] and in soft-law, as the OECD Principles on Transfrontier Pollution, D5. It is also contained in Article 32 of the ILC's draft articles on watercourses[238] and Article 53 of the Draft IUCN Covenant and Article 20 of the WCED-Draft. This element has an important role to play as it also concerns claims presented by States on behalf of their nationals against other States in the exercise of their right of diplomatic protection. Because no full consensus exists in respect of the need to exhaust all domestic remedies before State-to-State action is undertaken, the full application of the above principle is likely to render such actions superfluous.

152. Both elements have an ex-ante and ex-post dimension. Prior to the approval of dangerous installations and hazardous activities by public authorities the potential victims should be able to exercise a certain "droit de regard," either in the context of administrative proceedings or by introducing court actions. Once harm has occurred, in spite of all precautions ("due diligence") taken by the operators, the victims should have appropriate standing in proceedings concerning reinstatement, compensation, etc.

### (18) National implementation of international commitments

153. The principle of national implementation of international commitments in the field of sustainable development underscores the fact that, while international treaties are needed to address problems of global magnitude, to achieve their objectives, action must take place at the national level. The principle thus emphasizes the duty of States to implement at the national level the international obligations in the field of sustainable development which they undertake.

154. This principle is implicated in Principle 27 of the Rio Declaration. It is also a central element in Agenda 21, chapters 38 and 39.[239] Principle 11 of the Rio Declaration refers to "enacting effective environmental legislation" by States. Principle 11 is also reflected in the Preamble of the Climate Change Convention, and in UNCLOS.[240] In most cases, such national legislation must be no less effective than the international rules and standards.

## (19) Monitoring of compliance with international commitments

155. Based on the general principle of pacta sunt servanda and the duty of States to cooperate in good faith, a large number of international regimes for natural resource management and environmental protection have elaborated a further obligation for participating States to accept collective supervision of their compliance with agreed norms. This obligation[241] can take the form of specific duties to disclose and communicate information; to tolerate verification and in some instances inspection; and generally to cooperate in multilateral monitoring procedures involving the participation of other States and, in a growing number of cases, of non-State actors. Sometimes phrased in terms of "accountability", the duty to accept external compliance controls is considered as extending also to intergovernmental organizations, as illustrated by the newly established World Bank Inspection Panel. As already noted, the Panel reflects an opportunity for affected groups to request an inspection into allegations that the World Bank has violated its policies and procedures.

156. Compliance is a dynamic process involving both governments and non-State actors and individuals. Compliance covers not only the enactment and application of national laws for the purpose of treaty implementation, but also relates to the application of laws which are enacted and to the changes in behaviour requested of the targeted actors. At the international level, compliance may require national reporting or on site monitoring as well as monitoring through international institutions, on the basis of a scientific consensus achieved through a continuous process of information exchange. The outcome of this process may be either the provision of assistance, if non-compliance results from a lack of capacity, or the imposition of sanctions, or other measures, if non-compliance results from ill will.

157. The need "to ensure the effective, full and prompt implementation of legally binding instruments" and to establish and strengthen reporting requirements for this purpose was affirmed by Agenda 21[242] and reiterated by the Draft IUCN Covenant.[243] In respect of the domestic level, Agenda 21 states that "it is equally critical to develop workable programmes to review and enforce compliance with laws".[244] As regards existing international agreements Agenda 21 signalled "problems of compliance" and the need for "improved national implementation".[245] Chapter 39 of Agenda 21 recognizes that the capacity to comply with international law for sustainable development depends on the economic circumstances of States, and must be addressed through international efforts for capacity-building, under the principle of global partnership.

158. Following well-established practice in the field of international labour conventions[246] and international instruments on human rights and disarmament, periodic reports on implementation by member States have become a standard feature of multilateral environmental agreements. Reporting requirements enforce transparency in multilateral treaty regimes. The reports may cover legal and administrative measures, on the effectiveness of such measures, and on problems encountered in implementation.[247] However, there is concern that parties not be overwhelmed by the growing number of reports that countries are requested to file. Verification procedures, such as mutual inspection, have also been introduced, following earlier precedents

in international marine resource agreements in particular.[248] Furthermore, especially in the context of treaties aimed at detecting and curtailing infringements by individuals rather than States, participation in national and international monitoring activities by qualified non-governmental organizations is now widely accepted in practice.[249]

159. Regarding the implementation practice after UNCED, a distinction needs to be drawn between monitoring and data exchange for the purpose of improving the level of information needed to meet overall treaty objectives, and "compliance monitoring" for the purpose of supervising national implementation of specific treaty commitments.[250] While some monitoring systems established by environmental agreements serve both purposes, such as the EMEP network[251] under the Convention on Long-range Transboundary Air Pollution, other monitoring procedures, e.g., as set up in 1990 under the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, are not designed to detect treaty infractions but to identify sites most in need of conservation. The implementation procedures developed since 1990 under the Montreal Protocol, which provides for an Implementation Committee, and more recently under the Protocol on Further Reduction of Sulphur Emissions[252] are expressly distinguished as non-confrontational from classical mechanisms of dispute resolution. Mechanisms to foster compliance have also been introduced in the Basel Convention[253] and the Convention for the Protection of the Marine Environment of the North-East Atlantic.

160. Compliance controls and implementation procedures also help to prevent conflicts, and hence need close coordination with treaty provisions on dispute settlement.

## III. RECOMMENDATIONS TO THE COMMISSION ON SUSTAINABLE DEVELOPMENT

161. The Expert Group notes the centrality of the foregoing principles of international law for sustainable development, in particular the principle of integration and interrelationship. It calls to the attention of the Commission on Sustainable Development the importance of taking an integrated approach to developing international law related to sustainable development, including the formulation of new treaties, and to applying international law related to any aspect of sustainable development.

162. The Expert Group recalls para 39.5 of Agenda 21 which suggests that "legal experts, designated by Governments could meet at suitable intervals... with a broader environmental and developmental perspective" to "review and assess both the past performance and effectiveness of existing international agreements or instruments as well as the priorities for future law-making on sustainable development," including "an examination of the feasibility of elaborating general rights and obligations of States, as appropriate, in the field of sustainable development, as provided by General Assembly resolution 44/228". In this context the Expert Group proposed that the Commission on Sustainable Development convene periodically an ad hoc Advisory Group of Legal Experts to meet to study and further identify the elements and practical

consequences of these principles as they evolve, and invite appropriate expert organizations to cooperate by undertaking to organize these meetings in partnership, with due consideration to representation of developing countries.

163. The Expert Group recommends the establishment of a Monitoring Network among expert organizations and secretariats, both within and outside of the United Nations system, to monitor the development and application of principles of international law for sustainable development. This would require identifying principles to monitor, which could include those in the process of formation. Baseline data should cover the use of the principles in legal instruments (both binding and, in some cases, non-binding) and known implementation of them by parties to the instruments, particularly in national courts. The data to be monitored on the principles could include: new uses, refinements and/or changes in content, national applications and implementation, and incorporation in transnational private sector accords. A small working group should meet to develop the network details. National international law societies or international expert bodies could provide data on application and implementation of the principles within countries. To minimize costs of maintaining the data base, it would be useful to identify a host(s) that could work in collaboration with the United Nations.

164. Broadening the mandate to include compiling and monitoring of international legal instruments could be explored. Many of these instruments are now already available through the Internet. An effort should be made to ensure that the information is comprehensive and that access is made as universal as possible. This would facilitate monitoring the textual incorporation of principles.

165. The Expert Group further proposes that the Commission on Sustainable Development, in its preparations for the 1997 Special Session of the General Assembly to review the implementation of Agenda 21:

(a) invite relevant organizations, universities, non-governmental organizations and other specialized groups to report on legal developments relevant to these principles;

(b) request States, and in particular their governmental and non-governmental legal authorities, to provide information on methods whereby these principles are being or have been recognized and implemented by national or subnational jurisdictions;

(c) consider how to use the 1997 review of Agenda 21 to further develop consensus on the definition of principles and the means for their practical application;

(d) consider any further measures needed to strengthen the definition or use of principles for sustainable development, including the possibility of a codifying instrument of general application.

166. The Expert Group notes that from among the participants there were experts from eleven organizations in the United Nations system, multilateral financing institutions and from secretariats of conventions related to sustainable development participated in their expert capacity in the meeting. The Group requests the Secretariat of the Commission on Sustainable Development to continue its consultations with other relevant bodies as to their views regarding principles of international law for sustainable development.

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## ENDNOTES

1. E/1994/33. On international law in the field of sustainable development and the legal output of UNCED, see generally E. Brown Weiss, ed., Environmental Change and International Law (1992); A. Kiss and S. Doumbe-Bille, "La Conférence des Nations Unies sur l'environnement et de développement", Annuaire francais de droit international, 38 (1992), p. 823; W. Lang (ed.), Sustainable Development and International Law (1995); W. Lang, "The United Nations and International Environmental Law," International Geneva Yearbook, Vol. IX (1995); P.H. Sand, "UNCED and the development of international environmental law", 3 Yearbook of International Environmental Law (1992), p. 3; P. Sands, "International Law in the Field of Sustainable Development", British Yearbook of International Law (1994), p. 303; Foundation for International Environmental Law and Development, "Report of a Consultation on Sustainable Development: The Challenge to International Law", 3 Review of European Community and International Environmental Law (1994), p. 1; "Lessons Learned from UNCED", Proceedings of the American Society of International Law (1993), p. 508; United Nations Environment Programme, UNEP's New Way Forward: Environmental Law and Sustainable Development (1995); M.P. Williams Silveira, "International Legal Instruments and Sustainable Development: Principles, Requirements and Restructuring," Willamette Law Review, Volume 3, No. 2 (Spring 1995); and M.P. Williams Silveira and B.M.G.S. Ruis, "International Law for Sustainable Development: An Attempt at Definition," NAFTA : Law and Business Review of the Americas (forthcoming).

In addition, the text of many of the legal instruments cited in this paper are contained in the following publications: P. W. Birnie and A. Boyle, eds., Basic Documents on International Law and the Environment (1995); E. Brown Weiss, D. Magraw and P. Szasz, International Environmental Law: Basic Instruments and References (1992; and P. Sands, R. Tarasofsky and M. Weiss, eds., Documents in International Environmental Law (volumes (IIA and IIB) (1994).

2. Report of a Consultation on Sustainable Development: The Challenge to International Law, convened by the Foundation for International Environmental Law and Development (FIELD), with the support of the Ford Foundation, held at St. George's House, Windsor Castle, England, 27-29 April 1993.

3. Submitted to the second session of the CSD, Doc. E/CN.17/1994/16.

4. See Report of the 62nd Conference of the International Law Association, Buenos Aires, 1994, pp. 111-136.

5. 1995, hereafter referred to as the Draft IUCN Covenant.

6. See, for example, the draft Summary and Survey: Principles of Environmental Conservation and Sustainable Development, prepared for the Earth Charter Project by Steven C. Rockefeller (revision of 5 December 1995); Report of the Meeting in The Hague of the Earth Charter Initiative, a joint initiative of the Earth Council and Green Cross International, 16 April 1994; and the draft report of the Workshop in The Hague, 31 May 1995.

7. Subsequent to the meeting in September of this Expert Group, the United Nations Environment Programme (UNEP) initiated a complementary process to identify the principles and concepts of international environmental law aiming at sustainable development. An Expert Group Workshop on this topic was organized by UNEP in Washington, D.C., 13-15 November 1995.

8. Stockholm Declaration on the Human Environment, June 1972, hereafter referred to as the Stockholm Declaration.

9. Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), 1155 United Nations Treaty Series (UNTS) 331.

10. UNGA Resolution 37/7 (1982), the World Charter for Nature, para.7.

11. United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), UN Doc. A/CONF.62/122 and corr. 1 to 11, 21 International Legal Materials (ILM) 1261, hereafter referred to as UNCLOS, third preambular paragraph.

12. Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, 17 June 1994), Doc. A/AC.241/15/Rev.3, 33 ILM 1332, hereafter referred to as the Desertification Convention, Preamble, paragraph 9 and 22; Article 2.2.

13. Charter of the United Nations (San Francisco, 26 June 1945), hereafter referred to as the UN Charter.

14. Declaration on the Right to Development, UNGA Res. 41/128, 4 December 1986.

15. See the various contributions in S.R. Chowdhury, E.M.G. Denters and P.J.I.M. de Waart (eds) The Right to Development in International Law, Martinus Nijhoff, Dordrecht, 1992; J. Crawford (ed.) The Rights of Peoples, Clarendon Press, Oxford, 1988.

16. Paragraph 26 (j), Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995, Doc. A/CONF.166/9.

17. See Report of the Fourth World Conference of Women, Annex II, Platform for Action, Doc. A/CONF.177/20, 17 October 1995, paras 42, 216 and 231.

18. African Charter on Human and Peoples' Rights (Banjul, 26 June 1981), 21 ILM 59, Article 22.

19. CSD in its decision on combating poverty at its third session, E/1995/32, para.77.

20. International Law Association Declaration on the Progressive Development of Principles of Public International Law Relating to a New International Economic Order, adopted by consensus by the 62nd Conference of the International Law Association (Seoul, 1986) upon intensive preparatory work involving many international lawyers from both industrialized and developing countries. See Report of the 62nd Conference of the International Law Association, hereafter referred to as ILA, London, 1987, p. 2.

21. See Commentary on Article 8, Draft IUCN Covenant, p. 42.

22. Universal Declaration of Human Rights, UNGA Res. 217A(III) of 10 December 1948, Articles 3, 22, 24, 25, 28.

23. International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966), 993 UNTS 3, Arts. 1, 7, 11, 12 and 15.

24. Supra, note 10. Preamble: "Every form of life is unique, warranting respect regardless of its worth to man,.."; see also Principle 1.

25. See also para.40 of Chapter 6: "The overall objective is to minimize hazards and maintain the environment to a degree that human health and safety is not impaired or endangered and yet encourage development to proceed".

26. Stockholm Declaration, Principle 1 (see also Preamble).

27. Stockholm Declaration, preambular para.1.

28. Convention on Biological Diversity (Rio de Janeiro, 5 June 1992), Doc. UNEP/Bio.Div/N7-INC.5/4, 31 ILM 818, first preambular paragraph.

29. UNGA Res. 3281 "Charter of Economic Rights and Duties of States" (1974); UNGA Res. 42/186 "Environmental Perspective to the Year 2000 and Beyond" (1987). See also the International Covenant on Economic, Social and Cultural Rights (1976), Article 12.1: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

30. "All individuals are entitled to live in an environment adequate for their health and well-being." UNGA Res. 45/94 (1990). Declaration of The Hague on the Protection of the Atmosphere, 11 March 1989, Doc. A/44/340; E/1989/120.

31. Convention Concerning Protection of Workers Against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration (Geneva, 20 June 1977), UK Command Papers (Cmnd) 7901; Convention Concerning Occupational Safety and Health and the Working Environment (Geneva, 22 June 1981), Cmnd 8773; Convention on Safety in the Use of Chemicals at Work (Geneva, 25 June 1990), Cmnd 1562; Occupational Cancer

Convention (Geneva, 24 June 1974), Cmnd 6236.

32. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (New York, 18 December 1990), Doc. A/Res/45/158, 30 ILM 1521.

33. The General Agreement on Tariffs and Trade (GATT), 55 UNTS 187, Article XX.

34. ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (27 June 1989), No. 169, 28 ILM 1382, Articles 4, 7, 13, 15 and 19.

35. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Geneva, 8 June 1977), 16 ILM 1391, Articles 35 and 55.

36. "Illicit dumping of toxic and dangerous substances and wastes potentially constitutes a serious threat to the human rights to life and health of everyone." Para. 11, Vienna Declaration, World Conference on Human Rights, 1973, Doc. A/CONF.157/24, Part I; see also the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel, 22 March 1989), Doc. UNEP/WG.190/4, 28 ILM 657, hereafter referred to as the Basel Convention.

37. The World Health Organization, task manager on health, "Health, the Environment and Sustainable Development" (March 1994).

38. "Human Rights and the Environment", Annex I, Final Report of the Special Rapporteur, Sub-Commission on Prevention of Discrimination and Protection of Minorities, ECOSOC Commission on Human Rights, Doc. E/CN.4/Sub.2/1994/9 (6 July 1994).

39. United Nations Framework Convention on Climate Change (New York, 9 May 1992), Doc. A/AC.237/18 (Part 11)/Add.1 and Corr.1, 31 ILM 848, hereafter referred to as the Climate Change Convention, Preamble, Article 4(7).

40. Convention on Biological Diversity, preambular paragraph 19.

41. Desertification Convention, preambular paragraph 8.

42. Article 11.

43. UNGA Universal Declaration of Human Rights, Paris, 10 December 1948.

44. Supra, note 10.

45. Part I, para.4.

46. World Commission on Environment and Development, Our Common Future, 1987, p.3.

47. Non-Legally Binding Authoritative Statement of Principles For a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, hereafter referred to as the Forest Principles, Principle 7.

48. Convention on the Rights of the Child (New York, 20 November 1989), Doc. A/RES/44/25, 28 ILM 1448; ILO Conventions on forced labour and child labour and minimum age for employment, including the Minimum Age Convention (Geneva, 26 June 1973) No. 138, Cmnd 5829.

49. E.g. International Covenant on Economic, Social and Cultural Rights, Article 6; ILO Employment Policy Convention (Geneva, 9 July 1964) No. 122, 569 UNTS 65. Other ILO Conventions describe the measures to be taken by States in order to promote the full employment goal; these relate, for example, to human resources development, employment services, adequate labour administration, equal opportunities and protection against unfair dismissal (ILO Conventions Nos. 142, 88, 150, 111, 158).

50. E.g. ILO Forced Labour Conventions (Nos. 29 & 105); Discrimination (Employment and Occupation) Convention (Geneva, 25 June 1958) No. 111, 362 UNTS 31; Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Geneva, 27 June 1989) No. 169, 28 ILM 1382.

51. The Copenhagen Declaration on Social Development encompasses Commitment 2: "We commit ourselves to the goal of eradicating poverty in the world, through decisive national actions and international cooperation, as an ethical, social, political and economic imperative of humankind", and under para (g) the heads of State and Government will, at the international level, "Strive to ensure that the international community and international organizations, particularly the multilateral financing institutions, assist developing countries in need in their efforts to achieve our overall goal of eradicating poverty and ensuring basic social protection". See also, e.g., World Bank Operational Directive 4.15 "Poverty Reduction", December 1991.

52. Doc. E/1995/32, Commission on Sustainable Development, Report on the Third Session (1995), at page 16.

53. Rio Declaration on Environment and Development, Principle 7.

54. See e.g. the UNEP Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States (1978), hereafter referred to as the 1978 Shared Natural Resources Principles, Principle 1.

55. See e.g., International Convention on the Establishment of an International Fund for Compensation for Oil Pollution (Brussels, 18 December 1971), Cmnd 7383, Art. 22(2)(a) on equitable geographic distribution of membership on Executive Committee; Convention for the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972), 1972 UNJYB 89, hereafter referred to as the World Heritage Convention, Art. 892 on 'equitable representation of the different regions and cultures of the world' on the World Heritage Committee; UNCLOS, Art. 161(1)(e) on equitable geographic distribution of membership of the Council of the International Seabed Authority.

56. See e.g. Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts (Gdansk, 13 September 1973), 12 ILM 1291, Art. I.

57. See e.g. Treaty for Amazonian Co-operation (Brasilia, 3 July 1978), 17 ILM 1047, Preamble.

58. Continental Shelf Case, I.C.J. Rep 1982, 18. See also the individual opinion of Judge Hudson in the "Diversion of the Waters from the Meuse Case", recognizing equity as "a part of international law", PCIJ Rep., Ser. A/B, No. 70, pp. 76-77 (1937).

59. Continental Shelf Case, ICJ Rep 1982.

60. Gulf of Maine Case, ICJ Rep 1984, 246 at 305.

61. Tunisia/Libya Continental Shelf case ICJ Rep. 1982, 18.

62. Fisheries Jurisdiction Cases, ICJ Rep 1974, p. 3 at 33. Also, equity may be applied by the ICJ to decide a case ex aequo et bono, if the parties to a dispute agree, in application of Article 38(2) of the Statute of the ICJ, although no such judgment has yet been given by the Court.

63. E. Brown Weiss, "Our Rights and Obligations to Future Generations for the Environment", 84 A.J.I.L. 198, 199 (1990); E. Brown Weiss, In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity, United Nations University and Transnational, 1989.

64. International Convention for the Regulation of Whaling (Washington, 2 December 1946), 161 UNTS 72. The Preamble recognizes the "interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks".

65. Under Article 4 of the World Heritage Convention parties agree to protect, conserve, present and transmit cultural and natural heritage to "future generations".

66. African Convention on the Conservation of Nature and Natural Resources (Algiers, 15 September 1968), 1001 UNTS 3, hereafter referred to as the African Conservation Convention. The Preamble provides that natural resources should be conserved, utilized and

developed "by establishing and maintaining their rational utilization for the present and future welfare of mankind."

67. Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 3 March 1973), 12 ILM 1085, hereafter referred to as CITES, Preamble.

68. Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (Kuwait, 24 April 1978), 17 ILM 511, Preamble; Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region (Cartagena de Indias, 24 March 1983), 22 ILM 221, Preamble; Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (Jeddah, 14 February 1982), 9 Journal of Environmental Policy and Law (EPL) 56, Art. 1(1).

69. Convention on Conservation of Nature in the South Pacific (Apia, 12 June 1976), 976 International Environmental Legal Materials and Treaties (IELMT) 45, hereafter referred to as the Apia Convention, Preamble.

70. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (New York, 10 December 1976), 1108 UNTS 907, Preamble.

71. Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979), 19 ILM 15, Preamble.

72. Convention for the Protection, Management and Development of the Marine and Coastal Environment of the East African Region (Nairobi, 21 June 1985), UNEP Selected Multilateral Treaties in the Field of the Environment, Vol. 2, Grotius Publications Ltd., Cambridge, 1981, p. 324, Preamble.

73. Association of South East Asian Nations Agreement on the Conservation of Nature and Natural Resources (Kuala Lumpur, 9 July 1985), 15 EPL 64, hereafter referred to as the ASEAN Agreement, Preamble.

74. Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992), 31 ILM 1312, Art. 2(5)(c).

75. Convention on Biological Diversity, Preamble.

76. Climate Change Convention, Art. 3(1).

77. Montreal Protocol on Substances That Deplete the Ozone Layer, 16 September 1987, 26 ILM 1550 (1987).

78. See Stockholm Declaration, Principle 1; UNGA Res. 35/8 (1980); Rio Declaration, Principle 4.

79. Request for an Examination of the Situation in Accordance with paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests Case (New Zealand v. France), I.C.J. Rep 1995, Judge Weeramantry diss. op. at 17.

80. See e.g., Supreme Court of the Philippines, "Minors Oposa v. Secretary of Department of Environment and Natural Resources", 30 July 1993; 33 ILM 173.

81. Protocol on Substances that Deplete the Ozone Layer (Montreal, 16 September 1987).

82. Arts. 3(1) and 4(2)(a).

83. Arts. 1 and 15(7).

84. These include: the fourth preambular paragraph refers to UNCLOS as being a legal order which will promote the equitable utilization of marine resources; the fifth preambular paragraph refers to a "just and equitable international economic order"; Articles 69 and 70 refer to "equitable arrangements" and equitable "participation" for (developing) land-locked States in the exploitation of the living resources in the exclusive economic zones of neighboring States; Art. 82 provides for an "equitable sharing" of payments or contributions to be made by coastal States with respect to the resources on the continental shelf beyond 200 miles; and Part XI (Arts. 140, 160, etc.) provides for an equitable sharing of benefits derived from the resources in the international seabed area.

85. These are premised in ILO Conventions on freedom of association, f.e. the Freedom of Association and Protection of the Right to Organise Convention (Geneva, 8 July 1948), 68 UNTS 17; see also Agenda 21, chapters 29 and 30.

86. See Stockholm Declaration, Principle 21; Rio Declaration, Principle 2; and Convention on Biological Diversity, Article 3.

87. Declaration on Permanent Sovereignty over Natural Resources, UNGA Res. 1803 (XVII) (1962), para.1: "The right of peoples and nations to permanent sovereignty over natural resources must be exercised in the interest of their national development and the well-being of the people of the State concerned."

88. See, for example, the Charter of Economic Rights and Duties of States, UNGA Res. 3281, 12 December 1974, 14 ILM 251 (hereafter referred to as CERDS), Article 30; the Stockholm and Rio Declarations.

89. See Nico J. Schrijver, "Sovereignty over Natural Resources: Balancing rights and duties", forthcoming with Cambridge University Press, Cambridge.

90. In doing so, it built on the well-known findings of the Ad Hoc Tribunal in the Trail Smelter Arbitration (1938, 1941) and of the International Court of Justice in the Corfu Channel Case (1949), as well as on other international law principles such as sic utere tuo ut alienum non laedas, good neighbourliness and due diligence and care.

91. See Principle 3 of the 1978 Shared Natural Resources Principles and Principles 10-12 of the Principles Concerning Transboundary Natural Resources and Environmental Interferences as adopted by the WCED Expert Group on Environmental Law.

92. Articles 193 and 194.2.

93. See the 8th preambular paragraph of the UN Framework Convention on Climate Change.

94. Article 3.

95. European Energy Charter Treaty (Lisbon, 17 December 1994), 34 ILM 360, Art. 18.

96. See the commentary at pp. 47-48 of the Draft IUCN Covenant.

97. See Section 5 of the Declaration on the Progressive Development of Principles of Public International Law Relating to a New International Economic Order, supra note 20.

98. Supra, note 85.

99. UNGA Res. 1831 (XVII), (1962).

100. Preambular para. 2. In general terms, Principle 2 of the Stockholm Declaration states: "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems *must* be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate."

101. Article 30, entitled 'Common responsibilities towards the international community'.

102. UNGA Res. 37/7 annexing the World Charter for Nature (1982). It stipulates in para. 10 that natural resources must not be wasted, but used with restraint in accordance with the following rules: a. Living resources shall not be utilized in excess of their natural capacity for regeneration; b. The productivity of soils shall be maintained or enhanced through measures which safeguard their long-term fertility and the process of organic decomposition, and prevent erosion and all other forms of degradation; c. Resources, including water, which are not consumed as they are used shall be reused or recycled; and d. Non-renewable resources which are consumed as they are used shall be exploited with restraint, taking into account their abundance, the rational possibilities of converting them for consumption, and the compatibility of their exploitation with the functioning of natural systems.

103. See principles 4 to 8.

104. The following regional co-operation treaties can be mentioned: 1) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, (Washington, 12 October 1940), 161 UNTS 229, which represents an early and visionary example of an effort

to protect all species in their natural habitat in order to prevent extinction and to preserve extraordinary beauty and striking geological formations, mainly through the establishment of national parks and wilderness reserves. It was concluded under the auspices of the Pan American Union, now called the Organization of American States. See S. Lyster, "International Wildlife Law: an analysis of international treaties", Grotius Publications: Cambridge (1985), Chapter 6; b) the African Conservation Convention; c) the Apia Convention; d) the Treaty for Amazonian Co-operation; e) the ASEAN Agreement; f) a series of regional conventions concluded in the context of UNEP including, for example, the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea, 25 November 1986), 26 ILM 38; and g) European Union law: the original constitutions of the European institutions did not deal with environmental concerns, but the Single European Act (Luxembourg, 17 February 1986 and The Hague, 28 February 1986), 25 ILM 504, and the Treaty on European Union (Maastricht, 7 February 1992), 31 ILM 247, inserted several environmentally-relevant provisions into EU law. One of the new objectives of the EU is "to promote through the Community a harmonious and balanced development of economic activities, [and] sustainable and non-inflationary growth respecting the environment".

105. They include a) the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 2 February 1971), 11 ILM 963; b) the World Heritage Convention; c) CITES; d) the Convention on the Conservation of Migratory Species of Wild Animals; e) the Convention on Biological Diversity; f) the Climate Change Convention and g) the Desertification Convention. In the Convention on Biological Diversity, for example, sustainable use is defined as "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations".

106. Examples are a) UNCLOS, of which Arts. 61(3) and 119(1) provide that conservation and management measures should aim at maintaining fish populations at levels which can produce the "maximum sustainable yield, as qualified by relevant environmental and economic factors"; b) the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 4 December 1995), Doc. A/CONF.164/22/Rev.1, hereafter referred to as the Fish Stocks Agreement, which defines its very objective as "to ensure the long-term conservation and sustainable use" of fish stocks concerned (Art.2), and in which the principle of sustainable use naturally appears throughout the Agreement; c) the International Tropical Timber Agreement (18 November 1983, revised 26 January 1994), Basic Documents on International Law and the Environment, Clarendon Press, Oxford, 1995, p. 556; d) the Sixth International Tin Agreement (Geneva, 26 June 1981), 1282 UNTS 205. Furthermore, e) African, Caribbean and Pacific States-European Economic Community: Fourth Lomé Convention (Lomé, 15 December 1989), 29 ILM 783, hereafter referred to as the Lomé IV Convention, Article 4: "a sustainable balance between its economic objectives, the rational management of the environment and the enhancement of natural ... resources". Also, its

environment chapter (Title I, Part Two) includes provisions concerning the protection and enhancement of the environment, the halting of the deterioration of land and forests, the restoration of ecological balances and the preservation of natural resources and their rational exploitation; f) the North America Free Trade Agreement and the European Energy Charter Treaty, which also contain environment provisions. The latter one makes reference to the concept of sustainable development and calls on each State to minimize in an economically efficient manner harmful environmental impacts, occurring either within or outside its territory, as a result of activities in the energy sector.

107. Australia/New Zealand v. France (1974) and New Zealand v. France (1995). While in the latter case the Court found that it had no jurisdiction to deal with New Zealand's request for an examination of the situation resulting from the resumption of nuclear testing by France, the Court pronounced that its Order was "without prejudice to the obligations of States to respect and protect the natural environment, obligations to which both New Zealand and France have in the present instance reaffirmed their commitment", ICJ Order of 22 September 1995, in ICJ Reports 1995, p. 306, para. 64.

108. Draft IUCN Covenant, Art. 14. Further, Arts. 145, 194(1) and 207-212 of UNCLOS provide for the prevention of pollution; Art. 195 obliges States to act so as not to transfer damage or hazards from one area to another, or transform one type of pollution into another.

109. Rio Declaration, Principle 11.

110. Rio Declaration, Principle 11.

111. Draft IUCN Covenant Article 6, commentary para. 2.

112. Rio Declaration, Principle 17.

113. Rio Declaration, Principle 10.

114. Stockholm Declaration Principle 21; Rio Declaration Principle 2; Trail Smelter Arbitration. See also Corfu Channel and Lake Lanoux cases.

115. Stockholm Declaration Principle 21; Rio Declaration Principle 2.

116. Draft IUCN Covenant Article 6, para.2 of Commentary; compare Article 7, para.1, of the International Law Commission's Draft Articles on the Law of the Non-Navigational Uses of International Watercourses, adopted on second reading in 1994, 1994 ILC Rep. p. 236 ("Watercourse States shall exercise due diligence to utilize an international watercourse in such a way as not to cause significant harm to other watercourse States." "Due diligence" is a flexible standard that takes into account both the gravity of the potential harm and the capability of the State exercising it. See the Geneva Arbitration (The Alabama case), J.B. Moore, History and Digest of the International Arbitrations to which the United States has been a Party, Vol. I (1898), pp. 572-573 and 612.

117. Rio Declaration Principle 17; Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991), 30 ILM 802, hereafter referred to as the Espoo Convention.

118. Rio Declaration Principle 19; Espoo Convention Arts. 2-5; ILC Draft Articles on Watercourses, Arts. 12 and 17.

119. Trail Smelter Arbitration.

120. UN Charter, Article 51.

121. GATT Art. XX b and Art. XIVb: "to protect human, animal or plant life or health".

122. Article 10. The legal principles for environmental protection and sustainable development identified by the World Commission on Environment and Development (hereafter referred to as WCED) formed part of the its report adopted by UNGA Res. 42/187 of 11 December 1987.

123. Council Recommendation on the Implementation of the Polluter Pays Principle, 14 November 1974, 14 ILM 234.

124. This is the "polluter-pays principle" in its original sense, which is probably more accurately entitled the "originator-pays principle". Art. 130(r) of the EU Treaty; OECD Council Recommendations C(72)128 (1972) and C(74)223 (1974); Draft IUCN Covenant, Art. 11(6). At its third session, in addressing the issue of changing production and consumption patterns, the CSD reiterated that "National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, as appropriate, taking into account the polluter-pays principle".

125. K. von Moltke, "The Vorsorgeprinzip in West German Environmental Policy", in Twelfth Report, Royal Commission on Environmental Pollution (1988), at 57.

126. Vienna Convention for the Protection of the Ozone Layer (Vienna, 22 March 1985), 26 ILM 1529, hereafter referred to as Ozone Layer Convention, Preamble: "Mindful also of the precautionary measures for the protection of the ozone layer which have already been taken .."

127. Preamble.

128. Convention on Biological Diversity, Preamble: "Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat"; Climate Change Convention, Art. 3(3): "The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason to postpone such measures, ...". See P. Sands, Principles of

International Environmental Law, Manchester University Press, 1995, 210-212.

129. Arts. 5 and 6.

130. See e.g. Preamble to the Ministerial Declaration of the International Conference on the Protection of the North Sea (Bremen, 1 November 1984); Ministerial Declaration of the Second North Sea Conference (London, 25 November 1987); also PARCOM Recommendation 89/1 (1989) -PARCOM administers the Convention for the Prevention of Marine Pollution from Land-Based Sources (Paris, 4 June 1974)- supporting the "principle of precautionary action"; Third North Sea Conference, (The Hague, 8 March 1990); UNEP Governing Council Decision 15/27 (1989).

131. See Article 130r (2) of the EEC Treaty as amended by the 1992 Maastricht Treaty.

132. EC Directive 91/271/EEC, (30 May 1991), Art. 6(2). The Directive allows certain urban waste water discharges to be subjected to less stringent treatment than that generally required by the Directive providing that "comprehensive studies indicate that such discharges will not adversely affect the environment."

133. Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris, 22 September 1992), 32 ILM 1069, hereafter referred to as the OSPAR Convention. Those Parties (France and the United Kingdom) wishing to retain the option of dumping low and intermediate level radioactive wastes at sea will be required to report to the OSPAR Commission on "the results of scientific studies which show that any potential dumping operations would not result in hazards to human health, harm to living resources or marine ecosystems, damage to amenities or interference with other legitimate uses of the sea.", Annex II, Art. 3(3)(c).

134. Nuclear Tests Case (New Zealand v. France), Request by New Zealand for an Examination of the Situation, 21 August 1995, at paras. 105-108. France replied that the legal status of the principle was "uncertain." ICJ, Verbatim Record, CR 95/20, 12 September 1995, p. 71.

135. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res. 2625 (XXV) (1970).

136. Part I, para.7.

137. See, for example, the Ozone Layer Convention; the 1987 Montreal Protocol and the 1990 London and 1992 Copenhagen amendments to this Protocol. See also the Climate Change Convention and Convention on Biological Diversity.

138. The practice of recent UN Conferences such as those in Rio de Janeiro, Vienna, Copenhagen and Beijing as well as the practice of the CSD show an increasing awareness of the relevance of consultation with non-State entities.

139. UNGA Res. 43/53 (1988), first operative paragraph: "climate change is a common concern of mankind since climate is an essential condition which sustains life on earth".

140. October 1989, UNGAOR 44th Sess., Agenda item 82(f), at annex, Doc. A/44/673.

141. The Conference was attended by representatives of 66 States in November 1989.

142. Declaration on International Economic Co-operation, in particular the Revitalization of Economic Growth and Development of the Developing Countries, Doc. A/RES/S-18/3, 1 May 1990, para. 29.

143. See Climate Change Convention, Preamble: "Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind"; Convention on Biological Diversity, Preamble: "Affirming that the conservation of biological diversity is a common concern of humankind."

144. Article 3: "The global environment is a common concern of humanity."

145. Common but differentiated responsibilities is also referred to in the implementation of Agenda 21. For example, the CSD, at its third session in April 1995, referred to this principle when noting the special responsibility born by developed countries in the field of changing production and consumption patterns that are detrimental to sustainable development; Doc. E/1995/32, para. 31.

146. The time-table is based on 1986 levels of production and consumption of these substances. Special provisions, however, apply to States with very low levels of production and consumption in 1986 [Art. 2(5)]. Furthermore, the Montreal Protocol recognizes the special situation of developing countries in its Art. 5.

147. In the Preamble it is noted that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, and they are urged to take the lead in combating climate change and its adverse effects.

148. Article 4.1.

149. Art. 20 paras. 2, 4.

150. The Climate Change Convention recognizes the specific needs and special circumstances of developing country parties. See, inter alia, Arts. 3(2), 4.4, 4.4, 4.5, 4.6 and 4.9.

151. The Preamble of UNCLOS states, "... a just and equitable international economic order which takes into account the interests and needs of mankind as a whole, and, in particular, the special interests and needs of developing countries..." See also Art. 207.4.

152. See Title IV of Part Three (The Instruments of ACP-EEC Cooperation) of the Lomé IV Convention.

153. The Desertification Convention emphasizes throughout the special situation of developing countries, given the high concentration of developing countries, notably the least developed countries, among those experiencing serious drought and/or desertification. See, in particular, the Preamble and Arts. 5-6.

154. Preamble.

155. Art. II.

156. Article 26.

157. The International Seabed Authority is the organization through which States Parties shall organize and control activities in the International Seabed Area, particularly with a view to administering the resources of the Area, UNCLOS Art. 157(1). On technology transfer see Y. Lee, Transfer of Technology for Deep Sea-bed mining: the 1982 Law of the Sea Convention and Beyond, Martinus Nijhoff, Dordrecht, 1994.

158. Principle 9(a).

159. Washington Declaration on Protection of the Marine Environment from Land-based Activities, adopted on 1 November 1995, Doc. UNEP(OCA)/LBA/IG.2/L.4, paragraph 4.

160. Nineteenth preambular paragraph; Art. 3 para.2.

161. The Conference was held in Bridgetown, Barbados, 26 April-6 May 1994. Report of the Global Conference on the Sustainable Development of Small Island Developing States, Doc. A/CONF.167/9.

162. Preambular para.5 to the Programme of Action.

163. See Article IV (6) of the Climate Change Convention. It may also be noted that the 1987 Montreal Protocol, Art. 2, para 6, has a more lenient provision that was drafted to meet the needs of the then Soviet Union and central and eastern European countries (now the economies in transition) and to apply only to them. The Protocol does not label it as that though.

164. This competitive advantage does not, however, exist in the biodiversity context.

165. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (New York, 5 December 1979), 1363 UNTS 3, states in its Article 11 that the moon and its natural resources are the common heritage of humankind. A similar, though not identical, regime, while not employing the term common heritage of mankind, has been employed by the Treaty on Principles Governing the Activities of States in the Exploration and Use of

Outer Space, Including the Moon and Other Celestial Bodies (London, Moscow, Washington, 27 January 1967), 610 UNTS 205.

166. See UN Doc. A/RES/48/263, 28 July 1994, annexing the Agreement. Text also in 33 ILM (1994), p. 1309.

167. UN Charter, Arts. 1-3.

168. Arts. 55 and 56.

169. Quoted in Art. 74 of the UN Charter.

170. Supra, note 114.

171. UNGA Res. 2625 (XXV).

172. See also Stockholm Declaration, Principle 24.

173. 1978 Shared Natural Resources Principles; ILC, Draft Articles on the Law of the Non-Navigational Uses of International Watercourses (1994), hereafter referred to as 1994 Draft International Watercourses Articles, Art. 5; ILA, Helsinki Rules on the Uses of the Waters of International Rivers (1966).

174. 1978 Shared Natural Resources Principles, Principle 1; Draft International Watercourses Articles, Art. 5(1).

175. 1994 Draft International Watercourses Articles, Art. 5(2).

176. 1978 Shared Natural Resources Principles, Principles 4-9; 1994 Draft International Watercourses Articles, Arts. 8 and 9, 11-19, 24 and 28.

177. 1978 Shared Natural Resources Principles, Principle 3(1); 1994 Draft International Watercourses Articles, Art. 7.

178. 1994 Draft International Watercourses Articles, Art. 24.

179. See, e.g., OECD Council Recommendation on Principles Concerning Transfrontier Pollution, 14 November 1974, C(74)224, Annex (1974), hereafter referred to as 1974 OECD Principles on Transfrontier Pollution; UNEP London Guidelines for the Exchange of Information on Chemicals in International Trade, Doc. UNEP GC/DEC/15/30, 25 May 1989, hereafter referred to as 1989 London Chemical Information Guidelines, Article 11; Draft IUCN Covenant, Art. 33(B).

180. Rio Declaration, Principles 18, 19; see also, e.g. Montreal Rules of International Law Applicable to Transfrontier Pollution, 4 September 1982, Report of the Sixtieth Conference of the ILC 1-3 (1982), hereafter referred to as Montreal Rules for Transfrontier Pollution;

1978 Shared Natural Resources Principles, Principle 6; UNCLOS, Article 206; Article 198 of UNCLOS contains obligation to notify imminent danger or damage by pollution to potentially affected States.

181. International Convention for the Prevention of Pollution From Ships (London, 2 November 1973), 1973 UNJYB 91, as modified by the Protocol of 1978 relating thereto, 17 February 1978, Cmnd 8277, hereafter referred to as Marpol Convention; UN Economic Commission for Europe, Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992), 31 ILM 1330, hereafter referred to as UN/ECE Convention on Industrial Accidents, Arts. 10, 17.

182. See e.g., European Community Directive on the Major Accident Hazards of Certain Industrial Activities, Council Directive 82/501, Article 5, 1982 O.J. (I.230) I.

183. Convention on Early Notification of a Nuclear Accident (Vienna, 26 September 1986), 25 ILM 1369.

184. Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Vienna, 26 September 1986), 25 ILM 1377.

185. Montreal Rules for Transfrontier Pollution, Article 8; see also, e.g., 1978 Shared Natural Resources Principles, Principles 6-7; 1974 OECD Principles on Transfrontier Pollution, at Annex, Principle 7; Convention on the Protection of the Environment Between Denmark, Finland, Norway and Sweden (Stockholm, 19 February 1974), 13 ILM 591, hereafter referred to as Nordic Convention for Protecting the Environment.

186. Convention on Long-Range Transboundary Air Pollution (Geneva, 13 November 1979), 18 ILM 1442, Article 5: "Consultations shall be held, upon request, at an early stage between, on the one hand, Contracting Parties which are actually affected by or exposed to a significant risk of long-range transboundary air pollution and, on the other hand, Contracting Parties within which and subject to whose jurisdiction a significant contribution to long-range transboundary air pollution originates, or could originate, in connection with activities carried on or contemplated therein.".

187. See, e.g., Climate Change Convention, Articles 7-10, which outline the consulting and decision-making authority of the Conference of the Parties and establishing various subsidiary bodies with advisory functions.

188. Ph. Sands, Principles of international environmental law, Vol.I, 1995, p.606.

189. For a global scale, see Art. 206 of UNCLOS: "When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments.."

190. Convention on Environmental Impact Assessment in a Transboundary Context.

191. In their Resolution on Environmental Impact Assessment in a Transboundary Context (ECE/ENVWA/19), the Signatories to the Espoo Convention decided to strive for its entry into force as soon as possible and to seek to implement it to the maximum extent possible pending its entry into force. ECE member countries are already implementing the Convention at the subregional level, in particular through bilateral and multilateral agreements. For example, in Hungary, bilateral agreements on transboundary waters with neighboring countries relate to activities which might have an adverse impact on the quality and quantity of these waters, and include provisions for the submission of information on such impact. The bilateral agreement between Hungary and Ukraine on environmental cooperation provides for cooperation in the field of EIA in relation to proposed activities which may have an adverse environmental transboundary impact. Also, new agreements are being elaborated for this purpose and other cooperative arrangements are being made. For instance, in the Netherlands, initiatives were taken to start bilateral discussions with Belgium and Germany. Examples of specific experiences with transboundary EIA include the application of the Convention between Croatia and Hungary, Hungary and Slovakia and the Netherlands and Germany. ECE member countries are increasingly applying the provisions of the Espoo Convention pending its entry into force in cases where significant transboundary impacts are likely. New regulations have been introduced or existing regulations modified at the national level in order to arrange for the EIA process, in particular in a transboundary context. A number of countries have decided to amend existing EIA legislation by inserting the relevant provisions of the Convention, while in other countries specific legislation related to EIA in a transboundary context is being elaborated.

192. UN/ECE Convention on the Transboundary Effects of Industrial Accidents.

193. Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992), 31 ILM 1312.

194. Convention on the Marine Environment of the Baltic Sea Area (Helsinki, 9 April 1992), 22 Law of the Sea Bulletin 54, Article 7.

195. Toolba, M. Osama, A. 1992. The World Environment, 1972-1992, Chapman and Hall, London.

196. Art. 6, para. 1 to 3.

197. Art. 6, para. 4.

198. Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (Bamako, 30 January 1991), 30 ILM 773 (Agreement) and 31 ILM 163 (Annexes).

199. See K. Ginther, E.M.G. Denters and P.J.I.M. de Waart (eds) Sustainable Development and Good Governance, Martinus Nijhoff, Dordrecht, 1995.

200. Agenda 21, para. 23.2.

201. Rio Declaration, Principle 10; see also Convention on Biological Diversity, Article 14.1.(a), which allows for public participation in environmental impact assessment procedures; Climate Change Convention, Article 4.1(i): "... encourage the widest participation in this process including that of non-governmental organizations"; Lomé Convention, Final Act; ASEAN Agreement, Article 16; OECD Council Recommendation Concerning the Provision of Information to the Public and Public Participation in Decision-Making Processes Related to the Prevention of, and Responses to, Accidents Involving Hazardous Substances, 8 July 1982, C(88)85 (Final) (1988); World Charter for Nature, Arts. 23-24; ILO Convention No. 141 (1975), Rural Workers' Organization Convention, Article 4.

202. ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Geneva, 27 June 1989), 28 ILM 1382, Convention no. 169, Articles 6-7; Convention on Biological Diversity, Preamble; Agenda 21, chapter 26.

203. Convention on the Elimination of All Forms of Discrimination Against Women (New York, 18 December 1979), 1249 UNTS 13, Art. 7(b), the right to participate in formulating government policy, Art. 14.2(a), the right to participate in development planning; Convention on Biological Diversity, Preamble; Agenda 21, chapter 24; UNGA Res. 34/180 (1979);

204. Art. 12(1).

205. Art. 12(2).

206. See Agenda 21, chapter 29 "Strengthening the role of workers and their trade unions".

207. Agenda 21, para.27.1.

208. See Rio Declaration, Principle 10: "... At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, ... and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

209. On the status of non-governmental organizations under various conventions, see CITES, Art. IX.7(b); UNCLOS, Art. 169; Montreal Protocol, Art. 11(3); Basel Convention, Art. 15(6); Convention on Biological Diversity Convention, Art. 23(5); Climate Change Convention, Arts. 7.2.(1), 7.6; International Tropical Timber Agreement, Art. 15; Desertification Convention, Art. 22(7).

210. See Rio Declaration, Principle 10; Agenda 21, paras. 27.9(g): "The United Nations system...and all intergovernmental organizations and forums should, in consultation with non-governmental organizations take measures to provide access for non-governmental organizations to accurate and timely data and information...", 27.10(f): Governments should take measures to make available and accessible to non-governmental organizations the data and information necessary for their effective contribution to research and to the design, implementation and evaluation of programmes"; European Council Directive on Freedom of Access to Environmental Information, Council Directive 90/313 (7 June 1990); Draft IUCN Covenant, Art. 44.

211. Agenda 21, chapter 40 describes activities for expanding information availability.

212. Principle 17.

213. Vienna Convention, with Montreal Protocol and amendments of London and Copenhagen.

214. Climate Change Convention, Article 4(1)(F).

215. Convention on Biological Diversity, Article 14(1)(a).

216. Art. 6(b)O.

217. Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (Kuwait, 24 April 1978), 17 ILM 511, Article I; Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan, 23 March 1981), 20 ILM 746, Article 13; Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific (Lima, 12 November 1981), Doc. UNEP/CPPS/IG/32/4, Article 10; ASEAN Agreement, Article 14.

218. See N.A. Robinson, "EIA Abroad: The Comparative and Transnational Experience" in Environmental Analysis: The NEPA Experience, CRC Press, Florida.

219. Espoo Convention, Article I(vii).

220. Convention on the Law of Treaties, Article 26.

221. UN Charter, Art. 2, para. 2.

222. The seven-member Chamber for Environmental Matters was established under Art. 26(1) of the Statute of the International Court of Justice, which allows the Court to form chambers for dealing with particular categories of cases.

223. The principle of peaceful settlement of disputes is also included in the non-legally binding instruments as the Draft IUCN Covenant, Art. 62.1; WCED Principles, Principle 22.

224. Art. 30.

225. Art. 14.1.

226. Art. 27.1. Para. 2 of the same article creates the possibility for parties, in case of non-agreement by negotiation, to request mediation, or seek the good offices, of a third party.

227. Examples include Art. 20 of the Basel Convention; Art. 14 of the Climate Change Convention; and Art. 27 of the Convention on Biological Diversity.

228. An exception is Part XV of UNCLOS.

229. Para. 39.3(h).

230. Para. 39.10.

231. See: Andronico O. Adede, International Environmental Law Digest, 1993, p. 208, and references.

232. Gerhard Loibl, Comment on the paper by Andronico Adede, in Sustainable development and international law, Winfried Lang, editor, (Graham and Trotman/Martinus Nijhoff, 1995) p. 129: "One useful and necessary task for the international community is to draw the attention of states to the various aspects of dispute prevention. It has to be made clear that, like dispute settlement, the prevention of disputes over different resources will require different mechanisms."

233. 1994 ILC Report, pp. 259-280, 322.

234. Arts. 8, 10.

235. Art. 14.

236. See also Art. 187 in conjunction with Art. 153.2(b) of UNCLOS, which enables certain natural or juridical persons to have access to the Sea-bed Disputes Chamber of the International Tribunal for the Law of the Sea in their disputes with the Authority.

237. Art. 3.

238. 1994 ILC Report, p. 319.

239. On, respectively, International institutional arrangements and International legal instruments and mechanisms.

240. Arts. 207, 208 and 210-212 of UNCLOS obligate States to adopt laws and regulations on the basis of initially agreed rules and standards.

241. For example, Art. 19 of the Fish Stocks Agreement requires a State to ensure compliance by its flag vessels with regional conservation and management measures. Art. 21 of the Agreement permits a State Party which is member of a regional organization to take certain enforcement actions against fishing vessels flying the flag of another State Party, even if the latter State is not a member of the regional organization.

242. Paras. 39.3(e) and 39.8.

243. Art. 61.

244. Para. 8.14.

245. Para. 8.15.

246. Within the ILO, the elements of the system for compliance monitoring of international labour standards include: (a) a spirit of dialogue and cooperation rather than conflict and confrontation; (b) a procedural obligation on governments to submit regular reports in an approved form on legal and practical measures taken to implement substantive international obligations; (c) legal requirements for the involvement of relevant non-governmental organizations by communication to them of copies of government reports and according them the right to make their own observation; (d) examination of government reports in the first place by an independent expert body, serviced by an adequate secretariat; (e) examination of expert body report by representatives of governments and the relevant non-governmental organizations, such examination leading to the publication of a report; (e) a complaints procedure to deal with specific allegations of breach of substantive obligations; (f) informal advisory services and technical cooperation and information activities to assist in the fulfillment of obligations.

247. See e.g., Art. 12 of the Climate Change Convention, Art. 26 of the Convention on Biological Diversity, and Art. 20 of the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona, 16 February 1976), 15 ILM 285, as amended in 1995.

248. See e.g., the Protocol on Environmental Protection to the Antarctic Treaty, (Madrid, 4 October 1991), 30 ILM 1461, Arts. 19-23.

249. See e.g., CITES.

250. See, for example, also the compliance policy of the European Bank for Reconstruction and Development (EBRD): Compliance with applicable international or regional standards and guidelines is typically incorporated into the legal agreement with the borrower by means of loan conditionality, covenants or through inclusion into a comprehensive Environmental Action Plan for the project. Typical tools for monitoring compliance with environmental provisions are requirements for regular performance reports and/or periodic audits by independent experts, coupled with the obligation to address any problems identified in a way that is satisfactory to the EBRD. In addition, financial mechanisms may

be used to ensure the implementation of environmental requirements, or to provide additional incentives for clients to do so. In practice, the EBRD may thus be enforcing compliance by private companies with international environmental law even in the absence of implementing legislation at the national level.

251. EMEP stands for "Co-operative programme for the monitoring and evaluation of the long-range transmission of air pollutants in Europe".

252. Protocol to the Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions (Oslo, 14 June 1994), Doc. EB.AIR/R.84, 33 ILM 1542.

253. Art. 5 of the Basel Convention requires Parties to establish Competent Authorities and Focal Points; Article 13 requires the Parties to submit annual reports to the Conference of the Parties; Article 16 requests the Secretariat to perform a number of functions related to monitoring of implementation and compliance; and Art. 19 requests any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under the Convention, may inform the Secretariat and the Party against whom the allegations are made. In addition, at the Third Meeting of the Conference of the Parties (September 1995), a standing body was established to perform compliance functions, called "Compliance Committee". The cases of non-compliance to be undertaken by this Compliance Committee could be initiated by a Party, the Secretariat, or the Open-ended Ad Hoc Committee which undertakes the review of information provided to it by the Parties.