



## **DRAFT WORKING PAPER**

# **The Principle of Public Participation and Access to Information and Justice**

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A Legal Working Paper in the CISDL “Recent Developments in International Law Related to Sustainable Development” Series<sup>1</sup>

**OPEN DRAFT FOR REVIEW**

**March 2005  
Oxford, United Kingdom**

*The author gratefully acknowledges the generous support provided for this research by Foreign Affairs Canada.*

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<sup>1</sup> In order to advance academic and policy debates, this Legal Working Paper will explore the principle of public participation and access to information and justice with respect to recent developments in international law in relation to sustainable development law. This research represents a series of Legal Working Papers that seek to investigate the International Law Association’s *2002 Principles of International Law Related to Sustainable Development*. This paper is designated as a scholarly legal research initiative, and accordingly, is not intended to be construed as legal advice for any country. Furthermore, the views expressed herein remain those of the author, and as such, do not reflect the official position of the Centre for International Sustainable Development Law (CISDL).

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# The Principle of Public Participation and Access to Information and Justice

By K. Bottriell, with MC Cordonier Segger<sup>2</sup>

## I Definition of the Principle

The principle of public participation is based on the fundamental human right to hold and express opinions and to seek, receive and impart ideas. In the context of sustainable development, this means that individuals (especially women), trade unions, non-governmental organisations, business organisations and other civil society organisations, are able to actively participate in national and international decision-making. In order to facilitate educated and informed opinions, access to appropriate, comprehensible and timely information is critical.

The public, as understood in the context of this principle, is a community of people. This is not an explicit reference to the public of a certain State, nor of people possessing citizenship rights to a specific place. Increasingly the planet is being conceptualised in terms of an interconnected whole, and thus all people are considered to be the public. However, the public is differentiated from the State in that people can be State actors and operate within the interests of that State, while at the same time belong to the public, where they can freely express their own ideas. Thus far in international law, specific emphasis has been placed on members and groups of the public who may be experiencing barriers to their participation. These vulnerable groups have been identified as women, minorities and the poor.

Participation in decision making can be achieved through planned State government consultation with civil society organisations. At the international level, involvement of non-governmental organisations (NGOs) at international conferences and in daily UN activities can lead to the achievement of increased public participation. The goal of the principle is to ensure that people are accorded a role in the activities and decision-making processes that directly impact on their lives and well being.<sup>3</sup>

## II International Legal Meaning of the Principle

According to the International Law Association (ILA), there are three key elements within the principle of public participation. First, public participation is recognised as a human right of expression. Viewed as a human right, it is especially significant for major groups such as women

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<sup>3</sup> As described in M.-C. Cordonier Segger & A. Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (Oxford: Oxford University Press, 2004) at 110.

who previously may not have had the right of expression in participation. The second element is key to the ability of participants to hold informed expression: “the right of access to appropriate, comprehensible and timely information held by governments and commerce.”<sup>4</sup> This applies to information specifically relating to sustainable use of natural resources and protection of the environment, and accessing it must not cause undue financial burdens on those seeking it. The final aspect of this principle, according to the ILA, is access to justice. This refers to instances where allegations of violations of entitlements or rights have been made against State measures, in the context of sustainable development. This also applies to those who are not citizens, but who have been affected in cases of transboundary harm.

Within the jurisdiction of a State, invoking the principle of public participation means ensuring that all persons have access to relevant information held by public and private actors regarding sustainable development issues. Essentially, the State is required to address the disparities within society and to remove obstacles to participation by vulnerable groups.<sup>5</sup> In the context of inter-state rules and regulations, this principle refers to State participation in international judicial processes, such as those administered by the ICJ, the WTO and the ITLOS. Part of this requirement is the need for access to justice for individuals and groups, involving effective judicial or administrative procedures to redress allegations of violations of entitlements or rights.

This principle requires that the institution and decision-making process be transparent, that is, the public must have access to information. Moreover, the process must be consultative, that is, the public must be able to participate accordingly and have access to justice. The institution and decision-making process can be applied within States, between States and between Parties within international arbitration.

### III The Principle in International Treaty Law

The principle that members of the public need to be consulted and that their views should be taken into account during the development of projects that are likely to affect their lives and environment, enjoys substantial support in international legal instruments. This principle is linked to governance structures and the way in which States are managed. The 1966 *International Covenant on Civil and Political Rights*<sup>6</sup> declares that every citizen has the right to participate in “the conduct of public affairs, directly or through freely chosen representatives [...] [t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”<sup>7</sup> The 1966 *International Covenant on Economic, Social, and Cultural Rights*<sup>8</sup> illustrates the importance of access to information, stating that “education shall enable all persons to participate effectively in a free society.”<sup>9</sup> Consequently, regional-level treaties also exist to ensure good governance and transparency. For example, the 1969

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<sup>4</sup> See International Law Association (ILA) Resolution 3/2002: “New Delhi Declaration of Principles of International Law Relating To Sustainable Development” in ILA, *Report of the Seventieth Conference*, New Delhi (London: ILA, 2002) [*New Delhi Declaration*], online: ILA <<http://www.ila-hq.org>>.

<sup>5</sup> See M.-C. Cordonier Segger & A. Khalfan, *supra* note 3.

<sup>6</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976) [ICCPR], online: UNHCHR <[http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)> [ICCPR].

<sup>7</sup> *Ibid.*, art. 12.

<sup>8</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 999 U.N.T.S. 3, (entered into force 3 January 1976) [ICESCR], online at UNHCHR <[http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm)>.

<sup>9</sup> *Ibid.*, art. 13.

*American Convention on Human Rights*<sup>10</sup> includes civil and political rights, economic, social and cultural rights, as well as personal responsibilities. The articles contained therein form the basis for public participation in decision making.<sup>11</sup>

Building on the basic right to participate in government, international treaties have emerged related specifically to public participation in environmental issues. These include calls for enhanced availability of environmental information to the public.<sup>12</sup> The 1992 *Convention on Biological Diversity*<sup>13</sup> specifically mentions the need for participation by women at “all levels of policymaking and implementation”, public participation in environmental impact assessments and the inclusion of non-governmental bodies or agencies as observers in the Meetings of the Conference of the Parties (COP). The *Convention* also establishes a subsidiary body that provides timely scientific, technical and technological advice to the COP and other subsidiary bodies. The *Convention on Climate Change*<sup>14</sup> also includes the latter two provisions, as well as requiring Parties to “[p]romote and cooperate in education, training and public awareness [...] and [to] encourage the widest participation in this process, including that of non-governmental organi[s]ations.”<sup>15</sup> According to the *Climate Change Convention*, it is the duty of the State to “promote and facilitate” public participation to address climate change and develop adequate responses.<sup>16</sup> Article 1 of the 1993 *North American Agreement on Environmental Cooperation*<sup>17</sup> specifically provides that the objectives of the *Agreement* are to promote transparency and public participation in the development of environmental laws, regulations and policies.

The 1994 *Convention to Combat Desertification*<sup>18</sup> reiterates many of the elements of the *Biodiversity* and *Climate Change Conventions*, though it is more explicit in highlighting public participation. It specifically notes i) the importance of participation from women and youth at all levels; ii) that decision-making is to involve local communities; and iii) the role of non-governmental organisations in facilitating and promoting awareness.<sup>19</sup> Article 10(f) describes how national action programmes (NAPs) must:

provide for effective participation at the local, national and regional levels of non-governmental organi[s]ations and local populations, both women and men, particularly resource users, including

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<sup>10</sup> *Inter-American Convention on Human Rights*, 22 November 1969, 1144 U.N.T.S. 123, OAS T.I.A.S. No. 36 (entered into force 18 July 1978).

<sup>11</sup> For example, freedom of thought and expression, the right to participate in government, and specifically article 32 which states: “Every person has responsibilities to his family, his community, and mankind”. In the context of global environmental issues, this gives individuals the responsibility for these issues and thus becomes a force for public participation.

<sup>12</sup> A.B.M. Marong, “From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development” (2003) 16 *Geo. Int’l Env’tl. L. Rev.* 21.

<sup>13</sup> *United Nations Convention on Biological Diversity*, 5 June 1992, 1760 U.N.T.S. 79, 31 I.L.M. 822 (entered into force 29 December 1992).

<sup>14</sup> *United Nations Framework Convention on Climate Change*, 9 May 1992, 31 I.L.M. 849 [*Climate Change Convention*].

<sup>15</sup> *Ibid.*, art. 4(1)(i).

<sup>16</sup> *Ibid.*, art. 6(a)(iii).

<sup>17</sup> *North American Agreement on Environmental Cooperation*, 14 September 1993, 32 I.L.M. 1480 (entered into force 1 January 1994).

<sup>18</sup> *United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, 17 June 1994, 33 I.L.M. 1328 [*Desertification Convention*].

<sup>19</sup> *Ibid.* See e.g. the Preamble (“Stressing the important role played by women.”), arts. 3, 5(d), 10(2)(f), 17(1)(f), 18(2)(a), 19(1)(a), 19(3)(b), 21(1)(d), 22(7).

farmers and pastoralists and their representative organi[s]ations, in policy planning, decision-making, and implementation and review of national action programmes.<sup>20</sup>

The 1998 *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*<sup>21</sup> provides that “access to information, public participation in decision-making and access to justice in environmental matters are necessary for the fulfillment of the right to live in an environment adequate for personal health and well-being.”<sup>22</sup> The objective of this *Convention* is to “contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being” which will be achieved through the guarantee of each Party “the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions [contained therein].”<sup>23</sup>

The above-noted *Conventions* afford different rights to public participants. For example, the *World Heritage Convention*<sup>24</sup> grants official status to three different NGOs, which serve as advisors ‘for the implementation of [treaty] programmes and projects.’<sup>25</sup> Funding was provided by the United Nations Conference on the Environment and Development (UNCED)<sup>26</sup> for NGO participation, and adopted rules of procedure facilitating NGO participation at the preparatory meetings and at the conference. In some cases, NGO representatives participate as members of national delegations and participate *vis-à-vis* observer status.<sup>27</sup>

## IV The Principle in International Case Law and Acts of Inter-Governmental Organisations (IGOs)

Public participation in international arbitration has contributed to the emergence of jurisprudence. In the 1996 *Measures Affecting Asbestos and Asbestos-Containing Products*<sup>28</sup> case, an eleven-step procedure to consult with individual scientific experts was established. The experts were identified by a number of international organisations and institutions,<sup>29</sup> in accordance with article V:2 of the

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<sup>20</sup> *Ibid.*, art. 10(f).

<sup>21</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 25 June 1998, 2161 U.N.T.S. 447 (entered into force 30 October 2001).

<sup>22</sup> *Ibid.* at 73.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Convention for the Protection of World Cultural and Natural Heritage*, Nov. 23, 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151 (entered into force 17 December 1975) [*World Heritage Convention*].

<sup>25</sup> *Ibid.*, art. 8, at para. 3 (advisory roles for the International Center for the Study of the Preservation and the Restoration of Cultural Property, the International Council of Monuments and Sites, and the International Union for Conservation of Nature and Natural Resources).

<sup>26</sup> *Report of the United Nations Conference on Environment and Development*, UN Doc. A/CONF.151/6/Rev.1, (1992) 31 I.L.M. 874.

<sup>27</sup> J.L. Dunoff, Institutional Misfits, “The GATT, the ICJ & Trade-Environment Disputes: Institutional Misfits” (YEAR) 15 Mich. J. Int’l L. 1043

<sup>28</sup> *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products* (2001), WTO Docs. WT/DS135/AB/R (Appellate Body Report), WT/DS135/R (Panel Report). See also M.-C. Cordonier Segger & M.W. Gehring, “The WTO and Precaution: Sustainable Development Implications of the WTO Asbestos Dispute” (2003) J. Env’tl L. 15 at 289-321.

<sup>29</sup> The World Health Organisation, the International Labour Association, the International Programme on Chemical Safety, the International Agency for Research on Cancer and the International Organisation for Standardisation.

*WTO Agreement*,<sup>30</sup> which stipulates that the Appellate Body and the Panels may solicit submissions and information from non-Parties, including non-governmental bodies. As a result of 13 spontaneous submissions, the Appellate Body issued an *Additional Working Procedure*<sup>31</sup> wherein *amicus curiae* briefs were deemed acceptable.<sup>32</sup> The *Additional Working Procedure* allows ‘any person, whether natural or legal, other than a Party or a third Party in the dispute, desiring to file a brief with the Appellate Body’ to apply to file a brief by a specific deadline.<sup>33</sup> An application consists of information pertaining to the applicant, the special interest in the dispute and the specific legal issues. The applications are subsequently reviewed by the Appellate Body, which may then invite certain organisations to submit *amicus* briefs, albeit in this instance, they did not grant leave to any of the 11 applications. This was the first time in which non-State actors had been provided with a formal procedure to have their submissions taken in to account. Finally, a member of the Appellate Body issued a statement expressing concern over ethical considerations, and noted that philosophical questions may be more appropriate than economic ones in certain cases.<sup>34</sup> This was the first time under WTO/GATT law that a member had broken with protocol to make a concurring statement. In the *WTO Hormones* dispute,<sup>35</sup> at the request of the U.S.A., the European Communities and Canada, their substantive Meetings with the Parties were opened to the public.<sup>36</sup> The proceedings, held in September 2005, were broadcast via closed circuit television to a separate viewing room at the WTO Headquarters in Geneva, Switzerland. This is the first time in the history of the WTO that Panel Meetings have been made public.

While the 1998 *U.S. Import Prohibition of Certain Shrimp Products*<sup>37</sup> case is well known for legitimising trade embargoes of *CITES* species, it was also the first instance that NGOs were allowed to participate in the WTO dispute settlement. A partnership of NGOs<sup>38</sup> filed an *amicus curiae* brief in support of the U.S. ban on shrimp caught by methods that kill endangered sea turtles. The brief contained factual and legal information that were critical about the decline of sea turtle populations, due to shrimp harvesting and the role of Turtle Excluder Devices (TEDs) in protecting sea turtles. In addition, an analysis of environmental treaties and principles of customary international law supporting a broad reading of the WTO’s environmental exceptions was also included in the brief. The brief was accepted based on Article 13 of the Dispute Settlement Understanding (DSU),<sup>39</sup>

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<sup>30</sup> *Marrakesh Agreement Establishing the World Trade Organisation*, 15 April 1994, 1867 U.N.T.S. 154 (entered into force 1 January 1994) in WTO, *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations* 4 (1999) [*The Legal Texts*]. The WTO texts and dispute settlement reports are available online at <<http://www.wto.org>>.

<sup>31</sup> Under the DSU, the Appellate Body may develop working procedures for individual cases, according to *Working Procedures for Appellate Review* WT/AB/WP: (28 February 1997) drawn up pursuant to art. 17(9) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

<sup>32</sup> *Communication from the Appellate Body* WTO Doc. WT/DS135/9 (8 November 2000).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *EC – Measures Concerning Meat and Meat Products (Hormones) (Compliance USA and Canada)* (13 February 1998), WTO Doc. WT/DS26/AB/R, WT/DS48/AB/R (Appellate Body Report) [*EC Hormones*]. See also WTO Docs. WT/DS320, WT/DS321.

<sup>36</sup> Four hundred seats have been set aside for the public, and may be reserved on a first-come, first-served basis by filling out and returning to the WTO a form found on the WTO website.

<sup>37</sup> *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (1999) WTO Doc. WT/DS58/AB/R (Appellate Body Report), WT/DS58/R (Panel Report); (Recourse to Article 21.5 of the DSU by Malaysia (2001), WTO Docs. WT/DS58/AB/RW (Appellate Body Report), WT/DS58/RW (Panel Report).

<sup>38</sup> The Center for International Environmental Law, the Center for Marine Conservation, Red Nacional de Accion Ecologica (RENACE) of Chile, the Environmental Foundation Ltd of Sri Lanka and the Philippine Ecological Network.

<sup>39</sup> *Understanding on Rules and Procedures Governing the Settlement of Disputes*, April 15, 1994, *Marrakesh Agreement establishing the World Trade Organisation*, *supra* note 30, Annex 2 (1994), specifically, arts. 13(1)-(2).

which allows Members of the Panel to “seek information from any relevant source and [...] consult experts to obtain their opinion,” and which provides that unsolicited *amicus curiae* briefs are admissible in panel proceedings.<sup>40</sup> However, according to the Appellate Body, the Panel may choose to ignore any information provided, regardless of whether the Panel explicitly sought the information in the first place.<sup>41</sup> In the 2000 *British Steel* case, *amicus curiae* briefs were again called into question. While the Appellate Body explicitly ruled that unsolicited *amicus curiae* briefs are admissible in Appellate Body proceedings, in this instance, it did not find it necessary to take the *amicus curiae* briefs into account.<sup>42</sup> In this case, the U.S. set an example in terms of transparency by posting its own filings immediately during submission in dispute resolution proceedings.

Similarly, NAFTA’s Chapter 11 investor State arbitral tribunals have examined the issue of *amicus briefs*. In a 2001 arbitral decision, *United Parcel Services of America, Inc. v. Canada*, a NAFTA Tribunal confirmed its authority to allow *amicus briefs*, based on NAFTA’s dispute settlement provisions. Accordingly, article 1120(1)(c), which referred to UNCITRAL Arbitration Rules. Article 15(1) of UNCITRAL’s rules authorised the Tribunal to “conduct the arbitration in such manner as it considers appropriate, provided that the [P]arties are treated with equality and that at any stage in the proceedings each [P]arty is given a full opportunity of presenting his case,” which was interpreted to allow for acceptance of *amicus* briefs.<sup>43</sup> In *Methanex Corp. v. United States*,<sup>44</sup> another NAFTA Chapter 11 investor-state arbitral tribunal, several NGOs<sup>45</sup> filed briefs. The petition to include the *amicus* briefs were first submitted in 2000. In 2001, the Tribunal declared that it had the authority to accept *amicus* written submissions under Article 15(1) of the *UNCITRAL* Arbitration Rules, subject to procedural limitations yet to be determined.<sup>46</sup> In early 2004, the Tribunal issued a press release outlining the steps and means for interested non-Parties to apply for *amicus curiae* status.<sup>47</sup> On August 9, 2005, the Tribunal released the Final Award, which specifically cited the International Institute for Sustainable Development’s “carefully reasoned [*amicus*] submission” in several places. In the *Methanex* Case, the Tribunal took note of the public interest in the case (involving California inhabitants’ access to drinking water):

[t]here is undoubtedly a public interest in this arbitration. The substantive issues extend far beyond those raised by the usual transnational arbitration between commercial parties [...] There is also a broader argument [...] the Chapter 11 arbitral process could benefit from being perceived as more open or transparent; or conversely be harmed if seen as unduly secretive.<sup>48</sup>

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<sup>40</sup> *Ibid.*, art. 13(2).

<sup>41</sup> The Appellate Body did not take the views expressed in the briefs into consideration. See *supra* note 38, WTO Docs. WT/DS58/AB/RW 76-78.

<sup>42</sup> Under article 17(9) of the DSU, the Appellate Body can decide whether it may accept such submissions.

<sup>43</sup> As described in D. Hollis, “Private Actors in Public International Law: Amicus Curiae and the State Sovereignty” (2002) 25 B.C. Int’l & Comp. L. Rev. 235.

<sup>44</sup> *Methanex Corporation v. United States of America*, Decision of the Tribunal on Petitions for Intervention and Participation as “Amici Curiae” (2001).

<sup>45</sup> Bluewater Network, Communities for a Better Environment, the Center for International Environmental Law and the International Institute for Sustainable Development.

<sup>46</sup> Decisions of the Tribunal on Petitions from Third Persons to Intervene as “amici curiae”, January 15, 2001, online: <<http://www.state.gov/documents/organization/6039.pdf>>.

<sup>47</sup> The procedures include written application for submission, and “identification by amici of any entity with which it collaborated in preparing submissions;” and “a right to respond to any NAFTA Article 1128 submissions from Canada or Mexico on amicus submissions.”

<sup>48</sup> *Methanex Corporation v. United States of America*, *supra* note 45, at para. 49 (2001).

According to Professor Shelton,<sup>49</sup> other tribunals such as the European Court of Justice [ECJ], the European Court of Human Rights [ECHR] and the Inter-American Court of Human Rights are all examples where international tribunals have permitted private actors to serve an *amicus* function. The International Criminal Court (ICC) may soon allow *amicus* briefs as well, given that Rule 103 of the draft *ICC Rules of Procedure* provides that the ICC may, if it deems it desirable, “[a]t any stage of the proceedings [...] invite or grant leave to a State, organi[s]ation or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.”<sup>50</sup> This is in contrast with the practice of the International Court of Justice (ICJ)<sup>51</sup> which does not accept participation from anyone other than States, and in certain cases, public international organisations, since the ICJ Statute *per se* is limited.<sup>52</sup> Still, the ICJ accepted an *amicus* brief from an NGO in the 1950 *South-West Africa advisory proceeding*,<sup>53</sup> but rejected the same NGO’s request to submit a brief in the contentious 1950 *Asylum* case.<sup>54</sup>

At the Inter-American Court of Human Rights, there have been a number of instances where NGOs and indigenous people have submitted *amicus curiae* briefs.<sup>55</sup> At the federal and State levels, use of *amicus* briefs is frequent in Canada, Australia, South Africa, the United Kingdom and India. For example, in *Consumer Unity & Trust Society v. State of Rajasthan and Others*, the Indian National Consumer Dispute Redressal Commission requested the assistance of an *amicus curiae* while deciding on the case, and widely discussed the issues raised in the brief submitted by the *amicus curiae*.<sup>56</sup> Furthermore, national environmental bodies in Canada, Finland, Mauritius, the Netherlands, Nigeria and Singapore have already enacted domestic legislation that provides for the participation of industry, the private sector, non-governmental organisations and the scientific community.<sup>57</sup>

## V The Principle in Soft Law

The principle of public participation emerged from human rights, and its roots can be found in significant human rights instruments. The 1948 UN *Universal Declaration of Human Rights*<sup>58</sup> makes reference to everyone’s “right to take part in the government of his country, directly or through freely chosen representatives”, the “right of equal access to public service in his country” and that

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<sup>49</sup> D. Shelton, at 629, 631–32, 638.

<sup>50</sup> Preparatory Commission for the International Criminal Court, *Finalized Draft Text of the Rules of Procedure and Evidence*, June 30, 2000, Doc. PCNICC/2000/1/Add.1.

<sup>51</sup> According to D.B. Hollis, “Private Actors in Public International Law: Amicus Curiae and the State Sovereignty” (2002) 25 B.C. Int’l & Comp. L. Rev. 235 (2002).

<sup>52</sup> *Methanex Corporation v. United States of America*, *supra* note 45 at 34 (citing ICJ Statute, arts. 34, 35, 61–64); UPS, *supra* note 11, 64.

<sup>53</sup> 1950 *South-West Africa advisory proceeding*

<sup>54</sup> 1950 *Asylum* case

<sup>55</sup> See e.g. *Report No. 10/05 Petition 380/03 IACHR Admissibility Rafael Ignacio Cuesta Caputi, Ecuador*, (23 February 2005 where the Guayaquil Journalists’ Association and the Plenipotentiary Embassy in Ecuador of the International Parliament for Safety and Peace of Palermo submitted a brief that was acknowledged and transmitted it to the two parties, *Constitutional Court Case [2001] IACHR* January 31, 2001 where the International Human Rights Law Group, C.F. Doebbler and A. Borea Odría submitted an *amicus curiae* brief in the capacity of *amicus curiae*).

<sup>56</sup> *Amicus Curiae Brief: Should the WTO Remain Friendless?* Centre for International Trade Economics and Environment, online: <http://www.cuts-international.org/Amicus%20Curiae.pdf>

<sup>57</sup> J. L. Dunoff, Institutional Misfits, “The GATT, the ICJ & Trade-Environment Disputes: Institutional Misfits” in (YEAR) 15 Mich. J. Int’l L. 1043.

<sup>58</sup> *Universal Declaration of Human Rights*, G.A. Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, U.N. Doc. A/810 (1948).

“[t]he will of the people shall be the basis of the authority of government”.<sup>59</sup> More recently, the 1994 *Draft Principles on Human Rights and the Environment*<sup>60</sup> treats the right to participation as a means for realising other human rights. Participation in sustainable development decision-making “includes a right to prior assessment of the environmental, developmental and human rights consequences of proposed actions,” a preventative step in mitigating human rights violations.<sup>61</sup> The facilitating nature of the right to public participation is also noted in the IUCN’s *Draft International Covenant on Environment and Development*,<sup>62</sup> which notes the right of all persons to “participate in relevant decision-making processes.”<sup>63</sup> Furthermore, the 1994 *Draft UN Declaration on Indigenous Peoples*<sup>64</sup> recognises the rights of indigenous peoples to participate “in political, economic, social and cultural life of the State,”<sup>65</sup> and that this right is “at all levels of decision-making in matters which may affect their rights, lives and destinies.”<sup>66</sup> The ways in which they participate can be determined through “procedures determined by them, in devising legislative or administrative measures that may affect them” if they so choose.<sup>67</sup>

Public participation in issues relating to the environment can be conceived not only as a human right, but also as a need fundamental to the decision-making process. In its preamble, the 1972 *Stockholm Declaration*<sup>68</sup> stipulates the “acceptance of responsibility by citizens and communities and by enterprises and institutions at every level” in order to “defend and improve the human environment for present and future generations.”<sup>69</sup> The 1986 UN *Declaration on the Right to Development*<sup>70</sup> was one of the first major international documents to make public participation a central objective in development.<sup>71</sup> The *Declaration’s* preamble states that improvement of the well being of the entire population will be based on “active, free and meaningful participation in development” by all individuals.<sup>72</sup> The *Declaration* subsequently asserts that: “every human and all peoples are entitled to participate in, contribute to [...] cultural and political development.”<sup>73</sup> Following this, the role of public participation, as a necessary means for achieving *sustainable* development, was initially

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<sup>59</sup> *Ibid.*, art. 21.

<sup>60</sup> *Draft Declaration of Principles on Human Rights and the Environment*, 16 May 1994, online: <<http://fletcher.tufts.edu/multi/www/1994-decl.html>>.

<sup>61</sup> *Ibid.*

<sup>62</sup> IUCN, *Draft International Covenant on Environment and Development* (Gland, Switzerland: IUCN, 1995), online: IUCN <<http://www.iucn.org/themes/law>>.

<sup>63</sup> See M.-C. Cordonier Segger & A. Khalfan, *supra* note 3.

<sup>64</sup> *Draft UN Declaration on Indigenous Peoples* (1994).

<sup>65</sup> *Ibid.*, art. 4.

<sup>66</sup> *Ibid.*, art. 19.

<sup>67</sup> *Ibid.*, art. 20.

<sup>68</sup> *Stockholm Declaration of the United Nations Conference on the Human Environment*, 16 June 1972, U.N. Doc. A/CONF.48/14/Rev.1, 11 I.L.M. 1461 (1972), reprinted in 11 I.L.M. 1416 (1972) [*Stockholm Declaration*]. For further information on the development of international environment law, see e.g. P. Sands, *Principles of International Environmental Law: Frameworks, Standards and Implementation*, vol. 1 (Cambridge: Cambridge University Press, 2003). See also A. Timoshenko, “From Stockholm to Rio: The Institutionalization of Sustainable Development” in W. Lang, ed., *Sustainable Development and International Law* (London: Graham and Trotman/Martinus Nijhoff, 1995). And see D. Hunter, J. Salzman & D. Zaelke, *International Environmental Law and Policy* (New York: Foundation Press, 2002).

<sup>69</sup> *Ibid.*, Preamble.

<sup>70</sup> *Declaration on the Right to Development*, GA Res. 41/128, UN GAOR, 1986 Supp. No. 53, U.N. Doc. A/41/53, 186 (1986).

<sup>71</sup> See M.-C. Cordonier Segger & A. Khalfan, *supra* note 3.

<sup>72</sup> *Ibid.*, Preamble.

<sup>73</sup> *Ibid.*, art. 1.

identified in 1987, in the Brundtland Commission's report entitled, *Our Common Future*. This report explains that:

[i]n the specific context of the development and environment crisis of the 1980s, which current national and international political and economic institutions have not and perhaps cannot overcome, the pursuit of sustainable development requires: [*inter alia*...] a political system that secures effective citizen participation in decision making.<sup>74</sup>

The Brundtland Commission called for “effective participation” as a *sine qua non* for the realisation of sustainable development. The 1992 UN *Rio Declaration on Environment and Development*<sup>75</sup> elaborated on the need for public participation with respect to sustainable development. Similarly, *Our Common Future* called for public participation. However, it further identified ‘access to information’ and ‘justice’ as critical elements of such participation. Principle 10 of the *Rio Declaration* offers an overview of the principle of public participation, which states that:

[e]nvironmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities [...] Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>76</sup>

The *Declaration* also encourages States to cooperate in eradicating poverty,<sup>77</sup> which is both a barrier to public participation and an integral part of development. Specific reference is made to State provision of “prior and timely notification and relevant information” to other States which may be affected by transboundary environmental effects.<sup>78</sup> Women, youth and indigenous peoples are identified as essential participants in sustainable development.<sup>79</sup> *Agenda 21*,<sup>80</sup> which followed the *Rio Declaration*, encourages the participation of global, national and local organisations in sustainable development. It requires States to “facilitate and encourage public awareness and participation by making information widely available” and provides that “one of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making.”<sup>81</sup> It further calls for “attention [to] be directed to the quality of the information and the ease with which users can find the appropriate, accurate and timely information they require,”<sup>82</sup> and the concern that as access to information improves for some, “the gap between these groups and those who are not able to keep pace will widen dramatically.”<sup>83</sup>

In 1995, the Environment Ministers of the UNECE region’s countries adopted *Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making*,<sup>84</sup> which was based on

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<sup>74</sup> *Ibid.*

<sup>75</sup> *Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development*, UN Doc. A/CONF.151/6/Rev.1, (1992) 31 I.L.M. 874 [*Rio Declaration*].

<sup>76</sup> *Ibid.*, Principle 10.

<sup>77</sup> *Ibid.*, Principle 5.

<sup>78</sup> *Ibid.*, Principle 19.

<sup>79</sup> *Ibid.*, Principles 19-21.

<sup>80</sup> *Agenda 21, Report of the UNCED, I* (1992) UN Doc. A/CONF.151/26/Rev.1, (1992) 31 I.L.M. 874.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*, at para. 35.

<sup>83</sup> *Ibid.* at para. 38.

<sup>84</sup> Adopted at the Third Ministerial Conference in Sofia, Bulgaria (October 1995). See generally *Convention on Access To Information, Public Participation in Decision-Making and Access To Justice in Environmental Matters*, 25 June, 1998, 2161 U.N.T.S. 44738 I.L.M. 517 (entered into force on 30 October 2001 Oct. 30, 2001), as cited in *ibid.* [*Aarhus Convention*].

the EU's *Directive on Freedom of Access to Environmental Information*. One of the sections specifically pertains to access to environmental information. The *Guidelines* extend to all of Europe, including States where access to environmental information rules has yet to be adopted.<sup>85</sup> Also in 1995, the *Beijing Declaration and Platform for Action*<sup>86</sup> established that participatory partnerships involving both State and non-State actors are developing rapidly as a means for facilitating more equitable access and use of natural resources. In the 2001 *Doha Declaration*,<sup>87</sup> the WTO Ministers declared:

[Their ...] commit[ment] to making the WTO's operations more transparent, including through more effective and prompt dissemination of information, and t[he] improve[ment] of] dialogue with the public. [They] shall therefore at the national and multilateral levels continue to promote a better public understanding of the WTO and to communicate the benefits of a liberal, rules-based multilateral trading system.<sup>88</sup>

The principle of public participation also coincides with the *Millennium Development Goals (MDGs)*<sup>89</sup> in terms of the eradication of poverty,<sup>90</sup> the promotion of gender equality and the empowerment of women.<sup>91</sup> Broadly, ensuring environmental sustainability<sup>92</sup> involves the integration of the principles of sustainable development into State policies and programmes, which include the principle in question of public participation. In 2000, the *Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development*<sup>93</sup> was adopted, based on the 1996 *Bolivia Summit on Sustainable Development*,<sup>94</sup> which states that: “[i]n order to support the specific initiatives on public participation contained in the Plan of Action” it must give “[...] priority to the formulation of an inter-American strategy for the promotion of public participation in decision-making for sustainable development.”<sup>95</sup> The principle of public participation was reaffirmed at the 2002 *World Summit on Sustainable Development*,<sup>96</sup> and it also served as an influential factor with respect to the procedures of the Summit itself. Consequently, efforts were made to increase public participation in

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<sup>85</sup> According to R.E. Hallo, *Public Access to Environmental Information* Expert's Corner no. 1997/1, EEA (European Environment Agency), “the presumption in favour of access to environmental information for any person (*i.e.* in principle, all environmental information should be available to any person unless it falls in an exempt category); a fairly broad definition both of environmental information, and of the bodies which are supposed to supply it; a requirement that in each case where it is proposed to withhold information, the public interest served by disclosure must be taken into consideration; a qualified requirement to limit charges for information to the costs of reproduction and dissemination (qualified by “where appropriate”), with the right to inspect information free of charge; a requirement that where information is held in various forms, it should be supplied in the form specified by the person requesting the information (a measure which could significantly reduce the costs of information, where for example voluminous reports can be obtained on diskette or accessed through a modem).”

<sup>86</sup> *Fourth World Conference on Women*, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

<sup>87</sup> WTO, *Doha Ministerial Declaration* (Doha, 14 Nov. 2001), WTO Doc. WT/MIN(01)/DEC/W/1.

<sup>88</sup> *Ibid.* at para. 10.

<sup>89</sup> UN *Millennium Development Goals*, online: UN <<http://www.un.org/millenniumgoals/>> [MDGs]. See also *Millennium Declaration*, G.A. Res. 55/9, UN GAOR, 2000, c. III [Millennium Declaration].

<sup>90</sup> *Ibid.*, Goal 1.

<sup>91</sup> *Ibid.*, Goal 3.

<sup>92</sup> *Ibid.*, Goal 7.

<sup>93</sup> By the Inter-American Council for Integrated Development, in Resolution CIDI/RES 98 (V-0/00), April 20, 2000

<sup>94</sup> *Bolivia Summit on Sustainable Development* (1996).

<sup>95</sup> *Ibid.*

<sup>96</sup> *Report of the World Summit on Sustainable Development*, Johannesburg, South Africa (4 September 2002), UN Doc. A/CONF.199/20.

the preparations and implementation of the Summit, *vis-à-vis* the design of ‘type II’ informal outcomes that could be led by civil society groups.<sup>97</sup>

Participation by specific groups in the public sector, namely indigenous peoples and NGOs, is key to sustainable development. Between 1946-1950, participation rights were acquired gradually. The developing practice was reviewed, amended slightly and codified under the Economic and Social Council’s (ECOSOC’s) Resolution 288 X(B) of 27 February 1950.<sup>98</sup> The procedures were subsequently reviewed, and Resolution 1296 (XLIV) was passed as a revised statute. In 1992, the UN *Conference on Environment and Development* at Rio resulted in a third review, which took four years to complete. Another version of the statute was passed as Resolution 1996/31 of 25 July 1996.<sup>99</sup> In this review, the presumption that an NGO must be ‘international’ was deleted, and it became routine to allocate ‘national’ NGOs with consultative status. The bulk of the current resolution (which is still in force and will remain so for the foreseeable future) is identical to clauses in the initial version of the statute.

An element of participation is cooperation, both between States and people, as well as between States. The duty to cooperate is well-established in international law, as exemplified under Chapter IX of the UN Charter<sup>100</sup> and Principle 4 of the 1970 *Declaration on Friendly Relations*.<sup>101</sup> Cooperation also forms part of the *Rio Declaration*, which calls on “all States and all people” to cooperate on poverty eradication,<sup>102</sup> requests States to “cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem,”<sup>103</sup> and which calls on States to cooperate in developing international environmental law further.<sup>104</sup> The subsequent development of international law and its associated courts is part of the principle of public participation that refers to access to justice. It is also embodied in the *Rio Declaration* wherein: “States and peoples shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.”<sup>105</sup>

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<sup>97</sup> M-C. Cordonier Segger, A. Khalfan, M. Gehring *et al.*, “Prospects for Principles of International Sustainable Development Law after the WSSD: Common but Differentiated Responsibilities, Precaution and Participation” (2003) R.E.C.I.E.L. 12(1) at 54–68.

<sup>98</sup> Economic and Social Council’s (ECOSOC’s) *Resolution 288 X(B)* (27 February 1950).

<sup>99</sup> *The ECOSOC Statute for Non-Governmental Organisations Part VI Consultations with AD HOC committees of the council*, online: <<http://www.staff.city.ac.uk/p.willets/NGOS/RES31-96.HTM#Res96-31>>.

<sup>100</sup> *Charter of the United Nations*, 26 June 1945, Can. T.S. 1945 No. 7, c. IX, International Economic and Social Cooperation [UN Charter].

<sup>101</sup> *United Nations Declaration of Principles on International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*, 24 October 1970, 9 I.L.M. 1292.

<sup>102</sup> *Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development*, U.N. Doc. A/CONF.151/6/Rev.1 (1992), 31 I.L.M. 874 (1992) [*Rio Declaration*].

<sup>103</sup> *Ibid.*, Principle 7.

<sup>104</sup> *Ibid.*, Principle 13.

<sup>105</sup> *Ibid.*, Principle 27.

## VI The Status of the Norm

While public participation is a legally significant notion, the principle is – at best – still emerging as a binding norm of international law. While provisions to ensure ‘public participation’ are now standard in nearly all treaties on sustainable development, and it is broadly recognized that decision-making quality will improve if public access to information, participation and access to justice are secured, the ‘right’ to public participation, access to information and especially access to justice (with a corresponding duty upon States) is still being recognized in human rights law related to sustainable development, and has only just begun to be broadly implemented in practice. At the national level, similarly, specific provisions in legislation permit and encourage participation and access to information and justice, rather than a general constitutional principle, in most countries.

Without being defined as yet as a principle of customary law, the requirement that States shall provide effective avenues for public participation could be normative --- in the sense of a guide for practical decision-making processes --- at both the domestic and international levels. In this context, the processes that have come to be accepted in international law on sustainable development may have generated a legitimate expectation, derived from international discourse over the last three decades, that States and other actors should ensure some avenues for public participation in international processes related to sustainable development. It is both possible and legitimate for some norms to remain solely at the pre-legal stage of development, yet provide moral suasion for particular types of behaviour or serve as steps towards the development of substantive legal norms.<sup>106</sup>

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<sup>106</sup> J. Brunnee & S.J. Toope, “Environmental Security and Freshwater Resources: Ecosystem Regime Building” (1997) 91 Am. J. Int.Law 26 as cited in B.M. Marong, *supra* note 12 at 45.

## Annex I: Table of Treaties

Year	Treaty
1945	<i>Charter of the United Nations</i> , 26 June 1945, Can. T.S. 1945 No. 7, available online: UN < <a href="http://www.un.org/aboutun/charter/index.html">http://www.un.org/aboutun/charter/index.html</a> > [ <i>Charter</i> ].
1946	<i>International Convention for the Regulation of Whaling</i> , 2 December 1946, 62 Stat. 1716, 161 U.N.T.S. 72, online: IWCO: < <a href="http://www.iwcoffice.org/commission/convention.htm#convention">http://www.iwcoffice.org/commission/convention.htm#convention</a> >.
1950	<i>European Convention for the Protection of Human Rights and Fundamental Freedoms</i> , 11 November 1950, (ETS No. 5), 213 U.N.T.S. 222 (entered into force 3 September 1953), as amended by Protocols Nos. 3, 5, 8, and 11 (entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998, respectively), online: Council of Europe < <a href="http://conventions.coe.int/treaty/en/Treaties/Html/005.htm">http://conventions.coe.int/treaty/en/Treaties/Html/005.htm</a> >.
1961	<i>European Social Charter</i> , 18 October 1961, (ETS No. 35) 529 U.N.T.S. 89 (entered into force 26 February 1965), online: Council of Europe < <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm</a> >.
1966	<i>International Covenant on Economic, Social and Cultural Rights</i> , 19 December 1966, 999 U.N.T.S. 3, (entered into force 3 January 1976), available online at UNHCHR < <a href="http://www.unhchr.ch/html/menu3/b/a_cescr.htm">http://www.unhchr.ch/html/menu3/b/a_cescr.htm</a> > [ <i>ICESCR</i> ].
1966	<i>International Covenant on Civil and Political Rights</i> , 19 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976), available online: UNHCHR < <a href="http://www.unhchr.ch/html/menu3/b/a_ccpr.htm">http://www.unhchr.ch/html/menu3/b/a_ccpr.htm</a> > [ <i>ICCPR</i> ].
1967	<i>Charter of the Organization of American States</i> , 27 February 1967, 119 U.N.T.S. 3 (entered into force 13 December 1951) [ <i>OAS Charter</i> ].
1968	<i>African Convention on the Conservation of Nature and Natural Resources</i> , 15 September 1968, 1001 U.N.T.S. 3 (entered into force 16 June 1969), online: SEDAC < <a href="http://sedac.ciesin.org/entri/texts/african.conv.conserva.1969.html">http://sedac.ciesin.org/entri/texts/african.conv.conserva.1969.html</a> > [ <i>African Convention</i> ].
1972	<i>Convention Concerning Protection of World Cultural Property and Natural Heritage</i> , 23 November 1972, 1037 U.N.T.S. 151, 11, I.L.M. 1358, online: UNESCO < <a href="http://whc.unesco.org/world_he.htm">http://whc.unesco.org/world_he.htm</a> > [ <i>World Heritage Convention</i> ].
1973	<i>Convention on International Trade of Endangered Species and Wild Fauna and Flora</i> , 3 March 1973, 993 U.N.T.S. 243, T.I.A.S. No. 8249, 12 I.L.M. 1085 (1973) [ <i>CITES</i> ], online: CITES < <a href="http://www.cites.org/eng/disc/text.shtml">http://www.cites.org/eng/disc/text.shtml</a> >.

<b>Year</b>	<b>Treaty</b>
1976	<i>Convention on Conservation of Nature in the South Pacific</i> , adopted 12 June 1976, Preamble [ <i>South Pacific Nature Convention</i> ], online: INTFISH < <a href="http://www.intfish.net/treaties/southpacific1976.htm">http://www.intfish.net/treaties/southpacific1976.htm</a> >.
1979	<i>Convention on the Elimination of All Forms of Discrimination Against Women</i> , 18 December 1979, 1249 U.N.T.S. 13 (entered into force 3 September 1981) [ <i>CEDAW</i> ], online: UN < <a href="http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm">http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm</a> >.
1979	<i>Convention on the Conservation of Migratory Species of Wild Animals</i> , 23 June 1979, 19 I.L.M. 15 (1980).
1980	<i>Convention on the Conservation of Migratory Species of Wild Animals</i> , 23 June 1979, 19 I.L.M. 15 (1980).
1981	<i>African [Banjul] Charter on Human and Peoples' Rights</i> , 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (entered into force 21 October 1986), online: University of Minnesota < <a href="http://www1.umn.edu/humanrts/instreet/z1afchar.htm">http://www1.umn.edu/humanrts/instreet/z1afchar.htm</a> >.
1982	<i>United Nations Convention on the Law of the Sea</i> , 10 December 1982, 1833 U.N.T.S. 3, 21 I.L.M. 1245 (entered into force 16 November 1994) [ <i>UNCLOS</i> ].
1985	<i>Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment</i> adopted 14 February 1982 (entered into force 20 August 1985) [ <i>Jeddah Convention</i> ], online: INTFISH< <a href="http://www.intfish.net/treaties/redsea.htm">http://www.intfish.net/treaties/redsea.htm</a> >.
1985	<i>Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region</i> , 21 June 1985, 985 I.E.L.M.T. 46 [ <i>Nairobi Convention</i> ].
1985	<i>Agreement on the Conservation of Nature and Natural Resources</i> , 9 July 1985, 15 <i>Env'tl Pol'y &amp; L.</i> at 64, 68, Preamble (treaty not yet in force).
1988	<i>Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)</i> , 17 November 1988, O.A.S. TS No 69 (1988) rep. Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser LV/II.82 Doc.
1989	<i>Convention on the Rights of the Child</i> , 20 November 1989, 1577 U.N.T.S. 3 (entered into force 2 September 1990), online: UNICEF < <a href="http://www.unicef.org/crc/fulltext.htm">http://www.unicef.org/crc/fulltext.htm</a> >.

Year	Treaty
1990	<i>African Charter on the Rights and Welfare of the Child</i> , O.A.U. Doc. CAB/LEG./24.9/49 (1990) (entered into force 29 November 1999), online: University of Minnesota < <a href="http://www1.umn.edu/humanrts/africa/afchild.htm">http://www1.umn.edu/humanrts/africa/afchild.htm</a> >.
1992	<i>United Nations Framework Convention on Climate Change</i> , 9 May 1992, 31 I.L.M. 849, art. 3(1) [ <i>Climate Change Convention</i> ], online: UNFCCC < <a href="http://unfccc.int/essential_background/convention/background/items/1349.php">http://unfccc.int/essential_background/convention/background/items/1349.php</a> > [ <i>Climate Change Convention</i> ].
1992	<i>Convention on the Protection and Use of Transboundary Watercourses and International Lakes</i> , 17 March 1992, UN Doc. ENVWA/R.53 and Add.1, 31 I.L.M. 1312 (entered into force 6 October 1996), art. 2 at para. 6(c), online: UNECE < <a href="http://www.unece.org/env/water/pdf/watercon.pdf">http://www.unece.org/env/water/pdf/watercon.pdf</a> >.
1992	<i>United Nations Convention on Biological Diversity</i> , 5 June 1992, 1760 U.N.T.S. 79, 31 I.L.M. 822 (entered into force 29 December 1992), online: Biodiversity < <a href="http://www.biodiv.org/convention/articles.asp">http://www.biodiv.org/convention/articles.asp</a> >.
1994	<i>North American Agreement on Environmental Cooperation</i> , 14 September 1993, 32 I.L.M. 1480 (entered into force 1 January 1994).
1994	<i>Marrakesh Agreement Establishing the World Trade Organisation</i> , 15 April 1994, 1867 U.N.T.S. 154 (entered into force 1 January 1994) in WTO, <i>The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations</i> 4 (1999) [ <i>The Legal Texts</i> ]. The WTO texts and dispute settlement reports are available online at < <a href="http://www.wto.org">http://www.wto.org</a> >. See generally < <a href="http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm">http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm</a> >
1994	<i>United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa</i> , 17 June 1994, 33 I.L.M. 1328 [ <i>Desertification Convention</i> ].
1998	<i>Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters</i> , 25 June 1998, 2161 U.N.T.S. 447 (entered into force 30 October 2001).
2003	<i>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</i> (adopted 11 July 2003), arts. 12(2), 14(2), 15, 16, online: University of Minnesota < <a href="http://www1.umn.edu/humanrts/africa/protocol-women2003.html">http://www1.umn.edu/humanrts/africa/protocol-women2003.html</a> >.

## Annex II: Table of Declarations

Year	Declaration
1945	<i>Universal Declaration of Human Rights</i> , 10 December 1948, G.A. Res. 217 A, UN GAOR, 3d Sess., UN Doc. A/810 (1948), available online: UN < <a href="http://www.un.org/Overview/rights.html">http://www.un.org/Overview/rights.html</a> > [ <i>UDHR</i> ].
1970	<i>United Nations Declaration of Principles on International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations</i> , 24 October 1970, 9 I.L.M. 1292.
1972	<i>Stockholm Declaration on the Human Environment</i> , 16 June 1972, U.N. Doc. A/CONF.48/14/Rev.1, 11 I.L.M. 1461 (1972) [ <i>Stockholm Declaration</i> ].
1972	<i>Development and Environment</i> , GA Res. 2849(XXVI), UN GAOR, 26 <sup>th</sup> Sess., UN Doc. A/RES/2849 (1972).
1974	<i>Universal Declaration on the Eradication of Hunger and Malnutrition</i> , adopted on 16 November 1974 by the World Food Conference and endorsed by G.A. Res. 3348 (XXIX), UN GAOR, 1974.
1986	<i>Declaration on the Right to Development</i> , GA Res. 41/128, UN GAOR, 1986 Supp. No. 53, U.N. Doc. A/41/53, 186 (1986).
1989	<i>Protection of Global Climate for Present and Future Generations of Mankind</i> , GA Res. 43/53, UN GAOR, 43 <sup>rd</sup> Sess., Agenda Item 148, UN Doc. A/RES/43/53 (1989); 28 I.L.M. 1326.
1992	<i>Agenda 21, Report of the UNCED</i> , I (1992) UN Doc. A/CONF.151/26/Rev.1, (1992) 31 I.L.M. 874 [ <i>Agenda 21</i> ].
1992	<i>Rio Declaration on Environment and Development</i> , Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/6/Rev. 1 (1992), 31 I.L.M. 874 (1992) [ <i>Rio Declaration</i> ].
1993	<i>Vienna Declaration and Programme of Action</i> , adopted at the World Conference on Human Rights, 12 July 1993, UN Doc. A/CONF.157/23 [ <i>Vienna Declaration</i> ].
1994	<i>Tunis Declaration on Population and Development in Africa</i> , O.A.U. Doc. AHG/DECL.4(XXX) (1994).
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1998	<i>International Labour Organisation Declaration on Fundamental Principles and Rights at Work</i> , 19 June 1998, 37 I.L.M. 1237 (1998).
2000	<i>Millennium Declaration</i> , GA Res. 55/2, UN GAOR, 55 <sup>th</sup> Sess., UN Doc. A/Res/55/2 (2000).
2002	<i>Declaration of the World Food Summit</i> , adopted at the World Food Summit at the FAO Headquarters in Rome, June 2002, online: Food and Agriculture Organisation < <a href="http://www.fao.org">http://www.fao.org</a> >.
2002	<i>Johannesburg Declaration on Sustainable Development, in Report of the World Summit on Sustainable Development</i> , 26 August to 4 September 2002, UN Doc. A/CONF.199/20 [ <i>Johannesburg Declaration</i> ].
2002	<i>Johannesburg Plan of Implementation, Report of the World Summit on Sustainable Development</i> , 4 September 2002, UN Doc. A/CONF.199/20 [ <i>JPOI</i> ].
2002	<i>Monterrey Consensus on Financing for Development</i> , 22 March 2002, U.N. Doc. A/AC.257/32.
2002	International Law Association, 2002 <i>New Delhi Declaration on Principles of International Law Relating to Sustainable Development</i> , <i>ILA Resolution 3/2002 in ILA, Report of the Seventieth Conference</i> , New Delhi (London: ILA, 2002), Principle 2, available online: ILA < <a href="http://www.ila-hq.org">http://www.ila-hq.org</a> > [ <i>New Delhi Declaration</i> ].