



DRAFT WORKING PAPER

The Duty of States to Ensure Sustainable Use of Natural Resources: Recent Developments in International Law Related to Sustainable Development

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The Duty of States to Ensure Sustainable Use of Natural Resources: Recent Developments in International Law Related to Sustainable Development

By K. Bottruell, with D. French²

1. Definition of the Principle

Natural resources are generally conceptualized as commodities that are valuable in their relatively unmodified (natural) form. The primary activities associated with natural resources are extraction and purification (rather than creation). Mining, oil extraction, fishing and forestry are natural-resource industries. Air, water and land and their associated flora and fauna are increasingly referred to as natural resources, though activities associated with their use are more varied, and they often serve as components rather than commodities. Natural resources are encompassed in the term “biological diversity”, as described in the foreword of the 2004 *Principles and Guidelines for the Sustainable Use of Biodiversity*:

[U]nsustainable use of biological diversity [has] led to loss of species Overexploitation of resources such as timber in tropical forests and ocean fisheries is a major cause of loss of biodiversity in many ecosystems. Inappropriate methods of fishing, for instance, are a major factor in coral reef degradation. Hunting is a threat to some species, with a negative impact on traditional food sources. Catches of non target endangered species are also cause for concern. Some plant species are also in serious decline due to harvesting at an unsustainable level.³

Exhaustible natural resources and renewable natural resources are not mutually exclusive; living natural resources are susceptible to depletion, exhaustion and extinction.

The *duty to ensure sustainable use of natural resources* evolved from the well recognized objective that States cannot cause irreparable damage to the territories of other States. The negative obligation to not cause harm has increasingly been interpreted as a positive one, meaning “to ensure that shared natural resources are used in a sustainable manner”⁴. Sustainable use of natural resources is 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

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³ The Secretariat on the Convention on Biological Diversity's Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity at 1 (Montreal 2004).

⁴ As argued by Marie-Claire Cordonier Segger & Ashfaq Khalfan, in *Sustainable Development Law: Principles, Practices and Prospects* (Oxford University Press, 2004) at 110.

potential to meet the needs and aspirations of present and future generations”⁵. It is one of several principles that make up the legal conceptualization of sustainable development⁶. States have a sovereign right to exploit their natural resources, though this right is restricted by the principle that States cannot cause irreparable damage to the territories of other States, to areas outside of national jurisdiction or increasingly, to the global environment. The principle of permanent sovereignty over resources implies both ensuring that the whole people benefit from the exploitation of resources and the resulting national development as well as having due care for the environment which includes an obligation to prevent harm in areas beyond national jurisdiction and a responsibility to manage natural resources to ensure sustainable production and consumption⁷.

2. International Legal Meaning of the Principle

According to the International Law Association’s (ILA) *Sustainable Development Principles*⁸, the duty to ensure sustainable use of natural resources requires States to “pay due care to the environment and to make prudent use of the natural wealth and resources within its jurisdiction”. However, in the context of international law, this principle generally refers to natural resources that have some trans-boundary or international implications⁹. The extent to which a resource has international implications is not well defined. While international implications are clear in cases such as migratory species and high seas fish stocks, the degree to which a natural resource contained wholly within a State jurisdiction can be legally conceptualized as part of the global environment is less clear. International law is however gradually becoming interested in the management of domestic resources through the doctrine of common concern¹⁰.

Ratification of international treaties requires Signatory Parties to adopt domestic law that reflects the content of the agreements. In this sense, States acquire their duty to ensure sustainable use of domestic natural resources through voluntary signature of such agreements. For example, Signatory Parties to the 1972 *Convention for the Protection of World*

⁵ This definition, found in Article (2) of the Convention on Biological Diversity is the only treaty definition that refers specifically to sustainable use (as opposed to using the broader term of sustainable development).

⁶ In addition to the duty of States to ensure sustainable use of natural resources, principles of equity, common but differentiated responsibilities, the precautionary approach to human health, natural resources and ecosystems, public participation and access to information and justice, good governance and of integration and interrelationship, in particular relation to human rights and social, economic and environmental objectives are according to the ILA, the principles of sustainable development.

⁷ As discussed by N Schrijver in *Permanent Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge: Cambridge University Press 1997) 390-392

⁸ These principles were the result of ten years of consultation with international lawyers from all parts of the developing and industrialized world. They are discussed in detail in the Committee report of the New Delhi Conference (2002) *Legal Aspects of Sustainable Development*, and the duty to ensure sustainable use of natural resources is highlighted beginning on p.8.

⁹ As described in *Sustainable Development Law: Principles, Practices and Prospects* (Oxford University Press, 2004), by Marie-Claire Cordonier Segger & Ashfaq Khalfan at 110.

¹⁰ According to Dr. Duncan French in *International Law and Policy of Sustainable Development* (Manchester, Manchester University Press / New York, Juris Publishing: Melland Schill Studies in International Law, 2005) the concept of “common concern” was an attempt by the international community to justify international interest on matters without intervening in the domestic affairs of individual States. Common concern does not have territorial implications of *res communis* or the sovereign implications of common heritage.

Cultural and Natural Heritage explicitly recognized the duty of States to identify, protect, conserve, present and transmit natural heritage situated on its territory to future generations. Arguably, States that are not Party to such agreements do not have a domestic duty to ensure sustainable use of natural resources, though still have a legal duty to ensure “no harm” in trans-boundary and common areas according to the established principle in international law of good-neighborliness, as well as an established history of supporting jurisprudence.

Ensuring the sustainable use of natural resources in the context of inter-state rules and agreements is in part achieved through limitations on resource exploitation. Various treaties have provisional limitations on resource use and some State practice can be noted, but according to the ILA, this principle has received an inadequate practice in follow up¹¹. Where resources are renewable, management often invokes terms such as maximum sustainable yield and optimal use (thus allowing for conservation and inter-generational equity). The sustainable use of non-renewable resources is not as straightforward, as by necessity it implies the depletion of a limited resource. Unless use is completely halted, at some point the resource will cease to exist for the next generation. Sustainable use of a non-renewable resource therefore takes in to account the criticality of that resource, the availability of technologies for minimizing depletion, and the likelihood of substitutes being available. It requires that the rate of depletion of non-renewable resources should foreclose as few future options as possible¹². Examples of limitations include maximum allowable catch (in fisheries), maximum allowable cut (in forestry) and trade limitations imposed by the 1973 *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES).

Limitations of a State’s domestic use of resources are ultimately within the jurisdiction of the State to decide, though certain bilateral and multilateral agreements have legal instruments that enforce a State’s domestic adoption of the internationally-agreed upon limits. A treaty-backed international ban in the trade of a resource is a non-judiciary way of enforcing limits on non-signatory parties¹³. While non-signatories can still trade amongst themselves in the banned resource, it is often the case that a market no longer exists. According to the World Trade Organization (WTO), there are approximately 200 multilateral environmental agreements, of which about 20 include provisions that can affect trade¹⁴. Despite the fact that the WTO *General Agreement on Tariffs and Trade* (GATT) prohibits trade embargoes (Article XI(1)), in the case where a multilateral decision has been made to not trade in a certain resource, parties to the agreement may do so without being subject to GATT/WTO judicial processes. Furthermore, the principle of sustainable use has been used to halt resource-use activities and projects by actors from within and outside the State. Examples include blocking drastic deforestation plans and limiting logging licenses by local peoples¹⁵, examples which take into account limits on natural resource use, local community needs and participation as well as the State’s role in ensuring this.

¹¹ The report notes this in the context of that intergenerational equity of natural resources, as described in the Committee report of the New Delhi Conference (2002) *Legal Aspects of Sustainable Development* (p.9)

¹² World Commission on Environment and Development, *Our Common Future*, (Oxford University Press, 1987)

¹³ For example, *The Convention on International Trade in Endangered Species* (CITES).

¹⁴ The Commission on Trade and the Environment on: *Trade Rules, Environmental Agreements and Disputes*, as found at http://www.wto.org/english/tratop_e/envir_e/cte01_e.htm

¹⁵ *Minors Oposa v. Secretary of the Department of Environment and Natural Resources* (DENR), July 30, 1993 in 33 *International Legal Materials* (1994) p 173

While controlling rates of natural resource use is the central focus of sustainable use, it can also be interpreted to include the way in which use is undertaken. Natural resource use can incorporate ideas such as respect for local community needs, participatory rights and impact assessment. The duty of States to ensure sustainable use can thus be conceptualized as both a principle unto itself as well as an overriding principle that encompasses the other ILA *Principles of Sustainable Development*. The boundary between sustainable use and sustainable development is not always clear in theory or in practice¹⁶. In this vein, “sustainable allocation” has been tackled by the World Bank through their lending policies. Since 1989 they (and other multilateral development banks) have sought to integrate environmental assessment into their lending policies, creating an economic incentive to practice sustainable and equitable resource use. The assessments are used to ensure projects are “environmentally sound and sustainable”¹⁷. It is thus the responsibility of the State that the proposed project ensures resources are used sustainably in order to secure funding.

3. The Principle in International Treaty Law

The *duty of States to ensure sustainable use of natural resources* is a principle that has been invoked in a number of environmental, social and economic treaties. This responsibility arose from the affirmation of State sovereignty over resources and the evolution of corresponding limitations to this right. This co-evolution is reflected in international treaties.

The sovereign right to exploit natural resources is stated in many international treaties, and is a well established principle of international law. However, the following examples illustrate that it is not always a straightforward right, and has not evolved linearly. The 1971 *Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)* indicated that despite the inclusion of national wetland sites in its List of Wetlands, identified sites still lay under the “exclusive sovereign rights of the party in whose territory the wetland is situated”. The 1982 *United Nations Convention on the Law of the Sea* gives “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources”. The 1983 *International Tropical Timber Agreement* recalled “the sovereignty of producing members over their natural resources” in the preamble. The 1992 *Biodiversity Convention* reaffirmed that States have “sovereign rights ... over their natural resources”. However, the 1972 *Convention for the Protection of World Cultural and Natural Heritage* noted that:

[w]hilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage ... is situated, and without prejudice to property rights provided by national legislation, the States Parties to this convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to cooperate.

Clearly this limits the sovereignty of a State to exploit its resources through obligatory resource protection. While neither the *Biodiversity Convention* nor *Convention for the Protection of*

¹⁶ For a more complete discussion of allocation as it relates to sustainable use, see *International Law and Policy of Sustainable Development* (Manchester, Manchester University Press / New York, Juris Publishing: Melland Schill Studies in International Law, 2005)

¹⁷ The World Bank Operational Manual: Operational Policy 4.01 (1) on Environmental Assessment (revised 2004)

World Cultural and Natural Heritage impose concrete obligations¹⁸, specific limitations to State sovereignty have been codified in a number of international treaties. These take in to account transboundary, common and sovereign natural resource use.

The existence of transboundary resources is exemplified in the *Ramsar Convention*, which recognized that “waterfowl in their seasonal migrations may transcend frontiers and so should be recognized as an international resource”. The preamble confidently stated that “conservation [...] can be ensured by combining far-sighted national policies with coordinated international action”. The 1952 *International Plant Protection Convention* expressed the need to prevent the spread of plant pests and diseases across national boundaries. The 1963 *Nuclear Test Ban Treaty* prohibits nuclear tests if the explosion would cause radioactive debris “to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted”. The 1968 *African Conservation Convention* requires consultation and co-operation between parties where development plans are likely to affect the natural resources of any other State. The 1972 *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* recognized in its preamble that:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and 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.

The 1979 *Convention on the Conservation of Migratory Species of Wild Animals* notes in the preamble an awareness that “each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely”. It also recognizes that it is the duty of States to protect the migratory species of wild animals that live within or pass through their national jurisdictional boundaries. Similarly, the 1991 *Convention on Environmental Impact Assessment in a Transboundary Context* emphasized the duty of States to take preventive measures to protect the natural environment (an element of sustainable use). This convention requires Parties to prevent, reduce and control “significant adverse transboundary environmental impact”, which includes (but is not limited to) effects on flora, fauna, soil, air, water, climate and landscape. Accordingly, the concept of “new sovereignty” refers to the fact that States no longer have the freedom to simply act autonomously¹⁹.

Not only do States have an obligation not to cause harm to other territories, but also in areas not under State jurisdiction. Often referred to as the global commons, these areas include the sea, the atmosphere, outer space, and Antarctica. For example, concern for common resources was identified in the 1946 *International Convention for the Regulation of Whaling*, which recognized in its preamble “the interests of nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks”. Additionally, the 1972 *Convention for the Conservation of Antarctic Seals* recognized in the preamble Antarctic seals

¹⁸ Noted by Birnie and Boyle in *International Law & the Environment* (Oxford, Oxford University Press 2002) p 89

¹⁹ As discussed at the International Symposium “Sustainable Development and International Law”, described in a letter to the UN Economic and Social Council E/CN. 17/1994/16

as an important living resource, the need for effective conservation measures and that the seals “should not be depleted by over-exploitation, hence that any harvesting should be regulated as to not exceed maximum sustainable yield”. As is the case with transboundary natural resource issues, specific limitations have also been imposed on common resources. The Annex quantifies the limitations, and Article 2(2) requires contracting parties to adopt national laws necessary to implement the convention. The Schedule of the 1946 *International Convention for the Regulation of Whaling* categorizes whale stocks as Sustained Management Stock, Initial Management Stock and Protection Stock based on Maximum Sustainable Yield calculations. Catch limits are set corresponding to these categories²⁰. There are no means to enforce Schedule, and thus it is the duty of “each Contracting Government [to] take appropriate measures to ensure the application of the provisions of this Convention and the punishment of infractions against the said provisions in operations carried out by persons or by vessels under its jurisdiction”(Article IX). The 1991 *Regional Convention on fisheries cooperation among African States bordering the Atlantic Ocean* proposed “to take up the challenge of food self-sufficiency through the rational utilization of fishery resources” (Article 2b), and set about doing this operationally through assessment of species, monitoring of fishing vessels and enhancement of fishery production. Similarly, the 2005 European fisheries deal limits catch through time limitations and limits on mesh size²¹. The 1987 *Montreal Protocol on Substances that Deplete the Ozone Layer* addressed a novel situation of indirect natural resource use. Use of the atmosphere occurs as a byproduct to human production and consumption; unlike situations of fisheries and forestry where there are limits to how much is taken; in this case it is the inputs are limited. The *Convention* is thought to have been highly effective in drastically reducing CFC emissions. Similarly, the 1992 *Convention of the Protection and Use of Transboundary Watercourses and International Lakes* addresses the issue of water pollution. Because pollution of air and water can ultimately render them unavailable for use by future generations the pollution of these resources can be viewed as a type of unsustainable use.

In addition to transboundary and common resources, international treaties have also made broader reference to the protection and sustainable use of the environment. The global environment has increasingly been recognized as an integrated whole; accordingly activities conducted within the boundaries of State jurisdiction can be considered of global concern²². This is recognized in the 1992 *UN Framework Convention on Climate Change*, the 1992 *Convention on Biological Diversity* and the 1994 *United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*. These conventions all involve domestic limits to the utilization of land, water and other natural resources, and set out a framework for global environmental responsibilities, separate from trans-boundary and common spaces²³. Earlier treaties focused on the voluntary limits to State resource exploitation. Article (4) of the 1972 *Convention for the Protection of World Cultural and Natural Heritage* stated that:

²⁰ Commercial catch is banned for all species except for minke whales using the cold grenade harpoon, and subsistence catch can only be made by aboriginal peoples

²¹ Letter from the Secretary of State for Environment, Food and Rural Affairs (Rt Hon Margaret Beckett, MP) to the Chairman of the Committee of Agriculture and Fisheries Council: 21-22 December 2004

²² As noted in the commentary on the *Draft International Covenant on Environment and Development, Third Edition* (IUCN Environmental Policy and Law Paper No. 31 Rev. 2, 2004): ‘All recent developments in international environmental law recognize that the global environment is an integrated whole’ and ‘The obligation in this provision to protect and preserve is based on the global environment being a “common concern of humanity”(Article 3 of the Draft Covenant), and thus not a matter solely within the domestic jurisdiction of States’ (p. 51: Commentary on Article 11)

²³ According to Birnie P. and A.Boyle *International Law & the Environment* Oxford University Press (2002) p 97

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage [...] situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Though not in force, the 1985 *ASEAN Agreement on the Conservation of Nature and Natural Resources* recognized the duty of States “to develop their forestry management plans . . . with a view to maintaining potential for optimum sustainable yield and avoiding depletion of resource capital” and gave the Contracting Parties the responsibility of taking steps to ensure the “sustainable utilization of harvested natural resources under their jurisdiction . . . with scientific principles and with a view to attaining the goal of sustainable development” in Article 1(1). Furthermore, several international agreements include trade measures against non-signatories, providing a tool to force adjustment of State policies and clearly infringing on State sovereignty in the name of sustainable use and conservation.²⁴ For example, CITES recognized in the preamble that wild fauna and flora “must be protected for this and the generations to come”, and noted the growing value of these resources from economic and other standpoints. In this treaty, operationally protecting wild flora and fauna means identifying (by the “Scientific Authority of the State”) and restricting international trade (by the “Management Authority of the State”) of certain species²⁵.

Treaties specifically using the term “sustainable” with reference to natural resources have increasingly appeared since the term was first coined in the late 1980’s. For example, according to the preamble to the 1994 *Marrakesh Agreement Establishing the World Trade Organization*, rules of trade should be “in accordance with the objective of sustainable development”, and should “protect and preserve the environment”. Article XX of the 1994 *General Agreement on Tariffs and Trade* emphasized that the agreement was not to prevent adoption of measures necessary to “protect human, animal or plant life or health”, or “relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption”. In the 1995 *Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin*, the value of the Basin was recognized in its natural resources (preamble), and the parties agreed to protect “natural resources . . . from pollution or other harmful effects resulting from any development plans” (Article 3). As a result of the agreement, a Commission was set up to monitor and limit the uses of the Basin. The 1997 *Convention on the Law of the Non-navigational Uses of International Watercourses* expressed the conviction that “a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations”. It also emphasizes the responsibility of States to “take all appropriate measures to prevent the causing of significant harm to other

²⁴ According to the WTO, the *Montreal Protocol on Substances that Deplete the Ozone Layer*, the *Basel Convention*, and the *Convention on International Trade in Endangered Species* all require countries that are parties to the agreements to apply more restrictive trade provisions against non-parties than to fellow-signatories.

²⁵ Articles III, IV and V of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*.

watercourse States” (Article 7). The Convention was amended in its final stages to take into account the principle of sustainable utilization.

Multilateral treaties depend on the ratification process of a State’s domestic adoption of the agreement. For example, *The European Community Treaty* established in Article 174 (1) a directive that Community policy shall contribute to the objective of prudent and rational utilization of natural resources²⁶, which was in turn reflected in the UK Government’s sustainable development plan²⁷. It is the violation of this domestic law which forms the basis for arbitration and enforcement of the international treaties.

4. The Principle in International Case Law and Acts of IGOs

The legal question of sovereignty in the context of sustainable use first emerged in the late 19th century with the 1892 *Bebring Sea Fur Seals Arbitration*. The U.S. adopted laws to regulate the fur seal fishery, and seized non-compliant British vessels on the high seas. One of the U.S.’s arguments was that they had the right to protect fur seals in the interest of conservation, though this right was denied to exist by the British. An interim agreement between the two governments prohibited the seal fishery for a year “for the preservation of the seal species”²⁸. The two countries entered into a treaty through an arbitral tribunal convened in Paris, which found that the U.S. did not have a right to the seals on the high seas, but established regulations for the preservation of the fur seal²⁹.

A second case several decades later, marks the modern legal origin of the duty to not cause harm to other States. In the 1937 *Trail Smelter* arbitration³⁰ the United States was awarded damages because a Canadian smelter caused air pollution damage. The judgement of this case stated that “no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another”. Similarly, the 1947 *Corfu Channel* International Court of Justice (ICJ) case³¹ found Albania responsible for damage to British warships due to a failure to warn them of mines, stating that it was “every state’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states”. One of the first examples of a State taking responsibility for the maintenance of its natural resources was a 1948 law passed by the Icelandic Parliament, establishing a fisheries conservation zone due to concerns about the “progressive impoverishment of fishing grounds”³². In an ICJ judgment relating to this law, it was noted that rights to fisheries were subject to “considerations for the conservation of the resource”³³. The ICJ judgments relating to the Icelandic cases³⁴ support the existence of a

²⁶ Consolidated version of the treaty establishing the European Community, incorporating the amendments made by the Treaty of Nice, signed on 26 February 2001. Official Journal of the European Communities 325/1, 24 December 2002.

²⁷ *A Better Quality of Life - A Strategy for Sustainable Development for the UK* - CM 4345, May 1999

²⁸ As quoted from *North American Commercial CO v. U.S.* 171 U.S. 110 Case Number: 431 Decided: 05/31/1898 United States Supreme Court

²⁹ See Andrew Wishart *The Bebring Sea Question, the Arbitration Treaty, and the Award*. Publisher Edinb. & Co. (1893)

³⁰ *Trail Smelter Arbitration*, 33 AJIL (1939),

³¹ *Corfu Channel Case*, ICJ Report (1949),

³² *Fisheries Jurisdiction Case (Federal Republic of Germany v Iceland)* ICJ Report (1974) No. 56

p 11/182 Para 20

³³ *Fisheries Jurisdiction Case (Federal Republic of Germany v Iceland)* ICJ Report (1974) No. 56

p 41 / 213

³⁴ *Fisheries Jurisdiction Case (UK and Northern Ireland v Iceland)* ICJ Report (1974) No. 55, *Fisheries Jurisdiction Case (Federal Republic of Germany v Iceland)* ICJ Report (1974) No. 56

customary obligation to co-operate in the conservation and sustainable use of common resources on the high seas³⁵.

Because of the strong compliance and arbitration provisions of the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS), cases relating to this convention form a significant portion of the jurisprudence relating to sustainable natural resource use. Disputes relating to the convention are settled through four alternative means: the International Tribunal for the Law of the Sea (ITLOS), the ICJ, an arbitral tribunal (in accordance with Annex VII) and a special arbitral tribunal (in accordance with Annex VIII). For example, the 1999 *Southern Bluefin Tuna Cases* (*New Zealand v. Japan; Australia v. Japan*), *Provisional Measures* dispute involved a unilateral implementation unilaterally of an experimental fishing programme by Japan that exceeded the agreed upon catch limits. The Tribunal found that Article 64 of the convention gives states a *duty* to cooperate in “conservation and promoting the objective of optimum utilization of such species throughout the region, *both within and beyond* the exclusive economic zone the protection of the fisheries stock”. The Tribunal clearly indicated it was a State’s duty to ensure sustainable use of natural resources. Furthermore, it was stated that Parties should act with “prudence and caution to ensure effective conservation measures are taken” and that a “reduction in the catches of all those concerned in the fishery in the immediate short term would assist the stock to recover over the medium to long term”³⁶. The decision to request an interim halt to the experimental fishing programme hinged upon the fact that the Bluefin tuna stock was severely depleted and that Japan was not adhering to the convention, which gives States a duty to cooperate in the conservation and management of marine resources (which is interpreted to mean sustainable use). In a case concerning swordfish stocks in the South-Eastern Pacific Ocean, the European Community requested the establishment of a WTO panel against Chile, citing trade infringements³⁷. Under domestic conservation legislation, Chile did not allow vessels to use its ports to land swordfish for warehousing or to transship them onto other vessels. The European Community alleged that this was in contravention of GATT Article XI. Chile launched a counter through the ITLOS, alleging that member States of the European Community had not complied with their treaty obligations to ensure conservation of swordfish in high seas fisheries under Article 64 of UNCLOS. The order, which established a special chamber for dispute resolution, described Chile’s “right and duty, as a coastal State, to prescribe measures within its national jurisdiction for the conservation of swordfish”³⁸. The dispute was settled with an agreement re-establishing a bilateral technical commission, giving port access for fish caught under a new scientific fisheries program, and the creating a multilateral conservation forum for the Southeast Pacific³⁹. This agreement indicates that the negotiating States recognized their duty to ensure sustainable use of the swordfish stocks.

The scope of a State’s right to ensure sustainable use of natural resources was examined in a series of WTO cases involving fisheries. A dispute citing GATT contraventions involving

³⁵ ICJ Reports (1974), 3 and 175

³⁶ Order of 27 August 1999

³⁷ WTO Case DS193

³⁸Case Concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean

³⁹ The European Commission: Fisheries and Maritime Commission EU and Chile reach an amicable settlement to end WTO/ ITLOS swordfish dispute January 25, 2001.

tuna and dolphins⁴⁰ found that the right (as declared in the *Marrakesh Agreement*) “to take trade measures necessary to protect ... conservation of exhaustible natural resources” (Article XX) did not accord the right to impose trade embargoes for such purposes (Article XI). It was seen as an attempt to impose a domestic environmental protection goal on another country by means of trade restriction; Article XX was not interpreted to permit the protection of animals outside the territory of the state adopting the relevant measure. A similar case was later brought to the WTO dispute settlement panel regarding the 1998 *US Import Prohibition of Certain Shrimp Products*⁴¹. The initial panel found, as in the tuna case, that trade embargoes were not permissible going as far as to say that claims under Article XX would only be permissible if they “do not undermine the multilateral trading system”. However, the Appellate Body disagreed and gave one the strongest pieces of legal jurisprudence yet, stating:

We have *not* decided that the sovereign nations that are Members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles. Clearly, they can and should. And we have *not* decided that sovereign states should not act together bilaterally, plurilaterally or multilaterally, either within the WTO or in other international fora, to protect endangered species or to otherwise protect the environment. Clearly, they should and do.

Because sea turtles are afforded protection under CITES, the trade embargo was recognized as a legitimate exception to the WTO’s trade rules in order to protect, among other things, endangered species and exhaustible resources. The convention sets out limits on trade of flora and fauna identified in its Annexes. The specific limits on trade continue to be established during Conferences of Parties; for example the 13th meeting in 2004 wholly banned the international trade of great apes and established export quotas on the black rhinoceros⁴². It is the signatory State’s responsibility to transcribe these limitations into domestic law and the State’s responsibility to prosecute offenders⁴³. Prosecution has resulted in community service, probation, fines in the order of tens of thousands of US Dollars, and jail terms for offenders⁴⁴. Whales are currently listed in the CITES Annexes and thus the enforcement of trade is dealt with as described above. The International Whaling Commission (IWC) receives annual reports from signatories in the Infractions Subcommittee, though these are voluntary given the differentiating views of Parties as to whether this is within the competence of the IWC. Despite this, domestic violations of the *International Convention for the Regulation of Whaling* have resulted in unilateral import bans on certain products, as well as calling for boycotts of offending States’ tourist attractions and

⁴⁰ GATT (1991) Restrictions on Imports of Tuna, 39 B.I.S.D. 155, 204 and GATT (1994) United States – Restrictions on Imports of Tuna, WT/DS29/R/GATT

⁴¹ WTO Appellate Body (1998) WT/DS58/AB/R

⁴² Resolutions Conf. 13.4: Conservation of and trade in great apes and Conf. 13.5: Establishment of export quotas for black rhinoceros hunting trophies, Thirteenth meeting of the Conference of the Parties Bangkok (Thailand), 2-14 October 2004

⁴³ Recent cases enforced in Canada under domestically transcribe CITES restrictions include seizure of more than 260 black bear gall bladders (court procedures on-going) and investigation in illegal trade of orchids where the importer was fined \$10 000 and contributed \$5 000 to support a non-profit group (according to *Report of CITES activities by Canada since the 49th meeting of the standing committee*(March 2004) SC50 Doc. 35.5 Annex 2

⁴⁴ As described in the *Report of CITES activities by the United States since the 46th Meeting of the Standing Committee* (March 2003) SC49 Doc. 24.5 Annex 1 and the *Report of CITES Activities by Canada since the 49th Meeting of the Standing Committee* (March 2004) SC50 Doc. 35.5 Annex 2

other economic sanctions⁴⁵. Embargoes have been threatened against States no longer Party to the Convention⁴⁶.

The *Commission on Sustainable Development* has a proxy role in initiating the duty sustainable resource use by States. One of the roles of the commission is to assess the status of National Sustainable Development Strategies⁴⁷, which reflects the principles contained in the 1992 *Rio Declaration on Environment and Development*⁴⁸. Reference to resource use in the assessments is implicit through Principle 2 of the Rio Declaration, which pertains to resource use. The bi-annual assessments are a soft tool used to encourage countries that have not yet developed a national strategy to do so.

In the past few decades, the principle of good neighbourliness in international law to not cause harm has increasingly been interpreted to refer to the (global) environment. In a judgment referring to the 1995 *Request for an Examination of the Situation*, it was noted that since Rio there had been a trend to “establish a comprehensive set of norms to protect the global environment” and that there was international support for inter-generational equity⁴⁹. The judgment accepted that international law requires States not to cause or permit serious damage to areas outside their jurisdiction. A further ICJ ruling, the 1994 *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*⁵⁰, noted that there was a general obligation within the body of international law for States to “ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control”. The 1997 *Case Concerning Gabčíkovo-Nagymaros Dam* was where the ICJ set a precedent when it referred to, for the first time in such a judgment to the “need to reconcile economic development with the protection of the environment [which] is aptly expressed in the concept of sustainable development”⁵¹. In the Philippines Supreme Court plaintiffs seeking to challenge the grant of timber licenses were held to have standing on behalf of themselves and future generations⁵². The petitioners in this case were minors represented by their parents and a Philippine NGO. However, this precedent was not followed in comparable proceedings before the supreme court of Bangladesh⁵³.

As discussed at the Johannesburg Summit, there is increasing concern about the enforcement and compliance associated with environmental agreements. Both the Capacity Development Initiative of UNDP and the Global Environmental Facility have concluded that the domestic capacity to enforce laws and policies needs to be strengthened. It is believed, for example, that of the 154 parties to the CITES, 76 do not meet one or more of

⁴⁵ As described in the *Norway-IWC Dispute on Whaling* case study, contained in the Trade & Environment Database maintained by the American University in Washington

⁴⁶ For example, in 1993 the US threatened trade sanctions against Canada (who withdrew from the IWC in 1982 when the commercial whaling moratorium was imposed).

⁴⁷ As per General Assembly resolution *Institutional Arrangements to follow up on the United Nations Conference on Environment and Development* A/Res/47/191, 29 January 1993

⁴⁸ Resolution Adopted By The General (A/S-19/29) S/19-2. Programme for the Further Implementation of Agenda 21, paras. 107-110

⁴⁹ ICJ Order *Request for an Examination of the Situation with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case* 22 September 1995

⁵⁰ ICJ Report (1996) to the UN General Assembly

⁵¹ ICJ Report (1997) at para. 140

⁵² *Minors Oposa v. Philippine Secretary of the Department of Environment and Natural Resources*,

33 International Law Materials (1994) p 173

⁵³ *Farooque v. Government of Bangladesh* (1997) 49 DLR (AD) 1

the requirements for implementation⁵⁴. Furthermore, many countries continue to be nervous about sovereignty infringements⁵⁵.

5. The Principle in ‘Soft Law’

The foundations of soft law pertaining to sustainable use of natural resources lie in a 1962 General Assembly resolution, Principle 21 of the *Stockholm Declaration* and Principle 2 of the *Rio Declaration*. These principles have been echoed in many other soft law documents and have formed much of the basis for the aforementioned treaty law.

A 1952 General Assembly Resolution *Integrated Economic Development and Commercial Agreements* set the tone for what was to come, emphasizing the right of underdeveloped countries to determine the use of their natural resources by the requirement ‘that they *must* utilize such resources in order to be in a better position to further the realization of their plans of economic development in accordance with their national interests’⁵⁶. A decade later, this was followed by the more generally applicable 1962 UN General Assembly resolution *Permanent Sovereignty over Natural Resources*⁵⁷, which stated that the sovereign right to exploit resources must be undertaken “with the interest of national development and the well-being of the people of the state concerned” and also to “be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities”, which can now be interpreted as a limitation based on current environmental concerns. Similarly, the 1974 *Decree No. 1 for the Protection of the Natural Resources of Namibia* explicitly acknowledged the responsibility of the UN Council for Namibia to ensure that the “natural resources are not exploited to the detriment of Namibia [and] . . . its people”.

The 1972 *Stockholm Declaration* (Principle 21) affirmed the sovereign right to exploit resources while at the same time limited it by stating that no harm is to be caused to other States or areas beyond the limits of national jurisdiction. The 1992 *Rio Declaration* (Principle 2) reaffirmed this, adding that this right was a function of State environmental and development policies. The *Rio Declaration* extends the reach of international law by requiring States to enact environmental legislation, to apply the precautionary approach “widely” and to use environmental impact assessments as a “national instrument”. Throughout the accompanying Agenda 21, a State’s management of its own domestic environment is made a matter of international concern, emphasizing the “duty of States” aspect of the principle of ensuring sustainable use. Dr. Ximena Fuentes, an expert in International Environmental Law and Co-Rapporteur of the Committee on Sustainable Development, commented that

⁵⁴ According to Background Paper 1 *Co-Chair final conference statement: Sixth International Conference on Environmental Compliance and Enforcement* (2002) submitted by the International Network for Environmental Compliance and Enforcement, at the United Nations World Summit on Sustainable Development

⁵⁵ As demonstrated by the *Montreal Protocol* and sulfur regimes, discussed at the International Symposium “Sustainable Development and International Law”, and described in a letter to the UN Economic and Social Council E/CN.17/1994/16, para. 21

⁵⁶ 523 (VI) 12 January 1952 *Integrated Economic Development and Commercial Agreements*, 6th session (emphasis added)

⁵⁷ General Assembly resolution 1803 (XVII) of 14 December 1962, *Permanent Sovereignty over Natural Resources*

Principle 21 and Principle 2 have been read by many as establishing a rule that prohibits the infliction of material damage on all sorts of natural resources⁵⁸.

Building on the principle of “no harm” is that of sustainable use. Non-binding documents are more explicit than their binding counterparts in affirming the duty of a State to ensure sustainable use of natural resources. This duty of States is clearly iterated in 1974 *The Charter of Economic Rights and Duties of States*⁵⁹, both in the preamble (desiring to create conditions for the protection, preservation and enhancement of the environment) and in Chapter III (Article 30), where it is stated that “the protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States”. It gives further responsibility for States to establish national environment and development policies to conform to this duty. The 1982 *World Charter for Nature* called for land, atmospheric and marine resources to be managed to achieve optimum sustainable productivity and for all areas of the earth to be subjected to the principles of conservation. This goal was re-iterated in the 1989 *Amazon Declaration*, where States Party to the Amazonian Treaty stated:

Conscious of ... the necessity of using this potential [i.e., of the Amazon region] to promote the economic and social development of our peoples, we reiterate that our Amazon heritage must be preserved through the rational use of the resources of the region, so that present and future generations may benefit from this legacy of nature . . . We reaffirm the sovereign right of each country to freely manage its natural resources, bearing in mind the need for promoting the economic and social development of its people...⁶⁰

The 1992 *Statement on Forest Principles* re-affirmed Principle 21 of the *Stockholm Declaration*, and further stated that forest resources and forest lands should be “sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations”⁶¹. The 2001 *Doha Declaration*⁶² upheld the WTO’s commitment to sustainable development and incorporated a softer version of the shrimp-turtle decision, stating that “no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate”, and that “promotion of sustainable development can and must be mutually supportive”⁶³. Though this is not an explicit reference to sustainable use of natural resources, it does encompass

⁵⁸ Fuentes, X. (2002) *International Law-Making in the Field of Sustainable Development: The Unequal Competition Between Development and the Environment*. International Environmental Agreements : Politics, Law and Economics. Dordrecht: 2002. Vol. 2, Iss. 2; p. 109

⁵⁹ GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50

⁶⁰ Adopted in Manaus (Brazil) on 6 May 1989 by the Presidents of the States Parties to the Treaty for Amazon Co-operation (Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Surinam, and Venezuela). Reprinted in International Legal Materials, No. 28 (1989), p. 1303

⁶¹ Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests (1992) A/CONF.151/26 (Vol. III), authors emphasis added on “should”.

⁶² The Fourth WTO Ministerial Conference was held in Doha, Qatar (9-14 November 2001). The Ministerial Declaration (WT/MIN(01)/DEC/1) provided the mandate for negotiations on a number of subjects, and issues concerning the implementation of present agreements

⁶³ This is subject to the requirement that they are not applied in a manner that would cause arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements. The US lost the shrimp-turtle decision despite the acceptance of the action under Article XX because it applied trade sanctions discriminatorily on Mexico by giving other countries money and longer time periods to comply.

natural resource use, and further notes that it must be mutually supportive, giving legitimacy to the role the State must play in supporting sustainable use (as a component of sustainable development).

Ensuring environmental sustainability is one of eight *United Nations Millennium Development Goals*. One of the steps towards this goal was identified as the integration of the principles of sustainable development into country policies and programmes, thus giving States the responsibility of achieving this goal. Reversing the loss of environmental resources is specifically mentioned as is improving access to safe drinking water, both of which are references to natural resources. In the Secretary General's report on the goals⁶⁴, he notes that

[e]nvironmental sustainability is everybody's challenge. In the rich countries, the byproducts of industrial and agribusiness production poison soils and waterways. In the developing countries, massive deforestation, harmful farming practices and uncontrolled urbanization are major causes of environmental degradation.

The use of the word "everybody" is taken to refer to "every country", given that the next two lines refer to country examples.

The 2002 World Summit on Sustainable Development produced both the *Johannesburg Declaration* and an extensive implementation plan. According to the plan, the management of the natural resources base in a sustainable and integrated manner is essential to achieving sustainable development⁶⁵. Continued implementation and enhancement of existing conventions relating to sustainable use is stressed throughout. It is noted that in order to reverse the current trend of natural resource degradation, it is "necessary to implement strategies which should include targets adopted at the national and, where appropriate, regional levels to protect ecosystems and to achieve integrated management of land, water and living resources". It includes specific natural resource use targets such as in the case of fisheries to "[m]aintain or restore stocks to levels that can produce the maximum sustainable yield with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015"⁶⁶. Throughout the Johannesburg documents, there are references to the importance of sustainable development and both the implicit and explicit role States have in achieving it. For example, in a background report to the Summit, the Commonwealth submitted a paper that prioritized "reversing the current trends in the loss of environmental resources" and noted that "strong national capacities, the implementation of national strategies for sustainable development, and enactment of multilateral environmental agreements, are all critical to addressing climate change, desertification, biodiversity, biosafety and forest loss, and impacts on oceans and fish resources"⁶⁷.

The most significant piece of soft law supporting the duty in question is the 2002 *ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development*. Article 1.2 describes the following:

⁶⁴ *We the Peoples: The Role of the United Nations in the 21st Century* (2000). Chapter 4, p 55

⁶⁵ IV. Protecting and managing the natural resource base of economic and social development, Article 24

⁶⁶ IV. Protecting and managing the natural resource base of economic and social development 31(a)

⁶⁷ Background paper No. 6 *Sustainable development at the heart of the Commonwealth* (2002)

States are under a duty to manage natural resources, including natural resources within their own territory or jurisdiction, in a rational, sustainable and safe way so as to contribute to the development of their peoples, with particular regard for the rights of indigenous peoples, and to the conservation and sustainable use of natural resources and the protection of the environment, including ecosystems. States must take into account the needs of future generations in determining the rate of use of natural resources. All relevant actors (including States, industrial concerns and other components of civil society) are under a duty to avoid wasteful use of natural resources and promote waste minimization policies⁶⁸.

This declaration goes farther than any other document to explicitly identify the duty in question to exist with the boundaries of a State, and outside the purview of international treaties. The 2004 *Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity*⁶⁹ further strengthens the international status of sustainable use, offering a practical guide to its operationalisation and implementation by States.

6. The Status of the ‘Sustainable Use of Natural Resources’ Norm

The status of a State’s duty to ensure sustainable use of natural resources in international law has been discussed by several authors. Birnie and Boyle (2002) argue that in certain contexts the management of a State’s own domestic environment is a matter of common concern, independent of any trans-boundary effects⁷⁰. They indicate that common concern refers to neither common property nor common heritage, and that its impact has been to limit the sovereignty of States to fall within the confines of global responsibilities. However, they do note that at present it largely takes effect through individual treaty contexts rather than a rule of custom. A second author, French, argues that the notion of sustainable development relies on the organizational ability of the State to manage, change and promote a particular normative view of public policy. Sustainable use of natural resources therefore is, as a principle of sustainable development, reliant on the State. He describes the role of the State as an important actor on the international stage⁷¹. The State is seen to be the implementor of international treaties and thus any treaty that demands the sustainable use of natural resources by necessity gives that duty to signatory States to implement domestically. It cannot necessarily be assumed that similar obligations apply to areas which fall wholly within the boundaries of national sovereignty such as tropical forests, were the adoption of binding commitments has been more difficult⁷². French suggests that there has been a breakdown of

⁶⁸ United Nations General Assembly, *Letter dated 6 August 2002 from the Permanent Representative of Bangladesh to the United Nations and the Chargé d'affaires a.i. of the Permanent Mission of the Netherlands to the United Nations* addressed to the Secretary-General of the United Nations 31 August 2002 A/57/329 p. 4

⁶⁹ Convention on Biological Diversity Conference of the Parties, Decision VII/12 (2004) annex II

⁷⁰ Birnie P. and A.Boyle *International Law & the Environment* Oxford University Press (2002) p. 97

⁷¹ French, D.A. (2002). The Role of the State and International Organizations in Reconciling Sustainable Development and Globalization. *International Environmental Agreements : Politics, Law and Economics*. Dordrecht: . Vol. 2, Iss. 2; p. 135

⁷² Birnie P. and A.Boyle *International Law & the Environment* Oxford University Press (2002) p. 89

“artificial notions of sovereignty” through globalization⁷³. This has certainly also been seen through the increasing limitations to State sovereignty through the conceptualization of natural resources as part of the global concept of environment.

The above analysis of international treaties indicates that the duty of a State to ensure sustainable use of natural resources is a well established treaty norm. The treaties are often built on and supported by explicit references to this duty in soft law documents such as declarations. International court decisions have provided some supporting jurisprudence, though not to the extent that it is clear where the duty of the State lies. Though it has been suggested by some that the duty of States to ensure sustainable use of natural resources are obligations *erga omnes*, it still an emergent principle within the corpus of customary international law. If the duty of States to ensure sustainable use of natural resources continues to be expressed at international conferences, and participating states act in accordance with it, then it may become an obligation under customary law.

There are two fundamental issues that have emerged from the above examination of the duty of States to ensure sustainable use of natural resources. The first is differentiating between “no harm” and “sustainable use”. Whether unsustainable use of natural resources is equivalent to harming natural resources has not yet become clear within international law, though harm to future generations increasingly links them. A second issue is the extent to which this duty refers to resources within State jurisdiction. While the term “global commons” is increasingly being interpreted to refer to the global environment (which includes areas within the jurisdiction of a State), only the duty to not cause harm to trans-boundary or common resources outside of State jurisdiction is established in international law. The overall development of international environmental law suggests States are willing to accept constraints on resource exploitation⁷⁴. The continuing development of the sustainable use principle suggests that it is *lex in statu nascendi*.

⁷³ The Role of the State and International Organizations in Reconciling Sustainable Development and Globalization
Duncan A. French. International Environmental Agreements : Politics, Law and Economics. Dordrecht: 2002. Vol. 2, Iss. 2; p. 140

⁷⁴ As noted in the commentary on the *Draft International Covenant on Environment and Development, Third Edition* (IUCN Environmental Policy and Law Paper No. 31 Rev. 2, 2004)(p. 51: Commentary on Article 11).

Appendix – Treaties

- 1952 **International Plant Protection Convention**
The treaty relates to plant health, and is designed to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control.
Available: <http://www.fao.org/legal/treaties/004t-e.htm>
- 1946 **International Convention for the Regulation of Whaling**
The convention's objectives are protection of all whale species from overhunting, establishment of a system of international regulation for the whale fisheries to ensure proper conservation and development of whale stocks, and safeguarding for future generations the great natural resources represented by whale stocks.
Available: <http://www.ivcoffice.org/commission/convention.htm>
- 1963 **Nuclear Test Ban Treaty**
The Treaty bans nuclear tests in the atmosphere, underwater and in space. However, neither France nor China, both nuclear weapon States, signed.
Available: http://www.ucsusa.org/documents/limited_test_ban_treaty.pdf
- 1968 **African Conservation Convention**
The convention encourages individual and joint action for the conservation, utilization and development of soil, water, flora and fauna for the present and future welfare of mankind, from an economic, nutritional, scientific, educational, cultural and aesthetic point of view.
Available: http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Convention_Nature%20&%20Natural_Resources.pdf
- 1971 **Convention on Wetlands of International Importance especially as Waterfowl Habitat**
The convention aims to stem the progressive encroachment on and loss of wetlands and recognizes the fundamental ecological functions of wetlands and their economic, cultural, scientific and recreational value.
Available: http://www.ramsar.org/key_conv_e.htm
- 1972 **Convention for the Protection of World Cultural and Natural Heritage**
The convention establishes a system of protection for cultural and natural heritage of “outstanding universal value”. Parties designate cultural and natural heritage within their territories and to take measures for its protection, preservation and presentation.
Available: http://whc.unesco.org/world_be.htm
- 1972 **Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter**
The convention operationally controls pollution of the sea by dumping, and to encourage regional agreements supplementary to the Convention.
Available: <http://www.londonconvention.org/main.htm>
- 1972 **Convention for the Conservation of Antarctic Seals**
The convention aims to promote and achieve the protection, scientific study and rational use of Antarctic seals, and to maintain a balance within the ecological system of the Antarctic.
Available: <http://www.oceanlaw.net/texts/seals.htm>
- 1973 **Convention on International Trade in Endangered Species of Wild Fauna and Flora**
The convention seeks to control the trade in species of wild animals and plants that are, or may be, threatened with extinction as a result of international trade. An import/export permit system regulates trade in species which are listed in one of three Appendices. Species are listed in three Appendices according to how threatened they are.
Available: <http://www.cites.org/eng/disc/text.shtml>
- 1979 **Convention on the Conservation of Migratory Species of Wild Animals**

- Aims to conserve terrestrial, marine and avian migratory species throughout their range and is concerned with the conservation of wildlife and habitats on a global scale.
Available: http://www.cms.int/documents/convtxt/cms_convtxt.htm
- 1982 **United Nations Convention on the Law of the Sea**
 The convention applies to virtually all ocean resources, including fisheries, marine mammals and other marine living species. It establishes a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.
Available: http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm
- 1983 **International Tropical Timber Agreement**
 Provides a framework for cooperation between tropical timber producers and consumers and encourages the development of national policies aimed at sustainable utilization and conservation of tropical forests and their genetic resources.
Available: <http://sedac.ciesin.org/entri/texts/tropical.timber.1983.html>
- 1985 **ASEAN Agreement on the Conservation of Nature and Natural Resources**
 The agreement promotes joint and individual State action for the conservation and management of the natural resources of the Southeast Asian Region. It incorporates in its appendix the ASEAN Endangered and Threatened Species Lists. Only three of the original signatories (Indonesia, Philippines, and Thailand) have ratified the agreement and thus is not yet in force.
Available: <http://www.aseansec.org/1490.htm>
- 1987 **Montreal Protocol on Substances that Deplete the Ozone Layer**
 The Montreal Protocol stipulates that the production and consumption of compounds that deplete ozone in the stratosphere--chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform--were to be phased out by 2000 (2005 for methyl chloroform).
Available: <http://www.unep.org/ozone/Montreal-Protocol/Montreal-Protocol2000.shtml>
- 1991 **Convention on Environmental Impact Assessment in a Transboundary Context**
 Obligates Parties to assess the environmental impact of certain activities at an early stage of planning, lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.
Available: <http://www.unece.org/env/eia/eia.htm>
- 1991 **Regional Convention on fisheries cooperation among African States bordering the Atlantic Ocean**
 The main objectives of the Convention are to promote cooperation in fisheries conservation, management and development in the region, including the monitoring, surveillance and control of fishing vessels, food self-sufficiency through the rational utilization of fishery resources; to stimulate the national economic sectors through the direct and secondary effects resulting from fishery resources exploitation, and to enhance, coordinate and harmonize efforts and capabilities for the purpose of conserving, exploiting, upgrading and marketing fishery resources.
Available: http://www.fao.org/ji/body/rfb/AAFC/aafc_convention_text.pdf
- 1992 **Convention of the Protection and Use of Transboundary Watercourses and International Lakes**
 Intended to strengthen national measures for the protection and ecologically sound management of transboundary surface waters and groundwaters, obliges Parties to prevent, control and reduce water pollution from point and non-point sources.
Available: <http://www.unece.org/env/water/pdf/watercon.pdf>
- 1992 **UN Framework Convention on Climate Change**

- The Convention on Climate Change sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. It recognizes that the climate system is a shared resource whose stability can be affected by industrial and other emissions of carbon dioxide and other greenhouse gases.
Available: <http://unfccc.int/resource/docs/convkp/conveng.pdf>
- 1992 **Convention on Biological Diversity**
The three goals of the CBD are to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources.
Available: <http://www.biodiv.org/convention/articles.asp>
- 1994 **United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa**
The objective are to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 21, with a view to contributing to the achievement of sustainable development in affected areas.
Available: <http://www.unccd.int/convention/text/convention.php>
- 1994 **Marrakesh Agreement Establishing the World Trade Organization**
The agreement calls for a single institutional framework encompassing the GATT. Its structure is headed by a Ministerial Conference meeting at least once every two years. A General Council oversees the operation of the agreement and ministerial decisions on a regular basis. This General Council acts as a Dispute Settlement Body and a Trade Policy Review Mechanism, which concern themselves with the full range of trade issues covered by the WTO.
Available: http://www.wto.org/english/docs_e/legal_e/04-wto.pdf
- 1994 **General Agreement on Tariffs and Trade**
The agreement is designed to provide an international forum that encouraged free trade between member states by regulating and reducing tariffs on traded goods and by providing a common mechanism for resolving trade disputes.
Available: http://www.wto.org/english/docs_e/legal_e/06-gatt.pdf
- 1995 **Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin**
The agreement sets the framework for cooperation acceptable to all parties to accomplish sustainable development, utilization, and conservation of the Mekong River Basin water and related resources and is between The Kingdom of Cambodia, The Lao People's Democratic Republic, The Kingdom of Thailand, and The Socialist Republic of Viet Nam.
Available: <http://www.mrcmekong.org/pdf/95%20Agreement.pdf>
- 1997 **Convention on the Law of the Non-navigational Uses of International Watercourses**
It guides riparian States in the peaceful regulation of competing demands, such as flood control, water diversion for irrigation, generation of hydro power, pollution control and for freshwater ecosystems protection.
Available: <http://www.un.org/law/ilc/texts/nnawfra.htm>
- 2001 **Treaty of Nice**
The treaty amends the treaty on European Union, the treaties establishing the European Communities and certain related acts.
Available: http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c_325/c_32520021224en00010184.pdf

Appendix – Cases

- 1892 **Behring Sea Fur Seals Fisheries Arbitration (Great Britain vs. United States)**
The Americans claimed sovereignty over two-thirds of the Behring Sea, a right of property in the seals because for part of the year seals occupied Alaskan beaches and the right to protect high seas fur seals in the interest of conservation. Britain claimed freedom of the seas, denied the existence of property rights in wild animals, and denied the existence of the right of fishery conservation in the high seas. The tribunal agreed with Britain on all issues.
Not available online.
- 1937 **Trail Smelter Case (United States vs. Canada)**
The case involved transfrontier air pollution by a smelter factory located in Trail (Province of British Columbia, Canada) about 20 kilometers north of the US boundary. The Dominion of Canada was found responsible in international law for the conduct of the Trail Smelter, and the tribunal found “no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein”.
Available: <http://gurukul.ucc.american.edu/TED/TRAIL.HTM>
- 1947 **Corfu Channel (United Kingdom vs. Albania)**
British warships suffered mine damage while passing through the Corfu Channel in 1946. The ships were severely damaged and members of the crew were killed. The decision found that Albania was liable to the United Kingdom because of its duty to not allow its territory to be used to cause harm.
Available: <http://www.icj-cij.org/icjwww/icasess/icc/icframe.htm>
- 1972 **Fisheries Jurisdiction Cases**
Both the UK and Germany launched proceedings against Iceland concerning a dispute over the proposed extension by Iceland of the limits of its exclusive fisheries jurisdiction. The Court found that Iceland was not entitled unilaterally to exclude foreign fishing vessels from the disputed area, and that the Parties were under mutual obligations to undertake negotiations for solution of their differences.
(Federal Republic of Germany vs. Iceland)
Available: <http://www.icj-cij.org/icjwww/icasess/ibi/ibiframe.htm>
(UK and Northern Ireland vs. Iceland)
Available: <http://www.icj-cij.org/icjwww/icasess/iai/iaiframe.htm>
- 1994 **Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons**
There is in neither customary nor conventional international law that universally prohibits the threat or use of nuclear weapons and they would be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law (the Court could not conclude whether it would be unlawful extreme circumstance of self-defense). It was noted that the environment represents the living space, the quality of life and the health of human beings, including unborn generations.
Available: <http://www.icj-cij.org/icjwww/icasess/iunan/iunanframe.htm>
- 1995 **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 (New Zealand vs. France) Case**
New Zealand was seeking to recognize rights that would be adversely affected by entry into the marine environment of radioactive material as a result of the further nuclear tests by France, and to a properly conducted Environmental Impact Assessment. New Zealand's request was dismissed based on the fact that the 1974 case dealt with atmospheric rather than underground tests.
Available: <http://www.icj-cij.org/icjwww/icasess/inzfr/inzfrframe.htm>
- 1997 **Case Concerning Gabcikovo-Nagymaros Dam (Hungary/Slovakia)**
In 1992 Hungary annulled a 1976 treaty with Czechoslovakia concerning construction of the dam project because of environmental concerns. Slovakia continued construction unilaterally, completed the dam, and diverted the Danube River into a canal inside the Slovakian republic. The Court found Hungary had been wrong to withdraw from the treaty and abandon work on the project, but that

- Slovakia had also acted unlawfully unilaterally diverting the course of the river. This case contains The Court's only collective reference to sustainable development.
Available: <http://www.icj-cij.org/ijmw/m/idocket/ibs/ibsframe.htm>
- 1998 **US Import Prohibition of Certain Shrimp Products**
 India, Malaysia, Pakistan and Thailand launched a joint complaint against a ban imposed by the US on the importation of certain shrimp and shrimp products (that had been captured without the use of turtle exclusion devices). The Appellate Body ruled that countries have the right to take trade action to protect the environment, and that measures to protect sea turtles would be legitimate under GATT Article 20, as long as certain criteria such as non-discrimination were met.
Available: http://www.wto.org/english/tratop_e/dispu_e/distab_e.htm#r58
- 1999 **Southern Bluefin Tuna Cases (New Zealand vs. Japan; Australia vs. Japan), Provisional Measures**
 Requests for provisional measures were made by Australia and New Zealand against Japan, concerning fishing for southern Bluefin tuna. The cases concerned a Japanese experimental fishing program that was in excess of the quota allocated under the 1993 *Convention for the Conservation of Bluefin Tuna*. The Tribunal determined that the program could only continue with the consent of the other parties, and that parties should act with caution in light of the depleted stock.
Available: http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=3&lang=en
- 1994 **Minors Oposa vs. Philippine Secretary of the Department of Environment and Natural Resources**
 It was argued that while the present generation continues to suffer the ecological malfunctioning as a result of forest destruction, it is the generation of our children and those to follow that will suffer called irreversible damage and irreparable injury. The plaintiffs were 43 children from all over the Philippines. The Supreme Court found that children can, for themselves, for others of their generation and for the succeeding generations, file a class suit.
Available: <http://www.inece.org/4thvol1/oposa2.pdf>
- 1997 **Dr. M. Farooque vs. Secretary, Ministry of Communication, Government of the People's Republic of Bangladesh and 12 Others (Unreported).**
 The case involved a petition against various ministries and other authorities for not fulfilling their statutory duties to mitigate air and noise pollution caused by motor vehicles in the city of Dhaka.

- 1952 **General Assembly Resolution: Integrated Economic Development and Commercial Agreements**
Available:<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/067/78/IMG/NR006778.pdf?OpenElement>
- 1962 **General Assembly Resolution: Permanent Sovereignty over Natural Resources**
Declares that the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.
Available: <http://www.obchcr.org/english/law/resources.htm>
- 1972 **Declaration of the United Nations Conference on the Human Environment, Stockholm**
The declaration puts forth a common outlook and common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. Principle 21 is especially relevant as it recognizes States' rights to exploit their own resources pursuant to their own environmental policies, along with "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction".
Available:<http://www.unep.admin.ch/imperia/md/content/are/nachhaltigeentwicklung/international/1.pdf>
- 1974 **The Charter of Economic Rights and Duties of States**
The charter affirms each State's full and permanent sovereignty over its natural resources and economic activities.
Available: <http://law.dal.ca/kindred.intlaw/ECRtsandDuties.htm>
- 1982 **World Charter for Nature**
The charter proclaims five principles of conservation by which all human conduct affecting nature is to be guided and judged.
Available: <http://www.un.org/documents/ga/res/37/a37r007.htm>
- 1989 **Amazon Declaration**
The declaration is a statement against biopiracy and vows to ensure the full exercise of the sovereign rights of the Amazon countries over the resources of the region's biological diversity. It also emphasizes fair and equitable sharing of the economic benefits that result from sustainable commercial use of traditional knowledge.
Not available online.
- 1992 **Statement on Forest Principles**
The statement says that forests, with their complex ecological processes, are essential to economic development and the maintenance of all forms of life.
Available: <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm>
- 1992 **Rio Declaration on Environment and Development**
The declaration consisted of 27 principles to guide future sustainable development around the world.
Available: <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>
- 2001 **Doha Declaration**
The declaration provides the mandate for negotiations on a range of subjects concerning the implementation of the present WTO agreements.
Available: http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm
- 2000 **General Assembly Resolution: United Nations Millennium Declaration**
The declaration set time-bound and measurable goals and targets for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women. They are now called the Millennium Development Goals.

Available: <http://www.un.org/millennium/declaration/ares552e.htm>

2002 **Johannesburg Declaration**

The declaration endorses the Johannesburg plan of implementation and states a responsibility to the greater community of life. It identifies poverty eradication, changing consumption and production patterns, and protecting and managing the natural resource base for economic and social development as the overarching objectives of, and essential requirements for sustainable development.

Available: http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm

2002 **New Delhi Declaration of Principles of International Law Relating to Sustainable Development**

Based on seven principles that place poverty eradication, environmental conservation and human rights as the inter-connected pillars of sustainable development and aims to clarify and develop the concept of sustainable development.

Not available online.

2004 **Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity**

The Principles and Guidelines consist of fourteen principles, operational guidelines and a few instruments for their implementation that govern the uses of components of biodiversity to ensure the sustainability of such uses.

Available: <http://www.biodiv.org/programmes/socio-eco/use/addis.asp>