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THE ROLE OF INTERNATIONAL LAW IN SUSTAINABLE NATURAL RESOURCES MANAGEMENT FOR DEVELOPMENT

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Final Report, Resolution and the 2020 ILA Guidelines on the Role of International Law in Sustainable Natural Resources Management for Development

1. Introduction

1.1 This is the final report of the ILA Committee on the Role of International Law in Sustainable Natural Resources Management for Development (‘the Committee’), which was established by the ILA Executive Council in November 2012, building on a distinguished history of ILA inquiry into international law on sustainable development. The Committee’s mandate was informed by the common understanding that the field of international law on sustainable development is rapidly evolving, and that global concern about sustainable natural resources management is increasing significantly.

1.2 Global policy agendas reflect the importance of sustainable development of natural resources to States and stakeholders, with the outcomes of the 2012 UN Conference on Sustainable Development (Rio+20) resulting in States’ adoption, in New York in September 2015, of the 2030 Agenda for Sustainable Development and its
17 global Sustainable Development Goals (SDGs), which include 169 targets towards 2030. To advance achievement of the world’s SDGs in the context of important global challenges such as ‘building back better’ from the COVID-19 pandemic, and responding to the interlinked climate and biodiversity emergencies, new insights are required on the means by which international law and governance can promote more sustainable use of natural resources for development.

2. The Role of International Law in Sustainable Natural Resources Management

2.1 Over eight years, ILA international legal experts on the Committee from nearly thirty countries investigated the role and legal status of the principle of sustainable use of natural resources, as defined in the 2002 ILA New Delhi Declaration’ and acknowledged in the 2012 ILA Sofia Guiding Statements. Accordingly, they embraced a broad notion of ‘natural resources’, which includes celestial bodies, the atmosphere and a stable climate system, biological diversity and ecological systems, the ocean and its mineral and living resources, forests and landscapes, rivers and freshwater ecosystems, migratory species, land and soil, mineral commodities including precious minerals and sustainable energy, in line with the work of the ILA Committee’s predecessor (the Committee on International Law on Sustainable Development) as reflected in its Final Report.

2.2 The experts on the ILA Committee considered instances in which commitments to sustainable management of natural resources for development have been enshrined in international treaty law, reflected in the practices of States and international organizations and in the decisions of international courts and tribunals, and increasingly operationalized in international ‘soft law’ goals, standards and guidelines in relation to different resources, taking into consideration selected national level developments where relevant. Three principal axes formed the Work Programme:

(i) The study and analysis of the contents, legal status and application of the principles and rules of international law related to the sustainable management of natural resources at the international and national levels, as well as an assessment of the practice of States, and international organizations in this field;

(ii) An examination of the relationship between the evolving international law in the field of sustainable development (see the 2002 New Delhi Declaration and the 2012 Sofia Guiding Statements) and the principle of the sustainable use of natural resources, including analysis of:

a. the status of the obligation of States to use natural resources in a manner that is sustainable, including issues such as the obligation to undertake impact assessments of plans and projects that might affect sustainable development, transboundary resources management, the sharing of resources in the world interest and taking into account the interests and needs of future generations;

b. innovative instruments to support sustainable use of natural resources and their status and implementation in international and national law, including measures within regional trade and investment agreements and multilateral economic treaties;

c. the relationship between natural resource management and the enjoyment of human and peoples’ rights;

d. decisions of international courts and tribunals on matters related to natural resource management.

(iii) The study of national and international approaches to the regulation of natural resources in developing countries and the impact of such approaches on the sustainable use of natural resources and on the evolution of international law in this field.

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4 The Committee gratefully recognizes and thanks a team of dedicated and insightful legal researchers from the University of Victoria, Canada, including Ellen Campbell and Courtenay Jacklin and the University of Cambridge, including Freedom-Kai Phillips, Chantalle Byron, Yanela Ntloko, Ra’chel Thorpe-Blair, Fabiana Piccoli and Timothy Arvan, for their excellent and intensive support in the drafting, editing and formatting of this report and its accompanying resolution and guidelines.
2.3 Forty-nine Committee Members from over thirty countries (Albania, Austria, Bangladesh, Belgium, Brazil, Canada, Cameroon, China, Chile, Colombia, Costa Rica, Democratic Republic of Congo, France, Germany, Greece, Italy, Japan, Netherlands, New Zealand, Norway, Nigeria, Poland, Qatar, South Africa, Sweden, Switzerland, Taiwan, United Kingdom, United States, and Zambia) contributed to the Work Programme of the Committee. Progress was facilitated through the convening of Committee meetings, symposia and experts panel held in all ILA Biennial Conferences during the mandate, and also in Leiden (12-14 November 2015, hosted by Professor Nico Schrijver at the University of Leiden), Montreal (23 June 2017, hosted by Professors Alexandra Harrington, Marie-Claire Cordonier Segger, Francois Crepeau and Armand de Mestral at the Centre for International Sustainable Development Law (CISDL) and McGill University); Cambridge (27-28 April 2018, hosted by Professor Marie-Claire Cordonier Segger and Dr. Markus Gehring at the Lauterpacht Centre for International Law (LCIL), University of Cambridge), Athens (10-11 May 2019, hosted by Professor Emmanuella Doussis at the National and Kapodistrian University of Athens), and Lugano (2-3 October 2020, hosted by Professor Ilaria Espa at the Università della Svizzera italiana), including in particular the following events: International Justice and Sustainable Development (CISDL and McGill University, Montreal, 23 June 2017), Sustainability, Natural Resources and International Law (Lauterpacht Centre for International Law, University of Cambridge, 27 April 2018), International Law and Sustainable Management of Natural Resources: Implementation Issues (National and Kapodistrian University of Athens, 10 May 2019) and Sustainable Natural Resources Governance in the SDGs Era: Responsibilities of States and Investors (Università della Svizzera italiana, Lugano, 2 October 2020).

2.4 The collaborative international legal research and scholarly endeavours of the Committee Members resulted in eighteen scoping papers covering diverse topics in relation to: (i) the rules and practices of international law for the sustainable management of natural resources of global, regional-transboundary and national concern, including their contribution to the global SDGs; (ii) innovations on sustainable resource use in international treaty law; and (iii) the evolution of international law in relation to sustainable natural resources management. The Committee Members have also prolifically contributed to wider scholarly inquiry and experts debates on sustainable natural resources management in international law. This final document consists of three elements:

5 The Committee’s legal working papers are listed in the Annex to this report, and published online by the ILA and institutions of Committee Members, including the Centre for International Sustainable Development Law, ‘Publications’ (CISDL 2020) <www.cisdl.org/publications/> accessed 8 November 2020.

(i) a final Report of the ILA Committee with a list of Legal Working Papers prepared by the Committee (annexed to the Report); (ii) a Draft Resolution for adoption by the International Law Association; and 3) the 2020 ILA Guidelines on the Role of International Law in Sustainable Natural Resources Management for Development (annexed to the Resolution).

3. Summary Report on the ILA Committee’s Findings

International Rules and Standards for Sustainable Management of Natural Resources as Common Global, Regional, Transboundary and National Concerns

3.1. The world’s natural resources, once seen as national and subject to permanent sovereignty, are now increasingly recognized as eliciting common global, regional, transboundary and national concerns, thereby challenging international law to provide more coherent, effective cooperative regimes for sustainable management. Tensions can exist with regards to certain nationally based resources, however myriad rules and standards now define, guide and direct State practice, providing a roadmap for the progressive development of international law on the sustainable management of natural resources for development, and leading this ILA Committee to find that:

Celestial bodies

3.1.1 States may not take unilateral action regarding the exploitation of natural resources located on celestial bodies. Under international law, States should not allow the use and deployment of satellites or other objects into space if they are likely to disintegrate and cause space junk, which can harm celestial and planetary resources as well as Earth itself. Any exploitation should be subject to the principle of equitable benefit-sharing.

The atmosphere and a stable climate system

3.1.2 States shall undertake domestic legal and policy measures in order to avoid dangerous interference with the climate system. States recognize that this requires global peaking of greenhouse gas (GHG) emissions as soon as possible, rapid and sustained emission reductions thereafter and achieving a balance between anthropogenic emissions by sources and removals by sinks around 2050 (so called ‘carbon neutrality’ or ‘net zero emissions’). In this context, States should take action to conserve and enhance GHG sinks and reservoirs, including biomass, forests and oceans, as well as other terrestrial, coastal and marine ecosystems. This includes, *inter alia*, soils, wetlands, peatlands and mangroves. Under the *United Nations Framework Convention on Climate Change* (UNFCCC) *Paris Agreement*, States must put forward progressive Nationally Determined Contributions (NDCs) every five years, which reflect the highest possible ambition, and pursue national legal and policy measures with the aim of achieving their NDC. States must also report on the progress of implementation and achievement of their NDCs. In conjunction with this, several international law instruments have established that States shall be subject to oversight committee review in instances of alleged failures to meet their treaty-based obligations, for example the *Paris Agreement* Article 15 Implementation and Compliance Committee. Further, States seeking to engage in the promotion and use of renewable energy should do so in a way that is sustainable and reduces GHG emissions while also avoiding the further degradation of biodiversity. International law recognizes the need for long-term commitment to carbon neutrality, as well as the need for procedures, including impact assessments and safeguarding mechanisms, to be put in place to avoid the risk of GHG emission leakage and maladaptation, double counting or other perverse incentives leading to unsustainable natural resource use, including unsustainable land use or land use change.

Forests and landscapes

3.1.3 States should create and implement national forestry and land management practices and laws which recognize many varied interests in forests and land resources, including the ecosystem approach. In this context,
States should factor the transboundary and global dimensions of these resources into their plans, and enter into consultations to this effect in practice. Further, States should ensure regulatory actions related to forestry and land use also cover private and industry actors involved in extraction, harvesting and use of the relevant resources, and associated value chains. Additionally, States may enter into voluntary agreements that further collaboration with other States, international organizations and private actors in order to create policies for the sustainable use of forests and land, with a focus on inter alia emissions reductions, and the conservation and enhancement of GHG sink and reservoir capacity. This includes facilitating changes to existing laws and rules which could hinder these efforts. In particular, States should create and implement national strategies, laws and institutions to address land use, land use change, forestry, deforestation and forest degradation. In conjunction with this, States should incorporate transparency and monitoring systems in their design and implementation of these strategies, including the use of reporting and verification mechanisms.

**Land and soil**

3.1.4 States should pursue the overarching goal of ensuring that land and soils are managed sustainably and that degraded land and soils are rehabilitated or restored. They should ensure that actions at all levels are informed by the principles of sustainable land and soil management and take action to combat desertification and drought and contribute to the achievement of a land-degradation neutral world. States should explicitly consider soil biodiversity, soil management practices and land use when planning for adaptation to, and mitigation of, climate change, and in their biodiversity strategies and action plans. In particular they should restore, conserve and enhance terrestrial and coastal land and soils, including wetlands, peatlands and mangroves, in their functions as GHG sinks and reservoirs and valuable biodiverse habitats. States have a duty to prevent pollution of land and soils, including by chemical and other types of pollutants such as pesticides and fertilizers, or resulting from mining, and to take appropriate measures to avoid the risks presented by such products or activities to human health and the environment, including through adequate legal and institutional measures at national level. They should implement regional conventions with provisions directed towards the sustainable management of soils, as well as sectorial treaties, dealing, for example, with water, air, protected areas and species, hazardous substances, pollution and waste, which implicitly have the objective of protecting land and soil. They should create socio-economic and institutional conditions favourable to sustainable land and soil management by removal of obstacles, in particular those associated with land tenure, the rights of users, access to financial services and incentives, and educational programmes. States and non-state actors should promote responsible investments in land, agriculture and food systems, and incorporate sustainable use and management of land and soil to promote food security as part of their agricultural and planning laws and practices. States should develop a national soil policy, maintain a national soil information system and contribute to the development of a global soil information system.

**Rivers and freshwater ecosystems**

3.1.5 States should ensure that there is harmonization in the legal and governance systems relating to transboundary and regional watercourses, such as aquifers, including obligations to work together to ensure this harmonization. As part of this, States must include the duty to notify and to consult neighbouring states in their management of watercourse resources. Additionally, in managing transboundary and regional watercourses, States should include key sustainable development law principles, such as the no significant harm principle, the polluter pays principle and the precautionary principle. When addressing the development of watercourses or wetlands directly or indirectly, States should adopt the ecosystem approach and use Environmental Impact Assessments (EIAs) or Sustainability Impact Assessments (SIAs) as tools to ensure that there is a full assessment of likely impacts, taking into account public concerns and contributions. Further, States should cooperate to create guidelines for the management of shared rivers and freshwater ecosystems.

**The ocean, and its mineral and living resources**

3.1.6 States must respect the res communis nature of high seas resources and the common heritage status of seabed minerals in areas beyond national jurisdiction as subject to international oversight. Under international treaty law and jurisprudence, States are required to undertake a number of activities – such as conservation, precaution, due diligence, EIAs and best environmental practices – to ensure sustainable management of oceans
as natural resources. States should also apply concerted management and conservation of migratory fish stocks found within their territorial waters so as to protect them as an international resource rather than classify as them as purely domestic resources. Further, flag States are required to ensure that the vessels sailing under their jurisdiction follow sustainable management and conservation practices for fishing living resources found in international waters. Sustainable ocean governance also requires full and ambitious implementation of the UNFCCC and the Paris Agreement.

Mineral commodities, including precious minerals

3.1.7 States are required to gradually reduce and, when feasible, eliminate the extraction and use of minerals when such endeavours pose serious health and environmental threats, including in relation to GHG emissions, sinks and reservoirs, and the prevention of dangerous anthropogenic interference with the climate system. States may restrict trade of and investment in mineral resources for overriding conservation, health and environmental protection interests. When States enter into agreements with private actors in the mineral commodities and extractives industries, they should create and implement practices and principles to ensure fiscal transparency, contain bribery, corruption and money laundering, combat tax avoidance and evasion and, ultimately, seek a more equitable distribution of financial and economic benefits arising out of extractive activities, especially for what concerns artisanal mining.

Biological diversity and ecological systems

3.1.8 States are required to develop national strategies, plans or programmes for the conservation and sustainable use of biodiversity, or adapt existing strategies, plans or programmes for this purpose. States shall integrate, as far as possible and as appropriate, the conservation and sustainable use of biodiversity into relevant sectoral or cross-sectoral plans, programmes and policies. In this context, States should conserve and sustainably use biological resources, both above and below ground, terrestrial and marine, and adopt the ecosystems approach. This includes establishing a system of protected areas or areas where special measures need to be taken to conserve biodiversity; regulating or managing biological resources important for the conservation of biodiversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use; promoting environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas; rehabilitating and restoring degraded ecosystems; and promoting the recovery of threatened species through the development and implementation of plans or other management strategies; developing or maintaining necessary laws and/or regulations for the protection of threatened species and populations; and, regulating or managing processes and categories of activities where a significant adverse effect on biodiversity has been determined. Beyond this requirement, States report on their activities, including those relating to protection of biodiversity and ecological systems.

3.1.9 In conjunction with this, some international law instruments go as far as to establish that States shall be subject to oversight committee review in instances of alleged failures to meet their treaty-based obligations, such as the Convention on International Trade in Endangered Species of Flora and Fauna (CITES), while others are based on the duty to cooperate, such as the Convention on Biological Diversity (CBD) and the Convention on Migratory Species (CMS). Additionally, States may – and are encouraged to – establish specialized regimes for the protection of particular species and ecosystems which are transboundary and international resources. States should take ambitious action to address the conservation of biodiversity.

Migratory species

3.1.10 States are required to provide for the protection, conservation and management of migratory species which traverse their territories in any form (land, air or water). States may work together to establish and implement targeted agreements for handling the migration patterns of specific migratory species with the purpose of ensuring sustainable management of the species at the national and regional levels. Further, States are required to provide special protections for endangered migratory species that traverse their territory and to ensure that they are not targeted for poaching or other illegal activities.
Sustainable energy

3.1.11 States should ensure that their domestic legal and regulatory systems promote and incentivize the generation and use of sustainable and renewable energy and sustainable management of all natural resources across all sectors and the economy as a whole. Additionally, States should ensure that there is transparency and oversight in the regulation and management of sustainable and renewable energy, and in relation to sustainable management of all natural resources. Appropriate procedures and safeguards must be put in place and implemented to avoid risks of maladaptation, particularly in the renewable energy sector. States are also encouraged to incorporate provisions to promote sustainable and renewable energy and sustainable management of all natural resources in their trade and investment agreements, cooperation programmes and governance systems on international, inter-regional, regional and bilateral levels, and to implement existing commitments.

Standards and Techniques for Effective Implementation of Rules and Norms for Sustainable Management of Natural Resources

3.2 Rules and norms of international law on the sustainable management of natural resources for development are still emerging and evolving. They make frequent reference, with approval, to the use of standards and techniques for effective implementation such as:

Human rights approaches

3.2.1 International human rights instruments provide protection for individuals in terms of rights that are linked to the ability to access natural resources and the ability to enjoy natural resources that are not degraded, polluted or otherwise threatened. Many regional human rights conventions and national constitutions contain an express right to a healthy environment, and the UN Special Rapporteur on Human Rights and the Environment has highlighted human rights linkages to other global agendas including climate change and biodiversity. The majority of human rights treaties contain reporting requirements that obligate States to disclose their compliance with the terms of the applicable treaty. This is coupled with the creation of a designated treaty oversight mechanism, which reviews and evaluates State compliance with treaty terms and provides guidance on treaty application. Through these oversight systems, there have been innovative treaty interpretations which have increasingly entrenched the sustainable use of natural resources in human rights law jurisprudence. This includes an emphasis on the role of environmental and human rights impact assessments, similar environmental and social impact reviews, and social impacts at all levels of planning and implementation, ranging from international to national to local. Access to justice and the availability of effective procedural rights for environmental defenders are also important. In this context, the jurisdictional reach of international courts and tribunals has expanded and now includes individuals as well as groups and peoples, notably Indigenous peoples.

Economic instruments

3.2.2 In recent years, there has been an increasing recognition of the relationship between trade and sustainable development, including in the context of the World Trade Organization (WTO), its mandate, and implementation of trade rules, e.g. the ongoing multilateral negotiations on the liberalization of environmental goods and services. There has also been an expansion of the scope of exceptions and provisions on sustainable resources management in inter-regional, regional and bilateral trade and investment agreements, with explicit provisions encouraging and structuring collaboration to promote sustainable development and use of natural resources, and to avoid negative consequences arising from liberalization.

3.2.3 International Investment Agreements (IIAs), as well as international investment guidance, have also begun to include significant aspects of environmental protection and conservation, particularly those which relate to the sustainable management of natural resources. Responsible investments in land and agriculture should contribute to food security and nutrition, including through conservation and sustainable management of natural resources. Further, economic mechanisms are figuring more prominently in international agreements on sustainable development, and States are increasingly deploying market instruments to support implementation and compliance efforts.
Financial mechanisms

3.2.4 The establishment of effective and reliable financial bodies to support activities in international treaties, and therefore, also compliance is crucial. Increasingly ambitious financial mechanisms are being established as States and others start to invest more deeply in addressing environmental problems. Funds are being set in place to implement the law, convening and facilitating the engagement of States which guide and contribute to the funds, and providing guidance to ensure adherence to agreed principles, rules and procedures.

Scientific collaboration

3.2.5 Through independent scientific institutions, and collaborative partnerships, States are now coordinating international scientific scans and studies, and attempting to provide independent and relatively neutral, publicly available, summaries and compilations of scientific data for national, transboundary and international problem identification and to support implementation of international treaties on sustainable development.

Monitoring, reporting and verification

3.2.6 Monitoring, reporting and verification practices have become more common in international law. The adoption of operational information-sharing arrangements, such as regular peer-reviewed monitoring, reporting and verification (MRV) systems, public online databases, and clearinghouses for information-sharing have engaged States and non-State actors in the international community in treaty implementation. By encouraging greater transparency in the treaty negotiation and implementation process, in part through the provision of important national information, international law and procedures have advanced. Regular submission of ‘national communications’ has become nearly a standard obligation for States under international treaties on sustainable development.

Public participation, access to information and justice

3.2.7 Multilateral Environmental Agreements (MEAs) rely upon public participation and dissemination of information to generate awareness, ownership and support for their work on all levels, and the UN assists in this process. Parties commit to promote public participation within their decision-making regimes, for instance through the granting of Observer status to non-governmental organizations with an interest in the subject matter, and encouraging multilateral engagement of stakeholders in a manner similar to the Observer status granted to ECOSOC-accredited organisations. Public access to information through technology and media is generating new potentials for meaningful public participation and engagement. International and national registries are being increasingly encouraged, serving to increase citizen knowledge and awareness of science, law and other developments related to the treaty’s subject matter.

3.2.8 Treaties on the environment and sustainable development support States in resolving disputes on treaty interpretation peacefully, both through the inclusion of dispute settlement and advisory opinion provisions in the accords, and through the encouragement of their appropriate use. Under these treaties, partners assist States to comply with their treaty obligations, providing analysis, technical knowledge, and training, and hosting forums for judges and officials to discuss new developments in international law. There are also increasing opportunities, on a procedural and substantive level, for non-state actors, including individuals as well as groups and peoples, to rely on internationally derived law relating to the sustainable management of natural resources.

Transparency and stakeholder engagement

3.2.9 In addition to monitoring, verification and reporting, requirements for publicly available environmental impact assessments and sustainability impact assessments promotes transparency and stakeholder engagement, and provides an anchor for review. These forms of assessment are innovative in that they attempt to create regulatory processes regarding the sustainable use of natural resources at the national and international levels. In the context of international agreements on sustainable development there is an increasing focus on inclusion, transparency and the promotion of public awareness of the potential environmental and natural resource impacts.
of activities subject to the terms of the treaty, and efforts to foster public empowerment and engagement in the discussions and debates regarding proposed activities falling within the ambit of the agreement. Bringing the voices of individuals and civil society into a realm which was formerly reserved for national and international actors, is innovative.

3.2.10 In terms of generating transparency within certain sectors, the corporate social responsibility Extractive Industry Transparency Initiative (EITI) serves as an example of a transnational framework for enhancing transparency in revenue flows to the governments of resource States. It requires disclosure of revenue flows to the governments of resource States and disclosure of contracts, as well as the disclosure of beneficial owners of companies. By generating these forms of transparency requirements at the national and sectoral levels, governments and corporations can be held accountable to the public for their actions and decisions as well as for the financial distributions they make as a result of resources generated in this context. In addition, transparency measures such as those under the EITI structure are also intended to serve as a counterweight to the potential for companies to commit acts of bribery and/or illicit influence peddling as well as for government actors to misuse profits from the trade in and licensing of natural resources. This method of including transparency as a core element of accountability and anti-corruption is innovative as a means to promote the sustainable use of natural resources.

**Peacebuilding and post-conflict**

3.2.11 In recent decades, the promise of international law for post-conflict contexts and environmental peacebuilding has come to the forefront, with significant developments in key international forums including *inter alia* the International Law Commission and the United Nations Environment Programme (UNEP). Environmental peacebuilding has been defined as integrating natural resources and the environment in conflict prevention, mitigation, resolution, recovery, cooperation and peacebuilding. Sustainable use in the context of environmental peacebuilding may refer to the obligation to prevent transboundary environmental damage resulting from the use of natural resources, as well as sustainability with respect to the use of the environment and natural resources themselves, e.g. preventing over-exploitation and ensuring sustainable livelihoods. Pursuant to their obligations under international law, States shall take all feasible measures to protect the environment in relation to armed conflicts.

**Secure land and water access**

3.2.12 Recognizing that access to land and natural resources are key for the lives and livelihoods of millions of people worldwide, secure land tenure and recognition, promotion and protection of all legitimate tenure rights, including for women, along with access to water, are instrumental in securing sustainable use of natural resources. Natural resources are also vital in post-conflict situations, since territory and water often form key aspects of the tensions giving rise to the conflict, and the failure to adequately address these issues in the peacebuilding process can lead to the renewal of armed conflict. At the same time, in many States emerging from conflict, agriculture, and thus access to land, soil and water resources, plays a critical role in survival. Against this backdrop of competing concerns and the need to avoid a renewal of hostilities in order to construct a durable peace, sustainable use of natural resources must be addressed.

**Equitable benefit-sharing**

3.2.13 Originating from the field of human rights law, primarily the right to development, the principle of equitable benefit-sharing is best known in the natural resource context of space, a stable climate system, biodiversity, including genetic resources, and the ocean, including deep seabed mineral resources. It will remain relevant to debates and negotiations in international fora given the economic and social inequalities between and within States recognized in the New Delhi Declaration, which will likely grow due to the global economic impact of the COVID-19 pandemic. As such, benefit-sharing may be used as an innovative requirement in future international treaties and instruments addressing sustainable resources management.
Control of illicit flows

3.2.14 The control of illicit flows of financial and natural resources, and attendant human rights abuses, is a significant element of promoting and ensuring the sustainable use of natural resources at the international and national levels. Methods of control have been crafted as national and international law, including soft law, each form containing innovative elements in terms of the obligations placed on actors throughout the international and national systems involved and the ways in which these actors can be held accountable.

3.1.15 States should ensure that there are adequate certification and customs screening systems in place to recognize and prevent the trafficking in conflict derived and illicit goods. In this context, States should ensure that there are measures in place to enforce bans on these products where an exporting State cannot meet the internationally required standards for certification. Further, States and private actors should work together to ensure that guidelines and recommendations for sustainable management of endangered species, wildlife, fisheries resources, timber and minerals are developed and implemented at the national level including, *inter alia*, reporting requirements and the establishment of governmental and industry-based oversight mechanisms.

Dispute settlement

3.2.16 A number of international courts and tribunals, as well as arbitral bodies and similar forms of dispute settlement mechanisms, have addressed issues relating to sustainable management of natural resources. The decisions of the bodies demonstrate an increasing willingness on the part of international and regional dispute settlement entities to endorse sustainable management of natural resources as a principle or a duty that is justiciable across a variety of jurisdictions. At the national level, the seminal *Minors Oposa* case from the Philippines recognized the efforts of current generations to assert their rights and the rights of future generations to address unsustainable natural resources exploitation and climate change. The trend has grown and was recently reflected in the 2019 *Urgenda* decision in the Netherlands, which saw the Supreme Court uphold a determination that the State was not complying with its obligations to address climate change, and other climate litigation decisions from other venues, including in the Irish Supreme Court.

Legal indicators of effectiveness

3.2.17 Assessing the effectiveness of international law related to sustainable development is an essential task that remains difficult to implement. In this context, the development of legal indicators for effectiveness of international law related to sustainable development is critical. By replicating the commitment-effort-result framework that is already common for other legal indicators, it may be possible to conceive structural-process-outcome indicators for international treaties on sustainable development in relation to natural resources governance. Three aspects of effectiveness are proposed: (i) legal effectiveness in relation to structural indicators aimed at assessing whether domestic systems accommodate for sufficient incorporation and enforcement of international legal obligations; (ii) behavioural effectiveness in relation to process indicators aimed at evaluating the adequacy of policy responses towards treaty purposes; and, (iii) problem-solving effectiveness evaluated in light of outcome indicators informing all stakeholders of gaps in solving problems regulated through international treaties on sustainable development. Within such a framework, structural indicators may be closest alternative to ‘classical’ legal indicators for the purposes of measuring legal effectiveness, with one fundamental difference: these can be formulated without necessarily inquiring into the specifics of domestic legal frameworks in a comprehensive way. In particular, they focus on aspects of domestic implementation that is directly inferable by looking into whether the international legal obligations agreed in international treaties on sustainable development are being fulfilled by States.

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4. Conclusions

4.1 International law has the potential to shape the principles, regulatory frameworks, institutions, standards and incentives for natural resource management on multiple local, national, regional and global levels. After thorough review, the Committee’s findings suggest that international law both reflects and also serves as a critical catalyst for the design, adoption, and implementation of sustainable natural resource management and resolution of disputes in relation to use of natural resources. Indeed, international law and non-binding international and national instruments such as standards and guidelines function as a baseline for States and other actors involved in natural resource management, shaping operating environments in which sustainable development will either be fostered, or frustrated.

4.2 In assessing the role of international law in this context, it is crucial to take into account how concepts of sovereignty and territory are evolving to accommodate new scientific understanding of interrelated ecological systems and conditions, whereby notions of custodial sovereignty may offer useful insights. The Committee’s work has established that sovereignty, of key importance to international law from its inception, is becoming more fluid in the face of shared responsibilities for the sustainable use of transboundary, regional, and global international natural resources, and collaborative regimes for management. The Committee has identified tensions in the context of nationally based natural resources, and considered how international legal regimes may offer options to reconcile key concerns, avoiding or reducing potential for conflict between and within States over resource use, as well as defusing potential clashes between resource conservation and exploitation goals.

4.3 Finally, the Committee has noted that international natural resources management systems could make a vital contribution to the achievement of the Sustainable Development Goals and the 2030 Agenda worldwide, but also that how these regimes are governed will be crucial for implementation and enforcement. Natural resources are essential to advance nearly all 17 Sustainable Development Goals, and many of the 169 targets, from poverty elimination, to ending hunger, to access to water and energy, to combatting climate change and promoting peace, justice and security. The Committee’s work highlights a number of governance mechanisms, ranging from formalized compliance mechanisms to informal industrial and sectoral oversight procedures, which implement essential tools of sustainable natural resources management and the sustainable use of natural resources.

4.4 In light of these findings and conclusions, in accordance with the principles of international law on sustainable development, and supported by the key instruments surveyed by the Committee, the annexed Resolution frames the new 2020 ILA Guidelines on the Role of International Law in Sustainable Natural Resources Management for Development. These Guidelines are found to be defining and guiding, and also providing a roadmap for the progressive development of international law on the sustainable management of natural resources for development, and are hereby proposed for adoption by the ILA.
ANNEX

Legal Working Papers of the ILA Committee on the Role of International Law in Sustainable Natural Resources Management for Development (2012 – 2020)

Standards for Resources of Global, Regional/Transboundary and National Concern

1) Contributions of International Law to SDG 7 on Sustainable Energy for All, Dr Markus Gehring, Germany, Mr Stuart Bruce (United Kingdom) and Mr Sean Stephenson (Canada).

2) Contributions of International Law to SDG 15 on Sustainable Management of Terrestrial and Biological Resources, Prof Jorge Cabrera (HQ/Costa Rica), Mr Frederic Perron-Welch (Canada) and Dr Balakrishna Pisupati (India).

3) Rules and Practices of International Law for the Sustainable Management of Celestial Bodies, Prof Stephan Hobe (Germany).

4) Rules and Practices of International Law for the Sustainable Management of Forests, Prof Konstantia Koutouki (Canada), Prof Christina Voigt (Norway), Mr Frederic Perron-Welch (Canada) and Mr Erick Kassongo Kalonji (HQ/DRC).

5) Rules and Practices of International Law for the Sustainable Management of Fresh Water Resources towards SDG 6 on Ensuring Water and Sanitation for All, Prof Otto Spijkers (Netherlands), Dr Yongmin Bian (China), Prof Maki Nishiumi (Japan) and Dr Nadia Sanchez Castilwo-Winckels (Chilean).

6) Rules and Practices of International Law for the Sustainable Management of High Seas Marine Resources towards SDG 14 on Sustainable Management of Fisheries and Ocean Resources, Prof Cymie R. Payne (USA), Prof Konstantia Koutouki (Canada) and Mr Freedom-Kai Phillips (Canada).

7) Rules and Practices of International Law for the Sustainable Management of Land and Soil, Ms Cairo Robb (United Kingdom), Dr Daniëlla Dam-de Jong (Netherlands), Prof Alexandra Harrington (Colombia), Prof Cymie Payne (USA) and Dr Barbara Janusz-Pawletta (Poland).

8) Rules and Practices of International Law for the Sustainable Management of Mineral Commodity Resources, including Nickel, Copper & Bauxite, Dr Ilaria Espa (Italy) and Dr Maximilian Oehl (Switzerland).

9) Rules and Practices of International Law for the Sustainable Management of Precious Mineral Resources, including Silver, Gold & Diamonds, Prof Isabel Feichtner (Germany) and Dr Guy Jules Kounga (HQ/Cameroon).

10) Rules and Practices of International Law for the Conservation and Sustainable Management of Migratory Species, Prof Werner Scholtz (South African) and Prof Arie Trouwborst (Netherlands).

Scoping Sustainable Resources Management in International Treaty Law

11) Principle of Sustainable Resources Use in Innovative Economic Law Instruments, Dr Markus Gehring (Germany), Dr Fabiano de Andrade Correa (Brazil) and Dr Matteo Barra (Belgium).

12) Principle of Sustainable Use of Natural Resources in Multilateral Environmental Agreements, Prof Marie-Claire Cordonier Segger (Canada), Prof Alexandra Harrington (Colombia), Prof Arie Trouwborst (Netherlands) and Ms Cairo Robb (United Kingdom).

13) Principle of Sustainable Use of Natural Resources in Human Rights Law, Prof Alexandra Harrington (Colombia) and Dr Leticia Sakai (France).
14) Sustainable Management of Natural Resources in Post-Conflict Contexts and for Environmental Peacebuilding, Ms Amanda Kron (Sweden).

*Progress in International Law for Sustainable Resources Management*

15) Principle of Sustainable Use of Natural Resources in International Law in the Decisions of International Courts and Tribunals, Prof Alexandra Harrington (Colombia), Prof Freya Baetens (Belgium), Prof Marie-Claire Cordonier Segger (Canada) and Dr Ilaria Espa (Italy).

16) Rules and Practices of International Law on Benefit-Sharing for the Sustainable Management of Natural Resources for Development, Prof Jorge Cabrera Medaglia (HQ/Costa Rica) and Mr Frederic Perron-Welch (Canada).

17) Rules and Practices of International Law to Contain Illicit Financial Flows related to Extractive Industries, Dr Daniëlla Dam-de Jong (Netherlands), Dr Ilaria Espa (Italy) and Prof Isabel Feichtner (Germany).

18) Legal Indicators as Tools to Assess the Effectiveness of International Rules Related to the Sustainable Management of Natural Resources, Prof Emmanuella Doussis (Greece), Dr Ilaria Espa (Italy) and Prof Alexandra Harrington (Colombia).
RESOLUTION No. __/2020
THE ROLE OF INTERNATIONAL LAW IN SUSTAINABLE NATURAL RESOURCES MANAGEMENT FOR DEVELOPMENT

The 79th Conference of the International Law Association held in Kyoto, Japan, 29th November to 13th December 2020;

TAKING INTO ACCOUNT with gratitude the ILA 2002 New Delhi Declaration,\(^9\) the ILA 2012 Sofia Guiding Statements;\(^11\) the final Report of the ILA Committee on the Legal Principles Relating to Climate Change;\(^13\) the Reports of the UN Special Rapporteur on Human Rights and the Environment;\(^13\) the IUCN Draft Covenant on Environment and Development;\(^14\) the UNEP Decision and Global Report on the Environment and the Rule of Law;\(^15\) the work of the World Bank on governance and the rule of law;\(^16\) the ILC Draft Principles on the Protection of the Environment in Relation to Armed Conflicts;\(^17\) and the FAO/UNEP Legislative approaches to sustainable agriculture and natural resources governance,\(^18\) among other important findings,

CONSIDERING that, in accordance with international law, all States have the sovereign right to manage their own natural resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause significant damage to the environment of other States or of areas beyond the limits of national jurisdiction,

EMPHASIZING that 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,

FURTHER EMPHASIZING that States must take into account the needs of future generations in determining the rate of use of natural resources, and that all relevant actors (including States and other stakeholders) are

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\(^{19}\) FAO & UNEP, Legislative Approaches to Sustainable Agriculture and Natural Resources Governance. FAO Legislative Study No. 114 (FAO/UNEP, 2020) (accessed 8 November 2020).
under a duty to avoid wasteful use of natural resources, promote waste minimization policies, and to implement the principle of sustainable use of natural resources,

**RECALLING** that the protection, preservation and enhancement of the natural environment requires global cooperation, and particularly that the change in the Earth’s climate and its adverse effects, and the conservation of biological diversity, are the common concern of humankind, that the resources of the Moon and other celestial bodies and of the seabed, ocean floor and subsoil thereof beyond the limits of national jurisdiction are the common heritage of humankind, and that the peaceful exploration and use of outer space is of common interest to all humankind,

**RECOGNIZING** that the principle of sustainable use of natural resources is intertwined with the principle of equity and eradication of poverty, including intra- and inter-generational equity and the right to development; the principle of common but differentiated responsibilities and capabilities; the principle of a precautionary approach to human health, natural resources and ecosystems; the principle of public participation and access to information and to justice; the principle of good governance; and the principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives, and necessitates cooperation and action at all levels, in internal and external relations and involving all actors to ensure sustainable consumption and production patterns,

**NOTING** the existence of myriad binding multilateral, regional and bilateral treaties which directly ensure or relate to the sustainable management of natural resources for development, including those which are considered universal and reflect *erga omnes partes* obligations, as well as those reflecting *lex ferenda* principles of international law, as mentioned below,

**RECOGNIZING** that the role of international law in sustainable management of natural resources has changed over time, and can differ depending on the state of international collaboration with regards to the particular resource, the nature and location of the specific resource involved, the renewable or non-renewable character of the resource, the interdependence of ecological systems which sustain the resource, the best available science and technology, distributive justice, substantive equality and benefit-sharing considerations, and other important factors,

**RECOGNIZING** that advances in scientific understanding underscore the interconnectedness of environmental, animal and human health and well-being, and highlight hitherto unacknowledged or underacknowledged interconnections in the atmosphere-land-water-biodiversity nexus, as well as the need to respect ecological limits and planetary boundaries to avoid tipping points and reduce risks to society and nature,

**TAKING** into account the work of independent scientists and scientific bodies, including but not limited to the Intergovernmental Panel on Climate Change (IPCC), the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), the UNCCD Science-Policy Interface (SPI), the Intergovernmental Technical Panel on Soils (ITPS), and the World Ocean Assessment (WOA), and the importance of work being done at the science-policy interface, including in relation to ‘nature-based solutions,’

**ACKNOWLEDGING** also the increasing interest in systems thinking, including the ecosystem approach, as well as traditional and Indigenous knowledge and State practice and scholarship advocating ecocentric approaches in law,

**RECOGNIZING** the importance of effective governance and sustainable peace, including in conflict and post-conflict situations, and that sustainable natural resources management prioritizes equity and the interests of, and benefits for, all persons, including local communities and Indigenous peoples, and future generations, and ensures free, informed and meaningful participation in decision-making,

**NOTING** that care is required to ensure that even well-intentioned sustainable development policies are not enshrined in legislation in such a manner as to create perverse incentives that risk resulting in unsustainable natural resource use, including unsustainable land use or land use change or other forms of maladaptation,
ACKNOWLEDGING in the light of the above that the conservation and use of natural resources, which may be viewed as global, regional, transboundary or national resources based on their spatial attributes, raises cooperation and distributional issues of global relevance,

HIGHLIGHTING that the natural resources in each of these categories have been the subject of both hard and ‘soft’ rules of international law, including many binding international, regional and bilateral treaties, the principles of international law on sustainable development and, over time, related codes of practice between States, and have been considered by international courts and tribunals;

DOES HEREBY:

1. REAFFIRM the 2002 New Delhi Declaration of Principles of International Law Relating to Sustainable Development,

2. REAFFIRM the 2012 Sofia Guiding Statements on the Judicial Elaboration of the 2002 New Delhi Declaration of Principles of International Law Relating to Sustainable Development,

3. ADOPT the 2020 ILA Guidelines on the Role of International Law in Sustainable Natural Resources Management for Development, as annexed to this Resolution, which in accordance with the principles of international law on sustainable development, and supported by myriad international legal instruments, are found to be defining and guiding the sustainable management of natural resources in the world today, and also providing a roadmap for the progressive development of international law on the sustainable management of natural resources for development.
ANNEX I

INTERNATIONAL LAW ASSOCIATION

KYOTO CONFERENCE (2020)

2020 ILA GUIDELINES ON THE ROLE OF INTERNATIONAL LAW IN SUSTAINABLE NATURAL RESOURCES MANAGEMENT FOR DEVELOPMENT

In accordance with the principles of international law on sustainable development, and supported by myriad international legal instruments, these 2020 ILA Guidelines on the Role of International Law in Sustainable Natural Resources Management for Development are found to be defining and guiding the sustainable management of natural resources in the world today, and also providing a roadmap for the progressive development of international law on the sustainable management of natural resources for development.

These Guidelines reflect both established international law, including *lex lata* rules of treaty law that are binding on the Parties to key instruments and also customary rules, and also many norms that are still *lex ferenda*, with a view to future law. They are organized in three parts.

The First Part (I) presents, sector by sector in a non-exhaustive survey, certain guidelines for the sustainable management of global, regional, transboundary and national natural resources, covering: (1) global natural resources such as celestial bodies, the atmosphere and a stable climate system, biological diversity and ecological systems, and the ocean and its mineral and living resources; (2) regional and transboundary natural resources of global importance such as forests and landscapes as regional and transboundary natural resources, rivers and freshwater ecosystems as regional and transboundary natural resources, and migratory species as regional and transboundary natural resources; and (3) national natural resources of global relevance such as forests and landscapes, land and soil, mineral commodities, including precious minerals and sustainable energy.

The Second Part (II) addresses trends and innovations in international legal instruments and approaches in sustainable natural resources management for development, with a non-exhaustive selection covering: (4) trends from international human rights, economic, environmental, peacebuilding and post-conflict instruments related to the sustainable use of natural resources for development including human rights approaches; economic instruments; environment and sustainable development cooperation including scientific collaboration, financing mechanisms, monitoring, reporting and verification, and public participation and access to information and justice; also peacebuilding and post-conflict instruments; and secure land and water access. This Part also covers (5) innovative techniques and requirements in international instruments on sustainable management of natural resources for development, with a non-exhaustive selection including: sustainable resources management through transparency and stakeholder engagement, equitable benefit-sharing from sustainable natural resources management, legal indicators of effectiveness for sustainable natural resources management, and control of illicit flows for sustainable natural resources management. The Part further covers a brief, non-exhaustive update on (6) sustainable natural resources management in international dispute settlement.

Finally, in the Third Part (III), notes are provided for the interpretation and application of the 2020 ILA Guidelines on the Role of International Law in Sustainable Natural Resources Management for Development.
1. GUIDELINES FOR SUSTAINABLE MANAGEMENT OF GLOBAL, REGIONAL, TRANSBOUNDARY AND NATIONAL NATURAL RESOURCES

1. Global Natural Resources

1.1 Celestial Bodies

1.1.1 Outer space, including the Moon and other celestial bodies, is recognized as being the province of all humankind and its exploration and use for peaceful purposes the common interest of all humankind. The resources of the Moon and other celestial bodies are conferred the status of common heritage of humankind under the Moon Treaty, which envisaged a regime of non-appropriation and joint management.19 This system of non-appropriation and joint management is intended to address natural resources found in outer space, including their exploration and exploitation, as well as spaces of cultural heritage in space.

1.1.2 Several key treaties, instruments and standards offer important insights in the evolving role of international law in the sustainable management of celestial bodies.20 International law promotes more sustainable management of celestial bodies by establishing several key norms. States should not take unilateral action regarding the exploitation of natural resources located on celestial bodies. Nor may States allow the use and deployment of satellites or other objects into space if they are likely to disintegrate and cause space junk, which can harm celestial and planetary resources as well as Earth itself. At the same time, international law requires that States must comply with the international regulatory system created under the jurisdiction of the International Telecommunication Union with regard to the launching and placement of satellites and celestial communications tools. Furthermore, the principle of equitable benefit forms part of the rules governing the sustainable management of outer space and celestial bodies.

1.2 The Atmosphere and a Stable Climate System

1.2.1 The atmosphere inextricably links States and individuals and cannot be contained by a border. Change in the Earth’s climate and its adverse effects are recognized as a common concern of humankind.21

1.2.2 An important body of treaties, instruments and standards highlight the evolving role of international law in the sustainable management of the atmosphere and a stable climate system.22 International law regulates the

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19 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space including the Moon and Other Celestial Bodies (adopted 19 December 1966, entered into force 10 October 1967) RES (XXI) 2222 (Outer Space Treaty), art 2; Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (adopted on 18 December 1979, entered into force on 11 July 1984) 1363 UNTS 3 (Moon Agreement), art 11. The latter has however only been ratified by 18 States.

20 In order to assess the evolving role of international law in the sustainable management of celestial bodies, the Committee surveyed the Constitution and Convention of the International Telecommunication Union (adopted on 22 December 1992, entered into force on 1 July 1994) 1825 UNTS 331/1825 UNTS 390; the Outer Space Treaty supra note 18; Moon Agreement supra note 18, arts 7(1) and 11(7); and the Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space, endorsed with UN GA Res. 62/217 of 22 December 2007.


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anthropogenic emissions of greenhouse gases (GHG) to achieve a stabilization of GHG concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system and promotes sustainable management of this resource by establishing several key norms. Specifically, States have committed to holding temperature increases to well below 2°C above pre-industrial levels, and to pursue efforts to limit temperature increases to 1.5°C above pre-industrial levels. States recognize that this requires global peaking of GHG emissions as soon as possible, rapid and sustained reductions thereafter in order to achieve a balance of anthropogenic emissions by sources and removals by sinks around 2050 (so called ‘carbon neutrality’ or ‘net zero emissions’). In order to reach this goal, States shall undertake domestic legal and policy measures to reduce GHG emissions. In this context, States should also take action to conserve and enhance GHG sinks and reservoirs, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems, including soils, wetlands, peatlands and mangroves, which pose risks of releasing GHGs on a significant scale when disturbed or not managed sustainably. Under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, States must put forward progressive Nationally Determined Contributions (NDCs) every five years, which are to reflect their highest possible ambition, and need to report on the progress on implementation and achievement of their NDCs. Several international law instruments have established that States shall be subject to oversight committee review in instances of alleged failures to meet their treaty-based obligations, for example the Paris Agreement Implementation and Compliance Committee.

1.2.3 Further, States seeking to engage in the promotion and use of renewable energies should do so in a way that is sustainable and reduces GHG emissions into the atmosphere, as well as avoid the further degradation of biodiversity. Importantly, States may fulfil such obligations in a flexible and cost-effective way, also in keeping with the principle of sustainable development and the principle of common but differentiated responsibilities and capabilities, in the light of different national circumstances, and make use of domestic and international transfer or trading mechanisms to this end (e.g. International Emission Trading, Joint Implementation, Clean Development Mechanism or the new international carbon credit mechanism established by Article 6 of the Paris Agreement, which is still to be implemented). This requires coordination between international climate change regimes and international economic regimes, such as the international trade and investment regime, with a view to ensure mutual supportiveness. Procedures, including impact assessments and safeguarding mechanisms, must be put in place to avoid the risk of GHG emission leakage and maladaptation, double counting or other perverse incentives leading to unsustainable natural resource use, including unsustainable land use or land use change.

1.3 Biological Diversity and Ecological Systems

1.3.1 Biodiversity plays an important role in maintaining the life-sustaining systems of the biosphere, and its conservation is a common concern to humankind. International, regional and global cooperation among States and stakeholders, including intergovernmental organizations, civil society and the private sector, is essential for the conservation of biodiversity and the sustainable use of its components. Several key treaties, instruments and standards offer important insights in the evolving role of international law in the sustainable use of global

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23 Paris Agreement supra note 21, arts 2.1 and 4.1.

biodiversity and ecological systems. International law regulates human activities affecting biodiversity and ecological systems to promote the conservation and sustainable use of these resources, as well as the fair and equitable benefit-sharing from the utilization of genetic resources, by establishing several key norms. States have sovereign rights over their own biological and genetic resources, and are responsible for conserving biodiversity and for sustainably using its components. States are encouraged, as far as possible and as appropriate, to cooperate with other States, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for conservation and sustainable use.

1.3.2 States should uphold the targets adopted and requirements identified for the protection of biodiversity and ecological systems found in the treaty regimes, associated protocols and other related instruments. States shall, in accordance with their conditions and capabilities, develop national strategies, action plans or programmes for the conservation and sustainable use of biodiversity, or adapt existing strategies, plans or programmes for this purpose. In accordance with their conditions and capabilities, States shall also integrate, as far as possible and as appropriate, conservation and sustainable use into relevant sectoral or cross-sectoral plans, programmes and policies. In this context, States should conserve biodiversity and sustainably use its components, both above and below ground, terrestrial and marine, and use an ecosystems approach.

1.3.3 Noting that in-situ conservation is a fundamental requirement for the conservation of biological diversity, States must, as far possible and as appropriate, establish a system of protected areas or areas where special measures need to be taken to conserve biodiversity; regulate or manage biological resources important for the conservation of biodiversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use; promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas; rehabilitate and restore degraded ecosystems and promote the recovery of threatened species through the development and implementation of plans or other management strategies; establish or maintain means to regulate, manage or control the risks associated with living modified organisms that are likely to have adverse environmental impacts that could affect conservation and sustainable use; prevent the introduction of, control or eradicate invasive alien species which threaten ecosystems, habitats or species; develop or maintain necessary laws and/or regulations for the protection of threatened species and populations; adopt measures for the recovery and rehabilitation of...
threatened species and for their reintroduction into their natural habitats; and, regulate or manage processes and categories of activities determined to have significant adverse effects on biodiversity.

1.3.4 States should integrate consideration of the conservation and sustainable use of biological resources into national decision-making; adopt measures on the use of biological resources to avoid or minimize adverse impacts on biodiversity; protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use; support local populations to develop and implement remedial action in degraded areas; and encourage cooperation between governmental authorities and the private sector in developing methods for sustainable use. States should also introduce Environmental Impact Assessment (EIA), Strategic Environmental Assessment (SEA) or Sustainability Impact Assessment (SIA) procedures for projects that are likely to have significant adverse effects on biodiversity in order to avoid or minimize such effects, and allow for public participation. Finally, States must take appropriate legislative, administrative or policy measures for fair and equitable benefit sharing from the utilization of genetic resources with the providing country. Benefits should be shared with Indigenous peoples and local communities where they have the right to grant access to genetic resources under national law.

1.3.5 Beyond these requirements, States shall report on their activities, including those relating to protection of biodiversity and ecological systems. In conjunction with this, some international law instruments establish that States shall be subject to oversight committee review in instances of alleged failures to meet their treaty-based obligations, such as the Convention on International Trade in Endangered Species of Flora and Fauna (CITES), while others are based on the duty to cooperate, such as the Convention on Biological Diversity (CBD) or the Convention on Migratory Species (CMS), out of recognition inter alia of the different capabilities of States in enacting and enforcing implementing laws and policies. Additionally, States are encouraged to establish specialized collaborative regimes for the protection of particular migratory terrestrial or marine species and ecosystems, such as the CMS and the UN Convention on the Law of the Sea (UNCLOS) Straddling Stocks Agreement.

1.4 The Ocean, and its Mineral and Living Resources

1.4.1 The natural resources of the global ocean and its ocean basins are subject to overarching duties of conservation and cooperation. Mineral resources of the ‘Area’ (the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction). 26 Marine biodiversity conservation is recognized as a common concern of humankind. 27 Although oceans physically straddle international and national jurisdictions, their ecological connectivity makes them truly global resources. This is reflected in the existing instruments that address oceans as global resources, listed below, and in the current progressive development of international law and policy which is in the process of integrating the traditional law of the sea with science-based international environmental law, especially with respect to conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (ABNJ).

1.4.2 In order to assess the evolving role of international law in the sustainable management of the global ocean, a collection of key treaties, instruments, and standards offers important insights. 28 International law regulates

26 UNCLOS supra note 21, Preamble and Part XI s 2 art 136.
27 CBD supra note 23, Preamble and art 2.
oceans to promote more sustainable management of these resources by establishing several key norms. States must respect the res communis nature of high seas resources; extraction of seabed minerals in areas beyond national jurisdiction is subject to international oversight. Under international treaty law and jurisprudence, States are required to undertake a number of activities – such as conservation, precaution, due diligence, EIAs and best environmental practices – to ensure sustainable management of oceans as natural resources. States should also apply concerted management and conservation of migratory fish stocks found within their territorial waters so as to protect them as an international resource rather than classify them as purely domestic resources. Further, flag States are required to ensure that the vessels sailing under their jurisdiction follow sustainable management and conservation practices for fishing living resources found in international waters. Ocean governance also requires full and ambitious implementation of the UNFCCC and Paris Agreement.

2. Regional and Transboundary Natural Resources of Global Importance

2.1 Forests and Landscapes as Regional and Transboundary Natural Resources

2.1.1 Forests and landscapes are of global relevance for the atmosphere and a stable climate system, and for the conservation and sustainable use of biodiversity. Forests and landscapes, including wetlands and coastal areas, can be considered as regional or transboundary resources, located across States, bisected by State borders, but still functioning ecologically as a unified system. In this way, while forming part of the territory of a sovereign State, these resources have an additional impact and importance beyond national boundaries, and actions taken regarding them at the State level will have repercussions throughout a broader area. This is reflected in existing international law and policy instruments, as well as regional law instruments and policy mechanisms that address forests and landscapes.

2.1.2 In order to assess the evolving role of international law in the sustainable management of regional and transboundary forests and landscapes a collection of key treaties, instruments, and standards offers important insights. International law regulates forests and landscapes as regional and transboundary resources to promote more sustainable management of these resources by establishing several key norms. States should create and implement national forestry management policies, strategies and practices which recognize the varied nature of interests encompassed in forests and land management, including applying the ecosystem approach, and addressing GHG emissions and removals from land use, land-use change, and forestry. States should also prevent, and restore, land and forest degradation through sustainable management practices. States should factor the need for transboundary conservation and management into their plans and strategies, and enter into consultations to implement this in practice. In addition, States should identify, protect, conserve, present and

24 In order to assess the evolving role of international law in the sustainable management of regional and transboundary forests and landscape ecosystems, the Committee surveyed the global CBD supra note 23, Preamble, arts 5 and 6; UNFCCC supra note 20, art 4; Paris Agreement supra note 21, art 5; UNCCD supra note21; ITTA 2006 supra note 24; Ramsar Convention supra note 21, art 5; the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted 16 November 1972, entered into force 17 December 1975) 1037 UNTS 151 (WHC), arts 2, 4, and, 11(4); CITES supra note 24; the CCITPIC supra note 21; the 'Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests' (New York 21 April 1992) UN Doc A/CONF.151/6 (NLBI); the UN Forest Instrument (16 February 2016) UN Doc A/RES/70/199 (UN Forest Instrument); UN Strategic Plan for Forests 2017-2030, adopted by UNGA (27 April 2017) UN Doc A/RES/71/285; UNDRIP supra note 21, art 25; UNDROP supra note 21; VGSSM supra note 21; VGGT supra note 21; Revised Soil World Charter supra note 21. The Committee also considered the work of the United Nations Forum on Forests and Collaborative Partnership on Forests; the policies of the Forest Carbon Partnership Facility; the Forest Stewardship Council; the Programme for the Endorsement of Forest Certification, and the Sustainable Forestry Initiative certification systems. Further, the Committee considered regional instruments such as the Revised African Convention on the Conservation of Nature and Natural Resources (adopted 11 July 2003, entered into force 23 July 2016) supra note 24; the Convention for the Conservation of the Biodiversity and the Protection of Priority Wilderness Areas in Central America supra note 24, art 14, see also arts 11 and 12; and the Alpine Soil Protocol supra note 24.
pass to future generations, natural areas of outstanding universal value from the point of view of science, conservation or natural beauty. Further, States should ensure that regulatory actions related to forestry and land use also cover private and industry actors involved in extraction, harvesting and use of these resources and associated value chains. Additionally, States may enter into voluntary agreements on forests and landscapes which further collaboration with other States, international organizations and private actors in order to undertake actions to reduce emissions from deforestation and forest degradation, conserve forest carbon stocks, sustainably manage forests, and enhance forest carbon stocks.

2.2 Rivers and Freshwater Ecosystems as Regional and Transboundary Natural Resources

2.2.1 Many rivers and freshwater ecosystems, including groundwater and aquifers, transect or even form borders and boundaries, making them a legal and societal resource of more than a particular State. In this way, while these bodies of water might originate in the territory of a sovereign State, as resources they have an impact and import beyond national boundaries and actions taken regarding them at the State level will have repercussions throughout a broader area. This is reflected in the existing international law and policy instruments, as well as regional law instruments and policy mechanisms, that address rivers and freshwater ecosystems.

2.2.2 In order to assess the evolving role of international law in the sustainable management of regional and transboundary rivers and freshwater ecosystems, a collection of key treaties, instruments, and standards offers important insights. International law, in addition to applicable regional law, regulates rivers and freshwater ecosystems as regional and transboundary resources to promote more sustainable management of these resources by establishing several key norms. States should ensure that there is harmonization in the legal and governance systems relating to transboundary and regional watercourses, including obligations to work together to ensure this harmonization. As part of this, States must include the duty to notify other riparian States of their development plans that may affect the rivers substantially and consult in their management of watercourse resources. Additionally, in managing transboundary and regional watercourses, States should include key sustainable development law principles, such as the no significant harm principle, the polluter pays principle and the precautionary principle, and adopting the ecosystem approach, States should include consideration of related land and soil use and management decisions, which impact water regulation and quality. When addressing the development of watercourses or wetlands directly or indirectly, States should use transboundary and domestic Environmental Impact Assessments (EIAs) or Sustainability Impact Assessments (SIAs) as tools to ensure that there is a full assessment of likely impacts, taking into account public concerns and contributions. Further, States should work together to create guidelines for the management of shared rivers and freshwater ecosystems.

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2.3 Migratory Species as Regional and Transboundary Natural Resources

2.3.1 Many species are highly migratory as a matter of standard course and cross boundaries and regions, making them a legal and societal resource of more than a particular State. In this way, while these species might originate in the territory of a sovereign State, as resources they have an impact and import beyond national boundaries and actions taken regarding them at the State level will have repercussions throughout a broader area. This is reflected in the existing international law and policy instruments, as well as regional and bilateral law instruments and policy mechanisms, that address straddling stocks and highly migratory species.

2.3.2 In order to assess the evolving role of international law in the sustainable management of regional and transboundary migratory species, a collection of key treaties, instruments, and standards offers important insights. International law regulates migratory species as regional and transboundary resources to promote more sustainable management of these resources by establishing several key norms. States are required to provide for the protection, conservation and management of migratory species which traverse their territories in any form (land, air or water). States may work together to establish and implement targeted agreements for handling the migration patterns of specific migratory species with the purpose of ensuring sustainable management of the species at the national and regional levels. Further, States are required to provide special protections for endangered migratory species that traverse their territory and to ensure that they are not targeted for poaching or other illegal activities.

31 UNCLOS supra note 21, art 63.
32 UNCLOS supra note 21, art 64 and Annex I. Also, see the Straddling Stocks Agreement supra note 28, which sets out principles for the conservation and management of those fish stocks and establishes that such management must be based on the precautionary approach and the best available scientific information. The Straddling Stocks Agreement elaborates on the fundamental principle, established in the UNCLOS, that States should cooperate to ensure conservation and promote the objective of the optimum utilization of fisheries resources both within and beyond the exclusive economic zone.
3. National Natural Resources of Global Relevance

3.1 Forests and Landscapes

3.1.1 In addition to their global relevance in relation to the sustainable management of the atmosphere and a stable climate system and the conservation and sustainable use of biodiversity, as well as transboundary or regional relevance, forests and landscape ecosystems within States are still considered to play a significant role in international environmental and socioeconomic concerns. They are thus subject to international laws and policies as well as national laws and enforcement mechanisms and, increasingly, an international human rights law lens, which impacts on their sustainable management. This is reflected in existing international law and policy instruments, as well as national law instruments and policy mechanisms that address forests and landscape ecosystems.

3.1.2 In order to assess the evolving role of international law in the sustainable management of national forests and landscape ecosystems, a collection of key treaties, instruments, and standards offers important insights. Taken together, international law, in addition to applicable domestic law, regulates forests and landscape ecosystems as national resources to promote more sustainable management of these resources by establishing several key norms. States should implement national strategies to plan for the conservation and sustainable use of forests and landscapes, including, where appropriate, facilitating changes to existing laws and rules which could hinder these efforts.

3.1.3 States should, in particular, create and implement national strategies to reduce deforestation and forest degradation, as well as for the conservation of carbon sinks and reservoirs, sustainable management of forests, and enhancement of forest carbon stocks. They should adopt the ecosystem approach to the management of forests and wetlands, such as mangroves. In conjunction with this, States should work towards the wise use of wetlands to ensure maintenance of ecological character, through the ecosystem approach, and in the context of sustainable development. Furthermore, States should incorporate transparency and monitoring systems in their design and implementation of these strategies, including the use of reporting and verification mechanisms. In order to reduce forest-based emissions to prevent catastrophic climate change, developing States should also include actions for reducing emissions from deforestation and forest degradation, conservation of forest carbon stocks, sustainable management of forests and enhancement of forest carbon stocks (REDD+) in their NDCs and strengthen national institutions for the implementation of REDD+ strategies; regularly assess the potential for advancing holistic, durable solutions to the intertwined issues of tropical deforestation, rural livelihoods, and food security; and review the REDD+ monitoring, verification and reporting system in national institutional frameworks and policies in order to improve the technical management of forest and landscape ecosystems.

3.1.4 Lastly, States should also promote ways to adequately control international trade in tropical timber, to prevent illicit flows of illegal timber and foster trade only from sustainably managed and legally harvested forests, and promote the sustainable management of tropical timber producing forests.

3.2 Land and Soil

3.2.1 In addition to their global relevance in relation to the sustainable management of the atmosphere and a stable climate system, and conservation of biodiversity, as well as any transboundary or regional relevance, land and soils within States still play a significant role in international environmental, societal, cultural and security concerns and are thus subject to international laws and policies as well as national laws and enforcement

34 In order to assess the evolving role of international law in the sustainable management of national forests and landscape ecosystems, the Committee surveyed the global CBD supra note 23, art 6; the UNFCCC supra note 20, art 4; Paris Agreement supra note 22; UNCCD supra note 21; the ITTA 2006 supra note 24; Ramsar Convention supra note 21, art 3(1); WHC supra note 27, arts 2, 4, 5, and 11(4); CITES supra note 24 Preamble; as well as the NLBI supra note 28; the UN Forest Instrument supra note 28; UN Strategic Plan for Forests 2017-2030 supra note 28; Revised Soil World Charter supra note 21; VGSSM supra note 21; VGST supra note 21; CCFTPIC supra note 22; UNDRIP supra note 22; and UNDROP supra note 22. Further, the Committee examined the work of the United Nations Forum on Forests and Collaborative Partnership on Forests; the policies of the Forest Carbon Partnership Facility; the Forest Stewardship Council; the Programme for the Endorsement of Forest Certification; and Sustainable Forestry Initiative certification systems.
mechanisms. Furthermore, land and soil are increasingly viewed through an international human rights lens, which impacts on their sustainable management. These elements are reflected in existing international law and policy instruments, as well as national law instruments and policy mechanisms that address land and soil.

3.2.2 In order to assess the evolving role of international law in the sustainable management of national land and soil, a collection of key treaties, instruments, and standards offers important insights. Taken together, international law, in addition to applicable domestic law, regulates land and soil as national resources to promote more sustainable management of these resources by establishing several key norms.

3.2.3 Nearly all States are required to create National Biodiversity Strategies and Action Plans (NBSAPs) for the sustainable use and conservation of biodiversity resources, which should include soil biodiversity. States should take action to restore, conserve and enhance terrestrial and coastal land and soils, including wetlands, peatlands and mangroves, in their function as GHG sinks and reservoirs, as part of the global efforts to mitigate climate change, through adequate mitigation actions at national level as well as international cooperative mechanisms. States should additionally contribute to enhancing adaptive capacity, including in relation to agricultural lands and food security, and seek a high level of ambition in their NDCs under the Paris Agreement in order to minimize the risks and impact to land and soil resulting from the effects of climate change. States shall also combat desertification and mitigate the effects of drought in areas experiencing serious drought and/or desertification through effective National Action Plans as well as through international cooperation and partnerships, including long-term integrated strategies focusing on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions. States shall strive to achieve a land degradation neutral world through setting land degradation neutrality (LDN) targets and collaboration. Further, States should designate wetlands of international significance within their territories, adopting an ecosystem approach, and identify areas of relevance under the World Heritage Convention.

3.2.4 States have a duty to prevent pollution of land and soils, including by chemical and other types of pollutants such as pesticides and fertilizers, or resulting from mining, and take appropriate measures to avoid the risks presented by such products or activities to human health and the environment, including through adequate legal and institutional measures at national level. They should implement regional conventions with provisions directed towards the sustainable management of soils, as well as sectorial treaties, dealing for

35 Of note, a ‘right to land’ of peasants and other people living in rural areas has been proclaimed in the Declaration on the Rights of Peasants and Other People Living in Rural Areas, defined as the right ‘individually and/or collectively [...] to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures’ UNDROP supra note 22. Further, the 66th Session of the UN Committee on Economic, Social and Cultural Rights held a general discussion on land and the International Convenant on Economic, Social and Cultural Rights (ICESCR) as part of an ongoing consultative process to draft a ‘general comment’ on this topic <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/GeneralDiscussionLand.asp> accessed 8 November 2020.

36 In order to assess the evolving role of international law in the sustainable management of land and soil, the Committee surveyed the global CBD supra note 23, arts 2 and 6; the UNFCCC supra note 20; Paris Agreement supra note 22; UNCCD supra note 21; UNCLOS supra note 21, art 56 l(a); Ramsar Convention supra note 21, art 3(1); WHC supra note 28, arts 2, 4, 5, and 11(4); CEDAW supra note 29, art 14(2)(g); the International Convenant on Economic Social and Cultural Rights (signed 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), art 11(2)(a); the Basel Convention supra note 21 and Protocol on the Control of Marine Transboundary Movements and Disposal of Hazardous Wastes and Other Wastes supra note 22; Rotterdam Convention supra note 22; Stockholm Convention supra note 21, art 7; Minamata Convention supra note 22; Bamako Convention supra note 22; the Convention on Long-Range Transboundary Air Pollution (adopted 13 November 1979, entered into force 16 March 1983) 1302 UNTS 217 and related protocols; the FAO International Code of Conduct on Pesticide Management; the Strategic Approach to International Chemicals Management (SAICM); the IUCN World Charter for Nature; CCITPIC supra note 22; the ILO Convention on Safety and Health in Agriculture (C184 Convention); Revised World Soil Charter supra note 22; VGSSM supra note 22; VGGT supra note 22; UNDRIP supra note 21, Preamble and art 25; and UNDROF supra note 22. The Committee also surveyed regional instruments such as the Revised African Convention on the Conservation of Nature and Natural Resources (adopted 11 July 2003, entered into force 23 July 2016) supra note 24; European Soil Charter, Ref. B172/63, Strasbourg, June 1972, and the Committee for the activities of the Council of Europe in the field of biological and landscape diversity (CO-DBP) Revised European Charter for the Protection and Sustainable Management of Soil (28 May 2003) CO-DBP (2003) 10; Alpine Soil Protocol supra note 25; the Escazu Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean (adopted 4 March 2018) CN.195:2018 and the Kuwait Regional Convention supra note 24 and Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf supra note 24.
example with water, air, protected areas and species, hazardous substances, pollution and waste, which implicitly have the objective of protecting land and soil.

3.2.5 States should recognize land as a multifaceted resource, including its economic, social, environmental, cultural and spiritual relevance, and as the basis of the livelihoods of millions of people worldwide. Further, States should recognize and respect all legitimate land tenure rights and their holders, including customary rights and other rights based on social legitimacy, safeguard legitimate tenure rights against threats and infringements, promote and facilitate the enjoyment of these rights and provide access to justice in case of their infringement, especially as secure tenure rights are key for more sustainable land and soil management. Non-state actors also have a responsibility to respect legitimate tenure rights, and States should take appropriate steps to protect against infringements and abuse of land tenure rights.

3.2.6 States should incorporate sustainable use and management of land and soil to promote food security and human nutrition as part of their agricultural, planning, and land management laws, policies and practices. States and non-state actors should promote responsible investments in land, agriculture and food systems, including through promoting the conservation and sustainable management of land and natural resources.

3.2.7 States should cooperate to implement the Revised World Soil Charter, as further elaborated in the Voluntary Guidelines for Sustainable Soil Management (VGSSM). In particular, States should pursue the overarching goal to ensure that soils are managed sustainably and that degraded soils are rehabilitated or restored, and that actions at all levels are informed by the principles of sustainable land and soil management and contribute to the achievement of a land-degradation neutral world in the context of sustainable development. States should promote sustainable soil management and strive to create socio-economic and institutional conditions favourable to sustainable soil management by removal of obstacles, in particular those associated with land tenure, the rights of users, access to financial services and educational programmes, taking into account the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT). They should participate in the development of multi-level, interdisciplinary educational and capacity-building initiatives that promote the adoption of sustainable soil management by land users; support research programs that will provide sound scientific backing for development and implementation of sustainable soil management relevant to end-users; and incorporate the principles and practices of sustainable soil management into policy guidance and legislation at all levels of government. States should develop a national soil policy, maintain a national soil information system and contribute to the development of a global soil information system, as well as developing a national institutional framework for monitoring implementation of sustainable soil management and the overall state of soil resources.

3.3 Mineral Commodities, including Precious Minerals

3.3.1 Mineral commodities, including precious minerals, can occur in terrestrial or marine jurisdictions, in the Area and in outer space. In the two latter cases, their status of common heritage of humankind is recognized in specific regimes (see above, Sections 1.1 and 1.4). In the former case, they serve as predominantly national natural resources. However, even within this context, it is important to note that mineral commodities and precious minerals within States are still considered to play a significant role in international environmental concerns due to the risks entailed in the extraction and trade of minerals and are thus subject to international laws and policies as well as national laws and enforcement mechanisms and, increasingly, an international human rights lens also impacts on their sustainable management. This is reflected in the existing international law and policy instruments that address mineral commodities, including precious minerals, as well as in national law instruments and policy mechanisms.

3.3.2 In order to assess the evolving role of international law in the sustainable management of national mineral resources, a collection of key treaties, instruments, and standards offers important insights.\(^{37}\) Taken together,

\(^{37}\) In order to assess the evolving role of international law in the sustainable management of mineral commodities, including precious minerals, the Committee surveyed the global UNCLOS, supra note 21, Part XI s4(c) art 164; UNFCCC supra note 20, Preamble, Paris
international law, in addition to applicable domestic law, regulates mineral commodities and precious minerals as national resources to promote more sustainable management of these resources by establishing several key norms and a wide range of standards targeting the private sector engaged in extractive resources. States shall gradually reduce and, when feasible, eliminate the extraction and use of minerals when it poses serious health and environmental threats, including in relation to GHG emissions, sinks and reservoirs, and the prevention of dangerous anthropogenic interference with the climate system.

3.3.3 States may restrict trade of and investment in mineral resources for overriding conservation, health and environmental protection interests. Where States enter into agreements with private actors in the mineral commodities and extractives industries, they should create and implement practices and principles to ensure fiscal transparency, contain bribery, corruption and money laundering, combat tax avoidance and evasion and, ultimately, seek a more equitable distribution of financial and economic benefits arising out of extractive activities, especially for what concerns artisanal mining. Further, States and private actors should work together to ensure that guidelines and recommendations for sustainable management of minerals, including precious minerals, are developed and implemented at the national level. This includes a reporting requirement and the establishment of governmental and industry-based oversight mechanisms, such as the Extractive Industries Transparency Initiative (EITI).

3.3.4 As noted in the African Commission’s Resolution on Illicit Flight of Capital from Africa. African States should examine their domestic tax laws and policies in order to prevent illicit financial flows. Similarly, as noted in the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector, there is a lack of transparency, accountability and public participation in African extractive industries, and several steps can be taken to transform national legal and governance frameworks to address illicit financial flows. As recognized in the 2012 African Union’s Resolution on Human Rights-Based Approach to Natural Resource Governance, transparency, accountability and public participation in the extractive sector is key. The three elements of transparency, accountability and public participation are intricately intertwined, and must be present for resource governance programs and policies to be effective at regional, national and local levels, natural resource driven conflicts, States are encouraged to ensure that “transparency and accountability mechanisms are in place prior to, and during, initiatives to develop and exploit natural resources.” There is a need for full reporting on revenues collected from natural resource activities and on how such revenues have been allocated to programs, governments and communities, and to address governance secrecy or information monopolisation by advancing public availability, accessibility and accuracy of information on relevant laws, regulations and policies.

Agreement supra note 21; Revised World Soil Charter supra note 22; VGSSM supra note 22; VGGT supra note 22; the CCITPIC supra note 22; UNDRIP supra note 22; UNDROP supra note 21, arts 24 and 32(2); IRENA supra note 22; the International Cyanide Management Code; Agreement Establishing the Multilateral Trade Organization [World Trade Organization] (signed 15 April 1994, entered into force 1 January 1995) 1867 UNTS 154; (1994) 33 ILM 13 (WTO Agreement); the International Commodity Agreements; Convention on the Regulation of Antarctic Mineral Resource Activities (adopted 2 June 1988) SATCM IV-12-10 (Wellington 1988) (CRAMRA); the ILO Safety and Healthy in Mines Convention; Minamata Convention supra note 22; OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted 17 December 1997, entered into force 15 February 1999) 2802 UNTS 225; United Nations Convention Against Corruption (signed 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41; the UN Guiding Principles; the OECD Guidelines for Multinational Enterprises and the framework of the United Nations Conference on Trade and Development. The Committee also considered the findings of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development; the findings of the International Lead and Zinc Study Group; the findings of the International Nickel Study Group; the findings of the International Copper Study Group; the Kimberley Process Certification Scheme; the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas; the framework of the Global Acid Rock Drainage Guide; the Ababa Action Agenda of the Third International Conference on Financing for Development; the OECD/G20 Inclusive Framework on Tax Base Erosion and Profit Shifting; and the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector; ACHPR Res 367 Resolution on the Protection of Sacred Sites and Territories (LX) (2017) ACHPR Doc. Res. 372 (LX) 2017.

38 China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum. ACHPR/Res.236 (LIII) 2013.
39 ACHPR/Res.224 (LII) 2012.
40 Resolution on the Protection of Sacred Sites and Territories note 36.
41 ACHPR/Res.224 (LI) 2012.
3.3.5 States should ensure that there are adequate certification and customs screening systems in place to recognize and prevent the trafficking in conflict diamonds. In this context, States should ensure that there are measures in place to enforce bans on these products where an exporting State cannot meet the internationally required standards for certification of minerals.

3.4 Sustainable Energy

3.4.1 The promotion of sustainable energy markets may be international or regional, while many of the rules governing generation of sustainable, clean energy are national, and subject to provincial, cantonal or other municipal laws and policies. This noted, both sustainable energy generation and transmission, as well as energy efficiency, have important transboundary and international environmental implications, and are thus subject to international rules and regimes, as well as domestic laws and enforcement mechanisms. This is reflected in the existing international law and policy instruments, as well as national and sub-national legal instruments and mechanisms that address sustainable energy.

3.4.2 In order to assess the evolving role of international law in the sustainable management of national energy resources, a collection of key treaties, instruments, and standards offers important insights.\(^{44}\) Taken together, international law, in addition to applicable domestic law, regulates clean energy as a national resource to promote more sustainable management of this resource by establishing several emerging key norms. States are encouraged to use trade and investment policy instruments as leverage for stronger sustainable and renewable energy-related activities and governance systems while still ensuring they align to applicable trade and investment law obligations at the international, regional and bilateral levels. States should ensure that their domestic legal and regulatory systems for energy promote and incentivize the generation and use of sustainable and renewable energy across all sectors and the economy as a whole, and support energy citizenship. There is a need to address the interconnectedness between sustainable energy and the management of food and water resources through a nexus governance approach. There is also a need to consider activities in relation to ocean resources such as methane hydrates. States should ensure that there is transparency and oversight in the regulation and management of sustainable and renewable energy as a sector. Procedures, including impact assessments and safeguarding mechanisms, must be put in place to avoid the risk of maladaptation, for example resulting from well-intentioned policies creating perverse incentives leading to unsustainable natural resource use including unsustainable land use or land use change.

II. TRENDS AND INNOVATIONS IN INTERNATIONAL LEGAL INSTRUMENTS AND APPROACHES IN SUSTAINABLE NATURAL RESOURCES MANAGEMENT FOR DEVELOPMENT

4. Trends from International Human Rights, Economic, Environmental, Peacebuilding and Post-Conflict Instruments related to the Sustainable Use of Natural Resources for Development

4.1 Human Rights Approaches

4.1.1 International human rights instruments provide protection for individuals in terms of rights that are linked to the ability to access natural resources and the ability to enjoy natural resources that are not degraded, polluted or otherwise threatened. Many regional human rights conventions and national constitutions and the UN Special Rapporteur on Human Rights and the Environment has highlighted human rights linkages to other global agendas including climate change and biodiversity. The majority of human rights treaties contain reporting requirements that obligate States to disclose their compliance with the terms of the applicable treaty. This is coupled with the creation of a designated treaty oversight mechanism, which reviews and evaluates State compliance with treaty terms and provides guidance on treaty application. Through these oversight systems, there have been innovative treaty interpretations, which have increasingly entrenched the sustainable use of natural resources, particularly in human rights law jurisprudence.

4.1.2 The application of the human rights instruments by international courts and tribunals, and particularly by the regional courts, such as Caribbean Court of Justice, European Court of Human Rights and the Inter-American Human Rights system, represents significant innovation for the protection of natural resources. Innovating by extensive and evolutive interpretation of treaties, these courts demonstrate a deeper understanding of the ways in which natural resources and human rights are linked and contribute to reaffirming, acknowledging or developing the scope of rights and duties related to the enjoyment of natural resources from hard and soft law. Among these rights and duties is the right of Indigenous peoples to enjoy the natural resources in their traditional lands as well as the right of both current and future generations to derive a benefit from the protection of natural resources confirmed, by the Inter-American Court of Human Rights. Further, there is the recognition of the duty to conduct EIAs or reviews and/or the right of prior consultation and to free, prior and informed consent for transfers and/or exploitation of territory and natural resources. In the application of international law, courts have innovated by expanding the scope of their jurisdiction going beyond the individual rights and acknowledging these rights to communities and groups of peoples, notably Indigenous peoples. The work of the quasi-judicial jurisdiction in the application of human rights law, such as the Human Rights Committee, the Committee on the Elimination of Racial Discrimination at the international level, at regional level the Inter-American Commission on Human Rights and the African commission on human and peoples’ rights, and national courts (e.g., Colombian Constitutional Court) and arbitrations, has also played a crucial role in recognizing rights to access and enjoyment of natural resources, as well as regarding the imputation of responsibility for the violation of these rights, including putting at stake the responsibility of private corporations in international and transnational matters.

4.2 Economic Instruments

4.2.1 In recent years, there has been an increasing recognition of the links between international trade and sustainable development, including in the context of continuing debates in the World Trade Organization (WTO) and the implementation of trade rules. Certain progress has been achieved in, for instance, trade negotiations on the liberalization of environmental goods and services (ESG) which aim to enhance the potential of trade to foster rather than frustrate more sustainable management of natural resources.

4.2.2 Regional and bilateral economic agreements, such as Regional Trade Agreements (RTAs), are also being adopted, integrating and accompanied by specific measures promoting sustainable development. Many such agreements include, for instance, interpretive statements, reservations or general exceptions similar or broader than those found in the General Agreement on Tariffs and Trade under the WTO, deployed with increasing frequency to ensure that the trade agreements do not unintentionally constrain environmental, social or sustainable development measures, such as the adoption of rules to prevent unsustainable exploitation of natural resources, to incentivize green procurement, or to provide subsidies for more sustainable development. Further, in a new generation of regional and bilateral trade and investment agreements, many States are adopting explicit provisions to avoid negative material or normative impacts arising from trade and investment liberalization, encouraging and structuring collaboration for more optimal or sustainable use of natural resources. In certain inter-regional, regional and bilateral economic agreements, Parties are adopting specific chapters on “Trade and Sustainable Development” and other relevant arrangements such as work programmes for collaboration of the Parties to implement mutual commitments on the environment or sustainable development. Additionally, economic agreements have begun to include a number of more specialized provisions which protect the environment and natural resources, such as climate finance mechanisms, the promotion of trade in sustainable products, services or technologies, disaster risk reduction collaboration, commitments to encourage subsidies for clean and renewable energy resources or organic agriculture, the inclusion of standard setting for low-carbon development, and the use of monitoring and assessment mechanisms to review the impacts of trade agreement implementation. Further, regional and bilateral trade agreements now increasingly scrutinized through mechanisms such as environmental, human rights or sustainability impact assessments and public consultations, both during negotiations and throughout their implementation.

4.2.3 Further, IIAs, as well as international investment guidance, have also begun to include significant aspects of environmental protection and conservation, particularly those which relate to the sustainable management of natural resources. IIAs are increasingly incorporating commitments to promote sustainable development, and reaffirming State rights and duties to regulate in relation to sustainable development. Additionally, IIAs are including environmental, social and other sustainability concerns in their definitions and application of the scope of investment, like circumstances designations and market access and expropriation, among other points. As one example of international guidance in this area, the Principles for Responsible Investment in Agriculture and Food Systems, adopted by the Committee on World Food Security, promote ‘responsible investments’ that contribute to food security and nutrition, including through conservation and sustainable management of natural resources.

4.2.4 Finally, innovative economic instruments are being adopted in international agreements on sustainable development, for instance through provisions to redirect financial flows in the objectives of the Paris Agreement under the United Nations Framework Convention on Climate Change, and the implementation of access and benefit-sharing arrangements under the Nagoya Protocol to the Convention on Biological Diversity, and should assist in realigning economic incentives with sustainable resources management imperatives.

4.3 Environment and Sustainable Development Cooperation

Scientific Collaboration

4.3.1 Treaty regimes, particularly those focused on understanding and resolving quickly changing environmental problems and related opportunities for sustainable natural resources management, often develop inter-actionally, building on the foundations of inter-governmental and also independent scientific collaboration mechanisms, such as the Intergovernmental Panel on Climate Change (IPCC), the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), the UNCCD Science-Policy Interface (SPI), the Intergovernmental Technical Panel on Soils (ITPS), and the World Ocean Assessment (WOA), to generate new and innovative solutions to persistent and emerging issues on the international scale. States and coalitions

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47 Certain Committee Members were supportive of such sustainable development measures adopted in chapters and cooperation arrangements, including those of the European Commission with developing countries, while others were critical, noting that such measures may not be subject to the treaty dispute settlement mechanisms nor envision sanctions for non-compliance.
of like-minded States, and also the work of broader epistemic communities in supporting treaty negotiation and implementation, have worked to better define the contours of the principle of sustainable use to ensure sustainable natural resources management.

4.3.2 There are many developments that have occurred in the last few years to secure more sustainable management of natural resources in multilateral environmental agreements (MEAs) and other treaties on sustainable development. In transboundary problem identification and scientific collaboration, for instance, States are now coordinating international scientific scans and studies, or attempting to provide independent and relatively neutral summaries and compilations of scientific data. Often, in environmental matters, it is a question of sounding the alarm on problems. Data is shared with State decision-makers and, in certain instances, becomes the platform for States and non-State actors to reach consensus on environmental problems and work to address them together, using, for example, Environmental Impact Assessment (EIA), Strategic Environmental Assessment (SEA) or Sustainability Impact Assessment (SIA) procedures. In some cases, cooperation arrangements have also supported efforts to ‘fail forward’ into cooperative instruments to address them.

Financing Mechanisms

4.3.3 The establishment of effective and reliable financial bodies to support activities agreed in international treaties, and therefore, also compliance, is crucial. Increasingly ambitious financial mechanisms are being established as States and others start to invest more deeply in addressing environmental problems. For instance, the Global Environment Facility has supported projects on sustainable resources use and has sought assurances that projects will not harm natural resources. Similarly, new methods of financing for clean development and renewable energy were tested in the UNFCCC through the Kyoto Protocol, and a sustainable development mechanism is included in the Paris Agreement. These funds are being set in place to implement the law, convening and facilitating the engagement of States which guide and contribute to the funds, and providing guidance to ensure adherence to agreed principles, rules and procedures.

Monitoring, Reporting and Verification

4.3.4 Transparent reporting, monitoring and verification practices have also become more common in international law, having arguably been piloted by State Parties to the treaties discussed herein. For instance, the adoption of operational information-sharing arrangements, such as regular peer-reviewed monitoring, reporting and verification (MRV) systems, public online databases, and clearinghouses for information-sharing have engaged States and non-State actors in the international community in treaty implementation. By encouraging greater transparency in the treaty negotiation and implementation process, in part through the provision of important national information, international law and procedures have advanced. Regular submission of ‘national communications’ has become nearly a standard obligation for States under treaties on the environment.

Public Participation and Access to Information and Justice

4.3.5 Treaty regimes on the environment rely upon public participation and dissemination of information to generate awareness, ownership and support for their work on all levels, and to increase the availability of relevant scientific information, and the UN assists in this process. In the treaties, Parties commit to promote public participation within their decision-making regimes, for instance through the granting of Observer status to non-governmental organizations with an interest in the subject matter, encouraging multilateral engagement of stakeholders in a manner similar to the Observer status granted to ECOSOC-accredited organisations. Public access to information through technology and media is generating new potentials for meaningful public participation and engagement (e.g., UN’s Papersmart online tool). International and national registries are being increasingly encouraged, serving to increase citizen knowledge and awareness of science, law and other developments related to the treaty’s subject matter. Many agencies work to provide independent, accessible information in relation to the objectives and obligations of the agreements. This public engagement in turn supports States efforts to comply with treaty obligations, encouraging partners and stakeholder to contribute to the treaty.
4.3.6 Treaties on the environment and sustainable development support States in resolving disputes on treaty interpretation peacefully, both through the inclusion of dispute settlement and advisory opinion provisions in the accords, and through the encouragement of their appropriate use. Dispute settlement mechanisms, such as the International Court of Justice, the International Tribunal on the Law of the Sea and others, are constituted by treaty regimes. The awards and decisions of these bodies not only resolve disputes that might otherwise further degrade the contested areas, but also assist States to understand their binding obligations and principles, interpreting the treaty law with an independent and respected voice in both contentious and advisory cases. Under these treaties, partners assist States to comply with their treaty obligations, providing analysis, technical knowledge, and training, and hosting forums for judges and officials to discuss new developments in international law that affect environmental protection. There are also increasing opportunities, on a procedural and substantive level, for non-state actors, including individuals as well as groups and peoples, to rely on internationally derived law relating to the sustainable management of natural resources.

4.3.7 Generally, treaties on the environment and on sustainable development have assisted in giving normative effect to the principles that underpin sustainable management in both procedural and substantive ways.48

4.4 Peacebuilding and Post-Conflict Instruments

4.4.1 In recent decades, the promise of international law in post-conflict contexts and environmental peacebuilding has come to the forefront, with significant developments in forums including the International Law Commission (ILC). Environmental peacebuilding has been defined as integrating natural resources and the environment in conflict prevention, mitigation, resolution, recovery, cooperation and peacebuilding. Principle 1 of the ILA New Delhi Principles sets out State responsibility “to ensure that activities within their jurisdiction or control do not cause significant damage to the environment of other States or of areas beyond the limits of national jurisdiction” and the “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.” Sustainable use in the context of environmental peacebuilding may refer to the obligation to prevent transboundary environmental damage resulting from the use of natural resources, as well as sustainability with respect to the use of the natural resources themselves, e.g. preventing over-exploitation and ensuring sustainable livelihoods.

4.4.2 New Delhi Principle 6 notes that “good governance requires full respect for the principles of the 1992 Rio Declaration on Environment and Development.” Principle 24 of the 1992 Rio Declaration states that: “Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing for protection for the environment in times of armed conflict and cooperate in its further development, as necessary.” Principle 23 notes that, in situations of occupation, “The environment and natural resources of people under oppression, domination and occupation shall be protected.” In addition, Principle 25 of the Rio Declaration states that peace, development and environmental protection are interdependent and indivisible.

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4.4.3 As outlined in the ILC’s analysis on this topic, the 1977 Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques prohibits the military or other hostile use of environmental modification techniques that have “widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party” (Article 1). In addition, Article 35 and Article 55 of the 1977 Additional Protocol I to the 1949 Geneva Conventions prohibit warfare that may cause “widespread, long term and severe damage to the natural environment.” The duty to not cause significant damage is also referenced in the 1998 Rome Statute of the International Criminal Court, which states that “intentionally launching an attack in the knowledge that such attack will cause incidental […] widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” constitutes a war crime (Article 8(2)(b)(iv)). In 2016, the ICC Office of the Prosecutor issued a Policy Paper on Case Selection and Prioritisation, explaining “the Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossess of land.” In addition to the work of the ILC on protection of the environment in relation to armed conflicts (see e.g. Draft principle 21 on Sustainable use of natural resources in situations of occupation), the UN Environment Assembly (UNEA) is also increasingly addressing links between conflict, peacebuilding and the environment (UNEA Res. 2/15 and 3/1). Furthermore, the Sustainable Development Goals (SDGs) aim to both mitigate fragility, corruption and environmental hazards on the one hand (e.g. SDGs 3.9, 15.7, 16.4, 15.2), and enable good governance on the other (e.g. SDG 16.7, 5.a, 2.3, 12.2, 16.8), meaning that their effective implementation could further the objectives of environmental peacebuilding.

Secure Land and Water Access

4.4.4 Recognizing that access to land and natural resources are key to the lives and livelihoods of millions of people worldwide, secure land tenure, also recognition, promotion and protection of all legitimate tenure rights (as per the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)), including for women, along with access to water, are key to secure sustainable use of natural resources. They are vital in post-conflict situations, as lack of access to such resources can exacerbate the tensions giving rise to the conflict, and the failure to adequately address concerns in the peacebuilding process can contribute to the renewal of armed conflict. At the same time, in many States emerging from conflict, agriculture, and thus access to land, soil and water resources, plays a critical role in survival. In the context of these competing concerns, recognizing the pressing need to avoid a renewal of hostilities in order to construct a durable peace, sustainable use of land, natural resources and access to water should be addressed. While approximately half the peace agreements concluded between 1989 and 2004 referred to natural resources, nearly all major agreements from 2005 onwards contain explicit provisions. Recent examples, such as the 2016 Peace Agreement between Colombia and the FARC-EP, recognize the inherent necessity of including sustainable use of natural resources as a cornerstone in building post-conflict society.

5. Innovative Techniques and Requirements in International Instruments on Sustainable Management of Natural Resources for Development

5.1 Sustainable Resources Management through Transparency and Stakeholder Engagement

5.1.1 In the context of international agreements on sustainable development, reporting requirements are increasingly becoming a standard method through which the terms of the agreement are implemented and oversight is provided. Reasons for this trend include the necessity of creating a compliance assessment structure for the agreement and the requirement that the international community and stakeholders, especially civil society members at all levels, have access to information on environmental progress, further environmental and other threats, including threats to natural resources. In addition, the requirement for publicly available EIA promotes transparency and stakeholder participation, and provides an anchor for review. These forms of assessment are innovative in that they attempt to create regulatory processes regarding the sustainable use of natural resources at the national and international levels.
5.1.2 Another critical aspect of oversight in the context of international agreements on sustainable development is the focus on inclusion, transparency and the promotion of public awareness of the potential environmental and natural resource impacts of activities subject to the terms of the treaty. Included in these areas are, increasingly, efforts to foster public empowerment and engagement in the discussions and debates regarding proposed activities falling within the ambit of the agreement. By bringing the voices of individuals and civil society into a realm which was formerly reserved for national and international actors, these provisions are innovative. For example, the Minamata Convention on Mercury, one of the newest MEA instruments in international law, requires States to generate information on mercury stocks and mercury production in their territories, as well as to regulate these production and storage of mercury in their jurisdiction. At the same time, the Minamata Convention provides for significant control and oversight of mercury transportation, import and export within and between States.

5.1.3 In terms of generating transparency within certain sectors, the corporate social responsibility initiative the Extractive Industry Transparency Initiative (EITI) serves as an example of a transnational framework for enhancing transparency in revenue flows to the governments of resource States. The EITI requires disclosure of revenue flows to the governments of resource States and disclosure of contracts, as well as the disclosure of beneficial owners of companies. By generating these forms of transparency requirements at the national and sectoral levels, governments and corporations can be held accountable to the public for their actions and decisions as well as for the financial distributions they make as a result of resources generated in this context. In addition, transparency measures such as those under the EITI structure are also intended to serve as a counterweight to the potential for companies to commit acts of bribery and/or illicit influence peddling as well as for government actors to misuse profits from the trade in and licensing of natural resources. This method of including transparency as a core element of accountability and anti-corruption is innovative as a means to promote the sustainable use of natural resources.

5.2 Equitable Benefit-Sharing from Sustainable Natural Resources Management

5.2.1 A growing number of treaties and other legal instruments refer to benefit-sharing from the use of natural resources. Benefit-sharing emerged as a manifestation of the international legal principles of equity and international cooperation, evolving at the intersection of natural resources governance and human rights law – particularly the right to development. The principle may, depending on the resource, promote procedural fairness and/or equitable outcomes in the sustainable management of natural resources. It may also require the sharing of monetary and/or non-monetary benefits, including economic, environmental, social and intrinsic benefits. It has been applied to relationships between States, within States, and between generations.

5.2.2 The application of the benefit-sharing principle varies depending on the natural resource involved, as well as its nature and location. The principle’s best known expression is in the biodiversity regime, which calls for the fair and equitable sharing of the benefits resulting from the utilization of genetic resources and associated traditional knowledge held by sovereign States or their indigenous peoples and local communities, and in the associated regime addressing plant genetic resources for food and agriculture, It is also present as a voluntary mechanism in the climate regime, namely REDD+. Furthermore, it forms part of the rules governing the sustainable management of outer space, an area of common interest, and celestial bodies, to which the common heritage of humankind is applicable. Additionally, it is being addressed in the emerging rules governing deep sea bed mining in the Area under UNCLOS, which is also the common heritage of humankind.

5.2.3 Binding commitments on equitable benefit-sharing are challenging to negotiate. For example, negotiations have been particularly complex on potential benefit-sharing from ‘digital sequence information’ in the CBD, and benefit-sharing from marine genetic resources in ABNJ under the oceans regime. Negotiations on intellectual property rights over genetic resources and traditional knowledge, folklore and genetic resources have not produced a treaty after nearly twenty years of negotiations. Yet, the principle will remain relevant to debates and negotiations in international fora given the economic and social inequalities between and within States recognized in the New Delhi Declaration, which will likely grow due to the global economic impact of the COVID-19 pandemic. As such, benefit-sharing may be used as an innovative requirement in future treaties and instruments addressing sustainable resources management.
5.3 Legal Indicators of Effectiveness for Sustainable Natural Resources Management

5.3.1 Assessing the effectiveness of international law related to sustainable development is an essential task, particularly in the context of sustainable use of natural resources, and yet it remains somewhat difficult to implement. In this context, the creation of legal indicators for effectiveness of international law related to sustainable development is critical, although questions as to how to collect information and convert data into indicators and the need to avoid misuse of data remain. The innovative idea of developing and applying these legal indicators offers the chance to generate a larger system in which assessment of sustainable use of natural resources can be conducted.

5.3.2 In this context, a potential approach to analysis could build on the existing systems in place for establishing legal indicators in other fields that link to MEAs and natural resource governance, including three measures of effectiveness: (i) legal effectiveness, which focuses on the issue of compliance; (ii) behavioural effectiveness, which focuses on the role of international law in influencing and even changing actors’ behavior towards achieving the treaty’s objectives; and (iii) problem-solving effectiveness, which focuses on the ability of the legal rule to solve or mitigate the problem it was designed to address.

5.4 Control of Illicit Flows for Sustainable Natural Resources Management

5.4.1 The control of illicit flows of natural resources, including flows of endangered species, wildlife, fisheries resources, timber and minerals, and the attendant human rights abuses and loss of biodiversity, is a significant element of promoting and ensuring the sustainable use of natural resources at the international and national levels. Methods of control have been crafted as national and international law, each form containing innovative elements in terms of the obligations placed on actors throughout the international and national systems involved and the ways in which these actors can be held accountable.

5.4.2 A number of States, such as the United Kingdom and France, have enacted legislation addressing and banning conflict minerals of various forms as well as the forced labor used to extract them. Further, under the Dodd Frank Act enacted by the United States and subsequent regulations enacted by the US Securities and Exchange Commission, there is an obligation for companies to disclose if they are using minerals originating in the Democratic Republic of Congo or neighboring States. Additionally, the EU has established regulations requiring that EU importers of tin, tantalum and tungsten, related ores and gold from conflict areas follow certain due diligence obligations. Perhaps the best-known binding instrument in this regard is the Kimberley Process Certification Scheme for Rough Diamonds, which establishes a series of requirements for the certification of diamonds as non-conflict diamonds and the ability to trace diamonds to the source of their extraction. Additionally, inspired by non-binding instruments such as the United Nations Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Mineral Supply Chains of Minerals from Conflict Affected and High-Risk Areas, States have gradually started to adopt binding legislation on the regional and national levels to address the application of disclosure and due diligence to corporate practice and regulation in the context of conflict minerals and other resources which can be yielded through illicit activities.

6. Sustainable Natural Resources Management in International Dispute Settlement

6.1 In recent years, a number of international courts and tribunals, as well as arbitral bodies and other international dispute settlement mechanisms, have addressed issues relating to sustainable management of natural resources. The decisions of these dispute settlement mechanisms demonstrate openness to the recognition of sustainable management of natural resources as a principle, if not indeed a duty, that is justiciable across a variety of jurisdictional competencies in a variety of specific contexts.
6.2 At the international level, decisions such as those issued by the International Court of Justice in the Case Concerning the Project, 49 Pulp Mills on the River Uruguay, 50 Whaling in the Antarctic (Australia v Japan), 51 and Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) 52 demonstrate a certain level of recognition, in international law, of the principle that shared natural resources should be managed sustainably in certain conditions. This includes the recognition of shared fishing rights in the Pulp Mills on the River Uruguay 53 case and of species such as whales in Whaling in the Antarctic, 54 and the sustainable use of shared natural resources in Gabčikovo-Nagymaros, particularly the separate opinion of Justice Weeramantry. 55 Similar trends can be observed in the Permanent Court of Arbitration’s Abyei-Sudan case, 56 relating to recognition and protection of Indigenous knowledge of and interests in natural resources, Iron Rhine (Belgium v Netherlands) case, 57 recognizing the obligation of Belgium to undertake environmental impact assessments, 58 and Indus Waters Arbitration (Pakistan v India) case, 59 recognizing the importance of shared waterways and to achieve development while minimizing impacts on water flow diversion, decisions of the International Centre for Settlement of Investment Disputes (notably Chevron Corporation and Texaco Petroleum Corporation v Ecuador), 60 relating to the ability of States to abrogate contracts relating to the exploitation of national oil resources, and Gauff (Tanzania) Ltd v United Republic of Tanzania 61 relating to contractual obligations of a State stemming from water and sewerage contracts with foreign entities, and the International Tribunal on the Law of the Sea in Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, 62 establishing State requirements to use the precautionary principle in the conduct of contract-based exploration for natural resources in the Area and Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC), establishing flag-State responsibility to prevent, detect, report and investigate illegal, unreported and unregulated fishing, including in the EEZs of third-party States. 63

6.3 The latest WTO reports, in particular, show an increasing receptivity towards accommodating for sustainable natural resources management concerns, even when this entails restricting international trade, via conservation-related exceptions. In China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum and China – Measures Related to the Exportation of Various Raw Materials, WTO adjudicators have in particular recognized Members’ right to design broad natural resources conservation programmes in a way that responds to their own concerns and priorities in light of the principle of sustainable development and the principle of sovereignty over natural resources. 64 In US – Import Prohibition of Certain Shrimp and Shrimp Products and US – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (Article 21.5), they clarified that Members can legitimately pursue conservation policies for the sake of

51 Whaling in the Antarctic (Australia v Japan) (Judgement) [2014] ICJ Rep 226.
54 Whaling in the Antarctic (Australia v Japan) (Merits) [2014] ICJ Rep 226.
55 Case Concerning the Gabčikovo-Nagymaros Project (Hungary v Slovakia) (Separate Opinion of Vice-President Weeramantry) [1997] ICJ Rep 7.
57 Iron Rhine Arbitration, Belgium v Netherlands, Award, ICCI 373 (PCA 2005).
58 Bear Creek Mining Corporation v Republic of Peru, ICSID Case No ARB/14/21, Procedural Order No 10 (15 September 2016).
59 Indus Waters Arbitration, Pakistan v India, Final Award, ICGI 478 (PCA 2013).
60 Chevron Corporation and Texaco Petroleum Corporation v Ecuador (II), PCA Case No. 2009-23 (25 January 2012).
61 Biwater Gauff (Tanzania) Ltd. v United Republic of Tanzania, ICSID Case No. ARB/05/22 (24 July 2008).
62 Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, ITLOS Case 17, Advisory Opinion (1 February 2011).
63 Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission, ITLOS Case 21, Advisory Opinion (2 April 2015).
protecting both non-living and living natural resources, even when they are not endangered or threatened by extinction, and even if such policies have extraterritorial effects.

6.4 At the regional level, key decisions have come from the *African Charter on Human and Peoples’ Rights* system, Caribbean Court of Justice, European Court of Human Rights and the Inter-American Human Rights system. Further, a number of quasi-judicial and other bodies have issued findings and decisions that are critical in entrenching the sustainable management of natural resources in organizational and as well and international, regional and national legal practice. The bodies include the World Bank Inspection Panel, Inter-American Development Bank Independent Consultation and Investigation Mechanism, Committee on the Elimination of Racial Discrimination, Human Rights Committee, and multilateral environmental agreement enforcement mechanisms such as those associated with the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and the North American Agreement on Environmental Cooperation.

6.5 At the national level, the seminal *Minors Oposa* case from the Philippines opened a new way of thinking about the ability of current generations to assert their rights and the rights of future generations in the context of climate change and natural resources. The trend has continued through to the 2019 *Urgenda* decision in the Netherlands, which saw the Supreme Court uphold a determination that the State was not complying with the obligations it had undertaken regarding climate change. Since the months since *Urgenda*, a spate of similar climate litigation claims have been brought around the world, and additional courts, such as the Irish Supreme Court, have endorsed this line of reasoning.

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67 See Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, African Commission on Human and Peoples’ Rights (Communication No 276/2003 (2010); Social and Economic Rights Action Centre & the Centre for Economic and Social Rights v Nigeria (Communication No. 155/96) (2002); Fishermen and Friends of the Sea v Environmental Management Authority and Atlantic LNG, [2018] IACHR 24; Depalle v France, ECtHR (no. 34044/02 ) (2010); Tatar v Romania, ECtHR (no. 67032/01) (2009); Mayagna (Sumo) Awas Tingi Community v Nicaragua, IACHR Series C No 79, [2001] IACHR 9, IHRIL 1462 (IACHR 2001), 31 August 2001; Saramaka People v Suriname, IACHR Series C No 185, IHRIL 3058 (IACHR 2008), 12th August 2008.

68 See discussions in MC Cordonier Segger with HE CJ Weeramantry (eds), *Sustainable Development in International Courts and Tribunals* (Routledge 2017).


71 Decision I (68) (United States of America) (2014).


73 Aarhus Convention Compliance Committee Case Concerning Armenia, ACC/C/2016/138 Armenia (2016); Aarhus Convention Compliance Committee Case Concerning the European Union, ACCC/M/2017/3 European Union (2018); Aarhus Convention Compliance Committee Case Concerning France, ACCC/C/2007/22 France (2009); Aarhus Convention Compliance Committee Case Concerning Romania, ACCC/C/2012/69 Romania (2015).


III. INTERPRETATION AND APPLICATION OF THESE GUIDELINES

7. In their interpretation and application, the 2020 ILA Guidelines on the Role of International Law in Sustainable Natural Resources Management for Development are inter-related and each of them should be read in the context of the other Guidelines provided, in the context of the 2002 New Delhi Declaration of Principles of International Law Relating to Sustainable Development, the 2012 Sofia Guiding Statements on the Judicial Elaboration of the 2002 New Delhi Declaration of Principles of International Law Relating to Sustainable Development, other relevant Resolutions of the ILA, and the international legal instruments on sustainable development mentioned herein. Nothing in these Guidelines shall be construed as prejudicing in any manner the provisions of the Charter of the United Nations and the rights of peoples under that Charter.