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Understanding the Principles of International Environmental Law and Their Reflections in International Environmental Treaties and Non-Binding Soft Law Instruments

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Abstract
There are several principles that are at the heart of the bulk of most environmental protection structures at the international level. These principles are universal in make-up and have far-reaching support and are commonly allowed in state practice. They are universal in the sense that they are possibly applicable to all members of the global society across the scope of projects which they execute or approve and with regard to the protection of every aspects of the environment. Some of these principles might reflect customary law, others may reflect emerging legal obligations, and yet others might have an even less developed legal status. An understanding of these principles which might reflect customary law or emerging legal obligations can give insight into the rationale and drive of the diverse legal systems that have been built upon them. The aim of this article, which adopted the doctrinal research methodology, is to examine the main principles of international environmental law and their reflections in international environmental treaties and non-binding soft law instruments. To achieve its aim, this article discusses the principles of international environmental law (IEL) under the focal areas of the principles of IEL expressing the idea of prevention, principles of IEL expressing the idea of balance and fairness, principles of IEL expressing the idea of cooperation and public participation, principles of IEL expressing the idea of common heritage/concern and shared benefits. The article further examines the international environmental treaties reflecting the principles of IEL.
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1. Introduction

The greater awareness of the need to protect the environment and environmental resources has been accompanied by the adoption of a large number of environmental laws at the international level in the form of international environmental treaties[1] which embody a number of principles that are at the core of most environmental protection systems.[2] These principles embody a common ground and play important roles in international environmental law. They can indicate the essential characteristics of international environmental law and its institutions, provide guidance in interpreting legal norms, constitute fundamental norms, and fill in gaps in positive law. Today, almost all major binding and non-legally binding international environmental treaties contain or refer to principles and are engines in the evolving environmental law.[3]

However, there is no precise instrument or treaty where all the principles of international environmental law have been codified but the principles regarding environmental issues are found in the different international

[1]Sands P, Litigating Environmental Disputes: Courts, Tribunals and the Progressive Development of International Environmental Law: [Contribution to the Liber Amicorum of Judge Thomas Menash-2007], 27-28 March 2008 (OECD Global Forum on International Investment, 2008) p.3.
[2]See Shelton D & Kiss A, *Judicial Handbook on Environmental Law* (United Nations Environment Programme, 2005) p.19.
[3]Robinson N A & Kurukulasuriya L, p.23

environmental treaties and non-binding environmental soft law instruments.[1] Treaties and agreements between nations constitute the central focus of international environmental law.[2] An estimated 500 international conventions related to the environment have arrived since 1868. Out of them, almost 300 have been negotiated since the 1972 UN Conference on Human Environment.[3]

The term international environmental treaties, which are known by a variety of names, ranging from conventions, charters, pacts, accords, general acts, international agreements, protocols, declarations and covenant, relates to a number of legally binding international instruments that are used by States to commit to the achievement of specific environmental goals. The difference in names does not change the legally binding nature of the treaty. So long as the agreement is intended to be governed by international law and creates binding international obligations, it is an international treaty.[4] The *1969 Vienna Convention on the Law of Treaties* makes this clear. It defines a treaty as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.[5] Treaties could also be regarded as written agreements between two or more states whereby partaking states bind themselves legally to act in a particular way to establish particular relations between themselves, governed by international law.[6]

As a principle of international treaty law, international environmental treaties, like any treaty, bind only those States that have agreed to be bound by it.[7] Thus, an international environmental treaty is a contract between States and, just as with commercial contracts, what is important is the manifest intent of the parties-in this case States-to be bound by their agreement. It is the obligatory character of the terms of a treaty, not its nominal designation that determines whether a binding rule of international environmental law has been created.[8] Therefore, an international environmental treaty is an instrument which is intended to create legal rights and obligations between the parties.[9] International environmental treaties are the most effective force in promoting environmental ideas[10] and they differ from other kinds of treaties, having characteristics that respond to the specific needs of environmental protection.[11]

2. Principles Of International Environmental Law Expressing The Idea Of Prevention

2.1 The Principle of Preventive Action or the No-Harm Principle (The Principle of Responsibility Not to Cause Transboundary Harm)

The principle of preventive action or the No-Harm principle which sometimes is also referred to as the principle of responsibility not to cause transboundary harm places a duty on a State not to allow or tolerate any activity within its jurisdiction that may cause damage to the environment of other states or of areas beyond its national jurisdiction. The principle of preventive action or No-Harm principle recognizes the sovereign right of each state to exploit its own natural resources, while emphasizing that such right is limited by the responsibility of each State not to cause tranboundary environmental harm in the territory of another or other States. The principle allows states within limits established by international law to conduct or authorize such activities as they choose within their territories but with a corresponding responsibility not to allow such environmental harm to extend to the territories of other States.[12]

The principle requires action to be taken at an early stage to avoid environmental pollution, rather than waiting to restore contaminated areas. The prevention principle is intended to prevent, rather than react to,

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[1]Ashraful M Z, Application of the Principles of International Environmental Law in the domestic legal System of Bangladesh: A Critical Study on the legal framework and the position of judiciary' (2014) 19(5) *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, p.18.
[2]Roger R. Martella, Jr. & James W. Coleman, *International Environmental Law: A Guide for Judges* (Federal Judicial Centre, 2015) p.3.
[3]Bharat H. Desai, *Creeping Institutionalization Multilateral Environmental Agreements & Human Security* (1st Edn.,United Nations University Institute for Environment and Human Security (UNU-EHS), UN Campus, Bonn: Germany, 2006) p.9.
[4]Ministry of Natural Resources and Environment (MNRE), *International Environmental Law: Multilateral Environmental Agreements* (International Publishing House, Hanoi – May, 2017) p.11.
[5]See Vienna Convention on the Law of Treaties, Done at Vienna on 23 May 1969. Entered into force on 27 January 1980, Article 2.1(a); Ministry of Natural Resources and Environment (MNRE), *ibid*; Anshu S, "Principles and Development of International Environmental Law" (May 2020) 10 *Acclaims*, p.9.
[6]Godwell N & Ekpe I, *Framework and Tools for Environmental Management in Africa* (Council for the Development of Social Science Research in Africa (CODESRIA), DAKAR: Senegal, 2011) p.28; See Shaw M N, *International Law* (4th Edn., Cambridge: Cambridge University Press, 1997); See Umozurike U O, *Introduction to International Law* (Ibadan: Spectrum, 1995).
[7]Ministry of Natural Resources and Environment (MNRE) (note 7).
[8]See Chris Wold, David Hunter & Melissa Powers, Climate Change and The Law (2d edn., LexisNexis, 2013).
[9]WWF-India & MoEF-India, *Handbook on International Environmental Agreements: An Indian Perspective* (World Wide Fund for Nature-India & Indian Ministry of Environment and Forests, 2006) pp.11-12.
[10]Aurelija P, Origins of Environmental Regulation' (2012) 19(2) *Jurisprudence*, pp.662-663.
[11]Shelton & Kiss (note 2) p.15.
[12]See 10 Key Principles in International Environmental Law <https://www.americanbar.org/groups/public_educ ation/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/10-key-principles-in-intern ational-environmental-law/> accessed 5 July 2022; See 'No-harm rule' and climate change <https://legalrespon se.org/legaladvice/no-harm-rule-and-climate-change/> accessed 5 July 2022; See Gregor Noll, "State Responsibility in relation to Transboundary Environmental Damage" (Master Thesis, Faculty of Law, University of Lund, 2007) pp.17-18.

environmental harm from unregulated action. It is applied in law and policy when the risk of harm to the environment is clear.[1] It is frequently impossible to remedy environmental injury: the extinction of a species of fauna or flora, erosion, loss of human life and the dumping of persistent pollutants into the sea, the introduction of exogenous species into an ecosystem, for example, create irreversible situations. Even when harm is remediable, the costs of rehabilitation are often prohibitive.[2] The principle requires an activity which does or will cause damage to the environment in violation of the standards established under the rules of international law to be prohibited, and has been described as being of overriding importance in very effective environmental policy, since it allows action to be taken to protect the environment at an early stage.[3]

2.1.1 Reflections of the Principle of Preventive Action or the Principle of No Harm (The Principle of Responsibility Not to Cause Transboundary Harm) in International Environmental Treaties

The principle of preventive action or the principle of No-Harm is reflected in several international environmental treaties. The *Convention on the Law of the Non-navigational Uses of International Watercourses 1997*[4] recognized the principle of No-Harm in its Article 7(1) which provides that "Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States"[5] Article 21(2) of the Convention further provides that "Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection".[6] More stringently, article 22 of the *Convention* requires watercourse states to "...take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States."[7]

Also, the *ILC's 'Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities 2001*[8] recognizes the principle of preventive action or the No-Harm-principle in its Article 2(a), which provides "For the purposes of the present articles: "Risk of causing significant transboundary harm" includes risks taking the form of a high probability of causing significant transboundary harm and a low probability of causing disastrous transboundary harm".[9] Further, the *International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL Convention)*[10] and the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships 1973*[11] recognized the principle of prevention. Annexes III-VI all contains requirements for the prevention of pollution.[12] Annex III of the MARPOL Convention deals with the prevention of pollution by harmful substances carried by sea in packaged form,[13] Annex IV deals with the prevention of pollution by sewage from ships,[14] Annex V deals with the prevention of pollution by garbage from ships,[15] while Annex VI deals with the prevention of air pollution from ships.[16]

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[1]See Max Valverde Soto, "General Principles of International Environmental Law" (1996) 3 *ILSA Journal of Int'l & Comparative Law*, pp.199-200; POSTNOTE 590 November 2018 EU Environmental Principles, p.3 <http://researchbriefings.files.parliament.uk/documents/POST-PN-0590/POST-PN-0590.pdf> accessed 5 July 2022.

[2]Nicholas A. Robinson & Lal Kurukulasuriya, *Training Manual on International Environmental Law* (Pace University: Pace Law Faculty Publications, 2006) pp.32-33.

[3]WWF-India & MoEF-India (note 12) p.12.

[4]United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses 1997 (UN Watercourses Convention). Adopted by the General Assembly of the United Nations on 21 May 1997. Entered into force on 17 August 2014; See also General Assembly resolution 51/229, annex, Official Records of the General Assembly, Fifty-first Session, Supplement No. 49 (A/51/49).

[5]UN Watercourses Convention, Article 7(1).

[6]UN Watercourse Convention, Article 21(2).

[7]UN Watercourse Convention, Article 22

[8]Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, 12 December 2001, GA Res. 56/82, UN Doc. A/RES/56/82 (ILC Prevention Articles).

[9]ILC Prevention Articles, Article 2(a); See also Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries 2001, p.152. Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10). The report, which also contains commentaries on the draft articles, appears in the Yearbook of the International Law Commission, 2001, vol. II, Part Two. <https://legal.un.org/ilc /texts/instruments/english/commentaries/9_7_2001.pdf> accessed 18 June 2022.

[10]International Convention for the Prevention of Pollution from Ships 1973 (MARPOL Convention).

[11]Protocol of 1978 relating to the International Convention for the prevention of pollution from ships, 1973 (with annexes, final act and International Convention of 1973). Concluded at London on 17 February 1978.

[12]See generally, MARPOL Convention <https://www.imo.org/en/About/Conventions/Pages/International-Conve ntion-for-the-Prevention-of-Pollution-from-Ships(MARPOL).aspx#:~:text=The%20International%20Conventio n%20for %20the ,2%20November%201973%20at%20IMO.> accessed 19 June 2020.

[13]Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form (entered into force 1 July 1992).

[14]Annex IV Prevention of Pollution by Sewage from Ships (entered into force 27 September 2003).

[15]Annex V Prevention of Pollution by Garbage from Ships (entered into force 31 December 1988).

[16]Annex VI Prevention of Air Pollution from Ships (entered into force 19 May 2005).

The *1993 North American Agreement on Environmental Cooperation* recognizes the principle of prevention as one of its objectives in Article 1(j) which provides that "The objectives of this Agreement are to... promote pollution prevention policies and practices". The *Convention on Biological Diversity 1992*[1] also recognized the principle of prevention. Article 14(1)(a) and (b) provides that "Each Contracting Party, as far as possible and as appropriate, (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate allow for public participation in such procedures; (b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account".[2]

The principle of preventive action is also contained in the *United Nations Convention on the Law of the Sea 1982 (UNCLOS)*.[3] Article 207(1) of the UNCLOS provides that: "States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.[4] Article 207(2) of the UNCLOS further provides that "States shall take other measures as may be necessary to prevent, reduce and control such pollution".[5] Also, Article 194(1) of the UNCLOS provides that "States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection".[6] Article 194(2) of the UNCLOS further provides that "States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention".[7]

The duty of prevention extends to combating the introduction of exogenous species into an ecosystem.[8] Article V(4) of the *Convention on Conservation of Nature in the South Pacific 1976*[9] provides that "Each Contracting Party shall carefully consider the consequences of the deliberate introduction into ecosystems of species which have not previously occurred therein".[10] Further, the *Convention for the Protection of the Marine Environment of the North-East Atlantic 1992 (OSPAR Convention)*[11] made reference to the principle of prevention in Articles 1(a), 3 and 4. For instance, Article 1(a) provides that "The Contracting Parties shall, in accordance with the provisions of the Convention, take all possible steps to prevent and eliminate pollution and shall take the necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected".[12] The *Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992* also recognized the principle of prevention. Articles 1 and 2(a) of the Convention provides that "The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact...and pollution of waters causing or likely to cause transboundary impact".[13]

The principle of preventive action or the No-Harm principle has also been recognized in non-binding soft environmental law instruments such as the *Stockholm Declaration of 1972* or the *Declaration of the United Nations Conference on the Human Environment 1972.* Principle 21 of the Stockholm Declaration provides that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction".[14]

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[1]Convention on Biological Diversity 1992, opened for signature 5 June 1992, 31 ILM 818 (entered into force 29 December 1993) (CBD).
[2]CBD, Article 14(1)(a) & (b).
[3]United Nations Convention on the Law of the Sea 1982, opened for signature at Montego Bay, Jamaica, on 10 December 1982, entered into force on 14 November 1994 (UNCLOS).
[4]UNCLOS, Article 207(1).
[5]*Ibid*, Article 207(2).
[6]*Ibid*, Article 194(1).
[7]*Ibid*, Article 194(2).
[8]Robinson & Kurukulasuriya (note 17) p.33.
[9]Convention on Conservation of Nature in the South Pacific 1976. Adopted at Apia on 12 June 1976, entered into force 26 June 1990.
[10]*Ibid*, Article V(4).
[11]Convention for the Protection of the Marine Environment of the North-East Atlantic, opened for signature 22 September 1992, 32 ILM 1069 (entered into force 25 March 1998) (OSPAR Convention).
[12]OSPAR Convention, Article 1(a).
[13]UN Watercourses Convention (note 19), Articles 1 & 2(a).
[14]Declaration on the United Nations Conference on the Human Environment, 16 June 1972, 11 ILM 1416 (1972) (Stockholm Declaration), Principle 21; see also U.N. General Assembly Resolutions 2994/XXVII, 2995/UVII and 2996/XXII of 15 December 1972; Robinson & Kurukulasuriya (note 17) p.27.

Twenty years later, Principle 21 was reiterated in Principle 2 of the *Rio Declaration on Environment and Development 1992*, with the sole change of adding the adjective "developmental" between the words "environmental" and "policies". Principle 2 of the Rio Declaration provides that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".[1]

Further, the 1992 Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests ("Forests Principles) made reference to the principle of prevention. Principle 8(h) of the Forest Principles provides that "National policies should ensure that environmental impact assessments are carried out where [government] actions are likely to have significant adverse impacts on important forest resources".[2]

2.2 The Precautionary Principle (The Principle of Precautionary Action)

The precautionary principle is an approach to risk management that is applied in circumstances of scientific uncertainty reflecting the need to take action in the face of a potentially serious risk without waiting for the results of scientific research.[3] Where there is no firm scientific evidence on the measures to be taken in a development activity that may have an environmental effect, the precautionary principle advocates protective anticipatory action to minimise the possible degradation of the environment. The precautionary principle provides that lack of scientific certainty should not be used as a reason to postpone measures to be taken for the protection of human life, health and environment.[4] Thus, the principle obligates authorities to take precautionary measures where there is a lack of scientific certainty about the consequence of its action and induces authorities undertaking development activities based on exploitation of nature to take precautionary measures to reduce the possible harm to the environment.[5]

2.2.1 Reflections of the Precautionary Principle in International Environmental Treaties

The precautionary principle is reflected in several international environmental agreements. The *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973*[6] made reference to the precautionary principle in its preamble which states "Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come".[7] Article 2 of the Convention also made reference to the precautionary principle. Article II (2)(a) provides " Appendix II shall include: all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.[8] Appendix II of CITES lists "all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival",[9] thus, recognizing the precautionary principle.

The precautionary principle was referred to in the *Vienna Convention for the Protection of the Ozone Layer 1985*[10] which provides in its preamble (paragraph 5) as follows: "Mindful also of the precautionary measures for

[1]Rio Declaration on Environment and Development, A/CONF.151/26 (Vol. I) Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), Principle 2; Robinson & Kurukulasuriya, *ibid*.
[2]The 1992 Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (Forest Principles), Principle 8(h). A/CONF.151/19Adoption of Agreements on Environment and Development (New York): UN, 21 Apr. 1992.
[3]Julian Boswall & Robert Lee (Eds), *Economic Ethics & the Environment* (London: Cavendish Publishing Limited, 2002) p.91.
[4]Svitlana Kravchenko, Tareq M.R. Chowdhury, Md Jahid Hossain Bhuiyan, *Principles of International Environmental Law From: Routledge Handbook of International Environmental Law* (Routledge, 2012) p.46-47; See J A Herrera Izaguirre, "International Law and GMOS: Can the Precautionary Principle Protect Biological Diversity" (2007) 11 *Boletin Mexicano de Derecho Comparado*, p.99; J Ellis & A FitzGerald, "The Precautionary Principle in International Law: Lessons from Fuller's Internal Morality" (2004) 49 *McGill Law Journal*, 2004, p.782; D Anton, J Kohout & N Pain, "Nationalizing Environmental Protection in Australia: The International Dimensions" (1993) 23 *Environmental Law*, pp.763-83; D Freestone & E Hey, "Origins and Development of the Precautionary Principle" in D Freestone & E Hey (Eds) *The Precautionary Principle and International Law: The Challenge of Implementation* (The Hague: Kluwer Law International, 1996) p.13; D M Dharmadhikari, "Environment – Problems and Solutions" (2003) 90 *AIR Journal*, p.163.
[5]Svitlana K, Tareq M R C & Md Jahid H B, *ibid*.
[6]The Convention on International Trade in Endangered Species of Wild Fauna and Flora, opened for signature at Washington, D.C., on 3 March 1973 (CITES).
[7]CITES, Preamble, paragraph 1).
[8]*Ibid*, Article II(2)(a).
[9]John L. Garrison, "The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Debate over Sustainable Use" (1994) 12(1) *Pace Envtl. L. Rev.*, p.310.
[10]Vienna Convention for the Protection of the Ozone Layer, 22 March 1985, 1513 UNTS 293 (CPOL).

the protection of the ozone layer which have already been taken at the national and international levels".[1] Further, the *Montreal Protocol on Substances that Deplete the Ozone Layer to the Vienna Convention for the Protection of the Ozone Layer 1987* provides in its preamble (paragraph 6) "Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations and bearing in mind the developmental needs of developing countries",[2] thus, recognizing the precautionary principle.

The use of the precautionary principle by parties as a medium to predict, prevent or reduce the causes of climate change and alleviate its harmful effects was included in the *United Nations Framework Convention on Climate Change (UNFCCC) 1992*. The UNFCCC in its Article 3(3) calls for "parties to take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures".[3] Reference to the precautionary principle was made in the Preamble (Paragraph 9) of the *Convention on Biological Diversity (CBD) 1992* which state that "in cases where there is a major risk of reduction or loss of biological diversity in significant magnitude, inadequate scientific knowledge should not be used as an excuse for delaying necessary measures to avoid or diminish such a threat".[4]

The *Straddling Fish Stocks Agreement 1995* recognized the precautionary principle in Article 6(1) which provides that "States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment". Article 6(2) of the Agreement further provides that "States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures".[5]

The 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 1972 (the London Dumping Convention) made reference to the precautionary principle in its Article 3(1) which provides that "In implementing this Protocol, Contracting Parties shall apply a precautionary approach to environmental protection from dumping of wastes or other matter whereby appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects". [6]

Further, the *Cartagena Protocol to the Convention on Biological Diversity on Biosafety 2000* made reference to the precautionary principle in its preamble (paragraph 4), Articles 1 and 11. Article 1 of the Convention provides that "In accordance with the precautionary approach...the objective of this Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.[7] Article 11(8) of the Protocol further provides that "Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living modified organism on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of that living modified organism intended for direct use as food or feed, or for processing, in order to avoid or minimize such potential adverse effects".[8]

Also, the *Stockholm Convention on Persistent Organic Pollutants 2001* made reference to the precautionary principle in its preamble (paragraph 8) which provides "Acknowledging that precaution underlies the concerns

[1]CPOL, preamble, paragraph 5.
[2]Montreal Protocol on Substances that Deplete the Ozone Layer, 16 September 1987, 1522 UNTS 29 ('Montreal Protocol'), preamble, paragraph 6; The principles of international environmental law, pp.62 <https://edisciplinas.usp.br/pluginfile.php/520713/mod_resource/content/1/Cap.3_International%20Environmental%20Law%20%281%29.pdf> accessed 12 May 2022;
[3]United Nations Framework Convention on Climate Change 1992, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) (UNFCCC) Article 3(3); Svitlana K, Tareq M R C, Md Jahid H B (note 49) pp.48-49.
[4]CBD, Preamble, paragraph 9; Svitlana K, Tareq M R C, Md Jahid H B, *ibid*; The principles of international environmental law (note 57).
[5]Agreement for the Implementation of the Provision of the UN Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995), 4 August 1995, 2167 UNTS 88 (Straddling Fish Stocks Agreement), Article 6(1) & (2).
[6]1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972 (the London Dumping Convention), Article 3(1).
[7]Cartagena Protocol to the Convention on Biological Diversity on Biosafety 2000 (Biosafety Protocol), Article 1.
[8]Biosafety Protocol, Article 11(8).

of all the Parties and is embedded within this Convention".[1] Also, Article 1 of the Convention provides "Mindful of the precautionary approach...the objective of this Convention is to protect human health and the environment from persistent organic pollutants", thus, recognizing the precautionary principle.[2]

Further, reference was made to the precautionary principle in the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa 1991, which set forth in Article 4(3) that "parties should put some effort into implementing the precautionary approach to pollution, which would in turn prevent the release of substances which may be toxic to humans or the environment, without waiting for scientific proof to affirm the presence of such harm. The parties would have to work together to implement the precautionary principle and would have to adopt hygienic production methods to inhibit pollution".[3] The Convention for the Protection of the Marine Environment of the North-East Atlantic 1992 (OSPAR Convention) also recognized the precautionary principle. Article 2(2)(a) of the OSPAR Convention provides that "the precautionary principle, by virtue of which preventive measures are to be taken when there are reasonable grounds for concern that substances or energy introduced, directly or indirectly, into the marine environment may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, even when there is no conclusive evidence of a causal relationship between the inputs and the effects".[4]

A further reflection of the precautionary principle is seen in the *Protocol to the Regional Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions 1979*, which called on states to take precautionary measures to predict, prevent and reduce hazardous air emissions and diminish their potentially detrimental effects. Similar to later protocols, it provides that where there are threats of serious or irreversible damage, lack of scientific certainty should not be used to defer precautionary measures, taking into consideration that such measures would be worthwhile to invest financially.[5] The *Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992* also made reference to the precautionary principle in its Article 5 which provides that "The precautionary principle, by virtue of which action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the ground that scientific research has not fully proved a causal link between those substances, on the one hand, and the potential transboundary impact, on the other hand".[6]

The precautionary principle has also been recognized in non-binding soft environmental law instruments such as the 1992 Rio Declaration on Environment and Development which stated in its Principle 15 that "in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".[7]

2.3. The Principle of Environmental Impact Assessment

The purpose of the principle of environmental impact assessment (EIA) is to present information on the environmental effects of proposed activities or projects for decision-making and identify suitable mitigation measures that encourage environmentally beneficial and sustainable development. The objectives of EIA can be separated into two groups: the short term and long term objectives. The aim of the short term objective is to ensure that the decision-making authority is provided with the necessary information including the identification of potential significant environmental impacts and hazards of the proposed project activities. The aim of the long term objective is to achieve sustainable development. One of the ways to achieve this is to ensure that the proposed development activity or project does not damage important resource and ecological functions provided by the environment, including the role it provides to communities in terms of their wellbeing and lifestyles.[8]

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[1]Stockholm Convention on Persistent Organic Pollutants, 22 May 2001, 40 ILM 532 (2001) (Stockholm POPs Convention), preamble, paragraph 8.
[2]Stockholm POPs Convention, Article 1.
[3]Bamako Convention on the Ban of the Import to Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa , opened for signature 30 January 1991, 30 ILM 773 (entry into force 22 April 1998), Article 4(3)(f); Svitlana K, Tareq M R C, Md Jahid H B (note 49) p.48.
[4]Convention for the Protection on the Marine Environment of the North-East Atlantic , opened for signature 22 September 1992, 32 ILM 1069 (entered into force 25 March 1998) ('OSPAR Convention') Article 2(2)(a); Svitlana K, Tareq M R C, Md Jahid H B, *ibid.*
[5]Protocol to the Regional 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions , opened for signature 14 June 1994, UN Doc EB.AIR/R.84 (entered into force 5 August 1998) Preamble; Svitlana K, Tareq M R C, Md Jahid H B, *ibid.*
[6]The Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 18 March 1992, 1936 UNTS 269 (Helsinki Convention), Article 5(a).
[7]Rio Declaration on Environment and Development 1992, Principle 15 (Rio Declaration).
[8]Manogrie Chetty, 'Methodologies used for determining impact significance and the implications for EIA effectiveness in South Africa: Case studies from KwaZulu-Natal' Master Thesis (University of KwaZulu-Natal, Westville, South Africa 2015) pp.8-9; See Barry Sadle && Mary McCabe (Eds), *Environmental Impact Assessment Training Resource Manual – Topic 1: Introduction and Overview of EIA* (2nd edn, United Nations Environment Programme, 2002).

Thus, EIA is a means of improving decision-making, because it allows for the input of public opinion, and other knowledge and information, to ensure fairness and balance in the final decision of a proposed developmental project or activity.[1]

2.3.1 Reflections of the Principle of Environmental Impact Assessment in International Environmental Treaties

Several international environmental treaties provide for an obligation to conduct an environmental impact assessment. One major example is the *Convention on Environmental Impact Assessment in a Transboundary Context ('Espoo Convention') 1991*[2] adopted as part of the United Nations Economic Commission for Europe ('UNECE'). Under this Convention, States parties must introduce into their domestic law the obligation to conduct an environmental impact assessment before authorising certain activities (listed in Appendix I) that may have a 'significant adverse trans-boundary impact'.[3] Also, the *United Nations Convention on the Law of the Sea 1982* made reference to the principle of environmental impact assessment in its Article 206 which provides that "When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment..."[4]

Further, the *Protocol on Environmental Protection to the Antarctic Treaty 1991* made reference to the principle of environmental impact assessment in Article 8 which provides as follows: "1 Proposed activities referred to in paragraph 2 below shall be subject to the procedures set out in Annex I for prior assessment of the impacts of those activities on the Antarctic environment or on dependent or associated ecosystems according to whether those activities are identified as having: (a) less than a minor or transitory impact; b) a minor or transitory impact; or (c) more than a minor or transitory impact. 2. Each Party shall ensure that the assessment procedures set out in Annex I are applied in the planning processes leading to decisions about any activities undertaken in the Antarctic Treaty area pursuant to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities. 3. The assessment procedures set out in Annex I shall apply to any change in an activity whether the change arises from an increase or decrease in the intensity of an existing activity, from the addition of an activity, the decommissioning of a facility, or otherwise".[5]

Further, the *Convention on Biological Diversity 1992* recognized the principle of environmental impact assessment in Article 14 which provides that "as far as possible and as appropriate," Environmental Impact Assessment ("EIA") procedures to be introduced for proposed projects that are likely to have significant adverse effects on biological diversity.[6]

The principle of environmental impact assessment has also been recognized in non-binding soft environmental law instruments such as the *Rio Declaration on Environment and Development 1992*, which provides in its Principle 17 that "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority".[7]

3. Principles Of International Environmental Law Expressing The Idea Of Balance And Fairness

3.1 Polluter Pays Principle

The polluter pays principle has been defined as an instrument for allocating costs of pollution prevention and control measures. The definition entails that the polluter should bear the cost of carrying out measures decided by public authorities to ensure that the environment is in an acceptable state and that the cost of those measures should be reflected in the cost of goods and services which cause pollution in production and or in consumption.[8] The purpose of the policy was to internalise the economic cost of pollution control, cleanup and protection measures and to ensure that government did not distort international trade and investment by subsidizing those environmental cost.[9] The principle essentially means that the producer of goods or other items should be

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[1]Arctic Environment Protection Strategy 1997: Guidelines for Environmental Impact Assessment (EIA) in the Arctic (Sustainable Development and Utilization: Finnish Ministry of the Environment, Finland 1997), pp.5-7.
[2]Convention on Environmental Impact Assessment in a Transboundary Context, 25 February 1991, 1989 UNTS 310 (Espoo Convention).
[3]Espoo Convention, Article 2(3); The principles of international environmental law, p.67 (note 57).
[4]UNCLOS, Article 206.
[5]Protocol on Environmental Protection to the Antarctic Treaty 1991, Article 8(1), (2) & (3).
[6]CBD, Article 14.
[7]Rio Declaration (note 70), Principle 17; The principles of international environmental law (note 57) pp.68-69.
[8]Theresa O. Okenabirhie, Polluter Pays Principle In The Nigeria Oil And Gas Industry: Rhetorics Or Reality? (CAR CEPMLP Annual Review) (2008/2009 Environment and Social Issues in Energy Industry) p.6; OECD, Recommendation of the Council on Guiding Principles Concerning International Economic Aspects of Environmental Policies. Document No. C (72)128.
[9]Theresa *ibid*; Birnie P & Boyle A., *International Law and the Environment* (2nd Edn., OUP, 2002).

responsible for the cost of preventing, mitigating or remediating any environmental pollution or degradation which the process causes.[1]

Historically, pollution control costs have been borne by the community at large, rather than by those who pollute. Community assumption of the costs can be demonstrated using the example of an industry that discharges pollutants into a river. There are at least three possible ways for the community to assume the economic costs of the pollution: 1) The river can remain polluted and rendered unsuitable for certain downstream activities, causing the downstream community to suffer an economic loss; 2) The downstream community can build an adequate water treatment plant at its own cost; 3) The polluter may receive public subsidies for controlling the pollution. In each case, the affected community bears the cost of the pollution and of the measures designed to eliminate it or to mitigate its effects. The polluter pays principle avoids this result by obliging the polluter to bear the costs of pollution control, to "internalize" them.[2]

3.1.1 Reflections of the Polluter Pays Principle in International Environmental Treaties

The polluter pays principle is reflected in several international environmental treaties. The polluter pays principle was recognised as a general principle of international environmental law in the *International Convention on Oil Pollution, Preparedness, Response and Cooperation 1990* which states in its preamble (paragraph 7) that the polluter pays principle is "a general principle of international environmental law".[3] The *Convention on the Protection and Use of Transboundary Watercourses and International Lakes* 1992 gives recognition to the polluter pays principle in its Article 2(5)(b) by placing the costs of pollution prevention, control and reduction on the polluter.[4] The polluter pays principle was also recognised as a general principle of international environmental law in the preamble (paragraph 9) of the *Convention on the Transboundary Effects of Industrial Accidents 1992*.[5] The *Stockholm Convention on Persistent Organic Pollutants 2001* also recognized the polluter pays principle in its Preamble (paragraph 17).[6]

The polluter pays principle has also been recognized in a number of regional multilateral environmental treaties. The polluter pays principle was adopted in the *ASEAN Agreement on Conservation on Nature and Natural Resources of 1985*. It provides in its Article 10(d) that the originator of the activity that causes environmental degradation is to be held responsible for its prevention, reduction and control, and also for rehabilitation and remedial measures.[7] The polluter pays principle was also recognized by the *Convention for the Protection of the Marine Environment of the North-East Atlantic 1992*. According to Article 2(2)(b) of the Convention "The Contracting Parties shall apply...the polluter pays principle, by virtue of which the costs of pollution prevention, control and reduction measures are to be borne by the polluter."[8]

The *Convention on the Protection of the Marine Environment of the Baltic Sea Area 1992* states in its Article 3(4) that the polluter pays principle is an obligatory norm and directs the contracting parties to be guided by the principle.[9] The polluter pays principle was also recognized in the Preamble (paragraph 5) of the *1996 Amendments to the 1980 Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources.*[10]

The *1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 1972* (*the London Dumping Convention*) also recognized the polluter pay principle in its Article 3(2) which provides that "Taking into account the approach that the polluter should, in principle, bear the cost of pollution, each Contracting Party shall endeavour to promote practices whereby those it has authorized to engage in dumping or incineration at sea bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest".[11] Also, the *Convention on Co-operation for the Protection and Sustainable Use of the River Danube 1994* equally made reference to the polluter pay principle in Article 2(4) which provides that "The polluter pays principle and the precautionary principle constitute a basis for all measures aiming at the protection of the river Danube and of the waters within its

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[1]Theresa *ibid*, pp.6-7; Park D P, *Energy Law and the Environment* (Taylor and Francis, 2002) p.16.
[2]Shelton & Kiss, (note 2) p.22.
[3]International Convention on Oil Pollution, Preparedness, Response and Cooperation, opened for signature 30 November 1990, 30 ILM 733 (entered into force 13 May 1995) (OPRC Convention') Preamble, paragraph 7.
[4]UN Watercourses Convention (note 19), Article 2(5)(b); Svitlana K, Tareq M R C, Md Jahid H B (note 49) p.52.
[5]Convention on the Transboundary Effects of Industrial Accidents, signed in Helsinki, Finland, on 17 March 1992, entered into force on 19 April 2000, Preamble (paragraph 9); Svitlana K, Tareq M R C, Md Jahid H B, pp.52-53.
[6]Stockholm POPs Convention (note 64), Preamble, paragraph 17.
[7]ASEAN Agreement on Conservation on Nature and Natural Resources 1985, Article 10(d); Svitlana K, Tareq M R C, Md Jahid H B (note 49) p.52.
[8]OSPAR Convention, Article 2(2)(b); Robinson & Kurukulasuriya (note 17) p.34.
[9]Convention on the Protection of the Marine Environment of the Baltic Sea Area , opened for signature 9 April 1992, 13 ILM 546 (entered into force 17 January 2000) (Helsinki Convention), Article 3(4).
[10]1996 Amendments to the 1980 Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources. Adopted on 7th March 1996 in Syracuse, Italy, Preamble (paragraph 5).
[11]1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 1972, Article 3(2).

catchment area".[1]

The polluter pays principle has also been recognized in non-binding soft environmental law instruments such as the *1992 Rio Declaration on Environment and Development* which provides in its Principle 16 that "National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment".[2]

3.2. The Principle of Common But Differentiated Responsibilities

The principle of common but differentiated responsibility developed from the application of equity in general international law, and the recognition that the special needs of developing countries must be taken into account in the development, application, and interpretation of rules of international environmental law. This principle has two elements. The first concerns the common responsibility of states for the protection of the environment, or parts of it, at the national, regional, and global levels. The second concerns the need to take account of differing circumstances, particularly in relation to each state's contribution to the creation of a particular environmental problem and its ability to prevent, reduce, and control the threat.[3]

Empire & Ngozi[4] noted that the principle of principle of common but differentiated responsibilities is often said to be about incorporating justice and fairness into international environmental agreements' obligations and has been described as 'the bedrock of the burden-sharing arrangements crafted in international environmental treaties.' According to the common but differentiated responsibilities principle, while all countries are responsible for global environmental problems, for example, global warming, stratospheric ozone depletion, biodiversity loss, desertification, etc., some countries are more responsible than others. Thus, the principle of common but differentiated responsibilities requires all countries to play their part in global environmental protection based on the different contributions of developed and developing countries to global environmental problems.[5]

3.2.1 Reflections of the Principle of Common But Differentiated Responsibilities (CBDRs) in International Environmental Treaties

The principle of common but differentiated responsibilities (especially the aspects calling for developed countries to take environmental action first, and to provide assistance to developing countries in meeting their obligations) has developed across international environmental treaties to the point where it is almost automatically included when a negotiation process begins.[6] The *United Nations Convention on the Law of the Sea 1982* recognized the principle of common but differentiated responsibilities in its Article 202 which provides that "States shall, directly or through competent international organizations: (a) promote programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution".[7]

Also, the *Vienna Convention for the Protection of the Ozone Layer 1985* recognized the principle of common but differentiated responsibilities in its Preamble (paragraph 3) which calls on parties to take into account the circumstances and particular requirements of developing countries.[8] Article 4(2) further provides that "The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of the developing countries, in promoting, directly or through competent international bodies, the development and transfer of technology and knowledge".[9]

Further, the *Convention on Biological Diversity 1992* made reference to the principle of common but differentiated responsibilities in its Article 20(2&4) which provides that "The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full

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[1]The Convention on Co-operation for the Protection and Sustainable Use of the River Danube, 29 June 1994, IER 35:0251 (Danube Convention), Article 2(4).
[2]Rio Declaration, Principle 16.
[3]WWF-India & MoEF-India (note 12) p.13.
[4]Empire Hechime Nyekwere and Ngozi Chinwe Ole, "Understanding the Principle of Common but Differentiated Responsibilities and Its Manifestations in Multilateral Environmental Agreements (MEAS)" (2021) 11 *UNIZIK Journal of Public and Private Law*, p.263.
[5]Ibid; See also Tuula Kolari, "The Principle of Common But Differentiated Responsibility in Multilateral Environmental Agreements" in Tuula Kolari & Ed Couzens (Eds), *International Environmental Law-making and Diplomacy Review* (Department of Law: University of Joensuu, Joensuu, Finland, 2007) pp.21-22; See Joanne S & Lavanya R, "EU Climate Change Unilateralism" [2012] 23(2) *The European Journal of International Law*, p.476; Paul G H, "Common But Differentiated Responsibility: The Kyoto Protocol and United States Policy" [1999] (7)(1) *N.Y.U. Environmental Law Journal*, p.30; See Nabaat T M, "Sustainable Development and its Evolution in the Realm of International Environmental Law" [2016] *NAUJILJ*, p.14.
[6]Elizabeth R. Desombre, "The Evolution of International Environmental Cooperation" (Winter 2004/Spring 2005) 1(1-2) *Journal of International Law & International Relations*, p.85.
[7]UNCLOS, Article 202(a)(b)&(c), see also Article 203.
[8]Vienna Convention for the Protection of the Ozone Layer 1985, Preamble (paragraph 3).
[9]*Ibid*, Article 4(2).

incremental costs to them of implementing measures which fulfil the obligations of this Convention and to benefit from its provisions... The extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties".[1]

The *United Nations Framework Convention on Climate Change 1992* recognized the principle of common but differentiated responsibilities in its (Article 3(1)&(2) which provides that "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration".[2]

Empire and Ngozi noted that Article 4(2) (a&b) of the UNFCCC reaffirms the CBDRs of States to protect the global environment by providing as follows: "All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases..."[3]

The *1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change 1992* also made reference to the principle of common but differentiated responsibilities in provisions that grant assistance-financial and technological to developing countries. Article 11(2) (a & b) of the Kyoto Protocol provides that "...the developed country Parties and other developed Parties included in Annex II to the Convention shall Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under...the Convention... such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments of the Convention..."[4] Empire[5] noted that the Kyoto Protocol seeks to mitigate dangerous anthropogenic changes to the Earth's climate by assigning to all Parties' common but differentiated responsibilities' that take into consideration each country's contributions to the greenhouse effect, and each nation's capability to remedy this contribution.[6]

The *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa 1994* (UNCCD) recognized the principle of common but differentiated responsibilities in its Article 4(3) which provides that "Affected developing country Parties are eligible for assistance in the implementation of the Convention".[7] The *Stockholm Convention on Persistent Organic Pollutants 2001* made reference to the principle of common but differentiated responsibilities in its Preamble, paragraphs 13 and 11, which provides that "Noting the respective capabilities of developed and developing countries, as well as the common but differentiated responsibilities of States…Taking into account the circumstances and particular requirements of developing countries, in particular the least developed among them, and countries with economies in transition, especially the need to strengthen their national capabilities for the management of chemicals, including through the transfer of technology, the provision of financial and technical assistance and the promotion of cooperation among the Parties".[8]

Further, the *Minamata Convention on Mercury 2013* recognized the principle of common but differentiated responsibilities in its Preamble which provides "Recalling the United Nations…reaffirmation of the principles of…Development, including, inter alia, common but differentiated responsibilities, and acknowledging States' respective circumstances and capabilities and the need for global action".[9]

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[1]CBD, Article 20(2)&(4); See also Empire and Ngozi (note 95) p.273.
[2]UNFCCC, Article 3(1&2);
[3]Empire and Ngozi (note 95) pp.279-280.
[4]1997 Kyoto Protocol *to the United Nations Framework Convention on Climate Change 1992*, Article 11(2)(a&b).
[5]Empire Hechime Nyekwere, "Commercializing International Environmental Protection: A Review of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and Its Market-Based Mechanisms" (2020) 86 *International Affairs and Global Strategy*, p.23.
[6]*Ibid*; See Matthew Coghlan, 'Prospects and Pitfalls of the Kyoto Protocol to the United Nations Framework Convention on Climate Change' (2002) 3 *Melbourne Journal of International Law*.
[7]United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa 1994 (UNCCD), Article 4(3).
[8]Stockholm POPs Convention, Preamble, paragraphs 13 and 11.
[9]The Minamata Convention on Mercury, agreed at the fifth session of the Intergovernmental Negotiating Committee on mercury in Geneva, Switzerland on 19 January 2013 and adopted later that year on 10 October 2013 at a Diplomatic Conference (Conference of

The principle of CBDRs has also been recognized in non-binding soft environmental law instruments such as the *1992 Rio Declaration on Environment and Development*. Principle 7 of the Rio Declaration on Environment and Development provides that "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit for sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command".[1]

3.3 The Principle of Inter-Generational Equity

Inter-generational equity is the right of future generations to enjoy a fair level of the common patrimony. The principle of inter-generational equity is of the view that the present generation has a right to use and enjoy the resources of the Earth but is under an obligation to take into account the long-term impact of its activities and to sustain the resource base and the global environment for the benefit of future generations of humankind. In this context, "benefit" is given its broadest meaning as including, *inter alia*, economic, environmental, social, and intrinsic gain.[2] The principle of inter-generational equity advocates that while each generation's is entitled to enjoy the Earth's resources, they have a responsibility to leave for future generations an inheritance of wealth no less than what they themselves have inherited. The present generation, according to the principle, holds the natural resources in trust for future generations.[3] And therefore, should take into consideration impacts of current activities on future generations in other to avoid leaving the environment in a worse condition than it had for itself.[4]

3.3.1 Reflections of the Principle of Inter-Generational Equity in International Environmental Treaties

Several international environmental treaties have included the principle of inter-generational equity in their preamble or substantive provisions. The principle of inter-generational equity, that is, the interests of future generations (i.e. the) were recognised as early as 1946 in the *International Convention on the Regulation of Whaling 1946*, which in its preamble made reference to the 'interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks'.[5] Another reflection of the principle of inter-generational equity is found in Article 4 of the *Convention Concerning the Protection of the World Cultural and Natural Heritage 1972*, where parties agreed to 'protect, conserve, present and transmit cultural and natural heritage to future generations'.[6] Article 4 of the Convention provides that "Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain".[7]

The *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973* made reference to the principle of inter-generational equity in its preamble (paragraph 1) which states that "the contracting parties recognised that 'wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come'".[8] The *Convention on the Protection and Use of Transboundary Watercourses and International Lakes* 1992 made reference to the principle of inter-generational equity in its Article 2(5)(c) which states that "water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs".[9] The *Convention on Biological Diversity 1992* recognized the principle of inter-generational equity in its preamble (paragraph 23) which noted the parties' determination to

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Plenipotentiaries), held in Kumamoto, Japan. Entered into force on 16 August 2017, Preamble, Paragraph 4; The Minamata Convention on Mercury 2013: Text and Annexes (United Nations Environment Programme, 2019) p.13.

[1]Rio Declaration , Principle 7.

[2]Robinson & Kurukulasuriya (note 17) p.26.

[3]Max Valverde Soto (note 16) p.206; E Brown Weiss, "Our Rights and Obligations to Future Generations for the Environment" (1990) 84 *AM. J. INT'L L.,* p.198.

[4]See Svitlana K, Tareq M R C & Md Jahid H B (note 49) p.7; See D Hunter, J Salzman & D Zaelke, *International Environmental Law and Policy* (3rd Edn., NSW Australia: Foundation Press, 2007) p.495.

[5]International Convention for the Regulation of Whaling with Schedule of Whaling Regulations, 2 December 1946, 161 UNTS 361, preamble, paragraph 1; Principles of International environmental law (note 57) p.77.

[6]Convention Concerning the Protection of the World Natural and Cultural Heritage, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (World Heritage Convention); Svitlana K, Tareq M R Chowdhury & Md Jahid H B (note 49) p.56.

[7]World Heritage Convention, Article 4.

[8]CITES, preamble, paragraph 1; Svitlana K, Tareq M R C & Md Jahid H B (note 49) p.57.

[9]UN Watercourses Convention (note 19), Article 2(5)(c); Svitlana K, Tareq M R C & Md Jahid H B, *ibid,* p.57.

conserve and sustainably use biological diversity for the benefit of present and future generations.[1]

The *United Nations Framework Convention on Climate Change 1992* acknowledges the principle of intergenerational equity in its Article 3(1) which states that 'The parties should protect the climate system for the benefit of present and future generations of humankind'.[2] More so, the *Convention on the Law of the Non-Navigational Uses of International Watercourses 1997* recognized the principle of intergenerational equity in its Preamble (paragraph 5) which provides that "Expressing the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations".[3]

Further, the principle of inter-generational equity is well recognized in non-binding soft environmental law instruments. The preamble (paragraph 6) of the *Stockholm Declaration* states that 'to defend and improve the human environment for present and future generations has become an imperative goal of humankind'.[4] Principle 1 of the Stockholm Declaration states that man 'bears a solemn responsibility to protect and improve the environment for present and future generations'.[5] Principle 2 of the Stockholm Declaration requires safeguarding of natural resources and ecosystems 'for the benefit of present and future generations'.[6]

Further, the *Rio Declaration on Environment and Development* also made reference to the principle of inter-generational equity. Principle 3 of the Rio Declaration recognises that 'the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations'.[7] Later, when the Report of the Brundtland Commission introduced the concept of sustainable development in 1987, the focus was on meeting the needs of present generations without compromising those of future ones.[8]

3.4. The Principle of Sustainable Development

Sustainable development has been defined as development that meets the needs and aspirations of the current generation without compromising the ability of future generations to meet their own needs. Sustainable development is a process of change in which exploitation of resources, the direction of investments, the orientation of technology development, and institutional change are all in harmony and enhance both current and future potential to meet human need and aspirations.[9] In a more holistic definition of the principle of sustainable development, it may be seen as the facilitator for balancing the conservation of nature's resource with the needs for development. In other words, sustainable development means improving the quality of human life while living within the carrying capacity of supporting ecosystems.[10]

The principle of sustainable development advocates continuing growth and progress for humankind, whilst arresting and changing those processes which cause irreversible damage to the environment. It means using exhaustible resources wisely so that, as they are depleted, the profits from their use are reinvested in technology and other forms of capital wealth. Sustainable development exposes a concern which focuses on human need rather than human want.[11] From a general legal perspective, sustainable development is perceived as a development which is not only environmentally but also economically and socially sustainable. Sustainable development charts a way forward which not only meets the needs and aspirations of the present generation but also does so without compromising the ability of future generations to meet their needs to achieve sustainable development.[12]

3.4.1 Reflections of the Principle of Sustainable Development in International Environmental Treaties

The principle of sustainable development has been recognized in several international environmental treaties.

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[1]CBD, preamble (paragraph 23); Svitlana K, Tareq M R C, Md Jahid H B, *ibid.*
[2]UNFCCC, Article 3(1); Svitlana K, Tareq M R C, Md Jahid H B, *ibid*.
[3]UN Watercourses Convention (note 19), Preamble, paragraph 5.
[4]Declaration on the United Nations Conference on the Human Environment, 16 June 1972, 11 ILM 1416 (1972) (Stockholm Declaration), Principle 6; see also U.N. General Assembly Resolutions 2994/XXVII, 2995/UVII and 2996/XXII of 15 December 1972.
[5]Stockholm Declaration, Principle 1.
[6]*Ibid*, Preamble, Principles 2.
[7]Rio Declaration, Principle 3.
[8]Principles of International environmental law (note 57) p.77; Report of the World Commission on Environment and Development: Our Common Future, UN Doc. A/42/427, Annex, 4 August 1987, paragraph 1.
[9]Amari Chukwuomaka, *Nigerian Conservation Law and International Environmental Treaties* (2nd Edn, Lagos: Princeton & Associates Publishing Co. Ltd., 2018) p.11; World Commission on Environment and Development (WCED) 1987, *Our Common Future* (Oxford University Press) (also known as the Brundtland Report) pp.43 & 46; L Atsegbua, V Akpotaire & F Dimowo, *Environmental Law in Nigeria: Theory and Practice* (2nd Edn, Ambik Press, Benin City, 2010) pp.69-70; Saba A R K, "After Rio-What Next" in Ajomo M & Adewale O (Eds), *Environmental Law and Sustainable Development in Nigeria* (Lagos: NAILS and British Council, 1994) p.1; See Ajai W, "Achieving Environmental Protection through the Vehicle of Human Rights: Some Conceptual, Legal and Third World Problems" (1995) 2(1) *U.B.L.J.*, p.41.
[10]L Atsegbua, V Akpotaire & F Dimowo, *ibid*.
[11]Isabelle Fellrath, A Study of Selected Principles of International Environmental Law in the light of 'Sustainable Development' (PhD Thesis, University of Nottingham, 1998) pp.14-15.
[12]Fellrath, *ibid*, p.15.

The *United Nations Framework Convention on Climate Change 1992* provides in its Article 3(4) that "The Parties have a right to, and should, promote sustainable development.[1] The *Convention on Biological Diversity 1992* recognized the principle of sustainable development in its Preamble (paragraph 12) which provides that "Recognizing …innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components"[2] The CBD further provides "Desiring to enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components".[3]

The *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa 1994* made reference to the principle of sustainable development in its (Article 3) which provides that "the Parties should develop, in a spirit of partnership, cooperation among all levels of government, communities, non-governmental organizations and landholders to establish a better understanding of the nature and value of land and scarce water resources in affected areas and to work towards their sustainable use".[4] The *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998* included the principle of sustainable development in its Preamble (paragraph 8) which provides "Recognizing that trade and environmental policies should be mutually supportive with a view to achieving sustainable development".[5]

The *Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific 2002 (Antigua Convention)* recognized the principle of sustainable development in its Article 3(1)(A) which provides "For the purpose of this Convention sustainable development means the process of progressive change in the quality of life of human beings, which places it as the centre and primordial subject of development, by means of economic growth with social equity and the transformation of methods of production and consumption patterns, and which is sustained in the ecological balance and vital support of the region. This process implies respect for regional, national and local ethnic and cultural diversity, and full participation of people in peaceful coexistence and in harmony with nature, without prejudice to and ensuring the quality of life of future generations".[6]

The *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits 2010* recognize the principle of sustainable development in its (Article 9) which provides that "The Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and the sustainable use of its components".[7]

The principle of sustainable development has also been recognized in non-binding soft environmental law instruments such as the Rio Declaration on Environment and Development. Principle 4 of the Rio Declaration provides that "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it".[8] Also, the *2002 Johannesburg Declaration on Sustainable Development*, which was adopted at the 2002 United Nations Johannesburg World Summit on Sustainable Development (WSSD), created a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development-economic development, social development and environmental protection-at local, national, regional and global levels.[9] The *Johannesburg Declaration on Sustainable Development* played an important role in clarifying the components of the concept of sustainable development. According to paragraph 5 of the *Johannesburg Declaration*, 'economic development, social development and environmental protection' constitute the 'interdependent and mutually reinforcing pillars of sustainable development'.[10]

4. Principles Of International Environmental Law Expressing The Idea Of Cooperation And Public Participation

4.1 The Principle of Prior Informed Consent

The principle of prior informed consent requires obtaining and disseminating the decisions of importing countries on whether they wish to receive shipments of restricted or banned products after they have been fully

[1]UNFCCC, Article 3(4).
[2]CBD (note 32), Preamble, paragraph 12.
[3]*Ibid*, Preamble, paragraph 21.
[4]UNCCD (note 107), Article 3(c).
[5]The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998 (Rotterdam Convention on the Prior Informed Consent), Preamble, paragraph 8.
[6]Singh (note 8) p.13.
[7]Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits, adopted at the tenth meeting of the Conference of the Parties on 29 October 2010, in Nagoya, Japan (Nagoya Protocol on Access to Genetic Resources), Article 9.
[8]Rio Declaration, Principle 4; The principles of international environmental law (note 57) p.79; 'ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development', 6 April 2002 (New Delhi Declaration), paragraph 3.1.
[9]The Johannesburg Declaration on Sustainable Development, Report of the World Summit on Sustainable Development, A/CONF.199/20 (2002) 1 at 1-5.
[10]The principles of international environmental law (note 57) p.79; New Delhi Declaration, paragraph 3.1.

informed about the hazards posed by the products. Prior informed consent is a procedural mechanism utilized in advance of activities in order to avoid potential conflict and reduce the risks of environmental or social harm. In most instances, the products to which the procedure applies are those that pose serious risks to health or the environment. For instance, the Food and Agricultural Organization (FAO) incorporated the principle of prior informed consent in its *International Code of Conduct on the Distribution and Use of Pesticides* 1985.[1] Also, the prior informed consent requirement refers to the obligation assumed by a State not to export certain wastes, substances or products to another State unless the latter has given its prior informed consent. The objective of this principle or requirement is to ensure that such wastes, substances or products are sent only to States who are willing to accept them and have the technical capacity to manage them.[2]

4.1.1 Reflections of the Principle of Prior Informed Consent in International Environmental Treaties

The principle of prior informed consent has been recognized in several international environmental treaties. In fact, some international environmental treaties rely on a form of prior informed consent.[3] The *Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973* included the principle of prior informed consent in its Article 5 which states that "The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met: (a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;[4] and (b) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment".[5]

The Basal *Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989* recognized the principle of prior informed consent in its Article 6 which provides as follows:

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.[6]
2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.[7]
3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:
   (a) The notifier has received the written consent of the State of import; and
   (b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.[8]

The *Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998* made reference to the principle of prior informed consent in its Preamble (paragraph 3) which provides as follows: "Mindful of the work undertaken by the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization of the United Nations (FAO) in the operation of the voluntary Prior Informed Consent procedure, as set out in the UNEP Amended London Guidelines for the Exchange of Information on Chemicals in International Trade (hereinafter referred to as the "Amended London Guidelines") and the FAO International Code of Conduct on the Distribution and Use of Pesticides (hereinafter referred to as the "International Code of Conduct")" [9]

Further, the *2000 Cartagena Protocol on Biosafety to the Convention on Biological Diversity 1992* included the principle of prior informed consent in its Article 8(1) which provides that "The Party of export shall notify,

[1]Shelton & Kiss (note 2) p.38.
[2]The principles of international environmental law (note 57) p.67; See M Mbengue, 'Principle 14: Dangerous Substances and Activities' in Viñuales J E (Ed.), *The Rio Declaration on Environment and Development. A Commentary* (Oxford University Press, 2015) pp.383-402.
[3]See Ministry of Natural Resources and Environment (MNRE) (note 7) p.24.
[4]CITES (note 51), Article 5(a).
[5]*Ibid*, Article 5(b).
[6]Basal Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989. Adopted on 22 March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland and came into force in 1992 (Basal Convention), Article 6(1).
[7]Basal Convention, Article 6(2).
[8]*Ibid*, Article 6(3)(a)&(b).
[9]Rotterdam Convention on Prior Informed Consent (note 135), Preamble, Paragraph 3.

or require the exporter to ensure notification to, in writing, the competent national authority of the Party of import prior to the intentional transboundary movement of a living modified organism that falls within the scope of Article 7, paragraph 1. The notification shall contain, at a minimum, the information specified in Annex I".[1]

The *Convention on Biological Diversity 1992* itself made reference to the principle of prior informed consent in Article 15(5) by calling for access to genetic resources on agreed terms and requires that such access be subject to the prior informed consent of the provider country of such resources.[2] Also, Article 8(j) of the *Convention on Biological Diversity 1992* requires the 'approval and involvement' of indigenous peoples as a condition for the utilisation of their traditional knowledge.[3]

Additionally, the *Convention No. 169 of the International Labour Organisation on Indigenous and Tribal Peoples 1989* provides for an obligation to consult with and seek the prior informed consent of indigenous peoples as a condition for their exceptional 'displacement' or 'relocation' by the government of a State. Article 6 provides that "In applying the provisions of this Convention, governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly". [4] Article 16(2) further provides that "Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned".[5]

Similarly, the *2007 Resolution 61/295 of the United Nations General Assembly, entitled 'United Nations Declaration on the Rights of Indigenous Peoples'*, provides in its Article 10 that "indigenous peoples shall not be forcibly removed from their lands' and that 'no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned".[6]

4.2. The Principle of International Cooperation

The principle of international cooperation places an obligation on states to prohibit activities within the state's territory that are contrary to the rights of other states and which could harm other states or their inhabitants. The principle of international cooperation places a duty on States to cooperate in investigating, identifying, and avoiding environmental harm.[7] This obligation to cooperate is not absolute. Instead, it is limited by municipal conditions such as the protection of patents.[8] International cooperation is an approach that goes a long way towards repairing environmental problems and addressing governance hurdles. It can help to overcome the collective action problem and avoid the free-rider problem. Collaboration also puts pressure on governments and all stakeholders to find common ground and make concessions. The goal of international cooperation is to reduce human pressure on sustainability of the environment and orienting this activity toward a more harmonious relationship between meeting human needs and environmental quality.[9]

The environmental problems facing the world today are complex, involving political, economic, and social dimensions, and tackling these problems must involve viewpoints and interests from a variety of different actors. This has led to environmental issues becoming an increasingly fundamental element of international relations and the global political agenda.[10] Thus, international co-operation is becoming a significant part of international relations for environmental protection. The main reason for this approach in international law is based on this reality that environmental problems should be addressed internationally, both environmentally and politically. International environmental treaties, unlike some other areas of the public international law, bind states, but

[1]Cartagena Protocol on Biosafety (note 62), Article 8(1), See also, Articles 6 & 7; Nagoya Protocol on Access to Genetic Resources (note 137), Articles 6(2) & 7.
[2]CBD (note 32), Article 15(5); Shelton & Kiss, p.38.
[3]CBD *ibid*, Article 8(j); The principles of international environmental law, p.67.
[4]Convention No. 169 of the International Labour Organisation on Indigenous and Tribal Peoples in Independent Countries, 27 June 1989, 28 ILM 1382 (1989) (ILO Convention 169), Article 6(1)(a).
[5]ILO Convention 169, Article 16(2) & 6.
[6]See 'United Nations Declaration on the Rights of Indigenous Peoples', 2 October 2007, UN Doc. A/RES/61/295 ('UNDRIP'), Annex, Arts. 10 and 19; The principles of international environmental law (note 57) p.67.
[7]Max Valverde Soto (note 16) p.197; See Mirjam van H, Matthijs S. van L & Tanja de V, *International Law of Sustainable Development: Legal Aspects of Environmental Security on the Indonesian Island of Kalimantan-Legal Analysis* (Institute for Environmental Security, The Hague, The Netherlands, 2005) p.35.
[8]Principles of international environmental law (note 57).
[9]Richard Matthews, International Cooperation is the Key to Solving Sustainability Problems <https://thegreenmarketoracle.com/2021/05/17/international-cooperation-is-the-key-to-solving-sustainability-problems/#:~:text=International%20cooperation%20can%20circumvent%20protracted,resource%20depletion%2C%20and%20commercial%20fishing> accessed 1 July 2022.
[10]Conor Mulvihill, The Importance of International Cooperation in Tackling the World's Environmental Problems <https://bioweb.ie/international-cooperation/> accessed 1 July 2022.

compliance requires cooperation and behaviour to change primarily by private actors.[1]

4.2.1 Reflections of the Principle of International Cooperation in International Environmental Treaties

The principle of international cooperation has been recognized in several international environmental treaties. Most international environmental treaties have provisions requiring cooperation in the generation and exchange of scientific, technical, socioeconomic, and commercial information.' The *Convention concerning the Protection of the World Cultural and Natural Heritage 1972* recognized the principle of international cooperation in its Article 4 which provides that "Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage…situated on its territory…It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain".[2]

The *Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973* included the principle of international cooperation in its Preamble (paragraph 4) which states "*Recognizing*, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade".[3] The *United Nations Convention on the Law of the Sea* (UNCLOS) also recognized the principle of international cooperation in Article 197 which provides that "States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features".[4]

Further, the *Convention on Biological Diversity 1992* included the principle of international cooperation in its Article 10(e) which states that "cooperation between governmental authorities and its private sector is encouraged with regard to the sustainable use of biological resources".[5] The *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa 1994* recognized the principle of international cooperation in its Preamble which reads "Recognizing also the importance and necessity of international cooperation and partnership in combating desertification and mitigating the effects of drought".[6] Article 3 of the Convention further provides that "the Parties should, in a spirit of international solidarity and partnership, improve cooperation and coordination at subregional, regional and international levels, and better focus financial, human, organizational and technical resources where they are needed".[7]

The *Convention on the Law of the Non-navigational Uses of International Watercourses 1997* recognized the principle of international cooperation in its Article 8 which provides that "Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions".[8]

The *International Convention for the Prevention of Pollution from Ships 1973/78* recognized the principle of international cooperation in its Article 6(1) which provides that "Parties to the Convention shall co-operate in the detection of violations and the enforcement of the provisions of the present Convention, using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence".[9] The *Vienna Convention for the Protection of the Ozone Layer 1985* recognized the principle of international cooperation in its Preamble (paragraph 6) which reads "*Aware* that measures to protect the ozone layer from modifications due to human activities require international co-operation and action..."[10] Also, the *Montreal Protocol on Substances that Deplete the Ozone Layer 1987* included the principle of international cooperation in its Article 9 which requires all Parties to cooperate in promoting research,

[1]Sahar Zarei & Negin Mosavi Madani, "International Cooperation for Environmental Protection in the 21st Century" (2020) 1(2) *CIFILE Journal of International Law*, p.2.
[2]World Heritage Convention (note 115), Article 4.
[3]CITES (note 51), Preamble, Paragraph 4.
[4]UNCLOS (note 35), Article 197.
[5]CBD (note 32), Article 10(e).
[6]UNCCD (note 107), Preamble, paragraph 17.
[7]*Ibid*, Article 3(b).
[8]UN Watercourses Convention, Article 8(1) & (2).
[9]International Convention for the Prevention of Pollution from Ships 1973/78, Article 6(1).
[10]CPOL (note 55), Preamble, paragraph 6.

development and exchange of information on best technologies and alternatives to controlled substances.[1]

The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989* recognized the principle of international cooperation in its Article 10 which states that "The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes"[2] The *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998* made reference to the principle of international cooperation in its Preamble (paragraph 4) by recognizing the need to promote cooperation among the parties.[3] The *Stockholm Convention on Persistent Organic Pollutants 2001* included the principle of international cooperation in its Preamble which calls for Parties to take into account… the need to strengthen their national capabilities for the management of chemicals, including through the transfer of technology, the provision of financial and technical assistance and the promotion of cooperation among the Parties.[4]

The *Protocol on Environmental Protection to the Antarctic Treaty 1991* also made reference to the principle of international cooperation and provides in Article 1 that "The Parties shall co-operate in the planning and conduct of activities in the Antarctic Treaty area. To this end, each Party shall endeavour to "promote co-operative programmes of scientific, technical and educational value, concerning the protection of the Antarctic environment and dependent and associated ecosystems".[5]

The principle of international cooperation has also been recognized in non-binding international environmental soft law instruments such as the *1972 Stockholm Declaration on the Human Environment* which provides in its Principle 24 that "International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing." Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States."[6]

Also, the principle of international cooperation was recognized in Principle 27 of the *1992 Rio Declaration on Environment and Development* which declares that "States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development".[7] "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem".[8]

4.3. The Principle of Public Participation

The principle of Public Participation" seeks to ensure the availability of opportunities for individuals, groups and organizations to provide input in the making of decisions which have, or are likely to have, an impact on the environment, including in the enactment of laws, the enforcement of national laws, policies, and guidelines, and Environmental Impact Assessment procedures.[9] Public participation in environmental decision-making is an organized process adopted by public authorities or private sector organizations to engage the public in assessment, planning, decision-making, management, monitoring, and evaluation of environmental matters.[10] The principle of public participation aims to ensure that every potentially affected person can participate in environmental management at the relevant level. Public participation provides transparency in governance and hence serves to strengthen legislation and institutional regimes for environmental management. The objective of public participation is to improve the quality of decision-making in environmental matters through increased transparency.[11]

Reflections of the Principle of Public Participation in Environmental Matters in International

[1]Montreal Protocol on Substances that Deplete the Ozone Layer, Opened for signature in *Montreal on 16 September 1987*, entered into force on 1 January 1989, Article 9.
[2]Basel Convention (note 146), Article 10(1), see also subsections 2, 3 & 4 of section 10.
[3]Rotterdam Convention on the Prior Informed Consent, Preamble, paragraph 4.
[4]Stockholm POPs Convention, Preamble, paragraph 11.
[5]Protocol on Environmental Protection to the Antarctic Treaty, signed in Madrid on October 4, 1991 and entered into force in 1998, Article 1(a); See also Articles 1(b-f).
[6]Stockholm Declaration, Principle 24.
[7]Rio Declaration (note 70), Principle 27; LluõÂs Paradell-Trius, Principles of International Environmental Law: an Overview' (2000) 9(2) *RECIEL*, p.97; P. Sands, *Principles of International Environmental Law* (Manchester University Press, 1995) p.197.
[8]Rio Declaration (note 70), Principle 7.
[9]Robinson & Kurukulasuriya (note 17) p.79.
[10]Kloza D, 'Public Voice in Privacy Governance: Lessons from Environmental Democracy' in Schweighofer E, Saarenpää A & Böszörmenyi J (Eds), *Know Right 2012: Knowledge Rights-Legal, Societal and Related Technological Aspects* (Österreichische Computer Gesellschaft, 2013); See Francioni, F. 'International Human Rights in an Environmental Horizon' (2010) 21(1) *European Journal of International Law*, pp.41-55; Creighton J L, *The Public Participation Handbook: Making better Decisions through Citizen Involvement* (Wiley, 2005) p.7; Thomas D & Stern P C, 'Introduction' in Thomas D & Stern P C (Eds), *Public Participation in Environmental Assessment and Decision Making* (National Academy of Sciences, 2008) pp.11-12.
[11]Robinson & Kurukulasuriya (note 17) pp.79-80.

Environmental Treaties

The principle of public participation in environmental matters is reflected in several international environmental agreements. The *United Nations Framework Convention on Climate Change 1992* recognized the principle of public participation in environmental matters in its Article 6(a), which obliges state parties to promote and facilitate public participation in addressing climate change and its effects and developing adequate responses "in accordance with national laws and regulations, and within their respective capacities."[1] Further, the principle of public participation is reflected in Article 8(j) of the *1992 Convention on Biological Diversity* which aims at stronger involvement of indigenous and local communities as part of its "*in-situ* conservation" objectives. According to this provision, knowledge, innovations and practices of indigenous and local communities relevant for biodiversity conservation is to be preserved, and states shall "promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices."[2]

The *United Nations Convention to Combat Desertification in Countries experiencing Serious Drought and/or Desertification, particularly in Africa 1994* in its Article 3(a) obliges parties to "ensure that decisions on the design and implementation of programmes to combat desertification...are taken with the participation of populations and local communities..."[3] By the provisions of Articles 9 and 10 of UNCCD, Action programmes are to originate at the local level and be based on genuine local participation.[4] Article 10(2)(f) of the UNCCD provides that the participation is to be ensured at all stages, i.e. "...policy, planning, decision-making, implementation and review of the action programmes..."[5] According to Article 5(d) of the UNCCD, Affected Parties shall promote awareness and facilitate the participation of local populations, particularly women and youth, with the support of Non-Governmental Organizations (NGOs).[6]

Similar provisions of a strong participatory character apply to capacity building, education and training.[7] For instance, Article 19(1) of the UNCCD provides as follows "The Parties recognize the significance of capacity building-that is to say, institution building, training and development of relevant local and national capacities-in efforts to combat desertification and mitigate the effects of drought. They shall promote, as appropriate, capacity building: (a) through the full participation at all levels of local people, particularly at the local level, especially women and youth, with the cooperation of non-governmental and local organizations; (b) by strengthening training and research capacity at the national level in the field of desertification and drought".[8]

The *2000 Cartagena Protocol* reflects the element of public participation in article 23(2), which requires that the public shall be consulted in the decision-making process regarding Living Modified Organisms (LMOs), and the results of such decision are to be made available to the public.[9] The principle of public participation is also reflected in the *Stockholm Convention on Persistent Organic Pollutants (POPs) 2001*. Article 10(1)(d) of the Convention enshrines public participation with respect to addressing POPs and their effects and the development of "adequate responses," explicitly stating that this also includes "opportunities for providing input at the national level regarding implementation of this Convention."[10]

The *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998 (Aarhus Convention)*[11] has recognized the principle of public participation in decision-making in environmental matters. Article 1 of the Aarhus Convention states: "In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of…public participation in decision-making… in environmental matters in accordance with the provisions of this Convention".[12]

The principle of public participation has also been recognized in non-binding soft environmental law instruments. The principle of public participation is reflected in the *Rio Declaration on the Environment and Development*. Principle 10 of the Rio Declaration provides that "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate… opportunity to participate in decision-making processes. States shall facilitate and encourage

[1]UNFCCC (note 58), Article 6(a)(iii); Robinson & Kurukulasuriya, *ibid*, p.82.
[2]CBD (note 32), Article 8(j); Robinson & Kurukulasuriya,*ibid*, pp.82-83.
[3]UNCCD (note 107), Article 3(a).
[4]*Ibid*, Articles 9 & 10.
[5]*Ibid*, Article 10(2)(f).
[6]*Ibid*, Article (d); Robinson & Kurukulasuriya (note 17) p.83.
[7]*Ibid*, Article 19.
[8]*Ibid*, Article 19(1)(a)&(b); Robinson & Kurukulasuriya (note 17) p.83.
[9]Cartagena Protocol on Biosafety (note 62), Article 23(2); Robinson & Kurukulasuriya, *ibid*, p.84.
[10]Stockholm POPs Convention, Article 10(1)(d); Robinson & Kurukulasuriya, *ibid*.
[11]Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, opened for signature 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001) (Aarhus Convention).
[12]Aarhus Convention, Article 1, See also Articles 6, 7 & 8; See Stephen S (Ed), *Handbook on Access to Justice under the Aarhus Convention*, Working Draft for Discussion at the "Workshop on Access to Justice under the Aarhus Convention" 15-17 September 2001, Tallinn, Estonia <https://www.unece.org/fileadmin/DAM/env/pp/a .to.j/draft.handbook.e.doc> accessed 12 May 2022.

public awareness and participation…"[1]

5. Principles Of International Environmental Law Expressing The Idea Of Common Heritage/Concern And Shared Benefits

5.1. The Principle of Common Heritage of Humankind

Certain areas outside the territory of any particular state are deemed common (common heritage of humankind), meaning they can be enjoyed freely by any State or individual. This includes the high seas area which includes all seas and oceans beyond the exclusive economic zones of States-amounting to approximately two-thirds of all marine areas. For example, all States and the ships registered in them can operate fairly freely on the high seas. No State can subject the high seas to their sovereignty and everyone has equal rights to use the natural resources found there. Similarly, international "freedom areas" include international airspace, which extends to the skies superjacent to the outer limit of States' territorial seas, and outer space. States, their businesses and citizens have extensive freedom to operate in international common areas. However, these areas must be used without causing unreasonable harm to the interests and rights of other States.[2] Thus, the resources of outer space and celestial bodies and of the sea-bed, ocean floor and subsoil thereof beyond the limits of national jurisdiction are generally recognized as the common heritage of humankind.[3]

5.1.1 Reflections of the Principle of Common Heritage of Humankind in International Environmental Treaties

Several international environmental treaties recognize the principle of common heritage of humankind. The *Convention concerning the Protection of the World Cultural and Natural Heritage 1972* also made reference to the principle of common heritage of humankind in its Preamble (paragraph 6) which reads "*Considering* that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole".[4]

The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies 1979 (the Moon Treaty), recognized the Moon and its natural resources as the 'common heritage of mankind'.[5] Article 11(5) of the Moon Treaty further provides that: "States Parties to this Agreement hereby undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the Moon as such exploitation is about to become feasible".[6]

The concept of common heritage of humankind has been further developed in connection with the management of the seabed. The first development occurred in 1970 when the UN General Assembly adopted the '*Declaration of Principles Governing the Seabed and the Ocean Floor, and Subsoil Thereof, beyond the Limits of National Jurisdiction 1970*',[7] which placed the 'Area' and its resources under the status of common heritage of mankind. This characterisation has been taken up in Part XI of the *United Nations Convention on the Law of the Sea 1982* which subjects the Area to a regime of international management. In particular, Article 137(2) of the *United Nations Convention on the Law of the Sea 1982* provides that "All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority".[8]

5.2. The Principle of Common Concern of Humankind

The protection, preservation and enhancement of the natural environment, particularly the proper management of the climate system, biological diversity, ozone layer, and fauna and flora of the Earth, are generally recognized as the common concern of humankind.[9] The global environmental problems associated with the foregoing environmental systems such as climate change, loss of biological diversity, ozone depletion, etc - are connected to such an extent that they must all be considered common concern of humankind, as they cannot be resolved by individual States or any single regional group of States.[10] In line with the foregoing assertions, Empire[11] noted

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[1]Rio Declaration (note 70), Principle 10.
[2]Timo Koivurova, *Introduction to International Environmental Law* (London and New York: Routledge, Taylor & Francis Group, 2014) pp.99-100.
[3]Robinson & Kurukulasuriya (note 17) p.36.
[4]World Heritage Convention (note 115), Preamble, paragraph 6.
[5]Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 18 December 1979, 1363 UNTS 3 (Moon Treaty), Article 11(1).
[6]Moon Treaty, Article 11(5); The principles of international environmental law (note 57) p.84.
[7]'Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction', Res. 2749 (XXV), 17 December 1970 (Seabed Declaration), preamble, paragraph 4, Articles 1-3; UNCLOS'), Part XI; The principles of international environmental law (note 57), p.84.
[8]UNCLOS, Part XI, Article 137(2); The principles of international environmental law, *ibid*.
[9]See Robinson & Kurukulasuriya (note 17) p.36.
[10]Koivurova (note 194) p.117.

that one of the most current pressing environmental problems threatening the well-being and survival of the global community is climate change and that there is now a universal consensus that climate change is a global problem that needs urgent global attention and response.

Basic assumptions implicit in the common concern principle include that States and other non-state actors should not cause harm with regard to issues of common concern, and that States and other non-state actors share responsibility for addressing common environmental concerns.[1] Common concern of humankind implies that if the existence of a global environmental problem can be proven, participation in global treaties intended to tackle such problem should no longer be optional. In other words, common concern of humankind suggests that no State can argue that such matters are solely within its own jurisdiction. Every state has to contribute to the joint action aimed at resolving such global environmental problem.[2]

5.2.1 Reflections of the Principle of Common Concern of Humankind in International Environmental Treaties

The principle of common concern of humankind has been recognized in some international environmental treaties. The two main examples of this principle are provided by the *Convention on Biological Diversity 1992* and the *United Nations Framework Convention on Climate Change 1992*.[3] The *Convention on Biological Diversity 1992*, affirmed that the conservation of biological diversity is a common concern of humankind,[4] while the *United Nations Framework Convention on Climate Change 1992*, Acknowledged that change in the Earth's climate and its adverse effects are a common concern of humankind.[5]

The Basal *Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989*[6] recognized the principle of common concern in its Preamble (paragraph 18) which provides "Aware also of the growing international concern about the need for stringent control of transboundary movement of hazardous wastes and other wastes, and of the need as far as possible to reduce such movement to a minimum".[7]

5.3. Principle of Access and Benefit Sharing Regarding Natural Resources

The principle of access and benefit sharing regarding natural resources holds the notion that many indigenous and other local communities rely on natural resources such as forests, high deserts, wetlands, waterways, and fisheries for their livelihood or even existence. In addition, indigenous and other local communities often have unique cultures integrated with natural resources. These communities typically relate to these resources in a sustainable way, or else their livelihoods would disappear or their cultures would perish. Therefore, indigenous and other local communities have the right to participate in, or otherwise should be involved in the management, development and preservation of the resources on which they rely on for their survival and well-being.[8]

5.3.1 Reflections of the Principle of Access and Benefit Sharing Regarding Natural Resources in International Environmental Treaties

The principle of access and benefit sharing regarding natural resources has been recognized in Article 5 of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits 2010,* which provides that "…Benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms".[9]

6. Conclusion

This paper has made evident the fact that the field of international environmental law is now replete with several principles that govern environmental issues. The thirteen (13) main principles of international environmental law, as discussed in this paper are the principle of preventive action or the no-harm principle which in most cases is also referred to as the principle of responsibility not to cause transboundary harm, the precautionary principle or

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[11]Empire Hechime Nyekwere, "Commercializing International Environmental Protection: A Review of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and Its Market-Based Mechanisms" (2020) 86 *International Affairs and Global Strategy*, p.21.
[1]See Robinson & Kurukulasuriya (note 17) p.36.
[2]Koivurova (note 194) p.117.
[3]The principles of international environmental law (note 57) pp.85-86.
[4]CBD (note 33), Preamble, paragraph 3.
[5]UNFCCC (note 58), Preamble, paragraph 1.
[6]Basal Convention (note 146), Preamble, paragraph 18.
[7]*Ibid*, Preamble, paragraph 18.
[8]Robinson & Kurukulasuriya (note 17) p.35.
[9]Nagoya Protocol on Access to Genetic Resources (note 137), Article 5(1).

the principle of precautionary action, the principle of environmental impact assessment, the polluter pays principle, the principle of common but differentiated responsibilities, the principle of inter-generational equity, the principle of sustainable development, the principle of prior informed consent, the principle of international cooperation, the principle of public participation, the principle of common heritage of humankind, the principle of common concern of humankind, and the principle of access and benefit sharing regarding natural resources

While their legal status of the principles discussed in this paper varies, these principles are important for several reasons. First, they provide a framework to negotiate new environmental treaties and implement existing ones. Second, they provide guidance to various judicial bodies to resolve environmental disputes. Third, they provide a framework for the development of national environmental law and can also influence judicial decisions at the national level. Finally, some principles may be useful in integrating environmental issues with other branches of international law. Moreover, some principles embodied in non-binding soft law instruments can shape state practice and result in crystallizing a customary international law principle over time, or they could be incorporated into a treaty.[1]

It is equally obvious from this paper that the principles of international environmental law are not codified in a single international environmental treaty but reflects in several international environmental treaties. In fact, this paper discussed thirty nine different international environmental treaties that reflect the principles of international environmental law examined in this paper. This thirty nine (39) international environmental treaties includes, the Convention on the Law of the Non-Navigational Uses of International Watercourses 1997, International Convention for the Prevention of Pollution from Ships 1973/78, the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships 1973, the 1993 North American Agreement on Environmental Cooperation, the Convention on Biological Diversity 1992, the United Nations Convention on the Law of the Sea 1982, the Convention on Conservation of Nature in the South Pacific 1976, the Convention for the Protection of the Marine Environment of the North-East Atlantic 1992, the Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992, the Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973, the Vienna Convention for the Protection of the Ozone Layer 1985, the Montreal Protocol on Substances that Deplete the Ozone Layer to the Vienna Convention for the Protection of the Ozone Layer 1987, the United Nations Framework Convention on Climate Change 1992, the Straddling Fish Stocks Agreement 1995, 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 1972, the Cartagena Protocol to the Convention on Biological Diversity on Biosafety 2000, and the Stockholm Convention on Persistent Organic Pollutants 2001.

Others includes, the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa 1991, the Protocol to the Regional Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions 1979, the Convention on Environmental Impact Assessment in a Transboundary Context 1991, the Protocol on Environmental Protection to the Antarctic Treaty 1991, the International Convention on Oil Pollution, Preparedness, Response and Cooperation 1990, the Convention on the Transboundary Effects of Industrial Accidents 1992, ASEAN Agreement on Conservation on Nature and Natural Resources of 1985, the Convention on the Protection of the Marine Environment of the Baltic Sea Area 1992, the 1996 Amendments to the 1980 Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources, the Convention on Co-operation for the Protection and Sustainable Use of the River Danube 1994, the 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change 1992, the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa 1994, the Minamata Convention on Mercury 2013, the International Convention on the Regulation of Whaling 1946, the Convention Concerning the Protection of the World Cultural and Natural Heritage 1972, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998, the Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific 2002, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits 2010, the Basal Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989, the Convention No. 169 of the International Labour Organisation on Indigenous and Tribal Peoples 1989, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998, and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies 1979.

The paper further revealed that international environmental principles are reflected in non-binding soft law instruments such as the Stockholm Declaration of 1972 or the Declaration of the United Nations Conference on the Human Environment 1972, the Rio Declaration on Environment and Development 1992, the 1992 Non-

[1]Atapattu Sumudu, The significance of international environmental law principles in reinforcing or dismantling the north–south divide' in Shawkat Alam et. al., (Eds), *International Environmental Law and the Global South* (Cambridge University Press, 2015).

Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, the 2002 Johannesburg Declaration on Sustainable Development, the 2007 Resolution 61/295 of the United Nations General Assembly, entitled 'United Nations Declaration on the Rights of Indigenous Peoples', and the United Nations General Assembly Declaration of Principles Governing the Seabed and the Ocean Floor, and Subsoil Thereof, beyond the Limits of National Jurisdiction 1970.

Further, this paper has shown that international environmental treaties between nations constitute the fundamental focus of international environmental law and creates legally binding international obligations that are used by States to commit to the achievement of specific environmental goals. Put differently, international environmental treaties creates legal rights and obligations between the parties and are the most effective force in promoting environmental ideas since they respond to the specific needs of environmental protection.

The authors are of the view that the reflections of the thirteen (13) core international environmental principles discussed in this paper in the thirty nine (39) international environmental treaties examined in this paper is commendation, as it portrays the efforts the global community is making to protect the environment. However, global environmental protection can only be attained when the parties to the various international environmental treaties abide by the legal obligations created by the treaties and incorporate the principles contained therein in their environmental policies and decisions. Thus, the authors recommend that the parties to international environmental treaties should be guided by and integrate international environmental principles in all their environmental decisions and policies. Doing so, will help eliminate or at least reduce to a large extent, the unsustainable impact of human activities on the environment and the attainment of global environmental sustainability.