

1995

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### Recommended Citation

Kasimbazi, Emmanuel B. (1995) "An International Legal Framework for Forest Management and Sustainable Development," *Annual Survey of International & Comparative Law*: Vol. 2: Iss. 1, Article 6.

Available at: <http://digitalcommons.law.ggu.edu/annlsurvey/vol2/iss1/6>

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# AN INTERNATIONAL LEGAL FRAMEWORK FOR FOREST MANAGEMENT AND SUSTAINABLE DEVELOPMENT\*

EMMANUEL B. KASIMBAZI\*\*

## I. INTRODUCTION

“The tide of the earth’s population is rising, the reservoir of the earth’s living resources is falling. . . . There is only one solution: Man must recognize the necessity of cooperating with nature. He must temper his demands and use and conserve the natural living resources of this earth in a manner that alone can provide for the continuation of his civilization. The final answer is to be found only through comprehension of the enduring processes of nature.”<sup>1</sup>

“Nations must place far less reliance on our traditional environmental strategies of react and cure.”<sup>2</sup> “In this world view, one lives in nature as one lives in one’s family, and it is not something to be subdued or to be a steward of or to have dominion over.”<sup>3</sup>

Global environmental problems, such as loss of species, ozone depletion and deforestation indicate that no nation act-

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1. CONSERVATION IN THE 21ST CENTURY 3 (D.W. Pearl, ed., Oxford University Press 1989).

2. D. RUNNALS, OUR COMMON FUTURE: A CANADIAN RESPONSE TO THE CHALLENGES OF SUSTAINABLE DEVELOPMENT 8 (Harmony Foundation of Canada 1989).

3. *Id.*

ing alone can prevent such conditions or easily cope with their consequences. In her inaugural speech of the World Commission on Environment and Development, Chairperson Gro Harlem Brundtland<sup>4</sup> stated that: "Our world is an interdependent world. Decisions made by authorities in one society will affect conditions of life in other societies . . . We need international cooperation and regulation to promote and preserve equity."<sup>5</sup> In other words, the creation of global environmental problems by different countries raises new international legal and moral issues.<sup>6</sup>

This paper examines soft international law principles that regulate forest management. It proceeds from the 1972 Stockholm Conference on Human Environment as a major source of international environmental law and surveys major international customary law norms that have followed. The article ends with the Rio Declaration as the latest source of soft international environmental law. The discussion of the paper hinges on the strength and limitations of soft international law principles in regulating sustainable development of forests.

## II. THE IMPORTANCE OF INTERNATIONAL REGULATION OF FORESTS

Sustainable development of forests benefits all nations, whether developed or developing. This is significant because the implications of the use of forests go beyond national jurisdictions. However, it is questionable whether, in the context of a world community with such diverse interests and economic development goals as those which now exist, there can be an international sustainable development law that protects the interests of all states, or even those interests which states have in common.

To ensure optimum equitable use of renewable resources,

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4. Prime Minister of Norway.

5. See 14 ENVTL. POL'Y & L. 26 (1985). The speech was delivered at the opening session of the inaugural meeting in Geneva, 1-3 October, 1984.

6. For example, the discovery that acids in rain are often formed from pollutants emitted hundreds of kilometers away in foreign countries has raised new legal and moral issues.

nations must look to international regulation. International law, from which international environmental law emerged, shapes the underlying framework of a system of managing natural resources. It does so by establishing basic rules concerning circumstances in which nations can assert property rights in resources.<sup>7</sup> This framework encourages nations to consider resource problems and the types of solutions which may apply.<sup>8</sup>

International rules and agreements are the form by which nations can express their resource arrangements. These international rules indicate the manner in which nations can deal with resource issues. Thus, international law provides a process, a set of techniques, and a body of experience that can help nations to forge better solutions to resource problems.<sup>9</sup> The obligations set by international law to manage and protect the environment are defined and agreed to at the international level, and are intended to bind states.<sup>10</sup> This is an important aspect for sustainable development because to a certain extent there is a universal standard of resource management. Moreover, international rules are among the factors that influence national policy and decision making. Certainly, some national rules will reflect these international standards.

A prevailing challenge to international law is the articulation of the principle of sustainable development. The principle demands development that meets the needs of present generations without compromising the ability of future generations to meet their own needs.<sup>11</sup> It seems that this principle assumes that each generation receives a natural legacy in trust from the previous generation, and holds it in trust for future generations. The recognition of the principle at the international level creates a firm ground for sustainable development.

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7. R.B. Bilder, *International Law and Natural Resources Policies*, 20 NAT. RESOURCES J. 451 (1980).

8. *Id.*

9. P.M. Saunders, *Legal Issues in Development Assistance: The Challenge of Sustainable Development*, 27 RESOURCES 337 (1989).

10. *Id.*

11. WORLD COMMISSION ON DEVELOPMENT AND ENVIRONMENT, *OUR COMMON FUTURE* 8 (Oxford University Press 1987).

The international recognition of the principle of sustainable development is important, since in most countries, legislative tools do not distinguish between production and protection of forests. These tools are usually characterized by legal restrictions and bureaucratic approaches rather than goals of sustaining particular forest values. As a result, domestic regulatory tools have usually failed to achieve international forest sustainability. There seems to be little doubt that these tools do not consider full non-market benefits of forests. The simple reason for this is that the economic benefit of forests is the focus of most countries.

Problems concerning national forest legislation are due, not to the inherent inadequacy of the legislation, but to its inability to regulate forest sustainability at the international level. The global demands undermine the effectiveness of national measures. Nations look to international principles that provide common rules, reciprocal constraints on harmful activities, and guidelines for achieving international goals.<sup>12</sup> These international principles create obligations that can act as a springboard for sustainable development of forests.

Thus, the international element in policies for forest conservation is very important. The effective conservation of forests is a matter for international planning and cooperation. Proper sustainable use of forests can become difficult unless there are international policies which encourage it or at least do not positively discourage it. The next part of this paper examines international forest regulation and its implications for sustainable development.

### III. SOURCES OF INTERNATIONAL FOREST REGULATION AND THEIR IMPLICATIONS FOR SUSTAINABLE DEVELOPMENT

Crucial to an assessment of international forest regulation is an understanding of the sources from which it derives. International forest regulation denotes the aggregate of all rules

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12. M.B. Saunders, *Valuation and International Regulation of Forest Ecosystems: Prospects for a Global Agreement* 66 WASH. L. REV. 871 (1991).

and principles aimed at protecting the global forests and controlling forestry activities within national jurisdiction.<sup>13</sup> Ultimately, the development of an international forest law is a very important step in addressing forest management. Forest management is among the environmental issues that have been recognized in the international forum. The focus of the forum has been the need to have sustainable management of forest resources. Concerns have been raised in the quest for a link between long-term sustainability and economic growth and development. These concerns have culminated in a set of principles in conventions and “soft law regulations” that focus on sustainable development of forest resources.

#### A. STOCKHOLM DECLARATION AND THE MODEL OF INTERNATIONAL LIABILITY

The 1972 United Nations Conference on Human Environment, held in Stockholm, represented the first international forum to consider the protection of the environment on a comprehensive basis.<sup>14</sup> This Conference, in making its Declaration on the Human Environment, legitimized environmental policy as a universal concern among nations. In doing so, it created a place for environmental issues on many national agendas where they had previously been unrecognized.<sup>15</sup>

The preamble of the 1972 Declaration recognizes the need for sustainable development. It stipulates that “[t]o defend and improve the human environment for present and future generations has become an imperative goal for mankind.”<sup>16</sup>

Principle One of the Declaration states: “Man bears . . . a solemn responsibility to protect and improve the environment

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13. P.W. BIRNIE AND A.E. BOYLE, *INTERNATIONAL LAW AND THE ENVIRONMENT* 9 (Calrendon Press 1992).

14. S.H. Brandon, *National Sovereignty and Global Environment Responsibility: Can Tension Be Reconciled for the Conservation of Biodiversity?* 33 *HARV. INT’L L.J.* 384 (1989). See also L.K. CALDWELL, *INTERNATIONAL ENVIRONMENTAL POLICY* 55 (2nd ed., Duke University Press 1990).

15. *Id.* Many countries started to develop national policies designed to protect the environment following this conference.

16. The 1972 U.N. Conf. Hum. Env’t, pmbl., para. 6.

for the present and future generations.”<sup>17</sup> This was the first soft international law principle to recognize the need for sustainable development. However, it did not say anything about how its aims were to be achieved. It excluded elements regarding state responsibility for the well-being of its citizens and for the harm caused by them to the environment. Principles Two through Five further recognize the need for preservation of natural resources. Principle Three states that “the capacity of the earth to produce vital renewable resources *must* be maintained and, if practicable, restored, or improved.”<sup>18</sup> Principle Four states human’s responsibility to “safeguard and wisely manage” the imperiled “*heritage* wildlife and its habitat,”<sup>19</sup> but requires that nature conservation be stressed in economic development planning, thus accepting the right of continued exploitation of natural resources.<sup>20</sup>

A key provision in the 1972 Declaration is Principle 21. The principle states:

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 areas beyond the limits of national jurisdiction.<sup>21</sup>

This is the principle of “*sic utere tuo ut alienum non leadas*”. This maxim is the key to the “good neighborliness” principle. It lays down that States on the one hand have the sovereign right to exploit their own resources pursuant to their own environmental policies, but on the other hand have the responsibility that activities within their jurisdiction or control do not cause significant damage to the environment of other States or areas beyond the limits of national jurisdiction. This creates an international liability for environmental harm. Not-

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17. *Id.* Principle 1.

18. Emphasis added.

19. Emphasis added.

20. *Supra* note 16, Principle 5.

21. *Supra* note 16, Principle 21.

withstanding the sovereign right to exploit its resources, every state has an international obligation to prevent activities within its jurisdiction from causing environmental harm beyond its borders.<sup>22</sup> The implication of the principle is that the injured state has a legally recognized right with respect to whatever has been damaged and therefore can claim ecological damages.<sup>23</sup> However, in some cases of international environmental damage like global warming, it is difficult to prove distinct causation or the extent of a particular damage. Thus, the principle does not clearly address all transboundary environmental problems.

Principle 22 creates the duty for States to cooperate for the purpose of further developing international law. This principle addresses liability and compensation for damages as explicitly embodied in Principle 21. The two principles read together provide for the liability model that constitutes an important first step in international responsibility towards environmental protection.

However, the two principles ill-define responsibilities of the states and are narrow in scope in so far as the protection of forests is concerned. First, Principle 21 contains two parallel principles which contradict each other. Each of these two principles taken separately seem to be rather absolute. One limb of the principle recognizes that States have the undisputed right to exploit their resources and another limb of the principle qualifies the exercise of this right by prescribing the manner for the exploitation of natural resources in a way not to cause

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22. This principle underlines the notion of international environmental liability. The formulation of such principle was earlier enunciated in the Barcelona Traction case of 1970 in which the International Court of Justice found out that there were "obligations of a State towards the international community as a whole". See the case concerning the Barcelona Traction Light and Power Company, Limited (Belgium v. Spain), Second Phase 1970 I.C.J. 3.

23. Under traditional customary law, there is a notion that no state may use its territory or allow the use of it in such a way as to cause serious damage to the territory of another state. For example, in Trail Smelter Arbitration (USA v. Canada), 3 U.N. Rep. Arb. Awards 1911 (1941), the arbitral tribunal stated that: "A State owes at all times a duty to protect other states against injurious acts . . . from which [sic] its jurisdiction . . . and that under the principles of international law . . . no State has the right to use or permit the use of its territory in such as manner as to cause injury . . . to other territory or the property . . . and things therein. . . ."



any harm to anybody or anything beyond their borders.

Second, the liability model fails to provide guidelines for state responsibility. An individual State is the owner, possessor and regulator of internal resources like forests which, being located within its territory, are subject to exclusive jurisdiction. Certainly, forests do not fit neatly into any resource concept to which international law has attached legal consequences. The implication of this is that an act of deforestation attributable to the territorial state, but injurious to another state, is not subject to regulation by traditional international law, no matter how grave may be the consequences suffered by that other state. For example, a state has no right of action against a deforesting, neighboring state. The underlying assumption is the freedom of the territorial state from outside control over activities within a state's national jurisdiction. This is recognized by the 1933 Montevideo Convention which sets out the fundamental character of freedom. It provides that: "[No] state has the right to intervene in the internal or external affairs of the other."<sup>24</sup>

Third, pecuniary compensation cannot adequately repair the environmental harm that is unique, lasting or non-restorable. For example, the intergenerational dimension of global warming, ozone depletion, sea level rise, and climate change are not reparable by payment of monetary damages. The effect of these changes is upon future generations and global ecosystems as a whole. Moreover, replacement costs may be so large that they become prohibitive of compensation. Fourth, it may be difficult to apportion liability for a specific environmental damage.<sup>25</sup> Fifth, the protection of forests and other global resources also involves issues other than harm and liability.<sup>26</sup>

Accordingly, the liability model does not adequately regulate management of forests and other global resources. The

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24. Montevideo Convention of Rights and Duties of States, Dec. 26, 1933, art. 8.

25. For example, if deforestation causes global warming, it may be difficult to assess damages or the respective portion of which each injured party is entitled to be compensated.

26. Such other issues include recreation, ecosystems needs, cultural heritage, and genetic diversity.

controversy created by the inalienable right of a sovereign state over its natural resources can be substantially resolved by a more precise analysis of its operation. There can be little controversy if the principle of state sovereignty does not preclude a state from agreeing to specific limitations of its rights to control or exploit some of its resources for a certain period. The right of sovereign nations to conserve, manage, and utilize forest resources within their jurisdiction is unquestionable and must continue to be recognized universally.

However, the recognition of sovereignty should entail acceptance of responsibility to consult and cooperate with other nations at the global and transboundary levels. It should involve responsibility to maintain and develop the productive capacity and ecological diversity of land to be inherited by future generations. In particular, for the environment to be protected as a whole, international standards to control exploitation of resources within each state need to be developed. Further, the focus should no longer be reparation for environmental injury, but measures to ensure control and prevention of environmental harm and the conservation and sustainable development of the natural resources and ecosystems of the whole biosphere.

Formally, the Stockholm Declaration did not pay special attention to sustainable management of forests. Nevertheless, the results of the Stockholm Conference are highly visionary, emphasizing the close relations between environmental problems and development issues. The Declaration itself is also remarkable because it formulates a number of general principles which are not legally binding but nonetheless have certain legal significance, thus marking the first actual attempt to establish a set of basic rules concerning international environmental problems.<sup>27</sup>

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27. The Stockholm Conference has been characterized as a watershed for global environmentalism. Over the past twenty years since the Stockholm Conference, over three hundred multilateral agreements and about nine hundred bilateral treaties and similar agreements have been concluded on the environment. See V. Koester, *From Stockholm to Bruntland* 20 ENVTL. POL'Y & L. 22 (1990).

## B. THE WORLD CONSERVATION STRATEGY AND THE SUSTAINABLE ECOSYSTEMS MODEL

The World Conservation Strategy (WCS) was launched in March, 1980, after three years of intensive efforts by the International Union For Conservation of Nature and Natural Resources (IUCN) with the sponsorship of the United Nations Environment Program and the financial assistance of the World Wildlife Fund.<sup>28</sup> The purpose of the Strategy was to bring a sharper focus to the task of national and international environmental protection and to provide policy guidance on how the objectives of sustainable development might be realized.<sup>29</sup>

The Conservation Strategy defines "conservation" in general as "the management of the human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations."<sup>30</sup> This definition suggests that conservation includes preservation, maintenance, sustainable use, restoration, and enhancement of natural resources.

WCS suggests that conservation improves the prospect of sustainable development by integrating conservation into the development process. Thus the strategy states: "if the object of development is to provide for social and economic welfare, the objective of integrating the environment into the planning and execution of that same development must surely be to ensure a capacity for sustaining it and support its growth".<sup>31</sup>

The WCS sets out some desirable objectives for forest management. These objectives are: to maintain essential ecological processes and life support-systems;<sup>32</sup> to protect genetic

28. See also N. Robinson, *Caring for the Earth: Legal Print for Sustainable Development* 22 ENVTL. POL'Y & L. 22 (1992).

29. *Id.*, Foreword.

30. *Id.*, Introduction, ¶4.

31. *Id.*, Foreword.

32. The essential ecological processes and life-support systems include: soil regeneration, the recycling of nutrients and the cleansing of water on which hu-

diversity;<sup>33</sup> and to ensure the sustainable utilization of species and ecosystems.<sup>34</sup>

The most striking aspect of WCS is the role accorded to the basic tenet that is expressed in the introduction: "Living Resource Conservation for Sustainable Development." The introduction states:

Conservation and development have so seldom been combined that they often appear and are sometimes represented as being incompatible. Conservationists themselves have helped quite unwittingly to foster this conception although often they have allowed themselves to be seen as resisting development although they have been forced into that posture because they have not been invited to participate in the development process enough. . . . development has continued unimpeded by conservationists yet with seeds of its eventual failure lying in the ecological damage that conservation could have helped to prevent.<sup>35</sup>

The above interpretation of conservation and development stresses the view of the Strategy concerning the sustainable ecosystems model. Thus, the philosophy of the Strategy appears to be that ecologically sound development offers the only prospect of conserving the world's ecosystems and human survival and well-being.<sup>36</sup> Ultimately, the task of conservation is not to resist development but to guide the process of environmental planning.

The Conservation Strategy expressly recognizes the need for sustainable utilization of species and ecosystems. It particu-

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man survival and development depend. *See supra* note 28, § 2.

33. Protection includes the range of genetic material found in the world's organisms on which depend the functioning of many ecological processes and life support systems. *See supra* note 28, § 3.

34. Species and ecosystems which support millions of rural communities include fish and other wildlife, forests and grazing lands. *See supra* note 28, § 4.

35. *Supra* note 28, § 1, ¶1.

36. PETER JACOBS, ENVIRONMENTAL STRATEGY AND ACTION: THE CHALLENGE OF THE WORLD CONSERVATION STRATEGY 17 (University of British Columbia Press 1981).

larly recognizes the threat posed to species by international trade, especially in animals and their products taken from the wild in developing countries to developed countries. This trade ignores the great symbolic importance of wildlife to the people.<sup>37</sup> The Conservation Strategy places considerable importance on the destruction of forests and overgrazing for commercial and subsistence purposes and the effect on species.<sup>38</sup>

Based on the aforesaid principles of the Conservation Strategy, the Strategy formulates the "sustainable model" which articulates affirmative duties of protection, thereby emphasizing environmental conservation.<sup>39</sup> This model both complements and surpasses the liability model created by the Stockholm Declaration.<sup>40</sup>

The Strategy further stresses the need for the development of international conservation law and the means of implementing it. It states that "strong international Conventions or Agreements provide a legally binding means of ensuring the conservation of those living resources that cannot be conserved by national legislation alone".<sup>41</sup> This recommendation applies to forests because timber is a commodity that is subject to international trade. Therefore, national legislation alone cannot regulate sustainable trade of timber. The Strategy recognizes international assistance specifically directed towards tropical forests and the application of the concept of protected areas as a means of conserving those lands.<sup>42</sup>

The World Conservation Strategy has been recently supplemented by a program for "Caring for the Earth."<sup>43</sup> This program addresses the problems of integrating conservation and development. It does not address solely conservation issues, but rather takes a broader perspective, acknowledging

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37. See *supra* note 28, § 4, ¶6.

38. See *supra* note 28, § 4, ¶10, 11 and 12.

39. M.B. Saunders, *supra* note 12, at 878.

40. *Supra* note 16, Principle 21.

41. See *supra* note 28, § 15, ¶3.

42. See *supra* note 28, § 16.

43. This defines itself as a "Strategy for Sustainable Living." See CARING FOR THE EARTH: A STRATEGY FOR SUSTAINABLE LIVING (David A. Munro, ed., GLAND: IUCN/UNEP/WWF 1991). (Hereinafter CARING FOR THE EARTH).

that action is required on many fronts. Thus, the solution to problems of the extinction of species requires simultaneous use of a combination of *in situ* and *ex situ* conservation measures to maintain species and genetic resources.<sup>44</sup> Caring for the Earth further attempts *inter alia*, to outline what sustainable development entails in ecological, social, cultural, and economic terms by identifying actions and setting targets for environmental protection.<sup>45</sup> These generally focus on the development of environmental law as an essential tool for achieving sustainability and strengthening international agreements for the conservation of life-support systems and biological diversity.

The additional elements of Caring for the Earth imply that, unlike the Stockholm Declaration's international environmental model, the World Conservation Strategy's sustainable ecosystems model articulates guidelines for preventing environmental harm. By focusing on the need for international cooperation to maintain essential ecological processes, this model emphasizes the benefits of conservation rather than injury from environmental harm. Thus, this model suggests common grounds on which states could affirmatively cooperate to conserve ecosystems.

The approach based on conservation rather than liability responds to environmental problems. However, the Conservation Strategy, unlike the Stockholm Declaration, is a purely strategic document; it has no pretensions to law, but it gives a clear indication of the essential issues for the development of international law to protect ecosystems. Thus, the Conservation Strategy can only be useful if it is incorporated into an international convention that starts with pertinent traditional principles of international law, such as Principle 21 of the Stockholm Declaration.

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44. See CARING FOR THE EARTH, *supra* note 43, at 40.

45. See CARING FOR THE EARTH, *supra* note 43, at 42.

### C. WORLD CHARTER FOR NATURE AND PRINCIPLES OF SUSTAINABLE DEVELOPMENT

Ten years after the Stockholm Declaration, on October 28, 1982, the U.N. General Assembly solemnly proclaimed the World Charter for Nature.<sup>46</sup> The Charter proclaims principles of conservation by incorporating the Stockholm principles and three objectives of the World Conservation Strategy. In other words, it bases itself on certain fundamental principles laid down in the World Conservation Strategy which introduced the concept of "sustainable development." The preamble to the Charter establishes some of its basic philosophy. Paragraph (a) states:

Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources.

Paragraph (c) further emphasizes that "man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of future generations."<sup>47</sup>

In the context of forests, the World Charter provides a general admonition that living resources should not be utilized in excess of their natural capacity for regeneration,<sup>48</sup> and that "forest practices should be adapted to the natural characteristics and constraints of given areas."<sup>49</sup> Further, the Charter is indicative of international endorsement of sustainable development as a concept of universal significance. In that spirit, it does not confine itself to the conservation of international or transboundary resources but instead calls for "[a]ll areas of earth, both land and sea" to be subject to principles of conser-

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46. *World Charter for Nature*, U.N.G.A. Resolution A/RES/37/7, U.N. Doc. A/RES/37/7 (1982) reprinted in 22 INTERNATIONAL LEGAL MATERIALS 455 (1983).

47. *Id.* Preamble ¶(c).

48. *Id.* Principle 10.

49. *Id.* Principle 11.

vation.<sup>50</sup> It insists that “special protection” must be given to endangered areas to represent samples of all different types of ecosystems and the habitats of rare or endangered species<sup>51</sup> and ecosystems, land, marine, and atmospheric resources must be managed to achieve and maintain optimum sustainable productivity without endangering other ecosystems or species.<sup>52</sup>

At the implementation level, Principles 21 and 22 of the Charter deal with resources such as forests. Principle 21 requires States, public authorities, international organizations, individuals, groups, and corporations to ensure that “activities within their jurisdiction or control do not cause damage to the natural systems located within other States or in areas beyond the limits of national jurisdiction and safeguard and conserve nature beyond national jurisdiction.”<sup>53</sup> Principle 22 recognizes the doctrine of sovereignty of States, but nonetheless requires implementation of the provisions of the Charter. It thus states: “Taking fully into account the sovereignty of States over natural resources, each State shall give effect to the provisions of the present Charter through its competent organs in cooperation with other States.” Thus, it appears that the World Charter recognizes the principle of sovereignty with a requirement of conservation of internal resources.

Formally, as a recommendation from the UN General Assembly, the Charter is not legally binding in the narrow sense, although it contains provisions which could be regarded as expressions of international customary law in status *hascendi*.<sup>54</sup> However, it stands apart from other recommendations in several important ways. First, it was not only adopted but also “solemnly proclaimed.” Second, it contains principles of a broad nature, aimed at everyone. Finally, as is the case with the Stockholm Declaration, it employs the form “shall” (*devra*), instead of “should” (*devrait*), which is the normal practice in recommendations. Therefore, the Charter contributes to

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50. *Id.* Principle 3.

51. *Id.*

52. *Id.* Principle 4.

53. Emphasis (quotation marks) added.

54. See BIRNIE AND BOYLE *supra* note 13, at 431.



the law of sustainable development, and if systematically applied and elaborated, the rules may thus go some distance towards developing international forestry law.

Nonetheless, the World Charter has setbacks as an international legal instrument. Unlike the Stockholm Declaration, the World Charter is barely known outside the circles concerned with international environmental cooperation and the rules of international law on environmental protection.<sup>55</sup> As a result, the principles enunciated by the Charter lack international flavor.<sup>56</sup>

#### D. THE BRUNDTLAND COMMISSION REPORT AND ITS SIGNIFICANCE FOR SUSTAINABLE DEVELOPMENT OF FORESTS

An integrative theme for international environmental policy led to the emergence of the concept of sustainable development. The 1972 United Nations Conference on Human Environment<sup>57</sup>, the 1980 World Conservation Strategy,<sup>58</sup> and the World Charter for Nature highlighted the basic principles of sustainable development. These principles culminated in a composite principle of "sustainable development" which was the work of the U.N. World Commission on Environment and Development (WCED). This Commission was established in 1983 and published the Brundtland Report in 1987.<sup>59</sup> In response to that report, the UNEP Governing Council adopted a text entitled "Environmental Perspective to the year 2000 and Beyond."<sup>60</sup>

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55. See Koester, *supra* note 27.

56. *Id.*

57. This marked a watershed in international environmental relations and is very significant for the development of the concept of sustainable development.

58. The theme of this Strategy was "Living Resource Conservation for Sustainable Development".

59. The Report is named for the chairperson of the Commission, Madam Gro Harlem Brundtland, Prime Minister of Norway. The report is also known as "Our Common Future."

60. In two resolutions of 1987 (42/187 and 42/186) the main guidelines of the reports were unanimously endorsed by the U.N. General Assembly as a framework for future environmental cooperation. The General Assembly further decided that efforts should be made towards implementation of the reports' objectives and towards recommendations in an environmental perspective. It called on governments to consider the recommendations of the Brundtland Report. See Koester, *supra*

The Commission was established at a time of unprecedented pressure on the global environment which coincided with a growing recognition that much of today's development is not sustainable. Development was squandering "biological" capital, soils, forests, animal and plant species, water, and air.<sup>61</sup> Consequently, the Commission had three tasks. First, it was mandated to re-examine the critical issues of environment and development and formulation of innovative, concrete, and realistic actions to deal with them. Second, it was asked to assess and propose new forms of international co-operation on environment and development that could transcend existing patterns and influence policies and events in the direction of necessary changes. Third, the Commission sought to raise the level of understanding and commitment to action on the part of individuals, voluntary organizations, businesses, institutes, and governments.<sup>62</sup> In formal terms, the World Commission was to formulate "a global agenda for change"<sup>63</sup> by proposing "long-term strategies for achieving sustainable development by the year 2000."<sup>64</sup> The Commission was to recommend ways of achieving cooperation between developing and developed countries with respect to environmental protection and development,<sup>65</sup> and the means by which the international community could deal effectively with environmental concerns. In addition, the Commission was to help define a shared perception of long-term environmental issues and the appropriate efforts needed to protect the environment.<sup>66</sup>

With the above objectives the concept of sustainable development emerged as the theme of the Brundtland Report, "Our Common Future."<sup>67</sup> The Report assumed a "common future" for all states which could be arrived at through the achieve-

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note 27.

61. Gro Harlem Brundtland, Chairperson of the World Commission on Environment and Development 14 ENVIRONMENTAL POLICY AND LAW 26 (1985).

62. *Id.*

63. Brundtland, *Foreword to WORLD COMMISSION REPORT*, *supra* note 61, at ix.

64. *Id.*

65. *Id.*

66. *Id.*

67. The report provides the views of the World Commission on the concept of sustainable development. It identifies the causes of unsustainable development and offers possible strategies for achieving sustainable development.

ment of sustainable development.<sup>68</sup> Sustainable development was defined by the Commission as “[h]umanity’s ability to make development sustainable to ensure that it meets the needs of the present generation without compromising the ability of the future generation to meet their needs.”<sup>69</sup> This definition emphasized that future generations must be given priority. The Brundtland report stated:

Many present efforts to guard and maintain human progress, to meet human needs, and to realize human ambitions are simply unsustainable in both the rich and poor nations.

They draw too heavily, too quickly, on already overdrawn environmental resources accounts to affordable far into the future without bankrupting those accounts. They may show profits on the balance sheets of our generation, but our children will inherit the losses. We borrow environmental capital from future generations with no intention or prospect of repaying. They may damn us for our spendthrift ways, but they can never collect our debt to them. We act as we do because we can get away with it: future generations do not vote; they have no political or financial power; they cannot challenge our decisions.

But results of the present profligacy are rapidly closing the options for future generations. Most of today’s decision makers will be dead before the planet feels heavier effects of acid precipitation, global warming, ozone depletion, or widespread desertification and species loss.<sup>70</sup>

The definition of sustainable development emphasizes that

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68. BIRNIE AND BOYLE, *supra* note 13, at 433.

69. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *Our Common Future* 8, 43-65 (Oxford University Press 1987). A separate report by an expert group on environmental law set up to advise the Commission recommended that, under Principle 2: “States shall conserve and use the environment and the natural resources for the benefit of present and future generations”. Principle 3 stipulates: “States shall maintain ecosystems and ecological process essential for functioning of the biosphere to preserve biological diversity, and the principle of optimum sustainable yield in the use of living natural resources and ecosystems.”

70. WORLD COMMISSION REPORT, *supra* note 69, at 8.

the present generation has a moral obligation to use resources sustainably, allowing future generations use of the same resources. Inevitably, the aim of the concept of sustainable development is to "promote harmony among human beings and between humans and nature."<sup>71</sup>

The above principles of sustainable development clearly apply to forest management, while the Bruntland Report considered them applicable and important to forest resources. In that spirit, the report recognized that the planet's species are under stress.<sup>72</sup> Thus, the first priority was to place the problem of disappearing species and threatened ecosystems on the political agenda as a major economic and resource issue.<sup>73</sup> The Report specifically recognized the rate of destruction of the tropical forests. Consequently, it recommended development of a reformative forest policy to create more efficient long-term resource use.<sup>74</sup> In this regard, the Commission argued for the promotion of the "protected areas concept." The report was of the view that "protected areas would provide a higher degree of protection for tropical forest animals and plant species."<sup>75</sup>

The Report also recognized that implementation of sustainable development demands international cooperation. It stated that "human progress depends on technical ingenuity and capacity for cooperative action," and that "[n]ational boundaries have become so porous that traditional distinctions between local, national, and international issues have become blurred."<sup>76</sup> The view of the report was that the international legal framework must be strengthened significantly in support of sustainable development. The view of the Commission was that the internationalization of the concept of sustainable development would provide universal protection of natural resources.

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71. *Id.* at 65.

72. *Id.* at 13.

73. *Id.* The Commission was suggesting that the environmental problems concerning ecosystems should be addressed at both national and international levels.

74. *Id.* at 13.

75. See *Deforestation - Priorities for Action*, 7 ENVIRONMENTAL POLICY AND LAW 159, 161 (1980).

76. *Id.* at 313.

The Brundtland Report contained "analyses of a number of administrative and judicial problems, and various considerations on *inter alia* the obligation of States towards their citizens and towards other States." In addition, an Annex to the Report proposes legal principles on environmental protection and sustainable development.<sup>77</sup> The legal principles emphasize, *inter alia*, conservation<sup>78</sup> and sustainable use of natural resources. Article 3 specifies that:

States shall maintain ecosystems and ecological processes essential for the functioning of the biosphere, to preserve biological diversity and to observe the principles of optimum sustainable yield in the use of living natural resources and ecosystems.

The proposals and legal principles of the Brundtland Report indeed brought into focus the issues concerning environmental survival under the concept of sustainable development. The recognition of the need to integrate development and environment is a very important step towards sustainable development. However, these proposals do not provide a comprehensive package for existing and future programming to meet the sustainable development thrust.

The main challenge of the proposals is the need to support a global perspective and yet maintain the individual state uniqueness that establishes jurisdictional or political identity. The interpretation of the proposals varies from one state to another. Each state has its priority national interests, which may lead to various conclusions. Therefore, it appears that the global impact of the proposals can meet these challenges if they are developed into international rules that bind all states.

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77. The Experts Group on Environmental Law appointed by the WCED in 1986 adopted these rules.

78. "Conservation" means the management of human use of a natural resource or the environment in such a manner that may yield the greatest sustainable benefit to the present generation while maintaining its potential to meet the needs and aspirations of future generations. It embraces preservation, maintenance, sustainable utilization, restoration, and enhancement of a natural resource or the environment. See WORLD COMMISSION REPORT, *Environmental Protection Legal Principles and Recommendations* 9 (London, Graham & Trotman, 1987).

## E. THE RIO DECLARATION AND THE SUSTAINABLE MANAGEMENT OF FORESTS

In 1988, the General Assembly of the United Nations, with assistance from UNEP's Executive Director, requested the Secretary-General to obtain views of governments and organizations, within and outside the UN system, on holding a Conference on environment and development.<sup>79</sup> Consequently, the decision to hold the UN Conference on Environment and Development (UNCED),<sup>80</sup> twenty years after the 1972 Stockholm Conference, was made after an apparent need was felt by the international community to assess progress made since the Stockholm Conference to protect the earth from environmental degradation.<sup>81</sup>

On the December 22, 1989, the General Assembly of the United Nations by resolution 228, voted to accept an invitation from the Government of Brazil to hold a major Conference on environment and development at Rio de Janiero in 1992.<sup>82</sup>

The major theme of sustainable development set by the Brundtland Report was the focus of the Conference.<sup>83</sup> On the basis of environmental and developmental issues identified by the Brundtland Report to be addressed by the UNCED topics included, *inter alia*, (1) protection of the atmosphere by combating climate change, depletion of the ozone layer, and transboundary air pollution; (2) protection and management of land resources by, *inter alia*, combating deforestation, desertification and drought; (3) conservation of biodiversity; (4) environmentally sound management of biotechnology; (5) protection of the oceans and all kinds of seas, including enclosed and semi-closed seas and coastal areas, and the protection,

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79. *Id.* See also Adede, *Profile of Legal Instruments for International Responses to See The Origins of the Rio Declaration* 20 ENVIRONMENTAL POLICY AND LAW 2, 4 (1990).

80. [Hereinafter Rio Declaration].

81. *Id.* See also Adede, *Profile of Legal Instruments for International Responses to Problems of Environmental Protection and Development*, 21 ENVIRONMENTAL POLICY AND LAW 225 (1991).

82. United Nations Resolution and decision of the General Assembly 44th session, 22nd December, 1989 Resolution 228.

83. Caldwell, *supra* note 14, at 18.

rational use, and development of their living resources; (6) environmentally sound management of wastes; and (7) environment and development education.<sup>84</sup>

The Rio Declaration on Environment and Development<sup>85</sup> clarified and further defined the current concept of sustainable development. It widened the concept to include elements regarding states' responsibility for the healthy environment of their citizens and for the harm caused by them.<sup>86</sup> Principle 1 states: "Human beings are at the center of sustainable development. They are entitled to a healthy and productive life in harmony with nature."<sup>87</sup>

The Rio Declaration recognized the substantive requirements for development and procedural requirements for implementing environmental protection. Principle 2 thus recognizes a right to development. It states:

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 areas beyond the limits of national jurisdiction.<sup>88</sup>

This principle amends Principle 21 of the Stockholm Declaration<sup>89</sup> by stipulating that states have a right to exploit their resources pursuant to their environmental and developmental policies. The addition of the word "development" may reflect a recognition in some measure of the right of states to exploit their resources without being unduly constrained by the general rules of international law.<sup>90</sup> Thus, the principle em-

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84. See Adede, *supra* note 81.

85. Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, U.N. Doc. A/CONF. 151/5/Rev.1(1992), reprinted in 31 International Legal Materials 874 (1993).

86. Sanwal, *Sustainable Development, the Rio Declaration and the Multilateral Cooperation*, 48 COLO. J.INT'L L.& POL'Y 45 (1993).

87. *Supra* note 85, Principle 1.

88. *Supra* note 85, Principle 2.

89. *Supra* note 16.

90. This is in line with the increasingly vocal complaint of developing countries

phasizes state sovereignty under international law.

The principle of state sovereignty presents a significant challenge to the principles and the orientation of the international legal order for conservation of natural resources. State sovereignty seems to be inappropriate in the world today, where domestic decisions have an international dimension.

For sovereign states to co-exist, and yet effectively manage natural resources, a new meaning must be given to the traditional concept of state sovereignty and responsibility. A global approach to the management of natural resources requires acceptance of the general rule of state responsibility for the management of global resources.

Further, the Rio Declaration recognized that environmental protection is an integral part of development. This was embodied in Principle 4, which states: "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."<sup>91</sup> This is the closest the Rio Declaration comes to a definition of sustainable development by striking a balance between developmental and environmental considerations.

In general, the Rio Declaration constitutes a departure from the Stockholm Declaration in the sense that it emphasizes world partnership, the recognized need for sustainable development and joint but differentiating responsibility of the developed and developing countries. These fundamental legal principles are further developed in the documents that were drafted at the Conference.

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about what are perceived as the industrialized world's attempts to impose on them its vision of the environmental crisis as an international one. It is also consonant with the strong emphasis placed on sovereign control over forests in existing forest documents. *See infra* forestry agreements.

91. *Supra* note 85, Principle 4.



## F. AGENDA 21 AND SUSTAINABLE FOREST MANAGEMENT

The prospect of the Conference in Brazil indicated a significant change in the attitude of Brazil. Twenty years earlier, at the Stockholm Conference,<sup>92</sup> Brazil had in fact led the opposition to international environmental restrictions. Concern, both within and outside of Brazil, in regard to the destruction of tropical forests may have been a factor contributing to Brazil's willingness to consider an international environmental agreement formally regarded as prejudicial to national sovereignty.<sup>93</sup>

The key document from the Rio Conference was Agenda 21.<sup>94</sup> Forests were a major focus of UNCED. They merited a separate chapter of Agenda 21 and featured prominently in several others.<sup>95</sup> The avowed aim of the forest section of Agenda 21 was to achieve conservation and rational utilization of all forests and tree based resources to increase their contribution to overall socio-economic development, environmental protection and peoples' quality of life, within the content of sustainable development. Section II, Chapter 3 of Agenda 21,<sup>96</sup> provides the global principles of forestry management. The global objective and programs area relative to forest, proposed by Agenda 21, are based on the orientation in the UN resolution 44/228. This resolution reaffirmed the principle of sovereignty as well as the need to prevent further deterioration of land resources while ensuring the protection and enhancement of the environment. It also reaffirmed the need to address the major environmental issues in the overall development context, in order to restore the global ecological balance,

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92. *Supra* note 16.

93. Caldwell, *supra* note 14, at 18.

94. The United Nations Conference on Environment and Development (UNCED) prepared this document. It was an agreed program of work by the International Community addressing major environment and development priorities for the initial period 1993-2000 and leading into the 21st Century.

95. Other issues that were discussed include: population and poverty; human settlement, development, and management; natural resources management and planning at national and global levels; waste management; education; and public participation and its responsibility.

96. This chapter is entitled *Combating Deforestation: Options for Agenda 21*. It contains the report of the Secretary General of the Conference.

conserve biological diversity and promote sustainable and environmentally sound development.<sup>97</sup>

Agenda 21 slates various proposals regarding sustainable management of forests. First, it reaffirms the principle of sovereignty as well as the need to prevent further deterioration of land resources, while ensuring protection and sustainable development.<sup>98</sup> Secondly, Agenda 21 recommends public participation in the management of forests. It states that governments should involve the private sector, non-governmental organizations, local communities and the public at large in a sustainable forest management system through improved management planning and timely implementation of silvaculture operations.<sup>99</sup> Thirdly, Agenda 21 recommends internationalization of forest management principles by strengthening the capacity of international organizations<sup>100</sup> and encouraging international, bilateral, and regional cooperation in the promotion of sustainable and environmentally sound development.<sup>101</sup>

It is evident from the proposals that the objective of Agenda 21 in regard to forests was to achieve their conservation and rational utilization, and to increase their contribution to overall socio-economic development and environmental protection. In addition, Agenda 21 was intended to provide the necessary framework to channel international technical and financial cooperation. Thus, Agenda 21 is a useful international action plan to promote sustainable development of forests and should serve as the basis for assistance to developing countries.

In spite of the obvious importance of forests to the global community, the chapter in Agenda 21 on "Combating Defores-

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97. AGENDA 21 AND THE UNCED PROCEEDINGS 3RD SERIES INTERNATIONAL PROTECTION OF THE ENVIRONMENT 342 (N.A. Robinson, Ed.).

98. *Id.* at 343.

99. *Id.* at 351.

100. Such organizations include: Food and Agriculture Organization (FAO), International Tropical Timber Organization (ITTO) and United Nations Industrial Development Organization (UNIDO). These bodies need to be enabled to provide technical support and guidance to developing countries.

101. *Id.*

tation" is a disappointing consensus on the politically acceptable principles of forest management. Notwithstanding its title, the chapter is not about combating deforestation and it is curative rather than preventive. The sections on international and regional cooperation and coordination are particularly weak and without specifics. In addition, it neglects to mention the real causes of world deforestation: poverty and landlessness in the South and excessive consumerism in the North. Even a passing recognition of the existence of these problems would be useful. Yet, there is only one brief reference to the landless in the chapter, with a suggestion of the need to limit "destructive shifting cultivation" by addressing the underlying social and ecological causes. There is no indication of how this is to be done. Equally problematic is the fact that nothing is said about the consumerism of developed countries. In short, it fails to come to terms with the difficult political differences that underlie the whole discussion of deforestation — the differences between developed and developing countries. This is evident in the agreements that were reached during UNCED. Notwithstanding the inadequacies of the chapter, it may be complemented on the grounds that, given the politics of the topic, perhaps it is the best that could have been achieved. Whatever its imperfections, what matters most is the follow up.

#### G. AGREEMENTS ADOPTED ON FOREST MANAGEMENT

There was great friction between developing countries and developed countries regarding the agreements during the Conference.<sup>102</sup> However, a non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests was adopted.<sup>103</sup>

During the Conference, the most contentious issue was the Preamble. Industrialized countries wished it to contain a com-

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102. See *Rio Conference on Environment and Development*, 22 ENVTL. POL'Y & L. 204, 223 (1992).

103. They are known as Statement of Principles for Global Consensus on Management, Conservation and Sustainable Development of All Types of Forests, adopted on June 13, 1992, U.N. Doc. A/CONF.151/26/Rev.1, reprinted in 31 INTERNATIONAL LEGAL MATERIALS 881 (1992) [hereinafter Forest Principles].

mitment to an enforceable future forest convention. However, developing countries like India refused to sign anything which even mentioned a convention and insisted the principles be implemented first to see how they work. As a compromise, the final statement leaves open the possibility by talking of "appropriate internationally agreed arrangements to promote international cooperation."<sup>104</sup>

The U.S. on the other hand, refused to accept the words "right to development," claiming that they could have human rights implications. A compromise was finally reached through the wording "right to socio-economic development on a sustainable basis."<sup>105</sup> It appears that fear of an international convention on forests by the developing countries was based on the fact such a convention would jeopardize their sovereign right to exploit their forest resources.<sup>106</sup> Finally, this was resolved by stating that forests are "essential to economic development and the maintenance of all forms of life."<sup>107</sup>

The controversy about the statement on forest principles led ultimately to the adoption of a non-binding authentic statement of principles for global consensus on the management, conservation, and sustainable development of all types of forests.<sup>108</sup>

Does the agreement provide a mechanism for sustainable management of forests? The Helsinki Forest Meeting defined sustainable development of forests as follows:

[T]he stewardship and the use of forests and the forest land in a way, and at a rate, that main-

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104. Paragraph (d) of the Preamble states: "These principles should reflect a first global consensus on forests. In committing themselves to the prompt implementation of these principles, countries also decide to keep them under assessment for their adequacy with regard to further international cooperation on forest issues".

105. Paragraph (a) of the Preamble observes: "the subject of forests is related to the entire range of environmental and development issues and opportunities, including the right to socio-economic development on a sustainable basis."

106. This argument seems to have been based on the fact that denial of sovereignty over forests would mean that developing countries could not exploit forests for national development.

107. Preamble ¶(g).

108. A/CONF.151/6/Rev.1, 13 June 1992, Agenda item 9.

tains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfill, now and in the future, relevant ecological, economic and social functions, at local, national and global levels, and does not cause damage to other ecosystems.”<sup>109</sup>

Principle Two of the Rio Declaration recognizes the right of a State to use forests in accordance with principles of sustainable development. It states:

States have the sovereign and inalienable right to utilize, manage and develop their forests in accordance with their development needs and the level of socio-economic development and on the basis of national policies consistent with sustainable development legislation, including the conversion of such areas for other uses within the overall socio-economic development plan and based on rational land use policies.<sup>110</sup>

The Principle recognizes the sovereign right of states to exploit forest resources; however, it emphasizes this should be done in accordance with sustainable development principles. The requirement of sustainable management of forests is emphasized in Principle Two(b) which states that “forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations.” The combination of Principles One(a) and Two(a) indicates a clear unwillingness on the part of states to accept any restrictions on the utilization of forest resources that goes beyond the Stockholm Declaration 21 formulation and could thus be characterized as an interference with sovereign rights.

The Forests Agreements further emphasize the applicability of the right to participatory development. The opening statement of the preamble affirms that “the subject of forests is

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109. *General Guidelines for Sustainable Management of Forests in Europe of the Helsinki Forest Meeting of June 16-17, 1993*, 23 ENVIRONMENTAL POLICY AND LAW 231, 232 (1993) [Hereinafter Helsinki Forest Guidelines].

110. *Id.* Principle 2(a), (b). These emphasize that forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural, and spiritual human needs of present and future generations.

related to the entire range of environmental and development issues and opportunities, including the right to development on a sustainable basis.” Thus, the agreements require governments to promote public participation in forest management by providing opportunities for the participation of interested parties such as local communities, indigenous peoples, industries, labor, non-governmental organizations, individuals, forest dwellers, and women.<sup>111</sup> Further, the agreements call for forest policies that recognize culture, the rights of indigenous people,<sup>112</sup> and the participation of women.<sup>113</sup>

The Principles further emphasize that decisions made concerning management, conservation and sustainable development would benefit from a comprehensive assessment of economic and non-economic values of forest goods and services and an assessment of environmental costs and benefits.<sup>114</sup> Thus, national policies should ensure that environmental impact assessments are carried out where actions are likely to have a significant adverse impact on important forest resources, and where such actions are subject to a decision of a competent authority.<sup>115</sup>

The principles adopted in the agreements have strong implications for sustainable development, especially in developing countries. The concepts of public participation and environmental impact assessment are both very important as forest management is concerned, because they create conditions for reconciling development and sustainability. This makes it possible for the formulation of forest policies and the development of a project to reflect the socio-economic conditions of society.

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111. *Id.* Principle 2(d).

112. *Id.* Principle 5(a). This principle seems to suggest that sustainable management of forests has to reflect the cultural values of society.

113. *Id.* Principle 5(b). This is a very important approach, particularly in developing countries. The International Union for Conservation of Nature and Natural Resources (IUCN) program on women and natural resource management discovered that in developing countries women are primary users of natural resources. For this reason, encouraging the participation of women gives a perspective on sustainable development and therefore provides a basis for environmental protection.

114. *Id.* Principle 5(c).

115. *Id.* Principle 8(h).

Again, the principles recognize the importance of the internationalization of forest management. International institutional arrangements should be used to facilitate international cooperation with respect to forest management.<sup>116</sup> These arrangements would act as liaisons for international financial and technical cooperation which are beneficial to developing countries.<sup>117</sup> These would act, too, as a source of international exchange of information on the results of forest and forest management research and development.

Obviously, the United Nations Conference on Environment and Development indicates that agreements on forest management provide comprehensive principles on the sustainable management of forests.<sup>118</sup> However, these principles do not have a forest sustainable management impact. The agreements are vague and contain non-binding principles which neither resolve the conflict between competing interests, nor commit the signatories to do so in the future. A surface reading of the agreements might lead to the view that they are nothing much more than a disparate collection of assertions that are closer to the reflection of political self-interest and rhetoric than pragmatic norms that are required to deal with the global challenge of conservation and sustainable development of forests. Admittedly, the application and enforceability of such principles in the international regulation of forest resources remain in doubt. Despite many inadequacies, the non-binding statement of principles for global consensus on the management, conservation, and sustainable development of all types of forests represent a first step toward establishing national guidelines and internationally agreed criteria for the conservation and sustainable development of forests as well as a legally-binding set of rules for international conservation for forests. However, they need to be developed into enforceable agreements in order to be effective.

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116. *Id.* Principle 3(b).

117. *Id.* Principle 8(c).

118. In other words, Forest Principles do not fully incorporate the principles of sustainable development of forest as defined by Helsinki Forest Guidelines. See *supra* note 109.

#### IV. CONCLUSION

International sustainable forest management has raised and will continue to raise legal issues that cannot help but change existing soft law principles. It is questionable whether soft law principles can do more than provide certain general principles of law and frameworks in time, given the developmental concerns of developing countries. However, as seen in the practice of states, international forest principles may play a dynamic role in developing forest resources protection, despite the inherent political, social, and economic problems, and will continue to do so whether or not relevant conventions are eventually concluded. A particularly important function in the context of sustainable development is that international forest law, if supported by consensus among the states concerned, can facilitate equitable distribution of the economic and other benefits and burdens of regulation and ensure parity of sacrifice among those states. Examination of the present principles of international forest law indicates that universally respected standards must be laid down, which are not only binding on and reflecting consensus of all participants, but are also within the framework of global solidarity and common interests for all nations.



