

State Sovereignty in the Planetary Management of Natural Resources

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Abstract. Protagonists of global environmental governance often view the sovereign State as well as the principle of sovereignty as major stumbling blocks for effective environmental conservation and sustainable development. Some even herald the demise of the idea of the sovereign State. However, reality has it differently. Sovereignty is no longer an unqualified concept. Manifold new duties have been imposed upon the sovereign State as a result of the progressive development of international law. Much of the modern international law movement vests States with the responsibility to adopt regulations, to monitor and secure compliance and exercise justice in order to achieve its implementation, whereas supranational global environmental governance has remained notoriously weak. This article examines this proposition by reference to the environmental and developmental role of states in three landmark multilateral treaties: The United Nations Law of the Sea Convention (1982), the Convention on the Conservation of Biological Diversity (1992) and the Paris Agreement on climate change (2015). They demonstrate that sovereignty serves as a key organisational principle for the realization of global values, such as environmental conservation and sustainable development.

Keywords: Sovereignty, global environmental governance, law of the sea, biological diversity, climate change, natural resources

1. Introduction

Our planet has been divided into 200 sovereign territorial units, few of them along rational borders.¹ It is a fact of life that these 200-odd national states exist, despite the myriad of challenges to the role of national sovereignty in a global society. At regular intervals some are sounding the death-knell for this principle of law and predict, if not herald, the withering-away of the sovereign state. Each time this proves to be premature.

2. The Changing Nature of Sovereignty

In view of the continuing weak level of international organisation and integration, the national sovereign state survives and is on balance

still the prime layer of international administration². In fact, it is truism to state that “it is the sovereign states which are, primarily, subjects of international law and as such they are the ones that dictate the growth of institutional development at the international level”³. Notwithstanding this, sovereignty remains a postulate ‘within the law’ since “the principle that the sovereignty of the State consists of its competence as defined and limited by international law and is not a discretionary power which overrides the law”⁴.

As a matter of fact, each time when a new multilateral treaty is being concluded new duties are being imposed on the sovereign state. As a result of the progressive development of international law and its codification, the sovereign state is still widely perceived as both the main instrument for implementing such newly-established rules and the main body to be held accountable for their

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observance. Moreover, despite the emergence of our multi-stake holder societies, few international rules can evolve without the ultimate endorsement, if not consent, by states. Ian Brownlie viewed sovereignty as “the basic constitutional doctrine of the law of nations”.⁵ Similarly, Alan James noted that sovereignty is “the one and only organising principle in respect of the dry surface of the globe, all that surface now . . . being divided among single entities of a sovereign, or constitutionally independent kind.”⁶ While one could perhaps argue that in our world there is more than sovereignty and the sovereign state in view of the overarching role of universal international law and the increased role of regional and global co-operative and occasionally integration organisations, that is not to say that sovereign states are no longer the backbone of the contemporary world society. However, what has changed is the nature of sovereignty.⁷ For instance, it has taken advanced forms such as ‘sharing of the sovereignties in common’ as propounded by the German Constitutional Court that rules that the “member-States have established the European Union in order to exercise a part of their functions in common and to that extent to exercise their sovereignty in common”⁸.

There is a rich variation of the qualification of sovereignty in different times through the range of adjectives that have been employed. One could well argue that gradually and as a result of the progressive development of international law the world has moved away from absolute, full and permanent sovereignty to forms of relative, functional and responsible sovereignty. Each of these adjectives indicate certain qualifications which can differ by subject and historical period. Hence, sovereignty is not a static but a dynamic concept. It can have a different meaning in different historical periods although certain essential characteristics remain. Internally, it means that the government of a State is considered the ultimate authority within its territorially defined borders and national jurisdiction over its nationals, wherever they reside. Externally, it means that a State is not subject to the legal power of another State and stands in principle, albeit formally, on equal footing with other States: *par in parem non habet imperium*, as reflected in the very first principle of United Nations law enshrined in Article 2 of the UN Charter.⁹ In the succinct description by Judge Huber as the sole arbitrator of the arbitral tribunal in the landmark *Island of Palmas case* (1928):¹⁰

“Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of another State, the functions of a State . . . Territorial sovereignty involves the exclusive right to display the activities of a State.”

Modern international law protects the existence, the territorial integrity, the jurisdiction and the freedom to formulate its own policies of the national State. But modern international law has, apart from rights, also come to entail many duties incumbent upon states in an increasingly interdependent world. This follows from a careful analysis of the three fundamental multilateral treaties under review in this article. While these treaties may well be symptomatic of the new direction international law and organization are taking, they qualify but certainly do not diminish the role of the sovereign state on the subject matters they address – which are all of crucial importance for the management of the planet’s natural resources.

3. UNCLOS: World Constitution of the Oceans

During the 20th century, territorial sovereignty over adjacent maritime areas has been substantially extended, as a result of the recognition of the 12 nautical miles (nm) territorial sea (previously, 3 nm), the archipelagic state (turning huge masses of sea into internal waters), the regime for islands (generating extensive maritime entitlements) and straight baselines for measuring the low water line, respectively.¹¹ Furthermore, new national resource regimes in extensive maritime areas have been established by way of the recognition of an extended continental shelf and the 200-nm Exclusive Economic Zone (EEZ). These are all codified in and regulated by the United Nations Convention on the Law of the Sea (UNCLOS), also called the “World Constitution of the Oceans”.¹² Furthermore, this comprehensive Convention addresses nearly all of the uses of the seas and oceans (navigation, fisheries, overflight, oil and gas exploitation, to mention just a few) and identifies and delineates all maritime zones.

In essentially all maritime zones - ranging from the territorial sea through the exclusive economic zone to the high seas - states are under a duty to

conserve fisheries through rational and optimal use and avoiding overexploitation. For example, with respect to the EEZ, UNCLOS vests coastal States with the duty to design measures to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, “taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards”.¹³ Account must be taken of “the best scientific evidence available” and where appropriate the coastal State must co-operate with “competent international organisations”,¹⁴ most notably regional fisheries organisations and the Food and Agriculture Organization of the UN (FAO). Furthermore, coastal States are required to determine “the total allowable catch of the living resources” in their exclusive economic zone.¹⁵

While huge masses of natural resources have been brought under national economic jurisdiction as a result of the establishment of a 200 nm EEZ and an extended continental shelf, obligations have been formulated as regards the protection and preservation of the marine environment within these areas. This dual approach is reflected in Article 193: “States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.” This Article is one of the opening provisions of the separate Part XII of UNCLOS on Protection and Preservation of the Marine Environment.

The responsibilities of States parties under this Part relate in particular to the prevention, reduction and control of pollution, including originating in areas under national economic jurisdiction. Article 235 provides that States are responsible for the fulfilment of their international obligations concerning the protection and the preservation of the marine environment, and that “they shall be held liable in accordance with international law”. In addition, States are under an obligation to protect and preserve the marine environment and to take all kinds of measures to prevent, reduce or control pollution. This is also reflected in the first two advisory opinions which the International Tribunal for the Law of the Sea (ITLOS) rendered. The first one by its Seabed Disputes Chamber on 1 February 2011 addressed the responsibilities and obligations of states which sponsor persons and corporations with respect to activities relating to exploring and

exploiting the deep seabed.¹⁶ It specifies modern international environmental law principles, such as due diligence, the precautionary approach and liability for damage and loss in view of the *erga omnes* obligation for preservation of the environment of the high seas and the deep seabed. The second advisory opinion of April 2015 addressed the issue of illegal, unreported and unregulated (IUU) fishing in West African coastal waters for which the Tribunal holds the flag states responsible.¹⁷ ITLOS was also asked about the rights and obligations of coastal States in ensuring the sustainable management of shared stocks and stocks of common interest in their EEZs. The Tribunal observed that “the ultimate goal of sustainable management of fish stocks is to conserve and develop them as a viable and sustainable resource”.¹⁸ An obligation to ensure the sustainable management of shared stocks includes an obligation to cooperate to ensure that “the maintenance of shared stocks, through conservation and management measures, is not endangered by over-exploitation”; that such measures “are based on the best scientific evidence” or where such evidence is insufficient, on the basis of the “precautionary principle”.¹⁹ The Tribunal further opined that cooperation between States “on issues pertaining to the conservation and management of shared fisheries resources, as well as the promotion of the optimum utilization of those resources, is a well-established principle in the Convention”.²⁰

4. Biological Diversity: A ‘Common Concern’ under National Jurisdiction

The landmark Convention on Biological Diversity (1992) was concluded in 1992 in the context of the Rio Conference on Environment and Development. Its main objectives are the conservation of biological diversity, the sustainable use of its living organisms and ecosystems, and the fair and equitable sharing of benefits of utilizing genetic resources.²¹ The Convention addresses three levels of biological diversity: ecosystems, species and genetics. The Convention is widely known for its innovative balancing of the duality of ‘conservation’ and ‘sustainable use’.²² Whereas the former is not defined, the Convention provides a succinct definition of sustainable use: “... the use of components of biological diversity in a way and

at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations".²³

The larger part of biological resources and herewith biological diversity are located in areas under the jurisdiction of States. Furthermore, although it is widely recognised that continuous loss of biological diversity affects humankind in its entirety, the effects of losses in one particular state are often not directly and significantly harmful to the population of other States. In its preamble the Convention reaffirms that "States have sovereign rights over their biological resources" and "... are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner." Furthermore, the Convention provides that its operational provisions apply to those components of biological diversity that are located in areas under national jurisdiction.²⁴ While recognizing State sovereignty over natural resources, the preamble of the Convention also confirms that "the conservation of biological diversity is a common concern of humankind". Therefore, it requires States parties to comply with the Convention with regards to both areas under national jurisdiction and processes and activities carried out under their jurisdiction or control, including those having effect in areas beyond the limits of national jurisdiction. In this way, the Convention indirectly covers all biological diversity on our planet.²⁵ States Parties are to facilitate access to their genetic resources for environmentally-sound uses by other States. Furthermore, the Convention provides for national monitoring of biodiversity and the development of national strategies for its conservation, including the establishment of measures for specific species and habitats.²⁶

The major part of the substantive obligation incumbent upon States under the Convention relate to *in-situ* conservation and sustainable use of protected areas,²⁷ all biological resources, ecosystems, natural habitats, viable populations of species across all areas of a Party's territorial jurisdiction and so-called buffer zones, i.e. areas adjacent to protected areas. Article 9 complements the *in-situ* measures with *ex-situ* measures for the conservation of the components of biodiversity, preferably in the country of origin of such components, to adopt measures for the recovery and rehabilitation of threatened species, and to regulate and manage collection of biological resources from

natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species. Article 10 addresses specifically the sustainable use of components of biodiversity and commits States parties to five specific obligations, including: integrating (mainstreaming) both conservation and sustainable use into relevant sectoral plans, programmes and policies (sub *a*); minimizing adverse impacts (*b*); protecting and encouraging customary use of biological resources (*c*); developing and implementing remedial action in degraded areas where biodiversity has been reduced (*d*); and cooperation with the private sector for sustainable use of biological resources (*e*). Thus, the Convention obliges States to take multiple and effective national action to put a halt to the destruction of biological species, habitats and ecosystems, while leaving sovereignty over natural resources and national jurisdiction and control over their biological resources fully intact. The Convention also incorporates important new principles of international environmental law such as the 'precautionary principle', 'intergenerational equity' and 'the principle of integration'.

5. Curbing Climate Change: Three Legal Instruments

As another offspring of the preparatory process for the 1992 Rio Conference on Environment and Development, the UN Framework Convention on Climate Change (UNFCCC) was adopted on 9 May 1992. Over time the UNFCCC has with 198 parties (197 states and the EU) achieved universal coverage. The Convention aims to stabilize atmospheric concentrations of greenhouse gases at levels that would prevent human activities interfering dangerously with the global climate system.²⁸ Such a level is, according to the UNFCCC, to be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.²⁹ The Convention stipulates that developed countries "should take the lead in combating climate change and the adverse effects thereof", considering that "the largest share of historical and current global emissions of greenhouse gases has originated in developed countries".³⁰ Industrialised countries are required

“by the end of the decade” (that is, in 2000) to “return individually or jointly to their 1990 levels of those anthropogenic emissions” of greenhouse gases.³¹

The Convention is built on the two pillars of addressing climate change: *mitigation* and *adaptation*. Mitigation refers to the efforts taken to reduce GHG emissions and seeking to minimize the harm inflicted. Adaptation means to adjust or assimilate to climate-change impacts and preparing and learning how to live with the consequences. The State parties have recognized that mitigation and adaptation are complementary activities. Moreover, the UNFCCC also formulates duties incumbent upon all State parties. They all have the general duties to protect the climate system for the benefit of present and future generations of humankind, to take precautionary measures with respect to climate change, and to promote sustainable development. More specific resource-related obligations are: to compile national inventories of anthropogenic emissions of greenhouse gases; prepare programs on measures to mitigate climate change; to promote and co-operate in the conservation and enhancement of sinks and reservoirs of greenhouse gases, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems; and to co-operate in preparing for adaptation to the impacts of climate change and to develop integrated plans for areas and resources especially vulnerable.³² With respect to specific groups of States, the Convention provides that industrialised countries may implement certain policies and measures “jointly” with each other or with other States Parties.³³ In addition, developing countries with significant energy resources such as oil, gas and coal, may cooperate in applying more effective pollution abatement measures and greenhouse gases reductions for which they can expect to receive some international assistance and access to environmentally sensitive technologies.³⁴

In 1997, the Kyoto Protocol to the UNFCCC was adopted. As a result of a long ratification process, the Protocol only came into operation in 2005.³⁵ The Protocol takes one major step further than the UNFCCC in the sense of committing developed States parties to legally binding emission reduction targets. The thirty-seven listed developed States committed to decrease their emissions between 2008 and 2012 (the so-called *budget period*) by 5 percent over 1990. The Protocol obliges States

parties to take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects, and cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties.³⁶ Furthermore, the Kyoto Protocol requires parties to implement and/or further elaborate policies and measures aimed at increasing energy efficiency, protecting and enhancing sinks and reservoirs of greenhouse gases (e.g., through sustainable forest management) and promoting sustainable agriculture, new and renewable sources of energy, and technologies aimed at carbon dioxide sequestration. Parties also have to implement policies and measures that address market, fiscal, and other imperfections in sectors that emit greenhouse gases and that reduce or limit greenhouse gases in the transport sector, in waste management, and in the energy sector.

The Compliance Committee, using periodic reports and verification of emissions levels, was to verify countries to find out whether they lived up to their commitments. In view of its late entry into force and the refusal of the US and other key States to join the Protocol, the targets set for the budget period could not be achieved. Agreement on a post-Kyoto regime also proved impossible for a time. For that reason, the application of the Kyoto Protocol was intended to extend till 2020 through the so-called Doha amendment – however this only entered into force at the end of 2020.³⁷

A major breakthrough was reached in Paris on 12 December 2015. Faced with alarming scientific observations and predictions regarding the rate and impacts of climate change, 195 States and the European Union adopted the Paris Agreement. This Agreement sets a long-term temperature goal of “well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”.³⁸ The preamble of the Agreement expressly recognises “the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty”. The Agreement accordingly aims to “strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty”.³⁹ The SDGs, which include a goal on Climate Action (Goal 13), specifically recognise the UNFCCC as “the primary international, intergovernmental forum

for negotiating the global response to climate change.⁴⁰ As with the earlier instruments, a key theme in the Agreement is the need to balance obligations to reduce GHG emissions with the aim of sustainable development. The Agreement further states that greenhouse gas emissions of States parties should peak “as soon as possible” with rapid reductions thereafter “in the context of sustainable development and efforts to eradicate poverty”.⁴¹

In contrast to the “*top-down* approach” of the Kyoto Protocol symbolized by its imposition of legally binding quantitative emission reduction commitments, the Paris Agreement is characterised by a *bottom-up* approach, especially through the voluntary national action plans for the reduction of the emission of greenhouse gases which are called “*nationally determined contributions*” (NDCs).⁴² These are recorded in a public register.⁴³ Innovative is also its provision on transparency: Parties “shall” provide information necessary for clarity, transparency and understanding⁴⁴ and regularly provide information necessary to track progress in implementing and achieving its NDCs.⁴⁵ This information “shall undergo a technical expert review”, and each State must participate in a “facilitative and multilateral consideration” of their progress.⁴⁶ These obligations form part of a wider “enhanced transparency framework” aimed at building “mutual trust and confidence and to promote effective implementation”.⁴⁷ The Agreement provides for a system of reporting and verification. For example, the NDCs will be assessed every five years in the light of the agreed objectives, for the first time in 2023. This is identified as the *global stocktake*.⁴⁸

From a legal point of view the substantive commitments under the Paris Agreement, and in particular the mitigation commitments, are hardly enforceable, although the Agreement is as a matter of course a legally binding treaty.⁴⁹ The soft-law character of some of the commitments is epitomized by the frequent use of the merely inducing words “should” and “may” rather than the binding terms “shall” and “must”, the bottom-up approach, and the more encouraging than enforcing supervisory mechanisms of reporting and verification. As to the latter, the agreement provides that the control on climate reporting by States will be conducted in “a facilitating, . . . , non-confrontational way, with respect for national sovereignty”.⁵⁰ While the UNFCCC introduced the two main categories of

mitigation and adaptation, the Paris Agreement for its part also covers loss and damage.⁵¹

The climate change treaties have also introduced a number of innovative instruments in the pursuit of sustainable development. These include compliance procedures, technology development and transfer, and so-called flexibility instruments such as joint implementation, the clean development mechanism, and tradeable emission rights. The financial mechanisms aimed at assisting developing countries in meeting the challenges posed by climate change similarly highlight the importance of pursuing sustainable development. For instance, the “objectives and guiding principles” of the Governing Instrument of the Green Climate Fund (GCF) is:

“[i]n the context of sustainable development”, to “promote the paradigm shift towards low-emission and climate-resilient development pathways”. Similarly, one of the “basic provisions” of the Instrument for the Establishment of the Restructured Global Environment Facility (GEF) is that the GEF shall “fund programs and projects which are country-driven and based on national priorities designed to support sustainable development.”

As opposed to the Kyoto Agreement, nearly all States have now ratified the Paris Agreement: 191 Parties out of the 197 Parties to the Convention are Parties to the Agreement. However, the collective effect of States’ nationally determined contributions (NDCs) appears to be far from sufficient to meet the long-term temperature goal.⁵² More must be done to avoid the effects of climate change undoing progress in sustainable development worldwide.

6. Conclusion: Indispensability of the Sovereign State

All three multilateral treaties under review in this article are of great significance for environmental conservation and sustainable use of natural resources. Each in their own way function as framework treaty and have been elaborated in subsequent treaties, international arrangements and national implementation legislation.⁵³ Furthermore, all three treaties provide procedures and fora for international consultation and co-operation. They

also have a similar governance structure, with a Conference of the Parties as the main decision-making organ, a treaty secretariat and various subsidiary bodies, including advisory bodies on scientific, technic and technological co-operation and a Compliance Committee.⁵⁴

Only UNCLOS has a more advanced international institutional structure, with the Assembly of Parties, the International Sea-bed Authority and the International Tribunal for the Law of the Sea as its judicial wing. They also reflect the emergence of new principles of international law relating to environment and development. These include: the principle sustainable development in general and the duty of states to ensure sustainable use of natural resources in particular; due care, harm prevention and the precautionary approach to natural resources, ecosystems and biological diversity; the principle of equity, common heritage of human kind and common concern of humankind; the principle of common but differentiated responsibilities; the principle of public participation, transparency, access to information and justice; and the principle of integration and interrelationship.⁵⁵

These three multilateral treaties undeniably demonstrate the continued key role sovereign states have to play in today's world. While many provisions of especially the Biodiversity Convention and the climate treaties may not be directly enforceable (for UNCLOS this is somewhat differently), they all carry important normative authority. In the words of Bodansky et al with respect to the Paris Agreement, they create "normative expectations",⁵⁶ in the sense that the agreements will represent a progression beyond previous policies and signal the highest possible ambition, reflecting common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.⁵⁷

Upon reflection they also signify that, in contemporary international relations, sovereignty serves increasingly as an organizational principle for the realization of certain universal norms and values, such as those embodied in the treaties under review, including the intrinsic value of nature, environmental conservation, respect for human and peoples' rights, intra- and intergenerational equity and peace and security. In modern international law, sovereignty functions therefore not merely as the basis of rights but also as the source of responsibility, accountability and liability and as the basis of international cooperation.

Hence, international law not only delineates the borders of state territory and national jurisdictions but also increasingly defines the substance of the responsibilities of the sovereign state, internationally as well as nationally. In this way, sovereignty is not just a stumbling block or an absolute and static concept, but rather a relative and dynamic one vesting states with a host of duties as well as rights. In a globalizing international community with an increasing set of shared global values, such a modern understanding of sovereignty can well underpin rather than block the evolution towards sustainability, environmental justice and human dignity. In the process towards achieving such objectives the role of responsible States is indispensable.

Endnotes

¹ See the political map of the world showing 195 recognised sovereign states at https://www.nationsonline.org/oneworld/map/world_map.htm.

² Cf. Robert H. Jackson, and Alan James Eds (1995), *States in a Changing World. A Contemporary Analysis*, Oxford, Clarendon.

³ Bharat H. Desai (2003), *Institutionalizing International Environmental Law*, Ardsley, New York: Transnational Publishers, p.17.

⁴ Arthur Larson and Wilfred Jenks (1965), *Sovereignty Within the Law*, Dobbs Ferry and London: Oceana and Stevens & Sons, pp. 5–6.

⁵ Ian Brownlie, *Principles of Public International Law*, Oxford: Clarendon, 5th ed., 1998, p. 289.

⁶ Alan James, *Sovereign Statehood. The Basis of International Society*, London: Allen-Unwin, 1986, p. 34.

⁷ See my own contribution to this discussion in Nico J. Schrijver, 'The Changing Nature of State Sovereignty', 70 *British Yearbook of International Law*, Oxford: Oxford University Press, 1999, pp. 65-98.

⁸ See the judgment in the case *Manfred BRUNNER & others v. The European Union Treaty* (cases 2 BvR 2134/92 & 2159/92) decided by the Federal Constitutional Court, 2nd Chamber on 12 October 1993; reproduced in *Common Market Law Review*, 1994 (1), pp.57–109 at p.90. See also Bharat Desai, p.3, p.23.

⁹ See UN Charter of the United Nations, adopted 26 June 1945, entered into force on 24 October 1945; 1 *UNTS* xvi. See also the Declaration on Principles of International Law concerning the Friendly Relations among States in accordance with the Charter of the United Nations, GA Res. 2625 (XXV), 24 October 1970, principle 7.

¹⁰ *Island of Palmas case* (1928), in: *Reports of International Arbitral Awards*, vol. 2, (1949), p. 829.

¹¹ See Nico J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press 1997; paperback re-issue, 2008), chapter 7; Robin R. Churchill and Vaughan Lowe, *The Law of the Sea*, 2nd ed., Manchester: Manchester University Press, 1988; ; Yoshifumi Tanaka, *International Law of the Sea*, 3rd ed., Cambridge: Cambridge

University Press, 2019; Donald R. Rothwell, Alex G. Oude Elferink, Karen Scott and Tim Stephens, *The Oxford Handbook of the Law of the Sea*, Oxford: Oxford University Press, 2015.

¹² United Nations Convention on the Law of the Sea (UNCLOS), Montego Bay, 10 December 1982, entered into force on 16 November 1994; *UN Doc. A/CONF.62/122* (UNCLOS); 1833 *UNTS* 3; 21 *ILM* 1261 (1982). Currently, UNCLOS has 168 parties (167 states and the European Union).

¹³ Art. 61 (3), UNCLOS

¹⁴ Arts 61 (3) and 61 (5) of UNCLOS.

¹⁵ Art. 62 (2), UNCLOS.

¹⁶ *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Request for an Advisory Opinion submitted to the Seabed Disputes Chamber)*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10. Available at www.itlos.org.

¹⁷ *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4. Available at www.itlos.org.

¹⁸ *Ibid.*, para. 190.

¹⁹ *Ibid.*, para. 208.

²⁰ *Ibid.*, para. 213.

²¹ Convention on Biological Diversity (Biodiversity Convention or CBD), Rio de Janeiro, 5 June 1992, entered into force on 29 December 1993; 1760 *UNTS* 79; 31 *ILM* 822 (1992). Currently, the Convention has as many as 198 parties, 197 states and the EU.

²² See Nele Matz-Lück, 'Biological Diversity, International Protection', *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2012, Vol. I, pp. 927-937, para. 2.

²³ CBD, Art. 2.

²⁴ Art. 4 (a) CBD.

²⁵ Art. 4 (a) and (b) of the CBD. The latter provision reads in part: "... processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction."

²⁶ Art. 7 and 9 CBD.

²⁷ Art. 2 of CBD defines a "protected area" as: "a geographically defined area, which is designated or regulated and managed to achieve conservation objectives."

²⁸ Art. 2 UNFCCC.

²⁹ *Ibid.*

³⁰ Art. 3.1, and preamble UNFCCC.

³¹ Art. 4.2 UNFCCC.

³² Art. 4 (1) (d) and (e) UNFCCC.

³³ Art. 4.2 (1) UNFCCC.

³⁴ Art. 4 (1, sub c) and (5) of UNFCCC.

³⁵ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 11 December 1997, entered into force on 16 February 2005; *UN Doc. FCCC/CP/L.7/Add.1*, 10 December 1997; 37 *ILM* 32 (1998).

³⁶ Art. 3 (3), (4) and (5) of the Kyoto Protocol.

³⁷ Doha Amendment to the Kyoto Protocol, Doha, 8 December 2012, entered into force 31 December 2020; *UN Doc. FCCC/KP/CMP/2012/13/Add.1*.

³⁸ Paris Agreement, Paris, 12 December 2015, entered into force 4 November 2016; *UN Doc. FCCC/CP/2015/10/Add. 1* (2016), Art. 2(1)(a).

³⁹ Art. 2 (1) Paris Agreement.

⁴⁰ *Transforming our world: the 2030 Agenda for Sustainable Development*, Resolution adopted by the GA on 25 September 2015, *UN Doc. A/RES/70/1* (21 October 2015), at p. 14.

⁴¹ *Ibid.*, Art. 4(1).

⁴² Art. 4. Also see, Daniel Bodansky et al., *International Climate Change Law*, Oxford: Oxford University Press (online), 2017, p. 213.

⁴³ Art. 4 (12) Paris Agreement.

⁴⁴ Art. 4 (8).

⁴⁵ Art. 13 (7).

⁴⁶ Art. 13 (11).

⁴⁷ Art. 13 (1).

⁴⁸ Art. 14 (2). Further details on this process were agreed to at COP 24 in Katowice (Poland) in 2018, see <https://www.wri.org/paris-rulebook/global-stocktake>.

⁴⁹ Daniel Bodansky, 'The Legal Character of the Paris Agreement', 25 *Review of European Comparative and International Environmental Law* (2016), p. 142.

⁵⁰ Art. 13 (2) of the Paris Agreement.

⁵¹ *Ibid.*, Art. 8.

⁵² See the website of the Intergovernmental Panel on Climate Change at www.ipcc.ch and the latest review by the Climate Secretariat of the UNFCCC, the NDC Synthesis Report from Feb 2021, available at <https://unfccc.int/news/greater-climate-ambition-urged-as-initial-ndc-synthesis-report-is-published>

⁵³ In particular for *UNCLOS*: Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994 Agreement), *UN Doc. A/RES/48/263*, 17 August 1994; 33 *ILM* 1309 (1994), in force 28 July 1996; the Straddling Fish Stocks Agreement, New York, 4 August 1995, in force on 11 December 2001, 2167 *UNTS* 3; for the *Biodiversity Convention* the Cartagena Protocol on Biosafety, Montreal, 29 January 2000, in force on 11 September 2003; 39 *ILM* 1027 (2000) and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, Nagoya, 29 October 2010, in force 12 October 2014, *UN Doc. UNEP/CBD/COP/1-1/27*; and for the UNFCCC the Kyoto Protocol (1997, in force in 2005) and the Paris Agreement (2015, in force in 2016), as discussed in section 4 of this article.

⁵⁴ Bharat H. Desai, *International Environmental Governance. Towards UNEPO*, Boston & Leiden: Brill Nijhoff, 2014, Chapter 8, p.221. Also see Bharat H. Desai, *Multilateral Environmental Agreements: Legal Status of the Secretariats*, 2nd edition, New York, NY: Cambridge University Press, 2013.

⁵⁵ Cf. ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development, April 2002, published in *UN Doc. A/57/329* and in 49 *Netherlands International Law Review* (2002), pp. 299-305, with Introductory Note. For a discussion of these principles see Nico J. Schrijver, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status*, Leiden: Brill, 2008. See also Pierre-Marie Dupuy and Jorge E. Viñuales, *International Environmental Law*, Cambridge: Cambridge University Press, 2nd ed., 2018, chapter 3.

⁵⁶ Daniel Bodansky et al., n.42, p. 223.

⁵⁷ Cf. Art. 4 (3) of the Paris Agreement.