Sovereignty over natural resources
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4 Permanent Sovereignty, Environmental Protection and Sustainable Development

1. Growing International Awareness of Environmental Degradation

Under the auspices of the World Meteorological Organization (WMO), an International Geophysical Year was proclaimed in 1957–58, mainly focusing on meteorological and ozone layer observations, including atmospheric pollution and climate change. The Year marked the beginning of a broader interest in the state of the world environment. During the 1960s the global extent of resource depletion and environmental degradation came to the fore. A wide variety of environmentally relevant issues came under discussion including: the long-term damaging effects on nature of products containing DDT; excessive economic growth; tanker disasters on the high seas or in territorial waters; contamination of water; harmful chemicals; waste discharge; the testing of nuclear weapons; population growth; wasteful consumption patterns; and unrestricted use of the world’s natural resources. Such issues provoked a new debate on traditional international law, including the principles of freedom of action and non-interference in domestic affairs. Previously, if issues of sea and river pollution were addressed at all at the international level, it was not so much because of fear of damage to the human environment and the ecological balance at large, but because of the threat posed to economic interests, for example, to fish stocks and consequently to the fishing industry. During the 1960s this situation radically changed. It was realized that the ‘human environment’ as such was at stake. People began to see the world as an entity, as ‘spaceship earth’. This affected thinking on State sovereignty. At the same time it became clear that the environmental problems of destitute developing and affluent industrialized countries differed essentially. The latter considered whether a pause in their economic growth, or even deceleration, would be necessary. In contrast, the standard of living in most developing countries was low and their economic


2 One of the first books which called for international attention to this issue was Rachel Carson’s Silent Spring (1962; re-published 1987).
growth was far below needs. In most developing countries the problem of industrial pollution and waste discharge hardly existed and natural wealth and resources such as clean air and pure water were abundantly available. Their major environmental problems resulted from a lack of development. Low and unstable commodity prices resulted in haphazard exploitation of their natural resources, both mineral and agricultural.

2. **Early UN Resolutions on the Conservation of Nature**

In 1962, the General Assembly adopted Resolution 1831 (XVII) on ‘Economic Development and the Conservation of Nature’ which considered natural resources of ‘fundamental importance to the further economic development of countries and of benefit to their populations’, and expressed consciousness of the extent to which economic development of developing countries might jeopardize their natural wealth and resources, including flora and fauna. It endorsed a call by UNESCO to enact effective domestic legislation covering *inter alia* the preservation and rational use of natural resources.  

In 1968, Sweden revived the debate in the General Assembly by raising concerns over the accelerating impairment of the quality of the human environment. The General Assembly decided, by Resolution 2398 (XXIII), to convene a UN Conference on the Human Environment in 1972 in order to provide for ‘a framework for comprehensive consideration within the United Nations of the problems of the human environment’. The developing countries initially felt somewhat suspicious about the developed countries’ concern for the human environment, fearing a further deterioration of their terms of trade as a result of developed countries’ environmental policies. On the eve of the Conference in Stockholm, the General Assembly adopted a Resolution entitled ‘Environment and Development’. In the view of the industrialized nations, the Resolution focused too heavy-

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4 *UNYB* 1962, pp. 268–69. UNESCO, in co-operation with other specialized agencies including FAO and WHO and non-governmental organizations such as the International Union for the Conservation of Nature and Natural Resources (IUCN, now World Conservation Union), hosted an Intergovernmental Conference of Experts on the Biosphere in 1967. It led to the establishment of an interdisciplinary research programme, entitled Man and Biosphere and the launching of a ten-year programme, the International Hydrological Decade, to promote the study of hydrological resources, including the effect on them of pollution. These and other UNESCO initiatives are discussed in Weiss et al. (1994: Chapter 8).
5 GA Res. 2398 (XXIII) of 3 December 1968; see *UNYB* 1968, pp. 473–76.
6 This Resolution 2849 (XXVI), an initiative by Brazil, proved to be quite controversial: the voting record was 85 votes to 2, with 34 abstentions.
ily on environmental problems of developing countries while ignoring theirs. Furthermore, they opposed the observation that pollution with a world-wide impact had primarily been caused by industrialized countries and that therefore these countries should bear the main responsibility for financing corrective measures. They feared that the outcome of the UN Conference might be prejudiced.


3.1 Preparatory Stage

At the end of 1969, the General Assembly established for the Conference a Preparatory Committee (PrepCom), which decided that a draft declaration should be presented to the Conference. It should merely outline broad goals and objectives and ‘by its very nature, the Declaration should not formulate legally binding principles’. It was also agreed that the relationship between environment and development was one of crucial importance and that it would be useful to refer specifically in the declaration to the protection of the interests of developing countries. This proved, however, to be difficult. For example, in 1971 the draft was challenged on the grounds that it ‘unduly dissociated the environmental issues from the general framework of development and development planning, in such a manner as to render it an instrument for purely restrictive, anti-developmental and “conservationist” policies’, and that it did not put ‘in the forefront the basic principle that each State has inalienable sovereignty over its environment.’ Nonetheless, the PrepCom finally succeeded in completing the draft Declaration, thanks to the work of a special meeting of experts in Founex in Switzerland in June 1971, convened by Maurice Strong (the Secretary-General of the Conference).

The Stockholm Conference took place from 5 to 16 June 1972 and was attended by 113 States. It was the first intergovernmental global conference on environmental issues. During the Conference the draft Declaration was substantively challenged. China, in particular, submitted a series of amendments, and was eventually successful in its efforts to link environmental issues more closely to development issues. On 16 June 1972 the Conference could be concluded with the adoption of a Declaration embodying 26 general principles aimed ‘to inspire and guide the peoples of the world in the preservation and enhancement of the human envi-

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7 GA Res. 2581 (XXIV), 15 December 1969.
10 The report to the Club of Rome, The Limits to Growth (1972) by Donella Meadows et al., gave an extra impetus and sense of urgency to the debate.
ronment'. In addition, 109 specific recommendations were adopted which together constituted an Action Plan for International Co-operation on the Environment.

3.2 The Declaration Reviewed

In Part I, the Conference proclaimed that the improvement and defence of the human environment had become an imperative goal for humankind, to be pursued together with the fundamental goals of peace and world-wide economic and social development. It stated that: (a) local and national governments would bear the greatest burden for large-scale environmental policy and action within their jurisdictions; and (b) international co-operation was needed, both to raise resources to support developing countries and because an increasing number of environmental problems were regional or global in extent. It affirmed that in developing countries most environmental problems were caused by under-development, while in industrialized countries they were generally related to industrialization and technological development. The Declaration, as far as relevant to the present study, can be summarized as follows:

*Fundamental human right (Principle 1)*

Principle 1 formulates a human right to a healthy and safe environment, albeit in a somewhat indirect way: ‘Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations’. Thus Principle 1 formulates responsibilities as well as rights.

*Management of natural resources (Principles 2–5 and 13–14)*

Principle 2 declares that careful planning and management are required for the safeguarding of the natural resources of the earth. As in the 1970 Seabed Declaration, it is stated that this is for the benefit of humankind. Principle 3 stipulates that ‘the capacity of the earth to produce vital renewable resources must be maintained and, wherever practical, restored or improved’. Principles 4 and 5 elaborate this with respect to wildlife and non-renewable resources. As regards the latter, it is provided that they must be employed in such a way ‘as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind’. Principles 13 and 14 point out that an integrated and co-ordinated approach and rational planning are necessary in order to achieve

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a more rational management of resources and to ensure that development is compatible with environmental preservation.

The correlation between development and environment (Principles 8–12)

After stating in Principle 8 that economic and social development is essential for an environment favourable to human beings, Principle 9 points out that ‘environmental deficiencies generated by the conditions of underdevelopment and natural disasters’ can best be remedied by accelerated financial and technical assistance. It is also provided that, for the developing countries, stability of prices and adequate earnings for primary commodities and raw material are essential to environmental management (Principle 10). Principle 11 stipulates that the environmental policies of States should enhance and not adversely affect the development potential of developing countries and the attainment of better living conditions for all. Principle 12 repeats that more resources should be made available to preserve and improve the environment, especially for developing countries.

Rights and obligations of States under international law and the role of international institutions (Principles 21–25)

Rightly or wrongly, Principle 21 is undoubtedly the best-known principle of the Stockholm Declaration. It reflects the principle of PSNR as well as State responsibility for transboundary environmental damage (see the next section). Principle 22 calls for the further development of international law regarding liability and compensation for victims of such environmental damage. Principle 23 underlines that, in defining criteria and norms on environmental matters, the system of values prevailing in each country should be respected, in particular in developing countries. Principle 24 formulates a duty of States to cooperate in protection and improvement of the environment, in such a way ‘that due account is taken of the sovereignty and interests of all States’. International organizations should play a co-ordinated, efficient and dynamic role for this purpose (Principle 25).

4. Principle 21:
A Delicate Balance Between Rights and Obligations

In 1970, the Secretary-General had circulated a questionnaire on principles to be included in the envisaged Declaration. One of them related to ‘the principle of national sovereignty over natural resources’. There were only a few replies pertinent
to this issue. The Canadian one was the most substantive and specific. It suggested six principles including:

1. Every State has a sovereign and inalienable right to its environment, including its land, air and water, and to dispose of its natural resources;
2. No State may use or permit the use of its territory in such a manner as to cause damage to the environment of other States or to the environment of areas beyond the limits of national jurisdiction.

There was considerable debate in the Preparatory Committee whether the exercise of sovereignty could be subject to any qualification or limitation. Sweden proposed the following injunction:

In bringing about economic and social development and adequate conditions for all, States whether acting individually in the exercise of their sovereignty over their natural resources or in concert through international organizations, must use their power to preserve and enhance the human environment . . .

The Netherlands suggested the following formulation:

Each State, when exercising sovereignty over its natural resources for economic and social development, shall take due account of the effect of its activities on the ecological balance of the biosphere.

However, developing countries preferred putting the sovereign right of each country to exploit its resources more clearly in the forefront. Brazil, Egypt and Yugoslavia submitted the following proposal:

The sovereign right of each country to exploit its own resources in accordance with its own environmental policies, standards and criteria shall be exercised in such a manner as to avoid producing harmful effects on other countries or on areas beyond national jurisdiction.

The final version of the Preparatory Committee came to read:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

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13 See the very informative review of the travaux préparatoires of the Stockholm Declaration by Sohn (1973: 487–93).


16 UN Doc. A/CONF.48/PC/WG.1(II)/CRP.5, 1972, p. 3.

During the 1972 Conference several countries attempted to change the text. For example, Brazil had never been very happy with the restrictive reference to the UN Charter and principles of international law and proposed deleting them, while nine African countries proposed an additional reference to the sovereign right to control resources.

Yet, the consensus reached in the Preparatory Committee was so fragile that eventually it was decided not to accept any changes. Thus the text places sovereignty over natural resources in an environmental context, but it does not substantially limit it (‘pursuant to their own environmental policies’). However, if one reads the principles of the Declaration in relation to each other (for example, Principles 2, 5 and 21), it could be argued that the Stockholm Declaration as a whole stipulates that sovereignty over natural resources must be exercised in an environmentally responsible way and for the benefit of both the present and future generations. This interpretation also finds support in the text which connects sovereignty over natural resources with the UN Charter and principles of international law. The second phrase of Principle 21 builds on the well-known findings of the ad hoc Tribunal in the Trail Smelter case (1938 and 1941) and of the International Court of Justice in the Corfu Channel case (1948) and includes such international law principles as good neighbourliness and due diligence and care. However, while Principle 21 thus calls for the prevention of extraterritorial effects causing environmental damage in other countries or in areas outside national jurisdiction, it does not in fact impose specific obligations that could be invoked by other States with regard to national management of resources.

5. Follow-up to the Stockholm Declaration with Respect to Permanent Sovereignty

In December 1972, the General Assembly merely took note, albeit ‘with satisfaction’, of the report of the Stockholm Conference. Abstentions came from the USSR and Eastern European countries. Most of them had boycotted the Stockholm Conference in protest against the exclusion of the German Democratic Republic (GDR). As an institutional follow-up to the Conference, the General Assembly established the United Nations Environment Programme (UNEP) with headquarters in Nairobi.

Apart from taking note ‘with satisfaction’, during its 27th session the General Assembly underscored more specifically the relevance of Principle 21. Thus, the

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18 See Chapter 8.
19 GA Res. 2994 (XXVII), adopted by 112 votes to none, with 10 abstentions.
20 GA Res. 2997 (XXVII), 15 December 1972.
Assembly emphasized that, in exploration, exploitation and development of their natural resources, States must not produce significant harmful effects in zones situated outside their national jurisdiction and it recognized that ‘... co-operation towards the implementation of Principles 21 and 22 ... will be effectively achieved if official and public knowledge is provided of the technical data relating to the work to be carried out by States within their national jurisdiction, with a view to avoiding significant harm that may occur in the environment of the adjacent areas’. In this way the concept of prior notification was acknowledged within the ambit of Principle 21. Next, the General Assembly adopted Resolution 2996 (XXVII) in which it bears in mind that Principles 21 and 22 ‘lay down the basic rules governing this matter’ and therefore the Assembly declares ‘that no resolution adopted at the twenty-seventh session of the General Assembly can affect Principles 21 and 22’.

In subsequent years, a significant development took place. While previous resolutions were primarily concerned with the extraterritorial impact of environmentally-harmful activities, later resolutions have indicated that the environmental impact of an irrational and wasteful exploitation of natural resources may amount to a threat to the exercise of permanent sovereignty over natural resources by other countries, especially by developing countries. Moreover, ever since the Stockholm Conference, UN resolutions have gradually elaborated guidelines for nature management, conservation and utilization of natural resources within States, while recognizing PSNR. The following paragraph of GA Resolution 35/7 is symptomatic of this new trend:

Solemnly invites Member States, in the exercise of their permanent sovereignty over their natural resources, to conduct their activities in recognition of the supreme importance of protecting natural systems, maintaining the balance and quality of nature and conserving natural resources, in the interests of present and future generations.

This phrase was literally repeated in GA Resolutions 36/6 and 37/7. In the latter Resolution the General Assembly adopted and solemnly proclaimed the (revised) World Charter for Nature as a UN document. It had been drafted in 1979 by a task force of the International Union for Conservation of Nature and Natural Resources (IUCN) and brought to the attention of the General Assembly in 1980.21 In the World Charter the conviction is expressed that:

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.

21 See Burhenne and Irwin (1986: 194); book review by A. H. Westing, in 14 Environmental Conservation (1987), No. 2, pp. 187–88. Initially, the usefulness of drafting such a Charter was introduced to the UN agenda by President Mobutu of Zaire.
Competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of peace. Consequently, the World Charter for Nature proclaims five principles of conservation ‘by which all human conduct affecting nature is to be guided and judged’, and outlines its functions. The scope of the Charter is limited to the conservation of living natural resources. In the implementation section each State is required (‘shall’) to give effect to the provisions of the Charter through its competent organs and in co-operation with other States, while the sovereignty of States over their natural resources is fully taken into account. Apart from the United States, which voted against, substantial opposition to the World Charter was expressed in particular by Latin American countries. In view of regional instruments, they saw no need and even no place for the formulation of multilateral rules for the management of shared resources, such as the Amazonian area. It has been reported that ‘the Amazonian countries considered the text non-mandatory and would treat it merely as a general indication of intentions which they might take into account if such guidelines were in conformity with national legislation and accepted international obligations’. Like the Stockholm Declaration the World Charter for Nature is a non-binding instrument.

6. The UN and the Issue of Shared Resources: The UNEP Guidelines of 1978

Water, fisheries, oil and gas deposits, and atmospheric resources often straddle boundaries and give rise to transboundary issues. The management and equitable sharing of resources common to two or more States may raise difficult problems and create controversies between neighbouring States. For obvious reasons some consultation and co-operation is required (but all too often is not achievable) in order to prevent disputes over concurrent national uses of internationally-shared natural resources. In the practice of States as well as through judicial and arbitral decisions, principles and rules of international law have evolved, particularly with respect to international watercourses such as rivers, lakes and canals, which separate or pass through the territories of two or more States. As a matter of fact, the earliest example of modern international organization was in this particular field, namely the Danube Commission established in 1856. Numerous arrangements have been made, both at a bilateral and a regional level, with respect to ‘shared

22 See UNYB 1982, p. 1024.
Chapter Four

water resources’ and their use. In the early days these arrangements focused on the issue of free navigation. In the 20th century the non-navigational uses of international watercourses have become increasingly important and have given rise to regulations concerning fisheries, extraction of minerals and other uses of waters for agricultural and industrial purposes, and pollution control. ILA’s Helsinki Rules on the Uses of the Waters of International Rivers (1966) have served as a relevant model for the development of international norms in this field during recent decades. Criteria such as prior use, historic rights, proportionality, and relative needs have been invoked and applied in order to achieve ‘equitable’ results with respect to the use and apportionment of shared water resources and the delimitation of maritime boundaries. Such criteria have been applied by the International Court of Justice, for example in its judgments in the North Sea Continental Shelf Cases (1969), the Fisheries Jurisdiction Cases (1974), the Libya/Tunisia Continental Shelf case (1982), the Gulf of Maine Area case (1984) and the Jan Mayen Island case (1993).

6.1 Shared Resources on the UN Agenda

The issue of shared resources has been on the UN agenda only since the early 1970s. Debates have focused on the mutual obligations of neighbouring States regarding these resources, and what their relation is to the PSNR of each State, as well as on obligations arising from such principles as good neighbourliness and due diligence. At the 1972 Stockholm Conference it proved to be impossible to include a substantive paragraph on shared resources in the UN Declaration on the Human Environment, as a result of serious differences of opinion between, for example, Argentina and Brazil, on the use of the La Plata river basin for a Brazilian hydroelectric project.

The Non-Aligned Movement took up the issue during its summit in Algiers, in 1973. It was agreed that it was important soon to develop an effective system of co-operation for the conservation and exploitation of natural resources shared by two or more States. In the same year, on behalf of a large number of Non-Aligned countries, Yugoslavia tabled in the UN General Assembly a draft resolution on ‘Co-operation in the field of the environment concerning natural resources shared by two or more States’. The ensuing controversy is illustrated by the fact that neither the co-sponsors nor the opponents were willing to adopt the phrase ‘in


the best spirit of co-operation and good-neighbourliness” proposed by Uruguay. General Assembly Resolution 3129 (XXVIII) of 13 December 1973 mandated the Governing Council of UNEP to formulate international standards for the conservation and harmonious exploitation of shared resources, including a system of prior information and consultation.

The General Assembly included a relevant provision in the 1974 Charter of Economic Rights and Duties of States. Article 3 reads:

In the exploitation of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultation in order to achieve optimum use of such resources without causing damage to the legitimate interests of others.

It was adopted with 100 votes to 8, with 28 abstentions which illustrate the controversy involved.

Based on GA Resolution 3129, UNEP began to deal intensively with the issue and established in 1975 an intergovernmental working group of experts to draft principles of conduct with respect to shared resources. In 1978, its work resulted in the adoption by UNEP’s Governing Council of a set of ‘Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States’.

6.2 UNEP Guidelines on Shared Resources

The Draft Principles (or Guidelines) contain 15 principles intended to encourage States which share resources to co-operate for the purpose of their conservation and harmonious utilization and with a view ‘to controlling, preventing, reducing or eliminating adverse environmental effects which may result from the utilization of such resources’. Principle 1 calls for co-operation among States to be intensified as the activities of one State increase external effects and the risk of significantly affecting the environment of other States. Thus, the Guidelines provide for: exchange of information; notification of plans; consultations; immediate informa-

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26 The voting result was 77 votes to 5, with 43 abstentions.

27 UNYB 1973, pp. 374–75.

28 GA Res. 3281 (XXIX), adopted on 12 December 1974 by 120 votes to 6, with 10 abstentions.

29 See UNYB 1975, p. 440.

30 UNEP GC Dec. No. 14 (VI) of 19 May 1978, adopted by consensus. However, three Latin American countries (Brazil, Colombia, Mexico) declared that they were unable to join in the consensus. The text of the set of Principles is reproduced in 17 ILM (1978), pp. 1094–99.
tion in emergency situations; mutual assistance; responsibility and liability; international dispute settlement; equal access to administrative and judicial proceedings; and equal treatment for persons affected in other States. All principles are addressed to States. Principle 1 includes a reference to co-operation on an equal footing and taking into account the sovereignty, rights and interests of States. Principle 3, paragraph 1 repeats the text of Principle 21 of the Stockholm Declaration. Yet, a clarification is added in paragraph 3:

Accordingly, it is necessary for each State to avoid to the maximum extent possible and to reduce to the minimum extent possible the adverse environmental effects beyond its jurisdiction of the utilization of a shared resource so as to protect the environment, in particular when such utilization might:

a. cause damage to the environment which could have repercussions on the utilization of the resource by another sharing State;

b. threaten the conservation of a shared renewable resource;

c. endanger the health of the population of another State.

Without prejudice to the generality of the above principle, it should be interpreted, taking into account, where appropriate, the practical capabilities of States sharing the natural resource.

It can be inferred from the last part of this text how sensitive the issue of management of shared natural resources remained. This also explains why it proved, unfortunately, to be impossible to include a definition of transboundary resources in the Guidelines.

6.3 The Political Follow-up to the UNEP Guidelines

The UNEP Council invited the General Assembly to adopt the Guidelines. During the discussion in the General Assembly, several States reiterated their objection to any encroachment on sovereignty and a State’s sovereign right freely to dispose of its natural resources. On the other hand, France and Germany expressed reservations to the preambular paragraph, in which the ‘principle of full permanent sovereignty of every State over its natural resources’ was reaffirmed. According to France, the authority of States over their natural resources could never be ‘full’. A formal adoption of the Guidelines by the General Assembly turned out to be impossible. Upon a proposal by Brazil, the Assembly finally merely took note of the 15 draft principles ‘without prejudice to the binding nature of those rules already recognized as such in international law’ (paragraph 1). Nevertheless, the General Assembly also took a more positive step by requesting all States ‘to use the prin-

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31 The intent presumably is to reduce the effects to the maximum extent possible in order to minimize the adverse effects.

principles as guidelines and recommendations in the formulation of bilateral or multilateral conventions regarding natural resources shared by two or more States, on the basis of the principle of good faith and in the spirit of good neighbourliness and in such a way as to enhance and not to affect adversely development and the interests of all countries, in particular developing countries.  

7. The Brundtland Expert Group on Transboundary Natural Resources Law

In 1985, the World Commission on Environment and Development (WCED) or ‘Brundtland Commission’ established an Expert Group on Environmental Law in order to prepare legal principles which ought to be in place before the year 2000 to support environmental action and sustainable development within and between States. Article 1 of the legal principles proposed reiterates the fundamental right of all human beings to an environment adequate for their health and well-being, and Article 2 formulates the accompanying obligation of States ‘to conserve and use the environment and natural resources for the benefit of present and future generations’. The principles relate to policies on matters within and between States, and apply to their sovereign territories, border areas and transboundary natural resources, as well as to areas beyond national jurisdiction and resources therein.

For our purposes, Part II of the set of legal principles is the most relevant part. It contains 12 articles and forms the core of the proposed legal principles. They clearly depart from the UNEP Guidelines and represent the elements of both codification (lex lata) and progressive development of emerging principles (lex feren-da). The set is called ‘Principles, rights, and obligations concerning transboundary natural resources and environmental interferences’. Apparently, it is left to the reader to determine whether a specific article incorporates a principle, a right or an obligation, and the text does not provide definitions of the terms ‘transboun-

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33 UN Doc. A/RES/34/186, 18 December 1979, oper. para. 3.
34 The World Commission on Environment and Development (WCED), commonly known as the Brundtland Commission, was established by GA Res. 38/161 of 19 December 1983. Its mandate included (a) proposing long-term environmental strategies for achieving sustainable development to the year 2000 and beyond, and (b) recommending ways of achieving greater co-operation among developing countries and between developing and developed countries which would lead ‘to the achievement of common and mutually supportive objectives which take account of the interrelationships between people, resources, environment and development’.
35 See Chapter 8.
dary resources’ and ‘environmental interferences’, albeit that the commentary provides some guidance on these questions.

The emphasis in this set of principles is much more on ‘environmental protection’ than on ‘sustainable development’. Probably as a result of time constraints, the Brundtland Commission was not in a position to approve or consider the set of principles, but included, in Annex 1 of its report, a summary of proposed Legal Principles for Environmental Protection and Sustainable Development adopted by its Legal Expert Group. In its report the Commission proposed ‘to consolidate and extend relevant legal principles in a new charter to guide State behaviour in the transition to sustainable development’.36

8. **PSNR in an Environmental and Developmental Context: Rio 1992**

8.1 **Preparatory Stage**

In 1987, the Governing Council of UNEP adopted the Brundtland report as a guideline for its work. Later UNEP also embraced the Brundtland Commission’s concept of ‘sustainable development’ which the Commission had defined as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’. However, the UNEP Governing Council added that this ‘does not imply in any way encroachment of national sovereignty’.37 It was just another sign that States, in particular developing countries, were not very keen to have their sovereignty confined for the sake of protecting the environment. In the UN General Assembly progress was not achieved so smoothly. After its publication in 1987, the Assembly welcomed the Brundtland report without committing itself to its contents.38 It introduced a new item on the agenda for the next session, entitled ‘A long-term strategy for sustainable and environmentally sound development’. In subsequent years, the debate centred around the usefulness of convening a UN Conference on Environment and Development (UNCED) in 1992 (a second ‘Stockholm Conference’). This idea gave rise to complicated discussions on the relationship between aid and environmental management, restraints on trade, the current imbalance in global patterns of production and consumption, and on the responsibility of industrialized countries for causing most pollution and toxic waste. Developing countries expressed the fear that environmental management would be given a higher priority than poverty

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alleviation and a solution of their debt problems. Nevertheless, on 22 December 1989, the General Assembly decided to convene this Conference, to be hosted by Brazil in 1992, lamenting the ‘continuing deterioration of the state of the environment and the serious degradation of the global life support systems’.

It warned that if such trends continue, the global ecological balance could be disrupted, resulting in ‘an ecological catastrophe’. Its Resolution 44/228 strikes a delicate balance between the protection of the environment and the promotion of economic growth in developing countries. 39

It reaffirms that States have the sovereign right to exploit their resources pursuant to their own environmental policies, but stresses, as did Principle 21 of the Stockholm Declaration, their responsibility for ensuring that no damage will be caused to the environment and natural resources of other States nor to that of areas beyond the limits of national jurisdiction. 40

The General Assembly decided that one of the objectives of the Conference would be ‘to promote the further development of international environmental law, taking into account the Declaration of the UN Conference on the Human Environment, as well as the special needs and concerns of the developing countries, and to examine, in this context, the feasibility of elaborating general rights and obligations of States, as appropriate, in the field of the environment, taking into account existing legal instruments’. 41 The Resolution set an ambitious scheme for the 1992 Conference.

8.2 The Declaration Reviewed

One of the notable outcomes of UNCED, also called the ‘Earth Summit’, is the Rio Declaration on Environment and Development. 42 During the preparatory phase this document came to be known as the ‘Earth Charter’, but developing countries feared that this would give the impression of a purely environment-oriented document. Therefore, they expressed strong preference for the title ‘Environment and Development’ so as to give greater prominence to the development issues involved. 43 The 27-principle Declaration embodies several points of interest to the present study:

40 Paragraphs 7 and 8.
41 Para. 15, sub (d).
43 Ultimately, the final document was called a Declaration rather than a Charter. From a legal point of view this makes no difference since it was obviously never the intention to adopt this document as a binding one. The term charter has been used for similar documents on a few other occasions, including the 1974 Charter of Economic Rights and Duties of States and the 1982 World Charter for Nature.
Sovereignty over natural resources (Principle 2)

Principle 2 repeats literally Principle 21 of the Stockholm Declaration, with one notable addition. The first part of Principle 2 proclaims the sovereign right of States to exploit their own natural resources ‘pursuant to their own environmental and developmental policies’.44 This phrase expresses the conviction of developing countries that their environmental policies cannot override their developmental policies, especially not as regards the exploitation of natural resources. This seems, however, to be qualified by Principles 3 and 4 which provide, respectively, that: ‘the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations’; and ‘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’. It seems to be symbolic that Principle 21 in the Stockholm Declaration now features as Principle 2 in the Rio Declaration, emphasizing, as it were, the predominant place of the principle of PSNR.

The right to a healthy environment and the right to development (Principles 1 and 3)

Principle 1 provides: ‘Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature’. Principle 3 of the Rio Declaration reiterates the right to development, which had been the subject of a rather controversial Declaration of the General Assembly of 1986, and gives recognition to the concept of intergenerational equity, which had been introduced in the realm of international law through the law of the sea and outer space law.

Correlation between development and environmental preservation (Principles 4 to 7)

In various places, in Principles 4 to 7, the Declaration indicates that environmental preservation and the promotion of development are interrelated and that an integrated approach is called for. Principle 4, incidentally, plainly states that ‘environmental protection shall constitute an integral part of the development process’. Principle 6 deals with differential treatment of developing countries, particularly the least developed and ‘those most environmentally vulnerable’.

International policy measures (Principles 8, 9 and 12)

Principle 8 calls for the reduction and elimination of ‘unsustainable patterns of production and consumption’. Principle 9 deals with the need to improve research and development and to transfer environmentally sound technology. Principle 12 is important in so far as it links sustainable development policies to structural

44 Emphasis added.
international economic policies. States should co-operate to promote ‘a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation’. Most likely with recent GATT discussions in mind, it is added that trade policy measures for environmental purposes should not constitute ‘a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade’. In addition, there is an implicit endorsement of the 1991 GATT Tuna Panel report where Principle 12 points out that: ‘Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.’

*Interests of indigenous peoples (Principle 22)*

Principle 22 stresses the need to recognize and support the identity, culture and interests of indigenous peoples and other local communities, because they can play a vital role in environmental management and development in view of their knowledge and traditional practices and for other reasons.

*Other relevant international law principles (Principles 13 to 15, 18 to 19, 24 and 26 to 27)*

Principle 13 calls for the further development of national and international law regarding liability and compensation for environmental damage. Principle 14 takes up the subject matter of the 1989 Basel Convention on Hazardous Wastes and calls for co-operation for the prevention of environmental degradation or harm to human health as a result of the transfer to other States of environmentally hazardous activities or substances. Principle 15 addresses the need for ‘the precautionary approach’ in a non-specific way. This is also reflected in Principle 19 which calls for ‘prior and timely notification and relevant information to potentially affected States’ as well as early consultation in good faith. States are under an obligation to notify other States immediately of disasters and emergencies which are likely to cause sudden harmful effects on the environment of other States, and to provide international assistance. With the 1990–91 Gulf War still fresh in mind, Principle 24 recalls the obligation of States to respect international law providing protection for the environment in times of armed conflict and to co-operate in its

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46 Para. 16 of S/RES/687 of 5 April 1992 holds Iraq liable, among other things, for ‘environmental damage and the depletion of natural resources, as a result of Iraq’s unlawful invasion and occupation of Kuwait’. 
further development, as necessary. Principle 26 reflects the international law obligation of States to resolve peacefully all environmental disputes in accordance with the Charter of the United Nations, while the last one, Principle 27, proclaims the duty of ‘States and people’ to co-operate in good faith and in ‘a spirit of partnership’, both in the fulfilment of the principles of the Rio Declaration and ‘in the further development of international law in the field of sustainable development’.

8.3 Other Results
The 1992 Rio Conference also marked the opening for signature of two new global environmental treaties: the UN Framework Convention on Climate Change; and the Convention on Biological Diversity. Furthermore, it adopted A Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. The serpentine title of the last document reveals its highly controversial nature. All three documents repeat more or less the text of Principle 2 of the Rio Declaration. Especially the Biodiversity Convention is highly relevant from the perspective of sovereignty over natural wealth and resources, as Article 1 includes, amongst the objectives of the Convention, ‘the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources’. As its main international law principle, the Convention includes in Article 3 sovereignty over natural resources in a formulation identical to Principle 21 of the 1972 Stockholm Declaration. Thus the words ‘and developmental’ in the clause relating to ‘the sovereign right to exploit their own resources pursuant to their own environmental policies’ are missing, whereas they do appear in the preamble to the Climate Change Convention and the Forests Statement as well as in the 1994 UN Convention to Combat Desertification. This is possibly a result of the fact that these words were inserted at a late stage of the negotiations; be this as it may, it is remarkable that the main texts resulting from the Rio Conference 1992 are not identical on such a sensitive question.

In addition, the Conference adopted Agenda 21, containing an international programme of action with concrete measures for its implementation in the period following the Conference and leading into the 21st century. Agenda 21 comprises, for example, a section on conservation and management of resources for devel-

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47 During the Rio Conference there was considerable debate whether a ‘green protocol’ to the Geneva Red Cross Conventions should be drafted or whether better compliance with existing rules would do more good than the drafting of new rules. The latter was the opinion of the International Committee of the Red Cross. See UN Doc. A/47/328, 31 July 1992.

opment, while Chapter 39 calls for the further development of ‘international law on sustainable development’, giving special attention to the delicate balance between environmental and developmental concerns’, and for further study in the area of avoidance and settlement of disputes.

The 47th session of the General Assembly endorsed the Rio Declaration, Agenda 21 and the Statement of Principles on Forests.\textsuperscript{49} As suggested in Chapter 38 of Agenda 21, ECOSOC, after an official request made by the General Assembly, established a UN Commission on Sustainable Development.\textsuperscript{50} The mandate of the new Commission includes: monitoring progress made in the implementation of Agenda 21; considering national reports on implementation; reviewing the adequacy of funding and transfer of environmentally-sound technologies to developing countries; and making recommendations on the need for new co-operative arrangements related to sustainable development.\textsuperscript{51}


In comparing the two, it appears that the Stockholm Declaration contains more specific and substantive provisions pertaining to natural resources management and nature conservation than the Rio Declaration. The Rio Declaration appears to be less ‘environment-centred’ than its predecessors, the 1972 Stockholm Declaration and the 1982 World Charter of Nature, and it has been criticized for representing ‘a triumph of unrestrained anthropocentricity’.\textsuperscript{52} For example, Stockholm Principle 2 stipulates careful planning and management of the natural resources of the earth including air, water, land, flora and fauna and especially representative samples of natural ecosystems, while Stockholm Principles 3 to 5 provide that: the capacity of the earth to produce vital renewable natural resources must be maintained and improved; the heritage of wildlife and its habitat should be safeguarded and wisely managed; and non-renewable natural resources should be safeguarded against the danger of future exhaustion. These provisions refer to the interests of humankind, including both present and future generations. Principle 7 of the Rio Declaration merely provides that ‘States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem’, and points to ‘the common but differentiated responsibilities’ of in-

\textsuperscript{49} GA Res. 47/190, 22 December 1992, adopted without a vote.
\textsuperscript{50} ECOSOC Res. 1993/225.
\textsuperscript{51} See also UN Doc. A/48/442, 14 October 1993, containing the report of the Secretary-General on ‘Implementation of GA resolution 47/199 on the institutional arrangements to follow up the United Nations Conference on Environment and Development’.
\textsuperscript{52} Pallemaerts (1993: 12).
dustrialized and developing countries, respectively. The rationale for the latter lies in ‘the different contributions to global environmental degradation’ and not in different levels of development as such. Rio Principle 7 thus reflects ‘the polluter pays’ concept more than the duty to co-operate for development embodied in the Stockholm Declaration.

Furthermore, Stockholm also seems less exclusively State-oriented in that it formulates the ‘solemn responsibility’ of humans ‘to protect and improve the environment for present and future generations’ (Principle 1) and ‘to safeguard and wisely manage the heritage of wildlife and its habitat’ (Principle 4). In contrast, the Rio Declaration links environmental preservation more closely to poverty eradication (see its Principle 5) and calls for special priority for the needs of developing countries, particularly the least developed and those which are most vulnerable environmentally (Principle 6).  

However, this principle becomes somewhat weakened by the last sentence: ‘International actions in the field of environment and development should also address the interests and needs of all countries’.

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