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## The Environment as a Commodity?

An ecofeminist analysis of the extent to which associations between security and the environment have altered the perception of the environment in international law

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## Abstract

The growing evidence that humanity has entered the Anthropocene raises significant concerns over the existential survival of individuals, states, and of life on Earth itself. In response to the increasingly global nature of environmental problems, international environmental law (IEL) has emerged to facilitate collective efforts by states to mitigate ecological harm. In more recent times, the role of IEL has centred on addressing the balance between development, economic growth, and the need to protect the environment for future generations. In light of mounting evidence over the role of environmental degradation and the negative impact of humanity's activities on the Earth, concerns over how such destruction can exacerbate conflict and undermine security, development, and economic growth have been raised by the United Nations Security Council and other international forums. The increasing associations between environment and security in international circles and by states poses the questions of how states perceive the 'environment' and for what reasons do they protect it? This thesis examines the extent to which this convergence between environment and security alters the way in which the international community seek to protect the environment, and in turn, what this suggests about their perception of the environment. Drawing on ecofeminist theory to develop an analytical framework, it examines the preparatory reports and outcome texts from eight environmental regimes in relation to three areas of international environmental law-making. It examines who participates in the development of IEL in order to reveal any tensions between the principle of participation included in sustainable development, and the exclusionary practices in some environmental areas that are closely connected to the environment and national interests. It then considers the justifications for the integration of other non-environmental considerations, such as development, economic, security, and technology into IEL, and their influence on states' perception of the environment. The thesis concludes that despite the broader participation by NSAs in the development of IEL, changes in states' priorities over time, and the growing convergence between security and environment, the western anthropomorphic perception of the environment prevails in law-making at an international level.



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## List of Abbreviations

AGBM	<i>Ad Hoc</i> Group on the Berlin Mandate
AOSIS	Alliance of Small Island States
ASEAN	Association of Southeast Asian Nations
AWG-ABS	<i>Ad Hoc</i> Open-Ended Working Group on Access and Benefit-Sharing
AWG-CFC	<i>Ad Hoc</i> Working Group of Legal and Technical Experts for the Elaboration of a Protocol on the Control of Chlorofluorocarbons
AWG-KP	<i>Ad Hoc</i> Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
AWG-LCA	<i>Ad Hoc</i> Working Group on Long-term Cooperative Action under the Convention
AWG-Ozone	<i>Ad Hoc</i> Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer
BSWG	Open-Ended <i>Ad Hoc</i> Working Group on Biosafety
CBD	Convention on Biological Diversity
CBDR	Common but differentiated responsibilities
CBDRRC	Common but differentiated responsibilities and respective capabilities
CDM	Clean Development Mechanism
CFC	Chlorofluorocarbon
CIEL	Centre for International Environmental Law
COP/MOP	Conference of the Parties/Meeting of the Parties
DAWN	Development Alternatives with Women for a New Era
ECOSOC	(UN) Economic and Social Council
GDP	Gross Domestic Product
GEF	Global Environment Facility

GHG	Greenhouse gas
ICJ	International Court of Justice
IEL	international environmental law
ILA	International Law Association
ILC	International Law Commission
INC	intergovernmental negotiating committee
INC/CBD	Intergovernmental Negotiating Committee for a Convention on Biological Diversity
INCD	Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa
INC/FCCC	Intergovernmental Negotiating Committee for a Framework Convention on Climate Change
IPCC	Intergovernmental Panel on Climate Change
IPMG	Indigenous Peoples Major Group
IPR	intellectual property rights
IR	international relations
ITTA	International Tropical Timber Agreement
ITLOS	International Tribunal for the Law of the Sea
IUCN	World Conservation Union (formerly International Union for the Conservation of Nature)
KP	Kyoto Protocol to the United Nations Framework Convention on Climate Change
LMO	living modified organism
MDG	Millennium Development Goal
MEA	multilateral environmental agreement
NGO	non-governmental organisation

NIEO	New International Economic Order
OAS	Organization of American States
OECD	Organisation for Economic Cooperation and Development
SIDs	Small Island Developing States
TRIPs	Agreement on Trade-Related Aspects of Intellectual Property Rights (1994)
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994)
UNCED	United Nations Conference on Environment and Development (Rio Conference)
UNCHE	United Nations Conference on the Human Environment (Stockholm Conference)
UNCLOS	United Nations Convention on the Law of the Sea
UNCSD	United Nations Commission on Sustainable Development (Rio+20 Conference)
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFAO	United Nations Food and Agriculture Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
USA	United States of America
USSR	Union of Soviet Socialist Republics

WCED	World Commission on Environment and Development (Brundtland Commission)
WEDO	Women's Environment & Development Organization
WMG	Women's Major Group
WSSD	World Summit on Sustainable Development (Johannesburg Summit)
WTO	World Trade Organization
WWF	Worldwide Fund for Nature (formerly World Wildlife Fund)

## List of International and National Cases

*Award between the United States and the United Kingdom, Relating to the Rights of Jurisdiction of the United States in the Bering's Sea and the Preservation of Fur Seals* (Decision) (15 August 1893) XXVIII RIAA 263

*Island of Palmas Case (United States of America v Netherlands)* (Award) (4 April 1928) II RIAA 829

*Case Relating to the Territorial Jurisdiction of the International Commission of the River Oder* (Judgement) (10 September 1929) PCIJ Series A No 23

*Trail Smelter Case (United States v Canada)* (1938/1941) III RIAA 1905-1982

*Corfu Channel Case (UK v Albania)* (Merits) [1949] ICJ Rep 244

*Reparations for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174

*Lac Lanoux Arbitration (France v Spain)* (Judgement) (16 November 1957) XII RIAA 281; 24 ILR 101

*Fisheries Jurisdiction Case (United Kingdom v Iceland)* (Merits) [1974] ICJ Rep 3

*Nuclear Tests (Australia v France)* (1974) ICJ Reports 253 (Judgement, 20 December 1974)

*Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France)* (Order) [1995] ICJ Rep 288

*Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (Advisory Opinion) [1996] ICJ Rep 226

*Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgement) [1997] ICJ Rep 7; 37 ILM 168 (1998)

*European Communities – Measures Concerning Meat and Meat Products (Hormones)* (Report of the Appellate Body) (16 January 1998) WT/DS26/AB/R; (Report of the Panel) WT/DS48/AB/R

*United States – Import Prohibition of Certain Shrimp and Shrimp Products* (Report of the Appellate Body) (12 October 1998) WT/AS58/AB/R

*Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan)* (Provisional Measures) (1999) ITLOS Nos 4 & 5

*European Communities – Measures Affecting Asbestos and Asbestos-Containing Products* (Report of the Appellate Body) (12 March 2001) WT/DS135/AB/R; (Report of the Panel) WT/DS135/R

*The Mox Plant Case (Ireland v United Kingdom)* (Order) (3 December 2001) ITLOS Case No 10 (2001)

*In the Arbitration Regarding the Iron Rhine (“Ijzeren Rijn”) Railway (Belgium v Netherlands)* (Arbitral Award) (2005) XXVII RIAA 35

*European Communities – Measures Affecting the Approval and Marketing Biotech Products* (Panel Report) (29 September 2006) WT/DS291/R; WT/DS292/R; WT/DS293/R

*Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgement) [2010] ICJ Rep 14

*Responsibilities and Obligations of States with Respect to Activities in the Area* (Advisory Opinion) (1 February 2011) ITLOS Reports 2011 10

## List of International Treaties and Other Instruments

*Convention on Rights and Duties of States adopted by the Seventh International Conference of American States* (adopted 26 December 1933, entered into force 26 December 1934) (1936) 165 LNTS 19; 28 Am J Int'l L Sup 75 (1934)

*Convention Relative to the Preservation of Fauna and Flora in their Natural State* (London) (adopted 8 November 1933, entered into force 14 January 1936) 172 LNTS 241 (1953)

*Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (1945)

*Antarctic Treaty* (Washington) (adopted 1 December 1959, entered into force 23 June 1961) 402 UNTS 71 (1961); 19 ILM 860 (1980)

*International Convention for the Protection of New Varieties of Plants, as Revised in 1972, 1978 and 1991* (Brussels) (adopted 2 December 1961, revised 10 November 1972, 23 October 1978, and 19 March 1991, entered into force 24 April 1998) [2000] ATS 6 / 33 UST 2703 / 815 UNTS 89

Permanent Sovereignty over Natural Resources (14 December 1962) A/RES/1803(XVII)

*Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies* (London, Moscow, Washington) (adopted 27 January 1967, entered into force 10 October 1967) 610 UNTS 206 (1967)

Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (24 October 1970) A/RES/2625(XXV)

Declaration of the United Nations Conference on the Human Environment (16 June 1972) A/CONF.48/14/REV.1(1973); 11 ILM 1416 (1972)

Stockholm Action Plan of the Human Environment (16 June 1972) A/CONF.48/14/REV. 1 (1973); 11 I.L.M. 1421 (1972)

Declaration on the Establishment of a New International Economic Order (1 May 1974) A/RES/3201(S-VI)

Programme of Action on the Establishment of a New International Economic Order (1 May 1974) A/RES/3202(S-VI)

*The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies* (New York) (adopted 5 December 1979, entered into force 11 July 1984) 1363 UNTS 3 (1992); 18 ILM 1434 (1979)

*United Nations Convention on the Law of the Sea* (Montego Bay) (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (1998); 21 ILM 1261 (1982)



*International Tropical Timber Agreement* (Geneva) (adopted 18 November 1983, entered into force 1 April 1985) 1393 UNTS 119 (1985)

Declaration on the Right to Development (4 December 1986) UN Doc. A/RES/41/128 (1986)

*Convention on the Protection of the Ozone Layer* (Vienna) (adopted 22 March 1985, entered into force 22 September 1988) 1513 UNTS 323 (1988); 26 ILM 1529 (1987)

*Protocol on Substances that Deplete the Ozone Layer* (Montreal) (adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3; 26 ILM 1550 (1987)

*Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer* (London) (adopted 29 June 1990, entered into force 10 August 1992) 30 ILM 537 (1991); 1598 UNTS 469 (1991)

*Convention on Environmental Impact Assessment in a Transboundary Context* (Espoo) (adopted 25 February 1991, entered into force 10 September 1997) 1989 UNTS 309 (1997)

*Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa* (Bamako) (adopted 30 January 1991, entered into force 22 April 1998) 2101 UNTS 177 (2002)

Agenda 21: Programme of Action for Sustainable Development (14 June 1992) A/CONF.151/26 (1992)

*Convention on Biological Diversity* (Rio de Janeiro) (adopted 5 June 1992, entered in force 29 December 1993) 1760 UNTS 79; 31 ILM 818 (1992)

Rio Declaration on Environment and Development (14 June 1992) UN Doc A/CONF.151/26 (vol I); 31 ILM 874 (1992)

*United Nations Framework Convention on Climate Change* (New York) (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (2000); 31 ILM 849 (1992)

Non-Legally Binding Authoritative Statement of Principles for a Global Consensus of the Management, Conservation and Sustainable Development of all Types of Forests (14 June 1992) UN Doc A/CONF.151/26/Rev.1 (vol I) (1992)

*Agreement Establishing the World Trade Organisation* (Marrakesh) (15 April 1994, entered into force 1 January 1995) 1867 UNTS 154; 33 ILM 1125

*Agreement on Trade-Related Aspects of Intellectual Property Rights* (15 April 1994) 1869 UNTS 299; 33 ILM 1197 (1994)

*Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982* (28 July 1994) UN Doc A/RES/48/263

*International Tropical Timber Agreement* (Geneva) (adopted 16 January 1994, entered into force 1 January 1997) 1955 UNTS 143 (1997); 33 ILM 1016 (1994)

*United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (Paris) (adopted 17 June 1994, entered into force 26 December 1996) 1954 UNTS 3; 33 ILM 1328 (1994)

*Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (adopted 4 August 1995, entered into force 11 December 2001) 2167 UNTS 3; 34 ILM 1547 (1995)

*Convention on the Law of the Non-Navigational Uses of International Watercourses* (New York) (adopted 21 May 1997, entered into force 17 August 2014) 36 ILM 703 (1997)

*Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus) (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (2003); 38 ILM 517 (1999)

*Forest Act* 1998 (Gambia)

*Protocol to the United Nations Framework Convention on Climate Change* (Kyoto) (adopted 11 December 1997, entered into force 6 February 2005) 37 ILM 32 (1998)

*Environmental Protection and Biodiversity Conservation Act* 1999 (Cth) (Australia)

*Cartagena Protocol on Biosafety to the Convention on Biological Diversity* (Montreal) (adopted 29 January 2000, entered into force on 11 September 2003) 2226 UNTS 208; 39 ILM 1027 (2000)

Millennium Declaration (18 September 2000) A/RES/55/2

*International Treaty on Plant Genetic Resources for Food and Agriculture* (Rome) (adopted 3 November 2001, entered into force 29 June 2004) 2400 UNTS 303 (2010)

Johannesburg Declaration on Sustainable Development (4 September 2002) UN Doc A/CONF.199/20 Resolution I (Annex)

Plan of Implementation of the World Summit on Sustainable Development (4 September 2002) A/CONF.199/20 Resolution II (Annex)

*Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Kiev) (adopted 21 May 2003, entered into force 8 October 2009) 2629 UNTS 119 (2009)

*International Tropical Timber Agreement* (Geneva) (adopted 27 January 2006, entered into force 7 December 2011) UN Doc.TD/TIMBER.3/12

*Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community* [2007] OJ C306/01

*Federal Sustainable Development Act*, S.C. 2008 c. 33 (Canada)

*Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity* (Nagoya) (adopted 29 October 2010, entered into force 12 October 2014) UNEP/CBD/COP/DEC/X/1 (29 October 2010)

The Future We Want (11 September 2012) UN Doc A/RES/66/288

*Paris Agreement* (Paris) (adopted 12 December 2015, not yet in force) FCCC/CP/2015/10/Add.1 Annex (12 December 2015)

*Federal Sustainable Development Act*, S.C. 2008 c. 33 (Canada)

*Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union* [2012] OJ C326/47

*Sustainable Development Act*, Chapter 521 of the Law of Malta (10 July 2012)

*Fisheries Act* (No. 10 of 2014) (Vanuatu)

*Fisheries Act* (No. 20 of 2014) (Seychelles)

*Tuvalu Seabed Minerals Act* 2014

# 1. Introduction

This study will explore the conjunction of two powerful and ontologically divergent words – ‘environmental security’ – as this occurs in international environmental law (IEL) and the implications of this for the assumptions and perspectives about the environment in this body of law. The conjunction of these words carries significant emotive connotations because they both concern the existential survival of humanity, states and the Earth itself.<sup>1</sup> The United Nations, states, governments, intergovernmental organisations, non-governmental organisations, corporate global actors, civil society, communities, and individual human beings have responded to the degradation of the environment through policy-making and legislation, while also including environmental themes in security considerations. This inclusion reflects the widening and deepening of the meaning of ‘security’ in the post-Cold War period where concerns such as drugs, disease, environment, the economy, terrorism, and organised crime have been labelled as security issues.<sup>2</sup> Some member states of the United Nations have gone so far as to identify connections between poverty and environmental degradation as a cause of insecurity, and propose that the solution to these interconnected problems, and attaining peace, is through the process of sustainable development, economic growth, and trade and economic liberalisation.<sup>3</sup> However, such solutions are informed by assumptions about and perceptions of the environment and its role in international geopolitics.

Underlying any international response to the interrelated concerns of environment and security is the question of what states and non-state actors (NSAs) in the international community mean when they refer to the environment. Ecofeminists argue that different responses to security and environmental degradation are informed by beliefs, attitudes, and values that shape the way we view our world and other people.<sup>4</sup> Therefore, an examination of the beliefs, attitudes, and values that inform states’ perception of the environment is

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<sup>1</sup> Jon Barnett, *The Meaning of Environmental Security: Ecological Politics and Policy in the New Security Era* (Zed Books 2001), 1; UNSC Verbatim Record (17 April 2007) UN Doc S/PV.5663, 23 (Maldives), 27 (Papua New Guinea); UNSC Verbatim Record (20 July 2011) UN Doc S/PV.6587 (Resumption 1), 36 (Fiji).

<sup>2</sup> UNSC Verbatim Record (31 January 1992) UN Doc S/PV.3046, 143; Note by the President of the Security Council (31 January 1992) UN Doc UN Doc S/23500, 3; Note by the President of the Security Council (30 April 1993) UN Doc UN Doc S/25696; UNSC Verbatim Record (20 July 2011) UN Doc S/PV.6587 (Resumption 1), 2-3; see also, UNSC Presidential Statement 22 Maintenance of International Peace and Security: Natural Resources and Conflict (25 June 2007) UN Doc S/PRST/2007/22 (concerning climate change and natural resources in international peace and security); UNSC Resolution 1817 ((11 June 2008)) UN Doc S/RES/1817 (concerning drug trafficking and organised crime in international peace and security); UNSC Presidential Statement 32 (Peace and security in Africa) (8 December 2009) UN Doc S/PRST/2009/32; Presidential Statement 15 (Maintenance of International Peace and Security) (20 July 2011) UN Doc S/PRST/2011/15\*; UNSC Resolution 2177 (18 September 2014) UN Doc S/RES/2177 (Ebola); UNSC Resolution 1373 (28 September 2001) UN Doc S/RES/1373; and UNSC Resolution 2195 (19 December 2014) UN Doc S/RES/2195 (terrorism).

<sup>3</sup> Presidential Statement 4 (Maintenance of International Peace and Security: The Interdependence between Security and Development) (11 February 2011) UN Doc S/PRST/2011/4.

<sup>4</sup> Karen J. Warren and Duane L Cady, ‘Feminism and Peace: Seeing Connections’ (1994) 9(2) *Hypatia* 4.

particularly important in order to understand precisely what states seek to protect through IEL, and the way in which any associations between ‘security’ and the ‘environment’ may alter such perceptions. Given that the general consensus is that the environmental crisis is only going to deepen and potentially exacerbate both traditional and non-traditional security concerns, such an enquiry contributes to the wider debates about the role of IEL, and the justifications for linking environment and security in wider discourse.

## 1. SETTING THE SCENE: ENVIRONMENT/SECURITY CONNECTIONS AND THE REASONS FOR RESEARCH

The environment and international peace and security have historically been considered as separate concerns, and treated as such by the international community. However, with globalisation, climate change, and concerns about food, energy, and climate security, the environment has been increasingly seen as a threat to individual, national, and international peace and security. The emergence of the environment as an international concern is the focus of Chapter 2. Therefore, the following discussion intends to give an overview of these issues in order to set the scene and identify the research questions addressed in this thesis.

### 1.1 Environment and Security Connections

International law and international relations traditionally conceptualise the world divided into two types of regions: Those regions falling under territorial sovereignty, and those lying outside the political reach of state. The interrelated principles of *res communis* (belonging to all) or *res nullius* (belonging to none) affected the regulation of regions outside of the exclusive control of a sovereign state by permitting freedom of access, exploitation, and exploration by all states able to do so.<sup>5</sup> This dichotomy informs the early development of international responses to peace, security, and the environment, because the principle of non-intervention in the domestic activities of states was central to any international response.<sup>6</sup>

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<sup>5</sup> Arthur Nussbaum, *A Concise History of the Law of Nations* (Revised edition, Macmillan Co. 1954), 111-112; R. Y. Jennings, ‘A Changing International Law of the Sea’ (1972) 31(1) CLJ 32, 32; Yong-On Park, ‘Res Communis versus Res Nullius’ (1976) 5(1) J East West Stud 77, 81; Malcolm N Shaw, *International Law* (5th edn, Cambridge University Press 2003), 24, 453-454; see also FS Ruddy, ‘Res Nullius and Occupation in Roman and International Law’ (1968) 36(2) UMKC LRev 274.

<sup>6</sup> Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury* (Béla Kaposy and Richard Whitmore eds, Thomas Nugent tr, First published 1797, Liberty Fund: Indianapolis 2008), 289-291, especially ¶54; *Convention on Rights and Duties of States adopted by the Seventh International Conference of American States* (adopted 26 December 1933, entered into force 26 December 1934) (1936) 165 LNTS 19; 28 Am J Int'l L Sup 75 (1934), art 8; P. H. Winfield, ‘The History of Intervention in International Law’ (1922) 3 BYBIL 130, 133-134.

Early attempts to respond to environmental problems sought to regulate action in line with the principle of non-interference in a state's territory.<sup>7</sup> Principles such as the responsibility not to cause environmental damage in areas outside a state's jurisdiction,<sup>8</sup> and the polluter pays principle, both impose obligations on states to ensure that their activities do not cause harm to other states or areas beyond national control.<sup>9</sup> Other principles, such as the principle of preventative action<sup>10</sup> and the principle of 'good-neighbourliness'<sup>11</sup> similarly obligate states to respect the sovereignty of other states and cooperate to protect transboundary resources.<sup>12</sup> These early responses to transboundary environmental problems connect state obligations with the concept of sovereignty. In doing so, they indicate that these responses regulated the environment along a public (global commons)/private (state) dichotomy.

Decolonisation, the growing interdependence between states through globalisation, and the ongoing Cold War affected state relations, meaning that international responses to environmental problems required a more nuanced approach by the mid-20<sup>th</sup> century. The global commons/state dichotomy continued to inform international responses to transboundary environmental concerns. Newly-independent developing countries sought to reassert their sovereignty over their natural resources in response to the attempts by former colonial powers to retain favourable concessions and access to resources granted prior to independence.<sup>13</sup> At the same time, they also sought to ensure that the regimes being developed to manage the global commons took into account the unequal technological and economic power that precluded them from participating in their exploitation.<sup>14</sup> The

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<sup>7</sup> Marie-Claire Cordonier Segger and Ashfaq Khalfan, *Sustainable Development Law: Principles, Practices, and Prospects* (Oxford University Press 2004), 80.

<sup>8</sup> *Island of Palmas Case (United States of America v Netherlands)* (Award) (4 April 1928) II RIAA 829, 839; *Trail Smelter Case (United States v Canada)* (1938/1941) III RIAA 1905-1982, 1965.

<sup>9</sup> *Trail Smelter Case*, 1965; *Nuclear Tests (Australia v France)* (1974) ICJ Reports 253 (Judgement, 20 December 1974), 389; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (Advisory Opinion) [1996] ICJ Rep 226, ¶29; Cordonier Segger and Khalfan, *Sustainable Development Law*, 80-84; see also International Law Commission, *Draft Articles on Prevention of Transboundary Harm From Hazardous Activities with Commentaries* (2001) UN Doc A/56/10.

<sup>10</sup> E.g. *Convention Relative to the Preservation of Fauna and Flora in their Natural State* (London) (adopted 8 November 1933, entered into force 14 January 1936) 172 LNTS 241 (1953), art 12(2), protocol ¶1.

<sup>11</sup> E.g. *Lac Lanoux Arbitration (France v Spain)* (Judgement) (16 November 1957) XII RIAA 281; 24 ILR 101; Philippe Sands and others, *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012), 504.

<sup>12</sup> *Nuclear Weapons in Armed Conflict*, ¶29; *The Mox Plant Case (Ireland v United Kingdom)* (Order) (3 December 2001) ITLOS Case No 10 (2001), ¶82; See generally, Philippe Sands, *Principles of International Environmental Law* (2nd edn, Cambridge University Press 2003), 237-246, 249-251; Sands and others, *Principles* (3rd edn), 198-199 and 204-205.

<sup>13</sup> Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005), 212-213; Margot E Salomon, 'From NIEO to Now and the Unfinishable Story of Economic Justice' (2013) 62(1) ICLQ 31, 39.

<sup>14</sup> Anghie, *Imperialism, Sovereignty*, 213; Scott J Shackelford, 'The Tragedy of the Common Heritage of Mankind' (2009) 28(1) Stan Envtl LJ 109 116; Karin Mickelson, 'The Maps of International Law: Perceptions of Nature in the Classification of Territory' (2014) 27(03) LJIL 621, 633-634.

principle of permanent sovereignty over natural resources and the common heritage concept reflect these two approaches.

Developing countries used forums such as the United Nations General Assembly (UNGA) and environmental negotiations to ensure that their development needs were taken into account. The principles contained in the 1962 United Nations Declaration on the Permanent Sovereignty over Natural Resources enabled developing countries to gain control over their resources and promote economic and social development.<sup>15</sup> The reaffirmation of sovereignty over natural resources suggests that it was considered to be the natural wealth for developing countries. Therefore, the assertion of permanent sovereignty over natural resources reaffirmed the global commons/state dichotomy in the management of environmental resources.<sup>16</sup>

The common heritage concept, introduced during the same period, reaffirmed this dichotomy. The concept incorporates two interrelated aims. It seeks to manage the global commons for future generations,<sup>17</sup> and to develop an equitable approach to the sharing of resources and benefits of these commons.<sup>18</sup> The concept was included in many of the multilateral environmental agreements (MEAs) adopted during the mid-20<sup>th</sup> century, such as the 1959 Antarctic Treaty, the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies and the 1982 United Nations Convention on the Law of the Sea (UNCLOS).<sup>19</sup> The two aims of the common heritage concept incorporate elements of equity in the way in which states manage shared resources. This may be seen as recognition of the granulation of the international community, whereby states may have the same interests, but differentiated capabilities and needs that affect their ability to act on their interests in an equal way with other states.<sup>20</sup>

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<sup>15</sup> UNGA Resolution 1803 (XVII) Permanent Sovereignty over Natural Resources (14 December 1962) UN Doc A/RES/1803(XVII); Anghie, *Imperialism, Sovereignty*, 211-212; Salomon, 'From NIEO to Now', 40.

<sup>16</sup> Salomon, 'From NIEO to Now', 40.

<sup>17</sup> Shaw, *International Law* 454.

<sup>18</sup> Christopher C. Joyner, 'Legal Implications of the Concept of the Common Heritage of Mankind' (1986) 35(1) ICLQ 190, 191; Shackelford, 'Common Heritage of Mankind', 115; Stephen Stec, 'Humanitarian Limits to Sovereignty: Common Concern and Common Heritage Approaches to Natural Resources and Environment' (2010) 12(3) IntCLRev 361, 366.

<sup>19</sup> *Antarctic Treaty* (Washington) (adopted 1 December 1959, entered into force 23 June 1961) 402 UNTS 71 (1961); 19 ILM 860 (1980), preamble; *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies* (London, Moscow, Washington) (adopted 27 January 1967, entered into force 10 October 1967) 610 UNTS 206 (1967), preamble, art II; *The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies* (New York) (adopted 5 December 1979, entered into force 11 July 1984) 1363 UNTS 3 (1992); 18 ILM 1434 (1979), art 11; *United Nations Convention on the Law of the Sea* (Montego Bay) (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (1998); 21 ILM 1261 (1982), art 136; see also, Alexandre Kiss, 'The Common Heritage of Mankind: Utopia or Reality?' (1985) 40(3) IJ 423, 430; UNGA General Debate (1 November 1967) UN Doc A/C.1/PV.15, 12; cited in Mickelson, 'The Maps of International Law', 633.

<sup>20</sup> Kiss, 'Common Heritage of Mankind', 431-432.

Therefore, the principle of permanent sovereignty over natural resources and the common heritage concept indicate a more nuanced approach to the management of the environment. They maintain the global commons/state dichotomy, while also recognising the growing interdependence between states because of the emerging globalisation and growth of capitalism during this period. In doing so, they also recognised the significant interrelationships between natural resources, technological and scientific capabilities, and economic development.

The relationship between transboundary harm, technology, scientific capabilities, economic growth, and development was recognised during the preparations for the 1972 United Nations Conference on the Human Environment (Stockholm Conference). Developing countries used the opportunity to question the legitimacy of the global agenda as it was then conceived.<sup>21</sup> They sought to frame discussions about environmental problems in a way that took into account the integral interrelationship between development, the environment, and the structural and system bias within the international system as a whole.<sup>22</sup>

The 1972 Stockholm Declaration on the Human Environment (Stockholm Declaration) tries to balance these differences. In doing so, it reflects growing comprehension by the international community that the environment was increasingly interrelated with other international concerns, such as development, global economics, and trade issues, which had significant importance for developing states.<sup>23</sup> In particular, the declaration acknowledged the essential need for economic and social development,<sup>24</sup> that ‘environmental deficiencies’ were caused by underdevelopment,<sup>25</sup> and that ‘states have...the sovereign right to exploit their own resources pursuant to their own environmental policies...’<sup>26</sup> These principles helped shape the future of IEL based on a recognition of the interrelationship between development and the environment.

The tensions between developing countries and primarily western states, concerning access to natural resources fed into the dominant security discourse. During the mid-20<sup>th</sup> century, connections between security and the environment primarily focused on the need

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<sup>21</sup> Adil Najam, ‘Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement’ (2005) 5(3) *Int Environ Agreements* 303, 308; also, Sundhya. Pahuja, *Decolonising International Law* (Cambridge University Press 2011), 37-40 and Chapters 3-4.

<sup>22</sup> Najam, ‘Developing Countries and Global Environmental Governance’, 307-309; Susanna Hecht and Alexander Cockburn, ‘Rhetoric and Reality in Rio’ (1992) 254(24) *Nation* 848.

<sup>23</sup> Louis B Sohn, ‘The Stockholm Declaration on the Human Environment’ (1973) 14(3) *Harv Int'l LJ* 423, 432.

<sup>24</sup> *Declaration of the United Nations Conference on the Human Environment* (16 June 1972) UN Doc A/CONF.48/14/REV.1 (1973); 11 *ILM* 1416 (1972) , Principle 8.

<sup>25</sup> *Ibid*, Principle 9.

<sup>26</sup> *Ibid*, Principle 21.



to secure raw materials that private entities would need to retain economic power.<sup>27</sup> The oil crisis of 1973 highlighted the interdependence between security and other international systems, such as global trade and the economic interests of dominant states. The crisis revealed that natural resources, such as oil, could be used as political leverage and therefore become a strategic threat to the interests of powerful nations such as the United States.<sup>28</sup> The emerging discussion concerning the relationship between access to environmental resources, and the economic security of states, highlighted the growing interdependence between countries, which may affect the security of states.<sup>29</sup>

Similarly, the expansion of the international community through decolonisation raised concerns about underdevelopment, conflict, and the access to natural resources. Concerns surrounding 'underdevelopment',<sup>30</sup> the provision of western assistance through scientific and industrial support to colonised and newly-decolonised territories, fed into the discourse surrounding international peace and security.<sup>31</sup> In this context, non-western peoples and places were defined by their lack, and 'underdevelopment' became a 'synonym for 'economically backward' areas'<sup>32</sup> that needed to undertake significant societal transformation through socio-economic change, supported by the western (civilised) states.<sup>33</sup> Therefore, 'development' was framed in objective measures of economic growth instead of the culture of peoples and place.<sup>34</sup> These arguments informed the future policies and responses to the inequalities between states in the international communities and later debates concerning the connections between 'underdevelopment', food and energy security, overpopulation, environmental degradation, and peace and security.

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<sup>27</sup> Lester R. Brown, *Redefining National Security* (Washington: World Watch Institute 1977), 5-6; Norman Myers, 'The Environmental Dimension to Security Issues' (1986) 6(4) *The Environmentalist* 251, 252; Marc A Levy, 'Is National Security an Environment Issue?' (1995) 20(2) *Int Security* 35, 48.

<sup>28</sup> Barry Buzan and Lene Hansen, *The Evolution of International Security Studies* (Cambridge University Press 2009), 86.

<sup>29</sup> *Ibid.*, 85.

<sup>30</sup> However, both 'underdevelopment' and 'development' are contested concepts. See, Anne Phillips, 'The Concept of 'Development'' (1977) 4(8) *Rev Afr Polit Econ* 7, 8; Ilan Kapoor, 'Hyper-Self-Reflexive Development? Spivak on Representing the Third World 'Other'' (2004) 25(4) *Third World Quarterly* 627, 628-629; Farzana Naz, 'Arturo Escobar and the Development Discourse: An Overview' (2006) 28(3) *Asian Affairs* 64, 65; for a detailed discussion, see Vicky Randall and Robin Theobald, *Political Change and Underdevelopment: A Critical Introduction to Third World Politics* (Macmillan 1985); Wolfgang Sachs (ed) *The Development Dictionary: A Guide to Knowledge as Power* (2nd edn, Zed 2010).

<sup>31</sup> Pahuja, *Decolonising International Law*, 61.

<sup>32</sup> Gilbert Rist, *The History of Development: From Western Origins to Global Faith* (Patrick Camiller tr, 2nd edn, Zed Books 2002), 72; Anghie, *Imperialism, Sovereignty*, 207.

<sup>33</sup> Phillips, 'The Concept of 'Development'', 9; Ray Kiely, 'The Last Refuge of the Noble Savage? A Critical Assessment of Post-Development Theory' (1999) 11(1) *EJDR* 30, 32; Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (New edn, Princeton University Press 2012), 4; see also Charles Gore, 'The Rise and Fall of the Washington Consensus as a Paradigm for Developing Countries' (2000) 28(5) *World Dev* 789, 794-795.

<sup>34</sup> Pahuja, *Decolonising International Law*, 65.

Therefore, by the early 1980s, there were significant debates surrounding non-traditional sources of insecurity in the broader security discourse. State actors and policy-makers identified threats such as overpopulation, transboundary environmental degradation, natural resource scarcity, food and energy security, and underdevelopment, as potential security threats to powerful, western states. These narratives fed into the more general concerns surrounding the potential for population growth, resource scarcity, and environmental degradation to escalate conflict.<sup>35</sup>

The narrative connecting underdevelopment and environmental degradation with conflict and insecurity was reinforced in the World Commission on Environment and Development Report published in 1987. This report (also known as the Brundtland Report) stated that economics, environment, and security were interdependent, and that security should be widened to take account of these interactions.<sup>36</sup> The report proposed that 'sustainable development' could be a solution to the drivers of insecurity because it would enable countries to develop sustainably, within the carrying capacities of Earth's ecological systems. Therefore, the environment became part of wider discussions over the relationship between development, economy, and the environment in developing states, as well as the need to develop a solution to global environmental problems that took into account the legitimate interest of developing countries in pursuing economic and social development.

Sustainable development explicitly connects finding solutions to environmental concerns with achieving development. Because of this, the concept has had significant influence in the evolution of IEL, and caught the attention of liberal security discourses in the post-Cold War period. There are many conceptualisations of 'sustainable development'.<sup>37</sup> The Brundtland Report published the most popular definition. It defined sustainable development as meeting 'the needs of the present without compromising the ability of future generations to meet their own needs.'<sup>38</sup> The report further elaborated this definition and includes two important concepts:

'the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of *limitations* imposed by the state of technology and social organization on the environment's ability to meet present and future needs. Thus the goals of economic and social development must

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<sup>35</sup> Simon Dalby, *Security and Environmental Change* (Polity 2009), 16.

<sup>36</sup> WCED, *Our Common Future* (World Commission on Environment and Development; Oxford University Press 1987), 301

<sup>37</sup> Desta Mebratu, 'Sustainability and Sustainable Development: Historical and Conceptual Review' (1998) 18(6) *Environmental Impact Assessment Review* 493, 503-512; Iris Borowy, *Defining Sustainable Development for our Common Future: A History of the World Commission on Environment and Development (Brundtland Commission)* (Routledge 2014), 3.

<sup>38</sup> WCED, *Our Common Future*, 43.

be defined in terms of sustainability in all countries – developed or developing, market oriented or centrally planned.’<sup>39</sup>

The concept of sustainable development was not invented by the Brundtland Commission. Earlier documents produced by the World Bank, the International Union for the Conservation of Nature (IUCN) in collaboration with the United Nations Environment Programme (UNEP) and the World Wildlife Fund (WWF), and the International Institute for Environment and Development (IIED), each referred to ‘sustainable development’ and adopted other definitions of the concept.<sup>40</sup> For example, the IUCN’s World Conservation Strategy argued that for

‘development to be sustainable, it must take account of social and ecological factors, as well as economic ones; of the living and non-living resource base; and of the long term as well as the short term advantages and disadvantages of alternative actions.’<sup>41</sup>

These two definitions highlight the inherent tensions in the concept. Sustainable development seeks to reconcile the often paradoxical relationship between consistent economic growth,<sup>42</sup> the need for development,<sup>43</sup> and the physical limitations of the Earth’s ecological functions. Because sustainable development tries to reconcile these tensions, it was seen as a solution to the drivers of underdevelopment and the stressors that could lead to conflict and insecurity, while also having significant influence on the evolution of IEL

The substantive and procedural elements of sustainable development strongly influenced the evolution of IEL after 1992.<sup>44</sup> This influence reflects an institutionalisation of collective responses to environmental problems that also take into account the need to balance the different interests of states. Because of this, sustainable development can be considered as an

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<sup>39</sup> Ibid, 43. Emphasis added.

<sup>40</sup> Borowy, *Defining Sustainable Development*, 3; see e.g. International Union for Conservation of Nature and Natural Resources, *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (International Union for Conservation of Nature and Nature Resources (Currently World Conservation Union), United Nations Environment Programme, World Wildlife Fund. Gland, Switzerland, IUCN-UNEP-WWF 1980); Kirchner, JW and Others, ‘Carrying Capacity, Population Growth, and Sustainable Development’ in Kirchner, J. W, and others. “Two Essays on Population and Carrying Capacity.” Cited by The World Bank, *World Development Report 1984* (Oxford University Press 1984).

<sup>41</sup> International Union for Conservation of Nature and Natural Resources, *World Conservation Strategy*, ¶3.

<sup>42</sup> See e.g. Herman E. Daly, ‘Toward Some Operational Principles of Sustainable Development’ (1990) 2(1) *Ecolog Econ* 1; Sharachchandra M. Lélé, ‘Sustainable development: A Critical Review’ (1991) 19(6) *World Dev* 607; Ronnie D. Lipschutz, ‘Wasn’t the Future Wonderful? Resources, Environment, and the Emerging Myth of Global Sustaining Development’ (1991) 2(1) *Colo J Int’l Environ L & Pol’y* 35; Herman E. Daly, *Beyond Growth: The Economics of Sustainable Development* (Beacon Press 1996); Herman E. Daly, ‘Reconciling the Economics of Social Equity and Environmental Sustainability’ (2002) 24(1) *Popul Environ* 47; John Robinson, ‘Squaring the Circle? ‘Some Thoughts on the Idea of Sustainable Development’ (2004) 48(4) *Ecolog Econ* 369; Micheal Redclift, ‘Sustainable Development (1987–2005): An Oxymoron Comes of Age’ (2005) 13 *Sustainable Development* 212.

<sup>43</sup> Mark R. Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (Zed Books 2001), 114-115.

<sup>44</sup> Sands and others, *Principles (3rd edn)*, 206-209.

'integrationist principle'<sup>45</sup> that seeks to balance the competing economic, environmental and social interests of states.<sup>46</sup> This balance is manifested in the 1992 Rio Declaration on Development and Environment (Rio Declaration), adopted at the 1992 United Nations Conference on Environment and Development (Rio Conference).

In particular, the procedural elements of sustainable development have been incorporated into MEAs and soft law after the Rio Conference. These elements include the principle of participation, the right to information, and the right to effective remedies.<sup>47</sup> Similarly, the substantive elements of the concept, such as differential treatment, have become integral to the climate change and biodiversity regimes, amongst others.<sup>48</sup> These principles have shaped the evolution of IEL and have guided the way in which states balance the needs of individuals and communities with the limitations of the Earth's ecosystems, and the different capabilities of states to respond to environmental problems.

Further, sustainable development had a significant influence on the international community's responses to conflict and security in the post-Cold War period. Supporters of the concept claim that sustainable development can provide both a framework and solution to addressing the underlying drivers of underdevelopment (environmental degradation, socio-economic inequality) and as a means of addressing threats to individuals from livelihood insecurity, food insecurity, and an unliveable environment.<sup>49</sup> These arguments reveal the emerging connections between environment and security, as well as the adoption of sustainable development as a potential solution to the drivers of insecurity.

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<sup>45</sup> Dominic McGoldrick, 'Sustainable Development and Human Rights: An Integrated Conception' (1996) 45(04) ICLQ 796, 818.

<sup>46</sup> Sumudu Atapattu, 'Sustainable Development, Myth or Reality? A Survey of Sustainable Development Under International Law and Sri Lankan Law' (2001) 14 Geo Int'l Envtl L Rev 265, 277.

<sup>47</sup> *Rio Declaration on Environment and Development* (13 June 1992) UN Doc A/CONF.151/26 (vol I); 31 ILM 874 (1992), principle 10; see e.g. *Convention on Biological Diversity* (Rio de Janeiro) (adopted 5 June 1992, entered in force 29 December 1993) 1760 UNTS 79; 31 ILM 818 (1992), art 8(j); *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus) (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (2003); 38 ILM 517 (1999), art 1.

<sup>48</sup> Stockholm Declaration 1972, principle 23; UNCLOS 1982, art 61(3) and 69(4); *Protocol on Substances that Deplete the Ozone Layer* (Montreal) (adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3; 26 ILM 1550 (1987), preamble; *Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer* (London) (adopted 29 June 1990, entered into force 10 August 1992) 30 ILM 537 (1991); 1598 UNTS 469 (1991), art 10; *United Nations Framework Convention on Climate Change* (New York) (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (2000); 31 ILM 849 (1992), art 3(1).

<sup>49</sup> United Nations Development Programme, *Human Development Report: New Dimensions of Human Security* (UN Development Programme; Oxford University Press 1994) 24-25; United Nations, *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change* (2 December 2004) UN Doc A/59/565 26; Ban Ki-Moon, 'A Green Future: The Right War' *Time* (April 17 2008) <[http://content.time.com/time/specials/2007/article/0,28804,1730759\\_1731383\\_1731345,00.html](http://content.time.com/time/specials/2007/article/0,28804,1730759_1731383_1731345,00.html)> accessed 28 January 2014; UNEP, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment* (UNEP's Disasters and Conflicts Programme, Nairobi, Kenya: 2009), 6.

Therefore, the environment, development, peace, and security have increasingly been linked together after the Cold War. The connections between these areas have been examined from three different stances. The first approach examines the role of the environment as a long-term stressor on societies. In this approach, researchers examine the ways in which environmental scarcity, caused by overpopulation, physical depletion, and unequal resource allocation, increases the risk of conflict and insecurity in primarily developing countries.<sup>50</sup> This research influenced the development of collective security strategies and foreign policy by states and regional organisations.<sup>51</sup> Their policies connect environment and security and propose that social and economic development can reduce these risks by addressing the drivers of underdevelopment and pressures on the local environment. In this way, the environment is seen as a threat to the security of the international community by acting as a societal stressor.

The second approach makes humans the referent object of security. In this context, environment/security connects are framed as part of the attempt to protect and empower individuals in order to maintain security.<sup>52</sup> This approach views peace, security, and development as indivisible and essential to maintain international peace and security.<sup>53</sup> Therefore, the environment is considered antecedent to achieving development, and essential to the attainment of human security. Examples of this approach can be seen in the growing concerns over energy, food, and livelihood security in light of global environmental

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<sup>50</sup> Robert Kaplan, 'The Coming Anarchy: How Scarcity, Crime, Overpopulation, Tribalism, and Disease are Rapidly Destroying the Social Fabric of our Planet' *The Atlantic* (Washington, DC, 1 February 1994) <<http://www.theatlantic.com/magazine/archive/1994/02/the-coming-anarchy/4670/>> accessed 11 July 2011; Val Percival and Thomas F Homer-Dixon, 'Environmental Scarcity and Violent Conflict: The Case of South Africa' (1998) 35(3) *J Peace Res* 279 280; Ayalneh Bogale and Benedikt Korf, 'To Share or Not to Share? (Non)-Violence, Scarcity and Resources in Somali Region, Ethiopia' (2007) 43(4) *J Dev Stud* 743, 743; Dalby, *Security and Environmental Change*, 16; see also, Paul R. Ehrlich and Anne H. Ehrlich, 'Population Growth and Environmental Security' (1991) 45(2) *GaR* 223.

<sup>51</sup> E.g. United States, 'Quadrennial Defense Review Report' (United States Department of Defense, 15 April 2011) <[http://www.defense.gov/qdr/images/QDR\\_as\\_of\\_12Feb10\\_1000.pdf](http://www.defense.gov/qdr/images/QDR_as_of_12Feb10_1000.pdf)> accessed 19 June 2015; Cabinet Office, 'Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review' (Cabinet Office, 2010) Cm 7948 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/62482/strategic-defence-security-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62482/strategic-defence-security-review.pdf)> 19 June 2015, 4.B.1 43; Council of the European Union, 'Main Aspects And Basic Choices of the CFSP (Part II, point E, paragraph 25 of the Interinstitutional Agreement of 2 December 2013)' (High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament, 23 July 2014) Doc 12094/14 <<http://data.consilium.europa.eu/doc/document/ST-12094-2014-INIT/en/pdf>> accessed 19 June 2015, 159-160

<sup>52</sup> Human Security Unit, 'Human Security Approach' (*Human Security Unit, UN Office for the Coordination of Humanitarian Affairs (UNOCHA)*) <<http://unocha.org/humansecurity/human-security-unit/human-security-approach>> accessed 13 March 2014; Lloyd Axworthy, 'Human Security and Global Governance: Putting People First' (2001) 7(1) *Global Governance* 19 20; Ryerson Christie, 'Critical Voices and Human Security: To Endure, to Engage or to Critique?' (2010) 41(2) *Secur Dialog* 169 173; Nik Hynek and David Chandler, 'No Emancipatory Alternative, No Critical Security Studies' (2013) 1(1) *Critical Studies on Security* 46, 47-48.

<sup>53</sup> Presidential Statement 8 (Women and Peace and Security) (27 April 2010) UN Doc S/PRST/2010/8 , 2.

degradation.<sup>54</sup> Once again, environmental degradation and poverty are seen as the by-products of underdevelopment and sustainable development is the solution. In this approach, the connection between development, environment, and security is made explicit.

The final approach focuses specifically on the threat of climate change to state and human well-being through the exacerbation of existing vulnerabilities. This approach focuses on the potential losses of economic and livelihood security, as well as the erosion of social safety nets in vulnerable developing countries because of climate change.<sup>55</sup> Other research has examined the implications of inaction on climate change for economic, energy, and water security.<sup>56</sup> This suggests that such inaction may destabilise already volatile regions, and thus have a significant impact on the overall security of the international community.<sup>57</sup> States and NSAs highlight the potential economic, energy, food, and livelihood security implications of climate change, and the potential instability of regions because of poor access to water.<sup>58</sup> These debates recognise the increased interdependence of states because of globalisation, the global economy, and through transboundary ecosystems. They recognise climate change as a potential threat to the collective security of the international community and therefore connect security and the environment by examining how climate change exacerbates existing vulnerabilities and may therefore increase incidences of conflict.<sup>59</sup>

These different approaches to environment/security linkages indicate that there is an assumption that peace, security, and sustainable development are mutually supportive. This

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<sup>54</sup> Emmy Simmons, *Harvesting Peace: Food Security, Conflict, and Cooperation* (Environmental Change and Security Report, Washington DC: Woodrow Wilson Centre for International Scholars, 2013), 20; Saswati Bora and others, 'Food Security and Conflict' (Background Paper, World Development Report 2011 Agriculture and Rural Development Department, World Bank 22 October 2010) <[http://web.worldbank.org/archive/website01306/web/pdf/wdr%20background%20paper\\_bora%20et%20al4dbd.pdf?keepThis=true&TB\\_iframe=true&height=600&width=800](http://web.worldbank.org/archive/website01306/web/pdf/wdr%20background%20paper_bora%20et%20al4dbd.pdf?keepThis=true&TB_iframe=true&height=600&width=800)> accessed 14 April 2016, 4, 6-7; see also Henk-Jan Brinkman and Cullen S Hendrix, 'Food Insecurity and Violent Conflict: Causes, Consequences, and Addressing the Challenges' (Occasional Paper Number 24 World Food Programme, July 2011) <<http://documents.wfp.org/stellent/groups/public/documents/newsroom/wfp238358.pdf>> 09 December 2015; Clemens Breisinger and others, *How to Build Resilience to Conflict: The Role of Food Security* (International Food Policy Research Institute (IFPRI) 2014).

<sup>55</sup> Joshua W. Busby and others, 'Climate Change and Insecurity: Mapping Vulnerability in Africa' (2013) 37(4) *Int Security* 132, 142; IPCC, *Climate Change 2014: Synthesis Report. Summary for Policy Makers. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (R. K. Pachauri and Leo Meyer eds, Geneva: Intergovernmental Panel on Climate Change 2014), 13;

<sup>56</sup> Jon Barnett, 'Security and Climate Change' (2003) 13(1) *Global Environmental Change* 7, 9; Commission for Africa, *Still Our Common Interest* (Commission for Africa, 2010), 22; Matt McDonald, 'Discourses of Climate Security' (2013) 33(0) *Polit Geogr* 42, 47; IPCC, *Climate Change 2014. Summary for Policy Makers*, 16; see also, Oli Brown, Anne Hammill and Robert McLeman, 'Climate Change as the 'New' Security Threat: Implications for Africa' (2007) 83(6) *Int Aff* 1141, 1141; Jon Barnett and W Neil Adger, 'Climate Change, Human Security and Violent Conflict' (2001) 26 *Polit Geogr* 639, 640.

<sup>57</sup> Commission for Africa, *Still Our Common Interest* (2010), 22

<sup>58</sup> McDonald, 'Discourses of Climate Security', 47.

<sup>59</sup> Commission for Africa, *Still Our Common Interest* (2010), 22

assumption is inherent in the different explanations of the environment/security linkages outlined above. It is also reflected in the consistent affirmation of the role of sustainable development as a pathway to achieve peace and security, and environmental protection.<sup>60</sup> However, this appropriation of sustainable development by security discourses may be problematic for the development of IEL. This is because the references to the environment in the security discourse portray it as a commodity, resource, or utility to be used to achieve different security goals and as part of the sustainable development process.

Ecofeminists challenge this representation of the environment because it universalises an anthropocentric worldview which may not take into ontological differences between communities and societies.<sup>61</sup> Therefore, the securitisation of the environment may have implications for the subsequent evolution of IEL, the way in which it represents the environment, and the perception of the environment itself.

## 1.2 Identifying the Problem

The securitisation of the environment and the convergence with security concerns raises the question of the influence these changes have on the way states view the environment in IEL and the basis on which the states and NSAs seek to protect the environment. Such a convergence may well lead to conflict between the different understandings held by states and NSAs about the environment, or lead to exacerbations of existing differences.

Differences in perceptions of the environment in international law-making may affect states' motivations to protect the environment, with huge consequences for the future development of IEL. Thus, revealing the values, attitudes, and understandings about the environment, which constitutes states' perceptions of it, is crucial to understanding the development of IEL. There is as yet, however, little critical examination of these issues by the academy.

States' perceptions of the environment may influence many factors that shape IEL. For instance, how far do states' and NSAs' perceptions about the environment encompass an ecologically integrated/holistic view? Do states in their international policy and law-making

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<sup>60</sup> E.g. Georgi Gotev, 'Mimica: "There cannot be a sustainable foreign and security policy without a clear development contribution" *EurActivcom* (7 January 2015 [updated 8 January 2015]) <<http://www.euractiv.com/sections/development-policy/mimica-there-cannot-be-sustainable-foreign-and-security-policy-without>> accessed 29 January 2015; Lamberto Zannier, 'Fostering Peace and Sustainable Development: A Genuine Commitment of the Organization for Security and Co-operation in Europe' *UN Chronicle* (April 2016) <<http://unchronicle.un.org/article/fostering-peace-and-sustainable-development/>> accessed 17 May 2016.

<sup>61</sup> Vandana Shiva, *Staying Alive: Women, Ecology and Development* (Zed 1988), 224; Val Plumwood, *Environmental Culture: The Ecological Crisis of Reason* (Routledge 2002), 51-52; Carol J. Adams and Lori Gruen, 'Introduction' in Carol J. Adams and Lori Gruen (eds), *Ecofeminism: Feminist Intersections with other Animals and the Earth* (Bloomsbury Academic 2014), 1; see also Karen J. Warren and Jim Cheney, 'Ecological Feminism and Ecosystem Ecology' (1991) 6(1) *Hypatia* 179.

mainly view the environment in terms of its material contributions for human betterment? How far do states, through soft law and hard law instruments, acknowledge the differences between cultures, communities, and locations and how does this influence their perception of the environment and, consequently, IEL? Has the environment's utility for securing sustainable development become a central justification for protecting the environment? Building on this, has the introduction of new paradigms, such as sustainable development and the green economy, affected the way in which states view the environment, with concomitant effects on IEL?

In light of the above, this thesis examines the extent to which the association between environment and security has altered the basis on which states and NSAs that make up the international community seek to protect the environment, and in turn, what this suggests about their perception of the environment.

## 2. THE THEORETICAL FOUNDATION, METHODOLOGICAL CONSIDERATIONS, AND DOCUMENTARY CONSIDERATIONS

While a full account of the theoretical basis, research questions, and methods are provided for in Chapter 3 and 4, by way of an introduction to the research, the theoretical foundation, documentary considerations, and the approach taken to answer the research question, are outlined here.

### 2.1 Theory

This thesis draws on ecofeminist theory to develop an analytical framework through which a number of international legal documents and associated preparatory reports will be read. Ecofeminist theories critique the dominant social paradigms upon which western culture and the international community are built.<sup>62</sup> These paradigms are made up of institutions, habits, and values that together provide social lenses through which groups and individuals interpret the social world. Ecofeminists argue that in western society, the dominant social paradigm includes the belief that the primary goal for governments, after national defence, is to create conditions that increase commodity production and satisfy the materialist needs of citizens.<sup>63</sup> Ecofeminists argue that inherent in this goal is the belief that society's ills can be solved by technology and that 'economic growth' is a measure of

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<sup>62</sup> Dennis C Pirages and Paul R. Ehrlich, *Ark II: Social Response to Environmental Imperatives* (WH Freeman & Co 1974), 43 and 69; Bill Devall, 'The Deep Ecology Movement' (1980) 20(2) *Nat Resources J* 299, 300; Lester W Milbrath, 'Culture and the Environment in the United States' (1985) 9(2) *Environmental Management* 161, 163; Maria Mies and Vandana Shiva, *Ecofeminism* (Kali for Women; London: Zed Books 1993), 251; Shiva, *Staying Alive*, xv; World Women's Congress for a Healthy Planet, 'Womens Action Agenda 21' (Miami, 1991); Annie Rochette, 'Stop the Rape of the World: An Ecofeminist Critique of Sustainable Development' (2002) 51 *UNBrunswick LJ* 145, 152.

<sup>63</sup> Annie Rochette, 'Rape of the World: An Ecofeminist Critique of International Environmental Law' (Master of Laws (LLM), University of British Columbia 1998), 22.



progress.<sup>64</sup> These paradigms shape the ways in which states, international institutions, and NSAs respond to global concerns, such as environment and security.

Ecofeminism offers an approach that recognises the intersecting oppressions, silences, and exclusions felt by some states and NSAs in the creation, development, and implementation of IEL. This is because it starts from the position that the domination of nonhuman nature and other marginalised communities is mutually supportive.<sup>65</sup> Therefore, incorporating ecofeminism as the theoretical framework used in this research means that the project can make visible the beliefs, values, and assumptions that inform a state's perceptions of the environment and how these may have altered with the convergence of environment/security discourse and IEL.

Drawing from values which ecofeminism considers integral to an ecofeminist environmental ethic, this thesis develops an analytical framework through which the texts of the preparatory reports and adopted instruments will be read. In doing so, the thesis examines the extent to which a state's *perception* of the environment may have altered in line with the associations between environment and security. The value and benefits of drawing on ecofeminist theory in this thesis will be developed in Chapter 3.

## 2.2 Methodology

The project uses a reflexive version of content analysis that is informed by ecofeminist theory. Ecofeminists start from the basis that the social location of the knower is central to understanding epistemological claims.<sup>66</sup> Consequently, drawing on ecofeminist theory enables this research to develop a methodology that interrogates the beliefs, values, and attitudes of the international community in relation to the environment that recognises community-based experiences, as well as the situations in which those experiences are created.<sup>67</sup>

This research draws on the ecofeminist ethic articulated by ecofeminist philosopher Karen Warren to develop the ecofeminist analytical framework. I argue that these boundary conditions are suited to creating an analytical framework in order to examine the beliefs, values and attitudes that inform the justifications for environmental protection and the perception of the environment itself. In particular, I draw on Warren's 'inclusive' and 'contextual' boundary conditions because they have relevance in examining who participates

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<sup>64</sup> Devall, 'The Deep Ecology Movement', 300.

<sup>65</sup> Val Plumwood, *Feminism and the Mastery of Nature* (Routledge 1993), 1-2; Karen J. Warren, *Ecofeminist Philosophy: A Western Perspective on What it is and Why it Matters* (Rowman & Littlefield 2000), 62.

<sup>66</sup> Plumwood, *Feminism and the Mastery of Nature*, 105-119; Plumwood, *Environmental Culture*, 148; Josephine Donovan, 'Participatory Epistemology, Sympathy, and Animal Ethics' in Carol J. Adams and Lori Gruen (eds), *Ecofeminism: Feminist Intersections with other Animals and the Earth* (Bloomsbury Academic 2014), 75.

<sup>67</sup> Lori Gruen, 'Toward an Ecofeminist Moral Epistemology' in Karen J. Warren and Barbara Wells-Howe (eds), *Ecological Feminism* (Routledge 1994), 126.

in the creation of IEL, and the types of knowledge and experiences valued. Her ‘structurally plural’ boundary condition is relevant when examining the types of interests, voices, and views of the environment portrayed in the preparatory documents and adopted outcome texts, and the justifications for environmental protection. Finally, I include the ‘open’ condition, which although not part of her ethic, recognises that ecofeminism is a political and activist movement.<sup>68</sup>

These four boundary conditions can be used as interconnecting lenses through which to examine IEL. I describe how the boundary conditions are used to guide my critical analysis of the texts in Chapter 4. By using these interconnected lenses, I connect the aspirations of an ecofeminist ethic to an examination of the beliefs, values and attitudes of the international community in relation to the environment. Therefore, the analytical framework enables an original examination of the extent to which the securitisation of the environment may have altered the perceptions of the environment and the justifications used to protect it in international law.

### 2.3 Method and Terminology

Preparatory reports and outcome texts from eight different environmental regimes negotiated and agreed under the auspices of the United Nations are examined. I decided to analyse such a breadth of documents in order to draw out interrelationships and commonalities that may exist in IEL. Chapter 4 explains the rationale for data selection, strategy of inquiry, method choice, procedure, and analysis.<sup>69</sup> Therefore, the following paragraphs give a brief overview of the method and introduce common terms used to refer to the different types of documents examined in this research.

‘Outcome texts’ or ‘outcome documents’ refer to the document adopted by states at the culmination of the negotiation period. I use the term ‘environmental regime’ to refer to a collection of hard or soft documents that are associated with a specific environmental agreement. I justify my decision to analyse both ‘hard’ and ‘soft’ law documents in section 3 of this chapter. For example, the climate change regime encompasses the negotiating documents for both the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and the 1997 Kyoto Protocol to the UNFCCC,<sup>70</sup> as well as the reports produced in later working groups and their related COP decisions. The regimes considered in this thesis include biological diversity, tropical timber, fisheries, desertification, climate change, ozone layer, transboundary watercourses, and sustainable development.

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<sup>68</sup> Catriona Sandilands, *The Good-Natured Feminist: Ecofeminism and the Quest for Democracy* (University of Minnesota Press 1999), 144.

<sup>69</sup> Below, Chapter 4, Section 3.

<sup>70</sup> *Protocol to the United Nations Framework Convention on Climate Change* (Kyoto) (adopted 11 December 1997, entered into force 6 February 2005) 37 ILM 32 (1998).

I use the term ‘environmental area’ to refer to the broad issue that the environmental regime seeks to address. For example, the 1983 International Tropical Timber Agreement (1983 ITTA)<sup>71</sup> and the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention)<sup>72</sup> both concern the broader environmental area of ‘natural resources.’ This thesis draws environmental regimes from four different areas: Natural resources, climate change, ozone depletion, desertification, and the guiding principles of IEL that seek to recognise the balance between development and international responses to environmental problems. I introduce these regimes below, and in more detail in Chapter 4. Therefore, this thesis examines regimes that seek to protect the environment (such as biodiversity) and also seek to respond to broad environmental problems (such as climate change). Analysing a cross-sector of environmental concerns means that the project addresses the criticism that IEL scholarship ‘siloes’ different topics.<sup>73</sup>

This research groups the development of IEL into four time periods: Those documents developed prior to the Rio Conference (1980-1987), documents developed during the 1992 Rio Conference (1987-1992), those developed between the end of the conference and 2000, and those documents developed after 2001 and before 2012. Owing to the importance of the Stockholm Declaration on the subsequent development of IEL, I have included it in the analysis.<sup>74</sup> Furthermore, some environmental regimes cross between different periods, and in those cases, I use the date in which the outcome document was developed to determine which time period that regime should be associated with. A notable example of this is the development of the 1992 Biological Diversity Convention (Biodiversity Convention), whose development spans both the pre-Rio and Rio period. While not all documents or time-periods will fit my hypothesis, I hope to provide an explanatory framework that can identify the representation of the environment and basis for which the international community focuses upon the environmental protection at different points in time during the evolution of IEL.

I undertake a content analysis of the preparatory documents and adopted outcome texts. This offers a flexible method in order to better understand the way in which environment/security connections may alter the justifications for environmental protection

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<sup>71</sup> *International Tropical Timber Agreement* (Geneva) (adopted 18 November 1983, entered into force 1 April 1985) 1393 UNTS 119 (1985).

<sup>72</sup> *Convention on the Law of the Non-Navigational Uses of International Watercourses* (New York) (adopted 21 May 1997, entered into force 17 August 2014) 36 ILM 703 (1997).

<sup>73</sup> Elizabeth Fisher and others, ‘Maturity and Methodology: Starting a Debate About Environmental Law’ (2009) 21(2) *JEL* 213, 241.

<sup>74</sup> Karin Mickelson, ‘South, North, International Environmental Law, and International Environmental Lawyers’ (2000) 11 *YbInt’l EnvL* 52, 62; also, Jutta Brunnée, ‘The Stockholm Declaration and the Structure and Processes of International Environmental Law’ in Aldo Chircop and Ted McDorman (eds), *The Future of Ocean Regime Building: Essays in Tribute to Douglas M Johnston* (Available at SSRN: <http://ssrn.com/abstract=1437707>, Kluwer Law 2008).

and the perception of the environment itself. Examining the preparatory documents as well as the adopted outcome texts means that I can examine the beliefs, values and attitudes of the international community through an ecofeminist lens and therefore gain a more holistic understanding of the extent to which connections with other international concerns, such as the economy, development, and security may affect the perceptions of the environment.

I adopt an iterative process to analysing the documents through the ecofeminist framework. This approach allowed the data to be coded conceptually. I read the documents several times over, which meant I could identify specific categories that emerged in the content of the data. In doing so, I identified common categories such as participation, the incorporation of non-environmental considerations, and the perception of the environment itself emerging from the data. My initial analysis suggested that these three categories could enable me to examine the ways in which the securitisation of the environment may have altered IEL while also engaging with different elements within the documents themselves. Therefore, they have become the foci of the three analytical chapters included in this research project.

This section has given an overview to the theoretical foundations, methodology, and method developed in this project. I argue that ecofeminism offers the best theoretical framework through which to examine the underlying beliefs, values, and attitudes that inform the justifications for protecting the environment and the perception of the environment itself, and the extent to which these may be altered by the securitisation of the environment. The methodology of adopting a reflexive and iterative content analysis to examine the texts of preparatory and adopted outcome documents offers a number of benefits because it allows the categorisations of analysis to emerge from the analysis itself, while also allowing the interconnections between issue areas, regimes, and areas to be revealed during the analysis. In the following section, I defend my choice to include both 'hard' and 'soft' sources of law.

## 2.4 Documentary Considerations: The use of 'Hard' and 'Soft' Sources of IEL

IEL is made up from both 'hard' and 'soft' sources of law. 'Hard' sources of law are conventionally derived from the 1969 Vienna Convention on the Law of Treaties and, in the context of IEL, usually take the form of Conventions and Protocols.<sup>75</sup> 'Soft' sources of law usually take the form of non-legally binding documents that exert some normative effect on the actions of states and other international actors, such as intergovernmental organisations, institutions, and non-governmental organisations.<sup>76</sup> The term 'soft law' is often used as a

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<sup>75</sup> Patricia W Birnie and Alan E. Boyle, *International Law and the Environment* (2nd edn, Oxford University Press 2002), 13-15.

<sup>76</sup> See, Christine M Chinkin, 'Normative Development in the International Legal System' in Dinah Shelton (ed), *Commitment and Compliance: the Role of Non-Binding Norms in the International Legal System* (Oxford University Press 2000), 25-31; Jürgen Friedrich, *International Environmental "Soft Law": The Functions and*

synonym for normative statements that are included in non-legally binding instruments.<sup>77</sup> While there are many different interpretations and debates concerning the meaning of soft law, it is generally agreed that soft law 'begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision and delegation'.<sup>78</sup> In the context of IEL, the boundaries between 'hard' and 'soft' law are becoming increasingly permeable, and the reliance on 'soft' instruments has acted as a catalyst for significant academic debate.<sup>79</sup>

The debates concerning the role of 'soft law' or normative statements in international law generally fall into two distinct camps. Some writers evaluate hard and soft law in binary terms depending on their binding or non-binding nature.<sup>80</sup> In particular, writers starting from a positivist epistemological stance dismiss soft law because they argue that law is 'either hard or not law at all'.<sup>81</sup> For example, Klabbbers argues that law cannot be 'more or less binding', and therefore, the concept of 'soft law' is logically flawed.<sup>82</sup> Raustiala argues that 'there is no such thing as 'soft law''. The concept of soft law purports to identify something between 'binding law and no law'.<sup>83</sup> Writing earlier, Weil argues that the use of nonbinding normative statements may 'destabilise the international normative system and turn it into an instrument that can no longer serve its purpose'.<sup>84</sup> They argue that the traditional conception of law as binary is capable of performing many of the functions ascribed to soft law. These criticisms of soft law have been challenged for proposing crude distinctions that

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*Limits of Nonbinding Instruments in International Environmental Governance and Law* (Springer Berlin 2013), chapter 1.

<sup>77</sup> Dinah Shelton, 'Soft Law' in David J Armstrong and Jutta Brunnee (eds), *Routledge Handbook of International Law* (Routledge 2009), 69.

<sup>78</sup> Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 53(3) *Int Organ* 421, 422; Oscar Schachter, 'The Twilight Existence of Nonbinding International Agreements' (1977) 71(2) *AJIL* 296, 297; Shelton, 'Soft Law', 69..

<sup>79</sup> There are numerous articles outlining the debates concerning the theoretical and practical aspects of soft law in international law. For those who argue that there exists a 'normative continuum', see Schachter, 'The Twilight Existence of Nonbinding International Agreements'; R. R. Baxter, 'International Law in "Her Infinite Variety"' (1980) 29(4) *ICLQ* 549; Christine M Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38(4) *ICLQ* 850; Alan E. Boyle, 'Some Reflections on the Relationship of Treaties and Soft Law' (1999) 48(4) *ICLQ* 901; Jaye Ellis, 'Shades of Grey: Soft Law and the Validity of Public International Law' (2012) 25(02) *LJIL* 313; for critics of the need for soft law, and challenge its desirability, see Prosper Weil, 'Towards Relative Normativity in International Law?' (1983) 77(3) *AJIL* 413; Jan Klabbbers, 'The Undesirability of Soft Law' (1998) 67(4) *Nord J Intl L* 381; Hartmut Hillgenberg, 'A Fresh Look at Soft Law' (1999) 10(3) *EJIL* 499; Jean d'Aspremont, 'Softness in International Law: A Self-Serving Quest for New Legal Materials' (2008) 19(5) *EJIL* 1075;.

<sup>80</sup> Gregory C Shaffer and Mark A Pollack, 'Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance' (2010) 94(3) *Minn L Rev* 706, 715.

<sup>81</sup> d'Aspremont, 'Softness in International Law', 1076; see e.g. Weil, 'Towards Relative Normativity'.

<sup>82</sup> Jan Klabbbers, 'The Redundancy of Soft Law' (1996) 65(2) *Nord J Intl L* 167, 181; d'Aspremont, 'Softness in International Law', 1078.

<sup>83</sup> Kal Raustiala, 'Form and Substance in International Agreements' (2005) 99(3) *AJIL* 581, 586.

<sup>84</sup> Weil, 'Towards Relative Normativity', 413.

do not reflect the ‘complex social reality of soft law’ nor do justice to the spectrum of soft law instruments.<sup>85</sup>

However, other writers evaluate the role of soft law based upon characteristics that vary along a continuum.<sup>86</sup> In particular, from an *ex ante* negotiation perspective, states have choices which can make agreements more or less binding along the dimensions outlined by Abbott and Snidal, while also recognising that such agreements have normative content.<sup>87</sup> Writers such as Lichtenstein, Brunnée, and Toope propose that soft law offers an opportunity to achieve ‘functional cooperation amongst states to reach international goals’.<sup>88</sup> In doing so, soft law can be understood as a manifestation of, and mechanism for various forms of socialisation between states that include persuasion, norm diffusion, and acculturation.<sup>89</sup> Thus, soft law can informally establish acceptable norms of behaviour based on shared understandings that may emerge as legal norms as they influence the actions of states and NSAs.<sup>90</sup> In the context of IEL, this understanding of the role of soft law is appropriate because it reflects the evidence of the formation of customary law, authorises action by international organisations, and guides the interpretation of treaties.<sup>91</sup>

Therefore, in IEL, soft law often performs a powerful functional role.<sup>92</sup> It can act as a half-way house to facilitate compromise between parties and develop ‘mutually beneficial cooperation, between actors with different interests and values’.<sup>93</sup> It can allow flexibility for states to adapt commitments to their circumstances.<sup>94</sup> It may allow compromise between more powerful states and those with less power.<sup>95</sup> It can facilitate consensus between states by reducing contracting costs and limiting sovereignty costs.<sup>96</sup> It can respond to uncertainty

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<sup>85</sup> Matthias Goldmann, ‘We Need to Cut Off the Head of the King: Past, Present, and Future Approaches to International Soft Law’ (2012) 25(2) LJIL 335, 351.

<sup>86</sup> Shaffer and Pollack, ‘Hard vs. Soft Law’, 715; Dinah Shelton, ‘Commentary and Conclusions’ in Dinah Shelton (ed), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford University Press 2000), 292.

<sup>87</sup> Harro van Asselt, *The Fragmentation of Global Climate Governance: Consequences and Management of Regime Interactions* (Edward Elgar 2014), 49; Shaffer and Pollack, ‘Hard vs. Soft Law’, 715-715.

<sup>88</sup> Shelton, ‘Soft Law’, 69; Cynthia Crawford Lichtenstein, ‘Hard Law v. Soft Law: Unnecessary Dichotomy?’ (2001) 35(4) Int’l Law 1433, 1433.

<sup>89</sup> See the discussion in Lichtenstein, ‘Hard Law v. Soft Law’.

<sup>90</sup> Jutta Brunnée and Stephen J. Toope, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge University Press 2010), 129-130; see also, Martha Finnemore and Stephen J. Toope, ‘Alternatives to “Legalization”: Richer Views of Law and Politics’ (2001) 55(3) Int Organ 743; Sands, *Principles (2nd edn)*, 124; Stephen J. Toope, ‘Formality and Informality’ in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2007).

<sup>91</sup> Goldmann, ‘We Need to Cut Off the Head of the King’, 336.

<sup>92</sup> *Ibid.*, 337.

<sup>93</sup> Alan E. Boyle, ‘Soft Law in International Law-Making’ in Malcolm D. Evans (ed), *International Law (4 edn)*, Oxford University Press 2014), 121; Abbott and Snidal, ‘Hard and Soft Law’, 423.

<sup>94</sup> Abbott and Snidal, ‘Hard and Soft Law’, 445.

<sup>95</sup> *Ibid.*, 447.

<sup>96</sup> *Ibid.*, 434 and 439-440.

and adapt to the changing situation.<sup>97</sup> It can offer an effective approach to address uncertainty in environmental concerns.<sup>98</sup> In most cases, the statutes of intergovernmental organisations may not invest organs of their institutions with the right to adopt legally binding decisions.<sup>99</sup> Finally, it enables the participation by NSAs, both in the creation and subsequent evolution of norms, and in the implementation of any commitments contained within the soft-law instrument.<sup>100</sup>

Soft law in IEL can be categorised as primary and secondary instruments.<sup>101</sup> Shelton describes 'primary soft law' as normative texts that are not adopted in treaty form and are 'addressed to the international community as a whole'.<sup>102</sup> These instruments may declare new norms, are often adopted as a precursor to the adoption of a later binding agreement, or may reaffirm and further elaborate norms set forth in earlier binding or non-binding texts.<sup>103</sup> In IEL, the 1972 Stockholm Declaration, 1992 Rio Declaration, and UNGA Resolution 55/2 Millennium Declaration (2000) (Millennium Declaration)<sup>104</sup> may be considered as examples of primary declarative texts. They include norms and principles that have exerted influence on the interpretation, application and development of other rules of law.<sup>105</sup>

Specific environmental regimes also rely on the use of 'secondary' soft law instruments to engage in normative and institutional development.<sup>106</sup> This approach is prevalent in the climate change regime, biodiversity regime, and the earlier ozone layer regimes, whose framework conventions may be seen as a 'living' treaty that can generate secondary soft law in the form of decisions.<sup>107</sup> The institutions established by these framework conventions derive jurisdiction and mandate from the convention to create secondary soft law to guide the elaboration, interpretation, and application of the principles and obligations contained

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<sup>97</sup> Ibid, 442.

<sup>98</sup> Alexandre Kiss and Dinah Shelton, 'Guide to International Environmental Law' (GWU Law School Public Law Research Paper No 347; Alexandre Kiss, Dinah Shelton, Guide to International Environmental Law, Martinus Nijhoff Publishers, 2007) <<http://ssrn.com/abstract=1012092>> accessed 20 June 2015, 10.

<sup>99</sup> Ibid, 9.

<sup>100</sup> E.g. Margaret E. Keck and Kathryn Sikkink, 'Transnational Advocacy Networks in International and Regional Politics' (1999) 51(159) ISSJ 89; Kiss and Shelton, 'Guide to International Environmental Law', 10.

<sup>101</sup> Shelton, 'Soft Law', 70.

<sup>102</sup> Ibid, 70.

<sup>103</sup> Ibid, 70; see also Shelton, 'Commentary and Conclusions', 449-452; Sumudu Atapattu, 'International Environmental Law and Soft Law: A New Direction or a Contradiction?' in Cecilia M. Bailliet (ed), *Non-State Actors, Soft Law, and Protective Regimes: From the Margins* (Cambridge University Press 2012), 205.

<sup>104</sup> UNGA Resolution 55/2 Millennium Declaration (18 September 2000) UN Doc A/RES/55/2.

<sup>105</sup> Alan E. Boyle, 'Further Development of the Law of the Sea Convention: Mechanisms For Change' (2005) 54(03) ICLQ 563, 572-574; Boyle, 'Soft Law in International Law-Making', 128; see also Campbell McLachlan, 'The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention' (2005) 54(2) ICLQ 279.

<sup>106</sup> Shelton, 'Soft Law', 70.

<sup>107</sup> Chinkin, 'Normative Development', 27.

in the convention.<sup>108</sup> Subsequent decisions by the COP engage in normative and institutional development of the regimes, and often have significant operational impact.<sup>109</sup> These decisions contain many characteristics that make norms binding through precise language and by influencing and conditioning state behaviour.<sup>110</sup> The use of these forms of soft law reflect the interplay between traditionally 'hard' instruments, such as framework conventions, and the use of more flexible and 'softer' instruments to evolve these regimes.<sup>111</sup>

Because soft law has played an important role in the development of legal norms in IEL, this thesis examines examples of both primary and secondary soft law instruments. While recognising 'fuzziness' of soft law and the need for legal certainty,<sup>112</sup> to exclude such instruments from the analysis would mean omitting instruments that can reveal the underlying assumptions that inform the perception of the environment by different actors in the international sphere. As states consciously choose to use soft law to progress certain environmental regimes and develop environmental norms, analysing these documents can give a broader insight into the different values, beliefs, and assumptions that inform states' and NSAs' perception of the environment during different periods of the evolution of IEL. The important role that 'soft' law plays in the protection of the environment has informed the selection and reading of the environmental law documents investigated in this thesis.

## 2.5 Introducing the Environmental Regimes

I analysed the preparatory documents and outcome texts from eight environmental regimes. The breadth of this body of documentation furnishes this research with a unique insight into the evolution of IEL. It meant I could identify similarities and differences in states' and NSAs' perceptions of the environment, and the extent to which the securitisation of the environment may have altered these perceptions, and the justifications used for environmental protection.

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<sup>108</sup> Ibid, 27; Boyle, 'Further Development of the Law of the Sea Convention', 564 fn 8; Annecoos Wiersema, 'Conferences of the Parties to Multilateral Environmental Agreements: The New International Law-Makers?' (2009) 103 Proceedings of the Annual Meeting (American Society of International Law) 74, 74.

<sup>109</sup> Asselt, *The Fragmentation of Global Climate Governance*, 74; Duncan French and Lavanya Rajamani, 'Climate Change and International Environmental Law: Musings on a Journey to Somewhere' (2013) 25(3) JEL 437, 444; Decision 1/CP.1 'The Berlin Mandate: Review of the Adequacy of Article 4, Paragraph 2(a) and (b), of the Convention, including Proposals Related to a Protocol and Decisions on Follow-Up' in Report of the Conference of the Parties on its First Session, held at Berlin from 28 March to 7 April 1995, Addendum, Part Two: Action Taken by Conference of the Parties at its First Session (6 June 1995) FCCC/CP/1995/7/Add.1 (7 April 1995); Decision XIX/12 'Preventing Illegal Trade in Ozone-depleting Substances' in Report of the Nineteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (21 December 2007) UNEP/OzL.Pro.19/7 (21 September 2007). For example, in the ozone layer regime the Parties adopted a Decision to address the issue of illegal trade in ozone-depleting substances which was not addressed sufficiently in the Protocol.

<sup>110</sup> French and Rajamani, 'Climate Change and International Environmental Law', 445-446.

<sup>111</sup> See the discussion in, Baxter, 'International Law'; Shelton, 'Soft Law', 70;.

<sup>112</sup> Farhana Yamin and Joanna Depledge, *The International Climate Change Regime* (Cambridge University Press 2004), 8-9.



The ozone layer regime, comprising the 1985 Vienna Convention on the Protection of the Ozone Layer (Ozone Layer Convention)<sup>113</sup> and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), is included in this thesis because it provides one of the most effective and sophisticated models of international regulation and supervision of an environmental concern.<sup>114</sup> It represents an early example of a global response to the destruction of the global commons, and, as such, may give insight into early representations of the environment by the international community and the basis for which it is protected. It acknowledges the different needs and interests between developed and developing states in order to ensure universal participation.<sup>115</sup> It recognises the close association between the environment, economy, and development concerns, and includes novel ways to reduce the production of ozone-depleting substances supporting these other goals. Finally, the Ozone Layer Convention and the Montreal Protocol represent the only United Nations environmental regime that has achieved universal ratification.

The climate change regime comprises the UNFCCC and Kyoto Protocol, as well as subsequent COP decisions that have developed the regime.<sup>116</sup> Climate change has been characterised as a 'common concern of mankind'<sup>117</sup> and continues to be one of the most complex and intractable matters facing the world to date. The UNFCCC and Kyoto Protocol seek to regulate emissions of substances that contribute to global warming. In doing so, these two agreements touch upon a number of intersecting areas, such as economic and social development, science and technology, and national security. As discussed previously, the use of COP decisions in pursuit of environmental regulation reflects the enmeshing of soft and hard laws which is a distinctive characteristic of IEL.<sup>118</sup> They have significant operational effect and legal influence on the evolution of the regime.<sup>119</sup> For these reasons, the inclusion of the climate change regime is necessary to reflect contemporary IEL making.

The desertification regime comprises the 1994 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification,

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<sup>113</sup> *Convention on the Protection of the Ozone Layer* (Vienna) (adopted 22 March 1985, entered into force 22 September 1988) 1513 UNTS 323 (1988); 26 ILM 1529 (1987)

<sup>114</sup> Birnie and Boyle, *International law and the environment*, 523.

<sup>115</sup> Diane M Doolittle, 'Underestimating Ozone Depletion: The Meandering Road to the Montreal Protocol and Beyond' (1989) 16 *Ecology LQ* 407, 425; Elizabeth R DeSombre, 'The Experience of the Montreal Protocol: Particularly Remarkable, and Remarkably Particular' (2000) 19 *UCLA J Envtl L and Pol'y* 49, 51.

<sup>116</sup> 'Report of the *Ad Hoc* Working Group on Long-term Cooperative Action under the Convention on the First Part of its Fifteenth Session, held in Bonn from 15 to 24 May 2012' (10 July 2012) FCCC/AWGLCA/2012/3; Decision 2/CP.18 'Advancing the Durban Platform' in Report of the Conference of the Parties on its Eighteenth Session, Held in Doha from 26 November to 8 December 2012, Addendum, Part Two: Action Taken by the Conference of the Parties at its Eighteen Session (28 February 2013) FCCC/CP/2012/8/Add.1 (8 December 2012).

<sup>117</sup> UNGA Resolution 42/53 Protection of the Climate for Present and Future Generations of Mankind (6 December 1988) UN Doc A/RES/43/53.

<sup>118</sup> French and Rajamani, 'Climate Change and International Environmental Law', 445.

<sup>119</sup> *Ibid*, 444-445.

particularly in Africa (Desertification Convention)<sup>120</sup> and its four regional annexes. The convention integrates a holistic, bottom-up approach to preventing desertification at the local, national, and regional levels. It bases many of its objectives on attaining sustainable development, while also establishing differing obligations for affected developing country parties and developed country parties.<sup>121</sup> By doing so, the convention takes into account the social and economic development needs of developing countries while also addressing the serious environmental problem of desertification. This convention has been included in this project because it adopts an integrated response to desertification that takes into account both sustainable development and desertification.

The biodiversity regime encompasses all aspects of biodiversity, including biotechnology, biological resources and the role of biodiversity in development.<sup>122</sup> It includes the Biodiversity Convention, 2000 Cartagena Protocol on Biosafety (Cartagena Protocol), and the 2010 Nagoya Protocol on Access and Benefit Sharing (Nagoya Protocol).<sup>123</sup> These three legally binding MEAs are particularly relevant for this research because they address the interrelated issues of conservation of transboundary public goods in the form of biodiversity. They further aim to address and regulate the economic value of the nonhuman environment in the form of biotechnology and access to genetic resources. As this research examines the purpose for which the international community seeks to protect the environment, and the extent to which this has evolved over the course of the last 40 years or so, having an environmental system of law that has adopted legally binding documents at different stages of this time can give a certain insight into the representations of the environment and the ways in which other topics of international consideration have been included.

The International Tropical Timber Agreements (1983, 1994, 2006 ITTA)<sup>124</sup> were developed and adopted under the purview of UNCTAD. They are the first commodity

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<sup>120</sup> *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (Paris) (adopted 17 June 1994, entered into force 26 December 1996) 1954 UNTS 3; 33 ILM 1328 (1994).

<sup>121</sup> Pamela S. Chasek, 'The Convention to Combat Desertification: Lessons Learned for Sustainable Development' (1997) 6(2) JED 147, 148.

<sup>122</sup> Daniel Bodansky, 'International Law and the Protection of Biological Diversity' (1995) 28(4) Vand J Transnat'l L 623, 630.

<sup>123</sup> *Cartagena Protocol on Biosafety to the Convention on Biological Diversity* (Montreal) (adopted 29 January 2000, entered into force on 11 September 2003) 2226 UNTS 208; 39 ILM 1027 (2000); *Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity* (Nagoya) (adopted 29 October 2010, entered into force 12 October 2014) UNEP/CBD/COP/DEC/X/1 (29 October 2010).

<sup>124</sup> *International Tropical Timber Agreement* (Geneva) (adopted 16 January 1994, entered into force 1 January 1997) 1955 UNTS 143 (1997); 33 ILM 1016 (1994); *International Tropical Timber Agreement* (Geneva) (adopted 27 January 2006, entered into force 7 December 2011) UN Doc.TD/TIMBER.3/12.

agreements to integrate the conservation and sustainable usage of natural resources.<sup>125</sup> Therefore, the negotiations and adopted texts of the three ITTAs can give insight into the representation of 'high value' natural resources by the international community. They indicate the extent to which environmental considerations have been diffused across other sectors of the UN system.

The 1995 UN Fish Stocks Agreement, formally known as the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stock,<sup>126</sup> has relevance for this thesis because it addresses the way in which 'high value' transboundary natural resources are to be conserved. These resources are found in the high seas, which have traditionally been regarded as the global commons, and therefore open to all.<sup>127</sup> This agreement and its applicability to both the high seas and the exclusive economic zones of coastal states not only reflects a further qualification of the freedom to fish on the high seas, but also an obligation for the international community to cooperate in order to undertake conservation and sustainable management of these resources.

Unlike previous environmental law, the 1997 UN Watercourses Convention was drafted through the International Law Commission. It reflects a codification of customary international law governing this area of jurisprudence.<sup>128</sup> Therefore, this convention has relevance because it is an example of a legally binding outcome text developed through the evolution of customary international law. Like many other environmental outcome texts, it is a framework convention that provides states with a structure of rules and principles that may be adjusted to suit particular watercourses.<sup>129</sup>

The final group of environmental documents contains those relating to the elaboration of sustainable development in IEL. While soft law in nature, these documents contain the principles and concepts that have guided the development and evolution of IEL.<sup>130</sup> They

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<sup>125</sup> Malcolm Forster, 'Tropical Timber Agreement in Force' (1985) 14(2-3) *EnvPol'y & L* 50, 50; Christopher Rose, 'International Tropical Timber Agreement' (1987) 14(1) *Environmental Conservation* 79, 79.

<sup>126</sup> *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (adopted 4 August 1995, entered into force 11 December 2001) 2167 UNTS 3; 34 ILM 1547 (1995).

<sup>127</sup> See *Award between the United States and the United Kingdom, Relating to the Rights of Jurisdiction of the United States in the Bering's Sea and the Preservation of Fur Seals* (Decision) (15 August 1893) XXVIII RIAA 263; J Stanley Brown, 'Fur Seals and the Bering Sea Arbitration' (1894) 26(1) *Journal of the American Geographical Society of New York* 326.

<sup>128</sup> UNGA Resolution 2669 (XXV) *Progressive Development and Codification of the Rules of International Law Relating to International Watercourses* (8 December 1970) UN Doc A/RES/2669(XXV).

<sup>129</sup> David J. Lazerwitz, 'The Flow of International Water Law: The International Law Commission's Law of the Non-Navigational Uses of International Watercourses' (1993) 1(1) *Ind J Global Legal Stud* 247, 248.

<sup>130</sup> *Stockholm Action Plan of the Human Environment* (16 June 1972) UN Doc A/CONF.48/14/REV.1 (1973); 11 I.L.M. 1421 (1972); *Stockholm Declaration 1972; Agenda 21: Programme of Action for Sustainable Development*

trace the evolution of the concept of sustainable development and its central position in the growth of IEL in the era following the 1992 Rio Conference. They also trace the evolution of principles such as inter-generational equity and common, but differentiated, responsibilities as the basis for the international community's response to environmental concerns. While these principles are found in some 'hard law' outcome texts, they inform a number of non-legally binding documents developed by the international community to guide its response to environmental concerns and development considerations.

Analysing this range of environmental regulation ensures that this research can identify similarities and differences in states' and NSAs' perception of the environment, and the extent to which this may have altered with the securitisation of the environment. Further, it can reveal underlying beliefs, values, and attitudes that inform the justifications for the inclusion of non-environmental considerations, such as the economy, development, science, technology, and security, and if these have also been altered with the securitisation of the environment. The breadth of the documentation will furnish this study with a unique insight into the development of IEL, and the extent to which the basis upon which the international community seeks to protect the environment may have altered.

### 3. RESEARCH OVERVIEW

The thesis comprises an introductory chapter, one critical review of the literature, a chapter describing the research's theoretical foundation, a methodology chapter, three chapters conducting an ecofeminist reading of the preparatory texts and outcome documents, and a concluding chapter. In the following section, I will give a brief overview of each chapter, including its purpose and its relevance to the thesis and the questions it seeks to answer.

Chapter 2 critiques the development of IEL, and the evolving associations between the environment and international peace and security. It reviews the co-evolution of IEL and international security and examines the collective responses to environmental degradation by the international community and their conceptual underpinnings. It also maps the evolution of the international peace and security discourse from the post-Cold War period. The purpose of this chapter is to highlight the widening and deepening of the security discourse and to show that this evolution has similarities to the evolution of IEL. It reveals

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(14 June 1992) UN Doc A/Conf.151/26 (1992); Rio Declaration 1992; UNGA Resolution 54/254 Millennium Summit of the United Nations (15 March 2000) UN Doc A/RES/54/254; *Plan of Implementation of the World Summit on Sustainable Development* (4 September 2002) UN Doc A/CONF.199/20 Resolution II (Annex); Johannesburg Declaration on Sustainable Development (4 September 2002) UN Doc A/CONF.199/20 Resolution I (Annex); UNGA Resolution 60/1 2005 World Summit Outcome (24 October 2005) UN Doc A/RES/60/1; UNGA Resolution 66/288 UNCSD Outcome Document: The Future We Want (11 September 2012) UN Doc A/RES/66/288.

that over the course of the time-period in question, a link has been established between the environment and security.

Chapters 3 and 4 introduce ecofeminist theory as the critical theory through which I read the preparatory documents and outcome texts and describes the methodology and research method used in this project. The purpose of Chapter 3 is twofold. It first introduces three alternative theoretical approaches that could also examine the securitisation of the environment and the evolving perceptions of the environment and explains why they are less suited to this research agenda. These approaches include international feminisms (feminist critiques of international law, international relations, and security studies), deep ecology, and social ecology. Second, it introduces ecofeminism and explains why it is the most relevant theory for this research agenda. Chapter 4 explains how the analytical framework developed for this project fits within, and is inspired by, ecofeminist literature. It describes the strategy of enquiry and method of analysis that draws on, and is inspired by, ecofeminist methods.

Chapter 5 examines who participates in the development of IEL and where the participation by NSAs is supported. In doing so, it seeks to reveal any tensions between the principle of participation included in sustainable development, and the exclusionary practices in some environmental areas that are closely connected to the environment and national interests. To guide this analysis, the chapter seeks to answer two interrelated questions: (1) Who participates in the creation, development, and subsequent implementation of IEL? (2) To what extent has the participation by NSAs expanded in the creation and development of IEL in the international sphere?

The purpose for answering these questions is threefold. First, knowing who shapes IEL, and the types of issues where NSA participation is valued is the first step in examining the extent to which the securitisation of the environment may have altered the basis on which the international community seeks to protect the environment. Second, knowing who shapes the content of IEL can help reveal the assumptions, values, and beliefs that inform the justifications for the protection of the environment. Third, examining where participation is excluded can identify those environmental areas and non-environmental considerations that may be closely associated with national interests. The conclusions from this final point inform the direction and analysis of the following two chapters.

Chapter 6 examines the extent to which the consolidation of sustainable development as the dominant paradigm in IEL, and its integration of non-environmental considerations and the justifications for their integration, has altered the basis on which the international community protects the environment. Building on the previous chapter, these non-environmental considerations include economic, trade, development, scientific and technological, and security considerations. The analysis is guided by two interrelated

questions: (1) What other interests have been included in IEL? (2) What justifications for their inclusion are contained in the preparatory documents and adopted outcome texts? Identifying the prioritisation of these considerations and the justification for their prioritisation through the analytical framework makes it possible to identify the underlying beliefs, values, and assumptions that have informed the integration of non-environmental considerations in IEL. In doing so, this chapter will examine the extent to which the securitisation of the environment has altered the basis for protecting the environment.

Chapter 7 examines the different representations of the environment included in the environmental documents. It considers the extent to which the prioritisation of the non-environmental considerations through the paradigm of sustainable development has altered the perception of the environment. To guide this examination, this chapter asks two interrelated questions: To guide this examination, this chapter asks two interrelated questions: (1) To what extent the international community's references to the environment have altered over the time-period in question? And (2) what does this change, if found, indicate about States' evolving perception of the environment? By answering these questions, the chapter seeks to reveal if there are any shared assumptions, values, and beliefs between the different representations of the environment contained in the documents and those contained in the environment/security literature. Should similarities arise, this may indicate that the appropriation of sustainable development by the security discourse and its prioritisation in IEL may alter the perception of the environment.

In the final chapter, I summarise the key findings from the research and consider their implications for future development of IEL. Since an integral aspect of this thesis is the development of the critical analytical framework, I will explore the benefits and drawbacks of using this framework as a method, and its potential use in other areas of international law. Finally, I conclude with a section that considers future directions for research based on the findings from this thesis.

#### 4. CONCLUSION

This chapter has introduced the background and context in which I have placed my research. It posits that there is an increasing link between environment and security, and convergence in responses to these concerns. I have suggested that there is little critical examination of the consequences of the convergence of these two seemingly disparate discourses. This thesis aims to respond to this gap by examining the extent to which the association between environment and security has altered the basis upon which the international community seeks to protect the environment, and in turn, has affected the *perception* of the environment itself. In doing so, this research hopes to contribute to existing knowledge by providing greater contextualisation of why IEL may be considered ineffective and fragmented. Furthermore, by integrating an ecofeminist analytical

framework, this thesis can also contribute a novel and insightful critique through which to read IEL.

## 2. The Emergence of the Environment as an International Concern

This chapter traces the emergence of the environment as an international legal and security concern. I argue that in the post-Cold War period, environment/security connections have emerged at the same time that collective and cooperative responses to environmental problems have been adopted through international law. Throughout this chapter, I identify the different theoretical perspectives that inform the arguments linking the environment and global security, and those that support the development of collective responses in IEL.

The first section of this chapter introduces ‘traditional’ responses to environment and security concerns that occurred prior to the Second World War. Section 1 considers both liberal and realist theoretical perspectives and examines how these informed the responses to environment concerns in international law and the security domain. Section 2 introduces cooperative and institutional mechanisms developed to manage the environment during the mid-20<sup>th</sup> century. This section discusses the implications of decolonisation, the growing interdependence between states through globalisation, and the increased understanding of transboundary environmental degradation on the way in which states and other members of the international community responded to environment and security concerns. Section 3 traces the consolidation of sustainable development as the dominant paradigm in post-Cold War responses to environmental concerns, and increasingly, security considerations. In this section, I argue that the prominence of liberal internationalism and neoliberalism in the shaping of global governance means that ‘security’ as a concept has widened and deepened to encompass environmental considerations. In the conclusion, I argue that these are inherently ‘messy’ issues that have many intersections, contradictions, and alternative interpretations. However, it is possible to assert that the environment is securitised, and that such securitisation may alter the justifications for which international community protects protect the environment, and in turn perceives the environment in IEL.

### 1. ‘TRADITIONAL’ RESPONSES TO SECURITY AND THE ENVIRONMENT

Traditional responses to the environment and security concerns have predominately been framed in either the realist or liberal traditions of international relations. In the 19<sup>th</sup> and early 20<sup>th</sup> century, the liberal manifestos by Immanuel Kant and Jeremy Bentham had a profound influence on the development of international law and international relations.<sup>1</sup>

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<sup>1</sup> Doyle outlines the four propositions of liberal thought as: that all citizens are all juridically equal and have certain basic rights; that the legislative assembly of a state has the authority invested in it by the citizens, whose rights it is not allowed to abuse; an important dimension of the liberty of the individual is the right to property, including productive forces; and fourth, the most effective system of economic exchange is largely market-driven



During the inter-war period, Kant's arguments for perpetual peace were particularly influential. Kant argued that peace required the transformation of individual consciousness, republican constitutionalism, and cosmopolitan law for states to attain peace along with the Pacific union.<sup>2</sup> Building on these three components, other liberals argued that free trade would create a more peaceful world order, while others believed in the power of law to solve the problem of war.<sup>3</sup> These beliefs informed state responses to the environment and security in the inter-war period.

Liberal thought during the inter-war period recognised that international peace and prosperity must be constructed.<sup>4</sup> US President Woodrow Wilson argued that peace could only be secured by creating an international organisation to regulate international anarchy.<sup>5</sup> He argued that the international sphere should have a system of regulation to cope with disputes, as well as an international force that could be mobilised when peaceful dispute resolution failed. Wilson's vision of liberal internationalism can be described as a 'one-world' vision of nation-states that trade and interact in a multilateral system of laws creating an orderly international community.<sup>6</sup> It supported a universal membership to the League of Nations, through which collective security would be implemented. The sovereign state remained the central actor and affirmed state independence and non-intervention.<sup>7</sup> International law would be central to and enforced through global public opinion. Further, liberal states would have a narrow policy domain, mainly restricted to trade and collective

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and not subordinate to domestic or international regulation. Michael W. Doyle, 'Liberalism and World Politics' (1986) 80(4) *The American Political Science Review* 1151, 1151; see also Immanuel Kant, *Perpetual Peace: a Philosophical Essay* (Mary Campbell Smith tr, Preface by L. Latta 3rd edn, George Allen and Unwin 1917), 120-121; Michael W. Doyle, *Liberal Peace: Selected Essays* (Taylor & Francis Ltd - M.U.A 2011)

<sup>2</sup> Doyle, *Liberal Peace*, 68-70.

<sup>3</sup> Jeremy Bentham, *The Works of Jeremy Bentham, Published under the Superintendence of his Executor, John Bowring*, vol 2 (Edinburgh: William Tait 1843), 538ff; Richard Cobden, *Speeches on Questions of Public Policy by Richard Cobden, M.P.*, vol 1. Free Trade and Finance (John Bright and J.E. Thorold Rogers eds, with a Preface and Appreciation by J.E. Thorold Rogers and an Appreciation by Goldwin Smith, T.Fisher Unwin 1908), 187-188; Joseph A. Schumpeter, *Imperialism [and] Social Classes: Two Essays* (Heinz Norden tr, Introduction by Bert Hoselitz, Meridian Books 1955); Doyle, 'Liberalism and World Politics', 1152-1153.

<sup>4</sup> Evan Luard, *Basic Texts in International Relations: The Evolution of Ideas about International Society* (Macmillan 1992), 465, quoting Leonard Wolf, *International Government* (London: Allen and Unwin 1916)

<sup>5</sup> Woodrow Wilson, 'President Woodrow Wilson's Fourteen Points' (8 January 1918) Online by the Avalon Project: Documents in Law, History and Diplomacy <[http://avalon.law.yale.edu/20th\\_century/wilson14.asp](http://avalon.law.yale.edu/20th_century/wilson14.asp)> accessed 11 December 2015

<sup>6</sup> G. John Ikenberry, 'Liberal Internationalism 3.0: America and the Dilemmas of Liberal World Order' (2009) 7(01) *Perspect Polit* 71. It is worthwhile to note that liberalism distinguishes states according to regime type, and the following claims depend upon the other states also being liberal. See, Doyle, 'Liberalism and World Politics'; James L Richardson, 'Contending Liberalisms: Past and Present' (1997) 3(1) *Eur J Int Relat* 5; John M. Owen, 'How Liberalism Produces Democratic Peace' (1994) 19(2) *Int Security* 87

<sup>7</sup> Richardson, 'Contending Liberalisms', 16; Andrew J. Williams, *Liberalism and War: The Victors and the Vanquished* (Routledge 2006), 16-17; See also, *Reparations for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174, 180. James Crawford, *The Creation of States in International Law* (2nd edn, Clarendon Press 2006), 32-33; David A. Lake, 'The New Sovereignty in International Relations' (2003) 5(3) *Int Stud Rev* 303, 305-307.

security.<sup>8</sup> Therefore, liberal theory on a global scale may be understood as applying an analogy from the character of a political actor to its international conduct.<sup>9</sup>

Elements of these central claims of liberalism and liberal internationalism are reflected in the early development of responses to environmental concerns found in international law. One of the main foundations of the international legal system, and by extension, IEL is the primacy of the state and the sovereign control over activities undertaken within the state's borders.<sup>10</sup> A useful analogy to describe this inside/outside or public/private distinction is by describing the state as a 'person.' In this analogy, the state's territory is akin to the body, and states have autonomy over this territory/body.<sup>11</sup> Louis Henkin used the analogy of the state as essentially identical to the individual to describe states, like individuals, as being equal in rights and status. He suggests that states and (some) individuals share other similarities, including the right to liberty and internal autonomy and the 'right to property, including its territory, which implies territorial integrity'.<sup>12</sup> This construction of the state as a 'person' with a 'body' in the form of territory has normative consequence in maintaining the jurisdictional divide between the internal and external activities of states.<sup>13</sup> The traditional construction of states in international law thus has consequences for the way in which states regulated their action in relation to the environment during the early 20<sup>th</sup> century. As classical international law conceives the state as a 'person' with autonomy over its territory, this reflects a public/private dichotomy where states' activities over their 'body' are not subject to the interference of other states.<sup>14</sup>

This construction of the state is reflected in early responses to environment concerns. The principle of non-interference in the domestic interests of states meant that the environment under the sovereign control of a state could not be subject to the inference by

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<sup>8</sup> Ikenberry, 'Liberal Internationalism 3.0', 73-75.

<sup>9</sup> Louis Henkin, 'The Mythology of State Sovereignty' in Elaine Ed Hughes (ed), *State Sovereignty: The Challenge of a Changing World* (21st Annual Conference: Papers and Discussion, Canadian Council on International Law 1992).

<sup>10</sup> *Reparations for Injuries Suffered in the Service of the United Nations*, 180; Lake, 'New Sovereignty', 305-307; Crawford, *The creation of states in international law*, 32-33..

<sup>11</sup> Karen Knop, 'Re/Statements: Feminist and State Sovereignty in International Law' (1993) 3(2) *Transnat'l L&ContempProbs* 293, 319.

<sup>12</sup> Henkin, 'Mythology of State Sovereignty', 18.

<sup>13</sup> Knop, 'Re/Statements', 319; Karen Knop, 'Borders of the Imagination: The State in Feminist International Law' (1994) 88 *Proceedings of the Annual Meeting (American Society of International Law)* 14, 15-16.

<sup>14</sup> This construction of the state has been criticised by feminist international lawyers because it maintains the public/private dichotomy in which the international actions of the state are silenced and relegated to the private sphere. Hilary Charlesworth, Christine M Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) *AJIL* 613, 626; Christine M Chinkin, 'A Critique of the Public/Private Dimension' (1999) 10(2) *EJIL* 387, 389-390; see also, Frances E. Olsen, 'International Law: Feminist Critiques of the Public/Private Distinction' (1993) 25 *Stud Transnat'l Legal Pol'y* 157 and Diane Otto, 'Handmaidens, Hierarchies and Crossing the Public-Private Divide in the Teaching of International Law' (2000) 1 *Melb J Int'l L* 35.

another state.<sup>15</sup> Conversely, those areas of the planet deemed the ‘global commons,’ such as the high seas, were considered *res communis*, meaning that all states had access to them and none could impose ‘a particular approach to their use or protection.’<sup>16</sup> This dichotomy reflects the early emphasis on non-intervention in the domestic sphere of a state that maintained the distinction between the environment outside the control of a state and the environment inside the territorial boundaries of a state.

The early regulation of the global commons contained a similar understanding of the privilege of sovereign states to exercise their right of access and exploitation in areas such as the high seas. The *Bering Sea Arbitration* (1893) between the United States of America and the United Kingdom concerned the harvesting of seals in the Bering Sea.<sup>17</sup> In this case, the United States argued that it had a right of property and protection over fur seals residing in waters of the Bering Sea that extended to a right to take steps outside of its territory to conserve them for the benefit of humankind.<sup>18</sup> This argument is an early example of sustainable management and conservation of natural resources in the global commons.<sup>19</sup> However, the arbitral tribunal rejected the argument and ruled that states had sovereign rights to exercise freedom of access, exploitation, and exploration of areas outside their exclusive control.<sup>20</sup> In doing so, it reaffirmed the state-centric and sovereign-based regulation of the global commons, and maintained the public/private dichotomy contained in liberalism, a decision criticised by some writers at the time.<sup>21</sup>

Similarly, four widely accepted principles of IEL, developed during this period, connected state obligations to the concept of sovereignty.<sup>22</sup> The first principle required states

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<sup>15</sup> E.g. the Harmon Doctrine where Attorney-General Harmon argued that the general rules of international law did not impose any obligation on the United States to restrict its use of the Rio Grande in its own territory, ‘irrespective of the harmful consequences of the downstream state.’ Stephen C McCaffrey, ‘The Harmon Doctrine One Hundred Years Later: Buried, Not Praised’ (1996) 36(3) *Nat Resources J* 549, 551; Lazerwitz, ‘International Water Law’, 250; However, see also *Trail Smelter Case*, 1965; *Corfu Channel Case (UK v Albania)* (Merits) [1949] ICJ Rep 244, 22; Gabriel Eckstein, ‘Application of International Water Law to Transboundary Groundwater Resources, and the Slovak-Hungarian Dispute over Gabčíkovo-Nagymaros’ (1995) 19 *Suffolk Transnat’l L Rev* 67, 74.

<sup>16</sup> Jutta Brunnée, ‘Common Areas, Common Heritage, and Common Concern’ in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2007), 554; Nussbaum, *A Concise History*, 111-112; Shaw, *International Law*, 453-454.

<sup>17</sup> *Bering Sea Arbitration*, 266.

<sup>18</sup> Philippe Sands, ‘Turtles and Torturers: the Transformation of International Law’ (2001) 33(2) *NYU J Int’l L & Pol* 527, 529.

<sup>19</sup> *Ibid*, 529.

<sup>20</sup> *Bering Sea Arbitration*, 269; Brown, ‘Fur Seals’, 351.

<sup>21</sup> Brown, ‘Fur Seals’, 634-635. Brown notes, ‘The Tribunal, true to the conservatism of the Old World, accepted this interpretation of their powers, recognized the potency of venerable legal relics, assented to the arguments of the counsel for Great Britain and Canada based thereon, and contented itself with deciding that the United States had no rights of protection or property in the fur seals or the industry based thereon.’

<sup>22</sup> Cordonier Segger and Khalfan, *Sustainable Development Law*, 80; see also, Franz Xaver Perrez, ‘The Relationship Between “Permanent Sovereignty” and the Obligation not to Cause Transboundary Environmental Damage’ (1996) 26(4) *Env’tl L* 1187, 1189.

to ensure that activities within their jurisdiction and control respected the environment of other states or areas beyond national control.<sup>23</sup> The second principle involves a duty to prevent pollution.<sup>24</sup> The third principle implies that the polluter should bear the cost of undertaken pollution prevention measures or pay for any damaged caused.<sup>25</sup> The fourth principle concerns a general obligation for states to cooperate to identify and avoid transboundary harms.<sup>26</sup> These principles, while maintaining the public/private dichotomy of liberal internationalism, have informed the subsequent development of IEL and reflect an early response to environmental concerns.<sup>27</sup>

These principles indicate that the state, and its territorial integrity, remain central in the development of early IEL. For example, the ‘no harm’ principle is a negative obligation that seeks to regulate the activities of states in their territory so they do not cause harm above acceptable levels to another state or to the global commons. Therefore, traditional responses to environmental concerns during the inter-war period regulate state actions along the lines of the public/private dichotomy between those areas deemed *res communis* and those under the sovereign control of state.<sup>28</sup> In this way, they reflect liberal internationalism by using international law to maintain cooperation and friendly relations.<sup>29</sup> Further, they suggest that states maintained the view of the environment as property, the use of which may support the friendly relations between states through free trade and economic interdependence.

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<sup>23</sup> *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France)* (Order) [1995] ICJ Rep 288, 306; International Law Commission, *Draft Articles on Prevention of Transboundary Harm* (2001), art 3 and commentary; Shaw, *International Law*, 760; see *Island of Palmas Case*, 839; *Case Relating to the Territorial Jurisdiction of the International Commission of the River Oder* (Judgement) (10 September 1929) PCIJ Series A No 23; *Cofu Channel Case*, 22; *Lac Lanoux Arbitration*; Stockholm Declaration 1972, Principle 21; Rio Declaration 1992, Principle 2; *Nuclear Weapons in Armed Conflict*, ¶29; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgement) [1997] ICJ Rep 7; 37 ILM 168 (1998), ¶53; *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgement) [2010] ICJ Rep 14, ¶101; and *Trail Smelter Case*.

<sup>24</sup> *Trail Smelter Case*, 1905; *Nuclear Weapons in Armed Conflict*, ¶29; *Gabčíkovo-Nagymaros Project*, ¶140; International Law Commission, *Draft Articles on Prevention of Transboundary Harm* (2001), 148 ¶4.

<sup>25</sup> *Trail Smelter Case*, 1965-1966; see John D Wirth, ‘The Trail Smelter Dispute: Canadians and Americans Confront Transboundary Pollution, 1927-41’ (1996) 1(2) *Environmental History* 34, 34; Rebecca M. Bratspies and Russell A. Miller, ‘Introduction’ in Rebecca M. Bratspies and Russell A. Miller (eds), *Transboundary harm in international law: Lessons from the Trail Smelter arbitration* (Washington & Lee Legal Studies Paper No. 2011-30. Available at SSRN: <http://ssrn.com/abstract=1990519>, Cambridge University Press 2006), 3.

<sup>26</sup> *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (1945), art 1(3); see also *Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations* (24 October 1970) UN Doc A/RES/2625(XXV); Cordonier Segger and Khalfan, *Sustainable Development Law*, 83-84.

<sup>27</sup> UNCLOS 1982, art 194(2); *Convention on Environmental Impact Assessment in a Transboundary Context* (Espoo) (adopted 25 February 1991, entered into force 10 September 1997) 1989 UNTS 309 (1997), art 21(1); Biodiversity Convention 1992, art 8; UNFCCC 1992, preamble ¶8; UN Watercourses Convention 1997, art 7.

<sup>28</sup> Hilary Charlesworth, ‘The Public/Private Distinction and the Right to Development in International Law’ (1988) 12 *Aust YBIL* 190, 192-193.

<sup>29</sup> Xue Hanqin, *Transboundary Damage in International Law* (Cambridge University Press 2003), 116; Bratspies and Miller, ‘Introduction’, 3.

However, liberal internationalism and the ideal of collective security through an international institution, such as the League of Nations, was undermined by the events preceding the Second World War.<sup>30</sup> Towards the end of the 1930s, 'classical' realism resurfaced as a way to explain international concerns relating to security.<sup>31</sup> For classical realists, the most important element of international politics is to pursue power to ensure the security of the state. Therefore, they consider the core elements of international relations to be statism, survival, and self-help as they are directly related to state concerns.<sup>32</sup>

Classical realists assume that politics is governed by laws created by human nature. Realists such as Morgenthau, argued that to understand international politics, we must use the concept of interests, defined in terms of power.<sup>33</sup> Therefore, classical realism focuses on the logic of power politics driven by the essentially aggressive impulse of human nature.<sup>34</sup> These classical doctrines of realism became highly influential after the end of the Second World War, and shaped international security for much of the 20<sup>th</sup> century.

This survey of the early development of IEL and international peace and security suggests that the environment featured to the extent that it had relevance to economic or sovereign interests of states. Classical international law and international relations predominantly viewed states as the primary actor in the international sphere, and maintained a strict public/private divide in relation to the regulation of state actions. Therefore, responses to environmental problems were governed primarily in relation to the interests of states whose territory or interests in the global commons were affected by the actions by other states. Where states engaged in multilateral responses to environmental problems, these too, were framed in terms of negative obligations on the actions of states. While realist security purported not to have an interest in the environment, this reveals an inherent assumption whereby the environment is considered as a tool, resource, or commodity that could legitimately be exploited for state gain.

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<sup>30</sup> Edward Hallett Carr and Michael Cox, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations* (2nd edn, Palgrave 2001), 78-81.

<sup>31</sup> See e.g. Ibid; Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (1st edn, New York: Knopf 1948).

<sup>32</sup> Morgenthau, *Politics Among Nations*, 13-15; see also, Kenneth Neal Waltz, *Theory of International Politics* (McGraw-Hill 1979), 91, 111, 131; Kalevi J. Holsti, *The State, War, and the State of War* (Cambridge University Press 1996), 2-6; Peter Hough, *Understanding Global Security* (Taylor & Francis Ltd - M.U.A 2008), 24; . Sharon A. Lloyd and Susanne Sreedhar, *Hobbes's Moral and Political Philosophy* (Edward N. Zalta ed, Spring 2014 edn, 2014) <<http://plato.stanford.edu/archives/spr2014/entries/hobbes-moral/>> .

<sup>33</sup> Morgenthau, *Politics Among Nations*, Chapter 1; Hans Joachim Morgenthau, Kenneth W. Thompson and W. David Clinton, *Politics Among Nations: The Struggle for Power and Peace* (7th edn, McGraw-Hill Education 2006), 5.

<sup>34</sup> Morgenthau, *Politics Among Nations*, Chapters 1-2; see also Morgenthau, Thompson and Clinton, *Politics Among Nations* (7th edn), 4; Jonathan Cristol, 'Morgenthau vs. Morgenthau? "The Six Principles of Political Realism" in Context' (2009) 31(4) *American Foreign Policy Interests* 238, 238-241; J. Ann Tickner, *A Feminist Voyage Through International Relations* (Oxford University Press 2013), Chapter 1; Timothy Dunne and Brian C Schmidt, 'Realism' in John Baylis, Steve Smith and Patricia Owens (eds), *The Globalization of World Politics: An Introduction to International Relations* (6th edn, Oxford University Press 2014), 103-104.

## 2. AFTER THE SECOND WORLD WAR: MID-CENTURY RESPONSES TO THE ENVIRONMENT

With the start of the Cold War, realist approaches to international relations and security dominated state foreign policy and the policy-making elite. States remained the central actors for realist theory and the logic of power politics explained their actions. However, unlike earlier realist approaches, which attributed the struggle for power to human nature, realists writing toward the end of this period ascribed inter-state conflict and security competitions to the lack of an overarching authority above states.<sup>35</sup> This 'structural realist' theory still argued that security was the ultimate concern for states and that no other states could be relied upon to guarantee the survival of one's state.<sup>36</sup> They assumed that because of the anarchic political system, states provided their own means of protecting themselves from others.<sup>37</sup> For structural realists, the fundamental variable in understanding international outcomes is the relative distribution of power between states.<sup>38</sup> Therefore, they understood international relations as a politics of power and security, in which international law had little influence.<sup>39</sup>

This understanding of security remained in place for much of the mid-part of the 20<sup>th</sup> century.<sup>40</sup> However, critics argued that it was unable to offer a nuanced explanation of the emerging international order, or of international responses to the growing concerns such as environmental degradation, economic interdependence, and decolonisation.<sup>41</sup> In the early post-war period, liberals argued that transnational cooperation was essential in order to resolve common problems. David Mitrany argued that cooperation in one area, such as the environment or development, would lead states to extent collaboration in other areas.<sup>42</sup> As states became more embedded in this integrative process, the cost of withdrawing would

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<sup>35</sup> Waltz, *Theory of International Politics*, 102.

<sup>36</sup> Christian Reus-Smit, *The Politics of International Law* (Cambridge University Press 2004), 274.

<sup>37</sup> Waltz, *Theory of International Politics*, 88-89 and 105; Stephen M. Walt, 'The Renaissance of Security Studies' (1991) 35(2) *Int Stud Quart* 211, 212. For Waltz, anarchy refers to the absence of a world government that would provide stability and security in international relations.

<sup>38</sup> John J. Mearsheimer, *The Tragedy of Great Power Politics* (W.W. Norton 2001), 34-36, 144; Barnett, *The Meaning of Environmental Security*, 26; Susan Strange, 'The Persistent Myth of Lost Hegemony' (1987) 41(4) *Int Organ* 551, 565; Waltz, *Theory of International Politics*, 146-151; Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (3rd edn, New York, Knopf 1960), 113-117; see e.g. Robert Lilley, 'Constraints on Superpower Interventions in Sub-Saharan Africa' (1982) XII(3) *Parameters* and Richard N. Cooper, 'Natural Resources and National Security' (1975) 1(4) *Resources Policy* 192.

<sup>39</sup> William C Wohlforth, 'Realism' in Christian Reus-Smit and Duncan Snidal (eds), *The Oxford Handbook of International Relations* (Oxford University Press 2008), 133.

<sup>40</sup> Walt, 'Renaissance of Security Studies' 216.; However, there were some movements towards liberalism during the inter-war period. See Williams, *Liberalism and War*, 39-56

<sup>41</sup> See in general, Joseph S. Nye and Robert O. Keohane, 'Transnational Relations and World Politics: An Introduction' (1971) 25(3) *Int Organ* 329, 337; Joseph S. Nye and Robert O. Keohane, 'Transnational Relations and World Politics: A Conclusion' (1971) 25(3) *Int Organ* 721, 736-739.

<sup>42</sup> David Mitrany, 'The Functional Approach to World Organization' (1948) 24(3) *Int Aff* 350.

increase.<sup>43</sup> This argument concerning the positive benefits of transnational cooperation informed subsequent approaches to international governance.

In particular, liberal institutionalism offered an explanation of international relations as a 'cobweb' in which states and other transnational actors were linked different interactions.<sup>44</sup> Liberal institutionalists argued that the expansion of the international community, emergence of a global culture and the growth of capitalism increased the interdependence between states and other NSAs, thus offering the opportunity for enhanced cooperation. This approach paid more attention to the complex interdependence between states, societies, and NSAs.<sup>45</sup>

In this account, the interdependence of states through membership of international institutions created incentives for cooperation in areas outside of international peace and security.<sup>46</sup> While these writers acknowledged the role of power, they emphasise the interdependence through international institutions and the identification of common interests, which bind states together and mutually constrain each other's actions.<sup>47</sup> For example, some writers identified economic and social security as interests that could promote states' cooperation at the international level.<sup>48</sup> They argued that states were becoming less concerned about military security,<sup>49</sup> and with the growing interdependence, states viewed one another as partners needed to ensure the greater comfort and well-being for their citizens.<sup>50</sup> In this approach, environmental concerns were seen as a second-level issue and one that could be addressed through international institutions and to gain

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<sup>43</sup> Nye and Keohane, 'An Introduction', 337

<sup>44</sup> Kjell Skjelsbaek, 'The Growth of International Nongovernmental Organization in the Twentieth Century' in Robert O. Keohane and Joseph S. Nye (eds), *Transnational Relations and World Politics* (Cambridge Mass: Harvard University Press 1972), 70; Robert O. Keohane and Joseph S. Nye, 'Transnational Relations and World Politics: A Conclusion' in Robert O. Keohane and Joseph S. Nye (eds), *Transnational Relations and World Politics* (Harvard University Press 1972), 374-379.

<sup>45</sup> Nye and Keohane, 'A Conclusion', 730-733.

<sup>46</sup> Stanley Hoffmann, 'International Organization and the International System' (1970) 24(03) *Int Organ* 389, 396, 401; Keohane and Nye, 'Transnational Relations and World Politics: A Conclusion', 385; Joseph S. Nye, 'Independence and Interdependence' (1976) 22(Spring) *Foreign Policy* 130; Robert O. Keohane and Lisa L. Martin, 'The Promise of Institutional Theory' (1995) 20(1) *Int Security* 39, 39; Ikenberry, 'Liberal Internationalism 3.0', 7; Stec, 'Humanitarian Limits to Sovereignty', 365; see also the discussion in Gilpin 1972, 53, 64-67

<sup>47</sup> Robert O. Keohane, 'The Demand For International Regimes' (1982) 36(02) *Int Organ* 325, 334, 339; Keohane and Martin, 'Promise of Institutional Theory', 48-49; Daniel H Deudney and G. John Ikenberry, 'The Nature and Sources of Liberal International Order' (1999) 25(02) *Rev Int Stud* 179, 182; see also, Stanley Hoffmann, 'The Role of International Organization: Limits and Possibilities' (1956) 10(3) *Int Organ* 357, 360; Robert O. Keohane, 'Institutionalization in the United Nations General Assembly' (1969) 23(4) *Int Organ* 859; Ernst B. Haas, 'Regime Decay: Conflict Management and International Organisations, 1945-1981' (1983) 37(2) *Int Organ* 189.

<sup>48</sup> Robert O. Keohane and Joseph S. Nye, *Power and Interdependence* (3rd edn, Longman 2001), 227; see also, Keohane and Nye, 'Transnational Relations and World Politics: A Conclusion', 385.

<sup>49</sup> Keohane and Nye, *Power and Interdependence*, 27-29.

<sup>50</sup> Richard N. Cooper, 'Economic Interdependence and Foreign Policy in the Seventies' (1972) 24(2) *World Polit* 159, 162-163; Joseph M Grieco, 'Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism' (1988) 42(3) *Int Organ* 485, 490.

international cooperation.<sup>51</sup> As will be discussed below, and in Section 3, this assumption has informed many arguments in which the environment and international security are connected.

Two elements of liberal institutionalism had a profound influence on the development of international responses to environment and security concerns. First, their argument that the actions and interests of NSAs should be taken into consideration has influenced the development of international responses to environmental concerns.<sup>52</sup> Second, and related to the first element, the growing interdependence between states and NSAs through international institutions and organisations brought shared responsibilities to address common concerns as well as restraining state autonomy. Therefore, not only were the institutions in the international sphere becoming more interconnected and interrelated, but the actors involved in them were no longer solely states. As a result, states turned to international institutions that would carry out functions of the state, such as security, which they could not perform alone.

During the same period, scientists became increasingly concerned over the impact of human activities on the Earth's environment, particularly in light of the increasing population and unsustainable exploitation of the global commons.<sup>53</sup> These concerns tied with the environmentalist movement in mainstream culture and the decolonisation period of the 1960s and 1970s. Concerns over the growing population, population, resource scarcity, and the potential for conflict, gave impetus to states to use 'low political issues', such as the environment and development to build a sense of a global community, familiarity and confidence to prevent a further devastating world war.<sup>54</sup> Conversely, newly-independent, developing countries sought to use 'low political issues', such as environmental management to challenge the existing international system in the areas of the global economy, development assistance and the environment because they considered the current approach inequitable and unfair.<sup>55</sup>

The emergence of the common heritage concept and the affirmation of permanent sovereignty over natural resources may be seen as part of a broader change to the international community where newly-independent countries used international institutions, such as the UNGA, to challenge the inequality of existing economic and trade institutions. They used soft law instruments to effect changes in the international legal framework in an attempt to redress the inequalities of these institutions. At the same time, these two concepts can be understood as part of the international community's attempt to

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<sup>51</sup> Mitrany, 'The Functional Approach'.

<sup>52</sup> Nye and Keohane, 'A Conclusion', 730-733.

<sup>53</sup> E.g. Garrett Hardin, 'The Tragedy of the Commons' (1968) 162(3859) *Science* 1243; Harold A Mooney and Paul R. Ehrlich (eds), *Ecosystem Services: A Fragmentary History* (Island Press: Washington; Covelo 1997).

<sup>54</sup> Stec, 'Humanitarian Limits to Sovereignty', 365.

<sup>55</sup> Norman Myers, 'Environment and Security' (1989) 74(Spring) *Foreign Policy* 23, 26.



collectively manage the global commons in response to broader economic and environmental concerns. Therefore, these two principles reflect the growing interconnections between broader areas of international concern, such as development, the environment, and economic inequality. They also indicate an increased use in international institutions to effect change cooperatively in second tier political issues, such as the environment, thus instigating interdependence between states.

Developing countries supported the introduction of the common heritage principle because they believed the existing regime, and the unequal technological capabilities and economic power between developed and developing countries prevented them from exploiting the resources in the global commons.<sup>56</sup> The common heritage concept tied in with the broader calls for greater technology transfer, economic support and assistance from developed states to developing countries.<sup>57</sup> This, developing countries argued, would promote economic growth in the developing world. Therefore, the introduction of a normative concept, such as the common heritage concept, sought to redress the balance between developed and developing countries in the use and conservation of the global commons, thus signifying a more cooperative and collaborative response to environmental concerns.

Many of the MEAs that governed the global commons developed during the 1960s incorporated elements of the common heritage concept. The inclusion of this concept in these agreements embodies 'liberal sovereignty' which attempts to redistribute resources based on the rights of individuals.<sup>58</sup> In doing so, they reveal the growing links between economic development, peace, and security that shaped future environmental agreements. These links are historically present in liberal thought and relate back to the commercial liberalism advocated by Cobden.<sup>59</sup> For example, the 1959 Antarctic Treaty, the 1967 Outer Space Treaty, and the 1979 Moon Treaty each associate the use of the global commons and their natural resources for the benefit of mankind, peaceful purposes, and not subject to appropriation claims of sovereignty through use or occupation.<sup>60</sup> These statements reiterate

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<sup>56</sup> Shackelford, 'Common Heritage of Mankind' 116; Mickelson, 'The Maps of International Law', 633-634.

<sup>57</sup> UNGA Resolution 3201 (S-VI) Declaration on the Establishment of a New International Economic Order (1 May 1974) UN Doc A/RES/3201(S-VI); UNGA Resolution 3202 (S-VI) Programme of Action on the Establishment of a New International Economic Order (1 May 1974) UN Doc A/RES/3202(S-VI); see the discussion in, Robin C. A. White, 'A New International Economic Order' (1975) 24(3) ICLQ 542

<sup>58</sup> Jill Stuart, 'Unbundling Sovereignty, Territory and the State in Outer Space' in Natalie Bormann and Michael Sheehan (eds), *Securing Outer Space: International Relations Theory and the Politics of Space* (Routledge 2009), 15; referring to David Held and Anthony G. McGrew (eds), *Governing Globalization: Power, Authority and Global Governance* (Polity 2002), 15.

<sup>59</sup> Cobden, *Speeches on Questions of Public Policy by Richard Cobden, M.P.*

<sup>60</sup> Antarctic Treaty 1959, preamble; Treaty on Outer Space 1967, preamble, art II; Moon Treaty 1979, art 11; see also Bradley Larschan and Bonnie C Brennan, 'Common Heritage of Mankind Principle in International Law' (1983) 21(2) Colum J Transnat'l L 305, 310-311; Kiss, 'Common Heritage of Mankind', 430; Joyner, 'The Common Heritage of Mankind' 191; Shackelford, 'Common Heritage of Mankind' 111; Mickelson, 'The Maps of International Law', 633.

the importance of international cooperation to collectively manage these resources for the benefit of all mankind, and may be seen as a challenge by developing states to the liberalism articulated in the *res communis* which privileged the powerful, developed states and their private corporations.<sup>61</sup>

These arguments supporting inclusion of the common heritage concept are also found in the negotiations of the 1982 UNCLOS. The Ambassador of Malta argued that the deep seabed and ocean floor beyond the limits of national jurisdiction should be declared the common heritage for humankind. He identified two central concerns over the current regulation of these areas of global commons. First, that current international law encourages the appropriation of this area by those who have the technological capability to do so, and second, that environmental problems such as marine pollution, or the dumping of nuclear waste, risk destroying an ecosystem just when understanding of the Earth was expanding.<sup>62</sup> He argued that the common heritage concept takes into account the inequalities between members of the international community and sought to address some of the issues affecting the economies of developing countries.

The common heritage concept was given legal content in UNCLOS.<sup>63</sup> It proclaims that the seabed, ocean floor, and subsoil are beyond the limits of national jurisdiction and are the common heritage of mankind.<sup>64</sup> States may not exercise sovereignty or sovereign rights over the area or its tangible resources and all 'rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act'.<sup>65</sup> This means that the activities undertaken in this area must be carried out for the benefit of mankind as a whole and take into consideration the interests and needs of developing states.<sup>66</sup> This articulation of the concept reflects an institutionalisation of international cooperation in the management and exploitation of the global commons. It has been designed to benefit people who may otherwise be excluded from the profits accrued from the exploitation of the seabed. It therefore challenged the liberal free trade economics evident in the earlier use of *res communis* in the global commons with the notion of 'redistributive multilateralism' for all states to share the benefits of those resources in the global commons.<sup>67</sup> Further, it also

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<sup>61</sup> Kiss, 'Common Heritage of Mankind'; Steven F. Bernstein, *The Compromise of Liberal Environmentalism* (Columbia University Press 2001), 89-90.

<sup>62</sup> UNGA General Debate (1 November 1967) UN Doc A/C.1/PV.15, 12; cited in Mickelson, 'The Maps of International Law', 633.

<sup>63</sup> UNCLOS 1982, preamble, art 136-137; Mickelson, 'The Maps of International Law', 635.

<sup>64</sup> UNCLOS 1982, art 136. Kiss, 'Common Heritage of Mankind', 431-432.

<sup>65</sup> UNCLOS 1982, art 137(2) and art 137(1).

<sup>66</sup> Kiss, 'Common Heritage of Mankind', 431-432

<sup>67</sup> Jens Steffek, *Embedded Liberalism and Its Critics: Justifying Global Governance in the American Century* (Palgrave Macmillan 2006), 107-108.

recognised that the vulnerability of the environment required international cooperation to manage for future generations.<sup>68</sup>

During the same period, newly-independent developing countries sought to reassert their sovereign control over natural resources contained within their jurisdiction.<sup>69</sup> They challenged the structural biases of the existing international system and their development problems through the creation of a new international economic order, part of which included reasserting the exclusive control over natural resources for economic development.<sup>70</sup> This was in response to the attempts by former colonial powers to retain favourable concessions and access to resources granted prior to independence.<sup>71</sup> The 1962 United Nations Declaration on Permanent Sovereignty over Natural Resources affirmed the 'right of peoples and nations to permanent sovereignty over their natural wealth and resources' for the interests of 'national development and wellbeing of the people.'<sup>72</sup> This declaration aimed to balance the priorities of developing and developed states by conferring control over their natural wealth to developing countries with the interests of developed states and protection for their corporations investing abroad.<sup>73</sup> This declaration can be seen as part of the growing association between the environment and development, where the natural resources of developing states were to be used for their economic betterment and to secure the well-being of their citizens.<sup>74</sup> It may also be seen as a challenge by developing states to the growing economic interdependence between states, which they argued enabled hegemonic power to be accumulated in the developed, western states.<sup>75</sup>

Taken together, the principle of permanent sovereignty over natural resources and the common heritage concept can also be seen as a reaffirmation of the public/private divide. The two concepts maintain the view of natural resources as raw material to be exploited for the economic development of developing countries.<sup>76</sup> However, the introduction of the common heritage concept also ensures that the activities of states in the global commons are

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<sup>68</sup> Ibid, 157-185; see also Kemal Baslar, *The Concept of the Common Heritage Of Mankind in International Law* (Martinus Nijhoff 1998), 338-339; Bernstein, *Compromise of Liberal Environmentalism*. However, the concept remains highly controversial. For critiques of the normative content, see Shackelford, 'Common Heritage of Mankind', 114; Erik Franckx, 'The International Seabed Authority and the Common Heritage of Mankind: The Need for States to Establish the Outer Limits of their Continental Shelf' (2010) 25(4) *Int'l J Marine & Coastal L* 543; Mickelson, 'The Maps of International Law', 636 .

<sup>69</sup> Salomon, 'From NIEO to Now', 38; for an excellent discussion of the principle of permanent sovereignty over natural resources, see Pahuja, *Decolonising International Law*, chapter 4.

<sup>70</sup> Pahuja, *Decolonising International Law*, 121.

<sup>71</sup> Salomon, 'From NIEO to Now', 39; Anghie, *Imperialism, Sovereignty*, 212-213; Pahuja, *Decolonising International Law*, 119 and 125.

<sup>72</sup> Permanent Sovereignty over Natural Resources (1962) (1962), ¶1.

<sup>73</sup> Salomon, 'From NIEO to Now', 40.

<sup>74</sup> Ibid, 40. Pahuja, *Decolonising International Law*.

<sup>75</sup> See in general, Pahuja, *Decolonising International Law*; Anghie, *Imperialism, Sovereignty*; B.S. Chimni, 'Capitalism, Imperialism, and International Law in the Twenty-First Century' (2012) 14(1) *Or Rev Int'l L* 17.

<sup>76</sup> Salomon, 'From NIEO to Now', 40.

to be managed for the benefit of future generations of mankind. This reflects the increasingly cooperative approach towards responding to the interrelated concerns of environmental management and addressing the development needs of developing states.

At the same time, key events during the Cold War highlighted the linkages between ‘non-traditional’ issues and international peace and security. Non-traditional issues, such as the increasing interdependence between states through globalisation, access to natural resources, and underdevelopment were increasingly referred to as strategic threats to the security of the international community, particularly that of the United States. In particular, the 1973 Middle Eastern oil crisis highlighted the interdependence between security and other international institutions.<sup>77</sup> This crisis revealed that natural resources, such as oil, may be used as political leverage by cartels and thus be considered as a strategic threat to the interests of great powers (such as the United States).<sup>78</sup> Therefore, this crisis introduced the notion of interdependence and the issue of economic security on the realist international security agenda.<sup>79</sup> Similarly, the intra-state conflicts in the developing world were discussed within international security studies to the extent that they related to the ongoing superpowers’ global rivalry.<sup>80</sup> The discussion of these conflicts mainly focused on the concerns of economic security and the possibility that supplier cartels could disrupt the western economy through raising prices or restricting supply.<sup>81</sup>

Therefore, toward the end of the 1970s, different issues were raised as a security concern for states.<sup>82</sup> Structural realist security scholars argued that issues such as access to raw materials were relevant in the process of accumulating power that is based on the material capabilities that a state controls.<sup>83</sup> As the socio-economic power of states also informed their material capabilities, economic and technological considerations were increasingly included in realist security studies as strategic objectives to ensure states’ security. Similarly, issues such as international trade, disease, the global economy, and access to raw materials, were

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<sup>77</sup> Klaus Knorr, ‘The Limits of Economic and Military Power’ (1975) 104(4) *Daedalus* 229; This issue of *Daedalus* is dedicated to the Middle Eastern oil crisis. See also, Pahuja, *Decolonising International Law*, 120; Thomas J. McCormick, *America’s Half-Century: United States Foreign Policy in the Cold War and After* (2nd edn, Johns Hopkins University Press 1995), 121.

<sup>78</sup> Buzan and Hansen, *Evolution of International Security*, 86.

<sup>79</sup> *Ibid.*, 85.

<sup>80</sup> E.g. Mohammed Ayoob, ‘The Roots of Conflict’ in Mohammed Ayoob (ed), *Conflict and Intervention in the Third World* (1980), 241-243.

<sup>81</sup> Buzan and Hansen, *Evolution of International Security*, 86

<sup>82</sup> Barry Buzan, *People, States and Fear: An Agenda For International Security in the Post-Cold War Era* (2nd edn, Harlow: Pearson Educ 1991), 12.

<sup>83</sup> John J. Mearsheimer, ‘Structural Realism’ in Timothy Dunne, Milja Kurki and Steve Smith (eds), *International Relations Theories: Discipline and Diversity* (Oxford University Press 2007), 72

included in the discussion of security. This challenged the classical understanding of international security as purely the threat of external military attack.<sup>84</sup>

For example, Lester Brown proposed that the concept of a 'threat' should be expanded to take into account the change in the international community and the activities that may threaten states. He argued that events such as natural disasters, raw material shortages, rebellions, and blockades could be considered threats to security.<sup>85</sup> Richard Ullman argued that activities that inhibited the opportunity for cultural, scientific and intellectual exchange should be considered as a threat to security.<sup>86</sup> Each of these arguments widen the meaning of security to include activities and concerns not traditionally considered as a security issue.

One reason why these scholars argued that such issues should be considered a security issue was the increase in size of the international community through decolonisation. This raised concerns over unstable socio-economic and politically 'weak' states and the stability of different regions across the globe.<sup>87</sup> These anxieties coincided with the diversification of the global economy and significant price shocks on some raw materials, as well as growing unease over the effect of resource scarcity on the ability for newly-independent countries to pursue development goals.<sup>88</sup> Realist security scholars were concerned that such instability may affect the balance of power in the international community, while liberals argued that the transformation of such countries into democracies and assimilating them into the global economic institutions, can ensure the security of the international community.<sup>89</sup> These concerns informed the international security debate and the role of development and environment within it.

Concerns about over-population, resource scarcity, and weak governments were closely associated with growing debates over the security of newly-independent countries and the potential of regional destabilisation.<sup>90</sup> During the 1960s and 1970s, neo-Malthusians

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<sup>84</sup> Joseph S. Nye, 'Neorealism and Neoliberalism' (1988) 40(2) *World Polit* 235, 729; Mohammed Ayoob, *The Third World Security Predicament: State Making, Regional Conflict, and the International System* (Lynne Rienner 1995), 93-95.

<sup>85</sup> Brown, *Redefining National Security*, 5-7.

<sup>86</sup> Richard H Ullman, 'Redefining Security' (1983) 8(1) *Int Security* 129, 134.

<sup>87</sup> UNSC Resolution 539 (28 October 1983) UN Doc S/RES/539, preamble; UNSC Resolution 637 (27 July 1989) UN Doc S/RES/637; see also Barry Buzan and Ole Wæver, *Regions and Powers: The Structure of International Security*, vol 91 (Cambridge University Press 2003), 15-16, 19-20, 220..

<sup>88</sup> Michael T. Klare, *Resource Wars: The New Landscape of Global Conflict* (Henry Holt 2002), 32-35, 193-195,, Roland Dannreuther, *International Security: The Contemporary Agenda* (2nd edn, Polity 2013), 149-157, 167-179

<sup>89</sup> Georg Sørensen, *Democracy and Democratization: Processes and Prospects in a Changing World*, vol 2nd (Boulder; Oxford: Westview Press 1998), 101-112; see also Michael W. Doyle, 'Kant, Liberal Legacies, and Foreign Affairs' (1983) 12(3) *Philos Public Aff* 205; Doyle, 'Liberalism and World Politics'; Georg Sørensen, 'Introduction' (1993) 5(1) *EJDR* 1.

<sup>90</sup> Mark R. Duffield, *Global Governance and the New Wars: the Merging of Development and Security* (new edition/with a foreword by Antonio Donini, Zed Books 2014), 27; e.g. Myers, 'The Environmental Dimension to Security Issues'; Myers, 'Environment and Security'; Jessica T Mathews, 'Environment, Development, and International Security' (1990) 43(7) *Bulletin of the American Academy of Arts and Sciences* 10; J. Ann Tickner,

persuasively argued that conflict over resources would occur because of overpopulation.<sup>91</sup> These arguments draw on Thomas Malthus' theory that overpopulation is positively constrained by periods of war.<sup>92</sup> Neo-Malthusians warned that population growth, and specifically, population growth in the Global South, would destroy civilisation 'as we know it' and lead to an abrupt collapse of industrial society.<sup>93</sup> These arguments informed the narrative that underdevelopment, poor environmental management, and resource degradation was a threat to the current world order and global security.<sup>94</sup>

These arguments continued to inform debates surrounding development, conflict, and environmental degradation during the 1980s. There was ongoing concern about the possibility of regional destabilisation in the Global South because of its underdevelopment, and the exacerbation of conflict by natural disasters such as drought.<sup>95</sup> Whilst realists continued to frame these interconnected concerns in terms of altering the balance of power between the United States and the Soviet Union,<sup>96</sup> others looked beyond the state to the well-being of individuals. An example of this can be found in the highly influential 1987 Brundtland Report, published by the United Nations World Commission on Environment and Development. This report revealed a growing focus on the well-being of individuals and the potential destabilising effect of underdevelopment, overpopulation and environmental degradation on international peace and security.

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*Gender in International Relations: Feminist Perspectives on Achieving Global Security* (Columbia University Press 1992), 100; Astri Suhrke, *Pressure Points: Environmental Degradation, Migration and Conflict* (Environmental Change, Population Displacement and Acute Conflict, Ottawa: Institute for Research on Public Policy, 1993); Levy, 'Is National Security an Environment Issue?'; In connection to natural disasters, between 1950-1980 there were a number of droughts and incidences of famine. See Alex de Waal, 'Famine Mortality: A Case Study of Darfur, Sudan 1984-5' (1989) 43(1) *Population Studies* 5; Alex de Waal, 'Famine and Human Rights' (1991) 1(2) *Development in Practice* 77, 78-79; Edmond J. Keller, 'Drought, War, and the Politics of Famine in Ethiopia and Eritrea' (1992) 30(4) *JMAS* 609; Mamadou Baro and Tara F. Deubel, 'Persistent Hunger: Perspectives on Vulnerability, Famine, and Food Security in Sub-Saharan Africa' (2006) 35(1) *Annual Review of Anthropology* 521, 523..

<sup>91</sup> E.g. Hardin, 'Tragedy of the Commons'; Paul R. Ehrlich, *The Population Bomb* (Ballantine Books/Rivercity Press 1968).

<sup>92</sup> Thomas F Homer-Dixon, *Environment, Scarcity and Violence* (Princeton University Press 1999), 29; Bogale and Korf, 'To Share or Not to Share?', 743; Karen Lesley Hulme, 'Environmental Security: Implications for International Law' (2008) 19 *YbInt'l EnvL* 3, 4; Dalby, *Security and Environmental Change*, 16; Jörg Friedrichs, 'Who's Afraid of Thomas Malthus?' in Michael J. Manfredi and others (eds), *Understanding Society and Natural Resources: Forging New Strands of Integration across the Social Sciences* (Springer Open 2014), 67-70.

<sup>93</sup> Paul R. Ehrlich and John P. Holdren, 'Impact of Population Growth' (1971) 171(3977) *Science* 1212, 1214; Paul R. Ehrlich and others, 'Population Growth: Crash Program Needed' (1968) 160(3825) *Science* 252, 253; also, Donella H Meadows and others, *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind* (Universe Books 1972);

<sup>94</sup> Examples of this narrative can be found in Brown, *Redefining National Security*, 5-7; Ullman, 'Redefining Security', 134; Mohammed Ayooob, 'Security in the Third World: The Worm about to Turn?' (1983) 60(1) *Int Aff* 41, 43;

<sup>95</sup> Keller, 'Drought, War, '.

<sup>96</sup> Ayooob, 'The Roots of Conflict', 239; Ayooob, *Third World Security Predicament*, chapter 5; Buzan and Wæver, *Regions and Powers*, 15-20, 251-253.

The Brundtland Report expressly linked development, the environment, and security together. It introduced the concept of sustainable development into the political mainstream as a solution to the underdevelopment of the Global South as well as a goal for all states in general. The report can be understood as adopting a liberal perspective on the causes of insecurity by proposing a solution that focused on protecting individual rights and security through supporting the economic development of states, and increasing the number of liberal democracies in the international community. As will be discussed in later in this chapter, the Brundtland Report, and its definition of sustainable development, has had an extraordinary influence on the evolution of international responses to environmental concerns and questions of global security in the post-Cold War period.

Towards the end of the Cold War, other critical theories challenged the dominant paradigms of international relations, law, and security. Feminist security studies and post-colonial security studies challenged the 'traditional' (realist) perspective of international security.<sup>97</sup> Part of this early research mirrored the wider feminist debates and examined whether women's role as nurturers gave them a different perspective on peace and security.<sup>98</sup> Other researchers challenged this biological and cultural 'peace-proneness'<sup>99</sup> of early research and argued that women should be considered as a separate referent object for security.<sup>100</sup> These post-positivist examinations of security laid the foundations for developing multilevel and multidimensional interrogations of 'security' that were based on the experiences of women. These were significantly expanded in the post-Cold War, and as will be discussed below, engaged in examining the link between security and the environment to some degree.

While the security in the Cold War period has generally been viewed through the realist security paradigm, other approaches have produced different understandings of security and how to achieve it. Liberalism generally focused on increasing interdependence through economic and institutional means. However, both of these perspectives have framed the environment as ancillary to the end goal: Security. During this period, the environment was linked to security as a way to increase the economic security of a state (realist perspective) or as something to support economic interdependence between states through commercial activity (liberal perspective) as a way to ensure peace.

The latter perspective was reaffirmed in the emerging narrative, informed by liberalism, which linked developmental and environmental issues together as a way to attain security. This link is particularly evident in the Brundtland Report, and the subsequent introduction

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<sup>97</sup> Jill Steans, *Gender And International Relations: Theory, Practice, Policy*, vol 3rd. (Polity 2013), pg. 117.

<sup>98</sup> Buzan and Hansen, *Evolution of International Security*, 139; see also Elise Boulding, 'The Gender Gap' (1984) 21(1) J Peace Res 1.

<sup>99</sup> Buzan and Hansen, *Evolution of International Security*, 139.

<sup>100</sup> Christine Sylvester, 'I. Some Dangers in Merging Feminist and Peace Projects' (1987) 12(4) *Alternatives: Global, Local, Political* 493; Tickner, *Gender in International Relations*.

of sustainable development into mainstream international discourse. As will be examined below, the environment was once again considered in terms of the economic security of the state and international community, and as security for the individual terms of food and health. Finally, it was also considered as integral for states' ability to maintain security through resource control.

### 3. SUSTAINABLE DEVELOPMENT AND THE POST-COLD WAR RESPONSES TO THE ENVIRONMENT

The end of the Cold War was heralded as the 'end of history' by some commentators who noted the triumph of the west, and the 'unabashed victory of economic and political liberalism.'<sup>101</sup> The immediate post-Cold War period created an opportunity for development and environment issues to be heard by the international community. There was a new optimism that states would be able cooperatively to solve global problems that previously were unable to compete for attention on the diplomatic agenda. Bernstein suggests that the combination of environment and development 'epitomised the alternative international agenda so long buried under the preoccupation with superpower conflict'.<sup>102</sup> In particular, the 1992 Rio Conference represented an opportunity to show the new face of global cooperation and signalled that a peaceful, multilateral political system and open, market friendly international economic system were to be the cornerstones of the post-Cold War international order.

The organisers of the Rio Conference took the opportunity to make a statement on how planetary affairs should be managed. They promoted the concept of sustainable development, as articulated in the Brundtland Report, which linked these two areas.<sup>103</sup> They suggested that sustainable development should be seen as a goal and solution for the issues which undermine international peace and security. Maurice Strong made this argument when he linked the security of the planet and the security of individuals and nations.<sup>104</sup> The concept has had a profound effect on the subsequent evolution of IEL and international responses to peace and security. Many attribute this influence to its ability to reconcile the paradoxical relationship between consistent economic growth, and the limitations of the Earth's ecological functions.<sup>105</sup> Therefore, the concept was seen as a solution to the drivers of

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<sup>101</sup> Francis Fukuyama, 'The End of History?' (1989)(16) *The National Interest* 3, 3.

<sup>102</sup> Bernstein, *Compromise of Liberal Environmentalism*, 86.

<sup>103</sup> *Ibid*, 86.

<sup>104</sup> Maurice F Strong, 'Opening Statement to the Rio Summit' (United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, 3 June 1992) UN Doc A/CONF.151/26/Rev.1 (Vol II) Annex II, 45, 49.

<sup>105</sup> For a critique of this paradoxical relationship see, Lipschutz, 'Wasn't the Future Wonderful?'; Daly, *Beyond Growth*; Daly, 'Reconciling the Economics of Social Equity and Environmental Sustainability'; Robinson, 'Squaring the Circle?'; Redclift, 'Oxymoron Comes of Age'; Ximena Fuentes, 'International Law-Making in the Field of Sustainable Development: The Unequal Competition Between Development and the Environment' (2002) 2(2) *Int Environ Agreements* 109, 111



underdevelopment and the social stressors that can lead to conflict and insecurity, as well as a guiding principle for the subsequent development of IEL.

### 3.1 What is sustainable development?

The origins of sustainable development can be traced to earlier state practice and to reports and proposals by intergovernmental organisations such as the International Union for Conservation of Nature.<sup>106</sup> However, the concept of sustainable development introduced in the Brundtland Report has had significant influence on the development of IEL in subsequent soft and hard law instruments and in international responses to (in)security. The report refers to sustainable development as a way to meet the ‘needs of the present without compromising the needs of future generations.’<sup>107</sup> This approach is a normative one that integrates elements of inter- and intra-generational equity,<sup>108</sup> economic and social development, as well as the importance of maintaining a healthy environment.<sup>109</sup> The latter three elements have become known as the ‘three pillars of sustainable development’.<sup>110</sup>

These elements of sustainable development are reflected in the two underlying concepts that inform sustainable development: ‘The concept of ‘needs’, in particular the essential needs of the world’s poor; and the idea of limitations imposed, by the state of technology and social organisation.’<sup>111</sup> Therefore, sustainable development incorporates many of the central values of liberalism. It makes people the central focus of the concept. It incorporates liberalism’s technological innovation and social progress, while also recognising the current technological and social limitations of society. It also incorporates the argument that economic growth, development, and interdependence act as a way to maintain peace and security. For these reasons, sustainable development aims to support the continuation of (economic) development which states, international institutions, programmes, and organisations, deemed necessary for developing countries, while also taking into consideration the limitations of Earth’s ecological functions.

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<sup>106</sup> International Union for Conservation of Nature and Natural Resources, *World Conservation Strategy*, introduction, ¶3; see also, *Bering Sea Arbitration*; Stockholm Declaration 1972, preamble, Principle 1, Principle 8, Principle 11, Principle 21 and Principle 23; and the discussion in Sands, *Principles (2nd edn)*, 253.

<sup>107</sup> WCED, *Our Common Future*, 43.

<sup>108</sup> Edith Brown Weiss, ‘In Fairness to Future Generations and Sustainable Development’ (1992) 8 *AmUJInt’l L& Pol’y* 19; Daniel Barstow Magraw and Lisa D Hawke, ‘Sustainable Development’ in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2007); however, see also International Law Association, *International Law on Sustainable Development: Final Report* (International Law Association, Sofia Conference 2012).

<sup>109</sup> Fuentes, ‘International Law-Making’, 111; Magraw and Hawke, ‘Sustainable Development’, 615.

<sup>110</sup> Plan of Implementation 2002, 2; Gerd Winter, ‘A Fundament and Two Pillars’ in Hans Christian Bugge and Christina Voigt (eds), *Sustainable Development in National and International Law: What did the Brundtland Report do to Legal Thinking and Legal Development, and Where can We go from Here?* (Europa Law Pub. 2008), 25-28; see also Johannesburg Declaration (2002).

<sup>111</sup> Sands, *Principles (2nd edn)*, 253; WCED, *Our Common Future*, 43.

The content of the sustainable development concept has shaped the evolution of international responses to environmental problems through IEL. Principles such as the principle of integration, equity, precaution, and good governance have been incorporated into international regimes responding to environmental and developmental concerns.<sup>112</sup> This is indicative of an institutionalisation of collective responses to environmental concerns at different levels of governance and with the participation of both NSAs and states. In this way, sustainable development may be considered a manifestation of liberalism in the international sphere, and specifically, in the evolution of international responses to the environment.

### 3.2 Sustainable Development in International Environmental Law

The legal content of sustainable development is generally found in the conventions and soft law documents adopted during the Rio Conference process. There are two distinct elements to the concept: Those principles that reflect substantive elements of the concept and those that reflect procedural elements of the concept. Together, these elements indicate a growing institutionalisation of collective responses to transboundary environmental problems, while also taking into account the need to balance the differing interests of members of the international community.<sup>113</sup> In this way, sustainable development can be thought of as an ‘integrationist principle’<sup>114</sup> whose components seek to balance the competing economic, social and environmental interests of the international community.<sup>115</sup>

Sustainable development includes both substantive and procedural principles. One procedural principle that has been widely supported in the development of IEL and governance is participation, including the right by individuals to participate in environmental decision-making processes, the right to effective remedies and the right to information.<sup>116</sup> These principles encapsulate ‘norms of liberal environmentalism’ in which ‘liberal democracy, capitalism, ‘good governance’ is regarded as the most viable political framework for tackling sustainable development challenges.’<sup>117</sup> They have been included in both hard and soft IEL as a response to the perceived ‘democratic gap’ in the development of

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<sup>112</sup> Joyeeta Gupta, ‘Global Sustainable Development Governance: Institutional Challenges from a Theoretical Perspective’ (2002) 2(4) *Int Environ Agreements* 361, 363.

<sup>113</sup> Redclift, ‘Oxymoron Comes of Age’, 219. ‘At the time this meant the global environment and the institutions that were established at the first Earth Summit soon became vested with expectations that they could not possibly meet.’

<sup>114</sup> McGoldrick, ‘Sustainable Development and Human Rights’, 818.

<sup>115</sup> Atapattu, ‘Myth or Reality’, 277.

<sup>116</sup> Agenda 21 1992, chapter 40 ¶1; Plan of Implementation 2002, ¶24(b); Malgosia Fitzmaurice, ‘The Relationship between the Law of International Watercourses and Sustainable Development’ in Malgosia Fitzmaurice, David M. Ong and Panos Merkouris (eds), *Research Handbook on International Environmental Law* (2010), 605; Sands and others, *Principles* (3rd edn), 625, 648.

<sup>117</sup> Karin Bäckstrand, ‘Democratizing Global Environmental Governance? Stakeholder Democracy after the World Summit on Sustainable Development’ (2006) 12(4) *Eur J Int Relat* 467, 469-470.

such law. Chambers and Elliot suggest that the support for the participation of marginalised groups such as youth, women, and indigenous people is seen as a way to respond to the participation gap and strengthen the democratic basis of environmental governance.<sup>118</sup>

The support for the participation by NSAs, including individuals, civil society, NGOs, and private actors, demonstrates the growing pluralism of the international sphere described by liberal institutionalists. Many of the international environmental agreements adopted at the Rio Conference and afterwards include the principles of participation in their texts.<sup>119</sup> Principle 10 of the Rio Declaration recognises the principle of public participation.<sup>120</sup> Similarly, the 1992 Biodiversity Convention requires the participation and interests of the individual or communities affected.<sup>121</sup> One of the most comprehensive articulations of the participation principle is included in the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). This convention requires states to 'guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters'.<sup>122</sup> These principles have also been incorporated into national and regional institutional frameworks for environmental matters.<sup>123</sup>

The consequence of this broad support for procedural participation is that individuals at the local, national and international levels have been able to challenge the responses to

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<sup>118</sup> See, W. Bradnee Chambers, 'Introduction: Toward an Effective Framework for Sustainable Development' in W. Bradnee Chambers and Jessica F. Green (eds), *Reforming International Environmental Governance: From Institutional Limits to Innovative Solutions* (United Nations University Press 2005); Lorraine M. Elliott, *The Global Politics of the Environment* (2nd ed. edn, Palgrave Macmillan 2004).

<sup>119</sup> Magraw and Hawke, 'Sustainable Development', 629; Cordonier Segger and Khalfan, *Sustainable Development Law*, 158-166; International Law Association, 'New Delhi Declaration of Principles of International Law Relating to Sustainable Development' (New Delhi, 6 April 2002) A/CONF.199/8 (Annex) (9 August 2002), Principle 5; Commission on Sustainable Development, 'Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development' (*United Nations Department of Economic and Social Affairs*, 1996) <<http://www.un.org/documents/ecosoc/cn17/1996/background/ecn171996-bp3.htm>> accessed 26 June 2015, ¶126-¶130; Biodiversity Convention 1992, Principle 10; see also Marie-Claire Segger Cordonier and K Bottriel, 'The Principle of Public Participation and Access to Information and Justice' (Centre for International Sustainable Development Law Recent Developments in International Law Related to Sustainable Development Series) <[http://www.worldfuturecouncil.org/fileadmin/user\\_upload/papers/CISDL\\_P4\\_Participation.pdf](http://www.worldfuturecouncil.org/fileadmin/user_upload/papers/CISDL_P4_Participation.pdf)> accessed 26 June 2015.

<sup>120</sup> Rio Declaration 1992, Principle 10; International Law Association, ILA Declaration of Principles Relating to Sustainable Development (New Delhi, 6 April 2002) Principle 5.1; see also UNGA Resolution 41/128 Declaration on the Right to Development (4 December 1986) UN Doc A/RES/41/128 (1986), ¶8.3(c)

<sup>121</sup> Biodiversity Convention 1992, art 8(j); Magraw and Hawke, 'Sustainable Development', 629.

<sup>122</sup> Aarhus Convention 1998, art 1.

<sup>123</sup> Jonas Ebbesson, 'Public Participation and Privatisation in Environmental Matters: An Assessment of the Aarhus Convention' (2011) 4(2) *Erasmus Law Review* 71, 74; Sands and others, *Principles* (3rd edn), 655. see also, *Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Kiev) (adopted 21 May 2003, entered into force 8 October 2009) 2629 UNTS 119 (2009), art 1.

environmental concerns through local, national and international institutions.<sup>124</sup> The broadening of NSA participation at all levels of governance has challenged the state-centric conceptualisation of the international community as envisaged in realist paradigms.<sup>125</sup> It further reveals the consolidation of liberal institutionalist approaches to the global order which support the participation by NSAs as a way to increase the democratic legitimacy of state action and also to improve the democratic governance of states. This, liberalism assures, will help empower individuals and increase the number of liberal states in the international community, therefore creating peace.

The other notable procedural principle included in sustainable development is the precautionary approach. This principle builds on existing legal principles, such as the 'no harm' principle discussed above.<sup>126</sup> This is both an element of the substantive principle of sustainable usage and a procedural principle that requires states to undertake a duty to adopt precautionary measures where there is scientific uncertainty over effects of their activities on the environment.<sup>127</sup> In this way it reflects the recognition of the limitations of current technology and science, as articulated within the concept of sustainable development.

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<sup>124</sup> Rio Declaration 1992, Principle 10; Desertification Convention 1994, art 3; Aarhus Convention 1998, art 9; see also, Stephen Bass, Barry Dalal-Clayton and Jules Pretty, *Participation in Strategies for Sustainable Development* (London: International Institute for Environment and Development 1995); Organisation of American States, *Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development* (Organisation of American States 2001); Barbara Adams and Lou Pingeot, *Strengthening Public Participation at the United Nations for Sustainable Development: Dialogue, Debate, Dissent, Deliberation* (Study for UN Department of Economic and Social Affairs/Division for Sustainable Development Major Groups Programme, New York: 2013).

<sup>125</sup> E.g. *European Communities – Measures Concerning Meat and Meat Products (Hormones)* (Report of the Appellate Body) (16 January 1998) WT/DS26/AB/R; (Report of the Panel) WT/DS48/AB/R; *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (Report of the Appellate Body) (12 October 1998) WT/AS58/AB/R; *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products* (Report of the Appellate Body) (12 March 2001) WT/DS135/AB/R; (Report of the Panel) WT/DS135/R; These cases reflect a broadening of the participation by non-State actors in dispute resolution through the WTO. The WTO has issued an Additional Working Procedure to allow 'any person, whether natural or legal' to file a brief. In the WTO Hormones dispute, the substantive meetings were opened to the public. The Shrimp/Turtles case was the first instance that NGOs could participate in the proceedings. See Segger Cordonier and Bottriel, 'Principle of Public Participation', 6-7.

<sup>126</sup> *Nuclear Weapons in Armed Conflict*, ¶29.

<sup>127</sup> Rio Declaration 1992, principle 15; Magraw and Hawke, 'Sustainable Development', 361; Jonathan B Wiener, 'Precaution' in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2007), 601, 604;. There is a wealth of literature on the precise meaning of the precautionary principle/approach. See e.g. Giandomenico Majone, 'The Precautionary Principle and its Policy Implications' (2002) 40(1) JCMS 89; Arie Trouwborst, 'The Precautionary Principle in General International Law: Combating the Babylonian Confusion' (1997) 16(2) RECIEL 185; Arie Trouwborst, 'The Precautionary Principle and the Ecosystem Approach in International Law: Differences, Similarities and Linkages' (2009) 18(1) RECIEL 26; Julie A. Nelson, 'Is Dismissing the Precautionary Principle the Manly Thing to Do? Gender and the Economics of Climate Change' (Working Paper No 12-04 Global Development and Environment Institute, Tufts University 14 September 2012) <[http://ineteconomics.org/research\\_note/dismissing-precautionary-principle-manly-thing-do-gender-and-economics-climate-change](http://ineteconomics.org/research_note/dismissing-precautionary-principle-manly-thing-do-gender-and-economics-climate-change)> accessed 30 January 2015; Sands and others, *Principles (3rd edn)*, 217, fn 240..

The precautionary approach may be seen as a guiding principle to encourage decision-makers to consider the potentially harmful effects of their activities on the environment.<sup>128</sup> Some references to the approach in IEL are more qualified than others. For example, the 2000 Cartagena Protocol and Principle 15 of the Rio Declaration calls for states to apply a precautionary approach where there is lack of full scientific certainty and ‘threats of serious or irreversible damage’ exist.<sup>129</sup> It requires states to balance different interests, such as the economy and environment, in a cost-effective manner.<sup>130</sup> However, the earlier 1995 Fish Stocks Agreement contains a less qualified reference to precaution which does not refer to the balance between the threat to the environment and economic considerations.<sup>131</sup> This reflects the inclusion of a broader precautionary approach in the earlier agreement.

The inclusion of an explicit economic element in the manifestation of the precautionary approach in the later Cartagena Protocol suggests that the relationship between the environment, economy, and science has become increasingly complex in recent times. It may also indicate the increasing treatment of tensions between environmental conservation and the need to develop as an economic problem, and one that can be solved by subjecting it to objective, dispassionate cost benefit analysis. This may reveal a prioritisation of economic considerations in the context of these paradoxical issues. Finally, it may also identify the increasing influence of neoliberalism in the evolution of IEL and the dominance of the market in international development.

A number of international courts, including the WTO Appellate Body, ITLOS, and the ICJ, have been asked to pronounce on the legal status of the precautionary approach, but have eschewed answering this question.<sup>132</sup> The WTO Appellate Body has stated that it is unwilling to pronounce whether the precautionary approach has become a principle of

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<sup>128</sup> Rio Declaration 1992, principle 15; *Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa* (Bamako) (adopted 30 January 1991, entered into force 22 April 1998) 2101 UNTS 177 (2002), art 4(3)(f); *Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan)* (Provisional Measures) (1999) ITLOS Nos 4 & 5, ¶77-¶81; Magraw and Hawke, ‘Sustainable Development’, 361; Wiener, ‘Precaution’, 601, 604.

<sup>129</sup> Rio Declaration 1992, Principle 15; Cartagena Protocol 2000, preamble ¶4, art 1.

<sup>130</sup> International Law Association, *International Law on Sustainable Development* (2012), 20; see also Rio Declaration 1992, Principle 15; Kyoto Protocol 1997; Cartagena Protocol 2000, preamble. This has been criticised as a weaker version of the precautionary approach. See, Linda Cameron, ‘Environmental Risk Management in New Zealand - Is There Scope to Apply a More Generic Framework?’ (Policy Perspectives Paper 06/06 New Zealand Treasury) <<http://www.treasury.govt.nz/publications/research-policy/ppp/2006/06-06/tpp06-06.pdf>> accessed 15 October 2013, 12; Wiener, ‘Precaution’, 604.

<sup>131</sup> UN Fish Stocks Agreement 1995, art 6.

<sup>132</sup> E.g. *The Mox Plant Case (Ireland v United Kingdom)*; *Pulp Mills on the River Uruguay (Argentina v Uruguay)*; *Responsibilities and Obligations of States with Respect to Activities in the Area* (Advisory Opinion) (1 February 2011) ITLOS Reports 2011 10; Duncan French, ‘From the Depths: Rich Pickings of Principles of Sustainable Development and General International Law on the Ocean Floor – the Seabed Disputes Chamber’s 2011 Advisory Opinion’ (2011) 26 Int’l J Marine & Coastal L 525, 549; Daniel Kazhdan, ‘Precautionary Pulp: Pulp Mills and the Evolving Dispute between International Tribunals over the Reach of the Precautionary Principle’ (2011) 38(2) Ecology LQ 527, 533-536.

customary or general international law.<sup>133</sup> A similar tension is included in the ICJ's treatment of the principle. New Zealand relied on the precautionary principle in its submissions to the court in the *Nuclear Test Case* (1995).<sup>134</sup> While the court dismissed New Zealand's request in this case, judges Weeramantry and Palmer used the opportunity to argue that the precautionary approach had joined the growing corpus of international environmental principles.<sup>135</sup> The court, once again, chose not to record its view on the legal status of the approach in the later *Pulp Mills on the River Uruguay Case* (2010). This was criticised by Judge Cançado Trindade who argued that the principle was a principle of IEL.<sup>136</sup>

However, international courts have been more open to noting the relevance of the precautionary approach in the interpretation and application of international law. During the *Pulp Mills on the River Uruguay Case* (2010), the court did note that the approach may have relevance in the interpretation and application of provisions of law.<sup>137</sup> Similarly, the Seabed Dispute Chamber in the *Responsibilities and Obligations of States with Respect to Activities in the Area* (2011) suggested that the precautionary approach is a rule of custom for the purposes of treaty interpretation.<sup>138</sup> While not a declaratory statement of the law, the chamber goes beyond the statements made by previous tribunals and courts.<sup>139</sup> These decisions indicate that courts have been unwilling to rule on the legal status on the approach's substantive elements. However, they are more willing to recognise the procedural content of the principle. This indicates that states may be more willing to be

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<sup>133</sup> See also *EC – Hormones* (1998), ¶123-124; *EC-Asbestos*, ¶178; *European Communities – Measures Affecting the Approval and Marketing Biotech Products* (Panel Report) (29 September 2006) WT/DS291/R; WT/DS292/R; WT/DS293/R ¶7.89

<sup>134</sup> New Zealand, 'Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests Case (New Zealand v. France) Application Instituting Proceedings' (9 May 1973) , ¶100, ¶105-¶110.

<sup>135</sup> *Ibid*, ¶105-¶108; *Nuclear Test Case (New Zealand v France)* (Dissenting Opinion of Judge Weeramantry), 343-344; see also, Owen McIntyre and Thomas Mosedale, 'The Precautionary Principle as a Norm of Customary International Law' (1997) 9(2) JEL 221, 232-233; Kazhdan, 'Precautionary Pulp', 539-540.

<sup>136</sup> *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, (Separate Opinion of Judge Cançado Trindade) ¶67-¶68. Further, Judge Trindade criticised missed opportunity that the ICJ had in the earlier *Gabčíkovo-Nagymaros Project* case where they took note of Hungary's invocation of the precautionary principle but did not acknowledge nor elaborate on the legal implications of the principle. He used this opportunity to identify where the legal content of the principle may originate and argued that it emanates from the 'universal juridical conscience, which he contends is the 'ultimate material "source of law"' and the 'new *jus gentium* of our time.' This classification of the principle removes the question of consistent state practice from the development of the precautionary principle as a principle of international law. *Ibid*, ¶113, ¶257. See also *Gabčíkovo-Nagymaros Project*, ¶97 cited by Judge Cançado Trindade), ¶66 and also ¶52.

<sup>137</sup> *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, ¶257; Sands and others, *Principles* (3rd edn), 223

<sup>138</sup> *Advisory Opinion with Respect to Activities in the Area* (2011), ¶135, referring to *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, ¶164.

<sup>139</sup> *Southern Bluefin Tuna Cases*, ¶77 and ¶79; *The Mox Plant Case (Ireland v United Kingdom)*, ¶89(1); see also, Separate Opinion of Judge Treves, ¶8; *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, ¶164; *Advisory Opinion with Respect to Activities in the Area* (2011), ¶121-¶122, ¶125-¶127, ¶131, ¶135; French, 'From the Depths', 550.

subject to a decision-making exercise than a more substantive obligation concerning an unmeasurable uncertainty.

Philippe Sands notes that the substantive elements of sustainable development, such as the precautionary approach, differential treatment, and inter-generational equity comprise the inherent legal elements of sustainable development.<sup>140</sup> These substantive elements point to the limitations that must be placed on the use of natural resources.<sup>141</sup> One example of this differential treatment between the substantive and procedural elements of sustainable development is the treatment of the principle of inter-generational equity by international courts and tribunals.<sup>142</sup>

This tension is further revealed in the contested legality of the principle of common but differentiated responsibility (CBDR). This principle links the performance of developing states' obligations with financial assistance, technology transfer, and capacity-building.<sup>143</sup> As this principle explicitly connects international responses to environmental problems with development support, many states are reluctant to accord this principle legal content.<sup>144</sup> Others, particularly developing countries, argue it is a principle of international law.<sup>145</sup> This tension is noticeable in the negotiations of the climate change regime where environment and economic development considerations are intimately connected.<sup>146</sup>

Recent adopted decisions from the climate change regime point to an erosion of differentiation between developing and developed states. However, they contain

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<sup>140</sup> Sands and others, *Principles (3rd edn)*, 206-217.

<sup>141</sup> Sands, *Principles (2nd edn)*, 253.

<sup>142</sup> E.g. Minors; *Nuclear Weapons in Armed Conflict*; Vaughan Lowe, 'Sustainable Development and Unsustainable Arguments' in Alan E. Boyle and David Freestone (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges* (Oxford University Press 1999), 28; Claire Molinari, 'From a Right to Development to Intergenerational Equity' in Jorge E. Viñuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015), 152-153.

<sup>143</sup> E.g. Stockholm Declaration 1972, principle 23; UNCLOS 1982, art 61(3) and 69(4); Montreal Protocol 1987, preamble; London Amendment to the Montreal Protocol 1990, art 10; UNFCCC 1992, art 3(1); see also, *ibid*; Desertification Convention 1994; Kyoto Protocol 1997; Tuula Kolori, 'The Principle of Common but Differentiated Responsibilities as Contributing to Sustainable Development through Multilateral Environmental Agreements' in Hans Christian Bugge and Christina Voigt (eds), *Sustainable Development in National and International Law: What did the Brundtland Report do to Legal Thinking and Legal Development, and where can we go from here?* (Europa Law Pub. 2008), 251-253; Lavanya Rajamani, 'Differentiation in the Emerging Climate Regime' (2013) 14(1) *Theoretical Inq L* 151, 154.

<sup>144</sup> See the commentary by Lavanya Rajamani on this issue. Lavanya Rajamani, 'The Principle of Common but Differentiated Responsibility and the Balance of Commitments under the Climate Regime' (2000) 9(2) *RECIEL* 120; Lavanya Rajamani, 'The Changing Fortunes of Differential Treatment in the Evolution of International Environmental Law' (2012) 88(3) *Int Aff* 605, 616; Rajamani, 'Differentiation'.

<sup>145</sup> Christopher D Stone, 'Common but Differentiated Responsibilities in International Law' (2004) 98(2) *AJIL* 276, 281.

<sup>146</sup> E.g. Nina E Bafundo, 'Compliance with the Ozone Treaty: Weak States and the Principle of Common but Differentiated Responsibility' (2006) 21(3) *AmUInt'l LRev* 461; International Law Association, *International Law on Sustainable Development* (2012), 18.

commitments to technology transfer<sup>147</sup> and preferential access to assistance by developing states, particularly the least developed countries, African countries, and Small Island Developing States (SIDs).<sup>148</sup> The retention of these commitments reflects some acknowledgement of equity between states.<sup>149</sup> However, the Durban Platform on Enhanced Action makes no reference to 'equity' or CBDR.<sup>150</sup> These tensions are ongoing and revealed in the negotiations of the Paris Agreement at the 21<sup>st</sup> COP to the 1992 UNFCCC.<sup>151</sup> These tensions highlight the problems in the recent development of climate change law and difficulties in reconciling the substantive elements of sustainable development, with economic and political realities.<sup>152</sup> Therefore, they suggest that tensions between equity and differentiation remain at the forefront of climate negotiations.

The principle of sustainable use explicitly links the substantive elements of sustainable development. References to the 'sustainable utilisation' of resources, or words to similar

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<sup>147</sup> Decision 2/CP.15 'Copenhagen Accord' in Report of the Conference of the Parties on its Fifteenth Session, Addendum, Part Two: Action taken by the Conference of the Parties on its Fifteenth Session (30 March 2010) FCCC/CP/2009/11/Add.1 (18 December 2009), ¶11; UNFCCC, Decision 1/CP.16 'The Cancún Agreements: Outcome of the Work of the *Ad Hoc* Working Group on Long-term Cooperative Action under the Convention' in Report of the Conference of the Parties on its Sixteenth Session, held in Cancun from 29 November to 10 December 2010 (15 March 2011) FCCC/CP/2010/7/Add.1 (10-11 December 2010), ¶113-29; UNFCCC, Decision 1/CP.18 'Agreed Outcome Pursuant to the Bali Action Plan' in Report of the Conference of the Parties on its Eighteenth Session, held in Doha from 26 November to 8 December 2012, Addendum, Part Two: Action Taken by the Conference of the Parties at its Eighteenth Session (28 February 2013) FCCC/CP/2012/8/Add.1 (8 December 2012), Part V.

<sup>148</sup> E.g. Cancún Agreements (2010) (10-11 December 2010) ¶95; Decision 1/CP.18 Agreed Outcome Pursuant to the Bali Action Plan (8 December 2012) Part IV and V, ¶94; Decision 2/CP.15 Copenhagen Accord (18 December 2009), ¶3, ¶8; UNFCCC, Decision 3/COP.19 'Long-Term Climate Finance' in Report of the Conference of the Parties on its Nineteenth Session, held in Warsaw from 11 to 23 November 2013, Addendum, Part two: Action taken by the Conference of the Parties at its Nineteenth Session (31 January 2014) FCCC/CP/2013/10/Add.1 (23 November 2013), ¶4, ¶7; UNFCCC, Decision 21/CP.20 'Parties included in Annex I to the Convention whose Special Circumstances are Recognized by the Conference of the Parties' in Report of the Conference of the Parties on its Twentieth Session, held in Lima from 1 to 14 December 2014, Addendum, Part two: Action taken by the Conference of the Parties at its Twentieth Session (2 February 2015) FCCC/CP/2014/10/Add.3 (12 December 2014);

<sup>149</sup> Atapattu, 'Myth or Reality', 276-277.

<sup>150</sup> Rajamani, 'The changing fortunes of differential treatment', 618; Decision 2/CP.18 Advancing the Durban Platform (8 December 2012), ¶9; compare with, Decision 1/CP.17 'Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action' in Report of the Conference of the Parties on its Seventeenth Session, held in Durban from 28 November to 11 December 2011, Addendum, Part Two: Action Taken by the Conference of the Parties at its Seventeenth Session (13 March 2012) FCCC/CP/2011/9/Add.1 (11 December 2011)

<sup>151</sup> Noah M. Sachs, 'What Will 'Common But Differentiated Responsibility' Mean After Paris?' (*progressivereform.org*, 9 December 2015) <<http://www.progressivereform.org/CPRBlog.cfm?idBlog=46F28765-B8CC-F186-EC1CE82FA534C410>> accessed 15 December 2015.

<sup>152</sup> Lavanya Rajamani, 'The Durban Platform for Enhanced Action and the Future of the Climate Regime' (2012) 61(2) ICLQ 501, 507-508; Albert Mumma and David Hodas, 'Designing a Global Post-Kyoto Climate Change Protocol that Advances Human Development' (2008) 20(4) *Geo Int'l Envtl L Rev* 619, 631; see also Yoshiro Matsui, 'Some Aspects of the Principle of "Common but Differentiated Responsibilities"' (2002) 2(2) *Int Environ Agreements* 151; Rajamani, 'Differentiation'.



effect, have been included in many MEAs and other international agreements.<sup>153</sup> This principle has been recognised by international tribunals and courts who note the existence of an obligation to conserve living natural resources. In the *Icelandic Fisheries Case* (1974), the ICJ stated that states have a duty to give due regard to the needs of conservation for the benefit of all.<sup>154</sup> In cases decided after the introduction of sustainable development, the ICJ noted need for states to take into consideration the new norms and standards relating to sustainable development, including the sustainable usage of natural resources.<sup>155</sup> They recognised the need to balance states' rights and needs and the obligation to protect the environment from any damage that may be caused by activities.<sup>156</sup> These rulings uphold the substantive elements of the sustainable development concept that seek to ensure the management of environmental resources for future generations.

Sustainable development and the principle of integration recognises that there are interconnections between different areas of international law.<sup>157</sup> These interconnections have been noted by the ICJ and the WTO Appellate Body, both of whom have used the principle of sustainable development to acknowledge the interrelationships between the different areas of international law and balance these interests.<sup>158</sup> These pronouncements on the principle of integration indicate that not only is it a substantial principle of sustainable development, but it has practical usage to synthesise sustainable development.

The central importance of sustainable development is the ability for it to integrate laws, principles, and norms from across the international legal system.<sup>159</sup> Its value as a normative concept means that it continues to be central to the ongoing negotiations in environmental regimes, as well as in the wider international community.<sup>160</sup> Some of the central principles

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<sup>153</sup> The Biodiversity Convention (1992) defines 'sustainable use' as the use 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.' Biodiversity Convention 1992, art 2; UN Fish Stocks Agreement (1995) refers to the sustainability of fish stocks in relation to protecting marine resources and the biodiversity of the sea. UN Fish Stocks Agreement 1995, art 5; UN Watercourses Convention (1997) refers to the 'equitable' and 'sustainable utilisation' of transboundary watercourses. UN Watercourses Convention 1997, art 5(1) and 6(1)(f).

<sup>153</sup> UN Fish Stocks Agreement 1995, art 5.

<sup>154</sup> *Fisheries Jurisdiction Case (United Kingdom v Iceland)* (Merits) [1974] ICJ Rep 3, ¶72.

<sup>155</sup> *Gabčikovo-Nagymaros Project*, ¶140.

<sup>156</sup> *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, ¶175; *Southern Bluefin Tuna Cases*, ¶77.

<sup>157</sup> UNGA Resolution 37/7 World Charter for Nature (28 October 1982) UN Doc A/RES/37/7, ¶7; Commission on Sustainable Development, 'Principles of International Law', ¶13, ¶16-¶18; International Law Association, ILA Declaration of Principles Relating to Sustainable Development (New Delhi, 6 April 2002), principle 7; see also McGoldrick, 'Sustainable Development and Human Rights'.

<sup>158</sup> *Gabčikovo-Nagymaros Project*, 140; *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, ¶53.

<sup>159</sup> McGoldrick, 'Sustainable Development and Human Rights', 818.

<sup>160</sup> E.g. Report of the Secretary General, *The Road to Dignity by 2030: Ending Poverty, Transforming all Lives and Protecting the Planet* (4 December 2014) UN Doc A/69/700, ¶2, ¶36-¶37; United Nations, *Initial Input of the Secretary-General to the Open Working Group on Sustainable Development Goals* (17 December 2012) UN Doc A/67/634, ¶20; see also Open-Working Group on Sustainable Development Goals, 'Final Compilation for

have been integrated into national and international law,<sup>161</sup> and into primary and secondary soft law instruments such as regulations, declarations, and codes of practice.<sup>162</sup> These represent a ‘strengthening and broadening of the concept’<sup>163</sup> in the wider international sphere. These developments highlight the collective and cooperative response to the interrelated issues of environmental sustainability and development incorporated within the international community.

However, some commentators contend that sustainable development serves the interests of the industrial elite.<sup>164</sup> These criticisms relate to the tension between integrating the three pillars of sustainable development and the arguments that economic development has been prioritised in implementation of the concept. This issue has become particularly relevant in response to the global financial crisis of 2007-2009 and the resulting ‘great recession.’<sup>165</sup> Natural resource accounting has been a widely used and integral part of sustainable development where the ‘value’ of nature is included in economic considerations to provide a more comprehensive overview of the sustainability of development and growth.<sup>166</sup> Proponents of this approach argue that ascribing ‘value’ to the environment enables policymakers to inform decisions over the benefits and potential costs of any project over time. Critics of this approach question the ability of the methodology to ‘accurately assign

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Discussion Document on the Post-2015 Development Agenda Declaration by Major Groups and other Stakeholders’ (*Open Working Group on Sustainable Development Goals (17-20 February 2015)*, 2015) <<https://sustainabledevelopment.un.org/content/documents/6896MGoS%20Compilation%20Document%20-%20Declaration.pdf>> accessed 20 June 2015; United Nations, *Report of the Open Working Group of the General Assembly on Sustainable Development Goals* (12 August 2014) UN Doc A/68/970 ; Open-Working Group on Sustainable Development Goals, ‘Final Compilation of Amendments to Goals and Targets by Major Groups and other Stakeholders Including Citizen’s Responses to MY World 6 Priorities’ (ND) ;

<sup>161</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community [2007] OJ C306/01, art 2(5) and Art 10A 2; see also Tuvalu Seabed Minerals Act 2014, s. 5; Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 11; Fisheries Act (No. 10 of 2014) (Vanuatu); Fisheries Act (No. 20 of 2014) (Seychelles); Sustainable Development Act, Chapter 521 of the Law of Malta (10 July 2012); Federal Sustainable Development Act, S.C. 2008 c. 33 (Canada); Environmental Protection and Biodiversity Conservation Act 1999 (Cth) (Australia) , Forest Act 1998 (Gambia).

<sup>162</sup> See, Virginie Barral, ‘Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm’ (2012) 23(2) EJIL 377.

<sup>163</sup> International Law Association, *International Law on Sustainable Development* (2012), 5.

<sup>164</sup> Fernanda de Paiva Duarte, ‘The Environment and Development Debate: Paradoxes, Polemics and Panaceas’ (1999) 8 Griff L Rev 258, 271.

<sup>165</sup> Joseph E. Stiglitz, *The Price of Inequality* (Penguin Books 2013), 1; see also, ‘Timeline of World Financial Crisis’ *The Telegraph* (London, 23 June 2011) <<http://www.telegraph.co.uk/finance/financialcrisis/8592990/Timeline-of-world-financial-crisis.html>> accessed 20 June 2015; Karen Morrow, ‘Rio+20, The Green Economy and Re-orienting Sustainable Development’ (2012) 14(4) Env L Rev 279; Patrick Kingsley, ‘Financial Crisis: Timeline’ *The Guardian* (London, 7 August 2012) <<http://www.theguardian.com/business/2012/aug/07/credit-crunch-boom-bust-timeline>> accessed 30 January 2015;

<sup>166</sup> P ten Brink and others, *Nature and its Role in the Transition to a Green Economy* (United Nations Environment Programme, 2010), iii.

economic values to the social and environmental impacts of a project.<sup>167</sup> As many of the 'values' of nature are non-monetary or non-quantifiable, critics of the use of economic methodologies in environmental decision-making argue that this approach frames the environment as a commodity that silences and ignores those non-monetary and unquantifiable values of nature.<sup>168</sup>

In response to the recent global economic crisis, the concept of a 'green economy' has been integrated into the paradigm of sustainable development as a way to ensure sustained economic growth while also protecting the environment.<sup>169</sup> The 'green economy' is defined as 'new economic paradigm' that 'that reduces environmental risks and ecological scarcities at the same time as improving human well-being and social equity.'<sup>170</sup> It is meant to complement sustainable development by establishing an economic foundation to support sustainable development activities.<sup>171</sup> Both the climate change and biodiversity regimes include green economy by introducing 'payment for ecosystem services' schemes in the context of nationally defined development policies. These schemes 'sell' ecosystem functions on the global market, thus incentivising those communities who own the ecosystems to provide a reason not to use them in an exploitative manner.<sup>172</sup>

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<sup>167</sup> Magraw and Hawke, 'Sustainable Development', 636.

<sup>168</sup> See Clive L. Spash, 'How Much is that Ecosystem in the Window? The one with the bio-diverse trail' (2008) 17(2) *Environ Values* 259

<sup>169</sup> Rio+20 Outcome Document (2012) ¶56; see also UNGA Resolution 64/236 Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development (24 December 2009) UN Doc A/RES/64/236, ¶20(a); see also TEEB, *The Economics of Ecosystems and Biodiversity: Mainstreaming the Economics of Nature: A Synthesis of the Approach, Conclusions and Recommendations of TEEB* (2010) and the earlier Nicholas H Stern, *The Stern Review: The Economics of Climate Change. Executive Summary* (Stern Review of Economics and Climate Change)

<sup>170</sup> Kate Wilkinson, 'Payment for Ecosystem Services and the Green Economy: Green Washing or Something New?' (2014) 5(2) *JHRE* 168, 174; UNEP Economic and Trade Branch, *Green Economy Developing Countries Success Stories* (United Nations Environment Programme, 2010), 5.

<sup>171</sup> See UN-DESA, *Exploring Green Economy Principles* (A Guidebook to the Green Economy Issue 2, UN Division for Sustainable Development, 2012), 4-6; UNEP, *Restoring the Natural Foundation to Sustain a Green Economy: A Century-Long Journey For Ecosystem Management* (International Ecosystem Management Partnership (IEMP) UNEP Policy Brief 6 2011), 3; José Antonio Ocampo, *Summary of the Transition to a Green Economy: Benefits, Challenges and Risks from a Sustainable Development Perspective*. (Report by a Panel of Experts to Second Preparatory Committee Meeting for United Nations Conference on Sustainable Development, 2011), 2; see also, Clive L. Spash, 'Green Economy, Red Herring' (2012) 21(2) *Environ Values* 95, 95; Barbara Unmüßig, Wolfgang Sachs and Thomas Fatheuer, *Critique of the Green Economy: Towards Social and Environmental Equity* (Heinrich Böll Foundation ed, Christopher Hay tr, Heinrich Böll Foundation, Berlin, Germany 2012).

<sup>172</sup> Wilkinson, 'Payment for Ecosystem Services', 169; Jose Puppim de Oliveira and others, *Governing the Forests: An Institutional analysis of REDD+ and Community Forest Management in Asia* (United Nations University and International Tropical Timber Organization 2013), 17; Esteve Corbera, 'Problematizing REDD+ as an Experiment in Payments for Ecosystem Services' (2012) 4(6) *Current Opinion in Environmental Sustainability* 612, 612; see also United Nations, *Report of the Open Working Group of the General Assembly on Sustainable Development Goals* (2014) (2014), goal 8, goal 15.

Some NSAs criticise the inclusion of the green economy into sustainable development because it commoditises the environment and therefore may alter the balance between the three pillars of sustainable development. They argue that it reaffirms the anthropocentric content of the concept.<sup>173</sup> They argue that the continued support for ‘sustained and inclusive growth’ will lead to resource depletion and very little benefit for women.<sup>174</sup> The green economy’s commitment to sustained economic growth and the integration of more sophisticated accounting approaches reflect the complexity of contemporary responses to environmental degradation, environmental management, economic development and international trade. Critics argue that these responses manifest neoliberalism’s commitment to free-trade and free markets as a response to environmental problems which has resulted in highly complex and interconnected linkages between environment, economic, trade and development issues in the international sphere.

Critics of sustainable development argue that it has moved away from a holistic and integrated approach to the integrated pillars, simply towards another way of viewing the neoliberal, capitalist developmental approach. They argue that it is the ‘final destination’ for a neoliberal version on environmental protection and criticise this direction of international environmental governance.<sup>175</sup> Others argue that it maintains an ‘objective’ measurement of the value of nature that excludes those elements, which are unquantifiable. Despite these criticisms, sustainable development remains an environmental norm with a significant normative and legal concept. Therefore, the way that the environment is presented in the context of this concept has a profound influence on the subsequent evolution of IEL.

The integration of sustainable development into IEL reflects the social, political, and economic context of the past 20 years. From the discussion and treatment of sustainable development, as well as its constituent principles in international law, we can see that the international community has widened and deepened responses to environmental concerns in a way that sought to balance development interests and environmental concerns. In this way, the development of the concept reflects liberal ideals that support the increasing interdependence between different communities, individuals, and states through economic and social interdependence.

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<sup>173</sup> Michael McCloskey, ‘The Emperor Has No Clothes: The Conundrum of Sustainable Development’ (1999) 9 *Duke Envtl L & Pol’y F* 153, 154.

<sup>174</sup> Indigenous Peoples Major Group and others, ‘Indigenous Peoples Major Group Submission for the Zero Draft of the Outcome Document of the UNCSO/Rio+20’ (1 November 2011), ¶8; Women’s Major Group, ‘Women’s Major Group Summary: Input to the “Zero Draft” Outcome Document’ (1 November 2011), 3

<sup>175</sup> E.g. Thomas Wanner, ‘The New ‘Passive Revolution’ of the Green Economy and Growth Discourse: Maintaining the ‘Sustainable Development’ of Neoliberal Capitalism’ (2014) 20(1) *New Pol Econ* 21; James Goodman and Ariel Salleh, ‘The ‘Green Economy’: Class Hegemony and Counter-Hegemony’ (2013) 10(3) *Globalizations* 411; Murat Arsel and Bram Büscher, ‘Nature™ Inc.: Changes and Continuities in Neoliberal Conservation and Market-based Environmental Policy’ (2012) 43(1) *Development and Change* 53.

Therefore, sustainable development responds to the emerging multipolar, plural, and interconnected world in which different communities in the international order seek to reconcile the interrelated, but often contradictory, goals of environmental protection and development. It reveals the assumptions held by some states and international institutions that certain types of governance, economic practices, and participatory approaches will enable the peaceful and secure coexistence of states in the international community. This is particularly noteworthy in the justifications for the securitisation of the environment, discussed below, where the environment, development, and security are explicitly linked together as a reason for why sustainable development should remain the overriding goal for the international community and strategy for responding to environment concerns.

### 3.3 Post-Cold War Environment/Security links

During the post-Cold War period, security scholars and other interested actors began to examine the links between the environment and security in more detail. The way in which the environment has been linked with security in the post-Cold War period consolidates liberal approaches towards security by widening and deepening security to prioritise the security of individuals rather than states. This rests on the assumption that the protection and betterment of the world's poor and marginalised peoples through sustainable development can ensure the collective security of the international community.<sup>176</sup>

However, critics of the links are uncomfortable with the evocation of 'security' as a primary means to improve the human condition and strengthen international society in the post-Cold War period.<sup>177</sup> They question the dangerous and unforeseen consequences of the securitisation of issues, such as the environment, for group or institutional advantage. Further, they suggest that the securitisation of issues such as underdevelopment and the environment foster fear while also favouring policies of containment and marginalises the places in which these issues occur.<sup>178</sup>

With these criticisms in mind, the following discussion focuses on three approaches that have linked the environment with security in the post-Cold War period. The first examined the environment as a societal stressor and sought to identify where issues such as resource scarcity, overpopulation and environmental degradation may increase the incidences of insecurity. The second focused on the security of individuals and incorporated the environment to the extent that it enabled states and individuals to secure access to food,

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<sup>176</sup> Mark R. Duffield, *Development, Security and Unending War: Governing the World of Peoples* (Polity 2007), 3; Endre Begby and J Peter Burgess, 'Human Security and Liberal Peace' (2009) 1(1) *Public Reason* 91, 91; Mark R. Duffield, 'The Liberal Way of Development and the Development—Security Impasse: Exploring the Global Life-Chance Divide' (2010) 41(1) *Secur Dialog* 53, 55.

<sup>177</sup> E.g. Barry Buzan, Jaap de Wilde and Ole Wæver, *Security: A New Framework for Analysis* (Lynne Rienner 1998); Jef Huysmans, 'The European Union and the Securitization of Migration' (2000) 38(5) *JCMS* 751.

<sup>178</sup> Duffield, *Development, Security and Unending War*, 3-4; see also Rita Abrahamsen, 'Blair's Africa: The Politics of Securitization and Fear' (2005) 30(1) *Alternatives: Global, Local, Political* 55, 61, 70.

energy, and livelihood for development and economic productivity. The third approach focuses specifically on the threat of climate change to state and human well-being. Each of these approaches invokes 'security' as a primary means to improve the human condition and strengthen international society.

### 3.3.1 Environmental Security

The first wave of environment/security linkages that emerged in the post-Cold War period argued that scarcity, overpopulation, and unequal resource allocation could be a powerful long-term stressor on societies.<sup>179</sup> Proponents of this approach suggested that environmental scarcity could occur in one of three ways: Supply induced, structural induced, and demand induced. The causes of such scarcity were attributed to the physical depletion of the environment, population induced consumption, and unequal resource allocation within a society.<sup>180</sup>

This research had a significant influence on the foreign policy and collective security strategies of some states. Countries such as Canada, the United States, the United Kingdom, Sweden, and regional organisations such as the European Union, explicitly identified links between environmental scarcity and the increased risk of intra-state conflict in their international development, security, and humanitarian policies.<sup>181</sup> For example, the United Kingdom's Cabinet Office Report argues that 'a lack of effective government, weak security and poverty can all cause instability and will be exacerbated in the future by competition for resources, growing populations and climate change.'<sup>182</sup> This link between environment and security reveals the dominant assumption that 'development', which reduces poverty, improves well-being and generates hope, could reduce the alienation of individuals, and

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<sup>179</sup> E.g. Ehrlich and Ehrlich, 'Population Growth and Environmental Security', 224; Kaplan, 'The Coming Anarchy'; Bogale and Korf, 'To Share or Not to Share?', 743; Dalby, *Security and Environmental Change*, 16;

<sup>180</sup> Percival and Homer-Dixon, 'Environmental Scarcity', 280.

<sup>181</sup> Government of Sweden, 'Preventing Violent Conflict - A Swedish Action Plan' (Ministry for Foreign Affairs, 1999) Study 1999:24 <<http://www.sweden.gov.se/content/1/c6/02/01/61/aad1f9e6.pdf>> accessed 5 May 2011, 16, 24; 'Shared Responsibility: Sweden's Policy for Global Development' (Ministry for Foreign Affairs, 2003) Government Bill 2002/03:122 <<http://www.government.se/legal-documents/2003/05/200203122/>> accessed 20 June 2015; Javier Solana, 'A Secure Europe in a Better World: European Security Strategy' (European Union External Action 2 March 2011) <<http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>> accessed 20 June 2015, 2-3; European External Action Service, 'Report on the Implementation of the European Security Strategy: Providing Security in a Changing World' (EEAS, 2 March 2011) Doc S407/08 <[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/EN/reports/104630.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/104630.pdf)> accessed 2 March 2011, 5; United States, 'Quadrennial Defense Review'; Government of Canada, 'Canada First Defence Strategy' (Department of National Defence and the Canadian Armed Forces, 27 July 2013) <<http://www.forces.gc.ca/en/about/canada-first-defence-strategy.page>> accessed 28 May 2015, 'unequal access to resources and uneven economic distribution are proving to be increasing sources of regional tension even as existing low-intensity or frozen conflicts in Africa, South Asia, the Middle East and the Balkans remain largely unresolved.'; Government of Sweden, 'Aid Policy Framework: The Direction of Swedish Aid' (Government Offices of Sweden, 2014) Government Communication 2013/14:131 <<http://www.regeringen.se/contentassets/6eef64a9a36e48ff9a95e4d6ad97ce84/aid-policy-framework>> accessed 7 April 2015, 37; Council of the European Union, 'Main aspects and basic choices of the CFSP', 159-160;

<sup>182</sup> Cabinet Office, 'Securing Britain', 4.B.1 43.

thus lessen the risk of social tension and conflict.<sup>183</sup> In this context, the environment was seen as a potential threat to the security of the international community by undermining the development and security of individuals and communities. Commentators have identified this argument as embodying the outlook of post-Cold War liberal internationalism with its focus on democratic institutions, human rights, and economic liberalism.<sup>184</sup>

States, NSAs, and global institutions have responded to these concerns by creating development strategies to address the perceived causes of environmental scarcity. Many of the responses propose addressing the drivers of poverty, developing technological capabilities and improving land tenure.<sup>185</sup> These proposals continue to frame the global south and environmental insecurity as problems of underdevelopment that requires states, NSAs, and institutions from the global north to intervene to ensure the development of the global south and therefore prevent conflict.<sup>186</sup> These arguments reaffirm the representation of the global south as 'other', backward, in need of 'improving' and assimilating into the liberal international order.<sup>187</sup> Barnett criticises this 'selective interpretation' because it maintains security as 'business-as-usual' and continues the interpretation of the south by the north.<sup>188</sup> It has silenced the wider debate over historical, structural, and wider contributors to environmental degradation.<sup>189</sup>

More recent natural resource/conflict literature has sought to explain the causes of conflict in a way that takes into account the socio-economic context. The 2009 United Nations Environment Programme Report, *From Conflict to Peacebuilding*, argued that economic inequality and poverty create incentives for groups to capture resources by taking

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<sup>183</sup> Duffield, 'The Liberal Way of Development', 57.

<sup>184</sup> Begby and Burgess, 'Human Security and Liberal Peace', 92; see also, Michael W. Doyle, 'A More Perfect Union? The Liberal Peace and the Challenge of Globalization' (2000) 26(05) *Rev Int Stud* 081; Roland Paris, 'Bringing the Leviathan Back In: Classical versus Contemporary Studies of the Liberal Peace' (2006) 8(3) *Int Stud Rev* 425; Hanna Leonardsson and Gustav Rudd, 'The 'Local Turn' in Peacebuilding: A Literature Review of Effective and Emancipatory Local Peacebuilding' (2015) 36(5) *Third World Quarterly* 825.

<sup>185</sup> Ayoob, 'Security in the Third World', 43; Mary Mellor, *Feminism & Ecology* (Polity Press 1997), 26; Kapoor, 'Hyper-Self-Reflexive Development', 628-629; Duffield, *The New Wars*, 36-37; Duffield, 'The Liberal Way of Development', 55

<sup>186</sup> Barnett, *The Meaning of Environmental Security* 64-65; Duffield, *The New Wars*, chapter 2.

<sup>187</sup> Plumwood, *Feminism and the Mastery of Nature* 16, 47-55; Barnett, *The Meaning of Environmental Security* 65; Mark R. Duffield, 'Getting Savages to Fight Barbarians: Development, Security and the Colonial Present' (2005) 5(2) *Conflict, Security & Development* 141, 155; Simon Dalby, 'Peacebuilding and Environmental Security in the Anthropocene' in Didier Péclard (ed), *Environmental Peacebuilding: Managing Natural Resource Conflicts in a Changing World: Swisspeace Annual Conference 2007* (Swisspeace 2009), 11.

<sup>188</sup> Barnett, *The Meaning of Environmental Security*, 65; OECD, *DAC Guidelines on Conflict, Peace and Development Cooperation* (Development Assistance Committee, 1997), 16.

<sup>189</sup> Vaclav Smil, 'China's Environment and Security: Simple Myths and Complex Realities' (1997) 17(1) *SAIS Rev* 107, 107; Barnett, *The Meaning of Environmental Security*, 62-63.

<sup>189</sup> Simon Dalby, 'Security and Ecology in the Age of Globalisation' in Geoffrey D. Dabelko (ed), *Environmental Change and Security Report* (Issue No. 8, Woodrow Wilson International Centre for Scholars 2002) 24.

control of the resource rich territories.<sup>190</sup> These assumptions are evident in the text of recent UNSC resolutions concerning the exploitation of natural resources. In resolutions concerning the conflicts in the Democratic Republic of the Congo, Liberia, and the Central African Republic, the UNSC reiterates that the exploitation of natural resources should be used to aid the socio-economic development of these countries.<sup>191</sup> These resolutions also refer to the need to ensure ‘sustainable’ peace and development for these countries through the legitimate exploitation of natural resources.<sup>192</sup> They emphasise that the ‘transparent and effective management’ of natural resources is critical for sustainable peace and security.<sup>193</sup> These statements by the Security Council repeat the arguments put forward by the UN Secretary General and UNEP that peace and security are anchored in sustainable development, which in turn is based upon the (sustainable) exploitation of natural resources. Therefore, they reaffirm liberal assumptions that the process of economic and social development, use of natural resources for economic growth, and the transference to liberal democratic governance, will address the drivers of underdevelopment and insecurity and thus increase the security of the international community.

Similar arguments concerning the role of democratic governance, economic liberalisation, and human rights are revealed in the body of literature examining the links between natural resources, conflict, and development. The effect of having an abundance of natural resources has been described as the ‘resource curse’ where it has had a detrimental effect on the security of states.<sup>194</sup> Both academic and institutional literature seeking to

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<sup>190</sup> UNEP, *From Conflict to Peacebuilding* (2009) 8; see also Carl Bruch and others, ‘Post-Conflict Peace Building and Natural Resources’ (2008) 19 *YbInt’l EnvL* 58 59.

<sup>191</sup> UNSC Resolution 2128 (10 December 2013) UN Doc S/RES/2128, ¶12; see also UNSC Resolution 1903 Liberia (17 December 2009) UN Doc S/RES/1903, ¶9(d); UNSC Resolution 2021 (29 November 2011) UN Doc S/RES/2021, preamble; UNSC Resolution 2198 (29 January 2015) UN Doc S/RES/2198, preamble.

<sup>192</sup> UNSC Res 2198 (2015), preamble; UNSC Resolution 1533 DRC (12 March 2004) UN Doc S/RES/1533, preamble; UNSC Res 2128 (2013), preamble; ; see also Presidential Statement 5 (Peace and security in Africa) (13 May 2013) UN Doc S/PRST/2013/5, 2.

<sup>193</sup> UNSC Res 2198 (2015), preamble ¶14.

<sup>194</sup> Christa N Brunnschweiler and Erwin H. Bulte, ‘Natural Resources and Violent Conflict: Resource Abundance, Dependence, and the Onset of Civil Wars’ (2009) 61(4) *Oxford Econ Pap* 651 651. The relationship between the abundance of resources and conflict is a significant body of research. For an overview of the issues, see Philippe Le Billon, ‘The Political Ecology of War: Natural Resources and Armed Conflicts’ (2001) 20(5) *Polit Geogr* 561; Karen Ballentine and Heiko Nitzschke, *Beyond Greed and Grievance: Policy Lessons from Studies in the Political Economy of Armed Conflict* (Program on Economic Agendas in Civil Wars, International Peace Academy Policy Report, 2003); Paul Collier and Anke Hoeffler, ‘Greed and Grievance in Civil War’ (2004) 56(4) *Oxford Econ Pap* 563; Michael L Ross, ‘How Do Natural Resources Influence Civil War? Evidence from Thirteen Cases’ (2004) 58(1) *Int Organ* 35; Michael L Ross, ‘What Do We Know about Natural Resources and Civil War?’ (2004) 41(3) *J Peace Res* 337; Arvind Ganesan and Alex Vines, ‘Engine of War: Resources, Greed, and the Predatory State’ in *Human Rights and Armed Conflict: Human Rights Watch World Report* (Human Rights Watch 2004); Macartan Humphreys, ‘Natural Resources, Conflict, and Conflict Resolution: Uncovering the Mechanisms’ (2005) 49(4) *J Confl Resolut* 508; Päivi Lujala, ‘The Spoils of Nature: Armed Civil Conflict and Rebel Access to Natural Resources’ (2010) 47(1) *J Peace Res* 15; R De Koning, ‘Controlling Conflict Resources in the Democratic Republic of Congo’ (SIPRI Policy Brief Stockholm International Peace Research Institute, July 2010) <<http://books.sipri.org/files/misc/SIPRIPB1007.pdf>> accessed 30 January 2015; Andrews Atta-Asamoah, ‘Besides



explain the connection between natural resources and insecurity have attributed the insecurity to poor governance and institutional incapacity, where the institutional capacity of the state can be weakened because corruption, neglect of the military, and policy decisions by the state.<sup>195</sup> This understanding has been adopted by the UN in its work surrounding the link between resources, security, and peace.<sup>196</sup> In UNSC resolutions, statements, and debates concerning the post-conflict reconstruction of conflict rich areas, there are significant references to the importance of Governments gaining control over those regions where natural resources are prevalent, as well as ensuring the good governance and transparency of extractive industries.<sup>197</sup>

For example, the more recent resolutions concerning the Democratic Republic of the Congo and Liberia emphasise the importance both of transparency and of implementing sustainable natural resource exploitation.<sup>198</sup> In this context, natural resources are referred to as a benefit for the well-being of citizens and countries, and for their sustainable development. These associations highlight the integration of sustainable development practices in the UNSC practice surrounding environment/security links. They further repeat the assumption that economic and social development, democracy, good governance, and the recognition of human rights can help create and maintain peace.

Therefore, the solution put forward by western states and international institutions is to incorporate 'others' (the global south, women, marginalised communities, and the

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Greed and Grievance: Natural Resource Characteristics and Conflicts in Africa' (Paper No 243 Institute for Security Studies, January 2013) <<http://www.issafrica.org/uploads/Paper243.pdf>> accessed 19 June 2015; Maarten Bavinck, Lorenzo Pellegrini and Erik Mostert (eds), *Conflicts over Natural Resources in the Global South – Conceptual Approaches* (Leiden: CRC Press/Balkema 2014).

<sup>195</sup> Le Billon, 'Political Ecology of War', 566-567; Humphreys, 'Natural Resources, Conflict', 513; Lujala, 'Spoils of Nature', 16; see also Frederick van der Ploeg, 'Natural Resources: Curse or Blessing?' (Working Paper No 3125 Centre for Economic Studies and Leibniz Institute for Economic Research, University of Munich 2010) <<http://hdl.handle.net/10419/38934>> accessed 31 December 2012; Frederick van der Ploeg and Dominic Rohner, 'War and Natural Resource Exploitation' (Working Paper No 481 Insitute for Empirical Research in Economics, University of Zurich 4 March 2010) <<http://ssrn.com/abstract=1566820>> accessed 19 June 2015.

<sup>196</sup> UNEP, *From Conflict to Peacebuilding* (2009); UNEP, *Sierra Leone: Environment, Conflict and Peacebuilding Assessment. Technical Report* (UNEP Post Conflict Assessments, 2010); UNEP, 'Good Governance of Natural Resources is Vital for Peace and Economic Development in Darfur: UNEP Study' (Khartoum, 5 April 2013) <<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=2713&ArticleID=9457&l=en>> accessed 7 April 2015; see also Global Witness, *Lessons UNlearned: How the UN and Member States Must do More to End Natural Resource-Fuelled Conflicts* (Global Witness Limited 2010).

<sup>197</sup> UNSC Resolution 1306 The Situation in Sierra Leone (5 July 2000) UN Doc S/RES/1306, preamble (8); UNSC Resolution 1457 DRC (24 January 2003) UN Doc S/RES/1457, ¶3-¶4; UNSC Resolution 1521 Liberia (22 December 2003) UN Doc S/RES/1521, ¶14; UNSC Res 1533 (2004), preamble (4); UNSC Resolution 1579 Liberia (12 December 2004) UN Doc S/RES/1579, preamble (12); UNSC Resolution 2021 (2011), preamble (7); UNSC Res 2128 (2013), preamble (5)-(6), ¶12.

<sup>198</sup> E.g. UNSC Resolution 1509 Liberia (19 September 2003) UN Doc S/RES/1509, ¶3(r); UNSC Resolution 1925 Democratic Republic of Congo (28 May 2010) UN Doc S/RES/1925, ¶12(r); UNSC Res 2128 (2013), preamble (5)-(6), ¶12; UNSC Verbatim Record (19 June 2013) UN Doc S/PV.6982 (Resumption 1), 3, and 5; UNSC Res 2198 (2015), preamble (14) – (15), ¶20-26, ¶29; see also UNSC Presidential Statement 4 (Peace and security in Africa) (15 April 2013) UN Doc S/PRST/2013/4.

environment) into the global economic and security communities through a variety of development strategies.<sup>199</sup> This approach mirrors the approach taken in the security and development strategies of some states who also frame the value of the environment in terms of its usefulness for sustainable development and security. In this way, environment/security links are incorporated into the strategy of economic liberalisation, human rights, the rule of law, and neoliberal development.<sup>200</sup> Therefore, it features within development activities to the extent that it provides humanity's basic survival needs, resources for livelihood security, subsistence agriculture, and economic development.<sup>201</sup>

Neo-Malthusian arguments have resurfaced in more recent research examining environment/security links.<sup>202</sup> They are present in the discussions surrounding food security, climate change, and population growth. For example, the United Nations World Food Programme identifies food insecurity as a cause of violence, while the Wilson Centre proposes that population growth and resource scarcity can escalate conflict.<sup>203</sup> These assumptions inform broader discussions concerning population growth, development, and conflict.<sup>204</sup> Further, they inform sustainable development objectives as they view sustainable development as a solution to such insecurity and potential conflict.

Therefore, the environmental scarcity/conflict linkages portrayed in this body of research have been refined and continue to be analysed in the context of food security, climate change, and insecurity. While such links have been criticised for ignoring socio-economic considerations of insecurity,<sup>205</sup> they have had significant influence on the policy responses by NSAs, states, and international institutions in developing countries. Delving underneath these responses by such actors, it is possible to identify the argument that liberal governmentality and 'values' can contribute towards achieving security. Further, they

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<sup>199</sup> International Union for Conservation of Nature and Natural Resources, *Risks and Opportunities from Natural Resources and Environmental Peacebuilding in the Central African Republic* (IUCN-UNEP-WWF 2009); United Nations Development Group, *Natural Resource Management in Transition Settings* (UNDG-ECHA Guidance Note, 2013); UNEP and UNDP, *The Role of Natural Resources in Disarmament, Demobilization and Reintegration: Addressing the Risks and Seizing Opportunities* (United Nations Environment Programme and the United Nations Development Programme 2013).

<sup>200</sup> Oliver P Richmond, 'Human Security and the Liberal Peace: Tensions and Contradictions' (2006) 7(2) *Whitehead Journal of Diplomacy and International Relations* 75, 75.

<sup>201</sup> United Nations Development Programme, *Human Development Report*, 29.

<sup>202</sup> E.g. Bill Richardson, 'The New Realism' (2008)(93) *The National Interest* 86; Paul R. Ehrlich and Anne H. Ehrlich, 'Can a Collapse of Global Civilization be Avoided?' (2013) 280(1754) *Proceedings of the Royal Society of London B: Biological Sciences*; and criticisms by Robert Fletcher, Jan Breitling and Valerie Puleo, 'Barbarian Hordes: The Overpopulation Scapegoat in International Development Discourse' (2014) 35(7) *Third World Quarterly* 1195.

<sup>203</sup> E.g. Brinkman and Hendrix, 'Food Insecurity and Violent Conflict'; Simmons, *Harvesting Peace* (2013), 20.

<sup>204</sup> E.g. J. Anthony Cassils, 'Overpopulation, Sustainable Development, and Security: Developing an Integrated Strategy' (2004) 25(3) *Popul Environ* 171; Scott Victor Valentine, 'Disarming the Population Bomb' (2010) 17(2) *Int J Sust Dev World* 120.

<sup>205</sup> Fletcher, Breitling and Puleo, 'Barbarian Hordes', 1200; see also Nancy Peluso and Michael Watts, 'Violent Environments: Response' in Geoffrey D. Dabelko (ed), *Environmental Change and Security Report* (Issue No. 9, Woodrow Wilson International Centre for Scholars 2003).

indicate a growth interconnection between different areas of international interest, such as the economy, trade, development, and the environment, particularly in the context of natural resources and conflict. Therefore, environment/security links manifest themselves in debates concerning access to resources for food security as well as more traditional considerations of economic production and control.

### 3.3.2 Human Security

Another approach that connects the environment and security is the concept of 'human security'. This concept proposed to make humans the referent object of security as a response to the incidences of civil war, underdevelopment, and intra-state conflicts that occurred in the immediate post-Cold War period.<sup>206</sup> In doing so, it transformed 'security' from securing the territory of states to securing people, irrespective of any axes of difference.<sup>207</sup> The concept sought to encourage policymakers and scholars to reconceive international security as 'something more than the military defence of state interests and territory.'<sup>208</sup> Therefore, the concept is both explanatory and normative. Where environment/security connections are present, they are framed as part of its attempt to protect and empower individuals in order to promote and maintain international peace and security.<sup>209</sup>

There is no one, single unified paradigm of human security. Roland Paris describes the concept as ambiguous, contested, and permutated through many different interpretations.<sup>210</sup> However, the 1994 Report by the United Nations Development Programme, *Human Development Report* and the 2003 Report by the Commission on Human Security, *Human Security Now* have been fundamental to creating a vision of human security as a basis for international action and for action by international institutions.<sup>211</sup> These two reports framed human security as 'freedom from fear and freedom from want'.<sup>212</sup> As part of this broad understanding, these reports outline that the aim of human security is to create 'political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity'.<sup>213</sup> Therefore, the concept of human

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<sup>206</sup> Caroline Thomas, *Global Governance, Development and Human Security: The Challenge of Poverty and Inequality* (Pluto Press 2000) 6; Williams, *Liberalism and War*, 62; Duffield, 'The Liberal Way of Development', 55; Duffield, *The New Wars*, 36-37.

<sup>207</sup> Natasha Marhia, 'Some Humans are more Human than Others: Troubling 'Human' in Human Security from a Critical Feminist Perspective' (2013) 44(1) *Secur Dialog* 19, 20.

<sup>208</sup> Roland Paris, 'Human Security: Paradigm Shift or Hot Air?' (2001) 26(2) *Int Security* 87, 87.

<sup>209</sup> Axworthy, 'Human Security' 20; Human Security Unit, 'Human Security Approach'; Hynek and Chandler, 'No Emancipatory Alternative', 47-48; Christie, 'Critical Voices' 173.

<sup>210</sup> Paris, 'Human Security', 88.

<sup>211</sup> United Nations Development Programme, *Human Development Report*; United Nations Commission on Human Security, *Human Security Now* (Sadako Ogata and Amartya Sen eds, New York: Commission on Human Security 2003); Marhia, 'Some Humans are more Human than Others', 21.

<sup>212</sup> United Nations Development Programme, *Human Development Report*, 24.

<sup>213</sup> United Nations Commission on Human Security, *Human Security Now* 4.

security originates in the liberal humanist tradition and is part of the strategy of liberal internationalism which seeks to reduce conflict through preventative development predicated on the liberal values of 'life, liberty and property'.<sup>214</sup>

Some commentators suggest that human security embodies liberal internationalism because the fate of individual humans becomes the legitimate concern of the international community.<sup>215</sup> Therefore, responses by the international community, through international institutions and NSAs, are guided by ideals that reflect liberal values of democracy, human rights, and economic liberalisation. The indivisibility between peace, security, and development for the maintenance of international peace and security has been included in a number of UNSC Presidential Statements. They have reaffirmed that 'development, peace and security and human rights are interlinked and mutually reinforcing'.<sup>216</sup> They encourage governments in post-conflict situations to manage their resources lawfully, transparently and sustainably.<sup>217</sup> They condemn the use of natural resources in fuelling conflicts and called for their use in promoting development in post-conflict situations.<sup>218</sup> Therefore, these statements embody liberal internationalism in which values of democracy, economic liberalisation, and human rights are viewed as integral to achieving international peace and security, and that 'development' is seen as the primary way of achieving these values. In this context, the environment is seen as antecedent to achieving development, and integral to the attainment of human security.

This connection between the environment, development, and security is further contained in the reports by international organisations, such as the United Nations. The 2004 report published by the United Nations' High-Level Panel on Threats and Challenges, *A More Secure World: Our Shared Responsibility* described the indivisibility between freedom, economic development and security and linked the achievement of development with ensuring human security.<sup>219</sup> They identified environmental degradation, poverty, and infectious disease as the by-product of underdevelopment and argued that development is

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<sup>214</sup> Ibid 4; see also Obuchi Keizo, Prime Minister of Japan, 'Toward the Creation of a Bright Future for Asia' (Speech at the Lecture Program hosted by the Institute for International Relations, Hanoi, Viet Nam, 16 December 1998) <<http://www.mofa.go.jp/region/asia-paci/asean/pmv9812/policyspeech.html>> accessed 22 June 2015; David Bosold and Sascha Werthes, 'Human Security in Practice: Canadian and Japanese Experiences' (2005) 1 IPG 84, 95.

<sup>215</sup> Begby and Burgess, 'Human Security and Liberal Peace', 91-92; see also United Nations Development Programme, *Human Development Report*; International Commission on Intervention and State Sovereignty, *Report of the International Commission on Intervention and State Sovereignty: The Responsibility to Protect* (International Development Research Centre, Ottawa: 2001)

<sup>216</sup> Presidential Statement 8 (27 April 2010), 2.

<sup>217</sup> UNSC Presidential Statement 4 (15 April 2013), 4.

<sup>218</sup> Ibid, 4; United Nations Department of Public Information, 'Natural Resource Wealth Fails to Translate into 'Equivalent' Benefits for People, Fuelling Conflict, Instability, Deputy Secretary-General Tells Security Council' (New York, Press Release SC/11037, 19 June 2013) <<http://www.un.org/press/en/2013/sc11037.doc.htm>> accessed 24 February 2015.

<sup>219</sup> United Nations, *A More Secure World* (2004), 12.

the first line of defence against these issues which undermine human security. They argued that sustainable development was integral to achieving international peace and security. The UN Secretary-General reiterated this linkage and argued that

‘the basic building blocks of peace and security for all peoples are economic and social security, anchored in sustainable development, [because they] allow us to address all the great issues – poverty, climate, environment and political stability as parts to a whole.’<sup>220</sup>

The 2010 United Nations Secretary-General report on human security reaffirmed this link and made the connection between the security of individuals, the environment, and development explicit.<sup>221</sup>

These references identify a fundamental relationship between environment, security, and social and economic development in the pursuit of global peace in the 21<sup>st</sup> century.<sup>222</sup> In this approach, the environment features within development activities to the extent that it provides humanity’s basic survival needs, resources for livelihood security, subsistence agriculture, and economic development.<sup>223</sup> Therefore, human security may be considered as part of a strategy of liberal internationalism, with its emphasis on supporting economic liberalism, neoliberal development, human rights, and the rule of law.<sup>224</sup>

However, some critics argue that the liberal heritage of the concept means that it is inherently androcentric and exclusionary.<sup>225</sup> Feminists, such as Heidi Hudson and Natasha Marhia, criticise the concept for using the word ‘human’ because it collapses femininity and masculinity into the term ‘human’ which can ‘conceal the gendered underpinnings of security practices’.<sup>226</sup> Hudson argues that the liberal empiricist paradigm of mainstream security discourse universalises and reproduces existing meanings of what constitutes humankind.<sup>227</sup> This means that where security is conceived as ‘human’ security, it maintains the hegemonic universalisation of what it means to be ‘human’ – which some feminists

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<sup>220</sup> UNEP, *From Conflict to Peacebuilding* (2009) 6; Ki-Moon, ‘A Green Future’.

<sup>221</sup> Report of the Secretary General, *Follow-up to General Assembly Resolution 66/290 on Human Security. Report of the Secretary General* (23 December 2013) UN Doc A/68/685, ¶7, ¶10; see also Report of the Secretary General, *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa* (13 April 1998) UN Doc A/52/871-S/1998/318, 3.¶2

<sup>222</sup> United Nations, *A More Secure World* (2004), 26; UNEP, *From Conflict to Peacebuilding* (2009) 6.

<sup>223</sup> United Nations Development Programme, *Human Development Report*, 29.

<sup>224</sup> Richmond, ‘Tensions and Contradictions’ 75; Begby and Burgess, ‘Human Security and Liberal Peace’ 92; Christie, ‘Critical Voices’ 174; David Chandler, ‘Resilience and Human Security: The Post-Interventionist Paradigm’ (2012) 43(3) *Secur Dialog* 213 213-214;

<sup>225</sup> Marhia, ‘Some Humans are more Human than Others’

<sup>226</sup> Heidi Hudson, ‘Doing’ Security as Though Humans Matter: A Feminist Perspective on Gender and the Politics of Human Security’ (2005) 36(2) *Secur Dialog* 155, 157; Susan McKay, ‘Women, Human Security, and Peace-building: A Feminist Analysis’ in Hideaki Shinoda and Ho-Won Jeong (eds), *Conflict And Human Security: A Search for New Approaches of Peace-Building* (IPSHU English Research Report Series No. 19 2004), 155

<sup>227</sup> See, Hudson, ‘Doing’ Security’.

argue is problematic as it does not fully account for how 'the conditions through which individuals are *recognised* as 'human' in particular contexts can function in exclusionary ways'.<sup>228</sup> Finally, the discourse of 'human' security does not fully account for the fact that a person's security and well-being are a function of their social situation and location in a web of social and interpersonal relationships and power relations, all of which are inherently gendered.<sup>229</sup>

Other critics argue that the concept may not acknowledge the gendered assumptions that inform both 'development' and 'security' itself. They argue that the convergence of development and security agendas in the concept of human security can be deployed as a 'pretext for hegemonic and interventionist...policies'.<sup>230</sup> Similarly, others argue that the concept incorporates a universalised version of security containing western values of liberal democracy, free trade, human rights, and the rule of law.<sup>231</sup> Therefore, they are concerned that human security frameworks may be appropriated or co-opted into dominant, statist conceptualisations of risk, resulting in the dilution of the emancipatory potential of the concept.<sup>232</sup>

Others question the promotion of neoliberal globalisation and economic development as the primary mechanism to achieve human security. Greaves argues that such an approach is contestable because it discounts the risks in the neoliberal market place that disproportionately affect the most vulnerable people globally and within particular societies.<sup>233</sup> These criticisms are related and highlight how human security can be used to legitimise intervention to transform the 'savage' south, and others into 'proper' members of the international community.<sup>234</sup> As a result, many commentators are wary of this 'radicalisation of development', its intimate connection with NSAs, and the human security concept.<sup>235</sup> Duffield argues that the link between development and security has altered the

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<sup>228</sup> Marhia, 'Some Humans are more Human than Others', 22.

<sup>229</sup> For criticisms, see, Gunhild Hoegensen Gjorv and Kirsti Stuvoy, 'Gender, Resistance and Human Security' (2006) 37(2) *Secur Dialog* 207, 216; Jenny H. Peterson, 'Creating Space for Emancipatory Human Security: Liberal Obstructions and the Potential of Agonism' (2013) 57(2) *Int Stud Quart* 318, 319.

<sup>230</sup> Edward Newman, 'Critical Human Security Studies' (2010) 36(1) *Rev Int Stud* 77 88; Thomas, *Global Governance, Development* 160; Hudson, 'Doing' Security' 157, 165; Report of the Secretary General, *Human Security* (8 March 2010) UN Doc A/64/701 , ¶23-4; Chandler, 'Resilience and Human Security' 215; see further, Alex J Bellamy and Matt McDonald, 'The Utility of Human Security': Which Humans? What Security? A Reply to Thomas & Tow' (2002) 33(3) *Secur Dialog* 373

<sup>231</sup> Peterson, 'Emancipatory Human Security', 319; Hoegensen Gjorv and Stuvoy, 'Gender, Resistance', 216; Markus Kienscherf, 'A Programme of Global Pacification: US Counterinsurgency Doctrine and the Biopolitics of Human (In)security' (2011) 42(6) *Secur Dialog* 517, 522; see further, Andrew Mack, 'A Signifier of Shared Values' (2004) 35(3) *Secur Dialog* 366; Chandler, 'Resilience and Human Security'; Marhia, 'Some Humans are more Human than Others'.

<sup>232</sup> Hudson, 'Doing' Security' 165; Bellamy and McDonald, 'The Utility of Human Security'

<sup>233</sup> Wilfrid Greaves, 'For Whom, from What? Canada's Arctic Policy and the Narrowing of Human Security' (2012) 67(1) *IJ* 219, 225-226.

<sup>234</sup> Richmond, 'Tensions and Contradictions' 75; Begby and Burgess, 'Human Security and Liberal Peace' 96-97.

<sup>235</sup> E.g. Duffield, *Global Governance and the New Wars*.

meaning of development and the justifications for practices. The representation of underdevelopment as a danger to the international community has created an 'urgency and belief' that ensures the process is closely managed and not left to chance.<sup>236</sup>

Building on these criticisms, some propose that 'human' security has the potential to be emancipatory and a critical project that can interrogate the sources of people's insecurity.<sup>237</sup> Some propose that an ethics of care as the ontological and normative base for 'human' theory can enable a more nuanced understanding of the sources of insecurity.<sup>238</sup> Robinson argues that such an approach would encourage academics and policy-makers to critically and seriously consider the politics of race, gender, and class and their interactions with security. Other commentators similarly argue that the concept has potential to be emancipatory and can be used to make a case for an alternative concept of human security that addresses the interrelated, multiple, and essential foundations and sources of human security.<sup>239</sup> In particular, many emphasise the potential for the concept to identify and respond to the structural (in)security faced by women and girls.<sup>240</sup> Therefore, they suggest that for the concept to be viable, it must privilege other forms of violence, including physical, structural, ecological, and economic rather than military security.<sup>241</sup>

Therefore, human security reaffirms the assumption that underdevelopment is a threat to the security of individuals and a threat to the security of the international community. As part of its emancipatory and normative content, the concept incorporates environment/security linkages by stressing that human well-being is reliant on access to natural resources for food, and economic and livelihood security. It also incorporates a more holistic understanding of security/environment links by recognising that human well-being and security is also reliant on the availability of a healthy environment for health and general well-being. However, as discussed in this section, human security also embodies liberal internationalism in which development, and specifically, sustainable development, is seen as the primary way of achieving peace and security. In this context, I noted that the

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<sup>236</sup> Ibid.

<sup>237</sup> E.g. Peterson, 'Emancipatory Human Security'.

<sup>238</sup> Robinson, 'The Importance of Care', 176-178

<sup>239</sup> E.g. McKay, 'Women, Human Security'; Betty A. Reardon, 'Women and Human Security: A Feminist Framework and Critique of the Prevailing Patriarchal Security System' in Asha Hans and Betty A. Reardon (eds), *The Gender Imperative: Human Security vs State Security* (Routledge 2010).

<sup>240</sup> E.g. Anuradha M Chenoy, 'A Plea for Engendering Human Security' 42(2)(2) *International Studies* 167; Erin Baines, 'Rethinking Women, Peace and Security: A Critique of Gender in the Canadian Human Security Agenda' (Working Paper No 1 Liu Institute for Global Issues, University of British Columbia February 2005) <<http://www.ligi.ubc.ca/sites/liu/files/Publications/JRP/RethinkingWomenWorkingPaper.pdf>> accessed 10 December 2015.

<sup>241</sup> McKay, 'Women, Human Security' 156; e.g. Laura Sjoberg, 'From Unity to Divergence and Back Again: Security and Economy in Feminist International Relations' (2015) 11(2) *Polit Gender* 408; Jacqui True, 'A Tale of Two Feminisms in International Relations? Feminist Political Economy and the Women, Peace and Security Agenda' (2015) 11(2) *Polit Gender* 419.

environment is seen as antecedent to development and therefore integral in the discussion of human security.

### 3.3.3 Climate Security

In recent debates, environment/security links have been increasingly framed as exacerbating human 'vulnerabilities' in the face of climate change.<sup>242</sup> This shift in focus is particularly notable in the post-2001 period, and in the recent negotiations concerning global security and climate change. Many of the debates surrounding climate change and security centre on potential losses of economic livelihood and the exacerbation of poverty, as well as the loss of social safety nets in vulnerable developing countries.<sup>243</sup> These vulnerabilities have been attributed to the loss of economic revenue from degraded natural resources, or loss of productivity because of environmental changes.<sup>244</sup>

The emerging debate and its focus on human vulnerability maintains the anthropocentric nature of the environment/security connections that emerged in the post-Cold War period. The continued emphasis on the importance of addressing underdevelopment by states, NGOs, intergovernmental organisations, and international institutions highlights the enduring belief that liberal development promotes environmental conservation and international security by addressing the factors that make humans vulnerable and therefore more likely to engage in conflict-related activities. In this context, human vulnerability is discussed in conjunction with resource conflict or state instability.<sup>245</sup>

In the emerging debate, intergovernmental organisations, institutions, and actors are explicitly linking the impacts of climate change to the security of the international community of a whole.<sup>246</sup> Drawing on the language of 'common interests,' they associate inaction with economic and energy insecurity, as well as the likely instability of regions because of water insecurity.<sup>247</sup> They frame these concerns in economic terms and highlight the likely economic cost of inaction for future economic and energy security.<sup>248</sup> These recent

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<sup>242</sup> Nicole Detraz, 'Threats or Vulnerabilities? Assessing the Links between Climate Change and Security' (2011) 11(3) *Global Environ Polit* 104-112.

<sup>243</sup> Ibid 112; Busby and others, 'Climate Change and Insecurity', 142; see also Barnett, 'Security and Climate Change', 9; Barnett and Adger, 'Climate Change, Human Security'; IPCC, *Climate Change 2014. Summary for Policy Makers*, 13.

<sup>244</sup> Barnett, 'Security and Climate Change', 9; IPCC, *Climate Change 2014. Summary for Policy Makers*, 16; see further Brown, Hammill and McLeman, 'Climate Change as the 'New' Security Threat'; Barnett and Adger, 'Climate Change, Human Security'.

<sup>245</sup> Detraz, 'Threats or Vulnerabilities?' 114.

<sup>246</sup> Commission for Africa, *Still Our Common Interest* (2010), 22.

<sup>247</sup> McDonald, 'Discourses of Climate Security', 47.

<sup>248</sup> Ibid, 47. He notes that UN-led attempts to associate climate change with international security/stability have been furthered by other organisations who propose a policy agenda that responds to these perceived threats through a transition to low-carbon economies; see also UNSC Verbatim Record (20 July 2011) UN Doc S/PV.6587 (Resumption 1), 2 (The President); Michael T Klare, 'Climate Change Blowback: The Threats to Energy Security' (2015) 35(1) *SAIS Rev* 61; European Investment Bank, 'Statement on Climate Change' (29 November 2013).



connections between environment/security links acknowledge the interrelationships between different issue areas in the international sphere, and especially those relating to the international political economy, security, and the environment.<sup>249</sup> In this way, they take into consideration globalisation and the increased interdependence of states through the global economy, as well as the movement of people and shared ecosystems.

In the post-2001 period, climate change/security links have been addressed by the UNSC in two official debates.<sup>250</sup> During the speeches, these links were framed in two distinct ways: Climate change's impact on the Earth's functions were portrayed as a threat to the survival of states themselves, as well as their citizens.<sup>251</sup> Second, climate change's effect on societal stresses, humanitarian crises, and creating greater natural resource scarcities.<sup>252</sup> Each of these debates linked security and climate change and human security by emphasising the potential for humanitarian crises and current conflicts to be exacerbated by the effects of climate change.<sup>253</sup> Therefore, these debates connect environment and security by identifying how the environment exacerbates existing vulnerabilities.<sup>254</sup>

In both of the UNSC debates, states reaffirmed the interrelationship between security, development, and the environment, and also the threat of the environment to the make-up of the international community. In each of these understandings of the environment, states have emphasised the interrelationship between themselves, and other NSAs, and the need for collective responses, but also that the effect of such environmental degradation creates insecurity to the collective of states through migration and the externalisation of internal vulnerabilities. This emphasis on both the interdependence and collective responses to security issues, as well as the continued debates in the UNSC and in other security contexts,

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<sup>249</sup> E.g. Tickner, *Gender in International Relations*; True, 'A Tale of Two Feminisms'; Sjoberg, 'From Unity to Divergence'; Sara Meger, 'Toward a Feminist Political Economy of Wartime Sexual Violence' (2015) 17(3) *International Feminist Journal of Politics* 416

<sup>250</sup> UNSC Verbatim Record (17 April 2007) UN Doc S/PV.5663; UNSC Verbatim Record (17 April 2007) UN Doc S/PV.5663 (Resumption 1); UNSC Verbatim Record (20 July 2011) UN Doc S/PV.6587 (Resumption 1).

<sup>251</sup> Michel Boko and others, 'Africa' in Martin L. Parry and others (eds), *Climate Change 2007: Impacts, Adaptation and Vulnerability Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (pp 433-467, Cambridge University Press 2007), 442; Joshua W. Busby, 'Who Cares about the Weather? Climate Change and U.S. National Security' (2008) 17(3) *Security Studies* 468, 475-476; McDonald, 'Discourses of Climate Security', 46; Debra Javeline, 'The Most Important Topic Political Scientists Are Not Studying: Adapting to Climate Change' (2014) 12(02) *Perspect Polit* 420.

<sup>252</sup> 'Letter from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council' (5 April 2007) UN Doc S/2007/186, 3-5; see also UNSC Verbatim Record (20 July 2011) UN Doc S/PV.6587; UNSC Verbatim Record (20 July 2011) UN Doc S/PV.6587 (Resumption 1); Both address the international peace and security issues concerning climate change.

<sup>253</sup> UNSC Verbatim Record (17 April 2007) UN Doc S/PV.5663, 29; UNSC Verbatim Record (17 April 2007) UN Doc S/PV.5663 (Resumption 1), 29-30, 32

<sup>254</sup> Tuvalu, and other SIDs; see also, UNGA Resolution 63/281 *Climate Change and its Possible Security Implications* (3 June 2009) UN Doc A/RES/63/281; Aaron Korman and Giselle Barcia, 'Rethinking Climate Change: Towards an International Court of Justice Advisory Opinion' (2012)(Spring) *Yale Journal of International Law Online* 35; Kingdom of Spain and Malaysia, 'Concept Note' (30 June 2015), 2.

highlight the normative case put forward for the inclusion of 'environmental security' into both national and international debates on peace and security.

These debates and policy responses that connect security, the environment and development indicate a convergence between sustainable development and security.<sup>255</sup> As the components of sustainable development include the environment, economic development, and, more recently, social development, this colonisation or co-option by the global security agenda has significant implications for future international responses to these interrelated and interdependent areas. As securitising something legitimises the use of exceptional measures, or, in the case of 'non-traditional' or antecedent concerns, such as poverty, hunger, and natural disasters, it legitimises the penetration of the states where these problems happen by more powerful, and dominant global actors. The implications of such exceptionalism have been examined by Duffield who argues that this legitimises global actors to penetrate the 'world of peoples, ignoring existing laws, conventions or restraint' while promoting a particular form of 'development' that is predicated on liberal values.<sup>256</sup> In less emergent contexts, the co-option of sustainable development by security still occurs in softer forms. It is reflected in the responses by international actors that prioritise preventative activities, primarily focused on economic and social development, under the liberal model. However, it is clear that the environment has been linked explicitly and implicitly with security.

#### 4. CONCLUSION

This chapter has traced the evolution of international responses to environmental concerns, with a specific focus on the connection between the environment and security. It found that over the 20<sup>th</sup> century, environment/security connections have become more explicit and prevalent – particularly after the Cold War and into the 21<sup>st</sup> century. It further noted that the activities by states in IEL by the end of the Cold War reflected the growing interdependence between states and informed collective and cooperative international responses to transboundary environmental concerns, such as climate change, biodiversity loss, and the conservation of natural resources.

At the same time, international pluralism, the proliferation of environmental principles, the emerging interrelationships between development, the global economy, and the normative concept of 'sustainable development,' means that responses to these connected issues have become increasingly complicated and messy. The chapter concluded that not only have the different areas of the international legal system become muddled, but the 'reach' of the international community has widened and deepened as a result. Therefore, the

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<sup>255</sup> This is not a new thing. See Arthur H. Westing, 'International Cooperation for Sustainable Development and Peace' (1986) 13(2) *Environmental Conservation* 97

<sup>256</sup> See Duffield, *Development, Security and Unending War*; Duffield, *The New Wars*.

introduction of the concept of 'sustainable development' reflected a move from responding to environmental and security concerns at the state level towards focusing at the level of the individual. This chapter concluded that these developments were related to the resurgence of liberal internationalism and neoliberalism as the dominant approaches towards global security and international order. From this overview, three key conclusions relating to environment/security connections and international responses to the environment can be made.

First, sustainable development has had a profound influence on the development of international responses to environmental degradation in international law. In particular, it has had a notable influence on the development of procedural elements, such as public participation and the use of the precautionary approach. It has introduced a number of substantive principles that guide and support the collective and cooperative responses by individuals, states and other members of the international community to shape legal responses to environmental problems. The concept of CBDR and inter-generational principle are two notable examples of this collective response which have informed the development of many environmental regimes. In this way, sustainable development as included within IEL seeks to balance the needs of individuals against the needs of the community, and the limitations of the Earth's ecosystems.

Second, sustainable development has been co-opted by the international community as both a goal and solution to insecurity. This is particularly notable in the post-Cold War period where non-traditional security threats, such as underdevelopment and the environment, were increasingly addressed by security forums and policymakers. It became clear that the post-Cold War period has consolidated action by the state and NSAs in both areas on the assumption that peace, security, and (sustainable) development are mutually supportive. The chapter argued that the assumption inherent in these links has been informed by concerns over the causal relationship between conflict, natural resources, and direct/indirect effect of climate change on vulnerable communities and individuals. In response to these concerns, states and non-state members of the international community have consistently reaffirmed the role of sustainable development as a way to achieve sustainable security and environmental protection.

Third, the appropriation of sustainable development is concerning for the subsequent development of international law relating to the environment. This is because neoliberal responses to insecurity, in the form of human, environmental, climate or even 'sustainable' security, are inherently anthropocentric and place the individual as the referent object for security. Further, the proposed responses to insecurity focus on addressing the drivers of underdevelopment, in the form of economic and social development, with the environment presented as either the foundation for such development to occur, or as a potential threat or

barrier to these objectives. These concerns have been raised by ecofeminists and other feminists and will be discussed in the following chapter.

Following from the above, the environment has been portrayed as a utility or commodity to be used to achieve different types of security such as food, energy, livelihood and economic security as part of the process of sustainable development. In this way, the environment is seen as a tool to be used to ensure the well-being and security of individuals, and by extension, states. This universalises the dominant development paradigm, in which the environment is seen as a utility and commodity to be used to achieve security and may not take into account differences between communities and their interactions with the environment.

For these reasons, I suggest that securitisation of the environment has occurred. Further, the co-option of the sustainable development agenda by global security actors may have implications for the justifications used to protect the environment, as well as the basis on which states seek to protect the environment and the evolving perceptions of the environment in IEL by the international community. Should this be the case, this securitisation could have a profound effect on the future direction of international responses to the environment, as well as shaping the way in which the environment is seen and valued by the international community as a whole. This issue is the focus of my research for the rest of this thesis.



### 3. Ecofeminism and International Law

The purpose of this chapter is twofold. It first discusses alternative theoretical perspectives which could also critique the securitisation of the environment and the evolving perception of the environment by the international community, and explains why they are less suited to the research agenda of this thesis than ecofeminism. Second, it introduces ecofeminist theory and justifies why it is the most relevant theory through which to examine the international environmental law (IEL) regimes used in this thesis. In doing so, it establishes the foundations for the next chapter (Chapter 4) in which I explain how ecofeminism, and specifically, an ecofeminist ethic, informs my methodological perspective and the research method (feminist content analysis) deployed in this thesis.

This chapter first identifies and critiques alternative theoretical perspectives that could offer critiques of environment/security connections and IEL. It identifies the similarities between these approaches and ecofeminism before explaining why ecofeminism offers a more grounded and encompassing perspective. It introduces the different strands of ecofeminism and outlines the ways in which ecofeminists critique the subordination of women, other nonhuman 'others' and the environment in western thought. It explains how ecofeminism links such subordination to the lived realities of women, through social institutions in fields such as the economy, development, security, and trade. It identifies two strengths of ecofeminism: Its critique of value dualisms and its critique of language that are particularly useful in the analysis of IEL. It discusses the charges of essentialism and universalism that have been levelled at ecofeminists before arguing that these are no longer relevant in recent developments of ecofeminist theory.

#### 1. THEORETICAL CHOICES: CONTRASTING ECOFEMINISM WITH OTHER FEMINIST AND ENVIRONMENTAL THEORIES

Other critical approaches also question the dominant social paradigms upon which western culture and the international community are built. To recap, 'dominant social paradigms' are descriptions of a world view: 'A collection of values, beliefs, habits and norms that form the frame of reference of a collectivity of people.'<sup>1</sup> This world view includes the belief that economic growth (measured by gross national product) is the measure of progress, the belief that the primary goal of states is national defence (security), and the secondary goal should be satisfying the material well-being of citizens through production and consumption, and the belief that technology will solve all of humanity's problems.<sup>2</sup> In this worldview, 'security' in the dominant social paradigm represents a realist, state-centric

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<sup>1</sup> Devall, 'The Deep Ecology Movement', 300.

<sup>2</sup> Ibid, 300; Pirages and Ehrlich, *Ark II*, 43, 69; Milbrath, 'Culture and the Environment', 163.

view.<sup>3</sup> Further, the dominant social paradigm is consistent with the main social institutions, and expresses the values and beliefs of the ruling elites.<sup>4</sup>

This link between social institutions, elites, and their beliefs, values, and attitudes is the focus for criticism by both feminist and ecological approaches. Feminist international law, international relations, and security scholars (hereinafter referred to as feminist international scholars) offer a theoretical perspective which challenges the concepts, ideologies, and structures of the international system that are based on the dominant social paradigm. In ecological approaches, such as social and deep ecology, scholars criticise western anthropocentrism, and the function of social hierarchy as the stabilising principle in nature and society. These scholars view western anthropocentrism and social hierarchy as inherently harmful to both human societal well-being and nonhuman nature.<sup>5</sup> However, for reasons that I outline below, ecofeminism, while drawing on similar arguments to feminist and ecological theories more generally, has crucial differences that offer a more rounded and interconnected critique of IEL than other theories are able to support.

## 1.1 Feminist Criticisms of the International System

Feminist criticisms of the international system include feminists engaged in international relations, international law, and security studies. I refer to writers who engage in the work as 'feminist international scholars.' Like ecofeminists, they challenge the concepts, ideology and structures of the international system. Both J Ann Tickner and Hilary Charlesworth have used the analogy of an archaeological dig to describe their critical approach.<sup>6</sup> They suggest that feminist critique is akin to dissecting different layers of the international system and often requires different methodological tools to uncover its gendered nature and bias. Using this analogy, I will briefly outline the 'layers' of feminist critiques of the international system.

The first layer of a feminist critique examines who participates in the international sphere. In feminist legal studies and international relations, scholars examine the way that the absence of women in UN structures and work results in compartmentalisation, gendered

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<sup>3</sup> Hugh Dyer, 'Environmental Security as a Universal Value' in John Vogler and Mark F. Imber (eds), *The Environment and International Relations* (Routledge 1996), 22-40; Hiroshi Ohta, 'Climate Change and Human Security: The Convergence on Policy Requirements' in Saul Takahashi (ed), *Human Rights, Human Security, and State Security: The Intersection* (Praeger, an imprint of ABC-CLIO, LLC 2014), 79.

<sup>4</sup> Takis Fotopoulos, 'Values, The Dominant Social Paradigm and Neoliberal Globalisation' *International Journal of Inclusive Democracy* <[http://www.inclusivedemocracy.org/journal/vol4/vol4\\_no1\\_takis\\_values.htm](http://www.inclusivedemocracy.org/journal/vol4/vol4_no1_takis_values.htm)> accessed 22 November 2015.

<sup>5</sup> Rosi Braidotti and others, *Women, the Environment and Sustainable Development: Towards a Theoretical Synthesis* (Zed Press 1994), 149-150, 157; Rochette, 'Rape of the World', 26.

<sup>6</sup> Hilary Charlesworth, 'Feminist Methods in International Law' (1999) 93(2) *AJIL* 379, 381; J. Ann Tickner, 'What is Your Research Program? Some Feminist Answers to International Relations Methodological Questions' (2005) 49(1) *Int Stud Quart* 1, 3.

analysis and in the law that states create.<sup>7</sup> Charlesworth argues that institutional practices prevent women's participation by relying on norms that are based upon male life patterns as markers of success or eligibility.<sup>8</sup> In international relations, Gillian Youngs and Natasha Walter note the absence of women in diplomacy, the military, and foreign policy-making.<sup>9</sup> In both fields, feminists argue that exclusion and inhibition of women's participation in international relations is part of the reason for the resistance and limited response to the concerns of women in the international sphere.<sup>10</sup>

This view is promoted by feminist security scholars as noted in the previous chapter. These scholars problematise security theory and who is allowed to 'speak' and define 'security.'<sup>11</sup> Feminist security scholars, such as Lene Hansen, argue that who is able to speak of and define security centres on those who are privileged to speak and thus excludes traditionally marginalised groups from the role of security actor.<sup>12</sup> Hansen argues that there are blank spots in the study and understanding of security that may prevent the inclusion of gender. These criticisms concern both theoretical and epistemological foundations of 'security' and the institutional structures that inhibit and exclude the participation of marginalised groups and their contributions to norms, policies, and activities that will have a direct impact.<sup>13</sup>

Like other feminist studies, feminist security studies analyse the different institutions and structural power relations that shape international responses to security, within the wider international context.<sup>14</sup> As noted in the previous chapter, those interested in 'human' and 'environmental' security argue that these omit both the gendered impacts and dynamics of

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<sup>7</sup> Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989), 163-168; Charlesworth, Chinkin and Wright, 'Feminist Approaches', 613; Hilary Charlesworth, 'Transforming the United Men's Club: Feminist Futures for the United Nations' (1994) 4(2) *Transnat'l L& ContempProbs* 422, 423.

<sup>8</sup> Charlesworth, 'Transforming the United Men's Club', 440.

<sup>9</sup> Gillian Youngs, 'Feminist International Relations: A Contradiction in Terms? Or: Why Women and Gender are Essential to Understanding the World 'We' Live in\*' (2004) 80(1) *Int Aff* 75, 79; see also Natasha Walter, 'Where are the Women?' *The Guardian* (London, 25 April 2003)

<<http://www.theguardian.com/world/2003/apr/25/iraq.comment>> accessed 14 May 2014; J. Ann Tickner, *Gendering World Politics: Issues and Approaches in the Post-Cold War Era* (Columbia University Press 2001), ix-x.

<sup>10</sup> Youngs, 'Feminist International Relations', 79; Christine Sylvester, 'Tensions in Feminist Security Studies' (2010) 41(6) *Secur Dialog* 607, 608; Hilary Charlesworth, 'The Women Question in International Law' (2011) 1 *AsianJIL* 33, 35-38.

<sup>11</sup> Laura Sjoberg, 'Introduction to Security Studies: Feminist Contributions' (2009) 18(2) *Security Studies* 183, 185; Laura Sjoberg, 'Seeing Sex, Gender, and Sexuality in International Security' (2015) 0(0) *IJ* 1, 7.

<sup>12</sup> Lene Hansen, 'The Little Mermaid's Silent Security Dilemma and the Absence of Gender in the Copenhagen School' (2000) 29(2) *Millenn J Int Stud* 285 285.

<sup>13</sup> *Ibid* 285 and 291; Megan MacKenzie, 'Securitization and Desecuritization: Female Soldiers and the Reconstruction of Women in Post-Conflict Sierra Leone' (2009) 18(2) *Security Studies* 241 163; Kate Darling, 'A Weight for Water: An Ecological Feminist Critique of Emerging Norms and Trends in Global Water Governance' (2012) 13(1) *Melb J Int'l L* 1, 19. Examples within the literature include honour killings in Pakistan, or the complete exclusion of gender considerations within the DDR process in Sierra Leone.

<sup>14</sup> Carol Cohn, "'Feminist Security Studies': Toward a Reflexive Practice' (2011) 7(04) *Polit Gender* 581 583-584



such broad approaches to security.<sup>15</sup> They suggest that current responses to human or environmental security, couched in ‘sustainable’ development, remain ‘entrenched in current (gender-subordinating) social and political structures... [and] maintain[s] the state-centric and top-down foci of the ... conflict approach, masking it under a broader definition of who merits security.’<sup>16</sup> Similarly to broader criticisms of international relations, these criticisms relate to the exclusion of marginalised communities, and those who *experience* ‘non-traditional’ security concerns from the institutions and structures that shape security discussions.<sup>17</sup> They argue that the exclusion of marginalised communities and their experiences means that the organisational structures, in which international law and politics are negotiated, developed, and created by male élites reflect those interests while ignoring the voices and interests of marginalised groups, such as women.<sup>18</sup>

In response to these criticisms, some feminists argue that attaining equality of representation and participation by women in international institutions will end the subordination of women and other marginalised communities.<sup>19</sup> They suggest that having more women as state leaders, and having women and representatives from other marginalised communities, will ensure that international institutions and structures take into account their perspectives.<sup>20</sup> These proposals share similarities with liberal ecofeminism. This perspective focuses on making existing institutions equal through participation. Therefore, they examine who is able to participate in the creation of new policy, laws, and other methods to support gender equality in state and international institutions. As a result, they promote the equality of legal rights, commit to major economic re-organisation and redistribution of wealth, equality of opportunity, and both public and private recognition of women’s rights.<sup>21</sup> This contribution to the critique of the international sphere by liberal feminists is valuable in examining the creation and development of international responses to environmental degradation, development and economic growth.

However, this approach of ‘uncritical’<sup>22</sup> equality has been subject to significant criticism by some. Catherine MacKinnon argues that liberal feminism sees ‘sexism primarily as an

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<sup>15</sup> Nicole Detraz, ‘Environmental Security and Gender: Necessary Shifts in an Evolving Debate’ (2009) 18 *Security Studies* 345, 350.

<sup>16</sup> *Ibid.*, 351.

<sup>17</sup> E.g. J. Ann Tickner, ‘Hans Morgenthau's Principles of Political Realism: A Feminist Reformulation’ (1998) 17(3) *Millenn J Int Stud* 429, ‘international relations is a man’s world, a world of power and conflict in which warfare is a privileged activity.’ Laura Sjoberg, ‘Introduction’ in Laura Sjoberg (ed), *Gender and International Security: Feminist Perspectives* (Routledge 2010), 1

<sup>18</sup> Charlesworth, Chinkin and Wright, ‘Feminist Approaches’, 623; Mary Caprioli and Mark A. Boyer, ‘Gender, Violence, and International Crisis’ (2001) 45(4) *J Confl Resolut* 503, 503-18; Sjoberg, ‘Introduction’, 3.

<sup>19</sup> Caprioli and Boyer, ‘Gender, Violence, and International Crisis’; See criticisms of liberal feminism, Catharine A. MacKinnon, ‘Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence’ (1983) 8(4) *Signs* 635, 640.

<sup>20</sup> Caprioli and Boyer, ‘Gender, Violence, and International Crisis’.

<sup>21</sup> Susan Wendell, ‘A (Qualified) Defense of Liberal Feminism’ (1987) 2(2) *Hypatia* 65-66.

<sup>22</sup> Plumwood, *Feminism and the Mastery of Nature*, 27-31.

illusion or myth to be dispelled, an inaccuracy to be corrected.<sup>23</sup> In this way, liberal feminism may suffer by universalising a category of 'women' and thus essentialise the multitude of different experiences, knowledge, and contexts which gendered identities are created.<sup>24</sup> One of the main criticisms of liberal feminism is that it does not examine the way in which discourses, institutions, and structures incorporate masculine biases and deeply gendered assumptions.<sup>25</sup> Therefore, while dominant institutions increasingly support participation by women and marginalised communities, the underlying normative constructs that inform the language and structures of the international system still incorporate gendered beliefs, values, and attitudes that silence and render women and marginalised communities invisible. This is an important criticism that has been raised by some ecofeminists in their critique of international responses to environmental concerns and is discussed in more detail below.<sup>26</sup>

Other feminists look to the silences included in the responses to international concerns undertaken by the international community. They do this by examining the language and content of international law, and the activities undertaken by states, NSAs, and international institutions in response to international concerns and in the implementation of international law and policy. For example, feminists analysing international law examine the purported objectivity and neutrality contained within it.<sup>27</sup> They suggest that terms and language signifying 'male' characteristics are valued more than those terms and concepts signifying 'female' characteristics.<sup>28</sup> In a similar approach, feminist analysis of international relations reveal that 'certain ideas, concerns, interests, information, feelings, and meanings are marked in national security discourse as feminine, and are devalued.'<sup>29</sup> Carol Cohn and Hilary Charlesworth suggest that characteristics, language, and concepts characterised as 'feminine' are 'difficult to say and difficult to hear. They seem illegitimate, embarrassing and irrelevant.'<sup>30</sup> Charlesworth suggests that international law, as a symbolic system and culture, is permeated with such gendered values and these reinforce general stereotypes of women and men.<sup>31</sup>

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<sup>23</sup> MacKinnon, 'Feminism, Marxism, Method', 640.

<sup>24</sup> E.g. Audre Lorde, *Sister Outsider: Essays and Speeches* (Crossing Press 1984); Chandra Talpade Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' (1988) 30(Autumn) *Feminist Review* 61; Annick T. R. Wibben, 'Feminist Politics in Feminist Security Studies' (2011) 7(04) *Polit Gender* 590, 593.

<sup>25</sup> E.g. Martha A. Fineman, 'Feminist Theory in Law: The Difference it Makes' (1992) 2(1) *Colum J Gender & L* 1, 1.

<sup>26</sup> Mohanty, 'Under Western Eyes', 72; Rosi Braidotti, 'The Exile, the Nomad, and the Migrant: Reflections on International Feminism' (1992) 15(1) *Women Stud Int Forum* 7, 9; Hilary Charlesworth, 'Feminist Critiques of International Law and their Critics' (1994) 13 *Third World Legal Stud* 1, 12.

<sup>27</sup> Charlesworth, 'Feminist Methods in International Law', 381

<sup>28</sup> *Ibid*, 382.

<sup>29</sup> Carol Cohn, 'Sex and Death in the Rational World of Defense Intellectuals' (1987) 12(4) *Signs* 687, 690.

<sup>30</sup> Charlesworth, 'Feminist Methods in International Law', 382.

<sup>31</sup> *Ibid*, 382

Furthermore, feminist international lawyers examine the purportedly neutral principles and rules contained in international law that are seen to work differently for men and women.<sup>32</sup> This is because 'law' is treated as 'the mind of society: Disembodied reason in liberal theory, reflection of material interest in left theory.'<sup>33</sup> Therefore, the way in which the law is framed and the type of language it uses are important in understanding the ways in which the law treats women and men differently. Feminists argue that the key factor of legal language is its claim to rationality, power, culture, and objectivity. These are terms that are associated with the public or male sphere.<sup>34</sup> Therefore, to label these terms as 'neutral' does not engage with the dominant assumptions that the women's sphere and work are different, and inferior to men's.<sup>35</sup> Feminist international lawyers argue that these assumptions are evident in the supposedly neutral language of development and economic provisions in international legal agreements, as well as analysis of nuclear weapons in the maintenance of national and international security.

Similar analysis in international relations and security studies interrogates gender as part of a matrix of power intersecting with markers such as class, race nation, religion, and sexuality, among others.<sup>36</sup> As Annick Wibben notes, feminist security scholars bring identity into the political arena and therefore challenge the notion of an abstract, universal citizen.<sup>37</sup> In doing so, they reveal the silences, marginalisation, and exclusions within traditional security studies.<sup>38</sup> Feminist critiques of international relations similarly challenge the core assumptions of the discipline and reveal the ways in which international relations scholars use abstraction, distancing, and other language to discuss concepts and constructs in the academy.<sup>39</sup>

Ecofeminism shares these criticisms of the gendered values which permeate the symbolic system and culture of western society. Like feminist critiques of international law, international relations, and security, ecofeminists examine the use of language in relation to women and the environment and argue that such examination can make visible the implied or subliminal perceptions concerning the environment and our relationship with it.<sup>40</sup> They argue that such perceptions are informed by various dichotomies that are used in the

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<sup>32</sup> Ibid, 381.

<sup>33</sup> MacKinnon, 'Feminism, Marxism, Method', 642.

<sup>34</sup> Charlesworth, Chinkin and Wright, 'Feminist Approaches', 627.

<sup>35</sup> Ibid, 641.

<sup>36</sup> Wibben, 'Feminist Politics', 592.

<sup>37</sup> Ibid, 592.

<sup>38</sup> Ibid, 592-593.

<sup>39</sup> Tickner, *Gender in International Relations*, 3; Adrienne Elizabeth Christiansen, 'Rhetoric, Rape, and Ecowarfare in the Persian Gulf' in Karen J. Warren and Nisvan Erkal (eds), *Ecofeminism: Women, Culture, Nature* (Indiana University Press 1997), 249-250; Eric M Blanchard, 'Gender, International Relations, and the Development of Feminist Security Theory' (2003) 28(4) *Signs* 1289, 1292.

<sup>40</sup> Heather McLeod-Kilmurray, 'An Ecofeminist Legal Critique of Canadian Environmental Law: The Case Study of Genetically Modified Foods' (2009) 26 *Windsor RevLegal & Social Issues* 129, 170.

structure of western thought. As will be discussed below, and in the following chapter, such analysis is central to ecofeminism and to the methodological perspective that informs the analysis in this research.

The final layer of analysis examines the underlying concepts that inform international law, international relations, and international security. Feminist international scholars argue that concepts forming the basis of international law and relations have gendered meaning.<sup>41</sup> They argue that claims to rationality, objectivity, and abstraction continue to maintain and perpetuate oppressive structures that, in turn, maintain and perpetuate the subordination and devaluation of women in western thought.<sup>42</sup> These criticisms are shared by ecofeminists who critique western rationalism. Both approaches question the Enlightenment's development of conceptual dichotomies which they argue have formed the basis of contemporary western thought.<sup>43</sup> Examples of these dichotomies include: Objectivity vs subjectivity, culture vs nature, reason vs emotion, and economic vs social value.<sup>44</sup>

Feminist international scholars argue that these dichotomies are evident in the structural and conceptual bases of international law, international relations, and security. Using the nation-state as an example, it is possible to identify that the state is defined as rational, self-interested, autonomous, and separate from others.<sup>45</sup> This informs the way in which states interact in the realm of law and international relations. It also informs the way in which security has been constructed. Therefore, interrogations of the gendered nature of fundamental concepts of international law and relations can make visible the invisible gendered bias and the extent to which the language of each discipline is gendered.

In sum, feminist critiques of the international system challenge the gendered structure of the concepts, language, and institutional structure of international law, international relations, and security. In each of these areas, feminist critiques focus on the intersecting ways in which biases in the international system maintain the devaluation, marginalisation, and exclusion of women and other marginalised communities' experiences and lived realities. As will be discussed below, ecofeminism also undertakes similar critiques of the international system and the exclusion and devaluation of the experiences of women and other marginalised communities. However, unlike feminist critiques of the international system, ecofeminists explicitly include the way in which the environment is treated in these disciplines as the fourth category of analysis. This is because ecofeminists argue that without including the way in which society treats the environment, feminism offers an incomplete analysis of the interconnections between the 'isms' of domination. Ecofeminism builds on

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<sup>41</sup> Charlesworth, 'Feminist Methods in International Law', 381.

<sup>42</sup> Charlesworth, Chinkin and Wright, 'Feminist Approaches', 617; Charlesworth, 'The Women Question', 34.

<sup>43</sup> Charlesworth, Chinkin and Wright, 'Feminist Approaches', 617.

<sup>44</sup> Ibid, 617; J. Ann Tickner, 'You Just Don't Understand: Troubled Engagements between Feminists and IR Theorists' (1997) 41(4) *Int Stud Quart* 611, 621; Charlesworth, 'Feminist Methods in International Law', 382.

<sup>45</sup> Charlesworth, Chinkin and Wright, 'Feminist Approaches', 617.

and complements the analysis undertaken by liberal feminist international law, international relations, and security scholars, but offers a different and more complete analysis.

The alternative ecological approaches discussed below generally take a very different approach towards critiquing the international community's response to environmental degradation. Both deep and social ecology place the human relationship with the environment as central in their analysis. This examines the relationship between human and nonhuman nature from a different perspective than that undertaken in feminism.

## 1.2 Ecological Critiques: Deep Ecology and Social Ecology

Deep ecology and social ecology examine humanity's position vis-à-vis the environment. Deep ecology questions the assumption that humans are separate and above nature while social ecology considers human societal hierarchy and domination as the basis for environmental destruction.<sup>46</sup> Both of these approaches share similarities with ecofeminism in their critique of western culture's anthropocentrism, commitment to value dualisms, and the revision of structures of domination. I will briefly outline the main thesis of each critical approach.

### 1.2.1 Deep Ecology

Deep ecology theorists question the assumption that humans are separate and above nature.<sup>47</sup> They discredit the 'shallow ecology movement' which refers to the fight against pollution and resource depletion because its central objective is the affluence and health of people in developed countries.<sup>48</sup> Instead, deep ecologists enumerate a movement that encompasses seven important concepts, including 'biospherical egalitarianism,' principles of diversity and symbiosis, complexity and not complication, and local autonomy and decentralisation.<sup>49</sup> Inherent in these concepts is the critique of western culture's anthropocentrism, and the societal, class, and other hierarchies that are premised on the same dichotomies that ecofeminists reject.

In this way, deep ecology shares similarities with ecofeminism in its critique of the situation of humanity over nature as embodied in value dualisms.<sup>50</sup> Deep ecologists consider humans as part of 'creation ongoing'<sup>51</sup> and therefore not above or separate from nature.<sup>52</sup>

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<sup>46</sup> Janis Birkeland, 'Ecofeminism: Linking Theory and Practice' in Greta Claire Gaard (ed), *Ecofeminism: Women, Animals, Nature* (Temple University Press 1993), 29; Plumwood, *Feminism and the Mastery of Nature*, 14; Braidotti and others, *Women, the Environment*, 155.

<sup>47</sup> Braidotti and others, *Women, the Environment*, 149; Alan R. Drengson and Yuichi Inoue, 'Introduction' in Alan R. Drengson and Yuichi Inoue (eds), *The Deep Ecology Movement: an Introductory Anthology* (North Atlantic Books 1995).

<sup>48</sup> Arne Naess, 'The Shallow and the Deep, Long-Range Ecology Movement. A Summary' (1973) 16(1-6) *Inquiry* (USA) 95, 95.

<sup>49</sup> *Ibid.*, 96-99.

<sup>50</sup> Braidotti and others, *Women, the Environment*, 149-150.

<sup>51</sup> Devall, 'The Deep Ecology Movement', 303.

Like ecofeminism, and feminism more broadly, deep ecologists explore themes such as the rejection of mind/body, nature/culture, and subject/object dualisms.<sup>53</sup> Like some ecofeminists, they reject technology as an end in itself<sup>54</sup> and critique atomistic and hierarchical constructions in science.<sup>55</sup> Similar to some ecofeminists, deep ecologists argue that diversity is desirable and that decentralisation, and local autonomy is important.<sup>56</sup> Therefore, some elements of the deep ecology movement and ecofeminism share conceptual similarities and criticisms of the contemporary responses to environmental degradation based in technological innovation, commodification of nature and development predicated on economic growth.

However, ecofeminists and social ecologists, amongst others, have raised significant criticisms of deep ecology. Murray Bookchin, a social ecologist, considers deep ecology as 'vague, formless, often self-contradictory and invertebrate...'<sup>57</sup> He criticises deep ecology because it does not acknowledge that ecological problems rest in societal problems and universalises the experience of all humans rather than acknowledging the differences of lived experience between women and men, poor and wealthy, and the exploited with their exploiters.<sup>58</sup>

Similarly, ecofeminists challenge its conceptualisation of human/nature relationships for being 'shockingly sexist'<sup>59</sup> because they fail to acknowledge that the 'new consciousness' that deep ecology puts forward, is in fact integrating 'traditional 'female' values of caring, relatedness and wholeness without connecting these values with women's struggles.'<sup>60</sup> This exclusion of the gendered nature of the environmental crisis is evident in Warwick Fox's contention that the critiques of other forms of discrimination are irrelevant, and feminism,

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<sup>52</sup> Michael E. Zimmerman, 'Deep Ecology and Ecofeminism: The Emerging Dialogue' in Irene Diamond and Gloria Feman Orenstein (eds), *Reweaving the World: The Emergence of Ecofeminism* (Sierra Club Books 1990), 140. This has been termed 'biocentric egalitarianism', which would replace the anthropocentric hierarchies inherent in Western rationalist thought.

<sup>53</sup> Ibid; Braidotti and others, *Women, the Environment*, 150.

<sup>54</sup> Marti Kheel, 'Ecofeminism and Deep Ecology: Reflections on Identity and Difference' (1991) 8(2) *The Trumpeter* 62, 63.

<sup>55</sup> Zimmerman, 'Deep Ecology and Ecofeminism', 140; Kheel, 'Ecofeminism and Deep Ecology', 63; Braidotti and others, *Women, the Environment*, 150.

<sup>56</sup> Braidotti and others, *Women, the Environment*, 151.

<sup>57</sup> Murray Bookchin, 'Social Ecology versus Deep Ecology: A Challenge for the Ecology Movement' (*Environment and Ecology*, 1987) <<http://environment-ecology.com/deep-ecology/64-social-ecology-versus-deep-ecology.html>> accessed 22 November 2015; see also Ariel Salleh, 'Class, Race, and Gender Discourse in the Ecofeminism/Deep Ecology Debate' in Nina Witoszek and Andrew Brennan (eds), *Philosophical Dialogues: Arne Naess and the Progress of Ecophilosophy* (Rowman and Littlefield 1998).

<sup>58</sup> Bookchin, 'Social Ecology versus Deep Ecology'.

<sup>59</sup> Sharon Doubiago, 'Mama Coyote Talks to the Boys' in Judith Plant (ed), *Healing the Wounds: The promise of ecofeminism* (Green Print 1989), 40.

<sup>60</sup> Braidotti and others, *Women, the Environment*, 154.

for example, 'has nothing to add to the conception of environmental ethics.'<sup>61</sup> In this way, deep ecology considers the hierarchy in human society as irrelevant to explanations of environmental degradation and destruction. It is for these reasons that the theory is not used in this research project.

### 1.2.2 Social Ecology

Social ecology challenges the function of hierarchy as a 'stabilising principle' in nature and society.<sup>62</sup> Social ecologists believe that the root of the ecological crisis is in the interrelated dominations of humanity and nature.<sup>63</sup> They aim to uncover structures of domination in order to replace the current model of society with one that is based on recognising the 'co-evolution of nature and humanity along the principles of equity, mutuality, and unity in diversity.'<sup>64</sup> Therefore, social ecology argues for radical changes to present society towards one which adopts community-sized social arrangements, participatory democracy, and decentralisation. Such an approach ensures that authority remains at the community level, which is the level of 'lived experience.'<sup>65</sup> This conceptualisation of an ecological society has similar characteristics of an ecofeminist description of a non-aggressive and interdependent society.

Ecofeminism criticises social ecology for creating another hierarchy of oppressions by assuming that ending the dominations of humans within society will end the domination of nature.<sup>66</sup> They argue that social ecology is limited to intra-human oppressions and ignores the intersecting politics of human/nature relations.<sup>67</sup> Ecofeminists argue that social ecology may reproduce the human/nonhuman nature relationships that are integrated in the dominant social paradigm.<sup>68</sup> Therefore, ecofeminists argue social ecology is incomplete without integrating feminist critiques.<sup>69</sup>

Each of these theories critique western culture's conceptual and structural foundations, and argue that these have a profound effect on the wellbeing of subordinated groups and the environment. Feminist international scholars criticise the gendered nature of western rational thought and the philosophical foundations of international law, international relations, and security. Deep and social ecology theories critique western culture's treatment

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<sup>61</sup> Warwick Fox 'The deep ecology-ecofeminism debate and its parallels' (1989) 11 *Environmental Ethics* 1, 14; cited in Plumwood, *Feminism and the Mastery of Nature*, 17.

<sup>62</sup> Bookchin, 'Social Ecology versus Deep Ecology'; Braidotti and others, *Women, the Environment*, 157; Rochette, 'Rape of the World', 26.

<sup>63</sup> John Clark, 'The Matter of Freedom: Ecofeminist Lessons for Social Ecology' (2000) 11(3) *Capitalism, Nature, Socialism* 62, 64.

<sup>64</sup> Braidotti and others, *Women, the Environment*, 155.

<sup>65</sup> *Ibid*, 158.

<sup>66</sup> Plumwood, *Feminism and the Mastery of Nature*, 14.

<sup>67</sup> *Ibid*, 15

<sup>68</sup> Rochette, 'Rape of the World', 27.

<sup>69</sup> Ynestra King, 'The Ecology of Feminism and the Feminism of Ecology' in Judith Plant (ed), *Healing the Wounds: The Promise of Ecofeminism* (Green Print 1989), 19.

of the environment and offer solutions that aim to end this oppression. However, ecofeminism offers a more nuanced and rounded critical position through which to analyse the international community's perception of the environment because it recognises the interdependent nature of all oppressions, and that gender is linked to all of them.<sup>70</sup>

Therefore, ecofeminism shares similarities with the foundations of feminist and ecological theory. These two broad approaches critique to a greater and lesser degree, the broad western canonical philosophical position. However, beyond that, ecofeminism offers a different perspective which emerges from its foundations in both the environmental and feminist movements. Unlike feminist critiques of international law, international relations, and security, ecofeminism explores the connections between the unjustified domination of women and nature.<sup>71</sup> Unlike deep and social ecology, ecofeminism argues that the gendered nature of the logic of domination in western thought should be central in any environmental philosophy because to ignore this connection would give 'an incomplete, inaccurate, and partial account of what is required of a conceptually adequate environmental ethic.'<sup>72</sup> Therefore, ecofeminism argues that a feminist perspective can help to clarify how the liberation and domination of nature are 'conceptually linked to patriarchy and its demise.'<sup>73</sup> These differences enable ecofeminism to undertake a nuanced and interrelated critique of the underlying beliefs, values, and attitudes that inform the development of IEL and the extent to which the securitisation of the environment may have altered these.

However, ecofeminism does have synergies with different feminist perspectives. As will be discussed below, ecofeminism includes Marxist-informed perspectives, socioeconomic perspectives, historical perspectives, epistemological perspectives, and political perspectives which have emerged in the academy and movement.<sup>74</sup> Nevertheless, unlike feminist critiques of international law, international relations, and security studies, ecofeminism builds on these perspectives by making the connection between the exploitation of the environment and the subordination of women central in its analysis.<sup>75</sup>

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<sup>70</sup> Petra Kelly, 'Women and Power' in Karen J. Warren and Nisvan Erkal (eds), *Ecofeminism: Women, culture, nature* (Indiana University Press 1997), 115. 'There are many structures of domination – nation over nation, class over class, race over race, humans over nature. But domination of women by men is a constant feature within every other aspect of oppression.'

<sup>71</sup> Robert Sessions, 'Deep Ecology versus Ecofeminism: Healthy Differences or Incompatible Philosophies?' (1991) 6(1) *Hypatia* 90, 97-98.

<sup>72</sup> Karen J. Warren, 'The Power and the Promise of Ecological Feminism' (1990) 12(2) *Environ Ethics* 125, 144; Sessions, 'Deep Ecology versus Ecofeminism', 98.

<sup>73</sup> Warren, 'Power and Promise', 144.

<sup>74</sup> Karen J. Warren, 'Feminist Environmental Philosophy' (*The Stanford Encyclopedia of Philosophy*, Stanford University, 2015) <<http://plato.stanford.edu/archives/sum2015/entries/feminism-environmental/>> accessed 22 November 2015.

<sup>75</sup> Greta Claire Gaard, 'Living Interconnections with Animals and Nature' in Greta Claire Gaard (ed), *Ecofeminism: Women, Animals, Nature* (Temple University Press 1993), 1; Kelly, 'Women and Power', 115. 'There are many structures of domination – nation over nation, class over class, race over race, humans over nature. But domination of women by men is a constant feature within every other aspect of oppression.'



Finally, ecofeminism has evolved into a philosophy, social activism and an intellectual commitment. This enables ecofeminism to question the theoretical and ideological basis of the domination of women and nonhuman nature, and also to question the practical implications for this continued domination in social systems and institutions such as the global market economy, international environmental governance, and international organisations on the local level. As a result, ecofeminism has the power to contribute to the debate about the 'rise and consequence of science, capitalism, and warfare'<sup>76</sup> and also the ability to unite 'different strands of feminism.'<sup>77</sup> In doing so, ecofeminism has the 'power and promise'<sup>78</sup> to develop a more complete critique of the assumptions underlying the securitisation of the environment and the extent to which this securitisation has altered the basis for which the international community seeks to protect the environment, and the perception of the environment itself.

## 2. ECOFEMINISM: THEORIES, CRITICISMS AND STRENGTHS

Francoise D'Eaubonne first coined the term 'ecofeminism' and argued that it offers a theoretical approach that is able to identify the connections between the dominations of women and nature.<sup>79</sup> Ecofeminist activism and theory uses a range of tools and techniques to uncover the linked subordination of women and the environment.<sup>80</sup> In the following section, I introduce the historical antecedents, and various strands of ecofeminism. In doing so, I highlight the commonalities in the different ecofeminist positions and where they differ. Following from this overview, I discuss important strengths of ecofeminist theory and why they are relevant for the analysis of IEL. Finally, I acknowledge that ecofeminism has been subject to significant criticism as an essentialising and universalising theory. I respond to these criticisms and argue that they are not relevant for contemporary ecofeminist theory and perspectives.

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<sup>76</sup> Charis Thompson, 'Back to Nature? Resurrecting Ecofeminism after Poststructuralist and Third-Wave Feminisms' (2006) 97(3) *Isis* 505, 507.

<sup>77</sup> *Ibid.*, 507.

<sup>78</sup> Cuomo CJ, 'On Ecofeminist Philosophy' (2002) 7(2) *Ethics and the Environment* 1, 6-7; Warren, 'Power and Promise'.

<sup>79</sup> Francoise D'Eaubonne, 'Le Feminisme ou la Mort [Feminism or Death]' in Elaine Marks and Isabelle De Courtivron (eds), *New French Feminisms: An Anthology* (The University of Massachusetts Press 1980); Karen J. Warren, 'Feminism and Ecology: Making Connections' (1987) 9(1) *Environ Ethics* 3.

<sup>80</sup> Braidotti and others, *Women, the Environment*, 161; Noël Sturgeon, *Ecofeminist Natures: Race, Gender, Feminist Theory, and Political Action* (Routledge 1997), 23; Grace Y Kao, 'The Universal Versus the Particular in Ecofeminist Ethics' (2010) 38(4) *Journal of Religious Ethics* 616, 617.

## 2.1 Ecofeminist Theories

As with many feminist perspectives, there is more than one type of ecofeminism. It is not a homogenous theory and involves 'several different strands of discourse.'<sup>81</sup> While ecofeminists can make generalised statements seemingly referring to all men and women, their main focus is the 'pattern of dominance that arose in European society associated with the historical development of science, technology, industrialism, and capitalism.'<sup>82</sup> However, the way in which ecofeminists examine this pattern identifies various sources for the women/nature connection. Some of these are mutually complementary and supportive. Others give competing analyses of the dominations of women and nature.<sup>83</sup> In the following paragraphs, I introduce the main strands of ecofeminism.

In line with liberal feminism, liberal ecofeminism focuses on improving state regulation and ensuring equal opportunities for women in existing democratic, scientific, and economic institutions relating to the environment.<sup>84</sup> Liberal ecofeminists argue that environmental degradation is the result of overly rapid development and the failure to control and regulate environmental pollutants.<sup>85</sup> This approach reflects the political commitments of liberal feminism which focuses on the end of *de facto* discrimination on the basis of sex, education, a greater recognition of women as individuals, and equality of opportunity.<sup>86</sup>

Liberal ecofeminism receives significant criticism because it does not question the structures of the dominant social model and its underlying ideological and conceptual apparatus.<sup>87</sup> Rather, it considers the sole solution for environmental problems is to develop more stringent regulations in dominant institutions.<sup>88</sup> This does not acknowledge the masculine bias in the dominant model of the human as *opposite to* nature in human culture.<sup>89</sup> Other ecofeminists criticise this approach for articulating a path of 'uncritical

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<sup>81</sup> Bina Agarwal, 'The Gender and Environment Debate: Lessons from India' (1992) 18(1) *FSt* 119, 120; Birkeland, 'Linking Theory and Practice', 18; Cecile Jackson, 'Women/Nature or Gender/History? A Critique of Ecofeminist "Development"' (1993) 20(3) *J Peasant Stud* 389, 221; Rochette, 'Stop the Rape of the World', 150; Kao, 'The Universal Versus the Particular', 617.

<sup>82</sup> Mary Mellor, 'Feminism and Environmental Ethics: A Materialist Perspective' (2000) 5(1) *Ethics and the Environment* 107, 110.

<sup>83</sup> Karen J. Warren, 'Introduction to Ecofeminism' (*Lilith eZine*)

<<http://environmental.lilithzine.com/Introduction-to-Ecofeminism.html>> accessed 20 August 2013.

<sup>84</sup> Carolyn Merchant, 'Ecofeminism and Feminist Theory' in Irene Diamond and Gloria Feman Orenstein (eds), *Reweaving the World: The Emergence of Ecofeminism* (Sierra Club Books 1990), 101; Amy R Baer, 'Liberal Feminism' (*The Stanford Encyclopedia of Philosophy*, Stanford University 2013)

<<http://plato.stanford.edu/archives/win2013/entries/feminism-liberal/>> accessed 23 November 2013; Warren, 'Feminist Environmental Philosophy'.

<sup>85</sup> Merchant, 'Ecofeminism and Feminist Theory', 100-101.

<sup>86</sup> Wendell, 'A (Qualified) Defense', 66.

<sup>87</sup> Plumwood, *Feminism and the Mastery of Nature*, 29.

<sup>88</sup> *Ibid.*, 27-28; Carolyn Merchant, *Earthcare: Women and the Environment* (Routledge 1996), 9;

<sup>89</sup> Plumwood, *Feminism and the Mastery of Nature*, 28.

equality<sup>90</sup> where women overcome the stigma of their sex and work with men in projects of environmental conservation.<sup>91</sup> Others argue that it advocates a 'cheap unity' ... with men ignoring patriarchal culture.<sup>92</sup> Still others criticise it because it calls for equal opportunities in a socio-economic system that ecofeminists argue is 'killing us all.'<sup>93</sup> Therefore, it may endorse a model which incorporates assumptions of class, race and the supremacy of the human species.<sup>94</sup>

Radical/cultural ecofeminist theory responds to the perceived associations between women and nature, and their devaluation in western culture.<sup>95</sup> Radical/cultural ecofeminists argue that women and nature's liberation can be achieved by dismantling patriarchal systems embedded within human society.<sup>96</sup> Patriarchy can be understood as a 'system of social structures, and practices in which men dominate, oppress, and exploit women.'<sup>97</sup> Radical/cultural ecofeminists extend this understanding and argue that these systems oppress both women and nature.<sup>98</sup> They argue that there is a historical connection between the devaluation of women and nature, and that these are causal connections and the liberation of both can occur by embracing that which has been devalued.<sup>99</sup> Therefore, it is often seen as the rival of liberal feminism because it rejects the masculine ideals which liberal feminism supports.<sup>100</sup>

This perspective has been criticised for 'naturalising' the women/nature connection.<sup>101</sup> It considers women to have an epistemologically privileged understanding of 'nature' through, for example, their reliance on the local environment for subsistence living.<sup>102</sup> Therefore, radical/cultural ecofeminism argues for a form of reversal which would allocate positive values to that which has been devalued and devalue that which has been valued in patriarchal masculinity based in reason.<sup>103</sup> This form of 'uncritical reversal' can be

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<sup>90</sup> Ibid, 28.

<sup>91</sup> Merchant, 'Ecofeminism and Feminist Theory', 101.

<sup>92</sup> Mellor, *Feminism & Ecology*, 156.

<sup>93</sup> Ynestra King, 'Healing the Wounds: Feminism, Ecology, and the Nature/Culture Dualism' in Irene Diamond and Gloria Feman Orenstein (eds), *Reweaving the World: The Emergence of Ecofeminism* (Sierra Club Books 1990), 106.

<sup>94</sup> Plumwood, *Feminism and the Mastery of Nature*, 28.

<sup>95</sup> Merchant, 'Ecofeminism and Feminist Theory', 101.

<sup>96</sup> Tzeporah Berman, 'Towards an Integrative Ecofeminist Praxis' (1993) 13(3) *Canadian Woman Studies* 15, 16.

<sup>97</sup> Sylvia Walby, 'Theorising Patriarchy' (1989) 23(2) *Sociology* 213, 214.

<sup>98</sup> Berman, 'Towards an Integrative Ecofeminist Praxis', 16; Elaine Hughes, 'Fishwives and Other Tails: Ecofeminism and Environmental Law' (1995) 8(1) *CJWL* 502, 507.

<sup>99</sup> Berman, 'Towards an Integrative Ecofeminist Praxis', 16-17; Warren, 'Introduction to Ecofeminism'

<sup>100</sup> King, 'Healing the Wounds', 114; Plumwood, *Feminism and the Mastery of Nature*, 30.

<sup>101</sup> Chapter 3, Section 2.3, below.

<sup>102</sup> Mies and Shiva, *Ecofeminism*, 20; Richard T Twine, 'Ecofeminisms in Process' *Ecofem e-Journal* <<http://www.lancs.ac.uk/staff/twine/ecofem/ecofem2001.pdf>> accessed 2 February 2012, 2.

<sup>103</sup> Val Plumwood, 'Feminism and Ecofeminism: Beyond the Dualistic Assumptions of Women, Men and Nature' (1992) 22(1) *The Ecologist* 8, 10-11; Plumwood, *Feminism and the Mastery of Nature*, 30-31; Lori Gruen, 'Dismantling Oppression: An Analysis of the Connection between Women and Animals' in Greta Claire Gaard

problematic because it may stereotype ecological feminism.<sup>104</sup> Radical/cultural ecofeminism does not address how hierarchical structures position and exploit women's apparent natural and care-giving qualities.<sup>105</sup> As a result, it is limited in its ability to examine the ideological and societal apparatus that informs the association between environment/security links and the development of IEL. This is because it does not engage in a critique of the various structural and hierarchical positions that work together to maintain the inferiority of women and nature.

Social/ist<sup>106</sup> ecofeminist theory considers that environmental problems are based in the growth of 'capitalist patriarchy' and ideology in which nature is exploited for human progress.<sup>107</sup> 'Social/ist' ecofeminist theory describes an ecofeminist position that considers 'masculine/patriarchal values' as damaging and destructive.<sup>108</sup> Mellor argues that the core belief in social/ist ecofeminism is that 'all human beings are rooted in nature, they are embodied beings';<sup>109</sup> however, women have been materially associated with human embodiment through largely unpaid or underpaid work.<sup>110</sup> In this way, 'social/ist ecofeminists argue that 'women are not more rooted [in nature] *essentially* than men, it is just that men are less rooted in practice.'<sup>111</sup> They argue that nature is the basis of human life, a social construct, and the result of historical and social forces. Humanity has attempted to separate itself from nature through productive systems.<sup>112</sup> Therefore, men dominate the sphere of monetised production and women are relegated to the domestic sphere which is run on women's unpaid labour.<sup>113</sup> Following from this, nature is transformed into profit through processes that erode and pollute it.<sup>114</sup> Therefore, social/ist ecofeminists argue that there needs to be a revaluation of the historical, social and conceptual connections between the domination of nature and marginalised groups in order to end environmental degradation.

Building on this analysis, materialist ecofeminist theory argues that western society has used the sex/gender division as one vehicle in which to create itself against nature. Mellor argues that 'power is defined by the ability of certain individuals and groups to (temporarily)

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(ed), *Ecofeminism: Women, Animals, Nature* (Temple University Press 1993), 77-78; Hughes, 'Fishwives and Other Tails', 507; Mellor, *Feminism & Ecology*, 57.

<sup>104</sup> Plumwood, *Feminism and the Mastery of Nature*, 31.

<sup>105</sup> Merchant, 'Ecofeminism and Feminist Theory', 102; Hughes, 'Fishwives and Other Tails', 507; Lorraine Code, *Ecological Thinking: The Politics of Epistemic Location* (Oxford University Press 2006) 18.

<sup>106</sup> Mellor, *Feminism & Ecology*, 58-59.

<sup>107</sup> Merchant, 'Ecofeminism and Feminist Theory', 103; Mellor, *Feminism & Ecology*, 58.

<sup>108</sup> Mellor, 'Feminism and Environmental Ethics', 111.

<sup>109</sup> Mary Mellor, 'The Politics of Women and Nature: Affinity, Contingency or Material Relation?' (1996) 1(2) JPI 147, 154.

<sup>110</sup> Mellor, *Feminism & Ecology*, 180.

<sup>111</sup> *Ibid*, 60; see also, King, 'Healing the Wounds'.

<sup>112</sup> Merchant, 'Ecofeminism and Feminist Theory', 103; Mellor, *Feminism & Ecology*, 62.

<sup>113</sup> Mellor, *Feminism & Ecology*, 62.

<sup>114</sup> *Ibid*, 62.

free themselves from embodiedness and embeddedness, from ecological time and biological time.<sup>115</sup> Materialist ecofeminists argue that this pattern has occurred throughout history, and women have been responsible for carrying the 'burden of biological time.'<sup>116</sup> They suggest that in western social and economic structures, this burden still occurs and in order to take their place in western society, women must present themselves as 'autonomous individuals...avoiding domestic obligations, undertaking them in their 'free' time, or paying someone else to carry out that work.'<sup>117</sup> Therefore, materialist ecofeminists develop the critiques of social/ist ecofeminists by examining the way in which social and economic structures maintain patriarchal domination of women and nonhuman nature.

Development ecofeminists draw on critiques of the domination of non-western cultures by western culture.<sup>118</sup> This form of ecofeminist theory refers to women in developing countries fighting for their environment. It includes feminist responses from the global south concerning the impact of development strategies and has been referred to as the women, environment, and development debate.<sup>119</sup> They integrate anti-colonial critiques and analysis of the causes of environmental destruction.<sup>120</sup>

Development ecofeminists critique the interconnected concepts of 'maldevelopment' and 'underdevelopment.'<sup>121</sup> This criticism concerns the notion of 'development' as industrialism and the commodification of provisioning, first conceived by the United States President Harry Truman in his inaugural speech in 1949.<sup>122</sup> They argue that behind this approach is the assumption that western ways of life were superior to the 'backward' and subsistence ways of non-western societies.<sup>123</sup> Therefore, development ecofeminists challenge this because it renders non-western people, nature and women as deficient and thus in need of western, male-oriented forms of development.<sup>124</sup>

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<sup>115</sup> Mellor, 'Feminism and Environmental Ethics', 112.

<sup>116</sup> Ibid, 112.

<sup>117</sup> Ibid, 113; see also King, 'Healing the Wounds'; Mary Mellor, 'Women, Nature and the Social Construction of 'Economic Man'' (1997) 20(2) *Ecolog Econ* 129; Mellor, *Feminism & Ecology*.

<sup>118</sup> Shiva, *Staying Alive*, 1.

<sup>119</sup> Plumwood, *Feminism and the Mastery of Nature*, 40. Plumwood refers to this form of feminism as 'anti-colonialist feminism.'. Arguably, this critique is just as applicable to colonised people in developed countries as those who live in developing countries; see also Braidotti and others, *Women, the Environment*.

<sup>120</sup> Andy Smith, 'Ecofeminism through an Anticolonial Framework' in Karen J. Warren and Nisvan Erkal (eds), *Ecofeminism: Women, Culture, Nature* (Indiana University Press 1997), 22.

<sup>121</sup> Shiva, *Staying Alive*, 5-6; Mellor, *Feminism & Ecology*, 26. For an overview of the history of ecofeminism in development, see Sturgeon, *Ecofeminist Natures*, 140-166.

<sup>122</sup> Harry S. Truman, 'Inaugural Address' (Washington, 20 January 1949) Online by Gerhard Peters and John T. Woolley, The American Presidency Project < <http://www.presidency.ucsb.edu/ws/?pid=13282>> accessed 9 February 2015; Mellor, *Feminism & Ecology*, 26.

<sup>123</sup> Shiva, *Staying Alive*, chapter 1; Mellor, *Feminism & Ecology*, 26; Susan Hawthorne, *Wild Politics: Feminism, Globalisation, Bio/diversity* (Spinifex 2002), 9-12.

<sup>124</sup> Shiva, *Staying Alive*, 5-6, 41; Mies and Shiva, *Ecofeminism*, 22-35.

Development ecofeminists also critique the notion of sustainable development because this tacitly approves the overall aim of development.<sup>125</sup> They criticise the continued affirmation of economic development and the perpetuation of maldevelopment, which they argue marginalises, excludes, and devalues rural women and marginalised communities' ecological knowledge and experience.<sup>126</sup> Examples of these criticisms are found in the work of ecofeminists examining the impact of sustainable development policies surrounding reforestation, fuel wood, and access to local resources on women and rural communities.<sup>127</sup> In this research, development ecofeminists argue that future analysis and policy responses must take into account the gendered way in which women are excluded from market systems and that access to natural resources occurs along gendered lines which can be destabilised through development policies framed in western, market-based approaches.<sup>128</sup>

Development ecofeminists have extended their critique to the wider issue of globalisation and how the inclusion of systems, such as the global economy, maintains the subordination and devaluation of women and nonhuman nature.<sup>129</sup> Others argue that the interrelated responses to global environmental problems represent tools for 'colonialist projects of northern exploitation of southern peoples and lands.'<sup>130</sup> These criticisms of the 'globalisation' of development and environmentalism highlight that international responses to these interrelated issues converge the technological and moral responses to environmental degradation and underdevelopment. In doing so, they propose a 'unitary human concern' that omits any consideration of the varied political and material sources of environmental problems.<sup>131</sup> Critics argue that these universalising responses attempt to 'bypass the political terrain in which different groups experience problems differently and act accordingly.'<sup>132</sup> In doing so, technical solutions to environmental problems and underdevelopment may not take into account the interrelated 'isms of domination'

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<sup>125</sup> Mellor, *Feminism & Ecology*, 35-38.

<sup>126</sup> Shiva, *Staying Alive*, 4-8; Mellor, *Feminism & Ecology*, 35-38; see further, Anupam Pandey, 'Greening Garhwal through Stakeholder Engagement: The Role of Ecofeminism, Community and the State in Sustainable Development' (2010) 18(1) *Sustainable Development* 12; Mies and Shiva, *Ecofeminism*;

<sup>127</sup> E.g. Sandra Veuthey and Julien-Francois Gerber, 'Logging Conflicts in Southern Cameroon: A Feminist Ecological Economics Perspective' (2010) 70 *Ecolog Econ* 170; Pandey, 'Greening Garhwal'; Bina Agarwal, 'Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market' (2003) 3(1/2) *Journal of Agrarian Change* 184

<sup>128</sup> Veuthey and Gerber, 'Logging Conflicts in Southern Cameroon', 176.

<sup>129</sup> Mellor, 'Women, Nature', 130; Marilyn Waring, 'The Invisibility of Women's Work: The Economics of Local and Global "Bullshit"' (1997) 17(2) *Canadian Woman Studies* 31; Marilyn Waring, 'Counting for Something! Recognising Women's Contribution to the Global Economy through Alternative Accounting Systems' (2003) 11(1) *Gender and Development* 35.

<sup>130</sup> Sturgeon, *Ecofeminist Natures*, 146; Ramachandra Guha, 'Radical American Environmentalism and Wilderness Preservation: A Third World Critique' (1989) 11(1) *Environ Ethics* 71, 75-76.

<sup>131</sup> Sturgeon, *Ecofeminist Natures*, 147.

<sup>132</sup> Peter J. Taylor and Frederick H. Buttel, 'How do We Know We have Global Environmental Problems? Science and the Globalization of Environmental Discourse' (1992) 23(3) *Geoforum* 405, 408.

including class and gender effects of the ‘processes of degradation, statization [sic] and privatization of nature’s resources.’<sup>133</sup>

The critique of development ecofeminists is particularly relevant for this research project because it questions the assumptions and conceptual framework that informs sustainable development based on extractive and exploitative productivity.<sup>134</sup> Because sustainable development is central to IEL and security discourses on the environment, identifying the assumptions and conceptual frameworks that inform the concept is relevant for this research project. This is because assumptions and frameworks may affect states and NSAs, perceptions of the environment and the basis on which they protect it.

The strands of ecofeminist theory reviewed here argue that there are multiple oppressions of women, nonhuman nature, people of colour, class, and geographical situation, and these are mutually reinforcing. Any theory developed from these different strands of ecofeminism can draw on their individual strengths and critical insight.<sup>135</sup> I suggest that ecofeminism can offer the most complete theoretical framework in which to do this because it can highlight the multiple intersections of environment/security discourse that may have altered the international community’s perception of the environment. For these reasons, ecofeminist theory is a strong theoretical perspective through which to examine the interrelated associations between environment/security and the extent to which this may alter the perception of the environment and the basis on which the international community seek to protect the environment.

## 2.2 The Critical Strength of Ecofeminist Theory

Ecofeminist theory contains many strengths that can contribute towards a nuanced and rigorous critique of IEL because it offers a distinct methodological perspective to analyse IEL. This is because it critiques western canonical philosophical views and their male-bias, and explores the nature of the connections between the domination of women and nature. Particular strengths of the theory are its critique of oppressive conceptual frameworks and use of language. These, Warren and others argue, function as a ‘socially constructed *lens* through which one perceives reality.’<sup>136</sup> I will discuss these two strengths in preparation for following chapter where I introduce the methodological perspective and research approach used in this thesis.

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<sup>133</sup> Karen J. Warren, ‘Response to My Critics’ (2002) 7(2) *Ethics and the Environment* 39, 39.

<sup>134</sup> E.g. Patricia E Perkins and others, ‘Feminist Ecological Economics’ 11(3) *Feminist Econ* 107; Mary Mellor, ‘Ecofeminist Political Economy’ (2006) 1(1/2) *International Journal of Green Economics* 139; Veuthey and Gerber, ‘Logging Conflicts in Southern Cameroon’; Pandey, ‘Greening Garhwal’.

<sup>135</sup> Plumwood, *Feminism and the Mastery of Nature*, 40.

<sup>136</sup> Warren, *Ecofeminist Philosophy*, 46.

### 2.2.1 Revealing Value Dualisms in IEL

Ecofeminism offers a strong critique of the exploitative and gendered conceptual frameworks which underpin the dominant and rational discourses in western society.<sup>137</sup> These are formed by a set of values, attitudes, beliefs, and assumptions that shape and mirror how an entity views itself and the world around it, and a number of different factors such as class, religion, nationality, gender, and race/ethnicity can alter mirror in which an entity views itself.

Ecofeminists argue that these frameworks, and the logical structures integrated within them, continue to exclude, devalue, and subordinate human others, and nonhuman nature.<sup>138</sup> This is because they are based on the concept of dualism which privileges certain forms of knowledge and thinking that valorise rationalist faculty as superior to other characteristics of the human condition. These dualisms are part of logical structures that institutionalise power and normalise this by attaching it to existing types of difference.<sup>139</sup>

For example, dualisms such as male/female, mind/body (nature), reason/matter, and human/nature naturalise the oppression and subordination of gender, nature, and human 'others'.<sup>140</sup> These dualisms are integrated into the foundation of these conceptual frameworks and have affirmed male-oriented values, beliefs, and assumptions as the standard in modern rationalist culture.<sup>141</sup> These logical structures are used to valorise 'masculine', abstract, disembodied, and dispassionate characteristics while simultaneously devaluing and embedding 'feminine' or subordinate characteristics within the body and the natural world.<sup>142</sup> These structures have acquired significant cultural dominance and currency, and are evident in the structure of IEL, economic systems that govern the global economy, and security discourses.<sup>143</sup> This ecofeminist analysis of the underlying concepts and logical structures of rational discourses in western thinking is a useful critique for examining the evolving perception of the environment in IEL.

The strength of ecofeminism is that it can offer a 'spotlight' on some of the 'shared conceptual roots of the unjustified dominations of women, nonhuman animals, and nature.'<sup>144</sup> This critique is used by many of the ecofeminist perspectives discussed in the

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<sup>137</sup> E.g. Karen J. Warren, 'Taking Empirical Data Seriously: An Ecofeminist Philosophical Perspective' in Karen J. Warren and Nisvan Erkal (eds), *Ecofeminism: Women, Culture, Nature* (Indiana University Press 1997); Plumwood, *Feminism and the Mastery of Nature*; Warren, *Ecofeminist Philosophy*, 46; Plumwood, *Environmental Culture*.

<sup>138</sup> Plumwood, *Feminism and the Mastery of Nature*, 41-42.

<sup>139</sup> *Ibid*, 42.

<sup>140</sup> *Ibid*, 43.

<sup>141</sup> Plumwood, *Environmental Culture*, 20, 22-23.

<sup>142</sup> Greta Claire Gaard, 'Women, Water, Energy: An Ecofeminist Approach' (2001) 14 *Organ Environ* 157, 158.

<sup>143</sup> Chaone Mallory, 'Toward an Ecofeminist Environmental Jurisprudence: Nature, Law and Gender' (MA, University of North Texas, Denton Texas 1999), 13; Charlesworth, 'Feminist Methods in International Law', 382; Gaard, 'Women, Water, Energy', 159.

<sup>144</sup> Warren, 'Feminist Environmental Philosophy'



previous section to explore the interconnecting ways in which these shared conceptual roots function in real life to maintain institutions and practices of oppression and domination. An examination of dominant conceptual frameworks and the dualisms that inform them can offer a useful tool in my research for examining the evolving perception of the environment by the international community.

### 2.2.2 Critiquing the Language of IEL

Feminists have argued that language acts as a mirror and reflects our conceptualisation of the world and how we view ourselves in it. As such it can be used as a political instrument.<sup>145</sup> An important strength in ecofeminism is its linguistic perspective on the way that language plays an important role in the justifications for the domination of women and nonhuman nature.

Some ecofeminists argue that the English language ‘animalises and naturalises’ women in contexts where women and animals are already viewed as inferior to men.<sup>146</sup> They suggest that the use of such language in a patriarchal culture reinforces the inferiorisation of women and nature in relation to men. Karen Warren argues that this legitimises the exploitation of animals by feminising nature, while also justifying the exploitation of women and animalising and naturalising women.<sup>147</sup> She suggests that the use of such language perpetuates the domination of women and nonhuman nature because it fails to consider the extent to which these interrelated dominations are *culturally* analogous and sanctioned.

Similarly, Carol Adams’ examination of the language used to defend experimentation on animals reveals that it can be used to maintain and legitimise the distance between humanity/environment and subject/object.<sup>148</sup> Lincoln Houde and Connie Bullis have examined the use of language in communication that maintains narratives authorising and sanctioning the continued separation between human/nonhuman nature. They argue that ecofeminist critiques of language recognise the normative consequence of the symbols inherent in language and communication and acknowledge that ‘language and the body are interconnected and interrelated within the ecosystem, embedded within culture and nature together.’<sup>149</sup> Through interrogating language and the assumptions within it, ecofeminists can respect other differences and distinctions, and in doing so embrace a ‘contextualist ethic,

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<sup>145</sup> Warren, ‘Taking Empirical Data Seriously’, 12.

<sup>146</sup> Warren, ‘Feminist Environmental Philosophy’.

<sup>147</sup> Ibid.

<sup>148</sup> E.g. Carol J. Adams, ‘Feeling for the Language: Comments on Dunayer's "In the Name of Science"' (2000) 13(4) *Organ Environ* 453; Joan Dunayer, ‘Ecofeminist Pedagogy: The Language of Vivisection’ (2000) 13(4) *Organ Environ* 432.

<sup>149</sup> Lincoln J. Houde and Connie Bullis, ‘Ecofeminist Pedagogy: An Exploratory Case’ (1999) 4(2) *Ethics and the Environment* 143, 153

celebrate a politics of difference, and embody intersubjective interrelationships as differences that make a difference together.<sup>150</sup>

Language can also communicate sexist and exploitative assumptions while purporting to be neutral.<sup>151</sup> Carolyn Merchant argues that the use of sexual imagery and its associated language legitimises exploitation and control over nonhuman nature.<sup>152</sup> This use of language is similar to the way in which military scientists use language to divorce themselves from the reality of speaking about nuclear weapons.<sup>153</sup> A similar critique is used by Adams who argues that animals are ‘made absent through language that ‘that renames dead bodies before consumers participate in eating them’ therefore permitting their consumption.’<sup>154</sup> In these contexts, language is used to render the subject ‘other’ and thus to legitimise exploitative or destructive action.<sup>155</sup> Analysing the use of language in IEL may make visible the implied or subliminal perceptions concerning the environment and our relationship with it. This concept is integrated into my analysis in this project.<sup>156</sup>

These examples highlight the strengths of an ecofeminist linguistic perspective in examining IEL and revealing the underlying conceptual frameworks that may maintain the domination of women and nonhuman nature. My research requires a close analysis of the language used to refer to the environment as it examines the way in which the securitisation of the environment may have altered the justifications for which the international community seeks to protect the environment, and in turn, the perception of the environment itself. Therefore, one of the main strengths of using ecofeminism is its linguistic perspective and the way in which language can be analysed to reveal the underlying conceptual frameworks.

### 2.3 Criticisms of Ecofeminism

Ecofeminist theory has been criticised on the grounds of essentialism and universalising the experiences of women. Some critics have gone even further and charged ecofeminism with being essentialist, biologist, lacking political efficacy, intellectually regressive, and

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<sup>150</sup> Ibid, 152-153; Plumwood, *Feminism and the Mastery of Nature*, 174;

<sup>151</sup> See Warren, *Ecofeminist Philosophy*, 58-62; Carolyn Merchant, *The Death of Nature: Women Ecology and the Scientific Revolution* (Harper 1980), 171; Josephine Donovan, ‘Animal Rights and Feminist Theory’ (1990) 15(2) *Signs* 350, 363.

<sup>152</sup> Merchant, *The Death of Nature*, 171.

<sup>153</sup> Cohn, ‘Sex and Death’; see also Dunayer, ‘Ecofeminist Pedagogy’. She examines the language used by scientists in the discussion of vivisection.

<sup>154</sup> Carol J. Adams, ‘Ecofeminism and the Eating of Animals’ (1991) 6(1) *Hypatia* 125, 136.

<sup>155</sup> Merchant, *The Death of Nature*, 171; Greta Claire Gaard, ‘Ecofeminism and Climate Change’ (2015) 49(0) *Women Stud Int Forum* 20, 26.

<sup>156</sup> McLeod-Kilmurray, ‘An Ecofeminist Legal Critique’, 170.

inconsistent.<sup>157</sup> Many of these criticisms have been subject to significant debate in ecofeminist writing, and, I would argue, addressed in the most rigorous of this.<sup>158</sup> However, because these criticisms have endured for much of the eighties and nineties, I will outline the main charges and the responses to them by ecofeminists, stating why ecofeminism is still relevant for examining the perception of the environment by the international community. In my conclusion, I suggest that these critiques are no longer valid and reflect an evolutionary deadend in the development of ecofeminism.

### 2.3.1 Charges of Essentialism

Essentialism refers to claims that some form of universal nature exists for members of a certain group.<sup>159</sup> It identifies a connecting trait that all members of the group have,<sup>160</sup> and therefore does not take into account social and historical differences among women from different cultures.<sup>161</sup> It has been criticised for being ahistorical and confusing enduring attributes with social relations.<sup>162</sup> Therefore, to charge ecofeminism with essentialism is akin to accusing an ecofeminist of not being a 'proper' feminist.<sup>163</sup> As a result, the diversity of contributions by ecofeminists to the academy has been discredited.<sup>164</sup>

The main targets for charges of essentialism are cultural and spiritual ecofeminism. These positions accept and embrace women's sexuality and biology as being close to nature, or in some cases, being nature itself.<sup>165</sup> These positions argue that women and nature can be

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<sup>157</sup> Lucy Sargisson, 'What's Wrong with Ecofeminism?' (2001) 10(1) *Environ Polit* 52, 52. Other notable criticisms come from Janet Biehl, *Rethinking Ecofeminist Politics* (South End Press 1991); Janet Biehl, 'Problems in Ecofeminism' (1993) 2(1) *Society and Nature* 52.

<sup>158</sup> E.g. Val Plumwood, 'Ecofeminism: An Overview and Discussion of Positions and Arguments' (1986) 64( ) *Australasian J Phil* 120, 133-34; Stephanie Lahar, 'Ecofeminist Theory and Grassroots Politics' (1991) 6(1) *Hypatia* 28, 38-39; Roger J. H. King, 'Caring about Nature: Feminist Ethics and the Environment' (1991) 6(1) *Hypatia* 75, 81-83; Douglas J Buege, 'Rethinking Again: a Defense of Ecofeminist Philosophy' in Karen J. Warren and Barbara Wells-Howe (eds), *Ecological Feminism* (Routledge 1994), 51-53. Other ecofeminists have responded to this criticisms, such as Plumwood, *Feminism and the Mastery of Nature*; Victoria Davion, 'Is Ecofeminism Feminist?' in Karen J. Warren and Barbara Wells-Howe (eds), *Ecological Feminism* (Routledge 1994); Mellor, *Feminism & Ecology*; Noël Sturgeon, 'Ecofeminist Appropriations and Transnational Environmentalisms' (1999) 6(2-3) *Identities* 255; Chris J Cuomo, 'Still Fooling with Mother Nature' (2001) 16(3) *Hypatia* 149; Niamh Moore, 'Ecofeminism as Third Wave Feminism? Essentialism, Activism and the Academy' in Stacy Gillis, Gillian Howie and Rebecca Munford (eds), *Third Wave Feminism: A Critical Exploration* (Palgrave Macmillan 2004); Thompson, 'Back to Nature?'; Greta Claire Gaard, 'Ecofeminism Revisited: Rejecting Essentialism and Re-Placing Species in a Material Feminist Environmentalism' (2011) 23(2) *Feminist Formations* 26.

<sup>159</sup> Buege, 'Rethinking Again', 52.

<sup>160</sup> *Ibid*, 52.

<sup>161</sup> Charlesworth, 'Feminist Critiques of International Law', 9.

<sup>162</sup> *Ibid*, 9.

<sup>163</sup> Moore, 'Ecofeminism as Third Wave Feminism?', 229.

<sup>164</sup> Gaard, 'Ecofeminism Revisited', 31.

<sup>165</sup> See Starhawk, 'Power, Authority, and Mystery: Ecofeminism and Earth-Based Spirituality' in Irene Diamond and Gloria Feman Orenstein (eds), *Reweaving the World: The Emergence of Ecofeminism* (Sierra Club Books 1990), 85; Charlene Spretnak, 'Toward an Ecofeminist Spirituality' in Judith Plant (ed), *Healing the Wounds: The Promise of Ecofeminism* (Green Print 1989), 129; and criticisms by Biehl, *Rethinking Ecofeminist Politics*, 13-14.

liberated through political action and by revaluing what patriarchy devalues: Nature and the feminine elements of human nature.<sup>166</sup> Furthermore, spiritual ecofeminism claims that *prehistoric* cultures believed in the 'aliveness' of the Earth or of 'nature' as a whole.<sup>167</sup> They argue that politics lack spirituality which would recognise the interconnectedness of issues facing the planet and society.<sup>168</sup>

This position has been criticised for celebrating the traditional notion of women as nurturers and embracing of male stereotypes that other feminists have tried to challenge.<sup>169</sup> Janet Biehl argues that this approach retains 'the patriarchal stereotypes of what men expect women to be' and maintains women as mothers and carers instead of women's potentialities and abilities.<sup>170</sup> Not only does spiritualist ecofeminism universalise the category of 'women', but it also indicates an epistemological privilege of one understanding of 'nature.'<sup>171</sup> This approach has been challenged because it is a form of uncritical reversal that maintains the dichotomy between nature/culture without addressing multiple intersectional hierarchies.<sup>172</sup> Plumwood argues that the very idea of a 'feminine connection' is insulting and summons up 'women as earth mothers, as passive, reproductive animals, contented cows immersed in the body and in the unreflective experiencing of life.'<sup>173</sup> Therefore, cultural/spiritual ecofeminisms do not acknowledge that one set of values may not benefit all women equally.<sup>174</sup> As a result, they have been labelled as biologist, lacking political efficacy, intellectually regressive, and inconsistent.<sup>175</sup>

Ecofeminist responses to these criticisms argue that they homogenise ecofeminism by failing to distinguish cultural/spiritual ecofeminism from those who examine the structural oppressions of women and nature. They argue that the rejection of ecofeminism paid little attention to the internal critiques of their work by feminist environmentalists and ignored criticisms of cultural/spiritual ecofeminism by ecofeminists themselves. For example, Plumwood and Davion examine the different manifestations of essentialism in ecofeminism. They explore the conflation of sex and gender in some forms of ecofeminist thought as well as the homogenisation of women's experiences that is present in some ecofeminist

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<sup>166</sup> Sandilands, *The Good-Natured Feminist*, 17; Hughes, 'Fishwives and Other Tails', 507; King, 'Caring about Nature', 82.

<sup>167</sup> Biehl, 'Problems in Ecofeminism', 68.

<sup>168</sup> Starhawk, 'Power, Authority, and Mystery', 78-80; Riane Eisler, 'The Gaia Tradition and the Partnership Future: An Ecofeminist Manifesto' in Irene Diamond and Gloria Feman Orenstein (eds), *Reweaving the World: The Emergence of Ecofeminism* (Sierra Club Books 1990), 34; Irene Diamond and Gloria Feman Orenstein, 'Introduction' in Irene Diamond and Gloria Feman Orenstein (eds), *Reweaving the World: The Emergence of Ecofeminism* (Sierra Club Books 1990), xi.

<sup>169</sup> Thompson, 'Back to Nature?', 509.

<sup>170</sup> Biehl, 'Problems in Ecofeminism', 55.

<sup>171</sup> Twine, 'Ecofeminisms in Process', 2, Mies and Shiva, *Ecofeminism*, 20.

<sup>172</sup> Biehl, 'Problems in Ecofeminism', 53.

<sup>173</sup> Plumwood, *Feminism and the Mastery of Nature*, 20.

<sup>174</sup> Thompson, 'Back to Nature?', 510.

<sup>175</sup> Sargisson, 'What's Wrong with Ecofeminism?', 52.

literature.<sup>176</sup> They challenge those thinkers who identify as ecofeminists, yet uncritically examine femininity and who argue that a 'feminine' perspective of the environment will solve the ecological crises.<sup>177</sup> Plumwood considers this position as being untenable and open to serious criticism.<sup>178</sup>

Similarly, Victoria Davion labels this approach as 'ecofeminine' because these views uncritically embrace a unified view of the feminine side of gender dualisms.<sup>179</sup> She challenges this position because it does not recognise that feminism is a 'movement for the liberation of *all* women.'<sup>180</sup> She argues that 'ecofeminine' views fail to critically examine the possible negative aspects of the perspective, recognise that the concept of 'femininity' may be a by-product of patriarchy, and that the concept uncritically embraces a unified perspective of what the 'feminine' is.<sup>181</sup> These interrogations of certain forms of ecofeminism reflect the critical practice within the movement that looks both inward and outward when engaging with activism and academia.

Essentialism is a significant issue in feminist debates; however, it is also used to obfuscate the contributions by ecofeminism to wider feminist theory. Ecofeminists, such as Greta Gaard, Val Plumwood, Karen Warren, Noel Sturgeon, Catriona Mortimer-Sandilands, and Niamh Moore have undertaken significant critical insight and interrogation of their discipline. As a result, ecofeminist analysis and theory has become much more sophisticated in its fundamental approach. Therefore, I maintain that the critiques of this theoretical approach are insufficient to delegitimise the approach as a basis for a project like mine.

### 2.3.2 Charges of Universalism

One issue that both ecofeminism and feminist critiques of the international system face is a question of universalism, and how to address the diversity of women's voices in the international sphere. Ecofeminism has been criticised as a western, white and middle class theory that has limited consideration of the diversity of women's experiences across race, class, religion, and national boundaries.<sup>182</sup> This criticism is often directed at cultural or 'spiritual' ecofeminists who emphasise global unity and 'oneness' without acknowledging the

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<sup>176</sup> King, 'The Ecology of Feminism', 24-25; Gaard, 'Ecofeminism Revisited', 36; Val Plumwood, 'Nature, Self and Gender: Feminism, Environmental Philosophy, and the Critique of Rationalism' (1991) 6(1) *Hypatia* 3, 12.

<sup>177</sup> Davion, 'Is Ecofeminism Feminist?', 17.

<sup>178</sup> Plumwood, 'Ecofeminism', 120.

<sup>179</sup> Davion, 'Is Ecofeminism Feminist?', 17.

<sup>180</sup> *Ibid*, 17.

<sup>181</sup> *Ibid*, 17, and 18-26.

<sup>182</sup> Chris J Cuomo, 'Unravelling the Problems in Ecofeminism' (1992) 14(4) *Environ Ethics* 351, 358; Sturgeon, *Ecofeminist Natures*, chapter 4; For examples the appropriation of an essentialised indigenous women, see Spretnak, 'Toward an Ecofeminist Spirituality', 127-129; Starhawk, 'Power, Authority, and Mystery', 73. For non-Western critiques of ecofeminism, see Huey-li Li, 'A Cross-Cultural Critique of Ecofeminism' in Greta Claire Gaard (ed), *Ecofeminism: Women, Animals, Nature* (Temple University Press 1993); Sandilands, *The Good-Natured Feminist*, 55; Sturgeon, 'Ecofeminist Appropriations';

potential implications for some human communities and the universalising effect that this has on women's voices.<sup>183</sup> Non-western women, women of colour, and indigenous women have criticised ecofeminism for ignoring the multifaceted forms of oppression and the complex ways in which these oppressions affect their lived, material, reality.<sup>184</sup> They criticise the idealisation of 'indigenous' and non-western lifestyles that are dehistoricised and stereotypical and can serve to obscure specific problems related to cultural survival.<sup>185</sup> International feminists have been criticised for similarly failing to consider the diversity of women's experiences across class, race, and national boundaries.<sup>186</sup> While this is a significant issue, both ecofeminism and international feminism have acknowledged this critique and set forth different perspectives for addressing the criticisms.

Both Val Plumwood and Karen Warren articulate a theory which acknowledges difference and the multiple intersections of different oppressions. They explicitly incorporate nature as an additional category of analysis in a feminist framework that integrates gender, race and class analysis.<sup>187</sup> Warren emphasises the importance of pluralist ecofeminism which ensures that the diversity of women's voices is given significance.<sup>188</sup> The examination of cross-cultural difference suggests that later forms of ecofeminist analysis have become more sophisticated and attuned to the multiple oppressions within movements and cultures of which feminists and ecofeminists are part.<sup>189</sup>

Feminist international scholars similarly engaged with criticisms of universalism.<sup>190</sup> They argue that depending on circumstances, it may be appropriate to use the category of 'women', while in other circumstances, a more contextualised category may be appropriate.<sup>191</sup> They argue that the category of 'women' is a powerful theoretical and political force and therefore feminist analysis negotiates a difficult path between theoretical

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<sup>183</sup> Cuomo, 'Unravelling the Problems in Ecofeminism', 358.

<sup>184</sup> Sturgeon, *Ecofeminist Natures*, 119-128; Sandilands, *The Good-Natured Feminist*, 55; see also, Sturgeon, 'Ecofeminist Appropriations'.

<sup>185</sup> Sturgeon, *Ecofeminist Natures*, 122-123; see further, Agarwal, 'Gender and Environment Debate'; Jackson, 'Women/Nature'.

<sup>186</sup> E.g. Mohanty, 'Under Western Eyes', 72. She argues that 'women are constituted as women through the complex interaction between class, culture, religion and other ideological institutions and frameworks. They are not 'women' – a coherent group – solely on the basis of a particular economic system or policy.'

<sup>187</sup> Plumwood, *Feminism and the Mastery of Nature*, 2.

<sup>188</sup> Warren, 'Power and Promise', 139; Cuomo, 'Unravelling the Problems in Ecofeminism', 357. However, for a critique of Warren's pluralist statements, see Sandilands, *The Good-Natured Feminist*, 54-55.

<sup>189</sup> Greta Claire Gaard, 'Tools for a Cross-Cultural Feminist Ethics: Exploring Ethical Contexts and Contents in the Makah Whale Hunt' (2001) 16(1) *Hypatia* 1, 21.

<sup>190</sup> Hilary Charlesworth and Christine M Chinkin, *The Boundaries of International Law: a Feminist Analysis* (Manchester University Press 2000), 54-55; Charlesworth, 'Feminist Critiques of International Law', 12. Charlesworth and Chinkin acknowledge the difficulties over how to acknowledge the pitfalls of homogenisation and universalism and celebrate the diversity of women's experiences whilst also interrogating global issues. They have adopted a strategy of 'situated perspectives' that encourage the awareness of difference between women while recognising commonalities. This allows for cultural diversity to be respected.

<sup>191</sup> Charlesworth and Chinkin, *The Boundaries of International Law*, 55.

and political purity.<sup>192</sup> In a similar way to ecofeminism, feminist international scholars maintain awareness of differences between women, while also recognising commonalities.<sup>193</sup> These responses to the critique of universalism in feminist analysis mean that international feminists can acknowledge tensions between universal theories and local experience.<sup>194</sup>

However, ecofeminism and feminist critiques of international law have been criticised by non-western feminists for throwing away a theoretical purity.<sup>195</sup> Non-western feminists assert that women are not a coherent group constituted on the basis of a particular policy or system. They argue that women are constituted through the 'interaction between class, culture, religion and other ideological institutions and frameworks.'<sup>196</sup> Chandra Mohanty argues that feminists should engage in 'grounded, particularized analyses linked with larger, even global, economic and political frameworks.'<sup>197</sup> Post-colonial and transnational feminism challenge western international feminist scholars to resolve the pitfalls of homogenisation and universalism and celebrate the diversity of women's experiences while also interrogating global issues.<sup>198</sup>

In spite of these criticisms, ecofeminism can offer a nuanced and interconnecting critical perspective through which to analyse IEL. It draws on a diverse 'political and social milieu' which gives it a strength of critical insight that is derived from both the feminist and ecological movements.<sup>199</sup> In a similar vein to drawing on feminist international law, ecofeminism can adopt a strategy of 'situated perspectives' that encourage the awareness of difference between women while recognising commonalities.<sup>200</sup> This allows for 'cultural

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<sup>192</sup> Ibid, 55. Charlesworth and Chinkin argue that the category of 'women' has 'powerful theoretical and political potential in scrutinising international law. It has theoretical force in the sense that it is using a patriarchal tool against patriarchy, removing women from the category of the particular to which they are usually assigned. And it has political implications in its ability to mobilise.'

<sup>193</sup> Braidotti, 'The Exile', 9; Charlesworth, 'Feminist Critiques of International Law', 12.

<sup>194</sup> Charlesworth, 'Feminist Critiques of International Law', 12.

<sup>195</sup> 'Criticism, Feminism and the Institution: An Interview with Gayatri Chakravorty Spivak' (1985) 10-11(1) Thesis Eleven 175, 184.

<sup>196</sup> Mohanty, 'Under Western Eyes', 72; Leti Volpp, 'Talking Culture: Gender, Race, Nation, and the Politics of Multiculturalism' (1996) 96(6) Colum L Rev 1573, 1580-1582.

<sup>197</sup> Chandra Talpade Mohanty, "'Under Western Eyes" Revisited: Feminist Solidarity through Anticapitalist Struggles' (2003) 28(2) Signs 499, 501.

<sup>198</sup> Marnia Lazreg, 'Feminism and Difference: The Perils of Writing as a Woman on Women in Algeria' (1988) 14(1) FSt 81, 85-89; Isabelle R Gunning, 'Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries' (1992) 23(2) Colum Hum Rts L Rev 189, 191; J Oloka-Onyango and Sylvia Tamale, "The Personal is Political," or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism' (1995) 17(4) Hum Rts Q 691, 698; Charlesworth and Chinkin, *The Boundaries of International Law*, 54-55; see further, Karen Engle, 'Female Subjects of Public International Law: Human Rights and the Exotic Other Female' (1992) 26(4) New Eng L Rev 1509; Vasuki Nesiah, 'Toward a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship' (1993) 16 Harv Women's LJ 189; Volpp, 'Talking Culture'.

<sup>199</sup> Karen Morrow, 'Perspectives on Environmental Law and the Law Relating to Sustainability: A Continuing Role for Ecofeminism?' in Andreas Philippopoulos-Mihalopoulos (ed), *Law and Ecology: New Environmental Foundations* (Routledge 2011), 126.

<sup>200</sup> Braidotti, 'The Exile', 9; Charlesworth, 'Feminist Critiques of International Law', 12.

diversity to be respected without falling into cheap relativism<sup>201</sup> and acknowledges the global diversity of women's experiences by using different styles, languages, and disciplinary angles.<sup>202</sup> Therefore, ecofeminism can offer a 'range of different but related lenses through which to view environmental issues'.<sup>203</sup> The fluidity and dynamic nature of ecofeminism is one of its strengths, as is its ability to draw on social, political, philosophical, and economic foundations, as well as activism and practice in its form and content.<sup>204</sup>

Finally, I suggest that the strong rebuttals of the charges of essentialism and universalism by ecofeminists such as Plumwood, Gaard, Warren, and others indicate that ecofeminist theory has evolved from the ecofeminist approaches subject to such criticisms. In particular, the elucidation of ecofeminist philosophy by Warren and Plumwood reflects a more mature and grounded theory than the earlier, less coherent, theories, such as those put forward by Starkhawk and Charlene Spretnak. Further, more recent ecofeminists have moved in a very different direction from that of Starkhawk and Spretnak and have developed theoretical perspectives including ecofeminism as embodied materialism, queer ecofeminism, and ecofeminism phenomenology.<sup>205</sup> Similarly, the range of topics examined through an ecofeminist philosophical perspective include environmental jurisprudence, globalisation, sustainability and ecology.<sup>206</sup> These new directions in ecofeminism indicate that challenges of essentialism and universalism are no longer valid and may be seen to reflect an evolutionary deadend in the development of ecofeminist theory. For this reason, I believe that ecofeminism is an appropriate and useful critical theory through which to examine IEL.

### 3. CONCLUSION

This chapter has introduced ecofeminism as a philosophical position, movement, and intellection commitment that calls to attention the connection between the oppression of women and the unjustified domination of nonhuman nature. I argued that ecofeminism, unlike other feminist and ecology approaches, has the capacity to develop a more complete critique of the beliefs, attitudes, and values that inform the international community's perception of the environment and how these may have changed with the securitisation of the environment. I introduced and discussed the main strands of ecofeminism before discussing the two main strengths that inform the analysis undertaken in these different

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<sup>201</sup> Braidotti, 'The Exile', 9.

<sup>202</sup> Ibid, 10.

<sup>203</sup> Morrow, 'Perspectives on Environmental Law', 134; Code, *Ecological Thinking*, 19, 21.

<sup>204</sup> Morrow, 'Perspectives on Environmental Law', 133.

<sup>205</sup> E.g. Trish Glazebrook, *Eco-Logic: Erotics of Nature. An Ecofeminist Phenomenology*, (State University of New York Press 2008); Mellor, 'Feminism and Environmental Ethics'; Catriona Mortimer-Sandilands and Bruce Erickson (eds), *Queer Ecologies: Sex, Nature, Politics, Desire* (Indiana University Press 2010).

<sup>206</sup> E.g. Warren, 'Feminism and Ecology'; Mallory, 'Ecofeminist Environmental Jurisprudence'; Heather Eaton, 'Ecofeminism and Globalization' (2000) 8(24) *Feminist Theology* 41; Ariel Salleh (ed) *Eco-Sufficiency & Global Justice: Women Write Political Ecology* (Pluto Press; North Melbourne 2009).



strands which are relevant to this research: Ecofeminist linguistic perspectives and the examination of oppressive conceptual frameworks. Finally, I acknowledged the charges of essentialism and universalism in older ecofeminism and argued that such criticisms relate to ecofeminism approaches that have generally been abandoned and may be considered as evolutionary deadends.

With this in mind, I suggest that ecofeminism can offer a theoretical perspective that questions the intersecting oppressions, silences, and exclusions felt by members of the international community in the development and furtherance of international law and policy concerning environment/security links and the environment. This is because there are excluded and marginalised members of all communities – not just those at the local level. By extrapolating the critiques and perspectives developed within ecofeminism, it is possible to identify those groups within the international community who may also be marginalised by those members who are more powerful. The benefit of using ecofeminism is that it can examine the spaces where such silences and marginalisation may occur.

In the following chapter I introduce the methodology and research method used in this project. I will discuss the methodological perspective and how this is informed by ecofeminist philosophy, and particularly, Karen Warren's articulation of an 'ecofeminist ethic.' In this discussion, I will explain how the analytical framework used in this research is an outcome of the methodological perspective and the way in which feminist content analysis is used as a research method to examine the text of IEL.

## 4. Methodology

This chapter further elaborates the methodology and research method used in this project. It explores the research strategy and design. It shows how the analytical framework developed for this project fits within and is inspired by the broader ecofeminist literature. The analytical framework constitutes four lenses through which the texts of international environmental law are read in this project: Inclusivity, structural pluralism, contextualism and openness. The texts of international environmental law (IEL) at issue, fall into four broad areas (natural resources, climate change, ozone depletion, and the guiding principles of international environmental law), covering eight specific regimes (biological diversity, tropical timber, fisheries, desertification, climate change, ozone layer, transboundary watercourses, and sustainable development). These were selected as they encompass a sufficiently broad range of areas and regimes of international environmental law to counter claims of 'selectivism.' The strategy of enquiry and method of analysis is an iterative process which draws on and is inspired by ecofeminist methods.

### 1. RESEARCH DESIGN AND APPROACH

This thesis used a reflexive version of content analysis that is informed by ecofeminist epistemology. This approach to research enabled me to reveal underlying links between the securitisation of the environment, changes in the justifications for environmental protection, and the perception of the environment itself. It also offered the opportunity to draw out such links and evolutions in the justifications or perceptions of the environment inter-temporally, as I examined a range of environmental regimes and their documents from the pre-Cold War period to 2012.

My research reflects the postpositivist methodological approaches used in international relations, and by feminist legal scholars in the post-Cold War period. These approaches challenge the positivist position which holds that empirical sources of knowledge can only be validated and proved 'true' through tests.<sup>1</sup> Instead, I share the view of feminists such as Hilary Charlesworth, Shulamit Reinharz, and J. Ann Tickner who consider knowledge building as an ongoing process, which emerges through 'conversation with texts.'<sup>2</sup> As noted in Chapter 3, many feminists view research as a journey or archaeological dig, and part of an

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<sup>1</sup> J. Ann Tickner, 'Feminism Meets International Relations: Some Methodological Issues' in Brooke A. Ackerly, Maria Stern and Jacqui True (eds), *Feminist Methodologies for International Relations* (Cambridge University Press 2006), 19.

<sup>2</sup> Shulamit Reinharz, *Feminist Methods in Social Research* (with assistance by Lynn Davidman, Oxford University Press 1992), 230.

ongoing process which seeks to challenge and reconceptualise what is claimed to be 'knowledge' from the perspective of the other.<sup>3</sup>

Ecofeminism similarly challenges the positivist paradigm of social research, and specifically that contained in legal studies.<sup>4</sup> They argue that law is underpinned by positivism, which privileges empiricism and its emphasis on objective observation and origins in the scientific revolution.<sup>5</sup> Instead, ecofeminism is generally interpretivist and seeks to revise or challenge the ideals of masculine and human character.<sup>6</sup> It criticises Cartesian epistemology as implicitly masculine because it privileges the mind over the body, and believes that 'objectivity is ... interpreted as freedom from the body and its deceptions, weaknesses and hindrances, its personal and emotional ties.'<sup>7</sup> Ecofeminists argue that positivist epistemologies may be construed as dualisms because they involve hyperseparations which construe sharing and connections between the knower and known as a hindrance to knowledge.<sup>8</sup> They posit that the connections, links, and relationships between subject/object should be recognised in the temporal, social, and specific contexts in which they are found.<sup>9</sup> As Lori Gruen stresses, this relationship between temporal, social and specific contexts in the shaping of ecofeminist enquiry when she argues that the central feature of an ecofeminist epistemology is to recognise actual community-based experiences, and the situation in which these experiences are created.<sup>10</sup> Therefore, ecofeminists start from the basis that the social location of the knower is central to understanding and assessing epistemological claims.<sup>11</sup>

These epistemological considerations are alluded to in Karen Warren's ecofeminist ethic, which is discussed in Section 2 of this chapter. For now, it is enough to state that the epistemological perspective of this research critiques androcentric ways of knowing that 'account for the antagonistic, dualistic and hierarchical conceptions of self, society and cosmos, are perceived to be at the roots of oppression.'<sup>12</sup> And hence provide a methodology

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<sup>3</sup> Ibid, 241; Charlesworth, 'Feminist Critiques of International Law', 6; Tickner, 'Feminism meets International Relations', 21; see also María C. Lugones, 'Playfulness, "World"-Travelling, and Loving Perception' (1987) 2(2) *Hypatia* 3.

<sup>4</sup> Tickner, 'Feminism meets International Relations', 19; Brooke A. Ackerly, Maria Stern and Jacqui True, 'Introduction' in Brooke A. Ackerly, Maria Stern and Jacqui True (eds), *Feminist Methodologies for International Relations* (Cambridge University Press 2006), 6-7.

<sup>5</sup> E.g. Merchant, *The Death of Nature*; Karen J Warren, 'Toward an Ecofeminist Ethic' (1988) 15(2) *Studies in the Humanities* 140; Charlesworth, Chinkin and Wright, 'Feminist Approaches'.

<sup>6</sup> Plumwood, *Feminism and the Mastery of Nature*, 29.

<sup>7</sup> Susan Bordo (1987) *The Flight to Objectivity: Essays on Cartesianism and Culture*, Albany NY: State University of New York Press, 89, quoted in *ibid*, 116.

<sup>8</sup> *Ibid*, 116-117.

<sup>9</sup> Braidotti and others, *Women, the Environment*, 8.

<sup>10</sup> Gruen, 'Toward an Ecofeminist Moral Epistemology', 126.

<sup>11</sup> Warren, *Ecofeminist Philosophy*, 33-34; Code, *Ecological Thinking*, 3.

<sup>12</sup> Plumwood, *Feminism and the Mastery of Nature*, 162.

for interrogating the beliefs, values, and attitudes of the international community in relation to the environment.

With this in mind, I considered the different ways in which I could examine the international community's prevalent attitudes towards the environment. I decided to examine the texts of international environmental law through an ecofeminist analytical framework. This approach is not only original, but also contributes a rounded and informed critique through which I could identify and discuss different values, attitudes, and beliefs of the international community in relation to different international concerns, such as the environment, economy, and development.

My initial reading of environment/security literature, as well as the texts of the eight environmental regimes studied here, guided the broad focus of my research. I refined this through my reading of ecofeminism and the creation of the analytical framework, as well as through the broad topics that I identified during my reading of the documents. I came to develop my research question, outlined in Chapter 1, through this iterative process:

To what extent has the association between environment and security has altered the basis on which states and NSAs that make up the international community seek to protect the environment, and in turn, what this suggests about their perception of the environment?

This process encapsulates a reflexive approach to research in which the process of research and analysis informed the creation of topics and other variables that emerged throughout the study.<sup>13</sup>

To recap on some points made in previous chapters, it is worthwhile addressing this question for a number of reasons. One reason is that the securitisation of the environment is occurring in many different forums, and by many different actors on the international and national stages (see Chapters 1 and 2). Second, there are many criticisms of the ways in which states protect the environment, and particularly with the growing commercialisation or commoditisation of the environment as a proposed response (see Chapter 2). Therefore, examining the relationship between the securitisation of the environment and the emerging justifications for environmental protection offers an original lens to examine underlying beliefs, values, and attitudes that may inform the development of future environmental law and policy (see Chapters 1 and 2). Third, the methodology developed in this research can offer an interesting and original approach to examine the interconnections between other areas of international or national discourse. Finally, as discussed in the previous chapters, it

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<sup>13</sup> David L. Altheide, 'Ethnographic Content Analysis' (1987) 10(1) *Qualitative Sociology* 65, 68; Elana D Buch and Karen M Staller, 'The Feminist Practice of Ethnography' in Sharlene Nagy Hesse-Biber and Patricia Lina Leavy (eds), *Feminist Research Practice: A Primer* (Sage Publications 2007), 193; see also Sharlene Nagy Hesse-Biber and Deborah Piatelli, 'The Feminist Practice of Holistic Reflexivity' in Sharlene Nagy Hesse-Biber (ed), *Handbook of Feminist Research: Theory and Praxis* (SAGE Publications 2012).

is very important to understand the underlying perceptions of the environment because we need to interrogate these views in order to reconceive our relationship with the world and with each other (see Chapter 1 and Chapter 3).

## 2. CREATING AN ANALYTICAL FRAMEWORK BASED ON ECOFEMINIST ETHICS

I drew on the ecofeminist ethic articulated by philosopher Karen Warren to create my analytical framework. This ethic can be seen as both a reform and radical strategy because it makes critical gendered analysis central while also relying on concepts and positions found in reformist theories, such as justice, respect, autonomy, and liberty.<sup>14</sup> Warren describes her ethic as comprising eight 'boundary conditions', and in the following paragraphs I briefly outline these conditions and highlight the ways in which they contribute to the analysis of international law

The first two boundary conditions of Warren's ethic take into account the relationship between knowledge, history, and concepts which inform the beliefs, values, and attitudes about the world. She conceives her ethic as 'theory-in-process' which will develop from patterns of voices emerging from alternative descriptions of ethical situations.<sup>15</sup> These conditions can therefore take into account relationships between history and knowledge and that these relationships can inform the beliefs, values, and attitudes of those who shape and create international responses to security and environmental degradation.

Third, Warren proposes that her ethic is 'contextualist.' She explains this as an ethic which sees 'ethical discourse and practice as emerging from the 'voices' of entities located in different historical circumstances.'<sup>16</sup> This condition has two dimensions: The individual with their own identity, history and emotions, and relationships with their own identity and history.<sup>17</sup> This focus has significance for my research because it takes into account the network of relationships between individuals rather than simply concentrating on the rights, rules, and duties that apply to 'others.'<sup>18</sup> Further, it can also reveal the way in which knowledge is formed and critique the dualistic structures that western knowledge is built on, thus building a contextual understanding of knowledge.

Fourth, Warren describes an inclusivist ecofeminist ethic as one that emerges and reflects the diversity of perspectives of marginalised peoples and women.<sup>19</sup> As ecofeminism opposes the nature/culture dualism, it also acknowledges that humans are 'both members of an ecological community (in some respects) and different from other members of that

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<sup>14</sup> Warren, *Ecofeminist Philosophy*, 98.

<sup>15</sup> Ibid, 98-99.

<sup>16</sup> Ibid, 99.

<sup>17</sup> Ibid, 99; Margaret Urban Walker, 'Moral Understandings: Alternative "Epistemology" for a Feminist Ethics' (1989) 4(2) *Hypatia* 15, 17-18.

<sup>18</sup> Warren, *Ecofeminist Philosophy*, 99.

<sup>19</sup> Ibid, 99.

community (in other respects).<sup>20</sup> Therefore, it can recognise the differences and commonalities in human and nonhuman nature and humanity.<sup>21</sup> Furthermore, this condition ensures that the voices of marginalised or oppressed communities are given ‘central legitimacy in ethical theory building.’<sup>22</sup>

Fifth and sixth, an ecofeminist ethic does not attempt to provide an objective point of view, and also provides a central place for values that are unnoticed, misrepresented, or underplayed in traditional ethics.<sup>23</sup> She argues these values recognise ‘that our relationships to others are central to an understanding of who we are’ and can therefore acknowledge the diversity amongst and between humans by focusing on relationships, and the values celebrating relationships.<sup>24</sup> Drawing on these conditions, ecofeminism can recognise the various interconnections between the local and the global in an increasingly interconnected global society, while also acknowledging the differences.<sup>25</sup> In her previous writing, Karen Warren described this as ‘structurally plural.’<sup>26</sup>

Seventh and eighth, an ecofeminist ethic rejects ‘abstract individualism’ and reconceives western conceptualisations of reasons, which are informed by such individualism.<sup>27</sup> It refuses to accept that it is possible to identify a human essence or nature that ‘exists independently of any particular historical context.’<sup>28</sup> This emphasises historical and relationship contexts of humans and has relevance in the examination of IEL because it recognises the multitude of connections of historical relationships that form human, and by extension, state conduct. Further, it can challenge the rationalist tradition by making visible the underlying strands of reason that interconnect with each other to form a network of barriers, which through their relationship to each other, reinforce and maintain the subordination and devaluation of marginalised communities and nonhuman nature.<sup>29</sup> Therefore, such a critique into my analysis can help reveal where such structures have been incorporated into the text of IEL.

However, Warren’s ecofeminist ethic does not engage with ecofeminism as activism and political movement. A key condition omitted from her ethic is that of ‘openness.’ Openness

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<sup>20</sup> Ibid, 100.

<sup>21</sup> Ibid, 99.

<sup>22</sup> Ibid, 100; Warren, ‘Power and Promise’, 140.

<sup>23</sup> Warren, *Ecofeminist Philosophy*, 100; similar comments are made by Gruen, ‘Toward an Ecofeminist Moral Epistemology’.

<sup>24</sup> Warren, *Ecofeminist Philosophy*, 100; see also María C. Lugones and Elizabeth V. Spelman, ‘Have We Got a Theory for You! Feminist Theory, Cultural Imperialism and the Demand for “The Woman’s Voice”’ (1983) 6(6) *Women Stud Int Forum* 573, 547; Lugones, ‘Playfulness’.

<sup>25</sup> Niamh Moore, ‘Eco/Feminism and Rewriting the End of Feminism: From the Chipko Movement to Clayoquot Sound’ (2011) 12(1) *Feminist Theory* 3, 11; Warren, ‘Power and Promise’, 142

<sup>26</sup> See Warren, ‘Power and Promise’.

<sup>27</sup> Above, Chapter 3, 95-96; Val Plumwood, ‘Nature, Self and Gender’, 4-11.

<sup>28</sup> Warren, *Ecofeminist Philosophy*, 101.

<sup>29</sup> Ibid, 101-102; Marilyn Frye, *The Politics of Reality: Essays in Feminist Theory* (Crossing Press 1983), 5.

recognises that ecofeminism is not just a theoretical position, but also a social movement.<sup>30</sup> It challenges the decision-making and discussions concerning the environment which occurs behind closed doors and the gendered effect of such actions. This feature reflects ecofeminist politics by bringing ‘thinking, speaking, and acting in public in order to formulate new beginnings for ourselves and for the world.’<sup>31</sup> Therefore, it can ‘open up ‘nature’ to public, democratic discussion.’<sup>32</sup> Including such a feature can take into account that ecofeminism is a movement that challenges the dominant social paradigm, and in doing so seeks to make public the assumptions, beliefs, and values that inform IEL.

Many of these boundary conditions are suited to creating an analytical framework through which to examine the justifications for environmental protection, and the perception of the environment itself. In particular, Warren’s ‘inclusive’ and ‘contextual’ boundary conditions have relevance in the examination of who participates in the creation of IEL, and what types of knowledge or experience are valued. Her ‘structurally plural’ boundary condition (which may be considered an umbrella condition) has relevance in the examination of the types of interests, voices, and views of the environment that are portrayed in the documents because this feature recognises diversity amongst humans. The ‘open’ condition, while not part of Warren’s ecofeminist ethic, recognises that ecofeminism is political, and emerges from activism as well as the academy. It has relevance in examining the way in which interests are balanced in relation to the environment. These boundary conditions can also absorb the other conditions of an ecofeminist ethic and thus reinforce the analysis undertaken through them.

In the following section, I outline the specific ways in which I use these boundary conditions, to create my analytical framework. In doing so, I explain why I think they are relevant to the analysis of international environmental law, and how they relate to the separate analytic chapters in this research.

## 2.1 Creating the Four Ecofeminist Lenses: Inclusive, Structurally Plural, Contextual, and Open

Through the eyes of a lawyer, I view the eight boundary conditions of Warren’s ethic more akin to ‘goals’ than ‘values.’ This is because they reflect an overall ambition and guide to creating a new ethic and way of thinking. These *goals* reflect the normative and transformative aspirations of ecofeminist critiques. However, they contain specific *values*

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<sup>30</sup> Braidotti and others, *Women, the Environment*, 161; Rochette, ‘Rape of the World’, 32; see further, Carolyn Merchant, *Radical Ecology: The Search for a Livable World* (Routledge 1992).

<sup>31</sup> Catriona Sandilands, ‘Raising Your Hand in the Council of all Beings: Ecofeminism and Citizenship’ (1999) 4(2) *Ethics and the Environment* 219, 220.

<sup>32</sup> *Ibid*, 222; for examples, see, Lahar, ‘Ecofeminist Theory and Grassroots Politics’; Birkeland, ‘Linking Theory and Practice’; Moore, ‘Eco/Feminism’.

that can be used as interconnecting lenses through which to examine IEL.<sup>33</sup> For example, the value for the inclusive goal is 'inclusivity'; the value of structural plurality is 'structural pluralism'; the value 'contextual' is 'contextualism' (or 'contextual understanding') and the value for open is 'openness.' These goals and their associated values, drawn from an ecofeminist ethic, guide my critical analysis of the texts. In doing so, I connect the normative and transformative aspirations of an ecofeminist ethic to the examination of the beliefs, attitudes and values of the international community in relation to the environment.

### 2.1.1 Inclusivity

As stated above, the first lens of my analytical framework is informed by the value of 'inclusivity.' This value relates to the goals and aspirations of inclusiveness by enabling the voices and experiences of traditionally marginalised and excluded communities, and recognising humanity's membership in the ecological community. It is particularly relevant for the analysis of who participates in the creation of IEL, who is excluded, which voices are 'heard' and in what law-making forums. Therefore, it provides an interconnecting lens through which to examine the tension between securitising an environmental issue, as such a process excludes certain participants and removes the issue from the broader international community.

In this regard, the goal of inclusiveness shares similarities with feminist writers critiquing the participation by traditionally marginalised communities in the creation of law. It draws on feminist criticisms of 'privileged white men' who shape law with their own view which 'has come to be seen as universal, neutral, objective, inevitable and complete.'<sup>34</sup> The goal of inclusiveness builds on the arguments of liberal feminists who maintain that enabling the participation by those excluded communities during the creation of law can go in some way of enabling equality of opportunity.<sup>35</sup> However, an ecofeminist goal of inclusiveness moves beyond this and claim that the experiences and voices of those communities that directly experience the environment should have more 'value' or weight than others.

Inclusivity can also relate to the ways in which IEL recognises humanity as interrelated and integrated into an ecological community.<sup>36</sup> The goal of inclusiveness may be revealed in the analytical chapters in responses to environmental problems that are balanced, inclusive, and not based in a hierarchy between different international domains, such as economic,

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<sup>33</sup> Joanne Conaghan, 'Reassessing the Feminist Theoretical Project in Law' (2000) 27(3) *Journal of Law and Society* 351, 375.

<sup>34</sup> Rosemary Hunter, 'Contesting the Dominant Paradigm: Feminist Critiques of Liberal Legalism' in Margaret Davies and Vanessa Munro (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Ashgate 2013), 13; Charlesworth, Chinkin and Wright, 'Feminist Approaches', 614-615.

<sup>35</sup> Wendell, 'A (Qualified) Defense', 66; Charlesworth, Chinkin and Wright, 'Feminist Approaches', 615-616; Christopher C Joyner and George E Little, 'It's Not Nice to Fool Mother Nature! The Mystique of Feminist Approaches to International Environmental Law' (1996) 14 *BU Int'l LJ* 223, 871.

<sup>36</sup> Warren, *Ecofeminist Philosophy*, 100.



cultural, development, and trade. It may also reveal where certain issues are being elevated or securitised by their prioritisation or by the smaller group of states discussing them.

Similarly, inclusiveness is also revealed in texts that recognise humans as integrated and part of an ecological system, and not separate. In this way inclusiveness seeks to move beyond framing human/nonhuman relationships as a binary, by referring to the environment as separate, subordinate and other. Examining features such as the inclusivity of participation, the integration of other areas of international concern, and the different representations of nonhuman nature provides an opportunity to reveal these different perceptions of the environment and also whose voices contribute to the development of international environmental law regimes. In doing so, this lens can reveal the extent to which the provisions take into account not only the voices of those marginalised, but also humanity's place in an ecological community.

### 2.1.2 Structural Pluralism

The second lens of my analytical framework is informed by the value of 'structural pluralism'. This value relates to the structurally plural goal and is significant for the analysis of IEL. This is because structural pluralism relates to multi-level governance of environmental issues. It recognises the various interconnections between the local and the global in an increasingly interconnected global society.<sup>37</sup> It acknowledges multiple communities that make up the local, national, and international spheres, each of which contain diverse experiences, culture, and historical contexts.<sup>38</sup> Therefore, it draws on criticisms by some writers and activists that there should be a 'bottom-up' approach to the creation and implementation of international environmental law that takes into account diversity, location, and difference.<sup>39</sup>

Structural pluralism takes into account location, the ways in which different communities use and experience their local environment, and that such experiences may be affected by their class, race, gender, ethnicity, and social or cultural contexts. This is highly relevant in the analysis of the tensions of securitising the environment and in the creation of IEL. As noted in Chapter 2, securitising an issue moves it from the broader community to one in which only states, and often, select states have power to guide the issue. Therefore, any responses may homogenise and universalise a dominant response which does not reflect

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<sup>37</sup> Moore, 'Eco/Feminism', 11.

<sup>38</sup> Ibid, 10-11.

<sup>39</sup> WCED, *Our Common Future*, 326-327; Sturgeon, *Ecofeminist Natures*, 141-166; Harriet Bulkeley and Arthur PJ Mol, 'Participation and Environmental Governance: Consensus, Ambivalence and Debate' (2003) 12(2) *Environ Values* 143, 147-151; Adams and Pingeot, *Strengthening Public Participation* (2013), 42-43; for more discussion see, Shiva, *Staying Alive*; Mies and Shiva, *Ecofeminism*; Braidotti and others, *Women, the Environment*; and more broadly, Dharam Ghai and Jessica M. Vivian, *Grassroots Environmental Action: People's Participation in Sustainable Development* (Routledge 1992); Bina Agarwal, 'Gender and Forest Conservation: The Impact of Women's Participation in Community Forest Governance' (2009) 68(11) *Ecolog Econ* 2785.

the different features of the multiple communities at the local, national, and international, each with their different experiences, history, and cultures.

Structural pluralism focuses on bridging participation from the local level to the international level, while also taking into account differences between communities. It takes into account that such participation should occur at multiple levels and between multiple communities.<sup>40</sup> For these reasons, structural pluralism will be relevant in the analysis of IEL, particularly in the analysis of where participation occurs and how states take into account difference. It will also be relevant for the analysis of the documents because it enables a nuanced analysis of the ways in which the international community seeks to balance the different interests that relate to the environment in international environmental law. In this analysis, I will be able to consider what this might mean about the diversity of views of the environment at the international level, in light of the convergence of security and the environment in international discourse.

### 2.1.3 Contextualism

The third lens of my analytical framework will be informed by the value of 'contextualism'. This value relates to the goal of contextuality, that give significance to the emergence of voices from humans and other entities located in different historical circumstances. This has relevance for the analysis of IEL because it seeks to move beyond giving significance to different entities – such as nonhuman nature – on the basis of their similarity with humanity or ideas about preconceived rights. Instead, it seeks to give significance over how a moral agent relates to another. Therefore, it is particularly relevant in the analysis of who participates and the different types of knowledge, experience, and understandings of the environment that contribute to the creation of law. In this regard this goal shares similarities with the work of feminists who examine the prioritisation of certain types of knowledge and the exclusion or devaluation of more relational and experiential knowledge in the creation of law and responses to environmental degradation.<sup>41</sup> It draws from similar arguments suggesting that enabling the participation by those excluded communities, and valuing their traditional knowledge and experiences, can go some way to developing responses to environmental problems that take into account the historical circumstances of human/nonhuman interactions.

Contextualism is also relevant because it examines the ways in which the international community develops an integrated approach to knowledge of the environment. Therefore, it can critique the ways in which knowledge is used to justify the prioritisation of certain

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<sup>40</sup> Manisha Desai, 'The Messy Relationship Between Feminisms and Globalizations' (2007) 21(6) *Gender & Society* 797, 798.

<sup>41</sup> E.g. Mies and Shiva, *Ecofeminism; Code, Ecological Thinking*; Caroline Ramazanoğlu and Janet Holland, 'Knowledge, Experience and Reality: Justifying Feminist Connections' in Caroline Ramazanoğlu and Janet Holland (eds), *Feminist Methodology* (SAGE Publications Ltd. 2012).

interests in IEL, the commodification of knowledge as a response to environmental degradation, and also the types of knowledge that are privileged in relation to environmental problems. This is because contextualism seeks to take into account history, identity, and how these shape the ways in which different interests are balanced in IEL, and the way in which the international community may perceive the environment itself. It also has a bearing on the responses put forth by certain members of the international community in light of the growing associations between security and the environment as it may reveal the dominant values, principles, and knowledge that inform the basis for which the international community protects the environment. Furthermore, it may give greater understanding of the reasons for the approach adopted by the international community to respond to environmental concerns.

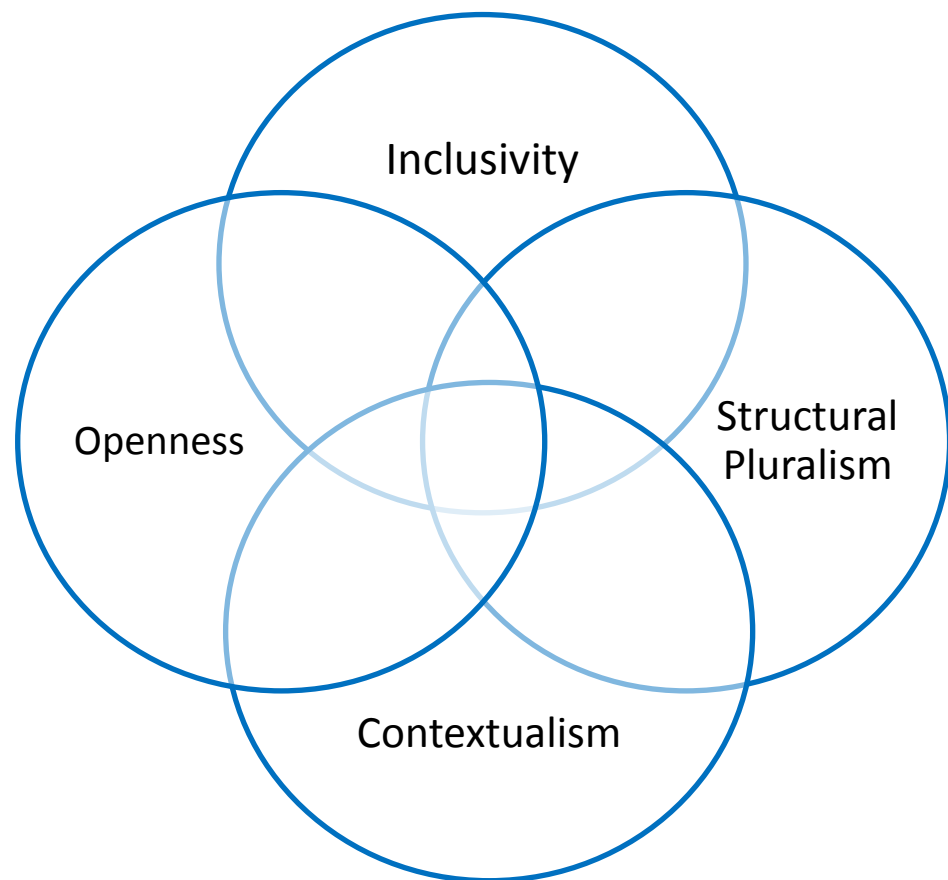
#### 2.1.4 Openness

The fourth lens of my analytical framework will be informed by the 'open' value. This value relates to the goals of openness, transparency, public engagement, and the politics of feminism, and environmental justice. It is important to remember that ecofeminism is both an academic theory and a social movement and therefore seeks to bring discussions concerning the environment into the public sphere. This enables those traditionally excluded to contribute and engage in debates concerning values, beliefs, and attitudes informing the creation of international environmental law. This is particularly relevant for each of the three analytic chapters in this thesis.

In the analysis of the documents, openness is relevant to understanding who participates, how 'open' or transparent the process is, and the extent to which such practices have been subverted by the securitisation of environmental issues. It is also relevant in the analysis of the spaces where NSAs are able to attend, and in some contexts, which states are able to attend. This, once again, relates to the growing tension between the creation of IEL on the basis that it is a global problem that requires community wide responses, and the securitisation of the environment with corresponding exclusionary practices. Therefore, using this lens can examine this tension within the texts.

Similarly, openness is relevant because it can reveal how institutional transparency and openness may not translate into the direct, democratic, and public openness called for by an ecofeminist ethic. This is because openness relies on other boundary conditions of an ecofeminist ethic, such as inclusivity and contextuality. Therefore, where documents purport to support transparent and open institutional processes, examining them through the open lens can offer the opportunity of a rigorous critique of what type of transparency and the assumptions, values and beliefs that have informed the insertion of such processes into the environmental regime. It may also reveal tensions between securitising environmental concerns and engaging in open, transparent, and public debate of the underlying justifications for such action.

The four analytical lenses introduced above each have stronger synergies with certain analytical topics than others. For example, the inclusivity lens has stronger synergies in relation to participation, whereas structural pluralism and contextualism may be more relevant in the examination undertaken for the integration of non-environmental considerations and representation of the environment categories. However, by using all four lenses for each topic I believe that I am able to develop an understanding of the ‘messiness’ of IEL where different categories, such as participation, integration of non-environmental considerations, and representation of the environment bleed into each other, have their own intersections, and cannot be analysed independently from each other. To recognise this ‘messiness’, I portray this framework in the following diagram:



**Figure 1**

To conclude, the four lenses that form the analytical framework enable an original examination of the extent to which the securitisation of the environment may have altered the perception of the environment and the justifications to protect it in international law. Through the inclusivity lens, I can interrogate the extent to which responses to environmental concerns by the international community recognise, respect, and include the voices of traditionally marginalised, excluded, and undermined peoples in dominant discourses. Through the structural pluralism lens, I can examine the extent to which the international community recognises and respects difference between humans, and humans

and nonhuman nature, and takes into account difference between communities in responses to such concerns. Through the contextualism lens, I can examine the ways in which the international community's responses acknowledge how social construction of conceptions of gender, race, class, race, ethnicity, and geographical location are formed by historical and social interactions and therefore inform the perception of the environment and knowledge concerning the environment itself. Finally, through the openness lens, I can take into account that anxieties about the environment necessitate an open, democratic discussion in which the previous values are able to be discussed. In the following section, I explain how I use this framework as a research method to undertake a feminist content analysis of the environmental documents.

### 3. METHOD

#### 3.1 Rationale for Data Selection

As noted in Chapter 1, I analyse documents from eight environmental regimes that contribute to the regulation of four different environmental areas: Natural resources, climate change, ozone depletion and sustainable development.<sup>42</sup> The decision to analyse such breadth of documents is informed by criticisms that environmental lawyers focus on one environmental area leading to clustering of scholarship in certain areas and themes.<sup>43</sup> This research attempts to respond to this criticism by drawing out interrelationships and commonalities that may exist in international environmental law.<sup>44</sup> The full details of the documents analysed in this thesis are displayed in Appendix 2 of this thesis. In the following discussion I explain why these eight regimes were selected.

I selected four main areas of climate change, natural resources, ozone depletion, and sustainable development because they encompass the broad range of environmental issues that states seek to regulate in the international sphere. As noted in the literature review, climate change is one of the most problematic areas of international environmental law. The 1992 UNFCCC and the 1994 Desertification Convention each address two different aspects of climate change. These two regimes are very interesting because they were negotiated and adopted just before and just after the 1992 Rio Conference. They also reflect very different approaches towards the creation and development of international environmental law, which makes them interesting to compare in this research project.

For example, the UNFCCC is a framework convention whose objective is to stabilise greenhouse gas emissions at a level that prevents dangerous 'anthropogenic interference

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<sup>42</sup> Above, Chapter 1, 22-26.

<sup>43</sup> Fisher and others, 'Maturity and Methodology', 230.

<sup>44</sup> Ibid, 241.

with the climate system.<sup>45</sup> It includes general principles to guide the parties' efforts in achieving stabilisation of the climate, including the precautionary approach, inter-generational equity, and common but differentiated responsibilities, among others.<sup>46</sup> The principles included in the UNFCCC reflect a more 'top-down' institutional approach towards achieving the objective of the convention. The subsequent negotiations of the 1997 Kyoto Protocol and the softer COP Decisions similarly reflect a consolidation of a 'top-down' regime in which states set internationally-defined, legally-binding emission reduction targets, in line with the guiding principles of the UNFCCC.<sup>47</sup> This top-down approach has been subject to criticisms in terms of effectiveness and also in terms of the differentiation between developed and developing countries within the regime.<sup>48</sup>

The negotiations and content of the Desertification Convention reflect a very different approach. It was negotiated with the participation of communities directly affected by desertification and thus demonstrated a more 'bottom-up' approach towards developing the text. It seeks to respond to desertification in a holistic, bottom-up approach to prevent desertification at the local, regional, and national levels. It bases many of its objectives on attaining sustainable development, while also incorporating differing obligations for affected developing country parties and developed country parties.<sup>49</sup> Therefore, it takes into account the social and economic contexts in which the international community, and local communities seek to respond to environmental problems. Furthermore, the convention may arguably be considered as one of the regimes that the international community has forgot, even though it has a number of intersections with the biodiversity and climate change regimes. At the time of negotiation, desertification was seen as a problem primarily for the global south, which may not now be the case.

Furthermore, as noted in Chapters 1 and 2, climate change has been increasingly referred to as a security concern. Concerns over desertification as a threat to food and water security have been discussed in the United Nations Security Council (UNSC) and in the UNGA, as well as in the academy and civil society. Therefore, including these two regimes means I can examine the differences in the creation of international law, the principles guiding states'

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<sup>45</sup> UNFCCC 1992, art 2.

<sup>46</sup> Ibid, art .3

<sup>47</sup> William Hare and others, 'The Architecture of the Global Climate Regime: A Top-Down Perspective' (2010) 10(6) *Climate Policy* 600, 601-602; Daniel Bodansky, 'A Tale of Two Architectures: The Once and Future U.N. Climate Change Regime' (Sandra Day O'Connor College of Law, Arizona State University 7 March 2011) <<http://ssrn.com/abstract=1773865>> accessed 12 November 2015, 2; Daniel Bodansky and Lavanya Rajamani, 'The Evolution and Governance Architecture of the Climate Change Regime' in Detlef Sprinz and Urs Luterbacher (eds), *International Relations and Global Climate Change: New Perspectives* (Forthcoming, 2nd edn, MIT Press 2016).

<sup>48</sup> See Rayner S, 'How to Eat an Elephant: A Bottom-Up Approach to Climate Policy' (2010) 10(6) *Climate Policy* 615

<sup>49</sup> Chasek, 'The Convention to Combat Desertification', 148, 154.

responses to climate change and the tensions in balancing interests such as security, development, and economic well-being.

Similarly, natural resources are one of the primary sources of economic development for many countries in the international community. Many people consider biodiversity (which encompasses all natural resources) as the foundation of life on Earth, and as a result, the biodiversity regime has many intersections with other areas of environmental law. These intersections offer the opportunity to examine the justifications used to protect natural resources and the extent to which these justifications alter the perception of the environment itself. The 1992 Biodiversity Convention and its two protocols, the 2000 Cartagena Protocol and the 2010 Nagoya Protocol also created a framework approach towards biodiversity. The framework convention contains very few obligations but defines three key objectives of the future biodiversity regime. It also includes principles of sustainable use, and provisions relating to technology and financial transfers.<sup>50</sup>

This regime is interesting in the context of this project for a number of reasons. First, because it has negotiated three legally binding environmental documents during the time-period under analysis. Second, it seeks to regulate and protect all types of biodiversity, while taking into account the needs of developing countries. Third, it explicitly refers to the interests of traditionally marginalised and excluded communities such as indigenous peoples and women within the context of the regime. For these reasons it offers the opportunity to analyse the development of a regime over time and how the interests of marginalised communities may have been taken into account in the context of biodiversity conservation.

The 1995 UN Fish Stocks Agreement has been included in this research project because it seeks to conserve and protect marine resources that straddle the high seas and areas under the national jurisdiction of a state. This is a novel approach because it applies to areas beyond the national jurisdiction of states and has introduced the precautionary principle into the management and conservation of such stocks.<sup>51</sup> Furthermore, it was negotiated and adopted after the Rio Conference, during which the international community noted the concerns of unregulated fishing, excessive fleet sizes, lack of cooperation between states, and unreliable databases over the state of the world fisheries.<sup>52</sup> Therefore, it includes guiding principles that reflect the concept of sustainable development. This approach to natural resource regulation may reveal interesting responses to development, the participation by NSAs, and the perception of the environment itself.

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<sup>50</sup> Biodiversity Convention 1992, preamble ¶5, ¶16 and ¶20 art 1, art 16

<sup>51</sup> UN Fish Stocks Agreement 1995, art 6.

<sup>52</sup> Agenda 21 1992, ¶17.50.

The 1983, 1994, and 2006 ITTAs<sup>53</sup> are included in this research because they offer a very different perspective on the regulation of natural resources. These three agreements were developed to prove an effective framework for international cooperation, policy development, and consultation among members concerning all 'relevant aspects of the world timber economy.'<sup>54</sup> In this way, the ITTAs can be seen as an international trade agreement that focuses on the regulation of a natural resource primarily concentrated in developing countries.<sup>55</sup> However, with the scientific and political concern over deforestation and environmental degradation, some NSAs sought to include more environmentally-minded principles into the renegotiated agreement.<sup>56</sup> Therefore, the agreements offer an opportunity to analyse the way in which trade, environment, and development are balanced, particularly in light of mounting evidence of the link between climate change and deforestation. As the agreements were developed over the time-period under analysis, it is possible to examine the way in which these interests were balanced at different points in time over the period analysed in this research.

The 1997 UN Watercourses Convention has been included in this research because it developed through a very different style of law-making. As noted in the introduction, the UNGA requested the International Law Commission to examine the issue of non-navigational watercourses with a view to its codification.<sup>57</sup> The ILC adopted a set of draft articles on the law of non-navigational uses of international watercourses in 1994 which were then submitted to the UNGA who adopted the framework convention in 1997.

This convention is relevant to this research as it emerges through the work of the International Law Commission and is an example of a legally binding outcome text developed through the evolution of customary international law. This is because very few states have the patience to wait for custom to develop. Therefore, this convention may be the only one to occur, and as such is an interesting and potentially unique example of IEL. In addition, it is the only treaty governing freshwater resources shared between states,<sup>58</sup> and is

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<sup>53</sup> Tropical Timber Agreement 1983; Tropical Timber Agreement 1994; Tropical Timber Agreement 2006.

<sup>54</sup> Tropical Timber Agreement 2006, art 1(a).

<sup>55</sup> Pamela S. Chasek, *Earth Negotiations: Analyzing Thirty Years of Environmental Diplomacy* (United Nations University Press 2001), 95-96; Duncan Poore, *Changing Landscapes: The Development of the International Tropical Timber Organization and its Influence on Tropical Forest Management* (Earthscan Publications 2003), 27; Gerry J Nagtzaam, 'The International Tropical Timber Organization and Conservationist Forestry Norms: A Bridge too Far' (ExpressO, Monash University) <[https://works.bepress.com/gerry\\_nagtzaam/1/](https://works.bepress.com/gerry_nagtzaam/1/)> accessed 6 May 2016, 23; Anja Eikermann, *Forests in International Law: Is There Really a Need for an International Forest Convention?* (Springer 2015), 72.

<sup>56</sup> Eikermann, *Forests in International Law*, 74.

<sup>57</sup> UNGA Res 2669 (XXV) (1970).

<sup>58</sup> Stephen C McCaffrey, 'Convention on the Law of the Non-Navigational Uses of International Watercourses' (*United Nations Audiovisual Library of International Law*, 2008) <[http://legal.un.org/avl/pdf/ha/clnuiw/clnuiw\\_e.pdf](http://legal.un.org/avl/pdf/ha/clnuiw/clnuiw_e.pdf)> accessed 28 December 2014, 1.



a framework convention that provides states with a framework of rules and principles that may be adjusted to suit particular watercourses.<sup>59</sup>

The ozone layer regime has been included in this project because its negotiations commenced at the start of the time-period and continued during the final stages of the Cold War. Therefore, it offers an opportunity to compare the way in which different interests such as trade, development, economy, and security were addressed within the negotiations and adopted outcome text. Furthermore, the 1985 Ozone Layer Convention and the later 1987 Montreal Protocol has been labelled as one of the most effective and sophisticated models of international regulation and supervision of an environmental concern.<sup>60</sup>

Finally, the law relating to sustainable development has been included as it has shaped the international response to environmental problems since the mid-20<sup>th</sup> century. As noted in Chapter 2, sustainable development can be seen as a 'bridging' concept that brings together the promise of community development and people-centred development.<sup>61</sup> Therefore, it has influenced and informed the development of IEL, particularly in the post-Cold War era.

Sustainable development has given states and NSAs a means to respond to the interrelated concerns of development, environmental degradation, peace and security, as well as a solution for a collective response to the destruction of the global commons that recognises the legitimate needs of developing countries to develop.<sup>62</sup> Such is the strength of this concept that it has been considered a 'principle with normative value'<sup>63</sup> and is an integral element in state and NSAs' responses to environmental concerns while also helping to shape the foreign and security policy of many countries.<sup>64</sup>

The principles that inform the concept of sustainable development have helped shape recent international responses to environmental degradation, involve local communities, and support the participation by NSAs in the creation and development of environmental law. Therefore, to exclude sustainable development would limit the ability of this research to understand the context in which states create IEL. This is because sustainable development is intractably linked with IEL, development, and more recently, security, and thus offers the opportunity to examine the tensions concerning securitisation of the environment on the evolution of IEL, and the perception of the environment itself.

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<sup>59</sup> Ibid, 1.

<sup>60</sup> Birnie and Boyle, *International law and the environment*, 523.

<sup>61</sup> Above, Chapter 2, 47- 48; and Duffield, *Global Governance and the New Wars*, 114-115.

<sup>62</sup> Rio Declaration 1992, Principle 3; see also International Law Association, *International Law on Sustainable Development* (2012), 14 and 16.

<sup>63</sup> *Gabčíkovo-Nagymaros Project*, (Separate Opinion of Vice President Judge Weeramantry), 90.

<sup>64</sup> Gotev, 'Mimica: "There cannot be a sustainable foreign and security policy without a clear development contribution"'.

Overall, each of these environmental regimes has some connection to the different themes that I examine in this thesis. The breadth of these regimes means that they encompass a broad range of participatory practices in the creation and subsequent content of the adopted outcome texts. Each of the regimes seeks to balance the different interests and needs of states in relation to a global environmental problem. Some of these regimes seek to regulate elements of the environment which have been increasingly securitised in international discourse, such as the climate, biodiversity, and water. Other regimes inform the development of international responses to security, environmental degradation, or development. Finally, the breadth of these regimes across the time-period in question means that it should be possible to examine the evolution of the international community's perception of the environment, in light of the growing securitisation of the environment, and different interests that are balanced in relation to the environment.

### 3.2 Strategy of Inquiry and Method Choice

Undertaking a content analysis of the preparatory documents and adopted outcome texts offers a flexible method to better understand the ways in which the securitisation of the environment may have altered the justifications for which states seek to protect the environment and the perception of the environment itself.<sup>65</sup> Reinharz argues that documents may be seen as types of cultural artefacts informed by social organisations, cultural patterns, and individual activity.<sup>66</sup> Therefore, examining the documents produced during the negotiations of environmental regimes as well as the adopted legal instruments themselves, means I can examine the beliefs, values, and attitudes by the international community during the negotiations and preparations of environmental regimes by reading these documents through ecofeminist lenses.<sup>67</sup> This gives a more holistic understanding of the different ways in which the international community mediates its experiences of the environment and its connections with other international domains such as economy, development, and security.<sup>68</sup>

There are other reasons for using content analysis as the primary research method. One benefit of undertaking content analysis on written documents as a form of data is that documents are pre-existing and therefore are naturalistic and non-interactive.<sup>69</sup> This means that the data has a 'built-in level of authority' and I can identify social and cultural norms without the use of interactive methods that might affect those norms.<sup>70</sup> This confers validity

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<sup>65</sup> Reinharz, *Feminist Methods in Social Research*, 146-146; Patricia Lina Leavy, 'The Feminist Practice of Content Analysis' in Sharlene Nagy Hesse-Biber and Patricia Lina Leavy (eds), *Feminist Research Practice: A Primer* (Sage Publications 2007), 225-226.

<sup>66</sup> Reinharz, *Feminist Methods in Social Research*, 145.

<sup>67</sup> *Ibid*, 151-154.

<sup>68</sup> For similar approaches, see Buch and Staller, 'The Feminist Practice of Ethnography', 187.

<sup>69</sup> Reinharz, *Feminist Methods in Social Research*, 147.

<sup>70</sup> Leavy, 'The Feminist Practice of Content Analysis', 227.

to the research, something that has been seen as 'lacking' in feminist research methods.<sup>71</sup> Therefore, even though I undertake a more reflexive and iterative approach towards analysing the data, the data itself remains pre-existing and naturalistic.<sup>72</sup>

Further, content analysis enables me to discern topics, themes, patterns, and meanings used to describe the interconnections between international domains, such as development, economy, security, as well as the ways in which states refer to the environment itself.<sup>73</sup> This more 'open' method enabled concepts to emerge from the data as well as approaching it with some expectations of what I may find. This allowed me to examine both 'manifest and latent' meanings<sup>74</sup> associated with the representation of the environment, justifications for its protection, and the extent to which these have been altered with the securitisation of the environment.

Finally, undertaking content analysis through an ecofeminist analytical framework enables me to examine the texts of the documents in the context and situations in which they are created. This benefit of content analysis is important because ecofeminism recognises that 'claims to knowledge are ... influenced by the values of the culture in which they are generated.'<sup>75</sup> Therefore, I wanted to use a research method that could take into account the context of the findings rather than looking at them as isolated structures.<sup>76</sup> This recognises that views, beliefs, and attitudes towards the environment and related issues are formed in 'particular places at particular moments in time' and are shaped by the culture, society, and history in which they emerge.<sup>77</sup>

These three reasons indicate that feminist content analysis is an interesting and original method to use in this thesis. Incorporating a more reflexive and iterative approach to the analysis enables me identify different categorisations, variables, and themes that emerge from the data when examined through the ecofeminist framework. It offers 'validity' to the research outcomes as documents are 'non-interactive', while also enabling me to examine the texts in the context in which they were created. These benefits of content analysis support the methodological perspective undertaken in this research. Finally, this research method has not been used before in the analysis of international environmental law, and therefore is part of the original contribution of this thesis.

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<sup>71</sup> See the discussion in Reinharz, *Feminist Methods in Social Research*; Caroline Ramazanoğlu and Janet Holland (eds), *Feminist Methodology: Challenges and Choices* (SAGE Publications Ltd 2002).

<sup>72</sup> Altheide, 'Ethnographic Content Analysis', 65;

<sup>73</sup> E.g. Elza Ibroscheva, 'The First Ladies and the Arab Spring: A Textual Analysis of the Media Coverage of the Female Counterparts of Authoritarian Oppression in the Middle East' (2013) 13(5) *Feminist Media Studies* 871, 874.

<sup>74</sup> *Ibid.*, 874.

<sup>75</sup> Gruen, 'Toward an Ecofeminist Moral Epistemology', 124.

<sup>76</sup> *Ibid.*, 124.

<sup>77</sup> *Ibid.*, 124.

### 3.3 Procedure and Data Analysis

Given the breadth of documents created during the negotiations and development of IEL, I limited my document selection to the preparatory reports and adopted outcome texts of eight environmental regimes.<sup>78</sup> I collected these documents through specialist online databases, such as UNBISnet (the United Nations Bibliographic Information System), websites of environmental secretariats (such as the Ozone Secretariat, the UNFCCC, and the Biodiversity Secretariat), the Ecolex database (operated by the FAO, IUCN and UNEP), and the United Nations Treaty Collection. I analysed the complete document, excluding those annexes or appendices that were lists of documents or numerical in content. Each document was broken into individual paragraphs or articles and sub-articles. These were each given a separate row in Microsoft Excel.

In order to analyse these documents through an ecofeminist framework, I adopted an iterative approach. In doing so, I aimed to reflexively engage with the data in a way that was systematic but not rigid.<sup>79</sup> I fully expected to be guided by topics, categories or variables throughout the study, but also allowed others to emerge through the study. This approach to content analysis allows data to be coded conceptually, meaning it can be relevant for several purposes.

Therefore, I first read the documents without any predefined or rigid categories that defined what was relevant.<sup>80</sup> However, my wider reading and feminist theoretical perspective gave me tools to use in my observation and analysis of the topics and themes that were raised in the documents. This repeated and extensive engagement with the texts and a holistic overview of the content itself meant that I could identify specific categories emerging in the content of the data. In particular, categories such as participation, the need to integrate non-environmental considerations into environmental documents, and the representation of the environment itself became emerging categories. I would then re-examine several previous documents from the same environmental regime and other environmental regimes to examine and compare how these categories are treated in the previous documents. Moving reflexively between data collection, analysis, and reconceptualisation of the categories, themes, and concepts increased my understanding of the relevance of formats, sources, and emphasis within the texts.<sup>81</sup>

With this in mind, I undertook the following steps in my analysis of the documents. I first read the documents many times over. This gave me a repeated and extensive

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<sup>78</sup> See Appendix 2.

<sup>79</sup> Altheide, 'Ethnographic Content Analysis', 68; Colleen Connolly-Ahern and Antoni Castells i Talens, 'The Role of Indigenous Peoples in Guatemalan Political Advertisements: An Ethnographic Content Analysis' (2010) 3(3) *Communication, Culture & Critique* 310, 321.

<sup>80</sup> This approach is adapted from the method used by Altheide, 'Ethnographic Content Analysis' and Connolly-Ahern and Castells i Talens, 'The Role of Indigenous Peoples'.

<sup>81</sup> Altheide, 'Ethnographic Content Analysis', 73.

engagement with the text, as well as a holistic overview of the content in each regime and in each environmental area. This meant I could recognise a number of different categories, themes, and ways in which the international community establishes connections between environment and other domains, such as economy, community, and science. While reading the documents repeatedly, I made notes on the topic, choice of words, tone used, and the omissions or silences within the text. I would then look back to previous regimes and compare and contrast the focus, topic, tone, words, and silences with the documents.

During my early analysis of the documents I identified three specific categories that shaped the research question and overall structure of this thesis. The categories of participation, integration of non-environmental considerations, and the representation of the environment itself were revealed during the initial analysis as intersecting and mutually supportive. These were used as the key foci for the substantial analytical chapters because they enabled me to engage with different elements within the environmental documents while also examining the ways in which the securitisation of the environment may have altered international environmental law.

Second, I read the documents through the different lenses of the ecofeminist framework. During this reading, I critiqued the tone, content, omissions, and language against the goals included within the ecofeminist ethic. I would look below the text to consider the underlying beliefs, values and attitudes that were contained in the text and considered these against the context in which the document was made and the purpose for which the document was created.

When undertaking this reading, I would 'measure' the provisions against those previously analysed and against the goals of an ecofeminist ethic. In doing so, I was able to 'categorise' the texts into those that reflected greater elements of an ecofeminist ethic and those that reflected fewer elements of such an ethic. Throughout this process I would refer back to the discussion of ecofeminism undertaken in Chapter 3 and Chapter 4 of this thesis, and to the writings of the ecofeminists such as Karen Warren, Val Plumwood, and Mary Mellor.<sup>82</sup> This way I engaged in reflexive analysis of the documents both through the analytical framework, and also in the way that I read the documents, informed by my understanding of ecofeminism. In doing so, I hoped to be able to reveal the extent to which the documents contained provisions that suggested that the securitisation of the environment had altered the perception of the environment, when read through an ecofeminist framework.

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<sup>82</sup> Plumwood, *Feminism and the Mastery of Nature*; Mellor, *Feminism & Ecology*; Warren, *Ecofeminist Philosophy*; Mellor, 'Feminism and Environmental Ethics'; Plumwood, *Environmental Culture*; Mary Mellor, 'Ecofeminist Political Economy and the Politics of Money' in Ariel Salleh (ed), *Eco-Sufficiency and Global Justice* (Pluto Press 2009).

This section has explained the way in which I used the analytical framework during the content analysis of the environmental documents. I suggested that there were a number of benefits of using this research method and approach. First, this approach to analysis takes into account the interconnections between the different values and features of ecofeminist theory. Second, it is an iterative and reflexive method, which allows categorisations to emerge from the analysis itself. Third, it allows interconnections between issue areas, regimes, and areas to be revealed during the process of analysis. These three benefits indicate that the process of analysis outlined below offers an original approach towards the examination of IEL. I will reflect on this in the conclusion of my thesis and evaluate the successes and limitations of this approach and the implications for my findings.

#### 4. CONCLUSION

This chapter has addressed the methodological approach and method used in this research project. This research was designed to undertake qualitative, feminist content analysis, through an ecofeminist analytical framework, of preparatory documents and adopted outcome texts from eight international environmental regimes. The role of theory in this research was informed by feminism in general, and by ecofeminism specifically, both of which argue that theory is central to the research. Therefore, I adopted an iterative approach in this research by mediating my analysis of the data through an ecofeminist lens.

While Chapters 1-2 focused on literature that I read prior to conducting my content analysis of the documents, I referred to Chapter 3 throughout the analysis of the documents and in my discussion of the findings in Chapters 5-7. These chapters centre on the data generated through my analysis of the documents. I have structured the analysis and discussion along three distinct categorisations that were revealed during the analytical process: Participation (Chapter 5); integration (Chapter 6); and representation (Chapter 7). As noted in the introduction (Chapter 1), each of these chapters have distinct questions that are asked as a way to guide the analysis undertaken.<sup>83</sup> These questions were developed during the initial reading of the documents, and helped shape discussion of the findings from the content analysis.

The first analytical chapter (Chapter 5) draws on findings relating to the participation by NSAs in the creation and subsequent implementation of the obligations contained in the outcome texts. In this chapter, I suggest that the emerging tension – as revealed through the analysis – between increased participation as a procedural element and the growing securitisation of environmental issues, suggests that the type of justifications for which states seek to protect the environment have altered.

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<sup>83</sup> Above, Chapter 1, 27-28.

In Chapter 6, I discuss the findings that relate to the justifications for which the international community protects the environment. Chapter 7 turns to reflect on the different perceptions of the environment itself, as revealed in the texts of the agreement. I decided to order these chapters in this way because who participates in the development of international law informs the types of issues and concerns that is included in the legal text. The types of issues included in the text can, in turn, inform the perceptions of the environment that are included in the document. Further, the hierarchy in which other international issues are included in these legal texts can also reveal the different perceptions of the environment included in these texts.

Finally, Chapter 8 provides some reflections on, and implications of, the research and focuses on the strengths, drawbacks and limitations of the use of an ecofeminist analytical framework to undertake feminist content analysis. The thesis concludes by considering the extent to which my analysis has revealed a growing trend in IEL away from focusing on the environment as a collective responsibility and concern, towards the protection and regulation of the commons based on current and future economic development.

## 5. The Participation by States and NSAs in the Development of IEL

This chapter uses the analytical framework developed in the previous chapter to examine the participation by states and NSAs in the creation and content of IEL. It examines who participates in the development of IEL and where the participation by NSAs is supported or excluded. It identifies the types of issues, topics, and areas where such participation is encouraged, and the justifications for the chosen approach. This examination reveals three aspects of the law making. It can reveal who participates in the creation of IEL. Second, it can examine the assumptions, beliefs, and values that inform state responses to environmental problems. Third, it can reveal the basis on which the participants seek to protect the environment. This chapter concludes that there is an emerging tension between the broadening and deepening of participation in the paradigm of sustainable development, and the exclusion of such participation in areas and topics that are closely aligned to state interests.

Support for the increased participation by NSAs, especially non-governmental organisations (NGOs) and civil society organisations (CSOs) re-emerged in the 1970s and 1980s. This support is closely associated with globalisation and is facilitated by increasing interdependence through systems of communication and transportation.<sup>1</sup> The rationale informing the support for increased participation may be drawn from different sources: Those on the ideological right support the role CSOs play in scaling back the role of the state, whereas those on the ideological left stress the potential for solidarity and emancipation that is inherent in civil society.<sup>2</sup> Philip Allot argues that NSA participation in the international sphere was a manifestation of the whole human race and of a society of all societies and thus incorporated the *social* element into the international sphere.<sup>3</sup> More pragmatically, Richard Falk suggests that the emerging system of international governance requires the creation of international civil society to ensure that the development of policy is shaped on behalf of human interests.<sup>4</sup>

The participation by NSAs has broadened the interpretative community involved in the creation of law and its implementation.<sup>5</sup> This process reflects the pluralisation of the actors

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<sup>1</sup> Andrew Hurrell, *On Global Order: Power, Values, and the Constitution of International Society* (Oxford University Press 2007), 99.

<sup>2</sup> *Ibid*, 99.

<sup>3</sup> Philip Allott, *Eunomia: New Order for a New World* (Oxford University Press 1990), chapter 13.

<sup>4</sup> Richard A. Falk, *On Humane Governance: Toward a New Global Politics* (Polity 1995), 35, 101.

<sup>5</sup> Hurrell, *On Global Order*, 111.



in the international system and in law-making processes at the international level.<sup>6</sup> While international law regulates states, it is said to be no longer dependent on them for its content, existence or implementation.<sup>7</sup> Both states and NSAs play a role in the international governance structure and in the creation and enforcement of international law and norms.<sup>8</sup> While states retain the final word, NSAs have an increasing influence in the creation and enforcement of international law and norms.<sup>9</sup> Understanding who participates in the creation and implementation of law and norms relating to the environment, and particularly what type of NSAs are involved, is pertinent to examining the extent to which environment/security linkages may have altered the basis on which the international community seeks to protect the environment.

Furthermore, as alluded to in earlier chapters, sustainable development, and to some extent, an ecofeminist ethic, envisages an inclusive, multilevel participatory approach towards the creation of norms and law. The concept of sustainable development introduced by the Brundtland Report refers to the importance of participation by NGOs and the scientific community.<sup>10</sup> This was consolidated by the 1992 Rio Declaration which established public participation as a 'cornerstone of sustainable development and good governance.'<sup>11</sup> International institutions consider these principles of participation as interrelated and mutually supportive. They assume public participation in the institutions and processes of international law is a prerequisite for the successful design and implementation of environmental and socio-economic objectives.<sup>12</sup>

For example, the United Nations Development Programme (UNDP)'s characteristics of good governance include, *inter alia*, participation, equity, the rule of law, and

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<sup>6</sup> Jean D'Aspremont, 'Non-State Actors in International Law: Oscillating between Concepts and Dynamics' in Jean D'Aspremont (ed), *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law* (Routledge 2013), 4.

<sup>7</sup> Hurrell, *On Global Order*, 111.

<sup>8</sup> Jean d'Aspremont, 'International Law-Making by Non-State Actors: Changing the Model or Putting the Phenomenon into Perspective?' in Cedric Professor Ryngaert and Math Dr Noortmann (eds), *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers* (Ashgate Publishing Ltd 2013), 178. For example, their formal presence and participation in international law-making processes within the framework of the ECOSOC, the UN Human Rights Council, the WTO and other international institutions. See e.g. *Agreement Establishing the World Trade Organisation* (Marrakesh) (15 April 1994, entered into force 1 January 1995) 1867 UNTS 154; 33 ILM 1125, art V(2); WTO, *Guidelines for Arrangements on Relations with Non-Governmental Organisations* (23 July 1996) WTO Doc WT/L/162; UNSC Resolution 1325 Adoption of a Gender Perspective that Included the Special Needs of Women and Girls in Post Conflict Reconstruction (31 October 2000) UN Doc S/RES/1325; UNGA Resolution 60/251 Human Rights Council (15 March 2006) UN Doc A/RES/60/251.

<sup>9</sup> d'Aspremont, 'International Law-Making by Non-State Actors', 175 - 178; see further discussion in Steve Charnovitz, 'Two Centuries of Participation: NGOs and International Governance' (1997) [University of Michigan Law School] 18(2) Mich J Int'l L 183; Alan E. Boyle and Christine M Chinkin, *The Making of International Law* (Oxford University Press 2007).

<sup>10</sup> WCED, *Our Common Future*, 326-327.

<sup>11</sup> International Law Association, *International Law on Sustainable Development* (2012), 22; Rio Declaration 1992, Principle 10.

<sup>12</sup> Cordonier Segger and Khalfan, *Sustainable Development Law*, 164.

transparency.<sup>13</sup> The UNDP states that these characteristics are interrelated and mutually reinforcing and should apply equally to the international and national levels.<sup>14</sup> It suggests that broad participation contributes to the exchange of information required for legitimate decision-making and, in turn, legitimacy enables effective implementation and further participation. These arguments have been expressly associated with achieving peaceful, resilient, and stable societies,<sup>15</sup> and that failures in 'governance', broadly defined, have been seen as the source of insecurity and threats to the security of western states.<sup>16</sup>

Following from this, NSAs (especially NGOs and CSOs) also perform important functions at the international level. The public quality of NGOs and CSOs enables them to transcend the 'inside-outside character of traditional politics and to fashion and provide space for new forms of political community, solidarity, and identity.'<sup>17</sup> They can perform a significant role in 'democratising' global politics by increasing the transparency and accountability of states, and other international institutions. Finally, and equally as important for ecofeminism, they are able to create links between the local and global in terms of needs and actors.<sup>18</sup>

These arguments emphasise that the activities and actions by CSOs support the practice of good governance while also holding states and international institutions to account for their actions. CSOs can provide a 'check on exaggeration, obfuscation, and poor logic and

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<sup>13</sup> UNDP, 'Governance for Sustainable Human Development: A UNDP Policy Document' (1997)

<<http://www.pogar.org/publications/other/undp/governance/undppolicydoc97-e.pdf>> accessed 6 May 2016.

<sup>14</sup> UNDP, *Human Development Report: Deepening Democracy in a Fragmented World* (Oxford University Press 2002), 112-122.

<sup>15</sup> UNEP, 'Good Governance'; UNDP, 'Governance for Sustainable Development: Integrating Governance in the Post-2015 Development Framework' (Discussion Paper United Nations Development Programme)

<<http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Discussion-Paper--Governance-for-Sustainable-Development.pdf>> accessed 30 January 2015.

<sup>16</sup> E.g. Paris, 'Human Security'; Nigale Bagoyoko and Marie V. Gibert, 'The European Union in Africa: The Linkage Between Security, Governance and Development from an Institutional Perspective' (Working Paper No 284 Institute of Development Studies, University of Sussex 2007) <<http://www.ids.ac.uk/files/Wp284.pdf>>

accessed 21 January 2016; United Nations, *A More Secure World* (2004); United Nations, *In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary General* (2005) UN Doc A/59/2005; UNDP, *Governance for Peace: Securing the Social Contract* (United Nations Publications 2012);

Open-Working Group on Sustainable Development Goals, 'Conflict Prevention, Post-Conflict Peacebuilding and the Promotion of Durable Peace, Rule of Law and Governance' (TST Issue Brief 21 November 2014)

<[https://sustainabledevelopment.un.org/content/documents/2639Issues%20Brief%20on%20Peace%20etc\\_FINAL\\_21\\_Nov.pdf](https://sustainabledevelopment.un.org/content/documents/2639Issues%20Brief%20on%20Peace%20etc_FINAL_21_Nov.pdf)> accessed 21 January 2016; Naomi Larsson, 'Good governance: the Pandora's box of the sustainable development goals' *The Guardian* (London, 25 September 2015)

<<http://www.theguardian.com/public-leaders-network/2015/sep/25/good-governance-sustainable-development-goals-united-nations>> accessed 21 January 2016.

<sup>17</sup> Hurrell, *On Global Order*, 103; Catriona Sandilands, 'Wild Democracy: Ecofeminism, Politics, and the Desire Beyond' (1997) 18S(2) *Frontiers: A Journal of Women Studies* 135; Sandilands, 'Raising Your Hand'.

<sup>18</sup> See in general, Thomas Princen and Matthias Finger, *Environmental NGOs in World Politics: Linking the Local and the Global* (Routledge 1994).

data<sup>19</sup> because of their diverse range of expertise. They can act as a conduit for ideas and political pressure and provide expertise and information concerning policy options.<sup>20</sup> They perform accountability functions by monitoring states through monitoring delegations,<sup>21</sup> providing independent assessments of state compliance and implementation,<sup>22</sup> and publishing detailed bulletins of environmental negotiations.<sup>23</sup> For ecofeminist activists, one of the most important functions that NSAs perform is to provide representation to marginalised communities and those groups who directly experience the impact of globalisation and environmental degradation.<sup>24</sup>

CSOs, NGOs and other NSAs can act as a conduit between the local and global by enabling an open, transparent, and inclusive environment for the negotiations of international legal agreements.<sup>25</sup> In this way, they can articulate values that are 'contextually construed by reference to the needs, actual circumstances, and cultural outlook' of the participants involved.<sup>26</sup>

As a result, NSAs can contribute to a state-based order through the provision of legitimacy and consent. Hurrell suggests that they can act as a 'relatively autonomous self-organised public sphere' wherein 'genuine deliberation between competing positions can take place and through which some notion of international public reason can be developed.'<sup>27</sup> In each of these views, it is clear that the participation by CSOs represents a 'plural and open arena' in which norms can be developed based upon 'genuine and unforced consent.'<sup>28</sup> For these reasons, the extent to which NSAs, such as NGOs and CSOs, are able to perform these functions can help identify those topics and environmental areas in which states are reluctant to open up to civil society. Examining the justifications used to restrict NSA participation, as well as identifying the topics of interest, can point to the broader international concerns that states take into consideration during the creation and implementation of IEL. Identifying these non-environmental considerations will help reveal

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<sup>19</sup> Kal Raustiala, 'States, NGOs, and International Environmental Institutions' (1997) 41(4) *Int Stud Quart* 719, 727; Kal Raustiala, 'The "Participatory Revolution" in International Environmental Law' (1997) 21 *Harv Envtl L Rev* 537, 559.

<sup>20</sup> Raustiala, 'States, NGOs', 728.

<sup>21</sup> Raustiala, 'The "Participatory Revolution"', 562.

<sup>22</sup> *Ibid*, 560-561.

<sup>23</sup> *Ibid*, 564; see e.g. the Earth Negotiations Bulletin and ECO.

<sup>24</sup> Hurrell, *On Global Order*, 103-4; see also Holly Cullen and Karen Morrow, 'International Civil Society in International Law: The Growth of NGO Participation' (2001) 1(1) *Non-State Actors and International Law* 7.

<sup>25</sup> Raustiala, 'States, NGOs', 725; Raustiala, 'The "Participatory Revolution"', 539-540; Steve Charnovitz, 'Nongovernmental Organizations and International Law' (2006) 100(2) *AJIL* 348, 366-368; Sabine Lang, *NGOs, Civil Society, and the Public Sphere* (Cambridge University Press 2012), 4; see also Princen and Finger, *Environmental NGOs in World Politics: Linking the Local and the Global*; Daniel Bodansky, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?' (1999) 93(3) *AJIL* 596.

<sup>26</sup> Cullen and Morrow, 'International Civil Society in International Law', 9; Falk, *On Humane Governance*, 113.

<sup>27</sup> Hurrell, *On Global Order*, 104.

<sup>28</sup> *Ibid*, 104.

the extent to which the securitisation of the environment may have altered the basis on which the international community seeks to protect the environment. Further, the justifications for supporting or excluding participation by NSAs can reveal underlying assumptions about the topics where participation is supported or excluded. Therefore, the analysis undertaken in this chapter can identify the non-environmental considerations which have been incorporated by states and NSAs into IEL that can guide the analysis in the next chapter. Finally, it may help reveal the tensions in the appropriation of the sustainable development paradigm by security discourses.

Building on the discussion above, knowing who shaped the content of IEL and the types of issues where such participation is supported is the first step to examining the extent to which the securitisation of the environment may have altered the basis on which the international community seeks to protect the environment. Second, the types of issues where participation is prioritised or excluded and the justification for this approach can reveal and contextualise the basis on which the international community protects the environment. Third, identifying who shapes the content of the law reveals the assumptions, values, and beliefs that are contained in the justifications for the environment's protection. Finally, examining the participation by NSAs will reveal the tension between the principle of participation contained in sustainable development (which encourages a broadening and deepening of NSA participation in environmental concerns), and the exclusionary practices in some areas that are closely linked to the environment and national interests. This final point helps inform the discussion in Chapters 6 and 7.

## 1. FINDINGS

In Chapter 4, I outlined the methodological approach used in this thesis. To recap, I undertook a form of feminist content analysis and examined the environmental documents through four ecofeminist lenses. This was an iterative and reflexive process where I first identified different characteristics of participation that resonate with the values that form the interconnecting lenses (inclusivity, structural pluralism, contextualism, and openness) through which I analysed the documents. These characteristics were contained in references, phrases, and provisions relating to participation by states or NSAs. They reflect the overarching goals of an ecofeminist ethic and therefore, the extent to which they are included in the documents may indicate a broadening and deepening of the participation by NSAs in the creation and implementation of IEL. Where these characteristics were less evident, it was understood as pointing to forums, issues or areas in which states were reluctant to engage in public, 'democratic' discussion. These considerations are explored in more depth in Section 2 of this chapter.

My analysis identified characteristics that reflect the different goals of ecofeminism. Those documents that exhibit the value of inclusivity include multiple voices and

experiences, particularly those of groups that disproportionately experience the destruction of nonhuman nature.<sup>29</sup> They support the participation by NSAs in the creation, and future development of the legal regime and respectfully acknowledge the differences between societal groups. Documents that reflect structural pluralism acknowledge the complexity of interconnections between the international and local.<sup>30</sup> They include references supporting the participation and contribution by actors from multiple communities at international, national, and local levels. Documents that incorporate contextualism recognise the diversity of voices that are located in differing historical and social circumstances. They recognise and respect different values, knowledge, interests, and experiences in different cultures and sectors of society, and active engagement with various actors.<sup>31</sup> Documents that include the openness value contain references that support the transparent or open participatory practices which enabled the environment to be 'opened up' to public, democratic discussion.<sup>32</sup>

In the following discussion, I group my findings according to the themes and variables that emerged during the analysis, and the extent to which they reflect a broadening and deepening of the participation by NSAs. These variables include the environmental area, age, and forum of the document. I do not expect to find that all voices are represented in the documents. There are many reasons for this to be the case.<sup>33</sup> First, states may not support the participation by some or all NSAs, as discussed above. Second, the technical nature of the topic may exclude some epistemic communities from participating. Third, lack of funding or monetary support may prevent some communities from attending. Nevertheless, the way in which the documents refer to NSA participation can signify those issues and areas where states support or oppose the participation by NSAs. Where such participation is absent or less explicit, it may indicate issues, areas and topics that states consider closely aligned to their interests, and to security. Furthermore, the justifications used to support or exclude participation by NSAs may also reveal underlying beliefs, values and attitudes towards the environment and the reasons why states seek to protect it. In addition, while I do not expect to identify all the different 'voices' contained in the documents, examining the justifications used to support or exclude participation by NSAs may also reveal underlying beliefs, values and attitudes towards the environment and the reasons why states seek to protect it. This process of analysis raised important considerations that were subject to re-examination and will be discussed with reference to the literature discussed in Chapters 2 and 3 in the second part of this chapter. In the following paragraphs, I outline the different variables that affected the participation by NSAs and give an overview of my findings.

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<sup>29</sup> Warren, *Ecofeminist Philosophy*, 99.

<sup>30</sup> Warren, 'Power and Promise', 142 ; Brunnée and Toope, *Legitimacy and Legality*, 80-82.

<sup>31</sup> Warren, *Ecofeminist Philosophy*, 99.

<sup>32</sup> Charnovitz, 'Nongovernmental Organizations', 366; Raustiala, 'States, NGOs', 725.

<sup>33</sup> For a discussion of the participation by NSAs in environmental governance, see Joyeeta Gupta, 'The Role of Non-State Actors in International Environmental Law' (2003) 63 *ZaoRV* 459;

## 1.1 High-Level Integration

My analysis indicates that there is a link between the area of IEL, whether it is climate change or sustainable development, for instance, and the provisions made in the documents for the participation of NSAs. There is a particular correspondence found in some areas of IEL and provisions for those who have traditionally been excluded or marginalised from the international sphere.

### 1.1.1 Sustainable Development

The documents outlining sustainable development contain the most significant references that support the participation by NSAs in the creation and implementation of IEL. The documents published by the Preparatory Committee for the 1992 Rio Conference (hereinafter 1992 Rio Preparatory Committee) include a significant number of references to the participation by marginalised communities. These references often reflect the inclusive, structurally plural, and open ecofeminist goals.

Both the Rio Preparatory Committee Reports and accompanying decisions support the participation by communities such as indigenous peoples, women, and youth. These are groups that ecofeminists argue are traditionally excluded or marginalised from discussions surrounding the environment.<sup>34</sup> The principles included in the Rio Declaration support the participation by women and indigenous communities, among others, in environmental decision-making. It also includes a broader public participation provision supporting the inclusive participation by other NSAs at different levels of decision-making. Similarly, the 1992 Agenda 21: Programme of Action for Sustainable Development (Agenda 21) includes specific chapters that support broader and deeper participation by NSAs in environmental and developmental matters. Agenda 21 also includes references to the inclusive, structurally plural and contextual participation by excluded communities in chapters addressing specific environmental and development problems. These two documents set out the concept of sustainable development and include significant references that reflect elements of inclusive, structural pluralism, contextualism, and openness values, when analysed through the ecofeminist framework.

The post-2001 sustainable development documents reveal a consolidation of this approach in this area of environmental law. The preparations for the 2002 World Summit on Sustainable Development (Johannesburg Summit) and the 2012 UN Conference on Sustainable Development (Rio+20 Conference) both used the internet and other forms of communication to encourage the participation by civil society, and particularly those who have traditionally been excluded. The references to the participation by such groups reflect the ecofeminist goals and continue to articulate and refine the role for NSAs as entities that can support the accountability and transparency of sustainable development objectives. This

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<sup>34</sup> Sturgeon, *Ecofeminist Natures*, Chapter 5.

is reaffirmed in the adopted outcome documents from these conferences, such as the 2002 Plan of Implementation of the World Summit on Sustainable Development (Johannesburg Plan of Implementation) and the later 2012 Rio+20 Outcome text, *the Future We Want* (Rio+20 Outcome Document). These documents affirm the importance of multilevel, inclusive participation that consolidates the broadening and deepening of civil society participation in the area of sustainable development. In doing so, they contain many references that reflect ecofeminist goals, when analysed through the ecofeminist lenses.

However, as will be discussed in Section 2 and in Chapter 6, the justifications for the broadening and deepening of civil society participation have altered with the emerging connections between security, development, and sustainable development that became increasingly explicit over the time period in question. Furthermore, the language used in support of increasing participation changes, in line with the emerging connection between environment and security in the post-2001 period.

#### 1.1.2 Desertification

The desertification regime shows great commitment to the participation by NSAs amongst the regimes examined in this thesis. This is particularly the case for the participation by marginalised communities or who directly experience the effect of environmental degradation. The Intergovernmental Negotiating Committee to Elaborate a Convention to Combat Desertification (INCD) explicitly endorses the participation by local, national, and international civil society, thus reflecting structurally plural participatory practices. The INCD supports the contributions by those who experience desertification and commits to the principles of sustainable development. The 1994 Desertification Convention, itself integrates inclusive, structurally plural, contextual and open participatory provisions into its central objectives. The significant references to participation, and sustainable development indicate a broadening and deepening of participatory practices in the creation, content and implementation of environmental agreements in the post-Rio period.

The later CRIC preparatory reports similarly support the participation by local communities and marginalised groups. However, following the pattern noted in the sustainable development regime, the language and justifications used to support their participation is different to that used in the INCD. Similarly, the adopted outcome texts from this review process utilise different language and arguments to support the participation of certain types of NSAs than that used in the earlier INCD documents. The underlying assumptions informing this change in language referring to NSAs will be examined in the second part of the chapter.

## 1.2 Mid-Level Integration

### 1.2.1 Natural Resources

While the 1992 Biodiversity Convention does not explicitly refer to the paradigm of sustainable development in its content, I found that many of the provisions affirm and support the participation by marginalised communities. This is interesting for two reasons. First, the preparatory process for the Biodiversity Convention contains few provisions that reflect inclusive, structurally plural, or open participation. Second, the biodiversity regime can be seen as an exception to the general approach towards participation by NSAs, and particularly civil society, in the environmental area of natural resources. For example, the later *Ad Hoc* Open-Ended Working Group on Access and Benefit-Sharing (AWG-ABS) contains more provisions that indicate a broadening and deepening participatory approach. The reports refer to supporting the contribution by marginalised communities and those who directly rely on their local environment for their well-being. This inclusive, structurally plural and open approach is further reflected in the adopted 2010 Nagoya Protocol.

However, the Open-Ended *ad hoc* Working Group on Biosafety (BSWG) and the Cartagena Protocol generally included fewer such references. This may reflect the technical nature of the issue at hand, or it may indicate that states are less comfortable with certain types of NSAs participating in negotiations concerning environmental issues that are closely aligned to economic, trade, and commercial interests. These tensions will be examined later in this chapter and in Chapters 6 and 7.

Two other natural resources agreements include more restricted references to participation by NSAs (particularly CSOs and NGOs). The 1995 UN Fish Stocks Agreement and the 1997 UN Watercourses Convention each include references to certain types of NSAs, such as experts or intergovernmental organisations. This approach acknowledges the expertise of some NSAs, but reflects very few of characteristics of ecofeminist participation.

Similarly, the adopted outcome texts relating to natural resources such as fisheries, timber, and freshwater resources include few direct references to participation by marginalised communities and social groups. The 1983, 1994, and 2006 ITTA include significantly fewer references that reflect inclusive, structurally plural, contextual or open goals for participation, even in those agreements adopted after the introduction of sustainable development. As these areas are traditionally linked to economic interests and national security in realist paradigms, it may indicate that states are less receptive to NSA participation in these areas. These considerations, and the justifications relating to the participation by NSAs in natural resource agreements will be examined in more detail in Section 2, below.



## 1.3 Low-level Integration

### 1.3.1 Climate Change

The documents from the climate change regime are a notable exception to the general trend towards supporting the broadening and deepening participation by marginalised communities and those directly experiencing environmental degradation in the Rio and post-Rio periods. While the 1992 UNFCCC takes into account sustainable development, the content of the provisions make little reference to the inclusion of marginalised communities or social groups. Further, its provisions do not take into account the different lived experiences, knowledge, or uses of the environment, characteristics that ecofeminism views as integral for open and inclusive participatory practices.

This more restrictive approach towards the participation by some NSAs is consolidated in later *ad hoc* Working Groups. The documents produced by the *Ad Hoc* Group on the Berlin Mandate (AGBM) include few references to the participation by NSAs. Those references identified generally reflect limited characteristics of structural pluralism, contextualism and openness values. Similarly, the documents produced by the *ad hoc* Working Groups established after 2001 include few references detailing the participation by civil society NSAs and marginalised communities. However, they do include more references to the importance of accountability, transparency, and openness, which reflect some elements of sustainable development and the arguments for participation by NSAs.

The soft-law outcome texts adopted after 2001 similarly include few provisions that reflect inclusive participation by those communities who directly experience the effects of climate change or have traditionally been excluded from the negotiation process. This is exemplified in the 2010 Decision 1/CP.16 The Cancun Agreements: Outcome of the Work of the *Ad Hoc* Working Group on Long-term Cooperative Action under the Convention (Cancún Agreements (2010)), and the 2012 Decision 1/CP.18 Agreed Outcome Pursuant to the Bali Action Plan (Agreed Outcome Pursuant to the Bali Action Plan (2012))<sup>35</sup>. While referring to participation in their texts, these provisions do not reflect the ecofeminist values to a significant degree.

In the case of the adopted outcome texts from the *Ad Hoc* Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP), this may be because of the technical nature of the topic at hand. However, in a similar vein to the content of the Cartagena Protocol, and the participatory processes for the AGBM, it may

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<sup>35</sup> Decision 1/CP.18 Agreed Outcome Pursuant to the Bali Action Plan (8 December 2012). (Decision 1/CP.18 Agreed Outcome Pursuant to the Bali Action Plan); See also Decision 1/CMP.8 'Amendment to the Kyoto Protocol pursuant to Article 3, paragraph 9' in Report of the Conference of the Parties Serving as Meeting of the Parties to the Kyoto Protocol on its Eight Session, held in Doha from 26 November to 8 December 2012, Addendum, Part Two: Action Taken by the Conference of the Parties Serving as Meeting of the Parties to the Kyoto Protocol on its Eight Session (28 February 2013) FCCC/KP/CMP/2012/13/Add.1 (8 December 2012).

also suggest that certain topics that are closely related to the economic, trade, development, and commercial interests of states correspond with fewer inclusive participatory provisions.

### 1.3.2 Age of Document

Another trend that emerged through my initial analysis was that the age of the document has a direct relation to the extent to which it includes references that support the participation by non-traditional NSAs. Many of the documents from the ozone layer regime include significantly few references that reflect the inclusive, structurally plural, and contextual characteristics of participation. Once again, this may be partly because of the technical nature of the negotiations that occurred in the two working groups that developed the 1985 Ozone Layer Convention and the 1987 Montreal Protocol. Such negotiations may not be the correct forum for facilitating contextual or structurally plural participation. However, the extent to which these documents reflect inclusive or open participatory practices may still help identify those issues where states are reluctant to include the participation by NSAs.

This may be in part because the paradigm of sustainable development, that supports the broadening and deepening of participation by NSAs, was not generally incorporated into IEL until after the Rio Conference. For example, the preparatory process and adopted outcome texts from the 1972 Stockholm Conference, supported the participation by newly-independent developing countries, but contained very few references that supported the participation by marginalised communities and those directly experiencing environmental degradation. This is reaffirmed by the adopted soft-law texts from the conference. The 1972 Stockholm Declaration and the 1972 Stockholm Action Plan of the Human Environment (Stockholm Action Plan) include some general references encouraging states to undertake consultation with local communities. While the documents do acknowledge the value of consulting with local communities, such an approach is top-down and only includes some limited characteristics of inclusive, structurally plural, contextual, and open participation.

### 1.3.3 Forum in which the document is created

The forum in which the document has been negotiated and adopted also has a bearing on the extent to which it includes references that support the participation by NSAs. Most notably, the two sustainable development resolutions adopted in the UNGA contain very few provisions that reflect the characteristics of inclusive, structurally plural, and contextual participation. The 2000 Millennium Declaration and UNGA Resolution 60/1 2005 World Summit Outcome (2005 World Summit Outcome) both contain general references to the principles of good governance and refer to participatory governance in this context. In this way, they reflect some characteristics of open and inclusive participation, albeit in very generalised and soft language. Once again, these documents' content and language indicate an emerging connection between sustainable development and security, part of which is support for participatory governance.

My findings suggest that the integration of the paradigm of sustainable development into IEL corresponds with a significant increase in references to the participation by NSAs in the creation, content, and implementation of IEL. However, the extent to which these provisions reflect ecofeminist characteristics of inclusive, structurally plural, contextual, and open participation depends on the environmental area, connection with other areas or state interests (trade, economic, science, commercial), age, and forum in which the document under consideration is negotiated and adopted. The following discussion will discuss these findings relying on the analytical framework developed in Chapter 4, with reference to the literature discussed in Chapter 2.

Drawing on these findings, I am particularly interested in where NSAs were invited to participate. This is because highlighting where NSAs were allowed to participate and where they were excluded, and the reasons given for their exclusion can give insight into the environmental topics and related issues that states were supportive of NSA participation in the creation, content, and implementation of environmental obligations. The justifications given by states for NSAs' participation or exclusion can also reveal any connections between the environment, development, and security and the role of NSAs in this context. Where possible, I endeavour to identify the types of voices and NSAs invited to participate. These findings can only be valid for those voices or NSAs discerned or identified in the documents. Nevertheless I believe the more generalised justifications given by states for NSA participation or exclusion can also reveal any connections between the environment, development and security and the role of NSAs in this context. Not only will this analysis inform the discussion in Chapter 6, it also can help unpack the emerging tension between the broadening and deepening of participation inherent in the sustainable development paradigm and the emerging appropriation of sustainable development by the broader security discourse. The conclusions from these discussions will help contextualise the extent to which the connections between environment/security may have altered the basis on which the international community seeks to protect the environment.

## 2. ANALYSIS OF THE FINDINGS

My findings indicated that the extent to which the content and language of the environmental documents reflected an ecofeminist understanding of participation increased in the post-Rio period. However, my findings also identified significant variation in the different references to participation depending on a number of variables, including the environmental area, age of the document, and the forum in which the document was made. In the following discussion, I analyse the language and content of the environment documents and focus on each ecofeminist variable separately. In this analysis I bring in the critique and commentary of the environment/security links introduced in Chapters 2 and 3.

## 2.1 Inclusivity

Section 1 noted that references to the participation by NSAs in the creation, content, and implementation of environmental outcome texts has increased with the introduction of sustainable development after the Brundtland Report. As noted above, the preparatory process for the Stockholm Conference generally included fewer provisions that reflected the ecofeminist value of inclusivity. Those references relating to the participation by NSAs in the preparation process were generally directed to expert organisations and individuals, or international institutions and organisations.<sup>36</sup> UNGA Resolution 2581(XXIV) (1969), convening the Conference and the preparatory process itself, contains limited references that reflect the inclusivity value. Resolution 2581 (1969) requests the Secretary-General to 'pursue' consultations and to 'draw on contributions' from 'appropriate' intergovernmental and non-governmental organisations.<sup>37</sup> This open language leaves the discretion of determining 'appropriate' to the Secretary-General, who may or may not decide to interpret this participatory provision widely.

Analysis of the preparatory reports indicates that the Secretary-General of the Conference supported the participation by NSAs on the basis of their expertise. He argued that NGOs had an important role in the preparations for the conference and justified this by referring to the 'variety of talent they could give to the conference.'<sup>38</sup> Some state delegates supported the Secretary-General and favoured the broadening of participation by NSAs because they considered environmental problems were of universal character and therefore required universal participation to resolve.<sup>39</sup> These statements reflect some elements of the inclusivity value as they seek to broaden the participation by NSAs on the basis of their expertise and in recognition of different experiences, knowledge and values that such broad participation could give to the issue of environmental degradation. In this way, the documents indicate that NSA participation was seen as drawing on a broader range of expertise in relation to development and environmental matters.

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<sup>36</sup> UNGA Resolution 2398 (XXIII) (3 December 1968) UN Doc A/RES/2398(XXIII), ¶3; United Nations, *Report of the Secretary-General* (9 December 1970) UN Doc A/CONF.48/PC.8, ¶70; United Nations, 'Report of the Preparatory Committee for the United Nations Conference on the Human Environment' (New York, 10-20 March 1970) (6 April 1970) UN Doc A/CONF.48/PC/6, Annex II; United Nations, 'Report of the Preparatory Committee for the United Nations Conference on the Human Environment on the Work of its Second Session' (Geneva, 8-19 February 1971) (26 February 1971) UN Doc A/CONF.48/PC/9, Annex II; United Nations, 'Report of the Preparatory Committee on its Third Session' (New York, 13-24 September 1971) UN Doc A/CONF.48/PC/13, Annex II. NSAs attending the preparatory conferences included the IUCN, Commission of the Churches on International Affairs, International Alliance of Women, International Council of Scientific Unions, Chamber of Commerce of the United States of America, Commonwealth Human Ecology Council, amongst others.

<sup>37</sup> UNGA Resolution 2581(XXIV) (15 December 1969) UN Doc A/RES/2581(XXIV) ¶7-8; ¶10.

<sup>38</sup> Report of the Preparatory Committee for the UNCHE. 2nd Session (1971), ¶107; see also ¶106.

<sup>39</sup> *Ibid.*, ¶109, ¶111.

Similarly, analysis of the preparatory documents published by the Working Groups for the Ozone Layer Convention and Montreal Protocol suggests that NSA participation was restricted to expert organisations and individuals, or international institutions and organisations.<sup>40</sup> The participation by experts is particularly notable in the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Protocol on the Control of Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer (AWG-CFCs). The Working Group reports record that NSAs such as the International Chamber of Commerce, The Federation of European Aerosol Associations, Environmental Defense Fund, and the World Resources Institute participated, among others.<sup>41</sup> These participant NSAs indicate a focus of expertise in law, science, and technology and also the participation by groups with a business and commercial interest in the environmental issue under negotiation. This narrow participatory approach may reflect the technical nature of this issue, unlike the broader and interrelated concerns of environmental degradation and underdevelopment addressed by the Stockholm Declaration. Therefore, while the overall participation by NSAs in the pre-Rio period does not reflect many of the characteristics of the inclusivity value, the references to the NSAs indicates growing support by some states in NSA participation in the creation of IEL. As the Ozone Layer Convention and the Montreal Protocol were negotiated during the time when the Brundtland Report was being written and published, the participation by experts, the private sector, and industry may be seen to support the arguments for developing more inclusive participation for NSAs included in the report.<sup>42</sup>

However, the tensions between those countries that sought to broaden the participation by NSAs and those that sought to limit their participation which were present during the Stockholm Conference were also present in the preparations for the Rio Conference. This tension correlates with those countries which sought to emphasise environmental problems and those that sought to focus on problems of underdevelopment in the preparations for the Rio Conference. Developing countries expressed resistance to the participation by NGOs in the preparatory processes and at the conference itself.<sup>43</sup> They were concerned that the

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<sup>40</sup> E.g. UNEP Governing Council, *Report of the Governing Council on the Work of its Ninth Session* (New York, 13-26 May 1981) (1981) UN Doc A/36/25, ¶353; UNEP Governing Council, Decision 13/18 I 'Protection of the Ozone Layer' in Report of the Governing Council on the Work of its Thirteenth Session (UN GAOR 40th Session, Supplement No 25) (1995) UN Doc A/40/25 (24 May 1985); UNEP, *Draft Report of the ad hoc Working Group of Legal and Technical Experts for the Elaboration of a Protocol on the Control of Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer on the work of its First Session* (Geneva, 1-5 December 1986) (1986) UN Doc UNEP/WG.151/L.4; DeSombre, 'The Experience of the Montreal Protocol', 57.

<sup>41</sup> UNEP, *Report on the Second Part of the Workshop on the Control of Chlorofluorocarbons* (Leesburg, USA 8-12 September 1986) (13 October 1986) UNEP/WG.148/3, ¶7; UNEP, *Draft Report of the the Ad Hoc Working Group on the work of its First Session*, UN Doc UNEP/WG.151/L.4 (1986), ¶3.

<sup>42</sup> WCED, *Our Common Future*, 20, 326-329.

<sup>43</sup> Peter Willetts, 'From Stockholm to Rio and Beyond: The Impact of the Environmental Movement on the United Nations Consultative Arrangements for NGOs' (1996) 22(1) Rev Int Stud 57, 71; Mickelson, 'South,

participation by environmental NGOs may undermine and draw attention away from their development concerns.<sup>44</sup> This tension reveals the paradox between environment and development considerations that the Rio Conference sought to address.<sup>45</sup> It also indicates that concerns over development were an issue of significant importance for developing countries during preparations of the Rio Conference, something that will be examined in more detail in Chapter 6.

To address the concerns by developing countries, the Preparatory Committee adopted Decision 1/1 that encouraged an 'equitable representation of NGOs from developed and developing countries and from all regions.'<sup>46</sup> It encouraged the committee to ensure 'a fair balance between NGOs with an environment focus and those with a development focus.'<sup>47</sup> It also took into account the differences between developed and developing countries and supported the use of the voluntary fund to facilitate the participation by institutions, NGOs, and experts from developing countries during the preparatory stage and at the Rio Conference.<sup>48</sup> These references to NSAs reflect many of the characteristics of the inclusivity value because they take into account the different interests, experiences, and needs of communities from different regions in relation to the environment. They recognise that for developing countries, the development needs of their citizens were of central importance to the negotiations concerning the use of the environment and environmental conservation. The inclusion of NGOs with a developmental interest enabled the participation by communities whose interests have not traditionally been recognised at the international level.

Furthermore, the Rio Preparatory Committee explicitly invited traditionally marginalised communities and social groups, such as indigenous peoples and youth, to participate in the creation, content, and implementation of sustainable development. Decision 2/7, Decision

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North, and International Environmental Law'; see also, Marc Williams, 'Re-Articulating the Third World Coalition: The Role of the Environmental Agenda' (1993) 14(1) *Third World Quarterly* 7.

<sup>44</sup> Willetts, 'Stockholm to Rio and Beyond', 72.

<sup>45</sup> See Redclift, 'Oxymoron Comes of Age'.

<sup>46</sup> UNCED, Decision 1/1 'Role of Non-Governmental Organisations in the Preparatory Process for the United Nations Conference on Environment and Development' in Report of the Preparatory Committee For the United Nations Conference on Environment and Development (UN GAOR 45th Session, Supplement No 46) (1991) A/45/46 Annex I (14 August 1990), ¶3.

<sup>47</sup> *Ibid.*, ¶3.

<sup>48</sup> *Ibid.*, ¶5; see also INCD, Decision 2/1 'Mandates for the Working Group' in Report of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa on its Second Session (15 October 1993) A/48/226/Add.1 (Annex) Appendix II which outlines the procedure to determine 'competence and relevance' of non-governmental organisations to the work of the Preparatory Committee; UNGA Resolution 45/211 (21 December 1990) UN Doc A/RES/45/211; see also, UNGA Resolution 46/168 (19 December 1991) UN Doc A/RES/46/168; United Nations, 'Reference Document on the Participation of Civil Society in the United Nations Conference and Special Session of General Assembly during the 1990s' (*Office of the President of the Millennium Assembly, 55th session of the United Nations General Assembly (Version 1 August 2001)*, 2001) <<http://www.un.org/ga/president/55/speech/civilsociety1.htm#earth>> accessed 14 May 2014.

3/7, and Decision 3/6 recognise the important contribution made by indigenous people and local community organisations to the preparatory process and sought to promote ‘effective’ participation by these social groups in the areas of environment and development.<sup>49</sup> These decisions invited NGOs, particularly those representing indigenous people and local communities, to contribute to this process.<sup>50</sup> By including these voices in the preparatory process, the Rio Preparatory Committee engages in inclusive participatory practices and identifies that participation by these groups is supported in areas relating to environmental management and development.

However, some marginalised social groups were initially omitted from the inclusive participatory approach adopted during the initial Rio Preparatory Conferences. Women were only explicitly acknowledged as a ‘major group’ alongside indigenous peoples, youth, and NGOs during the third session of the committee. This was after concerted effort by women-focused NGOs, civil society, and support by other NSAs to encourage states to incorporate a gender dimension into international responses to environment and development problems.<sup>51</sup> Decision 3/5 acknowledged these criticisms and stated that women’s contributions to sustainable development should be addressed at the Rio Conference as a ‘distinct cross-cutting issue.’<sup>52</sup> Decision 3/5 also recognised that women should be mainstreamed in all ‘substantive work and documentation,’<sup>53</sup> including the adopted outcome texts. The committee requested the Secretary-General, in collaboration with states and NSAs, to promote women’s participation in conference activities.<sup>54</sup> In doing so, this decision recognised that women experienced environmental degradation and development differently and supports the contribution of their experiences to the development of international responses for sustainable development.

The content of the these decisions indicate that states acknowledged there were connections between gender, development, and the environment that should be taken into consideration in the creation, content and implementation of soft-law objectives relating to sustainable development. Like Decision 2/7 and Decision 3/7 above, Decision 3/5 suggests

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<sup>49</sup> Decision 3/7 ‘Indigenous People and Local Communities’ in Report of the Preparatory Committee for the UN Conference on Environment and Development (Volume II) (UN GAOR 46th Session, Supplement No 48) (1992) UN Doc A/46/48 (vol II) Annex I (4 September 1991), preamble; UNCED, Decisions 3/6 ‘Youth in Environment and Development’ in Report of the Preparatory Committee for the UN Conference on Environment and Development (Volume II) (UN GAOR 46th Session, Supplement No 48) (1992) UN Doc A/46/48(Vol.II) Annex I (4 September 1991), ¶(b).

<sup>50</sup> UNCED, Decision 2/7 ‘Indigenous People and Local Communities’ in Preparatory Committee for the United Nations Conference on Environment and Development (UN GAOR 46th Session, Supplement No 48) (1991) A/46/48 Annex I (5 April 1991), ¶2.

<sup>51</sup> Braidotti and others, *Women, the Environment*, 91.

<sup>52</sup> UNCED, Decision 3/5 ‘Women in Environment and Development,’ in Report of the Preparatory Committee for the UN Conference on Environment and Development (Volume II) (UN GAOR 46th Session, Supplement No 48) (1992) UN Doc A/46/48(Vol II) Annex I (4 September 1991), ¶(a).

<sup>53</sup> Ibid, preamble.

<sup>54</sup> Ibid, preamble, ¶(c).

that the participation by women-related NSAs is supported in a broad range of topics connected to the environment and sustainable development. However, the connection between women's participation and sustainable development is very different from those proposed in the two decisions relating to indigenous peoples. In Decision 3/5, the text refers to women's 'critical economic, social and environmental *contributions* to sustainable development.'<sup>55</sup> This suggests that the reason for women's participation is what they can give to sustainable development whereas the references to economic growth and development in the decisions relating to indigenous peoples justify their participation as a way to strengthen growth and development.<sup>56</sup> This difference identifies not only the types of issues with which these social groups are associated, but also the purpose for their participation in the creation, content, and implementation of soft-law sustainable development objectives. Here, women are seen as the producers, whose worth is measured by their contribution to sustainable development, while indigenous peoples and local communities are presented as partners whose knowledge and expertise generates economic growth and the drive for development.

Overall, the decisions by the preparatory committee indicate that states recognised the interrelated ways in which certain groups of society may disproportionately experience environmental degradation and exclusion from development. In particular, they indicate that states supported NSA participation in areas such as sustainable development, social and economic development, and environmental management. This recognition supports the call for the increased participation by CSOs and NGOs put forward by the Brundtland Report on the basis that NSAs, such as CSOs and NGOs, hold important expertise, experience, and knowledge that can help sustainable development to succeed.<sup>57</sup> The references to women, indigenous peoples, and local communities support the participation by organisations representing their interests during the Rio Conference process, and also in the subsequent implementation of international, national and local responses to the interrelated concerns of development and environment through the paradigm of sustainable development.

The support for participation by marginalised groups continues in the adopted outcome texts of the Rio Conference. Agenda 21, contains discrete chapters to the participation and involvement of NSAs in the creation and implementation of sustainable development at the local, national, and international levels.<sup>58</sup> It also emphasises the importance of adopting inclusive participatory mechanisms in the implementation of development and environment

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<sup>55</sup> Ibid ¶(a). *Emphasis added*.

<sup>56</sup> See criticisms by, Mies and Shiva, *Ecofeminism*, 25.

<sup>57</sup> WCED, *Our Common Future*, 21, 38.

<sup>58</sup> Agenda 21 1992, Chapter 24 (Women), Chapter 25 (Children and Youth), Chapter 26 (Indigenous Peoples), Chapter 27 (NGOs), Chapter 29 (Workers and Trade Unions), Chapter 30 (Business and Industry), Chapter 31 (Scientific and Technological Community).



objectives.<sup>59</sup> This approach is included in other chapters relating to specific environmental, developmental, or institutional aspects of sustainable development. In these chapters, states support facilitating the decision-making by ‘concerned individuals, groups and organisations... at all levels.’<sup>60</sup> These general references to the participation by CSOs are complemented by detailed references to the inclusion by marginalised groups in the creation of environment and development policies.<sup>61</sup> Taken together, these references reflect the inclusivity value by supporting the participation by those communities and groups who are directly affected by environmental degradation as well as including more general participatory provisions.

The Rio Declaration also supports the participation by NSAs in sustainable development and environmental decision-making. Principle 20 and Principle 23 of the Rio Declaration state that the full participation of women, indigenous peoples, and local communities is ‘essential to achieve sustainable development’<sup>62</sup> and that ‘states should recognise and duly support their identity, culture, and interests and enable their effective participation in the achievement of sustainable development.’<sup>63</sup> Principle 10 states that ‘environmental issues are best handled with the participation of all concerned citizens, at the relevant level.’<sup>64</sup> By including these principles, the Rio Declaration has incorporated significant characteristics of the inclusivity value, when analysed through the inclusivity lens.. This is because Principle 10 recognises that different members of society experience environmental degradation differently and should therefore be involved in order to address these issues.

The analysis of the principles of participation contained in Rio Declaration and in the content of Agenda 21 reveal three important considerations. First, the analysis suggests that states increasingly recognised the value, expertise, and experience that different social groups may contribute in the creation and implementation of sustainable development. Second, NSA participation was linked to issues relating to development, environment, and economic growth in quite different ways. Whereas women’s activities are seen as part of the contribution to sustainable development, indigenous peoples’ activities are included because of their knowledge and expertise, which may be used to attain economic growth and development objectives. This distinction will be examined in more detail in Chapters 6 and 7

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<sup>59</sup> Ibid, Chapter 8 ¶3, ¶4(r), ¶5(g).

<sup>60</sup> Ibid, Chapter 8 ¶3(c); see also Chapter 10 ¶5(d), Chapter 11, ¶11; Chapter 12, ¶3, ¶4(f), Chapter 13 ¶16(d); Chapter 15 ¶3, ¶5(k); Chapter 16 ¶30.

<sup>61</sup> E.g. Ibid, Chapter 10 ¶10; Chapter 11 ¶1, ¶3(b), ¶13; Chapter 12 ¶17(a), ¶56(d), Chapter 13 ¶16(h).

<sup>62</sup> Rio Declaration 1992, Principle 20.

<sup>63</sup> Ibid, Principle 23.

<sup>64</sup> Ibid, Principle 10. ‘Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.’

as it suggests that each of these groups have a different value in the overall objective of sustainable development. Analysing these differences may reveal the underlying beliefs, values, and attitudes that inform the inclusion of issues such as development, economic interests and trade issues into IEL. Third, the inclusion of NSAs reflects significant characteristics of the ecofeminist value of inclusivity. These conclusions suggest states viewed NSA participation as integral to achieving sustainable development at the local, national, and international levels.

The support for NSAs' participation in environment and sustainable development matters was a central focus for the INCD preparatory process and the adopted Desertification Convention itself. This process enabled those who disproportionately experience environmental destruction to have a voice at the international level. The most significant example in the immediate post-Rio period is contained in the documents produced by the INCD. Under Resolution 47/188 (1992), the UNGA invited the attendance of observers, the contribution of intergovernmental organisations, and the participation of NGOs to contribute 'constructively to the success of the negotiating process.'<sup>65</sup> It further stated the first week of the first INCD session shall be 'devoted to the sharing of technical information and assessments, with the involvement of experts, on drought and desertification.'<sup>66</sup> These statements indicate that states supported the participation by NSAs in discussions concerning issues surrounding drought and desertification. They suggest that states recognised the expertise that such participants may have, and that the experiences of those who are directly affected by drought and desertification were relevant in the creation, content, and implementation of international responses to drought and desertification. In doing so, these statements reveal elements of the inclusivity value and suggest that in the post-Rio period, states were supportive of NSA participation on the basis that it enabled the different experiences, needs and experiences of local communities.<sup>67</sup>

This approach may be seen as a manifestation of Principle 10 of the Rio Declaration because it encouraged the participation by those directly affected by desertification and drought to be involved in the negotiations of international responses to these issues. Over the course of the negotiations, NSAs could meet with delegations formally and informally and they were successful in convincing governments to propose their ideas.<sup>68</sup> For example,

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<sup>65</sup> UNGA Resolution 47/188 ( 22 December 1992) UN Doc A/RES/47/188, ¶8; also ¶16, ¶19.

<sup>66</sup> Ibid, ¶5.

<sup>67</sup> Elisabeth Corell, 'Non-State Actor Influence in the Negotiations of the Convention to Combat Desertification' (1999) 4(2) *International Negotiation* 197, 208.

<sup>68</sup> United Nations, 'Report of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa on its Second Session' (Geneva, 13-24 September 1993) (15 October 1993) UN Doc A/48/226/Add.1 Annex, Appendix III, Report of Working Group I, ¶15 and Appendix III, Report of Working Group II, ¶15; Michele Merrill Betsill and Elisabeth Corell, 'NGO Influence in International Environmental Negotiations: A Framework for Analysis' (2001) 1(4) *Global Environ Polit* 65, 93-94.

NGOs argued that national action plans should establish a participatory approach at the international level, and they should be allowed to attend conferences of the parties as observers, or any other decision-making body created.<sup>69</sup> Both states and NSAs supported the full local participation in decision-making and incorporating an integrated, 'bottom-up approach' to combating desertification.<sup>70</sup> This widespread support for inclusive participation, both at the local and international level, reflects an increasingly pluralised international sphere, where states and other actors were involved in the creation, content, and implementation of environmental objectives.

The content of the Desertification Convention incorporates local community participation as a central feature of international responses to combating drought and desertification.<sup>71</sup> This incorporation indicates that states considered locally-driven participation as central to responding to desertification and its underlying social, economic, and developmental drivers.<sup>72</sup> Local participation was included in the National Action Plans – one of the main features of the convention. Articles 9 and 10 emphasise the importance of incorporating bottom-up participatory approaches and specifically refer to women, resource uses, and local communities.<sup>73</sup> Similarly, the regional annexes to the convention adopt this approach, although to a varying degree.<sup>74</sup> For example, the Regional Annex for Africa makes direct reference to the role played by women and the importance of their participation, whereas the Regional Annex for Asia is not explicit in their references to the participation by marginalised communities.<sup>75</sup> These provisions point to states supporting NSA participation in areas that relate to sustainable development and environmental degradation.

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<sup>69</sup> 'Summary of the Second Session of the INC for the Elaboration of an International Convention to Combat Desertification: 13-24 September 1993' Earth Negotiations Bulletin <<http://www.iisd.ca/vol04/0422000e.html>> accessed 30 January 2015.

<sup>70</sup> INCDC Secretariat, 'Compilation of Government Views, Statement and Drafting Proposals. Note by the Secretariat' (23 August 1993) A/AC.241/12, which noted the converging views on the Preamble; Chasek, 'The Convention to Combat Desertification', 155.

<sup>71</sup> Desertification Convention 1994, preamble, art 3(a), art 5(d), art 10(2)(f).

<sup>72</sup> Ibid, art 9.

<sup>73</sup> Ibid, art 9, art 10(2)(e), art 10(2)(f); see also art 3, art 5(d), art 17(1)(f), art 18(2)(a), art 19(1)(a), art 19(3)(b), art 21(1)(d) and art 22(7); Geoffrey Lean, *Down to Earth: a Simplified Guide to the Convention to Combat Desertification, Why it is Necessary and What is Important and Different about it* (Secretariat of the UN Convention to Combat Desertification 1995), 19; Alon Tal and Jessica A. Cohen, 'Bringing "Top-Down" to "Bottom-Up": A New Role for Environmental Legislation in Combating Desertification' (2007) 31(1) Harv Envtl L Rev 163, 177; see generally, Chasek, 'The Convention to Combat Desertification'.

<sup>74</sup> Desertification Convention 1994, Annex I Regional Implementation Annex for Africa, art 4(b); art 6(2); art 8(2)(c); art 11(g); Annex II Regional Implementation Annex for Asia, art 4(d); Annex III Regional Implementation Annex for Latin America and the Caribbean, art 4(l); Annex IV Regional Implementation Annex for the Northern Mediterranean, art 3(2), art 5(d).

<sup>75</sup> Compare *ibid* Annex I Regional Implementation Annex for Africa, art 8(2)(c); and *ibid* Annex III Regional Implementation Annex for Latin America and the Caribbean, art 3(2); Annex IV Regional Implementation Annex for the Northern Mediterranean, art 4(2) with *ibid* Annex II Regional Implementation Annex for Asia, art 4(1)(b) and art 4(1)(d); Annex III Regional Implementation Annex for Latin America and the Caribbean.

In the post-2001 period, the documents relating to sustainable development continued to consolidate inclusive participation by marginalised communities. The preparatory documents from the Johannesburg Summit and Rio+20 Conference affirmed the link between participation and effective implementation of sustainable development.<sup>76</sup> UNGA Resolution 64/236 (2009) called for the 'active' participation of all major groups 'at all stages of the preparatory process.'<sup>77</sup> It further stated that the Committee should provide for the 'full and effective' participation of all States, specialised agencies and to encourage the participation of relevant NSAs.<sup>78</sup> The report of the organisational meeting for the Rio+20 Preparatory Committee notes that representatives of major groups were able to address the plenary after statements by state delegates (time allowing), organise informal side events and briefings with governments, and participate in multi-stakeholder dialogues.<sup>79</sup>

The reports by the Johannesburg Summit Preparatory Committee also contain details of the participation by states and NSAs, such as major groups, private sector, and intergovernmental organisations in multi-stakeholder dialogues on sustainable development.<sup>80</sup> However, they also record the criticisms by some non-state participants who argued that their involvement should be institutionalised in decision-making for sustainable development.<sup>81</sup> Similarly, NSAs participating in the preparations for the Rio+20 Conference reiterated that their participation was necessary to ensure that sustainable development programmes reflected the needs and the context in which they would be placed.<sup>82</sup> These

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<sup>76</sup> UNGA Resolution 55/199 (20 December 2000) UN Doc A/RES/55/199, ¶12 ¶13; UNGA Res 64/236 (2009), ¶21

<sup>77</sup> UNGA Res 55/199 (2000), ¶12 ¶13; UNGA Res 64/236 (2009), ¶21.

<sup>78</sup> UNGA Res 64/236 (2009), ¶22.

<sup>79</sup> Decision 2001/PC/3 'Arrangements for Accreditation and Participation in the Preparatory Process and in the World Summit on Sustainable Development of Relevant Non-Governmental Organisations and other Major Groups' in Report of the Commission on Sustainable Development acting as Preparatory Committee for the World Summit on Sustainable Development (Organisational Session, 30 April-2 May 2001) (2001) A/56/19 at 31 (2 May 2001), ¶5-¶6 and ¶8-¶12; United Nations, 'Report of the Preparatory Committee for the United Nations Conference on Sustainable Development' (New York, 17-19 May 2010) (2010) UN Doc A/CONF.216/PC/5, Annex II ¶2(c)-(d); UNGA Resolution 65/152 (20 December 2010) UN Doc A/RES/65/152, ¶19 and ¶21.

<sup>80</sup> Commission on Sustainable Development, 'Report of the Commission on Sustainable Development acting as the Preparatory Committee for the World Summit on Sustainable Development' (New York, 28 January - 8 February 2002) (2002) UN Doc A/CONF.199/PC/2, annex I ¶68 and ¶17; Annex II ¶17 and ¶37.

<sup>81</sup> Ibid, Annex II ¶17, ¶37; Commission on Sustainable Development, 'Report of the Commission on Sustainable Development Acting as the Preparatory Committee for the World Summit on Sustainable Development' (New York, 27 May - 7 June 2002) (2002) UN Doc A/CONF.199/4, Annex II ¶17; WEDO, 'Multistakeholder Dialogue Segment, Note by the Secretariat. Addendum: Dialogue Paper by Women' (23 April 2002) A/CONF.199/PC/18/Add.1, ¶10; Indigenous Peoples Caucus of the Commission on Sustainable Development, 2002 #3107}, ¶8; Third World Network, Environmental Liaison Centre International and Danish 92 Group, 'Multi-Stakeholder Dialogue Segment. Note by the Secretary-General. Addendum: Dialogue Paper by Non-Governmental Organisations' (10 May 2002) A/CONF.199/PC/18/Add.4, ¶12(e)

<sup>82</sup> Report of the Preparatory Committee for the WSSD, 2nd Session (2002), Annex I, ¶3-5, ¶16-17 and Annex II ¶18; WEDO, Dialogue Paper by Women (23 April 2002), ¶6; Indigenous Peoples Caucus of the Commission on Sustainable Development, 'Note by the Secretary General. Addendum: Dialogue Paper by Indigenous Peoples' (23 April 2002) A/CONF.199/PC/18/Add.3, ¶6-¶7.

examples indicated that, in the context of sustainable development, NSAs were actively encouraged to participate during the preparatory process, and were offered opportunities to do so.

Once again, the content of the adopted outcome texts from these two conferences reveal that principles of participation by NSAs articulated in the Rio Declaration have been incorporated in the later soft law sustainable development documents. However, unlike earlier iterations of participation by NSAs, these documents emphasise the role of NSA participation as part of the solution to poverty and underdevelopment. For example, the Johannesburg Plan of Implementation reaffirms the participation of women in decision-making as part of the solution to poverty.<sup>83</sup> Similarly, the Plan of Implementation and the Rio+20 Outcome Document associate the participation by women and other marginalised groups with the development of renewable energy, and natural resource management, food security, and energy security, among others.<sup>84</sup>

The connections between participation by marginalised communities within these documents may indicate a shift in the topics in which states support the participation by NSAs. Whereas previous topics related to environment management and development, the documents from these two conferences indicate a shift towards supporting the participation by marginalised communities as a response to the drivers of underdevelopment and poverty.

However, the practices of negotiations in the climate change regime indicate exclusionary participation for both states and NSAs. The more frequent references to 'informal' working groups in the reports suggest that their use has become more common, particularly where the topic under negotiation concerns highly sensitive issues, such as economic or trade interests.<sup>85</sup> The use of the 'informal' working groups means that the Chair of the group retains the right to close the group to observers at any time, a practice that occurs most often in the final stages of negotiations.<sup>86</sup> This practice is not limited to the UNFCCC, and received criticism during the final negotiations at the Rio Conference.<sup>87</sup>

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<sup>83</sup> Plan of Implementation 2002, ¶7(d).

<sup>84</sup> Ibid, ¶25(b), ¶20(g), ¶45(h), ¶40(f), ¶42(e) ¶44(k)-(l), ¶46(b), and ¶128; Rio+20 Outcome Document (2012), ¶1 and ¶31.

<sup>85</sup> INC/FCCC, *Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of the Second Part of its Fifth Session* (New York, 30 April - 9 May 1992) (16 October 1992) UN Doc A/AC.237/18 (Part II), ¶36.

<sup>86</sup> UNEP, *Guide for Negotiators of Multilateral Environmental Agreements* (United Nations Environment Programme 2007), 11, 14; *Multilateral Environmental Agreement Negotiator's Handbook* (University of Joensuu 2007), 3-32 and 3-44.

<sup>87</sup> Ann Marie Clark, Elisabeth J Friedman and Kathryn Hochstetler, 'The Sovereign Limits of Global Civil Society: A Comparison of NGO Participation in UN World Conferences on the Environment, Human Rights, and Women' (1998) 51(1) *World Polit* 1, 17; see also 'Earth Summit Bulletin From PrepCom Four' *Earth Negotiations Bulletin* <<http://www.iisd.ca/download/asc/enb0101.txt>> accessed 26 June 2015.

During the negotiations of the UNFCCC, some states remarked on their exclusion from the negotiations. The representative from Malaysia stated that the process had not been representative a 'true spirit of cooperation' and noted that 'important and substantive elements of the convention had been drafted with selected delegates, without any plenary discussion.'<sup>88</sup> These issues related to the principles, objectives, and financial mechanisms of the convention and may suggest that some states were reluctant to include other states whose needs and interests may constrain their own. The marginalisation of some state participants may further suggest that these topics were viewed as closely linked to the economic and security interests of historically powerful States that were unwilling to include smaller states that may challenge the way in which the adopted texts addressed the linkage between climate change and other areas of international law. These issues will be examined in more detail in Chapter 6 because the justifications for their inclusion may give insight into the extent to which basis on which states seek to protect the environment has changed.

In the post-2001 climate change negotiations, the use of consensus decision-making indicates that some states can be marginalised or excluded because of unequal bargaining positions.<sup>89</sup> This marginalisation is noted in the reports produced by the AWG-LCA and the AWG-KP. For example, Decision 1/CMP.1 was adopted despite 'loud verbal dissent from Russia' with support from Belarus and Ukraine.<sup>90</sup> This also occurred in a later meeting where Bolivia argued that no consensus had been achieved over the draft 'Cancun Agreements' because they were not in agreement with the text.<sup>91</sup> The agreements were pushed through by the presiding officers despite Bolivia's express disagreement.<sup>92</sup> The meeting report notes that Bolivia objected to the text because most of the agreements had been discussed behind closed doors in ministerial negotiations and there had been no opportunity given for discussion or negotiation of the text prior to the decision to adopt it.<sup>93</sup>

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<sup>88</sup> INC/FCCC, *Report of the INC/FCCC. Second Part of its Fifth Session* (1992), ¶36.

<sup>89</sup> Lavanya Rajamani, 'The Cancun Climate Agreements: Reading the Text, Subtext, and Tea leaves' (2011) 60(02) ICLQ 499, 518.

<sup>90</sup> UNFCCC, *Report of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol on its Eighth Session, held in Doha from 26 November to 8 December 2012* (28 February 2013) FCCC/KP/CMP/2012/13, ¶43; Luke Kemp, 'Think politics is frustrating? Welcome to climate negotiations' *The Conversation* (14 June 2013) <<http://theconversation.com/think-politics-is-frustrating-welcome-to-climate-negotiations-15164>> accessed 26 June 2015; Luke Kemp, 'Framework for the Future: The Possibility of Majority Voting within the United Nations Framework Convention on Climate Change' (Environmental Policy Research Centre Report 01-2014, Forschungszentrum für Umweltpolitik 2014) <[http://edocs.fu-berlin.de/docs/servlets/MCRFileNodeServlet/FUDOCS\\_derivate\\_000000003244/Kemp\\_Framework\\_for\\_the\\_Future.pdf](http://edocs.fu-berlin.de/docs/servlets/MCRFileNodeServlet/FUDOCS_derivate_000000003244/Kemp_Framework_for_the_Future.pdf)> accessed 26 June 2015; Antto Vihma, 'Climate of Consensus: Managing Decision Making in the UN Climate Change Negotiations' (2015) 24(1) RECIEL 58, 65.

<sup>91</sup> UNFCCC AWG-LCA, *Report of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention on its Thirteenth Session, held in Cancun from 29 November to 10 December 2010* (4 February 2011) FCCC/AWGLCA/2010/18, ¶22; Rajamani, 'The Cancun Climate Agreements', 515.

<sup>92</sup> Rajamani, 'The Cancun Climate Agreements', 515.

<sup>93</sup> *Ibid.*, 515.

This practice is also found in the earlier negotiations of the Berlin Mandate, where it was adopted by consensus against the reservations by Kuwait, Saudi Arabia, and Venezuela, and the disagreement by Saudi Arabia.<sup>94</sup> These references to the use of consensus and its interpretation as ‘consensus minus one’<sup>95</sup> can function to marginalise states from the process of decision-making. In combination with the references to the exclusion of some states from the informal negotiations during the final stages of negotiation, this does not reflect characteristics of the inclusivity value. It reveals tensions in the negotiation of environmental documents whose content and purpose has a significant effect on the economic and security interests of states.<sup>96</sup>

NSAs connected with the environment and development issues have also remarked on their exclusion from observing the negotiations of the climate change regime in the post-2001 period.<sup>97</sup> They have protested over their exclusion during the final negotiations of important documents.<sup>98</sup> The few references to the participation by NSAs in the two *ad hoc* Working Groups suggest that where the environmental topic under negotiation is particularly sensitive and relates to state interests, the participation by NSAs is less secure.<sup>99</sup>

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<sup>94</sup> UNFCCC, *Report of the Conference of the Parties on its First Session, held at Berlin from 28 March to 7 April 1995* (24 May 1995) FCCC/CP/1995/7, ¶60; Joanna Depledge, ‘Striving for No: Saudi Arabia in the Climate Change Regime’ (2008) 8(4) *Global Environ Polit* 9, 12; Vihma, ‘Climate of Consensus’, 65.

<sup>95</sup> Rajamani, ‘The Cancun Climate Agreements’, 516; Tomilola Akanle and others, ‘Summary of the Cancun Climate Change Conference: 29 November - 11 December 2010’ *Earth Negotiations Bulletin* <<http://www.iisd.ca/download/pdf/enb12498e.pdf>> accessed 26 June 2015, 28.

<sup>96</sup> Tomilola Akanle and others, ‘Summary of the Copenhagen Climate Change Conference: 7-19 December 2009’ *Earth Negotiations Bulletin* <<http://www.iisd.ca/download/pdf/enb12459e.pdf>> accessed 6 March 2015, 28.

<sup>97</sup> *Ibid*, 28.

<sup>98</sup> United Nations Non-Governmental Liaison Service, ‘The Copenhagen Accord: UN Climate Change Conference ‘takes note’ of Final Document’ (*UN-NGLS*, 2009) <[http://www.un-ngls.org/spip.php?page=article\\_s&id\\_article=1743](http://www.un-ngls.org/spip.php?page=article_s&id_article=1743)> accessed 6 March 2015; Oxfam, ‘Climate Shame: Get Back to the Table. Initial Analysis of the Copenhagen Climate Talks’ (21 December 2009) <<http://www.oxfam.org/sites/www.oxfam.org/files/briefing-note-climate-shame-get-back-to-the-table.pdf>> accessed 5 March 2015; ‘The Dream and the Reality in Cancun’ *ECO: NGO Newsletter* (11 April 2010) <<http://www.climatenetwork.org/sites/default/files/BonnIeco3.pdf>> accessed 18 June 2014, 2; ‘NGO Participation in the COP17 Process’ *ECO: NGO Newsletter* (13 June 2011) 1 <[http://www.climatenetwork.org/sites/default/files/ECO\\_7\\_Bonn\\_2011\\_English\\_version.pdf](http://www.climatenetwork.org/sites/default/files/ECO_7_Bonn_2011_English_version.pdf)> accessed 18 June 2014, 2; ‘Time to Walk the Walk on Civil Society Engagement’ *Eco: NGO Newsletter* (9 June 2011) 1 <[http://www.climatenetwork.org/sites/default/files/ECO\\_4\\_Bonn\\_2011\\_English\\_version.pdf](http://www.climatenetwork.org/sites/default/files/ECO_4_Bonn_2011_English_version.pdf)> accessed 18 June 2014; ‘This is Our Home Too!’ *Eco: NGO Newsletter* (8 June 2011) 1 <[http://www.climatenetwork.org/sites/default/files/ECO\\_3\\_Bonn\\_2011\\_English\\_version.pdf](http://www.climatenetwork.org/sites/default/files/ECO_3_Bonn_2011_English_version.pdf)> accessed 18 June 2014; see discussion, Akanle and others, ‘Summary of the Copenhagen Climate Change Conference’, 28; Dana R. Fisher, ‘COP-15 in Copenhagen: How the Merging of Movements Left Civil Society Out in the Cold’ (2010) 10(2) *Global Environ Polit* 11; Chantal van den Bossche, ‘The Copenhagen Accord - The Way Forward’ (*Women in Europe for a Common Future*, 2010) <<http://www.wecf.eu/english/press/releases/2010/04/presswomen-bonn.php>> accessed 18 June 2014; Ian M. MacGregor, ‘Disenfranchisement of Countries and Civil Society at COP-15 in Copenhagen’ (2011) 11(1) *Global Environ Polit* 1.

<sup>99</sup> UNFCCC Secretariat, ‘Guidelines for the Participation of Representatives of Non-Governmental Organisations at Meetings of the Bodies of the United Nations Framework Convention on Climate Change’ (2003) <[https://unfccc.int/files/parties\\_and\\_observers/ngo/application/pdf/coc\\_guide.pdf](https://unfccc.int/files/parties_and_observers/ngo/application/pdf/coc_guide.pdf)> accessed 5 March 2015, 5.

This insecurity remains a central concern in recent climate change negotiations, where NSAs have been excluded or marginalised during discussions concerning economic, commercial, and trade implications of proposed measures.<sup>100</sup> The analysis indicates that states continue to view certain topics, such as the economy, trade, and development as closely related to their national interests and security. The connections between the environmental area and wider issues of international concern have a profound effect on the level of participation enjoyed by NSAs. This indicates that there may be an emerging tension between the principles of participation as deployed within sustainable development, contrasted with the participation within those environmental areas that have a direct impact on the economic and national well-being of states.

This analysis focused on four environmental regimes whose documents contain references to the participation by NSAs. Investigating the extent to which these regimes contain references to the participation by NSAs that reflect the inclusivity value has revealed two important insights which will inform the subsequent examination of these environmental regimes. The analysis suggests that, in general, the participation by NSAs has broadened and deepened with the introduction of sustainable development into international environmental agreements. Many of the documents relating to sustainable development and desertification attempt to ensure the inclusive participation of all citizens and particularly by communities traditionally excluded from environmental decision-making. This approach exemplifies many characteristics of the inclusivity value because these documents include explicit references to excluded communities in the preparatory process and outcome texts. Therefore, those who have experienced environmental degradation may participate in the creation of international, national and local responses to these concerns.

However, the analysis also revealed an emerging tension within some environmental regimes between supporting and encouraging the participation by NSAs, and excluding them from negotiations concerning topics that have connections to states' economic and security interests. This is particularly notable in the documents from the climate change regime, an environmental problem that has a potentially destabilising effect on national interests, including international trade, national security, and economic security. These documents reveal that states and NSAs may be excluded, particularly where negotiations have reached a critical juncture. Such practices suggest that where certain environmental

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<sup>100</sup> John Parnell, 'NGOs Cry Foul Over Access to UN Climate Fund Talks' (*Climate Home*, 12 March 2013) <<http://www.climatechangenews.com/2013/03/12/ngos-cry-foul-over-access-to-un-climate-fund-talks/>> accessed 4 April 2016; Alex Pashley, 'NGOs Criticise Closed-Door UN Climate Negotiating Sessions' (*Climate Change News*, 2015) <<http://www.climatechangenews.com/2015/10/21/ngos-criticise-closed-door-un-climate-negotiating-sessions/>> accessed 4 February 2016; 'Transparency: Just a Castle on a Cloud?' *ECO: NGO Newsletter* (7 December 2015) <<http://eco.climatenetwork.org/cop21-eco7-3/>> accessed 4 February 2016; '#KeepUsInTheRoom' *ECO: NGO Newsletter* (23 October 2015) <<http://eco.climatenetwork.org/adp2-11-eco5/>> accessed 4 February 2016.



topics directly concern the interests of state, such as economic and development interests, some states are less willing to proceed in a way that supports the inclusive participation by all sectors of the international community.

## 2.2 Structural Pluralism

My initial findings suggested that the content of documents developed and adopted during the Rio Conference and post-Rio period contained more characteristics of structural pluralism. This is because the introduction of sustainable development as the dominant paradigm shaping IEL emphasises the importance of locally-driven and community-led responses to environmental and developmental problems. As noted in section 1, the documents from the sustainable development and desertification regimes incorporated many characteristics of structural pluralism and the participation by NSAs in the creation, content, and implementation of environmental objectives.

The Rio Declaration and Agenda 21 emphasise the participation by NSAs at different levels of environmental governance in the creation and implementation of sustainable development objectives.<sup>101</sup> The chapters concerning specific major groups and environmental concerns stress the importance of participation by local populations, including marginalised communities, in decision-making at local and national levels.<sup>102</sup> These references encourage states and other international institutions to support the participation by communities directly affected by environmental and developmental objectives. In doing so, they reflect the arguments put forth by the Brundtland Report that the participation by all sectors of society is necessary to achieve sustainable development.<sup>103</sup>

In particular, the INCD described participation by NSAs as the 'fourth objective of sustainable development.'<sup>104</sup> Building on the inclusivity characteristics contained in the documents of the sustainable development and desertification regime, these documents support the participation by NSAs at different levels of the preparatory process, including local, national, and international negotiations. For example, the reports by the Rio Preparatory Committee and the INCD each include references to the participation by local NGOs in developing national reports prior to the Rio Conference, and the participation by grassroots NSAs as part of the fact-finding and knowledge sharing segment of the INCD.<sup>105</sup>

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<sup>101</sup> Agenda 21 1992, Chapter 23 ¶1-¶3; Rio Declaration, Principle 10.

<sup>102</sup> Ibid, Chapter 24 ¶2(b) and (f); Chapter 25 ¶2, ¶4, and ¶9(a); Chapter 26 ¶1, ¶3(b), and ¶4-¶5; Chapter 10 ¶5(d) and ¶10; Chapter 11 ¶3(b), ¶13(j), and ¶30(a); Chapter 12 ¶3.

<sup>103</sup> WCED, *Our Common Future*, 326-327.

<sup>104</sup> Hans Bruyninckx, 'The Convention to Combat Desertification and the Role of Innovative Policy-Making Discourses: The Case of Burkina Faso' (2004) 4(3) *Global Environ Polit* 107, 109; , 'Summary of the Second Session'; Corell, 'Non-State Actor Influence', 208.

<sup>105</sup> United Nations, *Report of the Preparatory Committee for the United Nations Conference on Environment and Development* (First session (Nairobi, 6-31 August 1990)) (31 August 1990) UN Doc A/45/46, ¶45-46; United Nations, *Report of the Intergovernmental Negotiating Committee for the Elaboration of an International*

The content of reports from these two regimes indicate that states increasingly supported 'bottom-up' approaches to participation by NSAs, such as local communities, in the creation of international environmental objectives.

The inclusion of locally-driven and bottom up participatory approaches in the Rio and post-Rio documents points to a consolidation of bottom-up and multilevel participatory structures articulated through the paradigm of sustainable development.<sup>106</sup> The report from the first session of the INCD notes the strong consensus for an innovative 'bottoms-up [sic] approach where commitments at national, regional and international levels reinforced local action.'<sup>107</sup> During the negotiations, state delegates continually referred to grassroots organisations, peoples living in marginal lands, and argued that the convention should be designed to improve their living conditions.<sup>108</sup> This approach built on the principles of participation articulated in the earlier Rio Declaration and recognised the importance of engaging local communities in developing responses to environmental problems, such as desertification, where they also have an impact on their economic development, livelihoods, and well-being. This structurally plural approach suggests that states supported the participation by NSAs at all levels in developing responses to the interconnected areas of desertification and sustainable development. Such an approach recognises that concerns surrounding desertification may be experienced by different sectors of society in different ways and will have an effect on other areas of their lives, such as economic and development opportunities.

The incorporation of this structurally plural approach reveals that in the post-Rio period, states sought to include the interrelated principles of public participation and good governance in IEL as a way to support the implementation of these practices at the national and local level. By emphasising this approach, lawmakers recognise that poor governance and lack of participation may impede the effectiveness of any international response to desertification. As noted in the introduction, good governance and participation have been expressly associated with attaining stable, peaceful, and resilient societies, as failures in

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*Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa on its First Session* (Nairobi, 24 May - 3 June 1993) (20 July 1993) UN Doc A/48/226 Annex, ¶22-¶23; INCD, Decision 2/4 'Elaboration of an International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa' in Report of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa on its Second Session (15 October 1993) A/48/226/Add.1 (Annex) Appendix II, Annex ¶12-¶14; see also 'Summary of the First Session of the INCD: 24 May-3 June 1993' Earth Negotiations Bulletin <<http://www.iisd.ca/vol04/0411000e.html>> accessed 5 March 2015; Corell, 'Non-State Actor Influence', 204-205.

<sup>106</sup> See the discussion in Chapter 2, 50-52.

<sup>107</sup> United Nations, *Report of the Intergovernmental Negotiating Committee for the Desertification Convention. 1st Session* (1993), (Annex), ¶27.

<sup>108</sup> Corell, 'Non-State Actor Influence', 208.

governance have been considered as sources of insecurity.<sup>109</sup> Therefore, the presence of such references in the Desertification Convention may suggest that states viewed structurally plural participatory approaches as part of a wider strategy to strengthen good governance and ensure peace.

The content of the Desertification Convention reinforces the structurally plural approach articulated by the Rio Declaration and Agenda 21. The Preamble to the Convention stresses the ‘importance of ensuring the full participation of both men and women at all levels’ to combat desertification and mitigate drought.<sup>110</sup> As noted earlier, local level participation is the central feature of the National Action Programmes.<sup>111</sup> These programmes include specific references to support the participation by marginalised communities in the creation and implementation of national action programmes, and their participation in regional and international responses to desertification and drought.<sup>112</sup> This structurally plural approach reinforces the participation principles contained in the Rio Declaration and may suggest that states increasingly viewed public participation at the local, national, and international levels, as a cornerstone of good governance and sustainable development.<sup>113</sup>

In the post-2001 period, the documents from the sustainable development regime reinforce this conclusion as they consistently emphasise the importance of deepening participation by NSAs at the local and national levels with the objective of attaining sustainable development. During the preparations for the Johannesburg Summit and the Rio+20 Conference, the reports notes the active participation by NSAs at the local, national, and international levels.<sup>114</sup> In this context, the reports refer to the importance of such participation for attaining sustainable development, and its related goals of addressing the drivers of underdevelopment, such as poverty, poor governance, environmental degradation, and poor economic growth.<sup>115</sup>

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<sup>109</sup> UNEP, ‘Good Governance’; Open-Working Group on Sustainable Development Goals, ‘Conflict Prevention, Post-Conflict Peacebuilding and the Promotion of Durable Peace, Rule of Law and Governance’.

<sup>110</sup> Desertification Convention 1994, preamble ¶21.

<sup>111</sup> *Ibid*, art 9(1); art 10(2)(f), and art 13(1).

<sup>112</sup> *Ibid*, art 10(2)(f).

<sup>113</sup> International Law Association, *International Law on Sustainable Development* (2012), 22.

<sup>114</sup> Report of the Preparatory Committee of the WSSD. 4th Session (2002), Annex II; Report of the Preparatory Committee for the WSSD. 2nd Session (2002), Annex I, ¶3-5, ¶16-17.

<sup>115</sup> ECOSOC, ‘Combating Poverty. Report of the Secretary General’ (14 March 2001) E/CN.17/2001/PC/5, ¶22; Report of the Preparatory Committee for the UNCSD. 1st Session (2010), Annex I ¶17, ¶88; United Nations, ‘Report of the Preparatory Committee for the United Nations Conference on Sustainable Development’ (New York, 7-8 March 2011) (New York, 2011) UN Doc A/CONF.216/PC/9, ¶52(e); see also the discussion in UNGA, *Objective and Themes of the United Nations Conference on Sustainable Development. Report of the Secretary-General* (Preparatory Committee for the United Nations Conference on Sustainable Development. Second Session (7-8 March 2011)) (22 December 2010) A/CONF.216/PC/7, ¶67, ¶100; UNCSD Secretariat, ‘Synthesis Report on the Best Practices and Lessons Learned on the Objectives and Themes of United Nations Conference on Sustainable Development. Note by the Secretariat’ (21 January 2011) A/CONF.216/PC/8, ¶15, ¶41, ¶96; Ernie

This connection between local level participation, sustainable development, and drivers of insecurity is also found in the outcome texts from the Johannesburg Summit and Rio+20 Conference. The Johannesburg Declaration, Johannesburg Plan of Implementation, and the Rio+20 Outcome Document include many provisions that affirm the need to enhance the participation by NSAs, such as NGOs, civil society, the private sector and other stakeholders in subnational, national, regional and international sustainable development efforts.<sup>116</sup> The Plan of Implementation calls for governments to promote ‘multi-stakeholder participation and encourage partnerships to support the implementation of Agenda 21 at the regional and sub-regional levels.’<sup>117</sup> It requests states and NSAs to support developing countries to improve the ‘capacity of civil society, including youth, to participate, as appropriate, in designing, implementing and reviewing sustainable development policies and strategies at all levels.’<sup>118</sup> The Rio+20 Outcome Document similarly refers to the ‘meaningful involvement and active participation of ... all major groups... as well as other stakeholders, including local communities, volunteer groups and foundations’<sup>119</sup> in achieving sustainable development. These references indicate an emerging connection between the principles of good governance and participation. The Rio+20 Outcome Document recognises the various interconnections between the local and the global in an increasingly globalised society.<sup>120</sup> Further, the Outcome Document may also be seen as part of international efforts to address concerns over the marginalisation and radicalisation of communities in the global south which present a threat to national and international stability.<sup>121</sup>

The post-2001 climate change decisions similarly emphasise local participatory approaches to developing national adaptation strategies. The Cancún Agreements (2010) affirms that adaptation strategies should follow a ‘country-driven, participatory... approach, taking into consideration vulnerable groups.’<sup>122</sup> This decision also directs countries to undertake national strategies and action plans to ensure the ‘full and effective participation of relevant stakeholders.’<sup>123</sup> It recognises the need to ‘engage a broad range of stakeholders at the global, regional, national and local levels.’<sup>124</sup> It explicitly identifies the importance of supporting capacity building in developing countries by ‘strengthening integrated

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Regehr, ‘The Drivers of Armed Conflict’ (*International Relations and Security Network ETH Zurich*, 2013) <<http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?id=158627>> accessed 28 January 2016.

<sup>116</sup> Millennium Declaration (2000), ¶6; Plan of Implementation 2002, ¶7(d), ¶25(b), ¶40(f), ¶45(h), ¶139(g), and ¶168; Johannesburg Declaration (2002), ¶26; World Summit Outcome (2005), ¶58(g); Rio+20 Outcome Document (2012), ¶31, ¶49, ¶58, ¶76(h), ¶85(h), ¶99, and ¶279.

<sup>117</sup> Plan of Implementation 2002, ¶160(d).

<sup>118</sup> *Ibid.*, ¶126(c).

<sup>119</sup> Rio+20 Outcome Document (2012), ¶43.

<sup>120</sup> Moore, ‘Eco/Feminism’, 11.

<sup>121</sup> Hannah Brock, *Marginalisation of the Majority World: Drivers of Insecurity and the Global South* (Oxford Research Group, 2012), 3.

<sup>122</sup> Cancún Agreements (2010) (10-11 December 2010) ¶12.

<sup>123</sup> *Ibid.*, ¶72.

<sup>124</sup> *Ibid.*, ¶7.

approaches and the participation of various stakeholders in relevant social, economic and environmental policies and actions.<sup>125</sup> Decision 2/CP.17 Outcome of the Work of the AWG-LCA (2011) includes more general references the participation by NSAs in the development of enhanced action on adaptation and in relation to capacity building.<sup>126</sup> These statements incorporate key elements of the participatory and governance principles articulated in the paradigm of sustainable development. The emphasis of such an approach in the climate change regime suggests that states recognise the benefit of good governance and local participation to identify, plan, and respond to climate change and its security risks.<sup>127</sup>

As noted earlier in this chapter, most of the natural resource agreements include very few obligations on states to encourage participation by local communities in their texts. This lack may suggest that in environmental regimes relating to natural resources that are closely associated with economic development and trade, states are more reluctant to incorporate the principles of participation and governance articulated in sustainable development and supported by an ecofeminist ethic. For example, the 1994 ITTA includes a general reference for members to give 'due regard for the interests of local communities.'<sup>128</sup> The later 2006 ITTA includes more focused references to the importance of collaboration between states and other stakeholders in promoting sustainable forest management.<sup>129</sup> These two generalised references to participation suggest a more 'top-down' and state-led approach to local community participation. The inclusion of this approach towards participation in the timber agreements may suggest that where the environmental topic in question is a significant contribution to the economic well-being of states, the latter have been loath to include references to the participation by NSAs at any level.

This analysis suggests that documents from the climate change, desertification, and sustainable development regimes incorporate structurally plural participatory practices in the creation, content, and implementation of their objectives. The support for the participation by different communities thus suggests that for the most part, states and other international actors acknowledge the value of the contributions by the multiple

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<sup>125</sup> Ibid, ¶130(d)

<sup>126</sup> UNFCCC, Decision 2/CP.17 'Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention' in Report of the Conference of the Parties on its seventeenth session, held in Durban from 28 November to 11 December 2011, Addendum, Part Two: Action taken by the Conference of the Parties at its seventeenth session (15 March 2012) FCCC/CP/2011/9/Add.1 (11 December 2011), ¶105 and Part V preamble;

<sup>127</sup> European Commission, 'Commission Implementing Decision on the Annual Action Programme 2015 for the Instrument contributing to Stability and Peace to be financed from the general budget of the European Union. Annex IV: Action Document for Climate Change and Security ' 30 July 2015) Decision No. C(2015) 5209 Final <[https://ec.europa.eu/europeaid/sites/devco/files/icsp-aap2015-climate\\_change\\_and\\_security-20151105\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/icsp-aap2015-climate_change_and_security-20151105_en.pdf)> accessed 28 January 2016.

<sup>128</sup> Tropical Timber Agreement 1994, art 1(j).

<sup>129</sup> Tropical Timber Agreement 2006, preamble (l).

communities that make up the local, national and international spheres. By encouraging structurally plural participation in the creation, development, and implementation of international responses to environmental degradation, these documents suggest that the international community recognised the diverse experiences, cultures and historical contexts in which common environmental concerns may have significantly different impacts.

Analysing the extent to which these regimes include references that support locally driven and bottom up participatory practices has revealed two important insights that will help shape the analysis of these environmental regimes in the two following chapters. First, the support for such participatory practices in the climate change regime is notably different from the analysis of the same documents through the inclusivity lens. This suggests that there has been a consolidation of the sustainable development paradigm in post-Rio and post-2001 periods.

Further, the arguments for supporting such approaches reveal an emerging connection between engaging marginalised communities, addressing the drivers of underdevelopment, and responding to environmental concerns at the local level. The justifications for ensuring local participation indicate that other international concerns are increasingly included in the content and objectives of IEL. As discussed in the literature review and earlier in this chapter, these connections may suggest that such participation has been encouraged in order to respond to potential national and international security risks caused by the marginalisation of communities.

Second, the environmental topic and its connection to the economic interests of a state have an impact on the extent to which the content of the documents contain references to the structurally plural participation by NSAs. As identified in the timber agreements, these documents mainly include top-down participatory provisions and very generalised references to the participation by relevant stakeholders. Once again, this suggests that where the environmental topic has connections to interests that impact on a state's well-being, the content of these provisions generally includes fewer provisions that reflect ecofeminist values of participation.

### 2.3 Contextualism

My findings suggested that many of the pre-2001 documents included references that reflected characteristics of contextualism in relation to the participation by marginalised communities. As noted in Chapter 4, this value gives significance to the voices from humans located in different historical circumstances. In the context of participation, it examines the different types of knowledge, experience, and understandings of the environment that marginalised communities may contribute to the creation, content and implementation of international environmental objectives. This value builds on arguments by ecofeminists who state that valuing traditional knowledge and experiences can contribute towards developing

responses to environmental problems in a way that takes into account the historical context of human/nonhuman interactions. The documents developed after the introduction of sustainable development into IEL contain many examples of contextual participation in their references to marginalised communities.

The biodiversity regime contains significant examples of contextualism in their references to the participation of indigenous peoples and local communities. During the negotiation of the Biodiversity Convention, the reports by the AWG-Biodiversity refer to the value of indigenous peoples' environmental experience and knowledge to biodiversity conservation. These reports indicate that states supported the participation by indigenous peoples in the implementation of the convention because their unique environmental knowledge had value for the sustainable utilisation of biological resources.<sup>130</sup> The discussion contained in the reports suggests that the support for some types of NSAs, such as indigenous peoples and local communities, may be based on the potential value that their knowledge can contribute to ensure the sustainable exploitation and management of states' biological resources. This argument, while acknowledging the contribution of different knowledge, experiences, and context, indicates that such support is on the basis that it has potential economic value.

However, the negotiations of the Biodiversity Convention also indicate that states and state experts understood that conservation efforts would fail without the participation by local communities and indigenous people. This recognition suggests that States were increasingly aware that the experiences and expertise of local communities is specific to the location in which they are placed and as a result, local communities may be the best source of knowledge and information about biological conservation. The AWG-Biodiversity supported the introduction of participatory approaches for indigenous peoples as the experiences, knowledge and traditional uses by indigenous peoples are often 'consistent with conservation goals.'<sup>131</sup> The Guatemalan expert argued that in-situ biodiversity conservation would be unsuccessful without participation by local communities and the contribution of their local knowledge.<sup>132</sup> Similarly, the Chilean expert stated that the convention should

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<sup>130</sup> UNEP, 'Report of the *Ad Hoc* Working Group of Experts on Biological Diversity on its First Session' (Geneva, 16-18 November 1988) (9 November 1989) UNEP/Bio.Div.1/3, ¶17; UNEP, 'Report of the *Ad Hoc* Working Group of Experts on Biological Diversity on the Work of its Second Session' (Geneva, 19-23 February 1990) (23 February 1990) UNEP/Bio.Div.2/3, Annex I, 11; see also UNEP, 'Report of the *Ad Hoc* Working Group on the Work of its Third Session in Preparation for a Legal Instrument on Biological Diversity of the Planet' (Geneva, 9-13 July 1990) (13 August 1990) UNEP/Bio.Div.3/12, Annex I, ¶7-¶8; UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts on Biological Diversity on the Work of its First Session' (Nairobi, 19-23 November 1990) (28 November 1990) UNEP/Bio.Div/WG.2/1/4, ¶57.

<sup>131</sup> Report of the AWG on Biological Diversity, 2nd Session (1990), Annex I, 11.

<sup>132</sup> UNEP, 'Statements, Amendments and Proposals Submitted to the Secretariat During the First session of the *Ad Hoc* Working Group of Legal and Technical Experts on Biological Diversity' (5 February 1991) UNEP/Bio.Div/WG.2/1/4/Add.1, 23.

‘ensure the systematic participation of populations living next to areas of interest.’<sup>133</sup> The content of the AWG-Biodiversity reports suggest that states were aware of the value of local knowledge and participation for successful conservation efforts. In doing so, they reflect characteristics of the contextualism value because they recognise the differences between locations, communities, and knowledge that is context specific.

The content of the Biodiversity Convention itself contains characteristics of contextual participation in its references to indigenous peoples and local communities. Following from the argument outlined by the Guatemalan expert, the convention includes state obligations towards ensuring local communities and indigenous peoples’ participation in connection to in-situ conservation, sustainable use of biodiversity components, and in the exchange of information.<sup>134</sup> This approach acknowledges the expertise, knowledge, and experience of the environment which such communities hold. For example, Article 8(j) recognises the benefit of indigenous and local communities’ participation in in-situ conservation. It requests parties to ‘respect, preserve, and maintain’ traditional knowledge, practices and innovations.<sup>135</sup> This provision incorporates characteristics of contextualism because it recognises the traditional knowledge and innovation that is context specific. Similarly, Article 10 requests states to protect and ‘encourage customary use of biological resources in accordance with traditional cultural practices.’<sup>136</sup> These two articles indicate that in some natural resource conventions, states supported the participation by NSAs because of their local expertise, knowledge and innovations. In doing so, they reflect contextualism and incorporate principles of sustainable development by taking into account these interests which form the basis of accountability and participation.

However, the Biodiversity Convention also recognises the value of local knowledge, experience and tradition in the successful implementation of sustainable development, and the sustainable exploitation of natural resources. This is similar to the content of reports by the CRIC who observed that the participation by local communities and indigenous populations was ‘critical’ to enable joint planning and information sharing for natural resource management processes.<sup>137</sup> Not only does this suggest that states took into account

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<sup>133</sup> Ibid, 22.

<sup>134</sup> Biodiversity Convention 1992, art 8, art 10, art 17(2), and art 18.

<sup>135</sup> Ibid, art 8(j).

<sup>136</sup> Ibid, art 10(c); see also, art 10(d).

<sup>137</sup> UNCCD CRIC, ‘Report of the Committee for the Review of the Implementation of the Convention on its First Session’ (Rome 11-22 November 2002) (17 January 2003) ICCD/CRIC(1)/10, ¶71-72, ¶74; UNCCD CRIC, ‘Synthesis and Preliminary Analysis of Information Contained in Reports Submitted by Affected Asian Country Parties, and Progress Made in the Formulation and Implementation of Subregional and Regional Action Programmes in Asia. Note by the Secretariat’ (10 June 2002) ICCD/CRIC(1)/3/Add.1, ¶12 - ¶13, and ¶30-¶34; UNCCD CRIC, ‘Review of Reports on Implementation by Affected Asian Country Parties, Including on the Participatory Process, and on Experience Gained and Results Achieved in the Preparation and Implementation of Action Programmes. Addendum: Inputs from the Regional Meeting of Affected Asian Country Parties’ (12 August 2002) ICCD/CRIC(1)/3/Add.3, ¶37 and ¶41; UNCCD CRIC, ‘Synthesis and Preliminary Analysis of



the diversity of cultures, ecosystems and structures amongst communities,<sup>138</sup> but they also recognised such knowledge can make a significant contribution to the development of local technology, and to the economic well-being of communities and States.

The emphasis on the value of local communities' knowledge and innovation is included in the speeches made on behalf of states during the UNGA High-Level Summits. The contents of the speeches suggests that states in the post-2001 period increasingly link NSA participation as a way to achieve objectives relating to the foremost interests of the international community, such as sustainable development, poverty reduction, and economic development. For example, the speeches refer to the general importance of NSA participation as a way to achieve economic development,<sup>139</sup> as a strategy for poverty reduction,<sup>140</sup> and as a way to counter the 'ideologues of division of civilisation.'<sup>141</sup> These statements reflect the dominant considerations of the international community and suggest that state support the participation by NSAs to the extent that it will contribute to the achievement of these objectives.

The connections between sustainable development, NSA participation, and poverty reduction in these speeches signify the continued belief by the international community that liberal values of participation, good governance, and free trade enable the peaceful secure coexistence of local communities and states. In doing so, the content of these speeches incorporate the emancipatory potential of human security. This is because they connect sustainable development, good governance, participation, economic development, and the technological potential of communities in order to reduce the the insecurity of peoples and of states.<sup>142</sup> The emphasis on the value of participation in addressing the drivers of underdevelopment (poverty, economic stagnation, poor governance) through the paradigm of sustainable development suggests that in the post-2001 period, the justifications such participation have been incorporated within wider discussions concerning the role of sustainable development in attaining peace and security for individuals and states.

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Information Contained in Reports Submitted by Affected Latin American and Caribbean Country Parties, and Progress Made in the Formulation and Implementation of Subregional and Regional Action Programmes in Latin America and the Caribbean. Note by the Secretariat' (18 June 2002) ICCD/CRIC(1)/4/Add.1, ¶33 -¶34, and ¶76

<sup>138</sup> World Women's Congress for a Healthy Planet, Womens Action Agenda 21 (Miami, 1991).

<sup>139</sup> UNGA Verbatim Record (6 September 2000) UN Doc A/55/PV.4, 23 (Republic of Guyana).

<sup>140</sup> UNGA Verbatim Record (15 September 2005) UN Doc A/60/PV.5, 26 (State of Qatar) and 45 (People's Republic of Bangladesh)

<sup>141</sup> Ibid, 4 (Russian Federation)

<sup>142</sup> Chapter 2, 67-73; see also Tickner, *Gendering World Politics*, 47; Sumudu Atapattu, 'Climate Change in South Asia: Towards An Towards an Equitable Legal Response within a Framework of Sustainable Development and Human Security' (Working Paper No 1, Sustainable Development Law on Climate Change Working Paper Series International Development Law Organization, Centre for International Sustainable Development December 2011) <[http://cisdl.org/public/docs/news/1.\\_Sumudu\\_Atapattu\\_1.pdf](http://cisdl.org/public/docs/news/1._Sumudu_Atapattu_1.pdf)> accessed 10 May 2016, 21; Behrouz Ajdari and Seyed Esmaeil Asgharpour, 'Human Security and Development, Emphasizing on Sustainable Development' (2011) 19 *Procedia: Social and Behavioral Sciences* 41, 43.

Therefore, the extent to which the content of these documents reflect the contextual value is less clear. There are many references that indicate states and international institutions supported the participation by NSAs because of their unique knowledge and that such knowledge is context specific. In this way, these documents connect the expertise of some marginalised communities, notably indigenous peoples and local communities, with successful conservation and sustainable management of natural resources. This association is particularly evident in the biodiversity regime. However, the content of the speeches made on behalf of states at the two UNGA High-Level Summits contain strong similarities to the arguments that associate sustainable development, peace and security discussed in the literature review. This difference suggests that in some contexts, states supported the participation by NSAs to enable their experiences, voices, and knowledge to contribute to the creation of international responses to environment and development. However, the underlying assumptions and arguments supporting this participation may be increasingly informed by liberal assumptions concerning solutions to insecurity based upon the principles of good governance, participation, and responding to the drivers of underdevelopment through sustainable development objectives.

## 2.4 Openness

Both an ecofeminist ethic and the paradigm of sustainable development emphasise the importance of accountability and transparency in the way in which states and other international institutions seek to respond to environmental problems. In Chapter 2, I noted that the Brundtland Report emphasised the importance of openness and accountability as a key procedural element of environmental decision-making. Both the Brundtland Report and the later report by the Commission on Global Governance emphasised the valuable contribution of NSAs in facilitating accountability and openness by governments, the private sector, and other actors involved in sustainable development.<sup>143</sup> Earlier in this chapter, I suggested that NSAs perform a valuable function in the international sphere by supporting good governance, including holding states and institutions to account, and enabling an open, transparent, and inclusive environment in which to negotiate environmental agreements. Therefore, the negotiations in the different environmental regimes may suggest that states have recognised the importance of such practices. Further, environmental issues such as sustainable development and desertification may not be viewed as a potential security risk, thereby legitimising exceptionalism and exclusion of states and NSAs from deliberations.

The content of the documents relating to environmental areas such as desertification, natural resources, and sustainable development reflect a more open participatory approach.

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<sup>143</sup> WCED, *Our Common Future*, 312-314; Commission of Global Governance, *Our Global Neighbourhood: Report of the Commission on Global Governance* (Oxford University Press 1995), 253-256.

This openness is particularly evident in negotiations that occur after the adoption of the Rio Declaration and Agenda 21. For example, the content of the reports produced by the INCD and the UN Fish Stocks Conference both include references that reflect an open participatory approach in which NGOs were able to actively take part in discussions concerning the negotiating text and contribute their knowledge and expertise.<sup>144</sup> During the INCD, NGOs took part in discussions concerning their prospective role in the decision-making body of the Desertification Convention. This open approach towards NSA participation enabled them to perform functions such as accountability, information dissemination and monitoring of state delegations – all of which characterise open participation.<sup>145</sup> This analysis suggests that in the post-Rio period, states supported the participation by NSAs and their function in opening up the negotiations to wider civil society in some natural resource regimes, as well as in the desertification and sustainable development regime.

The post-2001 period consolidates state support for openness in the area of sustainable development. Building on the procedural elements of the participation principle in sustainable development, the 2001 Secretary-General's Report on Major Groups recognised the importance of establishing accountable and transparent participatory mechanisms at the international level.<sup>146</sup> It acknowledged that some initiatives building on Agenda 21 and engaging with the private sector were criticised by some NSAs for their lack of accountability and transparency. It also recognised the criticisms facing some intergovernmental organisations, such as the World Trade Organisation (WTO), concerning lack of transparency and engagement with CSOs, had begun to be addressed, indicating that these institutions had started to open up consultations with NSAs.<sup>147</sup> This commentary indicates that the procedural principles of participation in sustainable development have been consolidated in the post-2001 period. In particular, the report suggests that international institutions such as the United Nations value the role of NSAs to hold states and institutions accountable and ensure transparency in their activities.

The sentiments expressed in this report are reflected in the content of the Johannesburg and Rio+20 Conference Preparatory Committee reports. They both record the delegates' support for 'transparent and inclusive preparatory process that fully engaged civil society

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<sup>144</sup> UNGA Resolution 47/192 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (22 December 1992) UN Doc A/RES/47/192, ¶12; 'Summary of the Second Substantive Session of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks: 14-31 March 1994' Earth Negotiations Bulletin <<http://www.iisd.ca/vol07/0730000e.html>> accessed 5 March 2015; United Nations, *Report of the Intergovernmental Negotiating Committee for the Desertification Convention. 1st Session* (1993), Appendix III, Report of Working Group I, ¶15 and Appendix III, Report of Working Group II, ¶14; 'INCD Highlights: Tuesday, 14 September 1993' Earth Negotiations Bulletin <<http://www.iisd.ca/vol04/0414000e.html>> accessed 30 January 2015; , 'Summary of the Second Session'; Betsill and Corell, 'NGO Influence', 93-94

<sup>145</sup> Raustiala, 'The "Participatory Revolution"', 560-562, 546; Raustiala, 'States, NGOs', 728.

<sup>146</sup> ECOSOC, *Major Groups. Report of the Secretary-General* (14 March 2001) UN Doc E/CN.17/2001/PC/4, ¶19.

<sup>147</sup> *Ibid*, ¶8

and all major groups.<sup>148</sup> The reports note the support by members of the international community, such as intergovernmental organisations, international institutions, and some UN programmes, for the participation by NSAs and the transparency and accountability such participation would offer.<sup>149</sup> This support suggests that in the context of attaining sustainable development, states encouraged the participation by NSAs and the openness that such participation enabled.

This support for the open and transparent participation by NSAs is reiterated in the outcome texts adopted in the fisheries, desertification, and sustainable development regimes. Article 36 of the UN Fish Stocks Agreement enabled the Secretary-General to invite intergovernmental organisations and NGOs to participate as observers in a review conference to assess the effectiveness of the Agreement.<sup>150</sup> The 10-Year Strategic Plan and Framework to Enhance the Implementation of the Desertification Convention emphasised the importance of open, transparent and objective institutions to ensure the successful implementation of the strategic plan.<sup>151</sup> The content of the Rio+20 Conference Outcome Document affirmed that the institutional framework for sustainable development should be ‘inclusive, transparent, and effective’<sup>152</sup> and that it should ‘promote transparency and broad public participation.’<sup>153</sup> The content of the Fish Stock Agreement and soft law documents suggest that in specific environmental regimes that relate to the environmental areas of natural resources, sustainable development and desertification, states support the participation by NSAs to ensure transparency and accountability of implementation of states and some NSAs’ objectives. As these documents similarly emphasise the importance of sustainable development in their texts, this analysis suggests that there has been a consolidation of the principles of participation articulated in those environmental areas.

However, the preparations and outcome texts developed under the climate change regime continue to provide exceptions to the general trend identified in the discussion

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<sup>148</sup> Report of the Preparatory Committee for the UNCSD. 1st Session (2010), Annex I, ¶13; see also ¶3; UNCSD Secretariat, ‘Organizational and Procedural Matters. Note by the Secretariat’ (1 April 2010) A/CONF.216/PC/3, ¶17; Cordonier Segger and Khalfan, *Sustainable Development Law*, 164.

<sup>149</sup> See the discussion of Type II and Type I Outcomes of the Summit, Report of the Preparatory Committee of the WSSD. 4th Session (2002), Annex III; Commission on Sustainable Development, *Report of the Commission on Sustainable Development acting as the Preparatory Committee for the World Summit on Sustainable Development on the Work of its Third Session* (New York, 25 March - 5 April 2002) (2002) UN Doc A/CONF.199/PC/14, Annex I; Report of the Preparatory Committee for the WSSD. 2nd Session (2002), Annex III.

<sup>150</sup> UN Fish Stocks Agreement 1995, art 36(1).

<sup>151</sup> Decision 3/COP.8 ‘The 10-Year Strategic Plan and Framework to Enhance the Implementation of the Convention (2008-2018)’ in Report of the Conference of the Parties on its Eight Session, held in Madrid from 3 to 14 September 2007, Addendum, Part Two: Action Taken by the Conference of the Parties at its Eight Session (23 October 2007) ICCD/COP(8)/16/Add.1 (14 September 2007), Annex ¶13.

<sup>152</sup> Rio+20 Outcome Document (2012) ¶75; see also ¶10 and ¶67.

<sup>153</sup> *Ibid*, ¶76(h); see also ¶85 and ¶87(h). Both emphasise ensuring the ‘active participation’ by stakeholders and promoting transparency and effective engagement of civil society.

above. As noted in section 2.1, the climate change regime has undertaken practices that exclude NSAs from observing the negotiations, as well as impairing the ability of some developing countries to participate.<sup>154</sup> This practice has continued in recent negotiations where civil society participation has been impaired because of space limitations of the conference centre and for security reasons.<sup>155</sup> For example, during COP-15, many of the meetings occurred behind closed doors and excluded both NSAs and some state delegations.<sup>156</sup> Space considerations were also used to justify the exclusion of CSOs during the negotiations and deliberations of the AWG-LCA and AWG-KP.<sup>157</sup> One environmental activist noted that the chair of these meetings has significant discretion over who could attend the negotiating meetings.<sup>158</sup> These exclusionary practices serve to marginalise many NSAs and impair the accountability and transparency functions that they may provide in the international sphere.

The marginalisation and exclusion of NSAs supports the analysis above that environmental areas that are related to the economic productivity, security and well-being of states generally include fewer references to support the participation by NSAs in their preparatory process and adopted outcome texts. This suggests that in negotiations concerning environmental issues that have close ties and significant impact on issues of national security, such as economic security, development, trade interests, and development, states are more likely to undertake difficult bargaining and negotiation sessions away from public scrutiny. This lack of openness and transparency in the area of climate change suggests that a tension is emerging between the broader objectives of sustainable development, in which the participation by NSAs and the principles of good governance are championed as central to achieving individual and state well-being, and the resistance to such openness in the negotiations of environmental issues that have a significant impact on the national interests and security of states.

The marginalisation of NSAs in the climate change regime reaffirms what some have referred to as the perceived democratic gap in the international sphere, where citizens are often unable to bridge the gap between the public (international) sphere and the private

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<sup>154</sup> Lars H Gulbrandsen and Steinar Andresen, 'NGO Influence in the Implementation of the Kyoto Protocol: Compliance, Flexibility Mechanisms, and Sinks' (2004) 4(4) *Global Environ Polit* 54, 29.

<sup>155</sup> 'Doors Wide Shut' *ECO: NGO Newsletter* (11 August 2009)

<[http://climatenetwork.org/sites/default/files/Eco2\\_Bonn-III.pdf](http://climatenetwork.org/sites/default/files/Eco2_Bonn-III.pdf)> accessed 18 June 2014, 2; Fisher, 'COP-15 in Copenhagen', 11; van den Bossche, 'The Copenhagen Accord - The Way Forward'; 'The Dream and the Reality in Cancun', 2. 'This is Our Home Too!'; Visionontv, 'Getting surreally stupid at cop15 as the NGOs are...' (16 December 2009) <<https://www.youtube.com/watch?v=Ce3a9crrN88>> accessed 19 June 2015, cited in Fisher, 'COP-15 in Copenhagen', 17.

<sup>156</sup> Mark Lynas, 'How Do I Know China Wrecked the Copenhagen deal? I was in the Room' *The Guardian* (London, 22 December 2009) <<http://www.theguardian.com/environment/2009/dec/22/copenhagen-climate-change-mark-lynas>> accessed 28 July 2014; Radoslav S Dimitrov, 'Inside UN Climate Change Negotiations: The Copenhagen Conference' (2010) 27(6) *Rev Policy Res* 795.

<sup>157</sup> 'Doors Wide Shut', 2.

<sup>158</sup> *Ibid*, 2.

(national) sphere.<sup>159</sup> For many citizens, meaningful participation in the international sphere is beyond their ability without NGOs, especially, who are able to put forward the arguments of those who are unable to be represented.<sup>160</sup> NGOs, in particular have been described as 'effective guardians of the public interest in environmental protection' vis-à-vis the perception of states as 'preoccupied by national self-interest.'<sup>161</sup> Therefore, the exclusion of, or limited opportunities for, NSAs to engage in public, democratic discussion concerning environmental issues in certain environmental regimes may suggest that some environmental regimes are unwilling to address this criticism.

The analysis undertaken in this section reveals that the extent to which states support open participatory practices depends upon the subject matter under discussion, and the forum in which the discussion occurs. Environmental subjects, such as desertification, fisheries, and those documents concerning sustainable development, integrate both open participatory practices in the preparation processes and notable references to transparency, openness, and inclusive participatory practices in their adopted texts. This analysis suggests that in some contexts, states continue to consolidate the participation by NSAs as integral to sustainable development at the different levels of policy development and implementation.

However, the analysis of the documents from the climate change regime suggests that there is tension between the increasingly open participatory practices in those regimes which integrate the paradigm of sustainable development, and those participatory practices that serve to marginalise and exclude states and NSAs during the climate change negotiations. The implications of such exclusion suggest that where negotiations touch on interests relating to trade, the economy, development and security, states are less willing to engage in participatory practices in which NSAs may seek to hold them accountable, or engage in transparent practices. As will be discussed in the following chapter, this creates an interesting paradox where states, and some NSAs, support the inclusion of other issues into IEL, but this may also mean that those issues are prioritised in the resulting outcome documents.

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<sup>159</sup> Roger A. Coate, Chadwick F. Alger and Ronnie D. Lipschutz, 'The United Nations and Civil Society: Creative Partnerships for Sustainable Development' (1996) 21(1) *Alternatives: Global, Local, Political* 93, 94; Diane Otto, 'Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society' (1996) 18 *Hum Rts Q* 107, 110; Raustiala, 'The "Participatory Revolution"', 539-540; Lang, *NGOs, Civil Society, and the Public Sphere*, 3; see also Charlesworth, 'The Public/Private Distinction'.

<sup>160</sup> Morrow, 'Perspectives on Environmental Law', 129.

<sup>161</sup> Jacqueline Peel, 'Giving the Public a Voice in the Protection of the Global Environment: Avenues for Participation by NGOs in Dispute Resolution at the European Court of Justice and World Trade Organization' (2001) 12(1) *Colo J Int'l Envtl L & Pol'y* 47, 48; WCED, *Our Common Future*, Chapter 1 ¶14; Christopher D Stone, 'Defending the Global Commons' in Philippe Sands (ed), *Greening International Law* (The New Press 1994), 39-41.

### 3. CONCLUSION

This chapter examined the participation by states and NSAs in the creation, content, and implementation of IEL. I started by examining who participates as this can reveal the types of areas and topics where states support NSA participation and those areas and topics where states and NSAs have been marginalised. This process of documentary analysis revealed the issues and topics of concern for those who are able to participate. This analysis is the first step in understanding the extent to which the securitisation of the environment has altered the basis on which states seek to protect the environment. It forms a stepping stone to, and informs, the analysis undertaken in the next chapter.

This chapter found that the integration of the paradigm of sustainable development into IEL corresponds with a significant increase in references to the participation by NSAs in the creation, content, and implementation of IEL. The extent to which these participatory provisions reflect ecofeminist values of inclusivity, structural pluralism, contextualism, and openness in their references to participation depends on the environmental area, its connection with other issues or state interests, the age of the document, and the forum in which the documents were negotiated and adopted. By analysing the preparatory documents and adopted outcome texts, it is possible to draw two broad conclusions from these variables.

First, there is a tension emerging between those environmental areas that have built their regime on the concept of sustainable development and those environmental areas which are closely aligned to the economic and developmental well-being of states. The documents from the sustainable development regime, desertification regime and, to a lesser extent, the fisheries and biodiversity regimes include references that facilitate the participation by NSAs, and especially those from traditionally marginalised communities. The language used to refer to the participation by NSAs indicates a widening and deepening of their participation as articulated by the Rio Declaration and Agenda 21. As the biodiversity, sustainable development, desertification, and fisheries regimes were consolidated after the Rio Conference, the content of these outcome documents emphasises the importance of involving local populations and marginalised communities in environmental decision-making, supporting 'bottom-up' participatory mechanisms, and encouraging the participation of indigenous peoples and local communities because of their knowledge, experience, and expertise of their local environment. These documents also highlight the areas in which such participation is encouraged, and these generally relate to issues such as poverty reduction, local development, environmental management, and technological innovation. These participatory approaches reflect many of the values of the ecofeminist ethic and further suggest that states acknowledge the value of such participation in the creation, content and implementation of IEL.

However, the analysis suggests that where responding to environmental concerns may have a detrimental effect on economic, commercial and trade interests, states are less supportive of inclusive participatory practices. The use of 'informal' working groups, 'consensus minus one' and other negotiating practices meant that some states were marginalised or excluded during the negotiations of the UNFCCC and the Cancún Agreements. Further, these exclusionary practices serve to marginalise NSAs who have criticised their exclusion during the final stages of negotiations of the soft-law COP decisions. The analysis suggests that more exclusionary participatory practices occur where the discussions concerning climate change relate to economic, commercial, and trade implications of the proposed measures. Therefore, the extent to which these documents support the participation by NSAs correlates with the degree to which any such measures may have an impact on state economic well-being and, in a broad sense, state security.

Second, the analysis suggests that the justifications for the participation by NSAs in the creation, content, and implementation of IEL have altered over the time-period. Whereas the documents that incorporated the concept of sustainable development in the Rio and post-Rio period supported the participation by NSAs on the basis that it would improve the economic and social development of states, the language included in later documents suggests that such participation is encouraged as part of the process of preventing conflict and insecurity. As discussed above, the later sustainable development documents, and the speeches made on behalf of states during the high-level summits, associate NSA participation with achieving other goals such as poverty reduction, economic development and countering threatening ideologies. Each of these non-environmental considerations issues has been identified as a driver of underdevelopment and linked with destabilising communities and exacerbating the security risks of states and the international community. Thus, the inclusion of such topics and their connection with sustainable development and environmental topics may suggest that the international community considers IEL as a tool in the fight against underdevelopment and other drivers of insecurity.

Where negotiations affect economic, development or security interests, some states are less willing to engage in inclusive, participatory practices. As sustainable development is an integrationist principle, it seeks to balance the different norms, principles and interests between different areas of international law. At a more practical level, the concept of sustainable development seeks to take into account often-competing interests between states, and between states and NSAs in different spheres of international concern. With the greater inclusion of other international considerations, such as development, the economy, science and technology, and security, it may be that these considerations are so closely linked to individual state interests that their integration into IEL has altered the ways in which states view the environment, and also their reasons for seeking to protect it. The implications of this difference will be examined in the following chapter where I will focus



on the non-environmental considerations identified during the examination of the participation by NSAs, and the justifications put forward by states and NSAs for their inclusion in IEL.

## 6. The Integration of Development, Economic, Scientific, Security and Technological Considerations into International Environmental Law

In the last chapter, I examined the participation by NSAs in the creation, content, and implementation of IEL. I found that where IEL adopted sustainable development as the dominant paradigm, the documents showed significant support for the participation of NSAs. I drew two conclusions from this examination of the documents. First, support for the participation by NSAs changed when this participation was considered to have an impact on state interests, economic well-being, and in a broad sense, its security. Second, the justifications used to support the participation by NSAs altered over the time-period. From these conclusions, I suggested that the inclusion of non-environmental considerations such as development, the economy, trade, and science and technology into IEL affected the way in which NSAs were encouraged to participate. Following from this, I suggested non-environmental considerations have been incorporated into IEL because they can help solve the interrelated drivers of poverty, underdevelopment, and environmental degradation which have been associated with insecurity and conflict.

This chapter focuses more on the integration of non-environmental considerations, such as the economy, development, science and technology in IEL and the justifications used to support their inclusion. This chapter examines the integration of these non-environmental considerations because it may identify any shared values, beliefs, and assumptions between the arguments supporting environment/security connections in international discourse, and those used in arguments supporting the protection of the environment. As these non-environmental considerations are considered key factors that lead to sustainable development, members of the international community believe that promoting sustainable development and growth will solve the drivers of insecurity and provide the means to address environmental degradation. I suggest that the introduction of sustainable development as the dominant paradigm in IEL, with its integration of socio-economic development, economic, scientific and technological considerations may have altered the basis on which states protect the environment because it prioritises economic growth and development. Furthermore, the inclusion of these considerations into IEL may also have important implications for the overall perception of the environment by the international community, but this is examined in a later chapter.

Underdevelopment and environment degradation have increasingly been coupled together by the international community because they are seen as affecting the security of states and the international community as a whole. This interconnected approach was consolidated with the introduction of sustainable development by the 1987 Brundtland

Report. The report argued that sustainable development could be a solution to national, regional and international insecurity. This is because it could respond to the drivers of insecurity by supporting the socio-economic development of underdeveloped countries through the sustainable exploitation of natural resources.<sup>1</sup> This response was explicitly integrative. It sought to address environment, social, and development problems in an interconnected and mutually supportive way and thus recognised the interconnections between different areas of international law, as well as international interests.<sup>2</sup>

The concept of sustainable development, introduced by the Brundtland Report, recognised that transboundary problems would have to be addressed in a way that took into account the different interests of states, and levels of development.<sup>3</sup> Therefore, the concept of sustainable development, articulated in the 1992 Rio Declaration, incorporates principles of differentiation in recognition of the historical differences in the contributions by developed and developing countries to global environmental problems.<sup>4</sup> In doing so, the concept recognises and addresses the respective differences between the economic and technical capacity of States to address environmental problems.<sup>5</sup>

However, critics of sustainable development argue that certain elements of the concept have been prioritised.<sup>6</sup> Previously, I suggested that the concept of sustainable development contained in the Brundtland Report embodied the outlook of post-Cold War liberal internationalism.<sup>7</sup> Sustainable development was seen as a solution to the drivers of state and human insecurity by supporting economic liberalism, democracy and democratic governance, and the sustainable exploitation of natural resources for socio-economic development.<sup>8</sup> Each of these elements of sustainable development relate to the values and practices needed to prevent conflict and maintain peace and security. The assumptions that inform this argument have been criticised because it subjects environmental resources to 'economisation' and measures their value against economic and development rationales

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<sup>1</sup> WCED, *Our Common Future*, chapter 11.

<sup>2</sup> World Charter for Nature (1982), ¶7; Commission on Sustainable Development, 'Principles of International Law', ¶13, ¶16-¶18; International Law Association, ILA Declaration of Principles Relating to Sustainable Development (New Delhi, 6 April 2002), principle 7; also, McGoldrick, 'Sustainable Development and Human Rights'; *Gabčíkovo-Nagymaros Project*, 140; *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, ¶53

<sup>3</sup> Redclift, 'Oxymoron Comes of Age'; McGoldrick, 'Sustainable Development and Human Rights'; Atapattu, 'Myth or Reality'.

<sup>4</sup> Rio Declaration 1992, Principle 7; Cordonier Segger and Khalfan, *Sustainable Development Law*, 133.

<sup>5</sup> Cordonier Segger and Khalfan, *Sustainable Development Law*, 133.

<sup>6</sup> E.g. Redclift, 'Oxymoron Comes of Age'; McGoldrick, 'Sustainable Development and Human Rights'; Atapattu, 'Myth or Reality'.

<sup>7</sup> Chapter 2, 49-50.

<sup>8</sup> Begby and Burgess, 'Human Security and Liberal Peace', 92; Leonardsson and Rudd, 'The 'Local Turn' in Peacebuilding', 827-834.

rather than other values.<sup>9</sup> Some argue that this prioritisation alters the balance between the three components of sustainable development.<sup>10</sup>

With these tensions in mind, this chapter turns to examine the content of the environmental documents and the extent to which the consolidation of sustainable development as the dominant paradigm in IEL, its integration of non-environmental considerations, and the justifications for their integration has altered the basis on which the international community protects the environment. By identifying which areas have been prioritised, and the justifications for such prioritisation through an ecofeminist analytical framework, it is possible to reveal the underlying beliefs, values, and assumptions that have informed the prioritisation of non-environmental considerations in IEL. In doing so, I can examine the extent to which (if at all), the securitisation of the environment (as identified in Chapter 2), has altered the basis for protecting the environment.

## 1. FINDINGS

In this chapter, I first identified the different types of non-environmental considerations that states proposed should be included in any responses to environmental problems. To do this, I drew on the findings from Chapter 5 in which I identified the environmental areas and non-environmental considerations where states and NSAs were either included or excluded from participating. Once I identified the non-environmental considerations that were included in IEL, I examined the assumptions that informed the arguments supporting their inclusion into the documents. During this process, I noted similarities between the arguments justifying the inclusion of these non-environmental considerations and the values that form the interconnecting lenses (inclusivity, structural pluralism, contextualism, and openness) through which I analysed the documents. Where the arguments for the inclusion of these non-environmental considerations supported an integrated, balanced and context dependent inclusion of other international interests, this may suggest that the international community recognised that the environment was of equal importance in IEL.<sup>11</sup>

I initially read the documents and identified arguments and references to the integration of non-environmental considerations and the characteristics within these references that reflected ecofeminist values. For example, those documents that reflected the value of

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<sup>9</sup> 'Economisation' implies that 'economy is an achievement rather than a starting point or a pre-existing reality that can simply be revealed and acted upon.' Koray Çalışkan and Michel Callon, 'Economization, Part 1: Shifting Attention from the Economy Towards Processes of Economization' (2009) 38(3) *Economy and Society* 369, 370; Valérie Boisvert, 'Conservation Banking Mechanisms and the Economization of Nature: An Institutional Analysis' (2015) 15 *Ecosystem Services* 134, 136; Yahya M. Madra and Fikret Adaman, 'Neoliberal Reason and Its Forms: De-Politicisation Through Economisation' (2014) 46(3) *Antipode* 691; Michael Rühle, 'The Economization of Security: A Challenge to Transatlantic Cohesion' (2013) 35(1) *American Foreign Policy Interests* 15; and WCED, *Our Common Future*, chapter 6 para 1.

<sup>10</sup> McCloskey, 'The Emperor Has No Clothes', 154.

<sup>11</sup> Chapter 2, section 3.3; Agarwal, 'Gender and Environment Debate', 127.

inclusivity supported the integration of non-environmental considerations in a way that acknowledged the interdependency between issue areas in a non-privileged manner, and recognised that human society is interrelated with and integrated into the Earth's ecosystems.<sup>12</sup> Those documents that reflected the value of structural pluralism supported arguments that took into account that environmental degradation and non-environmental considerations affected communities differently and is dependent on cultural and historical difference. Arguments that reflected the value of contextualism took into account that communities and peoples experience economic, social, environment and security interests in socially constructed ways that depended on culture and location. In this way they demonstrated a contextual understanding of the interconnections between people, place and cultures. Arguments that reflect openness supported the integration of environmental and non-environmental considerations in a transparent and open manner that enabled the creation and development of principles and values that take into account all experiences.

My initial findings revealed that the environmental area, age, and forum in which the document was created affected the extent to which the justifications for integrating non-environmental considerations reflected a balanced, contextual, and integrated approach. I will outline my findings in the discussion below.

## 1.1 High-level integration

The justifications in the documents for the integration of non-environmental considerations did not reflect many of the ecofeminist characteristics. In general, this was consistent across the environmental area, age of the document, and forum in which the document was adopted. In the discussion below, I identify the regimes in which the justifications take into account the differences between states as a reason for integrating non-environmental considerations, particularly those relating to economic, development, and trade differences.

### 1.1.1 Sustainable Development

Many of the preparatory documents and adopted outcome texts from the sustainable development regime reflected the value of structural pluralism in the way that they integrated other non-environmental considerations into their texts. The preparatory documents and adopted outcome texts from the 1972 Stockholm Conference reflected this value as they took into account economic interests and the perceived need for developing countries to pursue economic growth and development as a precursor for achieving environmental goals. This differentiation was contained in the text of the 1972 Stockholm

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<sup>12</sup> Lorraine Code, 'Flourishing' (1999) 4(1) *Ethics and the Environment* 63, 63-64; Serenella Iovino, 'Ecocriticism and a Non-Anthropocentric Humanism: Reflections on Local Natures and Global Responsibilities' in Laurenz Volkmann (ed), *Local Natures, Global Responsibilities: Ecocritical Perspectives on the new English Literatures* (Rodopi 2009), 35-37.

Declaration and in the 1972 Stockholm Action Plan which differentiated the objectives for developed and developing countries depending on the economic level of the country.

Documents from the 1992 Rio Conference similarly integrated non-environmental considerations to account for the differences between developing and developed countries and the respective capabilities of each to respond to environmental problems. Unlike the earlier Stockholm Conference, the documents from the Rio Conference included more references that took into account social considerations, as well as the different user groups in relation to the development, social, and economic objectives of sustainable development. The Rio Preparatory Committee Reports included provisions that explicitly recognised the interconnections between socio-economic considerations, development and the environment. This recognition has an effect on the well-being of different social groups and on developed and developing countries. In recognition of these differences between social groups, and between countries, the documents included references that acknowledged that the response of developing countries to environmental problems required greater support for social as well as economic development.

The adopted outcome texts from the Rio Conference reflected the value of structural pluralism by taking into account the differences between developed and developing country parties and the additional support that developing countries require to respond to environmental problems. In this, they followed the Stockholm Declaration and Action Plan before them.

Similarly, the later documents in the sustainable development regime, such as those produced during the preparations for the 2002 Johannesburg Summit and the 2012 Rio+20 Conference take into account the differences between developed and developing countries in their justification for the inclusion of non-environmental considerations into the adopted outcome texts. These documents, like those from the Rio Conference, specify social, cultural and other differences between communities, individuals and states as justifications for the inclusion of non-environmental considerations. Hence, it could be argued that the sustainable development regime reflects inclusiveness, contextualism, and structural pluralism in the arguments supporting the inclusion of non-environmental considerations.

In spite of examples like those referred to above, my findings in this chapter suggest that the justifications for the integration of non-environmental considerations prioritise economic growth and trade-related considerations to support development in developing countries. The prioritisation of economic considerations has been criticised by ecofeminism because it supports a process of 'maldevelopment' that is based upon the exploitation of natural resources and the dominance of non-western cultures in this process. This is very different to my findings in Chapter 5, where the post-2001 sustainable development documents included significant references that reflected inclusive, contextual, and open

participatory practices. In the present chapter, very few of the sustainable development documents published after 2001 contain references that reflect inclusiveness in the arguments supporting the inclusion of non-environmental considerations. This is because these arguments focus on attaining economic growth, economic development and international trade considerations in order to achieve sustainable development objectives. This finding will be discussed in more detail in Section 2.

### 1.1.2 Desertification

The preparatory reports from the INCD take into account the socio-economic differences between developed and developing countries in the arguments for including technological, scientific, and financial support for developing countries. Where the documents include additional support for developing countries, this is also based on socio-economic differences. Furthermore, the provisions included in the 1994 Desertification Convention adopted an integrated and interconnected approach towards addressing the problems of desertification and drought. The arguments supporting the integration of financial, technological, and scientific considerations in the convention were made on the basis that without such support developing countries may not be able to implement their obligations under the convention.

These arguments reflect structural pluralism because it recognises the differences between states. The INCD documents support the inclusion of non-environmental considerations to support developing countries in fulfilling their obligations under the desertification regime and to achieve sustainable development. They include proposals to adopt a convention framework that takes into account the inequalities between developed and developing countries. These proposals argue that including non-environmental considerations into the Desertification Convention will help developing countries redress these inequalities, with the support of developed countries and other international institutions. These arguments take into account the ways in which differences between developed and developing countries manifest themselves and affect their ability to respond to environmental problems.

In addition, the documents from the INCD, the CRIC, and the adopted outcome texts take a more holistic approach towards including non-environmental considerations. This approach reflects elements of inclusiveness because they do not appear to prioritise one type of interest over another. I found that the INCD and CRIC reports integrated economic, development, technological, and livelihood considerations in a way that acknowledged and incorporated a holistic approach. Similarly, the Desertification Convention and the later soft-law decisions took into account that environmental and non-environmental issues were interconnected and should be addressed in a non-privileged and holistic manner. This finding is very different from many of the other environmental regimes which privileged economic and development considerations.

### 1.1.3 Climate Change

The documents of the climate change regime contained one of the most comprehensive discussions of differentiation and the importance of integrating such an approach into IEL. Therefore, the documents reflected elements of structural pluralism in the arguments supporting the inclusion of non-environmental considerations and in their recognition of historical, geographical, and other forms of difference between the state parties. For example, the documents referred to the historic differences which affected the capabilities for some state parties to implement their obligations under the convention. Furthermore, the content of the documents produced by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC), the *Ad Hoc* Group on the Berlin Mandate (AGBM), and the post-2001 *Ad Hoc* Working Groups included notable references to non-environmental considerations, such as development, economic, financial and technology differences between developed and developing states, that should be taken into account when considering the ways in which states responded to climate change. This approach suggested that these non-environmental considerations were included in the adopted outcome texts to support developing country parties. By including these broader concerns, the documents suggest that states recognised that socio-economic, technological, financial, and geographical differences impaired national and international responses to climate change.

The content of the outcome texts from the climate change regime similarly contain significant references that take into account difference. As will be discussed below, Article 3 of the UNFCCC establishes the principle of common, but differentiated responsibilities and respective capabilities (CBDRRC) as a 'guiding principle' of the climate change regime.<sup>13</sup> This principle is further incorporated in the 1997 Kyoto Protocol<sup>14</sup> and in some of the later COP decisions, such as the 2007 Decision 1/CP.13 Bali Action Plan (Bali Action Plan (2007))<sup>15</sup> and the Cancún Agreements (2010). Notably, these documents also contain provisions that emphasise the importance of capacity building and supporting the needs of developing country parties in the context of science and technology, access to international markets, and in their mitigation activities relating to climate change. I found many of these arguments used to support the inclusion of these areas were made with reference to the economic and development inequalities and imbalances between developing and developed country parties.

These findings suggest that many of the arguments supporting the inclusion of non-environmental considerations reflect elements of structural pluralism because they took into

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<sup>13</sup> UNFCCC 1992, art 3(1).

<sup>14</sup> Kyoto Protocol 1997, art 10.

<sup>15</sup> UNFCCC, Decision 1/CP.13 'Bali Action Plan' in Report of the Conference of the Parties on its thirteenth session, held in Bali from 3 to 15 December 2007, Addendum, Part Two: Action taken by the Conference of the Parties at its thirteenth session (14 March 2008) FCCC/CP/2007/6/Add.1\* (14-15 December 2007).



account the cultural, historical, social, economic, technical, and geographical differences between states. This recognition is particularly evident in the provisions relating to CBDRRRC in the climate change and sustainable development regimes, and the arguments supporting the provision of financial, technical, and other assistance in order to support developing country countries' implementation of environmental and sustainable development objectives. However, as will be examined in Section 2, a significant proportion of these provisions emphasise the importance of economic, commercial, and development considerations in a way that may suggest these interests have been prioritised in the documents.

## 1.2 Mid-Level Integration

My findings revealed that only a few of the environmental areas took into account the social, geographical and cultural contexts of states in their arguments to support the integration of economic, social development, commercial, technological, scientific, and security considerations. Where such awareness was present, I found that the arguments for such a contextual approach were made on the basis that traditional and local knowledge can be a development opportunity. As will be discussed below, the assumptions that informed these arguments share underlying values and beliefs with the security discourse and their support for sustainable development as a solution to the drivers of insecurity.

### 1.2.1 Sustainable Development

Documents from the 1992 Rio Conference, 2002 Johannesburg Summit and the 2012 Rio+20 Conference contain provisions that acknowledge the cultural and traditional uses of the environment by different social groups. The documents take into account that these kinds of traditional uses of the environment dependent upon location and cultural context. The documents also recognise that there are different forms of knowledge, experience, and culture in the discussion of interests such as development, and science and technology.

I found that these references and the arguments for including non-environmental considerations emphasised the potential economic, development, and security gains that could be made through the exploitation of such knowledge. The documents made the connection between the use of traditional knowledge for the sustainable management of natural resources, gaining alternative energy sources for energy security, and attaining food security. These arguments and connections between traditional knowledge, development and security were prevalent in the 2002 Johannesburg Plan of Implementation and the 2012 Rio+20 Outcome Document. Each document includes provisions that refer to the dissemination of traditional technology, knowledge, and experience. I will examine the implications of these justifications in Section 2.

### 1.2.2 Natural Resources: Biodiversity, Fisheries, Tropical Timber and Freshwater Resources

While the sustainable development and climate change regimes demonstrated high-level integration of the structurally plural value, many of the natural resources regimes reflect mid-level integration of this value. This is particularly notable in the fisheries regime where the preparatory documents and adopted outcome texts recognised the economic and social differences between developed and developing countries, and took them into account in the obligations contained in the 1995 UN Fish Stocks Agreement. The agreement refers to financial, technological and scientific differences between developed and developing countries, and that these will affect the ability for developing countries to undertake their obligations under the agreement. Like the 1992 Biodiversity Convention, the agreement takes into account the differences between countries and their ability to implement their objectives. This differentiation incorporates elements of structural pluralism, albeit to a lesser degree than found in the climate change, sustainable development, and desertification regime.

The documents from the AWG-Biodiversity, the *Ad Hoc* AWG-ABS, the Biodiversity Convention, and the 2010 Nagoya Protocol, supported the protection of traditional knowledge and use of natural resources by local and indigenous peoples. Once again, the arguments supporting this protection were made on the basis that such knowledge could be used for the conservation of natural resources and for sustainable development. While these provisions reflect elements of contextualism because they take into account that different communities and peoples experience environmental degradation in ways that are dependent on culture and location, these documents also connect the protection of this knowledge because it could be used for economic development. This tension between the protection and utilisation of traditional knowledge, and the assumptions that inform these arguments, will be examined below and in Chapter 7 as they can give insight into the way in which the international community perceives the environment itself.

### 1.3 Low-Level Integration

My analysis of the documents found that there has been a prioritisation of economic, development, and trade considerations in these environmental regimes. I found that this prioritisation occurred in three interrelated ways. First, the arguments for such prioritisation were made on the basis that they were needed to achieve the objectives of the environmental regime; second, that these considerations were the precursor to environmental conservation; and third, that these areas could be used as a way to incentivise states to protect the environment. Where the documents prioritised these considerations, references were made to reducing security risks to individuals, communities, and states. This prioritisation occurred in most environmental regimes, with the exception of the desertification regime, and is most explicit in the documents developed in the UNGA,

### 1.3.1 Ozone Layer

While the ozone layer regime took into account the differences between the developed and developing country parties' capabilities to reduce emissions of ozone depleting substances, the content of the documents indicate that economic and industrial considerations have been prioritised. Like the outcome texts from the climate change, desertification, and guiding principles of IEL discussed above, the objectives and obligations to be undertaken by developing country parties under the 1987 Montreal Protocol are qualified by non-environmental considerations, such as economic, technological, and scientific support by developed countries. Once again, these references reflect characteristics of structural pluralism because they take into account the historical contributions to ozone layer degradation, the relative capabilities of states and that different geographic locations will be more adversely affected.

However, I found that the content of the documents produced by the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer (AWG-Ozone) and the AWG-CFCs focused primarily on economic and trade related considerations and the interrelationship between these two areas and the environment. The reports reveal that participants justified the integration of these considerations because they believed that economic and industrial issues had a bearing on the success of the regime. The documents contain very few references that reflect inclusiveness because the content of the reports suggest that economic development, and related trade and industry considerations, were prioritised during the negotiations.

Therefore, while the ozone documents suggest a prioritisation of certain non-environmental considerations, they do recognise the differences between the parties to the 1985 Ozone Layer Convention and the Montreal Protocol. As will be examined in the second part of this chapter, my initial findings indicate that these differences are predicated on economic, technological, and trade considerations, and these considerations seem to be prioritised in the creation, content, and implementation of IEL.

### 1.3.2 Climate Change

My analysis found that the justifications for integrating non-environmental considerations prioritised economic, trade, development, security, and social consideration. This does not reflect the inclusiveness value because it maintains separation between human (economic activities) and the nonhuman environment, while also prioritising certain forms of human activities over others. I found that the early documents in the regime prioritised economic and trade considerations and justified this prioritisation in two ways. First, that the prioritisation was necessary to achieve the objective of the convention. Second, that the prioritisation was necessary so as not to impede the development of developing countries. I found that the earlier documents in the climate change regime integrated economic,

sustainable development, and trade considerations. This integration is particularly noticeable in the preparatory documents from the INC/FCCC and in the negotiations undertaken by the AGBM. I found that the justifications for their integration prioritised the economic and commercial interests of developing countries, and the potential implications that emission reduction activities would have on the sustainable development of developing country parties.

The content of the 1992 UNFCCC and the 1997 Kyoto Protocol similarly integrated non-environmental considerations in a way that prioritised those interests. As will be discussed below, the UNFCCC's guiding principles focus overtly on the economic implications of emission reductions and maintain that economic growth is the best solution to climate change.<sup>16</sup> In the Kyoto Protocol, I found two interrelated approaches that reflect the prioritisation of economic and development considerations. First, state participants argued that states and private actors could be incentivised through economic and commercial means to reduce emissions. Related to this, the protocol incorporated market mechanisms as a way that enabled parties to commodify the nonhuman environment.<sup>17</sup> The content of these outcome texts suggests that non-environmental considerations have been prioritised, and as will be examined in later in the chapter, the justifications for this prioritisation may suggest that the basis for which states protect the environment has altered.

This prioritisation of non-environmental considerations continued in the post-2001 climate change documents, where economic and social development, technological, scientific, and trade considerations featured prominently in the content of the *Ad Hoc* Working Groups, and in the texts of the COP decisions themselves. Unlike the earlier documents, the content of these documents associated development, security, and economic considerations more prominently. I found more references to the importance of technological innovation for energy and food security, and the importance of sustained economic growth in developing countries to ensure that they continue to develop. I will examine the implications of these justifications in more detail below.

### 1.3.3 Sustainable Development

While the content of the preparatory documents and outcome texts from the sustainable development regime reflected many characteristics of structural pluralism, the documents also indicated a prioritisation of economic, scientific, technological, and development considerations. As in the climate change regime, the arguments supporting the prioritisation of socio-economic considerations are based on two underlying assumptions, first that economic growth is necessary to achieve sustainable development, and that its prioritisation is necessary so as not to impede the development of developing countries. The latter

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<sup>16</sup> UNFCCC 1992, art 3.

<sup>17</sup> Kyoto Protocol 1997, art 6, art 12, art 17; see also Yamin and Depledge, *The International Climate Change Regime*, 136-139.

argument is reflected prominently in the early sustainable developments, such as the 1972 Stockholm Declaration and the 1972 Stockholm Action Plan. These documents included many references that prioritised economic and development considerations and justified such prioritisation on the importance of economic growth for developing countries. As will be discussed below, these arguments emphasised the importance of economic growth and development for developing countries.

The more recent documents, such as the preparatory reports for the Johannesburg Summit and the Rio+20 Conference similarly integrate economic, trade, sustainable development, and technological considerations into their text. However, unlike the earlier documents, the justification for the inclusion of these considerations suggest that they are being prioritised as solution to the drivers of underdevelopment. The content of the adopted Johannesburg Plan of Implementation and the Rio+20 Outcome Document included many references for the need for economic and social development, technological development for energy security, and scientific innovation for food security. These references to security suggest that concerns over human security and the security of states have fed into the discussions surrounding environmental degradation and sustainable development. This may indicate that the reasons for protecting the environment may have altered over time.

My findings suggest that the forum in which the document is created has an effect on the type of non-environmental considerations that are incorporated into the texts. Like Chapter 5, I found that documents developed by the UNGA contained fewer references that reflected the ecofeminist values of openness, structural pluralism, contextualism, and inclusivity. The 2000 Millennium Declaration and the 2005 World Summit Outcome both prioritised the importance of achieving economic growth and development. Unlike other documents, these two resolutions explicitly link achieving sustainable development with security.<sup>18</sup> I found that the speeches made during the high-level summits of the UNGA emphasised the connection between achieving sustainable development and maintaining international peace and security.

This indicates that non-environmental considerations have been included in the environmental documents since the start of the time period under examination in this thesis. My initial reading has identified that economic, trade, commercial, development, financial, scientific, and technological considerations have been common topics of discussion during the creation of IEL, and many of these issues have also been incorporated into the adopted outcome texts themselves. However, the extent to which the inclusion of these considerations and the arguments supporting their inclusion reflect ecofeminist characteristics of inclusiveness, structural pluralism, contextualism, and openness depends on the environmental area, age of the document, forum in which the document was made,

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<sup>18</sup> E.g. Millennium Declaration (2000), ¶6; World Summit Outcome (2005), ¶9.

and the connection between the issue and state interests. These initial findings share similarities with those found in Chapter 5. However, unlike in Chapter 5, where the inclusion of the paradigm of sustainable development corresponded with an increase in references supporting the participation by NSAs, in this chapter, it appears that the introduction of sustainable development has meant a prioritisation of those areas closely aligned to state or international interests. Therefore, the following discussion will unpack these findings and discuss them with reference to the literature introduced in Chapter 2.

Building on these findings, the remainder of this chapter analyses the arguments supporting the introduction of sustainable development as the dominant paradigm in IEL, and the prioritisation of the development and economic aspects of this concept in the resulting environmental agreements. This is because examining the justifications and arguments given by states for the prioritisation of economic and development considerations in environmental agreements can reveal any underlying connections between the environment, development, and security which may be present in the documents. Analysing these arguments through the ecofeminist lenses, can reveal the underlying assumptions, values, and beliefs that have informed the reasons for which states seek to protect the environment and therefore the extent to which the environment/security connections may have altered the basis on which the international community seeks to protect the environment.

## 2. ANALYSIS OF THE FINDINGS USING AN ECOFEMINIST LENS

My findings and the literature discussion in Chapter 2, suggest that states and NSAs have accepted that there are interconnections between the environment, development, economic, and social considerations, and this has been succinctly incorporated into the concept of sustainable development.<sup>19</sup> However the analysis indicates that very few of the arguments used to support the incorporation of non-environmental considerations have engaged with the underlying beliefs, assumptions, and values informing them. This uncritical approach may indicate that dominant concerns, such as the economy, peace, and security, and their growing connections with the environment and development, has altered the reasons for which states protect the environment. This in turn may affect the ways in which states perceive the environment. It may further suggest that the association between environment, development, and security that has emerged in the post-Cold War period has altered basis on which the environment is protected. The following discussion will examine this further.

### 2.1 Inclusivity

Reading the environmental documents through the ecofeminist analytical framework revealed that very few of them contained provisions that exhibited non-privileged, non-

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<sup>19</sup> Chapter 2, 50.

hierarchical, integration of non-environmental considerations.<sup>20</sup> As noted in Section 1, a theme that surfaced from my analysis is the emerging prioritisation of specific non-environmental considerations, such as those relating to economic, trade, and developing concerns. The justifications for the prioritisation of these interests reveal underlying beliefs, values and assumptions, which inform reasoning as to why these interests have been integrated into environmental documents. Identifying these assumptions may reveal changes in the ways in which states perceive the environment and will guide the analysis in Chapter 7.

The reports by the Rio Preparatory Committee suggest that states explicitly recognised the interconnections between environmental problems, economic, social, and scientific interests. UNGA Resolution 44/228 (1990) convening the Rio Conference states the objectives of the Conference were to identify ways in which environmental concerns could be incorporated in the 'economic and social development process'<sup>21</sup> while taking into account the specific needs of developing countries. These links were stated in Decision 1/25 by the Preparatory Committee which identified the connection between environmental problems, poor economic growth, poverty, trade, and social conditions.<sup>22</sup>

This recognition of the need to address these considerations in an interrelated and integrated manner reflects the principle of integration and forms one of the substantive elements of sustainable development.<sup>23</sup> Principle 4 of the Rio Declaration embodies this approach and states that 'in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.'<sup>24</sup> This principle constitutes one of the core elements of sustainable development and informed the development of later environmental agreements.<sup>25</sup> The content of this principle initially suggests that the international community took into account the need to respond to environmental and developmental problems in a holistic manner.

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<sup>20</sup> Warren, *Ecofeminist Philosophy*, 100.

<sup>21</sup> UNGA Resolution 44/228 United Nations Conference on Environment and Development (22 December 1989) UN Doc A/RES/44/228, ¶15(c); further, ¶15(h), ¶15(f), ¶15(j) and ¶14.

<sup>22</sup> UNCED, Decision 1/25 'Environment and Development' in Report of the Preparatory Committee for the United Nations Conference on Environment and Development (UN GAOR 45th Session, Supplement No 46) (1991) UN Doc A/45/46 Annex I (31 August 1990), ¶a(i), ¶a(iii), ¶1a(vi) and ¶1a(viii.)

<sup>23</sup> WCED, *Our Common Future*, 5; Sumudu A. Atapattu, *Emerging Principles of International Environmental Law* (Transnational Publishers 2006), 129; above, Chapter 5, 133-137, and Chapter 2, 50.

<sup>24</sup> Rio Declaration 1992, Principle 4; see also Stockholm Declaration 1972, Principle 13.

<sup>25</sup> *Gabčíkovo-Nagyymaros Project*, ¶140; *In the Arbitration Regarding the Iron Rhine ("Ijzeren Rijn") Railway (Belgium v Netherlands)* (Arbitral Award) (2005) XXVII RIAA 35, ¶58-¶59; Atapattu, *Emerging Principles*, 129; Marie-Claire Segger Cordonier, 'Sustainable Development in International Law' in Hans Christian Bugge and Christina Voigt (eds), *Sustainable Development in National and International Law: What did the Brundtland Report do to Legal Thinking and Legal Development, and Where can We go from Here?* (Europa Law Pub. 2008), 174-175.

This integrated and holistic approach can be found in the reports produced by the INCD. These reports recognised that problems relating to desertification were interrelated with socio-economic considerations. As noted previously, this approach suggests that the participants in the INCD took into account the interrelated nature of environment and socio-economic considerations in a way that did not privilege or prioritise one such consideration. This inclusive and integrationist approach is similar to that found in Chapter 5, where state participants supported the contributions and participation by NSAs in the creation, content, and implementation of the convention. For example, participants attending the INCD proposed that programmes responding to desertification should ‘adopt an integrated approach encompassing all the measures to combat desertification including socio-economic aspects.’<sup>26</sup> They also referred to the different ways in which the integration of non-environmental considerations may affect local communities.<sup>27</sup> The recognition of the interrelationship between humanity and non-human nature reflects a more holistic and integrationist approach towards responding to the issue of desertification. It indicates that the participants during these conferences recognised the interrelationship between the environment and wider international interests in the context of desertification.

This integrationist approach is reaffirmed in the Desertification Convention. Article 10 takes into account the connection between desertification, drought, development, and socio-economic considerations and requires affected states to integrate national policies for sustainable development with long-term strategies to combat desertification.<sup>28</sup> This is a more holistic response to environmental problems and is further supported by other provisions in the convention that requests parties to take into account the way in which any such measures affect local communities and marginalised social groups.<sup>29</sup> These references to the integration of non-environmental considerations suggest that the international community recognised that the inclusion of development, scientific, and technological considerations into measures to respond to desertification and drought may disproportionately affect some social groups. Such a holistic approach is very different from the other environmental regimes developed during the same period and later.

While the Rio Declaration supported an integrationist approach towards environment and development in the paradigm of sustainable development, my findings suggest that the Rio Conference outcome texts also prioritise economic and development considerations. This prioritisation suggests that the assumptions informing international responses to

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<sup>26</sup> Report of the Intergovernmental Negotiating Committee for the Desertification Convention. 2nd Session (1993), (Appendix III) Pt 1 (Attachment), 27; Decision 2/1 (1993) Mandates for the Working Group, preamble ¶1.

<sup>27</sup> E.g. Report of the Intergovernmental Negotiating Committee for the Desertification Convention. 2nd Session (1993), 24-25.

<sup>28</sup> Desertification Convention 1994, art 10(2)(a); see also art 4-6 which outline the different obligations for developed and developing countries, as well as general obligations.

<sup>29</sup> *Ibid*, preamble, art 3(a); and art 5(c) - (d).



insecurity during the post-Cold War period were increasingly influential in the creation, content, and implementation of IEL. Chapter 2 noted there was widespread support for economic liberalisation and socio-economic development as pathways to support the peace and security of the international community.<sup>30</sup> In this context, they promoted the view that economic development was a precursor to environmental conservation, and that natural resource exploitation could be used as a source of economic development, in turn increasing the prosperity of communities and thereby decreasing incidences of conflict.<sup>31</sup> Elements of these views are contained in the Rio Declaration and Agenda 21, which incorporate damaging assumptions concerning the relationship between environmental problems and the economy. Principle 12 affirms that states should ‘cooperate 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.’<sup>32</sup> Not only does the association between economic growth and environmental protection reveal a set of beliefs and assumptions that prioritise institutions and structures that subordinate and exploit the natural world, they also suggest that some of the assumptions informing the securitisation of the environment are present in the basic documents of sustainable development.<sup>33</sup>

These assumptions are also present in Agenda 21. Chapter 2 of Agenda 21 incorporates the argument that economic growth and development is a precursor to environmental conservation.<sup>34</sup> This argument reflects assumptions that economic liberalisation, open trade, and the integration of developing countries into the international economic system is integral to achieving security as it addresses the drivers of underdevelopment and insecurity in developing countries. For example, Chapter 2 of Agenda 21 sets out the relationship between trade, the economy, and environmental protection. It states that ‘environment and trade policies should be mutually supportive,’<sup>35</sup> and calls for improved market access for developing countries’ exports that would have a ‘positive environmental impact.’<sup>36</sup> These justifications are made on the basis that trade liberalisation and other economic measures make possible a ‘more efficient allocation and use of resources and thereby contributes to an

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<sup>30</sup> Keohane and Nye, *Power and Interdependence*, 227; UNEP, *From Conflict to Peacebuilding* (2009) 8.

<sup>31</sup> WCED, *Our Common Future*, 14-10, 37-41, 57-60, 157-158; there significant research surrounding the relationship between natural resource exploitation and development. See the following for different perspectives. Report of the Secretary General, *The Causes of Conflict (1998)* (1998); Humphreys, ‘Natural Resources, Conflict’; Lujala, ‘Spoils of Nature’; De Koning, ‘Controlling Conflict Resources’; Global Witness, *Lessons UNlearned*; UNEP, *Sierra Leone* (2010); UNEP, ‘Good Governance’; Atta-Asamoah, ‘Besides Greed and Grievance’; Bavinck, Pellegrini and Mostert, *Conflicts over Natural Resources*.

<sup>32</sup> Rio Declaration 1992, Principle 12; see also Principle 6 and Principle 3.

<sup>33</sup> E.g. Stephanie Lahar, ‘Roots: Rejoining Natural and Social History’ in Greta Claire Gaard (ed), *Ecofeminism: Women, Animals, Nature* (Temple University Press 1993), 99; Mellor, *Feminism & Ecology*, 26-29, 173.

<sup>34</sup> Agenda 21 1992, Chapter 2.

<sup>35</sup> *Ibid*, Chapter 2 ¶19.

<sup>36</sup> *Ibid*, Chapter 2 ¶5.

increase in production and incomes and to lessening demands on the environment.<sup>37</sup> These statements reveal a belief that attaining sustained economic growth will address underdevelopment and enable developing countries to achieve environmental conservation. In doing so, it maintains the dominant social paradigm in which the environment is seen as an object and utility for economic well-being,<sup>38</sup> rather than recognising the interrelated nature of human/nonhuman nature as part of a fragile ecological relationship.<sup>39</sup> The justifications reflected in these references reflect the similar assumptions that informed the securitisation of the environment, namely that the environment is a commodity that can be used for economic development and thereby support the maintenance of peace and security.<sup>40</sup>

The content of the post-2001 sustainable development outcome documents also contains explicit references that prioritise economic and development considerations. In doing so, they maintain the view of the environment as subordinate to economic and development considerations. The 2002 Johannesburg Declaration on Sustainable Development (Johannesburg Declaration),<sup>41</sup> 2002 Johannesburg Plan of Implementation and the 2005 World Summit Outcome refer to the environment as the 'natural resource base' for development.<sup>42</sup> This language is repeated in the Rio+20 Outcome Document, which states that 'managing the natural resource base of economic and social development are the overarching objectives of, and essential requirements for, sustainable development.'<sup>43</sup> While these documents reaffirm the integration of environment and development considerations, they frame the environment as a subordinate consideration by referring to it as the 'base' for economic and sustainable development. These more explicit references to the environment as a 'resource' indicate that states viewed the environment as a commodity or utility in the process of economic and social development.

This prioritisation of economic and social development similarly reflects the assumptions put forward in the security discourse that support the use of natural resources for social and economic development and in conflict prevention strategies.<sup>44</sup> This explicit prioritisation in the post-2001 sustainable development outcome texts may indicate a consolidation of more implicit assumptions surrounding the connection between sustainable development and international peace and security. As discussed in Chapter 2, states have increasingly referred

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<sup>37</sup> Ibid, Chapter 2 ¶19; see also Chapter 8, ¶27 and ¶34.

<sup>38</sup> Devall, 'The Deep Ecology Movement', 126; see also Braidotti and others, *Women, the Environment*, 133; Annie Rochette, 'Transcending the Conquest of Nature and Women: A Feminist Perspective on International Environmental Law' in Doris Buss and Ambreena S Manji (eds), *International Law: Modern Feminist Approaches* (Hart 2005), 228.

<sup>39</sup> See the criticisms in Chapter 3, 91-97; see also Chapter 4, 112-114.

<sup>40</sup> See above, Chapter 2, 61-75.

<sup>41</sup> Johannesburg Declaration (2002).

<sup>42</sup> Ibid, ¶11; Plan of Implementation 2002, ¶2; World Summit Outcome (2005) ¶48.

<sup>43</sup> Rio+20 Outcome Document (2012) ¶4.

<sup>44</sup> See Chapter 2, 62-66.

to natural resources as a resource of peace and security by supporting the sustainable development of post-conflict states.<sup>45</sup> This connection was explicitly made in the UNSC in resolutions concerning the use of natural resources in supporting post-conflict reconstruction and the maintenance of peace in unstable regions.<sup>46</sup> Therefore, the prioritisation of socio-economic development and the references to natural resources as the 'base' for this development contained in the post-2001 sustainable development documents may suggest that assumptions which inform the environment/security connections have been increasingly incorporated within IEL documents.

Another way in which the documents indicate that economic and development considerations have been prioritised is by arguing that economic growth and development is a precursor to the conservation of the environment. This argument is found in the climate change regime where states affirmed that economic growth, as well as social and economic development, remains the overriding priorities of developing countries. The Berlin Mandate (1995), stated that that the process for negotiating emission reductions by Annex I Parties should be guided by the 'legitimate needs of the developing countries for the achievement of sustained economic growth and the eradication of poverty, recognising also that all parties have a right to, and should, promote sustainable development.'<sup>47</sup> These references to economic and development considerations indicate that the states continued to prioritise such considerations as a precursor to responding to environmental problems. This is reaffirmed by the Berlin Mandate which stated that the share of global emissions originating in developing countries will grow to meet their social and development needs.<sup>48</sup> Once again, the content of the climate change documents reaffirms the dominant social paradigm which assumes that economic growth is the measure of progress and the first and foremost requirement for responding to environmental degradation.

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<sup>45</sup> See Chapter 2, 63 fn 181. Government of Sweden, 'Preventing violent conflict - A Swedish Action Plan', 16, 24; Solana, 'European Security Strategy', 2; European External Action Service, 'Providing Security in a Changing World', 5; Government of Canada, 'Canada First Defence Strategy', 'unequal access to resources and uneven economic distribution are proving to be increasing sources of regional tension even as existing low-intensity or frozen conflicts in Africa, South Asia, the Middle East and the Balkans remain largely unresolved.'; Government of Sweden, 'Aid Policy Framework', 37; Council of the European Union, 'Main aspects and basic choices of the CFSP', 159-160.

<sup>46</sup> E.g. UNSC Res 1509 (2003), ¶3(r); UNSC Resolution 1625 Conflict Prevention in Africa (14 September 2005) UN Doc S/RES/1625 (2005), ¶6; Presidential Statement 22 (25 June 2007); UNSC Res 1925 (2010), ¶12(r); UNSC Resolution 2021 (2011); United Nations, *Report of the Secretary-General on the Protection of Somali Natural Resources and Waters* (25 October 2011) UN Doc S/2011/661; UNSC Presidential Statement 4 (15 April 2013); UNSC Res 2128 (2013), preamble (5)-(6), ¶12; UNSC Verbatim Record (19 June 2013) UN Doc S/PV.6982 (Resumption 1), 3, and 5; 'Letter dated 6 June 2013 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General' (6 June 2013) UN Doc S/2013/334, Annex; UNSC Res 2198 (2015), preamble (14) - (15), ¶20-26, ¶29.

<sup>47</sup> Decision 1/CP.1 The Berlin Mandate (7 April 1995), ¶1(c); see also ¶2(a).

<sup>48</sup> *Ibid.*, ¶1(d).

Similarly, the post-2001 COP decisions supported the liberalisation of the international economic system on the basis that this would lead to economic growth and development of all parties to the UNFCCC.<sup>49</sup> Not only does this reflect one of the cornerstones of the post-Cold War liberal international order, but it also reveals a continued assumption that economic growth is a precursor for responding to environmental problems that has informed the development of IEL since the Rio Conference and the introduction of sustainable development.<sup>50</sup>

An extension of this argument can be found in the increasing economisation of the environment in the sustainable development, climate change, and in some natural resources regimes. Economisation implies that the 'economy is an achievement rather than a starting point or a pre-existing reality that can simply be revealed and acted upon.'<sup>51</sup> This approach is revealed in the introduction of the green economy concept in the aftermath of the 2007 global economic crises.<sup>52</sup> The concept proposes to maintain sustained economic growth by creating an economy that supports sustainable economic growth, environmental protection, and social equity through the marketisation and commoditisation of nonhuman nature while simultaneously reducing environmental risks and ecological scarcities.<sup>53</sup> These areas suggest that the international community continued to view economic and social development as a precursor to attaining environmental protection.

One way in which the green economy seeks to maintain economic growth is through the commodification of the environment. For example, the reports by the Rio+20 Preparatory Committee propose that a 'green economy' can create new opportunities for through promoting efficiency in natural resource usage.<sup>54</sup> Reports by the CRIC suggest that it could create necessary revenue to achieve sustainable development goals and environmental protection.<sup>55</sup> Both regimes propose that the revenues from the sale of 'ecosystem services' could be a source of income for sustainable development and conservation within the green

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<sup>49</sup> Decision 1/CP.13 Bali Action Plan (14-15 December 2007), preamble ¶2; Cancún Agreements (2010) (10-11 December 2010), Pt II(E), preamble ¶3, ¶90.

<sup>50</sup> Cancún Agreements (2010) (10-11 December 2010), Pt III(E) preamble ¶3 and preamble ¶6, ¶6, ¶90.

<sup>51</sup> Çalışkan and Callon, 'Economization', 370.

<sup>52</sup> Morrow, 'Re-orienting Sustainable Development', 283; Stiglitz, *The Price of Inequality*, 1.

<sup>53</sup> UNEP Economic and Trade Branch, *Green Economy (2010)* (2010), 5; Report of the Preparatory Committee for the UNFCCC. 1st Session (2010), Annex ¶6; Report of the Preparatory Committee for the UNFCCC. 2nd Session (2011), ¶38, ¶40; Rio+20 Outcome Document (2012) ¶3, ¶11; and OECD, *Towards Green Growth: Monitoring Progress: OECD indicators* (OECD Publishing 2011); The World Bank Group, *Inclusive Green Growth: The Pathway to Sustainable Development* (Washington DC: World Bank, 2012); OECD, *A Toolkit of Policy Options to Support Inclusive Green Growth* (Revised version (July 2013) of the original submission to the G20 Development Working Group by the AfDB, the OECD, the UN and the World Bank, 2013).

<sup>54</sup> Report of the Preparatory Committee for the UNFCCC. 1st Session (2010), ¶54; Rio+20 Outcome Document (2012) ¶56, ¶58(d), ¶60, ¶62.

<sup>55</sup> UNCCD CRIC, 'Report of the Committee for the Review of the Implementation of the Convention on its Fifth Session' (Buenos Aires 12-21 March 2007) (24 April 2007) ICCD/CRIC(5)/11\*, Annex I ¶60.

economy.<sup>56</sup> The commodification of the environment will be examined in more detail in Chapter 7, as the assumptions, beliefs and values that inform the arguments for such an approach can give significant insight into the perception of the environment contained in these documents.

The above discussion suggests that the post-2001 climate change and sustainable development documents have consistently prioritised the economic and social elements of sustainable development. They have justified such prioritisation on the basis that socio-economic development is a precursor for environmental protection. In doing so, they reveal a continued affirmation of the dominant social paradigm whereby economic growth is seen as the primary measure of well-being. However, the analysis also reveals implicit assumptions and linkages with broader discourses in which sustainable development is a precursor to, and solution for, international peace and security. This is evident in the references to the importance of economic growth, social development, and the sustainable exploitation of natural resources in order to reduce poverty, land degradation, and other drivers of underdevelopment. As noted in Chapter 2, such problems are seen to be the causes of conflict and regional instability.<sup>57</sup> Therefore, the integration and prioritisation of economic and development considerations and the references to the environment as the 'resource base' for such development suggests that the environment/security connections have altered the basis for which states seek to protect the environment.

Furthermore, my analysis of the climate change documents suggests that the approaches used to protect the environment prioritise the economic and commercial benefits of such conservation. The analysis of these documents suggest that the participants assumed that the only way to incentivise states and relevant NSAs to reduce carbon emissions was through economic means. I found that the justifications used to incorporate market and trade measures as mechanisms to reduce carbon emissions prioritised the economic and commercial co-benefits of such approaches for both developed and developing countries parties. This approach towards implementing environmental objectives has been consolidated in IEL from the Rio period onwards,<sup>58</sup> and suggests that the neoliberal ideology

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<sup>56</sup> Ibid, Annex I ¶34.

<sup>57</sup> Chapter 2, 63, 72.

<sup>58</sup> E.g. Tropical Timber Agreement 1994, art 1(f), art 27(1); *Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982* (28 July 1994) UN Doc A/RES/48/263, preamble ¶6; Report of the CRIC. 1st Session (2002), ¶138; UNCCD CRIC, 'Report of the Committee for the Review of the Implementation of the Convention on its Third Session' (Bonn 2-11 May 2005) (23 June 2006) ICCD/CRIC(3)/9, ¶86; United Nations, 'Report of the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks' (New York, 22-26 May 2006) (5 July 2006) UN Doc A/CONF.210/2006/15, ¶79; United Nations, 'Report of the Resumed Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of

that has shaped the evolution of the sustainable development concept, and the environment/security connections has also informed international responses to environmental degradation. It is revealed in the arguments which emphasise the potential of commoditising the environment as a mechanism to protect the environment.<sup>59</sup>

In the climate change and sustainable development regimes, this approach has been supported by dominant states, such as the United States, and indicates a growing commoditisation of the environment. The justifications for the commoditising the processes by which states protect the environment may suggest that the basis for which they seek to protect the environment have altered in line with the emerging environment/security connections and the underlying assumption that economic development and the commodification of natural resources can respond to the drivers of insecurity.

For example, the justifications for integrating commercial and economic considerations in the climate change regime highlight the potential of economic mechanisms to encourage parties to reduce emissions.<sup>60</sup> Submissions to the AGBM emphasise the role of the market to 'incentivise' Annex I Parties to reduce their emissions through trading greenhouse gases.<sup>61</sup> The arguments for including a 'tradable CO<sub>2</sub> entitlement programme'<sup>62</sup> were made on the basis that it would provide a 'least cost solution'<sup>63</sup> to global warming and become 'effective mechanisms for transferring resources to developing countries.'<sup>64</sup> These arguments reflect an ideological shift towards privatising, deregulating, and replacing state-led emission reduction programmes with those which are market-oriented and support sustained economic growth.<sup>65</sup> Not only do they prioritise the continued economic growth predicated

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Straddling Fish Stocks and Highly Migratory Fish Stocks' (New York, 24-28 May 2010) (27 July 2010) UN Doc A/CONF.210/2010/7, ¶107.

<sup>59</sup> See above, Chapter 2, 58-60, and generally, Harry Cleaver, 'Nature, Neoliberalism and Sustainable Development: Between Charybdis & Scylla?' (Economy and Ecology, The Fourth Ecology Meeting, Viseu Portugal, 17-19 April 1997); Mike Raco, 'Sustainable Development, Rolled-out Neoliberalism and Sustainable Communities' (2005) 37(2) *Antipode* 324; Emmanuel Kumi, Albert A. Arhin and Thomas Yeboah, 'Can Post-2015 Sustainable Development Goals Survive Neoliberalism? A Critical Examination of the Sustainable Development-Neoliberalism Nexus in Developing Countries' (2014) 16(3) *Environment, Development and Sustainability* 539.

<sup>60</sup> UNFCCC AGBM, 'Report of the *Ad Hoc* Group on the Berlin Mandate on the Work of its Fourth Session, Geneva 11-16 July 1996' (7 October 1996) FCCC/ABGM/1996/8, Annex I(I), ¶3.

<sup>61</sup> UNFCCC AGBM, 'Framework Compilation of Proposals from Parties for the Elements of a Protocol or another Legal Instrument, Addendum, Note by the Chairman' (27 February 1997) FCCC/AGBM/1997/2/Add.1, ¶28.1 (New Zealand).

<sup>62</sup> UNFCCC AGBM, 'Annotated Compilation of Information Relevant to the Berlin Mandate Process. Note by the Secretariat' (26 October 1995) FCCC/AGBM/1995/5, ¶10; see also UNFCCC AGBM, 'Review of Relevant Conventions and other Legal Instruments. Note by the Secretariat' (21 May 1996) FCCC/AGBM/1996/6, ¶24.

<sup>63</sup> UNFCCC AGBM, Annotated Compilation of Information (26 October 1995) FCCC/AGBM/1995/5 (26 October 1995), ¶10.

<sup>64</sup> *Ibid.*, ¶14.

<sup>65</sup> M Shamsul Haque, 'The Fate of Sustainable Development Under Neo-Liberal Regimes in Developing Countries' (1999) 20(2) *Int Polit Sci Rev* 197, 199-200

on industrialisation and consumption, they frame the global commons as a commodity – something that will be examined in more detail in Chapter 7.<sup>66</sup>

These assumptions are also included in the Kyoto Protocol and in the introduction of emission trading schemes. The protocol established a system where parties' excess 'assigned amount units' of carbon may be sold to countries who are over their targets on a 'carbon market'.<sup>67</sup> It also includes other market mechanisms whereby 'removal units'<sup>68</sup> (referring to land use, land-use change and forestry), 'emission reduction units'<sup>69</sup> (created by joint implementation projects) and 'certified emission reduction'<sup>70</sup> (created from clean development mechanism projects) may be transferred in the 'carbon market'.<sup>71</sup> These articles reflect a realignment of environmental protection as a potential market and economic opportunity, particularly for developed country parties. Therefore, it economises the protection of the environment and in doing so prioritises the potential economic gains that could be made from such activities.

This approach has been consolidated in the post-2001 period. The reports by the AWG-LCA and AWG-KP, and their associated outcome texts indicate a continued support for the use of market measures to promote emissions reduction and climate adaptation.<sup>72</sup> For example, the content of the Cancún Agreements (2010) highlights continued support for the use of market measures to promote emissions reduction and climate adaptation. The decision asks parties to consider establishing of 'one or more market-based mechanisms to

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<sup>66</sup> Gaard, 'Women, Water, Energy', 163-164; Susan Hawthorne, 'Wild Politics: Beyond Globalization' (2004) 27(3) *Women Stud Int Forum* 243, 248-250.

<sup>67</sup> Kyoto Protocol 1997, art 17; UNFCCC, 'International Emissions Trading' <[http://unfccc.int/kyoto\\_protocol/mechanisms/emissions\\_trading/items/2731.php](http://unfccc.int/kyoto_protocol/mechanisms/emissions_trading/items/2731.php)> accessed 21 April 2015.

<sup>68</sup> Kyoto Protocol 1997, art 3(4); Decision 13/CMP.1 'Modalities for the Accounting of Assigned Amounts under Article 7, paragraph 4, of the Kyoto Protocol' in Report of the Conference of the Parties Serving as Meeting of the Parties to the Kyoto Protocol on its first session, held at Montreal from 28 November to 10 December 2005, Addendum, Part Two: Action taken by the Conference of the Parties Serving as the Meeting of the Parties to the Kyoto Protocol at its first session (30 March 2006) FCCC/KP/CMP/2005/8/Add.2 (30 November 2005), Annex ¶25, ¶26, ¶32; and UNFCCC, *Kyoto Protocol Reference Manual on Accounting of Emissions and Assigned Amount* (Information Services of the UNFCCC Secretariat 2008), 90.

<sup>69</sup> Kyoto Protocol 1997, art 6(1).

<sup>70</sup> *Ibid*, art 12(3).

<sup>71</sup> UNFCCC, 'International Emissions Trading'.

<sup>72</sup> UNFCCC AWG-KP, 'Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on its First Session, held at Bonn from 17-25 May 2006' (18 July 2006) FCCC/KP/AWG/2006/2, Annex I; UNFCCC AWG-LCA, 'Report of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention on its First Session, held in Bangkok from 31 March to 4 April 2008' (16 May 2008) FCCC/AWGLCA/2008/3, Annex I; UNFCCC AWG-LCA, 'Views Regarding the Work Programme of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention. Submissions from Parties' (3 March 2008) FCCC/AWGLCA/2008/MISC.1, 8 (Bangladesh); UNFCCC AWG-KP, 'Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on its Thirteenth Session, held in Bonn from 2 to 6 August 2010' (2 September 2010) FCCC/KP/AWG/2010/11, Annex II ¶14 and ¶12; Report of the AWG-LCA. 1st Part of 15th Session (2012), ¶9.

enhance the cost-effectiveness of, and to promote, mitigation activities.<sup>73</sup> The 2011 Decision 2/CP.17 Outcome of the Work of the AWG-LCA further affirms that ‘appropriate market-based approaches’ could be used to support ‘the results-based actions by developing country parties’<sup>74</sup> in the context of achieving emission reductions through reforestation [REDD].<sup>75</sup> These justifications for the integration of economic and development considerations contained in these documents prioritise the economic co-benefits resulting from the commodification of the environment. These arguments indicated that the economic considerations of any activities have been the focus of much of the discussion and centre in most arguments concerning emission reductions.<sup>76</sup> In doing so, these documents suggest that participants, who were predominately state actors,<sup>77</sup> believed that such an exploitative approach is the best. This prioritisation is interesting, as NSAs were generally excluded from participating in the negotiations for these Agreements. Building on the conclusions set out in Chapter 5, this analysis suggests that where the environmental regime is closely associated to states’ economic interests, those interests are prioritised.

However, in some regimes, the prioritisation of trade, economic, and commercial considerations have been challenged by states and NSA participants. In the biodiversity regime, states and NSAs have criticised the way in which trade, commercial interests, and intellectual property considerations were integrated into the Cartagena Protocol.<sup>78</sup> They argued that the way in which these interests have been included into the biodiversity regime functions to exclude, and marginalise the interests of less powerful states, and groups within society and they particularly criticised the draft Cartagena Protocol as being more ‘slanted towards trade than towards biosafety.’<sup>79</sup> These criticisms were reiterated after the subsequent adoption of the Cartagena Protocol where one representative suggested that the ‘philosophy of the protocol was to protect international trade.’<sup>80</sup> Similar criticisms were included in the reports by the AWG-ABS where states questioned the relationship between private property regime established by the 1994 Agreement on Trade-Related Aspects of Intellectual Property

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<sup>73</sup> Cancún Agreements (2010) (10-11 December 2010), ¶80; Decision 1/CP.13 Bali Action Plan (14-15 December 2007) ¶1(b)(v).

<sup>74</sup> Decision 2/CP.17 Outcome of the Work of the AWG-LCA (11 December 2011), ¶66.

<sup>75</sup> *Ibid.*, ¶79-¶86.

<sup>76</sup> Merchant, *The Death of Nature*, 193; Arsel and Büscher, ‘Nature™ Inc.’, 62.

<sup>77</sup> See above, Chapter 5, 142-143.

<sup>78</sup> E.g. CBD AWG-ABS, ‘Report of the *Ad Hoc* Open-Ended Working Group on Access and Benefit-sharing on the Work of its Fourth Meeting’ (Grenada, 30 January - 3 February 2006) (15 February 2006) UNEP/CBD/COP/8/6, ¶13, ¶40.

<sup>79</sup> CBD BSWG, ‘Report of the Sixth Meeting of the Open-Ended *Ad Hoc* Working Group on Biosafety’ (Cartagena 22-23 February 1999) (15 February 1999) UNEP/CBD/ExCOP/1/2, ¶68; also ¶61, ¶72, ¶76, ¶80, ¶85.

<sup>80</sup> CBD, ‘Report of the Extraordinary Meeting of the Conference of the Parties for the Adoption of the Protocol on Biosafety to the Convention on Biological Diversity’ (Cartagena, 22-24 February 1999, and Montreal, 24-29 January 2000) (20 February 2000) UNEP/CBD/ExCOP/1/3, Part I, ¶48.



Rights (TRIPs)<sup>81</sup> and its potential to undermine the access and benefit-sharing provisions of the Biodiversity Convention.<sup>82</sup> Others challenged the relationship between the WTO, TRIPs and the Biodiversity Convention, arguing that it was increasingly recognised that intellectual property rights ran counter to the interests of biodiversity.<sup>83</sup> These criticisms highlight the impact of the emerging connections between different areas of international law and suggest that trade and other commercial interests have been prioritised. These criticisms suggest that some states have queried the way in which dominant interests have been included in international responses to environmental problems.

The above discussion focused on the integration and prioritisation of predominately economic and commercial considerations into the content of IEL. I suggested that the arguments for their integration highlighted implicit connections between the environment and security. This is because the arguments that were used to support the inclusion and prioritisation of these considerations shared the same assumptions that informed the arguments supporting sustainable development as a solution for insecurity. These assumptions included the belief that economic growth, socio-economic development, and the sustainable exploitation of natural resources were the precursor for solving environmental problems. These assumptions have been criticised because they are based upon industrialisation, consumerism, and overexploitation.<sup>84</sup> In this context, they reaffirm the dominant social paradigm in which 'wellbeing' and 'security' are predominately viewed in economic terms. As noted in Chapter 2, many of the solutions to the perceived causes of insecurity were predicated on responding to the drivers of underdevelopment, such as sluggish growth, and poor social and economic development.<sup>85</sup> These documents indicate that similar assumptions have been incorporated into the justifications for including these non-environmental considerations into the content of IEL. Therefore, the prioritisation of such economic and development considerations may suggest that the basis for which the international community seeks to protect the environment has altered.

Furthermore, where the documents explicitly integrate security considerations, they prioritise the importance of using IEL to attain sustainable development and ensure the well-being of individuals. Once again, these references are contained in documents produced in forums where the participation by NSAs is significantly lower. For example, both developed and developing states made the connection between achieving sustainable development and international peace and security during the two high-level Summits of the

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<sup>81</sup> *Agreement on Trade-Related Aspects of Intellectual Property Rights* (15 April 1994) 1869 UNTS 299; 33 ILM 1197 (1994).

<sup>82</sup> Report of the BSWG, 6th Session (1999), ¶68.

<sup>83</sup> CBD AWG-ABS, 'Report of the Seventh Meeting of the *Ad Hoc* Open-Ended Working Group on Access And Benefit-Sharing' (Paris 2-8 April 2009) (5 May 2009) UNEP/CBD/WG-ABS/7/8, ¶40.

<sup>84</sup> Shamsul Haque, 'The Fate of Sustainable Development', 199.

<sup>85</sup> Above, Chapter 2, 61-75.

UNGA.<sup>86</sup> They included references that built on the assumption that economic and social security, based in sustainable development ‘are the basic building blocks of peace and security for all peoples ... [because they] allow us to address all the great issues – poverty, climate, environment and political stability as parts to a whole.’<sup>87</sup> During the summits, the representative of Kiribati stated that ‘development, in particular sustainable development, is fundamental to the achievement of international peace and security.’<sup>88</sup> Similarly, the presidents of both Rwanda and of Tajikistan identified a ‘clear and positive reaffirmation of the link between security and development.’<sup>89</sup> The King of Spain stated that sustainable development, peace and security, and respect for human rights represented ‘three interdependent, indivisible and fundamental pillars.’<sup>90</sup> These associations were made by other states during the summits.<sup>91</sup>

These references to the incorporation of sustainable development into considerations of peace and security, reflect the growing conceptual linkage between underdevelopment and insecurity<sup>92</sup> The content of these speeches indicates that during these plenary meetings of the UNGA, states exhibited a broader understanding of security in which addressing the drivers of underdevelopment and achieving sustainable development, is central for all countries, and particularly developing countries.

Furthermore, the speeches made on behalf of states during these summits suggest that states justified protecting the environment in order to protect the resource base for future development. The speeches contain references to ‘our’ environment and the importance of preserving the ‘planet’s riches’ for future development.<sup>93</sup> Others note the destabilising effect that environmental degradation may have on the ability of states to develop because of the negative effects on human health, natural resource productivity and economic development.<sup>94</sup> These justifications are reiterated in the content of the 2005 World Summit Outcome which states that the protection and management of the ‘the natural resource base of economic and social development are overarching objectives of and essential

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<sup>86</sup> UNGA Verbatim Record (15 September 2005) UN Doc A/60/PV.5, 2(Rwanda), 13 (Spain); UNGA Verbatim Record (6 September 2000) UN Doc A/55/PV.4, 7 (Guatemala); *ibid*, 6-7 (Austria).

<sup>87</sup> UNEP, *From Conflict to Peacebuilding* (2009) 6; Ki-Moon, ‘A Green Future’.

<sup>88</sup> UNGA Verbatim Record (16 September 2005) UN Doc A/60/PV.8, 8 (Republic of Kiribati).

<sup>89</sup> UNGA Verbatim Record (15 September 2005) UN Doc A/60/PV.5, 12 (Tajikistan), 2 (Rwanda).

<sup>90</sup> *Ibid*, 13.

<sup>91</sup> UNGA Verbatim Record (6 September 2000) UN Doc A/55/PV.4, 24 (Republic of Bangladesh), 7 (Republic of Austria); *ibid*, 17 (Japan), 30 (Côte d’Ivoire); *ibid*, 12 (Maldives), 16 (France), 17 (Kenya), 21 (Micronesia), 23 (China), 23 (Republic of Guyana) 27 (Republic of Malta). *Ibid*, 28 (Oman).

<sup>92</sup> Duffield, *The New Wars*, 16, 38-42.

<sup>93</sup> UNGA Verbatim Record (6 September 2000) UN Doc A/55/PV.4, 17 (Mr. Jacques Chirac, President of the French Republic); *ibid*, 2 (President of the Republic of Costa Rica).

<sup>94</sup> UNGA Verbatim Record (15 September 2005) UN Doc A/60/PV.5, 39-40 (Antigua and Barbuda). However, see the criticisms by other States at: 21 (Republic of Algeria), 37 (Prime Minister of Ireland); UNGA Verbatim Record (6 September 2000) UN Doc A/55/PV.4, 16 (Republic of Uzbekistan), 22 (Kingdom of Tonga).

requirements for sustainable development.<sup>95</sup> The justifications for environmental protection contained in this UNGA resolution reaffirm that the economic benefits derived from natural resources are one of the important considerations for the protection of the environment. As the document explicitly includes sustainable development in peace and security concerns, and refers to the environment in this context, this reflects an assumption of the environment as a utility or commodity.

Similar assumptions underlie the references to energy security in the climate change and sustainable development documents. The negotiations in the AWG-LCA associate energy security with supporting sustained economic growth and achieving sustainable development. The work program for the AWG-LCA stated that the Working Group must take into account energy security to support 'pro-poor economic growth and production targets' for Least Developed Countries (LDCs).<sup>96</sup> Submissions by state parties similarly emphasised the necessity of ensuring energy security as a means to meet sustainable development objectives for SIDs and LDCs.<sup>97</sup> These references to energy security in the sustainable development and climate change documents may indicate a continued and overriding prioritisation of sustained economic growth and development as the main priority for developed and developing countries alike.<sup>98</sup>

The justifications for integrating food security considerations into the post-2001 documents also indicate a continued prioritisation of socio-economic development in the climate change, biodiversity, and sustainable development regimes. The content of these documents emphasise the importance of increasing the productivity of the land and reducing land degradation and desertification which threaten food security and sustainable development.<sup>99</sup> These will also be examined in Chapter 7 because they prioritise utility of natural resources for human consumption and suggests that the underlying values, beliefs

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<sup>95</sup> World Summit Outcome (2005) ¶48.

<sup>96</sup> UNFCCC AWG-LCA, Views regarding the work programme of the AWG-LCA (2008) (3 March 2008), Paper No. 2 (Bangladesh), 8. However, consider Report of the Preparatory Committee for the UNCSA. 2nd Session (2011), ¶48; UNCSA Secretariat, Synthesis Report on the Best Practices and Lessons Learned (2011) (21 January 2011), ¶48 and ¶50.

<sup>97</sup> UNFCCC AWG-LCA, 'Ideas and Proposals on Paragraph 1 of the Bali Action Plan. Revised Note by the Chair' (15 January 2009) FCCC/AWGLCA/2008/16/Rev.1\*, ¶40(d), ¶15(e). Both developed and developing countries alike note the essential nature of energy security for attaining sustainable development aspirations and a climate resilient society. Consider the comments by Republic of Nauru, 'Views on Matters Referred to in Paragraphs 83 and 84 of Decision -/CP.17: Work Programme to Elaborate Modalities and Procedures for a New Market-Based Mechanism, Operating under the Guidance of the COP' (21 March 2012), 4.

<sup>98</sup> Klare, 'Climate Change Blowback: The Threats to Energy Security', 69-70; and John Vogler, 'Changing Conceptions of Climate and Energy Security in Europe' (2013) 22(4) Environ Polit 627, 630. These references are examined in more detail in Chapter 7 because they suggest that the dominant representation of the environment in the documents produced by the UNGA is as a commodity or utility for sustainable development.

<sup>99</sup> Report of the Preparatory Committee for the WSSD. 2nd Session (2002), Annex I, ¶13, ¶35, ¶37, ¶67 and ¶73.

and assumptions that inform the content of the IEL documents have been informed by anthropocentric perceptions of the environment.<sup>100</sup>

In addition, the focus on productivity and food security may also reveal the influence that liberalism has had on the development of sustainable development and its connection with international peace and security. In Chapters 2 and 3, I suggested that critics of sustainable development challenged the assumption that it was possible to increase consumption and production sustainably while also privatising and commoditising public goods, such as water, pasture land, and other sources of food.<sup>101</sup> They argued that it contained an inherent paradox because it supported market liberalisation, free trade, and capitalism as mechanisms to increase the economic development of developing countries – each of which is reliant on exploitation, production, and consumption, which critics argue makes the concept inherently unsustainable.<sup>102</sup>

In the IEL documents analysed in this chapter, I found that the justifications for integrating food security considerations into the documents reflected ‘neo-Malthusian’ assumptions that emphasised production and role of scientific and technological developments to support such production as the solution for feeding nine billion people by 2050.<sup>103</sup> These justifications indicate an emerging privatisation of food production, as well as a continued commitment to technological responses to environmental problems. These issues will be examined in more detail in Chapter 7. For the meantime, it is possible to suggest that these references to food security and the justifications for integrating these considerations into IEL documents indicate that the basis for which states seek to protect the environment are closely interconnected with concerns surrounding conflict over food, poverty, and hunger that the international community argue can be resolved through remedies such as trade liberalisation, increased production, and privatisation.<sup>104</sup>

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<sup>100</sup> Ibid, Annex I, ¶73.

<sup>101</sup> Cheryl Doss, Gale Summerfield and Dzodzi Tsikata, ‘Land, Gender, and Food Security’ (2014) 20(1) *Feminist Econ* 1, 12-13;

<sup>102</sup> E.g. Vandana Shiva, *Soil Not Oil: Climate Change, Peak Oil, and Food Insecurity* (Zed 2008); Darling, ‘A Weight for Water’; Zillah Eisenstein, ‘Stop Stomping on the Rest of Us: Retrieving Publicness from the Privatisation of the Globe’ (1996) 4(1) *Ind J Global Legal Stud* 59; Rosemary Lyster, ‘Privatising Water Utilities: A Cautionary Tale’ (2005) 9(1) *Asia Pac J Envtl L* 1

<sup>103</sup> E.g. Johannesburg Declaration (2002), ¶11; Plan of Implementation 2002, ¶2, ¶7(j), ¶31(h), ¶40 and ¶67. Similar language is found in, Rio+20 Outcome Document (2012), ¶4 ¶111, ¶113, ¶116-¶118 and ¶158; see also Colin Sage, ‘The Interconnected Challenges for Food Security from a Food Regimes Perspective: Energy, Climate and Malconsumption’ (2013) 29 *Journal of Rural Studies* 71, 71; Isobel Tomlinson, ‘Doubling Food Production to Feed the 9 Billion: A Critical Perspective on a Key Discourse of Food Security in the UK’ (2013) 29 *Journal of Rural Studies* 81, 82-83

<sup>104</sup> Lucy Jarosz, ‘Defining World Hunger: Scale and Neoliberal Ideology in International Food Security Discourse’ (2011) 14(1) *Food, Culture & Society* 117, 126; Kerry L. Preibisch, Gladys Rivera Herrejon and Steve Wiggins, L., ‘Defending Food Security in a Free-Market Economy: The Gendered Dimensions of Restructuring in Rural Mexico’ (2002) 61(1) *Human Organization* 68, 69.

The above analysis indicates that many of the IEL regimes examined in this thesis have integrated non-environmental considerations into the content of their documents. It found that the justifications for this integration and the results of the integration have consistently prioritised economic, trade, and development considerations over environmental ones, with the exception of the desertification regime. Furthermore, the analysis indicates that the assumptions that informed the connections between sustainable development, the environment and international peace and security have also informed the arguments supporting the prioritisation of these considerations in the environmental documents.

These assumptions were particularly evident in the content of the climate change and sustainable development documents which referred to economic and trade considerations in three interrelated ways. First and second, these documents prioritised economic, trade, and development considerations on the basis that economic growth and well-being needed to achieve the objectives of the environmental regime and were a precursor for responding to environmental problems. Third, they argued that using market forces, such as trading schemes and in effect, commoditising the global commons would both incentivise states to protect the environment while also contributing to the economic development of such countries. These three arguments indicate that the assumptions informing the environment/security discourse which portray the environment as a *commodity* or *utility* is reflected in the arguments supporting the integration and prioritisation of economic, development and trade considerations in IEL.<sup>105</sup>

## 2.2 Structural Pluralism

The arguments supporting the inclusion of non-environmental considerations also take into account the differences in capabilities between states. This recognition and the support for including such considerations to assist developing country parties to undertake their obligations reflects structural pluralism. In particular, the concept of sustainable development incorporates this recognition within the principle of CBDRRRC. This principle was introduced in the Rio Declaration and reaffirmed in the climate change regime.<sup>106</sup> It has subsequently made differentiation one of the central features of the international communities' response to environmental degradation and has guided the inclusion of other non-environmental considerations so as to support developing countries. In the following discussion, I will examine the justifications for including these areas to facilitate and support the mitigation and adaptation activities of developing states in the IEL documents.

In Section 1, I found that states justified the integration of non-environmental considerations into IEL documents on the basis of the differentiated capabilities and specific circumstances of members of the international community. The pre-Rio documents

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<sup>105</sup> This portrayal of the environment will be examined in further detail in Chapter 7.

<sup>106</sup> Rio Declaration 1992, Principle 7; UNFCCC 1992, preamble, art 3(1).

included provisions that recognised the differences and the need to include technological, financial, and scientific support in order for developing states to participate. For example, the preparatory reports for the Stockholm Conference acknowledged the differences between States due to national structures, stages of development and socio-cultural systems that may affect and alter the ability of states to address environmental degradation and conservation.<sup>107</sup> The Stockholm Declaration noted that in the context of environmental protection, the international community should consider the ‘systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.’<sup>108</sup> These statements indicate that some states recognised that responses to environmental degradation required a differentiated approach that took into account the differences in social and economic development.

Similarly, the documents from the ozone layer regime indicated that states took into account the special situation of developing countries. For example, participants attending a meeting of the AWG-Ozone agreed that that account should be taken of the special situation of developing countries and their obligations under the convention should be undertaken in accordance with their capabilities.<sup>109</sup> The participants attending the AWG-CFC noted that there was general consensus among states as to a requirement to give special consideration to the needs of developing countries.<sup>110</sup> These reports suggest that the participants in these two working groups recognised the social and economic disparities between states which may affect their ability to implement the objectives of the regime.

This recognition is explicitly stated in the content of the Montreal Protocol. The preamble acknowledges that ‘special provision is required to meet the needs of developing countries for these substances.’<sup>111</sup> This special consideration is reflected in the different treatment of developing states in the protocol itself. Article 5 of the protocol delays compliance for developing states, while Article 10 includes additional provisions for

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<sup>107</sup> E.g. ECOSOC, ‘Agenda Item 16: United Nations Conference on the Human Environment (E/4828, E/4877, paras 50-54; E/AC.24/L.371, E/L.1352)’ (27 July 1970) UN Doc E-SR.1719, ¶3; Report of the Preparatory Committee for the UNCHE. 1st Session (1970), ¶27(7)(a); ECOSOC, *United Nations Conference on the Human Environment. Report of the Secretary General* (19 June 1970) UN Doc E/4828, ¶17; Report of the Preparatory Committee for the UNCHE. 3rd Session (1971), ¶40.

<sup>108</sup> Stockholm Declaration 1972, Principle 23; see also preamble ¶4 and ¶7, and Principle 12,

<sup>109</sup> UNEP, ‘Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer on its Second Session’ (Geneva, 10-17 December 1983) (5 January 1983) UNEP/WG.78/8, ¶19.

<sup>110</sup> UNEP, ‘Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Protocol on the Control of Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer on the Work of its Second Session’ (Vienna, 23-27 February 1987) (4 March 1987) UNEP/WG.167/2, ¶7, ¶11, ¶13; UNEP, ‘Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Protocol on the Control of Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer on its Third Session’ (Geneva, 27-30 April 1987) (8 May 1987) UNEP/WG.172/2, ¶2 and ¶12.

<sup>111</sup> Montreal Protocol 1987, preamble ¶7.

technology transfer and financial assistance to developing states.<sup>112</sup> These reference tie developing country obligations to the provision of technology transfer, financial support, and capacity-building. These non-environmental considerations were integrated into the Montreal Protocol because the international community increasingly recognised that social, political, and economic disparities between its members should be taken into account in responses to the problems of the shared environment.

This practice continues after the Rio Conference. The content of the Rio documents supports the inclusion of technological, financial and other considerations in order to take into account the special needs of developing countries and to support them in fulfilling their obligations. Both the Biodiversity Convention and the Rio Declaration refer to the 'special situation and needs of developing countries.'<sup>113</sup> This phrase was repeated in later environmental agreements, such as the Kyoto Protocol and Desertification Convention.

In each of these documents, developing state obligations were tied to the provision of technology transfer and financial assistance by developed states.<sup>114</sup> This repeats the approach undertaken in the ozone layer regime, which encouraged parties to 'facilitate access to environmentally safe alternative substances and technology' by making funds available for developing countries to gain access to these technologies.<sup>115</sup> Further, the parties amended the protocol and established a multilateral fund to support developing countries to meet their obligations.<sup>116</sup> These provisions have been seen as a turning point in international environmental law and policy.<sup>117</sup> However, during the negotiations of this multilateral fund, parties, such as the United States emphasised that the fund decision was 'without prejudice to any future arrangements that may be developed with respect to other environmental issues.'<sup>118</sup> This resistance suggests that some powerful parties viewed CDDRRC as an opportunity for developing countries to 'extract the maximum possible transfer of wealth, without regard to the economics of the situation, as a precondition for accepting a share of responsibility in protecting the global environment.'<sup>119</sup> This resistance highlights the different perceptions of the notion of 'differentiation' and the role of technological and financial transfer mechanisms.

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<sup>112</sup> Ibid, art 5(3) and art 10 and London Amendment to the Montreal Protocol 1990.

<sup>113</sup> Rio Declaration 1992, Principle 6; Biodiversity Convention 1992, Preamble ¶16-¶17.

<sup>114</sup> Desertification Convention 1994, art 18, art 20(7); Kyoto Protocol 1997, art 10 chapeau, art 10(1).

<sup>115</sup> Montreal Protocol 1987, art 5(1).

<sup>116</sup> London Amendment to the Montreal Protocol 1990, art 10(1); also, UNEP MOP, Decision 11/8 'Financial Mechanism' in Report of the Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (London, 27-29 June 1990) (29 June 1990) UNEP/OzL.Pro.2/3 (29 June 1990).

<sup>117</sup> Mickelson, 'South, North, and International Environmental Law', 73.

<sup>118</sup> Ibid, 73; citing Ian H. Rowlands, *The Politics of Global Atmospheric Change* (Manchester University Press 1995), 173-174

<sup>119</sup> Mickelson, 'South, North, and International Environmental Law', 73; Richard E. Benedick, *Ozone Diplomacy: New Directions in Safeguarding the Planet* (Harvard University Press 1991), 241

There is widespread recognition of the disparities and differences between states because of socio-economic inequalities.<sup>120</sup> However, the technology transfer and funding mechanisms in the environmental regimes remain controversial with very little being put into them.<sup>121</sup> This disparity the recognition of difference between states, and the need to support developing countries in order for them to participate in environmental regimes and fulfil their obligations indicates that CDDRRC remains contentious.<sup>122</sup> This is because developed and developing countries hold very different understandings of the principle. Developing countries view it as a 'burden-sharing provision anchored in the historic, moral, and legal "responsibility to pay"...' <sup>123</sup> whereas developed countries see it as a 'pragmatic problem-solving formula based on a relative "ability to pay."' <sup>124</sup> Therefore, the integration socio-economic considerations reflect characteristics of structural pluralism by acknowledging the need to support those members in attaining environmental objectives. Nevertheless, the contentious nature of the attendant financial and technology transfer reveals the continuing tensions inherent in the principle because of the different perceptions and understandings of the CBDR principle itself.<sup>125</sup>

As noted in Chapter 2, the principle of CDDRRC sought to integrate the principle of equity in states' collective responses to environmental problems.<sup>126</sup> This principle may be seen as the manifestation of structural pluralism because it recognises the diverse starting points of states, while also acknowledging shared concerns over the common environment. Environmental agreements adopted during the Rio Conference and afterwards include the principle of CDDRRC as a central feature because it introduces conditionality for developing countries obligations. The inclusion of conditionality recognises that the extent to which developing country parties will be able to implement their commitments, depends on the effective implementation by developed country parties of their commitments relating to

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<sup>120</sup> Mickelson, 'South, North, and International Environmental Law', 76.

<sup>121</sup> Joyeeta Gupta, 'The Global Environment Facility in its North-South Context' (1995) 4(1) *Environ Polit* 19, 20, 24-25.

<sup>122</sup> For an explanation why CDDRRC may remain controversial, see Karin Mickelson, 'Leading Towards a Level Playing Field, Repaying Ecological Debt, or Making Environmental Space: Three Stories about International Environmental Cooperation' (2005) 43(1-2) *Osgoode Hall LJ* 137, 140-150.

<sup>123</sup> Mickelson, 'South, North, and International Environmental Law', 70.

<sup>124</sup> *Ibid*, 70; see also Jutta Brunnée and Charlotte Streck, 'The UNFCCC as a Negotiation Forum: Towards Common but more Differentiated Responsibilities' (2013) 13(5) *Climate Policy* 589

<sup>125</sup> For insightful discussions concerning these issues, see Paul G. Harris, 'Common But Differentiated Responsibility: The Kyoto Protocol and United States Policy' 7(1) *NYU Envtl LJ* 27; Duncan French, 'Developing States and International Environmental Law: The Importance of Differentiated Responsibilities' (2000) 49(01) *ICLQ* 35; Karin Mickelson, 'Beyond a Politics of the Possible? South-North Relations and Climate Justice' (2009) 10(2) *Melb J Int'l L* 411; Brunnée and Streck, 'The UNFCCC as a Negotiation Forum: Towards Common but more Differentiated Responsibilities'.

<sup>126</sup> Above, Chapter 2, 55-57; Sands, *Principles (2nd edn)*, 286; Magraw and Hawke, 'Sustainable Development', 631; and generally, Farhana Yamin, 'Equity, Entitlements and Property Rights under the Kyoto Protocol: the Shape of "Things" to Come' (1999) 8(3) *RECIEL* 265.



financial resources and the transfer of technology.<sup>127</sup> Not only does this principle recognise the interconnections between different areas of international concern, it also recognises that these interconnections affect states differently.

For example, the UNFCCC requires developed country parties to provide new and additional financial resources, including the transfer of technology required by developing country parties to meet the costs of implementing their commitments.<sup>128</sup> The Biodiversity Convention states that the extent to which developing country parties will be able to implement their commitments is dependent on the 'effective implementation by developed country Parties of their commitments under this convention related to financial resources and transfer of technology.'<sup>129</sup> Therefore, it requests parties to provide or facilitate access to and transfer of technology to developing countries, and promote technical and scientific cooperation.<sup>130</sup> Each of these link non-environmental issues to the ability of states to undertake their obligations.

The post-Rio documents continue to integrate CBDRRRC in their guiding principles and link developing states' obligations with provisions of support by developed states. In the context of technology transfer and capacity-building, provisions from the desertification regime include a novel response which reflects structural pluralism. Once again, this regime is the exception to the norm and it is worthwhile to note that it was also the regime that supported the inclusive participation by NSAs in the creation of the convention document.<sup>131</sup> The INCDC reports contain references to the development of technology and emphasise that such development should occur through joint efforts between developed and developing countries.<sup>132</sup> They justify this approach as a way to support locally driven responses that take into account differentiations between States and the needs of local communities.<sup>133</sup> These arguments reflect the approach towards participation that was discussed in Chapter 5 and indicates that the participants in the creation of the

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<sup>127</sup> UNFCCC 1992, art 4(7); INC/FCCC, 'Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of its Third Session, held in Nairobi from 9-20 September 1991' (23 October 1991) UN Doc A/AC.237/12, ¶82.

<sup>128</sup> UNFCCC 1992, art 4(3); also art 4(4) and art 4(5).

<sup>129</sup> Biodiversity Convention 1992, art 20(4); also preamble ¶15-¶16.

<sup>130</sup> *Ibid*, art 16(1)-(4), art 20(2), art 8(m), art 9(e).

<sup>131</sup> Above, Chapter 5, 149-150.

<sup>132</sup> Report of the Intergovernmental Negotiating Committee for the Desertification Convention. 2nd Session (1993), Appendix III, 37; INCDC Secretariat, 'Elaboration of an International Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa: Format and Possible Elements of the Convention. Note by the Secretariat' (23 April 1993) A/AC.241/7, ¶42-¶44 concerning research and development, and ¶57-59; INCDC Secretariat, Compilation of Government Views (23 August 1993) UN Doc A/AC.241/12 (23 August 1993), ¶88-¶94, esp. ¶90(b) (OAU Proposal); Desertification Convention 1994, preamble ¶18.

<sup>133</sup> INCDC Secretariat, Compilation of Government Views (23 August 1993) UN Doc A/AC.241/12 (23 August 1993), ¶90(b) (OAU Proposal).

Desertification Convention took into account the importance of locally driven, bottom up, responses to environmental problems.

Other post-Rio documents justified the integration of non-environmental considerations on the basis of difference between states. The documents produced during the UN Conference on Straddling Fish Stocks recognised that scientific, technological, and financial considerations would have to be integrated into the adopted agreement in order for developing states successfully to implement the objectives.<sup>134</sup> In the adopted Fish Stocks Agreement, Article 25 takes into account differences between developed and developing states by providing a general obligation to take into account the special requirements of developing countries.<sup>135</sup> It therefore requires states to extend technical and financial assistance to developing states to allow them to participate in the exploitation, conservation and management of fisheries.<sup>136</sup>

The Kyoto Protocol similarly integrates technological and financial considerations to support the needs of developing countries in responding to climate change. Article 10 calls for Annex I Parties to cooperate with developing countries for the 'effective transfer of environmentally sound technologies.'<sup>137</sup> Article 11 requests developed country parties to provide new and additional financial resources to meet the costs incurred by developing country parties.<sup>138</sup> These references indicate that states recognised that international responses to global environmental problems required taking into account of differentiations between states through the inclusion of other international interests in IEL so that they may achieve the objectives of the environmental agreement.<sup>139</sup>

Furthermore, the climate change includes some limited recognition of the historic responsibilities for climate change.<sup>140</sup> During the negotiations of the UNFCCC, UNGA Resolution 44/202 (1989) recognised the historic differences between states' contributions to climate change. It noted that the largest part of current emissions originates in developed

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<sup>134</sup> United Nations, 'A Guide to the Issues Before the Conference Prepared by the Chairman' (24 June 1993) A/CONF.164/10, ¶II(d); European Economic Community, 'Suggested Guidelines' (21 July 1993) A/CONF.164/L.20, ¶16 (EEC).

<sup>135</sup> UN Fish Stocks Agreement 1995, art 25(1).

<sup>136</sup> *Ibid*, preamble ¶8, art 25(2)-(3).

<sup>137</sup> Kyoto Protocol 1997, art 10(c).

<sup>138</sup> *Ibid*, art 11(2)(a) and art 11(2)(b).

<sup>139</sup> However, the extent to which they are fulfilled by States is less certain. See the following for criticisms and review of the current financing framework: M. J. Mace, 'Funding for Adaptation to Climate Change: UNFCCC and GEF Developments since COP-7' (2005) 14(3) *RECIEL* 225, 245; Smita Nakhoda, 'The Effectiveness of Climate Finance: a Review of the Global Environment Facility' (ODI Working Paper Overseas Development Institute October 2013) <<http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8632.pdf>> accessed 25 February 2015, executive summary; Laurence Boisson de Chazournes, 'Is There Room for Coherence in Climate Financial Assistance?' (2015) 4(3) *Laws* 541, 543.

<sup>140</sup> UNFCCC 1992, preamble, ¶3.

countries and therefore they have the main responsibility for combating such pollution.<sup>141</sup> As in the negotiations for Principle 7 of the Rio Declaration, developing countries wanted developed states to take legal responsibility for historic carbon emissions.<sup>142</sup> This was contested by developed countries, and Article 3(1) makes no reference to the historic contributions to climate change.<sup>143</sup> Instead, Article 3(1) incorporates the principle of equity and requires the parties to ‘take in account all relevant considerations in the setting of responsibilities, in particular the needs and circumstances of developing countries.’<sup>144</sup> It states that parties ‘should protect the climate system ... on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.’<sup>145</sup> It also informs the differences between commitments made by state parties.<sup>146</sup> This approach to differentiation means that there are more defined commitments for developed country parties and ties developing country parties’ obligations to the provision of financial and technical assistance.<sup>147</sup> These provisions indicate that states integrated non-environmental considerations because they recognised the historic, economic, technological, and scientific differences between states, which would make it difficult for developing country parties to implement their obligations under the convention.

This recognition is further expressed in the Berlin Mandate (1995), which stated that the process for reviewing the adequacy of the commitments contained in the UNFCCC should be guided by CBDRRRC.<sup>148</sup> The reports of the AGBM – tasked to implement the Berlin Mandate – note that state delegations shared a ‘general consensus’ on the need to achieve equitable burden-sharing to tackle climate change through the principle of CBDRRRC.<sup>149</sup> Similarly, proposals submitted by parties to the AGBM emphasised that any future implementation of the UNFCCC commitments should occur based on CBDRRRC.<sup>150</sup>

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<sup>141</sup> E. g. UNGA Resolution 44/207 Protection of the Global Environment for Present and Future Generations (22 December 1989) UN Doc A/RES/44/207 preamble ¶8; UNGA Resolution 45/212 Protection of the Climate for Present and Future Generations (21 December 1990) UN Doc A/RES/45/212.

<sup>142</sup> Yamin and Depledge, *The International Climate Change Regime*, 70; Atapattu, *Emerging Principles*, 387; see also, INC/FCCC, ‘Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of its Second Session, held at Geneva from 19 to 28 June 1991’ (19 August 1991) UN Doc A/AC.237/9, ¶45, ¶54; Report of the INC/FCCC. 3rd Session (1991) ¶76, ¶78. However, see the negotiation in ¶78 where Parties discussed who would undertake the obligations and commitments in the Convention. Some delegations were of the view that developing and developed countries should undertake obligations and commitments of a general nature. Others stressed financial resources should be linked with the implementation of these commitments by developing countries; see also ¶82 in relation to technology transfer; UNFCCC 1992, preamble ¶6.

<sup>143</sup> UNFCCC 1992, art 3(1); Yamin and Depledge, *The International Climate Change Regime*, 70.

<sup>144</sup> Yamin and Depledge, *The International Climate Change Regime*, 70.

<sup>145</sup> UNFCCC 1992, art 3(1).

<sup>146</sup> *Ibid*, art 4(1).

<sup>147</sup> *Ibid*, art 3(2), art 3(7).

<sup>148</sup> Decision 1/CP.1 The Berlin Mandate (7 April 1995), ¶1(a).

<sup>149</sup> Report of the AGBM. 4th Session (1996), Annex I Part III ¶15.

<sup>150</sup> UNFCCC AGBM, ‘Implementation of the Berlin Mandate: Proposals From Parties. Note by the Secretariat’ (17 May 1996) FCCC/AGBM/1996/MISC.2, 3 (Trinidad and Tobago, on behalf AOSIS).

However, there was significant debate over how to differentiate between parties in order to ensure equity and take into account the varying national circumstances, developmental stages, and economic context between Annex I Parties, and non-Annex I Parties.<sup>151</sup> These discussions suggest that the principle of CDRRC in the context of the climate change remained a contested feature, particularly with the economic growth undertaken by some developing states.

However, the principle of CDRRC has been increasingly challenged in the post-2001 period. The submissions by state parties to the AWG-KP emphasised the need for developing countries to become more engaged in mitigating climate change activities.<sup>152</sup> Canada noted that the 'new realities' concerning developing countries' emissions could not be ignored.<sup>153</sup> Similarly, the European Union stated that consideration 'should also be given to ways of effectively involving major energy-consuming countries, including those among the emerging and developing countries.'<sup>154</sup> Other state parties emphasised the historic responsibility for climate change by developed states.<sup>155</sup> In their submissions, they sought to ensure that the historical responsibility and ecological debt of developed country parties was taken into account to ensure the 'fair allocation of the global atmospheric space to all parties.'<sup>156</sup> These submissions indicate that the debates concerning *how* CDRRC should be integrated into the climate change regime contained in the post-2001 period, and highlight the tension in the debate as they concern areas closely related to national interests.

These debates also occurred in the AWG-LCA and suggest that there is growing distance between those parties who consider that climate change mitigation activities should be based upon CDRRC and historical responsibility, and those who argue that the principle does not take into account the current realities. The submissions by China and Bolivia argued that the principles for contribution by different groups of countries to long-term cooperative action should take into account the historical responsibility of developed countries.<sup>157</sup> Other

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<sup>151</sup> See e.g. UNFCCC AGBM, 'Report of the *Ad Hoc* Group on the Berlin Mandate on the Work of its Second Session, held at Geneva from 30 October to 3 November 1995' (21 November 1995) FCCC/AGBM/1995/7, ¶39.

<sup>152</sup> UNFCCC AWG-KP, 'Information and Views on the Mitigation Potential at the Disposal of Annex I Parties. Submissions from Parties. Addendum' (3 May 2007) FCCC/KP/AWG/2007/MISC.1/Add.1, 5 (Norway).

<sup>153</sup> UNFCCC AWG-KP, 'Information and Data on the Mitigation Potential of Policies, Measures and Technologies. Submissions from the Parties. Addendum' (14 August 2007) FCCC/KP/AWG/2007/MISC.4/Add.1, 7 (Canada).

<sup>154</sup> UNFCCC AWG-KP, 'Topics for the In-Session Workshop. Submissions from Parties' (11 September 2006) FCCC/KP/AWG/2006/MISC.2, 4 (European Union), see also 8 (Mexico).

<sup>155</sup> UNFCCC AWG-KP, 'Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on its Resumed Sixth Session, held in Poznan from 1 to 10 December 2008' (4 February 2009) FCCC/KP/AWG/2008/8, Annex I ¶12.

<sup>156</sup> UNFCCC AWG-KP, 'Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on its Tenth Session, held in Copenhagen from 7 to 15 December 2009' (28 January 2010) FCCC/KP/AWG/2009/17, Annex I, 10; see also Report of the AWG-KP. 13th Session (2010) Annex I ¶12.

<sup>157</sup> UNFCCC AWG-LCA, Ideas and Proposals on Paragraph 1 of the Bali Action Plan (15 January 2009), ¶22(f) (Bolivia).

parties proposed that differentiation requires reconsideration based upon the changing social and economic situation in the world.<sup>158</sup> These differences were evidenced in relation to the contribution by different country groups to the achievement of long-term goals.<sup>159</sup> They also express broader criticisms of CDDRRC held by some states. The United States, a long-standing critic of CDDRRC, sought to bracket references to it in other forums, including the Johannesburg Summit.<sup>160</sup> This analysis suggests that while the negotiations reflected a commitment to the principle of CDDRRC as a base for long-term cooperative action in climate change mitigation, in the AWG-LCA work stream there remains tension between members of the international community over CDDRRC as currently conceptualised. Once again, these tensions relate to those areas which are closely associated with national security and national interests, and signify developed county parties' reluctance to cede their powerful position in the international community.

This tension is reflected in the few references to the principle in the later climate change decisions. The Outcome of the Work of the AWG-LCA (2011) contains a single reference to the CDDRRC principle in the context of integrating market mechanisms to promote mitigation activities.<sup>161</sup> The Cancún Agreements (2010) refer to CDDRRC in relation to the shared vision for long-term cooperative action.<sup>162</sup> These decisions consistently stress the support for developing states in relation to technology transfer, access to assistance and to finance.<sup>163</sup> However, the criticism over the historical responsibility as a differentiator for commitments and the omission of this approach in the Advancing the Durban Platform Stream, indicates that the climate change regime is evolving and that the principle of CDDRRC may be increasingly contested.<sup>164</sup>

Furthermore, the introduction of 'nationally appropriate mitigation activities' in the Bali Action Plan (2007) demonstrates a shift in the way that differentiation is conceptualised in

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<sup>158</sup> Ibid, ¶22(h) (Australia and the United States of America).

<sup>159</sup> Ibid, ¶30(e) (Canada) and ¶30(i) (EC and Member States).

<sup>160</sup> Commission on Sustainable Development, 'Draft Plan of Implementation of the World Summit on Sustainable Development. Note by the Secretariat' (26 June 2002) A/CONF.199/L.1, ¶2, ¶13, ¶19, ¶37, ¶75, ¶120; ¶138(c); Lavanya Rajamani, 'From Stockholm to Johannesburg: The Anatomy of Dissonance in the International Environmental Dialogue' (2003) 12(1) RECIEL 23, 30; see also United States' interpretative statement concerning Principle 7 of the Rio Declaration, United Nations, *Report of the United Nations Conference on Environment and Development: Proceedings of the Conference* (Rio de Janeiro, 3-14 June 1992) UN Doc A/CONF.151/26/Rev.1(Vol. II), ¶16.

<sup>161</sup> Decision 2/CP.17 Outcome of the Work of the AWG-LCA (11 December 2011), Part II(E) preamble ¶23.

<sup>162</sup> Decision 1/CP.18 Agreed Outcome Pursuant to the Bali Action Plan (8 December 2012), ¶2.

<sup>163</sup> Decision 2/CP.15 Copenhagen Accord (18 December 2009), ¶3, ¶8, ¶11; Cancún Agreements (2010) (10-11 December 2010), ¶95, ¶113-¶129; Decision 2/CP.17 Outcome of the Work of the AWG-LCA (11 December 2011), Part V; Decision 1/CP.18 Agreed Outcome Pursuant to the Bali Action Plan (8 December 2012), Part IV, Part V and ¶94; Rajamani, 'The changing fortunes of differential treatment', 617.

<sup>164</sup> Rajamani, 'The Durban Platform', 507-508. However, see Paris Agreement (Paris) (adopted 12 December 2015, not yet in force) FCCC/CP/2015/10/Add.1 Annex (12 December 2015), art 2(2).

the climate change regime.<sup>165</sup> It introduced the possibility that developing countries may undertake mitigation activities. This signifies a move towards a more nuanced understanding of differentiation.<sup>166</sup> This is significant because the Bali Action Plan called for action on climate change by all UNFCCC parties, and indicated a move away from the Annex I/non-Annex I party dichotomy incorporated in the UNFCCC and Kyoto Protocol.<sup>167</sup> Instead, it referred to ‘developed’ and ‘developing’ countries in the context of CBDR and called for mitigation *commitments* by the former and mitigation *actions* by the latter.<sup>168</sup> The plan also qualified such actions by developing countries by stating that these must be ‘in the context of sustainable development’ as well as ‘supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner.’<sup>169</sup> Therefore, the evolution of the concept requires both developed and developing states to undertake mitigation activities, while also acknowledging the continuing barriers for developing countries in achieving mitigation activities and the overriding priorities of poverty eradication and socio-economic development for developing countries.<sup>170</sup>

These arguments indicate that discussions surrounding CBDRRC have increasingly focused on the economic implications of differentiation. The arguments surrounding the concept suggest that developed states are unwilling to cede their energy and economic security by supporting those developing countries who they view as economically capable of mitigating their carbon emissions. Once again, the focus of the debate centred on non-environmental considerations, and suggests that in these environmental documents, economic considerations remain a priority, for both rapidly developing country parties and developed country parties. This prioritisation may suggest that the increasing concern that climate change may affect the economic and energy security of states. Therefore, the tensions in these documents may suggest that the basis for which, and how states protect the environment has altered.

The above discussion has mainly concentrated on the integration of the CBDRRC principle into the climate change regime and the related arguments used to include non-environmental considerations in order to support developing countries implement their obligations. In Section 1, I found that many of the references to CBDRRC and differentiation reflected structural pluralism because it suggested that states have recognised

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<sup>165</sup> Decision 1/CP.13 Bali Action Plan (14-15 December 2007), ¶1(b)(i)-(ii). This may be the first soft-law instrument in climate change to call on developed and developing countries to mitigate their emissions of GHGs. For a discussion of this notion, see Doaa Abdel Motaal, ‘The Shift from “Low Politics” to “High Politics”: Climate Change’ (2010) 40(2/3) *EnvPol’y & L* 98.

<sup>166</sup> Brunnée and Streck, ‘The UNFCCC as a Negotiation Forum: Towards Common but more Differentiated Responsibilities’, 594.

<sup>167</sup> *Ibid.*, 594.

<sup>168</sup> Decision 1/CP.13 Bali Action Plan (14-15 December 2007), ¶1(b).

<sup>169</sup> *Ibid.*

<sup>170</sup> Cancún Agreements (2010) (10-11 December 2010), Part III(B) preamble ¶1-¶2.

that differences in ability, circumstances and needs affect the extent to which members may be able to pursue the common goal of environmental protection. The analysis undertaken in this section suggests that historical, socio-economic, geographical and (to some extent) political differences between states have been taken into account when identifying their capabilities to implement their environmental obligations under IEL. I found that the arguments supporting the integration of technological, scientific, and financial considerations into these documents expressly linked state obligations with the provision of additional support from developed countries. The Desertification Convention is notable for this conditionality because it also takes into account the local conditions where such technology may be used and emphasises the cooperative nature of technology transfer, and scientific capacity building between developed and developing countries. Therefore, these documents indicate that the integration of such non-environmental considerations has been made in order to support the capabilities of some states to achieve the common goal of environmental protection.

However, the analysis also suggests that the principle of CBDRRC is becoming increasingly contested and the rapid economic development of some developing state parties has caused other parties to challenge the relevance of the concept in the post-2001 period. The content of the post-2001 climate change documents indicates that much of the focus during the negotiations of the COP decisions centred on the economic implications of the concept and that some developed country parties resented the imposition of tighter controls while other developing countries were free to emit more. The analysis of the post-2001 climate change documents suggests that later negotiations surrounding the CBDRRC principle overwhelmingly focused on economic differentiation and the relative economic strengths of developing and developed country parties. The focus of the negotiations on these issues suggests that while the parties recognised the value of differentiation, it has increasingly been qualified in terms of economic capabilities. These tensions, and the reluctance to include the principle in the adopted outcome texts, may suggest that other interests, such as economic, trade and development, are affecting the extent to which states respond to environmental concerns in a differentiated way.<sup>171</sup> The analysis of the documents indicates that these interests are at the forefront of any discussion concerning differentiation in commitments. This suggests that economic, development and financial considerations have been prioritised during the negotiations of state responses in relation to shared environmental concerns, such as climate change.

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<sup>171</sup> However, see the UNFCCC, 1/CP.21 'Adoption of the Paris Agreement' in Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, Addendum, Part Two: Action taken by the Conference of the Parties at its twenty-first session (29 January 2016) FCCC/CP/2015/10/Add.1 (12 December 2015), in which the Parties have integrated CBDRRC and principle of equity into the content of the implementing decision; and *Paris Agreement* (Paris) (adopted 12 December 2015, not yet in force) FCCC/CP/2015/10/Add.1 Annex (12 December 2015), in which the principle of CBDRRC and equity are explicitly referred to.

### 2.3 Contextualism

In Section 1, I suggested that documents from the post-Rio period onwards indicate that the preference for trade and economic liberalisation has universalised a model of development that does not necessarily take into account the different contexts in which communities interact with the environment. From my findings, I propose that there are two important critiques of the ways in which the inclusion of non-environmental considerations take into account the different contexts in which local communities and other marginalised social groups interact with the environment. First, the arguments that support the inclusion of these other areas into environmental agreements are based on a universalising model of development that presents environmental protection as an opportunity for development through technological, scientific and commercial innovation.<sup>172</sup> Second, the arguments supporting the protection of traditional knowledge, technology, and know-how justify this protection on the basis that it can support the economic development and environmental protection of the local environment. This justification appears to appropriate indigenous peoples and local communities' knowledge for the purpose of economic development. These arguments share similar assumptions with the arguments supporting sustainable development as a solution to insecurity and conflict by facilitating the economic and social development of local communities in conflict-prone regions.

Ecofeminists argue that the dominant development approach taken by states, the United Nations, international financial institutions, and other members of the international community was influenced by the description of a new 'development age' put forward by President Truman in his 1949 inaugural address. This conceptualisation of development sought to support those peoples who are victims of disease and starvation, lead a primitive economic life, and whose poverty is a 'handicap and threat both to them and to more prosperous areas.'<sup>173</sup> Therefore, development should 'help free the peoples of the world, through their own efforts, to produce more food, more clothing, more materials for housing.'<sup>174</sup> In doing so, development could attain 'peace, plenty, and freedom'<sup>175</sup> through international cooperation with other states to increase the industrial and economic activity of poor and underdeveloped states.

Development ecofeminists criticised this conceptualisation of development because it incorporates a dualism whereby those who are underdeveloped are poor, sick, non-consumers, and a security risk, whereas those who are 'developed' are rich, healthy,

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<sup>172</sup> Above, Chapter 3, 92-95.

<sup>173</sup> Truman, 'Inaugural Address'; Rist, *History of Development*, 71; for discussion of this see, Sachs, *The Development Dictionary*; Gustavo Esteva, 'Development' in Wolfgang Sachs (ed), *The Development Dictionary: a Guide to Knowledge as Power* (2nd edn, Zed 2010); Escobar, *Encountering Development*.

<sup>174</sup> Truman, 'Inaugural Address'.

<sup>175</sup> *Ibid.*



consumers, and peaceful.<sup>176</sup> Critics of this conceptualisation argue that development has become synonymous with political, economic and social change in the countries of Africa, Asia, Latin America, the Caribbean and the South Pacific.<sup>177</sup> In this context, 'underdevelopment' emerges as the antithesis of development and denotes those societies who were made to look beyond their own culture to achieve salvation as they lack the autonomous capacity to mobilise or control socio-economic formation for economic growth. Therefore, 'underdevelopment' can refer to the insufficient or inadequate levels of development resulting from the under-utilisation or exploitation of countries' human and material resources. As understood, underdevelopment frames societies who have not been integrated into the capitalist world economy in terms of their economic and technological backwardness.

Elements of these assumptions are inherent in the arguments that support including non-environmental considerations into the environmental regimes because they reflect a universalising model of development predicated on economic growth and the sustainable exploitation of natural resources. These assumptions are found in the preparatory documents for the Rio Conference. UNGA Resolution 42/186 (1987), UNGA Resolution 44/228 (1989), and the Rio Preparatory Committee Decision 1/25 (1990) associate the continued improvement of the world's environmental situation with sustained economic growth, technological development, and the improvement of social and economic conditions.<sup>178</sup> Similarly, the Rio Preparatory Committee reports note that participants supported the role of technology and economic growth in responses to environmental degradation.<sup>179</sup> The prominence of these references reveals a singular understanding of 'development' that is defined by economic growth and environmental sustainability is predicated on technological innovation and economic development.<sup>180</sup>

Critics of development state that 'working in development inevitably positions us within a 'development discourse', where the north's superiority over the south is taken for granted, and western-style development is the norm.'<sup>181</sup> Development ecofeminists critique the interconnected concepts of 'maldevelopment' and 'underdevelopment' and argue that inherent in this approach is an assumption that western ways of life are superior to the

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<sup>176</sup> Mellor, *Feminism & Ecology*, 26.

<sup>177</sup> See in general, Naz, 'Development Discourse', 65; Kapoor, 'Hyper-Self-Reflexive Development', 628-629; Phillips, 'The Concept of 'Development'', 8; see also Randall and Theobald, *Political Change and Underdevelopment*.

<sup>178</sup> Decision 1/25 (1990) Environment and Development (31 August 1990), ¶a(iii) and ¶a(iv); UNGA Res 44/228 (1989)¶5; UNGA Resolution 42/186 Environmental Perspective to the Year 2000 and Beyond (11 December 1987) UN Doc A/RES/42/186, ¶3(b).

<sup>179</sup> Decision 1/25 (1990) Environment and Development (31 August 1990), ¶a(iii) and ¶a(iv); UNGA Res 44/228 (1989), ¶5.

<sup>180</sup> Plumwood, *Environmental Culture*, 5-9; Mellor, *Feminism & Ecology*, 26.

<sup>181</sup> Kapoor, 'Hyper-Self-Reflexive Development', 628-629.

'backward' and subsistence ways of non-western societies.<sup>182</sup> They criticise the associations between development, technology, and economic growth inherent in the concept of sustainable development. They argue that the continued support for technoscientific solutions to shared global problems retains part of the conceptual framework informing ideologies and economies of domination that rest on the exploitation of nonhuman nature through rationalist science and the continued commodification of the environment.<sup>183</sup> These criticisms will be taken up in Chapter 7 because they also point to the universalisation of a western perception of the environment as a commodity or utility for economic benefit, rather than recognising that different communities and cultures view and experience their environment differently.

The content of the documents from the biodiversity regime similarly contain references that universalise a development model based on the exploitation of natural resources. The documents produced by the AWG-Biodiversity consistently promote the importance of biodiversity as an economic good for developing countries' development.<sup>184</sup> The working group stated that any new instrument must protect the interests of the states in which biological resources are located, and provide incentives for the conservation, without inhibiting economic growth or sustainable development.<sup>185</sup> These references exhibit a universalisation of a dominant, western, model of development in which nonhuman nature is viewed as a commodity or utility.<sup>186</sup> The proposals suggest that such debates were informed by the assumption that the primary value of biodiversity is its economic potential, which communities need to be incentivised to protect rather than exploit.<sup>187</sup>

The prominence of these arguments and the way in which they include non-environmental considerations in protecting the environment reflect similar assumptions that link environment/security in post-Cold War liberal peace discourse. This is because they suggest that the participants in these working groups assumed that the primary value of natural resources is its economic value, and that if communities were not incentivised economically, they would not conserve it. These assumptions are similar to those that were presented by scholars examining environment/security connections who argued that the

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<sup>182</sup> Shiva, *Staying Alive*, chapter 1, esp. 5-6; Mellor, *Feminism & Ecology*, 26; Hawthorne, *Wild Politics: Feminism, Globalisation, Bio/diversity*, 9-12. For an overview of the history of ecofeminism in development, see Sturgeon, *Ecofeminist Natures*, 140-166;

<sup>183</sup> For a more detailed critique of the interconnecting roles of technology, the economy and reason see Plumwood, *Environmental Culture*, 38-60; Gaard, 'Ecofeminism and Climate Change'; 24; also Hawthorne, *Wild Politics: Feminism, Globalisation, Bio/diversity*.

<sup>184</sup> Report of AWG of Experts on Biological Diversity. 1st Session (1989), ¶22(e); Report of the AWG on Biological Diversity. 2nd Session (1990), ¶2, ¶12, and ¶24; Report of the AWG of Experts on Biological Diversity. 3rd Session (1990), ¶35.

<sup>143</sup> Report of the AWG of Legal and Technical Experts on Biological Diversity. 1st Session (1990), ¶93.

<sup>186</sup> Plumwood, *Feminism and the Mastery of Nature*, 111.

<sup>187</sup> Report of the AWG on Biological Diversity. 2nd Session (1990) ¶16; Report of the AWG of Legal and Technical Experts on Biological Diversity. 1st Session (1990), ¶93.

economic value of natural resources is a source of conflict.<sup>188</sup> As noted in Chapter 2, these arguments had significant influence on states in the post-Cold War period.<sup>189</sup> Therefore, the prominence of these references in the documents by these working groups signifies a universalisation of the assumptions that have informed the dominant development model which views the environment as a commodity and therefore states and communities require monetary ‘incentives’ to protect.

The documents also revealed a second approach towards including non-environmental considerations that recognised the cultural and traditional uses of natural resources by women, indigenous people, and local communities.<sup>190</sup> These groups were identified in Chapter 5, as the sustainable development and biodiversity regimes supported their participation in the creation of environmental objectives and the implementation of the objectives surrounding sustainable development and biodiversity.<sup>191</sup> In this context, the documents suggest that states recognised that the objectives may have an impact on the traditional and cultural practices of these groups. The AWG-Biodiversity noted that indigenous peoples and local communities were ‘users and custodians of biological richness’ and therefore, their knowledge and rights should be respected.<sup>192</sup> Decisions in the later Rio Preparatory Committee noted that programmes promoting sustainable livelihoods of indigenous peoples should ‘address the dimensions of cultural identity preservation’<sup>193</sup> and take into account indigenous peoples and local communities’ interaction with the environment.<sup>194</sup> These references recognise that communities have different lived experiences which affect the way in which they interact and utilise the local environment. These references requested states to take into account these differences in the way in which they integrate non-environmental and environmental considerations in national policies concerning biodiversity and sustainable development.

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<sup>188</sup> E.g. Arthur H Westing, ‘Environmental Security and its Relation to Ethiopia and Sudan’ (1991) 20 *Environmental Security* 168; Thomas F Homer-Dixon, ‘Environmental Scarcities and Violent Conflict: Evidence from Cases’ (1994) 19(1) *Int Security* 5; Carsten F Rønnefeldt, ‘Three Generations of Environment and Security Research’ (1997) 34(4) *J Peace Res* 473; Percival and Homer-Dixon, ‘Environmental Scarcity’;

<sup>189</sup> Government of Canada, ‘Freedom From Fear: Canada’s Foreign Policy for Human Security’ (Department of Foreign Affairs and International Trade, <[http://www.hegoa.ehu.es/dossierra/seguridad/Freedom\\_from\\_fear\\_Canada\\_s\\_foreign\\_policy\\_for\\_human\\_security.pdf](http://www.hegoa.ehu.es/dossierra/seguridad/Freedom_from_fear_Canada_s_foreign_policy_for_human_security.pdf)> ; and Christine Parthemore and Will Rogers, *Sustaining Security: How Natural Resources Influence National Security* (Center for New American Security, 2010).

<sup>190</sup> INCD Secretariat, *Compilation of Government Views* (23 August 1993) UN Doc A/AC.241/12 (23 August 1993), Part II, ¶30(b)(iii).

<sup>191</sup> Above, Chapter 5, 162-166.

<sup>192</sup> UNEP, ‘Report of the *Ad Hoc* Working Group of Legal and Technical Experts on Biological Diversity on the Work of its Second Session’ (Nairobi, 25 February - 6 March 1991) (7 March 1991) UNEP/Bio. Div/WG.2/2/5, ¶11.

<sup>193</sup> Decision 3/8 ‘Poverty, Sustainability and Demographic Pressures, Health and Education’ in Report of the Preparatory Committee for the United Nations Conference on Environment and Development (UN GAOR 46th Session, Supplement No 48) (1991) UN Doc A/46/48 (vol II) Annex I (4 September 1991), Annex ¶9.

<sup>194</sup> Report of AWG of Experts on Biological Diversity. 1st Session (1989), ¶17; Decision 3/7 (1991) Indigenous People and Local Communities (4 September 1991), ¶1(c).

The later INCD reports include similar references that recognise the ways in which local communities utilise the environment. They indicate that participants in the INCD also identified local communities as ‘users and custodians’<sup>195</sup> of nonhuman nature and that their knowledge and rights should be respected. They proposed that the development, implementation and follow-up concerning the Desertification Convention should involve all the actors concerned, including local communities, women, non-governmental organizations, youth, and the private and public sectors. They further supported the protection of cultural and traditional uses of natural resources where it contributed to the sustainable use of such resources or environmental conservation.<sup>196</sup> These references identify the different ways in which traditionally marginalised groups interact and utilise their environment, and the integration of non-environmental considerations is explicitly connected to the needs and values of the local community. Therefore, they indicate that states seek to take into account the different social, cultural, and geographical context in which environment and development responses would take place.

However, the arguments used to protect these traditional practices justify the protection on the basis that they can contribute to sustainable development. These arguments frame such knowledge as a potential commodity and relate it to sustainable development objectives for developing countries. The AWG-Biodiversity reports refer to the need to protect indigenous peoples and local communities’ rights, interests, and ownership of traditional knowledge and technology, and to reward indigenous peoples for their ‘informal innovation.’<sup>197</sup> They identified local communities, women, and indigenous peoples as holders of knowledge and technology that could enable the sustainable use of natural resources and therefore contribute to economic and sustainable development.<sup>198</sup> Once again, these references suggest that the extent to which states support the contextual integration of non-environmental considerations is balanced against the potential economic value of such consideration. In this context, the value of protecting and supporting the use of traditional

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<sup>195</sup> Report of the Intergovernmental Negotiating Committee for the Desertification Convention. 2nd Session (1993), Appendix III, 26; INCD Secretariat, *Compilation of Government Views* (23 August 1993) UN Doc A/AC.241/12 (23 August 1993), Part II, ¶31(b)(ii).

<sup>196</sup> Report of the Intergovernmental Negotiating Committee for the Desertification Convention. 2nd Session (1993), Appendix III, 26.

<sup>197</sup> Decision SS.II/5 ‘International Legal Instrument on the Biodiversity of the Planet’ in United Nations Environment Programme Report of the Governing Council on the Work of its Second Special Session 1-3 August 1990 (UN GAOR 45th Session, Supplement No 25) (1990) UN Doc A/45/25 Annex (3 August 1990), ¶27; Decision 2/18 ‘Protection of the Oceans and all kinds of Seas, including Enclosed and Semi-Enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of their Living Resources; Global Aspects of Marine Pollution; Regional Seas and Coastal Areas; Protection, Rational Use and Development of Living Marine Resources’ in Preparatory Committee for the United Nations Conference on Environment and Development (UN GAOR 46th Session, Supplement No 48) (1991) UN Doc A/46/48 Annex I (5 April 1991), ¶1(g); see also ¶1(h).

<sup>198</sup> Report of the AWG of Legal and Technical Experts on Biological Diversity. 1st Session (1990), Appendix I ¶12; Report of the AWG on Biological Diversity. 2nd Session (1990) Annex I, 11; Decision 3/7 (1991) *Indigenous People and Local Communities* (4 September 1991) ¶1(a).

knowledge and technology is measured against the potential for undertaking a process of development based upon a universalised western notion of development that focuses on the economic context of human/environment interconnections.<sup>199</sup>

The analysis of the outcome texts from the biodiversity and sustainable development regime similarly justify the protection of traditional and cultural practices on the basis that they contribute to sustainable development. In doing so, these documents indicate a prioritisation of the western notion of development. Both recognise the close relationship between indigenous peoples and local communities ‘embodying traditional lifestyles’<sup>200</sup> with nonhuman nature. They both refer to women as having a ‘vital role’ in environmental management, conservation and development of the environment.<sup>201</sup> However, they frame the contribution of these groups as a potential economic contribution to sustainable development through the sustainable utilisation of natural resources.<sup>202</sup> Principle 22 of the Rio Declaration affirms that indigenous people and local communities ‘have a vital role in environmental management and development because of their knowledge and traditional practices.’<sup>203</sup> These references indicate that states valued the traditional knowledge and experiences of women, local communities and indigenous peoples for their contribution to sustainable development.<sup>204</sup>

Once again the arguments supporting these contextual considerations contain assumptions that seek to assimilate other cultures, traditions and practices into the dominant discourse of development, in which the economic value of such practices is privileged over other values. These arguments suggest that the basis for which states seek to protect the environment has altered, particularly after the introduction of sustainable development. These references suggest that while states recognised that local communities utilised their resources differently, they supported the protection of these practices because they could contribute to sustainable development. These arguments indicate that the introduction of sustainable development has framed such protection in terms of the potential economic and development benefits.

However, some of the documents also include references that indicate states recognised other values, not just the economic value of the environment. The preamble to the Biodiversity Convention recognises the intrinsic value of biodiversity, including its cultural, ecological, social, and aesthetic value.<sup>205</sup> Principles 20 and 22 of the Rio Declaration call for

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<sup>199</sup> Braidotti and others, *Women, the Environment*, 130-131.

<sup>200</sup> E.g. Biodiversity Convention 1992, preamble ¶12; World Summit Outcome (2005), ¶56(e); Rio+20 Outcome Document (2012), ¶197.

<sup>201</sup> Rio Declaration 1992, Principle 20; Biodiversity Convention 1992, preamble ¶13.

<sup>202</sup> Biodiversity Convention 1992, preamble ¶12; Rio Declaration 1992, Principle 22.

<sup>203</sup> Rio Declaration 1992, Principle 22.

<sup>204</sup> Agenda 21 1992, Chapter 2 ¶37(g).

<sup>205</sup> Biodiversity Convention 1992, preamble ¶1.

states to support the identity, culture, and interests of indigenous communities,<sup>206</sup> while Agenda 21 calls for states to respect the ‘cultural integrity and the rights of indigenous people and their communities.’<sup>207</sup> These references suggest that in certain contexts, states acknowledged the different culture, location, social, and historical contexts in which community members alter the way in which they interact with nonhuman nature have been taken into account with the integration of sustainable development.

Once again, the content of the Desertification Convention and its annexes are a notable exception to the trend identified in the above analysis. The preamble to the convention identifies the cause of desertification as ‘complex interactions among physical, biological, political, social and economic factors,’<sup>208</sup> which recognises that different communities may experience desertification and drought differently, depending on the specific context in which they inhabit. Similarly, Annex I requests parties to undertake medium and long-term studies of socio-economic and cultural trends in affected areas in their national action programmes.<sup>209</sup> Article 2 of Annex III requests states to take into consideration particular conditions of the region, including the diverse values of the region and the negative social, cultural, economic, and environmental effects caused by desertification.<sup>210</sup> It further requests states to take into account the ‘frequent use of unsustainable development practices in affected areas as a result of complex interactions among physical, biological, political, social, cultural and economic factors, including international economic factors.’<sup>211</sup> The content of these articles from the regional annexes recognises that communities experience desertification differently because of their specific cultural, historical, and social contexts, which alters both the way in which they interact with nonhuman nature and their experiences of development. Like the preamble to the Biodiversity Convention above, these references integrate both environmental and non-environmental considerations into the text of the documents in a way that recognises the complexity of human and environment interactions, which occur because of cultural, traditional and geographical differences between communities.

In the post-2001 period, documents from the sustainable development regime attempt to balance the cultural diversity between groups and the need to integrate such groups into sustainable development. The Johannesburg Plan of Implementation and the Rio+20 Outcome Document recognise the ‘cultural diversity of the world’ and the value of this diversity for sustainable development.<sup>212</sup> Both recognise that vulnerable and marginalised social groups, such as the poor, especially depend on nonhuman nature for their ‘economic,

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<sup>206</sup> Rio Declaration 1992, Principle 22 and Principle 20.

<sup>207</sup> Agenda 21 1992, Chapter 3 ¶7(b); Chapter 11 ¶13(b).

<sup>208</sup> Desertification Convention 1994, preamble ¶6.

<sup>209</sup> Ibid Annex I, art 8(3)(d)(iii).

<sup>210</sup> Ibid Annex III, art 2(a).

<sup>211</sup> Ibid Annex III, art 2(b).

<sup>212</sup> Rio+20 Outcome Document (2012) ¶41; Plan of Implementation 2002, ¶70(c).

social, and physical well-being, and their cultural heritage.’<sup>213</sup> These statements take into account the geographical, social, and historical context in which different groups are situated.

This difference may reflect the emerging contribution by NSAs in the creation, content, and implementation of sustainable development objectives in the post-2001 period.<sup>214</sup> The submissions by NSAs to the preparatory process for the post-2001 sustainable development conferences included more direct references to the different ways in which communities may experience sustainable development because they view non-human nature in other ways, and not solely as a commodity. They stressed the need to take into account differences in location and between communities in international responses to environmental problems.<sup>215</sup> In the preparations themselves, they stressed the importance of cultural and spiritual aspects of sustainable development and that respect for cultural diversity was essential for supporting sustainable development.<sup>216</sup> These examples suggest that at least during the preparatory stage, there was broad recognition of the cultural differences between communities that affect their experience of sustainable development.

This is different from the submissions by states who referred to the value of cultural diversity,<sup>217</sup> but made little connection between diversity and the different ways in which communities experience and utilise their local environment. At the fourth session of the Johannesburg Preparatory Committee, ministers noted that the ‘world must work towards creating a culture of sustainable development, including ethical values that took into account cultural and traditional difference.’<sup>218</sup> This analysis suggests that states have recognised other values, such as cultural, traditional, and ethical values in the context of sustainable development and integrated them into IEL. Nevertheless, unlike the submissions by NSAs, they have not yet recognised that such values mean communities and social groups experience and interact with their environment differently.

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<sup>213</sup> Rio+20 Outcome Document (2012) ¶30; see also ¶58(j); ¶197; United Nations, *Report of the United Nations Conference on Sustainable Development* (Rio de Janeiro, 20-22 June 2012) (2012) UN Doc A/CONF.216/16, ¶54.

<sup>214</sup> See above, Chapter 5.

<sup>215</sup> International Federation of Agricultural Producers, 'Multi-Stakeholder Dialogue Segment of the Second Session of the Commission on Sustainable Development Acting as the Preparatory Committee for the World Summit on Sustainable Development. Note by the Secretary-General, Addendum, Dialogue Paper by Farmers' (15 January 2002) E/CN.17/2002/PC.2/6/Add.9, ¶24-¶25; WEDO, 'Multi-Stakeholder Dialogue Segment of the Second Session of the Commission on Sustainable Development acting as the Preparatory Committee for the World Summit on Sustainable Development. Note by the Secretary-General. Addendum, Dialogue Paper by Women' (10 December 2001) E/CN.17/2002/PC.2/6/Add.1, ¶24-¶30; Indigenous Peoples Caucus of the Commission on Sustainable Development, 'Multi-Stakeholder Dialogue Segment of the Second Session of the Commission on Sustainable Development Acting as the Preparatory Committee for the World Summit on Sustainable Development. Note by the Secretary-General, Addendum, Dialogue Paper by Indigenous Peoples' (28 December 2001) E/CN.17/2002/PC.2/6/Add.3, 1.

<sup>216</sup> Report of the Preparatory Committee of the WSSD. 4th Session (2002), Annex II ¶10 and ¶33.

<sup>217</sup> Ibid, Annex I ¶32; Report of the Preparatory Committee for the UNCSD. 1st Session (2010), Annex I, ¶42; UNCSD Secretariat, *Synthesis Report on the Best Practices and Lessons Learned* (2011) (21 January 2011), ¶97.

<sup>218</sup> Report of the Preparatory Committee of the WSSD. 4th Session (2002) Annex I ¶3.

However, I found that the documents relating to natural resources contained few references that recognised the differences between communities and that these differences affected the way in which they related to the environment. Article 5 of the UN Fish Stocks Agreement and Article 25 of the 2006 ITTA both require states to take into account the social effects or interests of account the interests of subsistence or artisanal users of the natural resource.<sup>219</sup> Article 6 of the UN Watercourses Convention includes similarly broad distinction.<sup>220</sup> These broad references do not directly acknowledge the social, historical, and cultural differences between locations and group and are in contrast with the 1992 Non-Legally Binding Authoritative Statement of Principles for a Global Consensus of the Management, Conservation and Sustainable Development of all Types of Forests (Statement of Forest Principles). This non-legally binding documented calls for states to consider ‘the multiple functions and uses of forests, including traditional uses, and the likely economic and social stress when these uses are constrained or restricted.’<sup>221</sup> The binding nature of the above agreements may suggest that states are less willing to take into account the ‘social, social, economic, ecological, cultural, and spiritual needs of present and future generations’<sup>222</sup> in connection with potentially profitable natural resources.

The analysis in this section indicates that the environmental regimes and areas that contained more inclusive participatory approaches general contain references that reveal greater contextual awareness in the integration of non-environmental considerations. They recognise that communities use and experience their local environment in very different ways, and therefore the inclusion of non-environmental considerations should take these contexts into account. This contextual approach is particularly represented in the Desertification Convention which supported the integration of technological, scientific, and other considerations so long as they recognised local communities, women and other social groups as users and custodians of traditional technology relevant to preventing desertification. Further, the convention and its annexes also recognised that local communities and their environments were intimately interrelated and that desertification affected the cultural, social and traditional practices of local communities. These references indicate that the arguments for the integration of non-environmental considerations take into account the local context in which they will be implemented.

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<sup>219</sup> Tropical Timber Agreement 1994, art 25(2)(b); UN Fish Stocks Agreement 1995, art 5(i), art 24(2)(b); Tropical Timber Agreement 2006, art 25(2).

<sup>220</sup> UN Watercourses Convention 1997, art 6(1); see also Report of the Resumed Review Conference on the UN Fish Stocks Agreement (2010)¶6(IV)(c); Report of the Review Conference on the UN Fish Stocks Agreement (2006).

<sup>221</sup> *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus of the Management, Conservation and Sustainable Development of all Types of Forests* UN Doc A/CONF.151/26/Rev.1 (vol 1) (1992) preamble ¶(c).

<sup>222</sup> *Ibid*, Principle 2(b).



However, many of the documents do not adopt such an approach, and the arguments supporting the integration of non-environmental considerations refer to the potential economic outcomes of protecting traditional knowledge and cultural practices. This is particularly the case in the documents relating to biodiversity and sustainable development where the documents contain many arguments supporting the protection of cultural and traditional technology and innovation on the basis that such technology could facilitate the sustainable exploitation of natural resources for economic development. This appropriation of local and traditional knowledge, and what it might reveal about the way in which the international community perceives the environment will be examined in Chapter 7.

These arguments indicate that there has been a universalisation of the dominant development model in which elements of different cultures, knowledge and experience may be considered a tool to achieve economic development and sustainability goals, rather than recognised for other, intrinsic and unmeasurable values. The justifications for States to take due account of these communities in the economic, social, and development considerations are often directly associated with economic gain and development, rather than a more contextual focus on the different principles, values and experiences of these communities. Supporters of sustainable development argue that it offers a way to respect local traditions and values as part of the development model, while also supporting the assimilation of these communities into the capitalist productive system, through development projects. However, critics argue that a core argument for the connection between sustainable development and insecurity is that economic growth and development is a precursor to both peace and environmental conservation. Therefore, the analysis undertaken in this section may suggest that the security/environment connections have altered the basis for which States protect the environment.

## 2.4 Open

In Chapter 2, I noted that sustainable development emphasised transparency and openness as part of the principle of good governance that has been incorporated into the concept.<sup>223</sup> Proponents of these principles argue that they institutionalise a collective response to environmental concerns by enabling governments to be held to account over their activities.<sup>224</sup> Similarly, an ecofeminist ethic emphasises the importance of transparency and openness in the way in which states connect non-environmental considerations and the environment in IEL. Ecofeminists argue that opening up the arguments and discussions surrounding the inclusion of non-environmental connections enables such justifications to be interrogated and the proponents for them to be challenged. Such activities reflect the activist heritage of ecofeminism and also recognises that those who are in privileged and

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<sup>223</sup> Gupta, 'Global Sustainable Development Governance', 363.

<sup>224</sup> Above, Chapter 2, 48-50; Chapter 5, 167.

dominant positions have historically determined the way in which areas were connected and which considerations were prioritised.<sup>225</sup> My analysis suggests that while the parties to some environmental regimes support including transparency and accountability provisions, these are limited to specific regimes, and omit any transparency in the way in which non-environmental considerations, such as intellectual property, trade, and economic considerations affect the decisions and approaches undertaken under the regimes.

One outcome text that does support stronger accountability and transparency mechanisms in its implementation is the Cartagena Protocol.<sup>226</sup> The BSWG preparatory reports and protocol suggest that states recognised the importance of transparency in some collective responses to environmental concerns, particularly in connection to environmental safety. During the negotiations of the protocol, state participants affirmed the necessity of ensuring transparency in the systems surrounding the safe transfer of living modified organisms (LMOs). Australia noted that the exchange of information on LMOs 'will be essential to the effective operation in all countries of a transparent, scientifically based system for regulating the transboundary movement of LMOs.'<sup>227</sup> The reports further affirmed the importance of transparency in relation to other issues directly related to an effective biosafety protocol, such as risk assessments.<sup>228</sup> The Cartagena Protocol requires information concerning LMOs to be publically accessible.<sup>229</sup> The reports also refer to the importance of ensuring transparency in different international systems, including international trade in the implementation of the objectives of the protocol.<sup>230</sup> The reports include statements that emphasise the need for assurances that any procedures developed under the protocol are themselves transparent.<sup>231</sup> This support to transparency and openness relates to environmental safety and allows some non-environmental considerations, such as transportation, and related scientific and technical considerations to be subject to the scrutiny of the public. These more procedural elements of LMOs indicate that in some contexts, transparency has occurred.

Similarly, the Kyoto Protocol includes provisions that support open and transparent information between parties, and in some instances, between parties and civil society. These provisions relate to both the content of the protocols and also more general provisions concerning information transfer. Article 2 of the Kyoto Protocol identifies information

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<sup>225</sup> Warren, *Ecofeminist Philosophy*, 99; Darling, 'A Weight for Water', 19.

<sup>226</sup> CBD BSWG, 'Report of the Third Meeting of the Open-Ended Ad Hoc Working Group On Biosafety' (Montreal, 13-17 October 1997) (17 October 1997) UNEP/CBD/BSWG/3/6, ¶68 and ¶81.

<sup>227</sup> CBD BSWG, 'Compilation of the Views of Governments on the Contents of the Future Protocol' (18 March 1997) UNEP/CBD/BSWG/2/2, 28 (Australia).

<sup>228</sup> CBD BSWG, 'Compilation of Government Submissions of Draft Text on Selected Items' (15 August 1997) UNEP/CBD/BSWG/3/3, 25 (Australia), 35 (Brazil). Report of the BSWG. 6th Session (1999), ¶7.

<sup>229</sup> Cartagena Protocol 2000, art 20.

<sup>230</sup> CBD BSWG, 'Report of the Second Meeting of the Open-Ended Working Group on Biosafety' (Montreal, 12-16 May 1997) (11 June 1997) UNEP/CBD/BSWG/2/6, ¶17.

<sup>231</sup> *Ibid*, ¶ 24.

exchange as a way to contribute to the effectiveness of the parties' actions.<sup>232</sup> Various provisions included in the 2001 Marrakesh Accords and in the 2005 Decision 27/CMP.1 'Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol' support the dissemination of information to the public.

Further, the Kyoto Protocol Compliance Mechanisms supports the provision of information during the compliance process, which enables more accountability between states and the public. Therefore, it allows the public dissemination of information and for enforcement hearings to be held in public.<sup>233</sup> Later decisions support the publication of 'non-confidential' information and the provision of a 'provide a publicly accessible user interface.'<sup>234</sup> These provisions suggest that some environmental agreements have incorporated provisions supporting transparency of information, information dissemination, and some accountability measures to be undertaken in public. These references indicate that in some contexts, transparency has occurred in relation to information surrounding the objectives of the agreement.

In this way, these provisions may suggest that these agreements have incorporated *procedural* accountability and transparency in their content. However, they do not indicate that the way in which states prioritise and decide which non-environmental considerations are important, or the arguments surrounding these discussions, are undertaken in a transparent and open manner. Further, the analysis of the post-2001 documents suggest that any references concerning the relationship between environment, trade, economic and commercial considerations and transparency and accountability provisions are extremely broad. This generalisation suggests that in relation to certain considerations that go to the heart of some state interests, and to the well-being of industry, business and other private actors, states are reluctant to open those decisions to the public.

Therefore, the post-2001 sustainable development outcome documents only include general references to the importance of open and transparent international economic

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<sup>232</sup> Kyoto Protocol 1997, art 2(1)(b), and art 3.

<sup>233</sup> Ibid, art 8; UNFCCC, Decision 27/CMP.1 'Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol' in Report of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol on its First Session, held at Montreal from 28 November to 10 December 2005, Addendum, Part Two: Action taken by the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol on its First Session (30 March 2006) FCCC/KP/CMP/2005/8/Add.3 (9-10 December 2005), Annex Part VII ¶6; Annex Part VIII ¶6-¶7; Annex Part IX, ¶2, ¶6 and ¶10; UNFCCC, Decision 22/CMP.1 'Guidelines for Review under Article 8 of the Kyoto Protocol' in Report of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol on its First Session, held at Montreal from 28 November to 10 December 2005, Addendum, Part Two: Action taken by the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol on its First Session (30 March 2006) FCCC/KP/CMP/2005/8/Add.3 (30 November 2005), Annex ¶115(a), ¶139.

<sup>234</sup> Decision 13/CMP.1 Modalities for the Accounting of Assigned Amounts under the Kyoto Protocol (30 November 2005), Annex ¶43(b), ¶44-¶48.

systems for sustainable development.<sup>235</sup> The Johannesburg Plan of Implementation includes broad references calling for international financial and trade institutions to ‘ensure that decision-making processes and institutional structures are open and transparent.’<sup>236</sup> The plan further identified a need for reform of the international financial architecture to ‘foster a transparent, equitable and inclusive system.’<sup>237</sup> The omission of any reference to accountability, or public dissemination may suggest that the provisions are responding to developing states’ criticism of the international financial and economic systems, but have not yet engaged in opening up those systems for public, democratic discussion.

Similarly, the move towards openness and accountability has been inhibited by economic and trade considerations in the biodiversity regime. During the negotiations of the Cartagena Protocol, the parties also emphasised the need to take into account issues of confidentiality and intellectual property rights in relation to the advanced informed procedure and risk assessments.<sup>238</sup> The tensions between the need to balance transparency and commercial interests suggests that in some circumstances, some states are less willing to enable open and transparent information sharing, particularly where it may affect private, economic, or commercial interests. This tension indicates that the increasing interrelationship between areas of international law, such as commercial, intellectual property, economic and environmental, environmental concerns have been subordinated.

Two conclusions may be drawn from this analysis. First, the preparations and outcome texts implementing legally binding obligations and objectives for states have engaged with, and accepted the need to integrate open and transparent systems for information-sharing as part of their institutional framework. The Cartagena Protocol, Kyoto Protocol, and Montreal Protocol include such references and the later decisions by the Meeting of the Parties to the Kyoto Protocol clarify the position concerning information dissemination to the protocol.<sup>239</sup> Therefore, there are some references that reflect the *openness* value in connection to the access of information. However, the generalised nature of the content and the use of ‘soft’ language in the post-2001 sustainable development documents suggests that some members of the international community may be resistant to such openness and transparency occurring. Similarly, the reluctance to open up the decisions surrounding economic, intellectual property and commercial interactions within the environmental

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<sup>235</sup> E.g. World Summit Outcome (2005), ¶25(e); Rio+20 Outcome Document (2012) ¶10.

<sup>236</sup> Plan of Implementation 2002, ¶47(b).

<sup>237</sup> Ibid, ¶86(a).

<sup>238</sup> Report of the BSWG, 2nd Session (1997), ¶156.

<sup>239</sup> Montreal Protocol 1987, art 7, art 9; Kyoto Protocol 1997, art 10(e); Cartagena Protocol 2000, art 20 and art 21; see also UNFCCC, Decision 11/CP.8 ‘New Delhi Work Programme on Article 6 of the Convention’ in Report of the Conference of the Parties on Eighth Session, held at New Delhi from 23 October To 1 November 2002. Part Two: Action Taken by the Conference of the Parties at its Eighth Session (28 March 2003) FCCC/CP/2002/7/Add.1 (1 November 2002), Annex Section B and Section C;

documents suggest that these interests remain prioritised and subject to very limited accountability.

Therefore, my analysis suggests that while the parties to some environmental regimes support including transparency and accountability provisions, these are limited to specific regimes, and omit any transparency in the way in which non-environmental considerations, such as intellectual property, trade, and economic considerations affect the decisions and approaches undertaken under the regimes. The extent to which these documents reflect such an approach is determined by other interests, particularly those relating to economic, intellectual property, and commercial interests. This prioritisation of non-environmental considerations over supporting accountability and openness in environmental agreements mirrors the conclusions outlined in Section 2.1 and 2.2, that economic and commercial interests have been prioritised in the context of IEL.

### 3. CONCLUSION

This chapter examined the integration of development, economic, technological, scientific, commercial, trade, and security considerations into IEL and the justifications put forward in the documents for their inclusion. I started this examination by identifying the broader areas of international concern that have been included in the content of IEL, and the justifications for their inclusion. I undertook this analysis because it identified any shared values, beliefs, and assumptions between the arguments supporting environment/security connections in international discourse, and those used in arguments supporting the protection of the environment. Therefore, it could potentially reveal the extent to which the inclusion of these interests has altered the for which states seek to protect the environment, and instead, the environment's utility for securing sustainable development and wider interests is considered more important.

My findings revealed three important themes affecting the extent to which an environmental regime reflected ecofeminist values. First, I found that the documents which took into account differences between countries, communities and locations generally included more references that reflected the ecofeminist values of structural pluralism, openness, and contextualism. As discussed above, the desertification regime and the sustainable development regime both incorporated differentiation into the content and implementation of their outcome texts. Interestingly, these two regimes were the ones that supported the increased participation by NSAs during the creation, content, and implementation of their objectives.

Second, I found that a consistent argument for the integration of non-environmental areas was made on the basis that the international community should take into account the differences between developed and developing countries. This argument occurred

throughout the time-period under analysis and was present in the documents from the Stockholm Conference, as well as in later documents, such as the reports by the AWG-LCA. However, the documents developed during the Rio period and afterwards explicitly integrate differentiation into the implementations of objectives and states' obligations through the principle of CBDRRC. This principle has been subject to significant criticism in the climate change agreement after 2001 and the tension revealed in the criticisms suggested that the differentiation as a central feature of IEL may increasingly be challenged.

Third, I found that the documents from the Rio Conference onward incorporated more provisions that supported the protection and respect for these forms of knowledge and experience, particularly in the sustainable development, biodiversity, and climate change regime. With the exception of the climate change documents, I found that these documents generally supported the participation by NSAs from local communities and marginalised groups in the creation, content and implementation of the adopted objectives. However, I also found that the justifications for such protection were made on the basis that such knowledge could be utilised for the purpose of economic development and scientific and technological innovation. These findings support the conclusions made in Chapter 5, where I suggested that one of the justifications for the participation by these groups was their potential utility in attaining economic and social development.

Finally, these findings indicate continued prioritisation of economic and trade considerations in the documents, particularly after the introduction of sustainable development. This prioritisation is found across the documents from the different regimes, and does not appear to be affected by the age of the document, the forum in which it has been made or the regime in which it is created. This prioritisation has significant implications concerning the arguments that states use to justify the protection of the environment and also the way in which the international community perceives the environment itself.

It is possible to draw three interrelated conclusions from the analysis undertaken in this chapter. First, this chapter concludes that economic and development considerations appear to be the overriding priority of states in the negotiations and discussion surrounding environmental problems. This prioritisation is reflected in the arguments supporting the conservation of the environment, and also in those supporting the integration of technological, scientific, and financial considerations. While earlier environmental documents, such as the Stockholm Declaration, Stockholm Action Plan, and the Montreal Protocol contain references that reflect this prioritisation, it has been consolidated in the paradigm of sustainable development and particularly in those documents relating to climate change and developed during the post-2001 period. This prioritisation does not reflect many of the values of the ecofeminist ethic and suggests that states consider the value

of the environment in terms of its potential use for economic and development gain, something that is the focus of the next chapter.

Building on the above, it is possible to conclude that the assumptions, values, and beliefs that inform the support for sustainable development as a solution to conflict and insecurity are present in arguments used to prioritise economic and development considerations. The belief that economic growth and socio-economic development is a precursor to environmental conservation is a central feature of the post-Cold War environmental documents, such as the Rio Declaration, Agenda 21, and the UNFCCC and forms the basis of the paradigm of sustainable development. Similar beliefs inform the arguments supporting sustainable development as a solution for conflict and insecurity which propose that responding to the drivers of underdevelopment through poverty eradication, good governance and the management of natural resources will ensure economic prosperity and reduce incidences of conflict. These associations were explicitly identified in the speeches made on behalf of states during the UNGA High Level Summits, and made more implicitly in the later sustainable development documents, particularly during the Johannesburg Summit and the Rio+20 Conference. The prioritisation of such considerations suggests that the international community considers the environment, and environmental management, as a tool in the fight against the drivers of insecurity.

Finally, inherent in these assumptions is the belief that the environment is a resource for a form of development that universalises western, rationalist development, predicated on the commodification, commercialisation, and exploitation of nonhuman nature for economic betterment. This belief reveals that the dominant model of development, in which economic growth, supported by technological assistance and expertise from developed countries, is seen as the primary measure of 'development.' Ecofeminists argue that such a model is predicated on the subordination and exploitation of nonhuman nature and maintains the separation between humanity and the material world in which we inhabit. These assumptions and what they may reveal about the perception of the environment by the states will be examined in more detail in the following chapter. For the meantime, these conclusions indicate that the reasons for state responses to environmental problems are informed by a development model in which the environment is a utility for achieving economic development as part of the wider goals of eradicating underdevelopment and attaining international peace and security

The above conclusions suggest that justifications used to support the integration of non-environmental considerations into IEL have underlying conceptual connections with those used to connect security, sustainable development, and environmental degradation. This indicates that the justifications for environmental protection, particularly after the introduction of sustainable development have evolved in line with the integration of liberal politics for peace and security in which economic growth and socio-economic development

are considered as the most important part of the solution. These conclusions have implications for the way in which the environment is represented, and in turn, perceived by the international community. They suggest that the environment is viewed as a commodity and utility for strategies of development that are predicated on consumption, production, and exploitation – something which ecofeminists have strongly criticised. Drawing on the conclusions found in this chapter, the following chapter will examine the extent to which the perception of the environment itself has altered in line with the changing priorities and focus of IEL.





## 7. Examining the Representation of the Environment in IEL

The previous chapters concluded that the introduction of the paradigm of sustainable development into IEL has altered the basis on which the international community seeks to protect the environment. This is because environment conservation, development, and economic growth have increasingly been viewed as solutions to the drivers of insecurity and conflict, such as the problems of underdevelopment and environmental degradation. In addition, the arguments supporting the increased participation by NSAs in the creation, content, and implementation of IEL are increasingly based on economic arguments, and an implicit linkage to security, through the paradigm of sustainable development. Furthermore, the arguments for protecting the environment prioritise economic, development, and trade non-environmental considerations, particularly through the paradigm of sustainable development.

This chapter turns to examine the second part of the research question. It analyses the ways in which the environment is represented in the environmental documents, and the extent to which the prioritisation of economic and development non-environmental considerations may have altered the perception of the environment itself by the international community. I intend to examine both how the perceptions of the environment may have altered over time and the degree to which states perceive the environment in terms of its intrinsic value for both humanity and nonhuman nature.<sup>1</sup>

When introducing ecofeminist theory, I noted that ecofeminists criticise the anthropocentric nature of the dominant social paradigm and its prioritisation of economic and productive measures of well-being.<sup>2</sup> Critics of this paradigm argue that it expresses the values and beliefs of the ruling elites.<sup>3</sup> Further, they argue that they are informed by a series of oppressive conceptual frameworks that underpin the dominant and rational discourses in western society.<sup>4</sup> They contend that these frameworks, and the logical structures included within them, continue to exclude, devalue, and subordinate human 'others' and the environment. This is because they are based upon conceptual dualisms naturalising the oppression and subordination of gender, nature, and human 'others'.<sup>5</sup> They argue that these dualisms are part of logical structures that institutionalise power and normalise it by attaching it to existing types of difference.<sup>6</sup> Therefore, these critical frameworks and logical

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<sup>1</sup> Hughes, 'Fishwives and Other Tails', 504; Mellor, 'Feminism and Environmental Ethics', 112-113.

<sup>2</sup> Above, Chapter 3, 77, 95-96.

<sup>3</sup> Fotopoulos, 'Dominant Social Paradigm'.

<sup>4</sup> Warren, *Ecofeminist Philosophy*, 46; see in general, Warren, 'Taking Empirical Data Seriously'; Plumwood, *Feminism and the Mastery of Nature*. Plumwood, *Environmental Culture*.

<sup>5</sup> Plumwood, *Feminism and the Mastery of Nature*, 43.

<sup>6</sup> *Ibid*, 42.

structures function to maintain institutions, such as the global economy and security which institutionalise oppression and domination.

The environment/security literature incorporates these oppressive conceptual frameworks and their logical structures,<sup>7</sup> and hence reflect the dominant social paradigm. This is in the research identifying the sources of security risks and in the proposed solutions to these risks. For example, scholars identified security risks because of natural resource scarcities,<sup>8</sup> the overabundance of natural resources,<sup>9</sup> the degradation of the environment,<sup>10</sup> overpopulation,<sup>11</sup> and underdevelopment,<sup>12</sup> among others.<sup>13</sup> These environmental sources of insecurity incorporate a worldview in which the environment is separate, subordinate, and a 'threat' to the well-being and security of humans.

These documents indicate support for sustainable development as a solution to these environmental threats. This is because proponents of the paradigm argue that it can reduce poverty, improve well-being, and generate hope, all of which can help reduce the 'alienation of individuals and thus lessen the risk of social tension and conflict.'<sup>14</sup> Inherent in this paradigm are the interrelated assumptions that supporting economic liberalism, technological innovation, and improving governance will establish the foundations of peace and prosperity, and therefore reduce insecurity. Building on these assumptions, security scholars, international institutions, states, and NSAs proposed that insecure states should achieve sustainable development through the 'managed' exploitation of natural resources in order to support socio-economic development, economic liberalism, and technological innovation.<sup>15</sup>

This reflects an anthropocentric perspective of the environment which seeks to reduce conflict through preventative development based on the liberal values of 'life, liberty and property'<sup>16</sup> predicated on the assumption that the environment is to be used for human interests. However, the prioritisation of economic and development considerations within the sustainable development paradigm incorporate damaging conceptual frameworks that

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<sup>7</sup> Above, Chapter 2, Section 3.3

<sup>8</sup> Percival and Homer-Dixon, 'Environmental Scarcity', 280.

<sup>9</sup> Mark J. Lacy, *Security and Climate Change: International Relations and the Limits of Realism* (Routledge 2005), 41; UNEP, *From Conflict to Peacebuilding* (2009), 8; Brunnschweiler and Bulte, 'Natural Resources and Violent Conflict' 651; see also Chapter 2, 63, fn 194.

<sup>10</sup> Barnett, 'Security and Climate Change', 9; IPCC, *Climate Change 2014. Summary for Policy Makers*, 16.

<sup>11</sup> Jeffrey Sachs, *The End of Poverty: How we can Make it Happen in our Lifetime* (Penguin 2005), 65-66.

<sup>12</sup> Duffield, *Development, Security and Unending War*, 3-4; also, Barnett, *The Meaning of Environmental Security* 64-65; Abrahamsen, 'Blair's Africa', 61, 70; Duffield, *The New Wars*, chapter 2.

<sup>13</sup> Fletcher, Breitling and Puleo, 'Barbarian Hordes', 1200.

<sup>14</sup> Duffield, 'The Liberal Way of Development', 57.

<sup>15</sup> UNSC Res 2128 (2013), ¶12; see also UNSC Res 1903 (2009), ¶9(d); UNSC Resolution 2021 (2011), preamble; UNSC Res 2198 (2015), preamble; Begby and Burgess, 'Human Security and Liberal Peace', 92.

<sup>16</sup> United Nations Commission on Human Security, *Human Security Now* 4; Bosold and Werthes, 'Human Security in Practice', 95.

exclude, devalue, and subordinate humans others and the environment.<sup>17</sup> These criticisms are important because the central thesis of ecofeminism is that there are shared conceptual roots for the domination of women, animals, and nature that function in real life to maintain institutions and practices of oppression and domination. Where the IEL documents represent the environment solely in terms of its value as a commodity or resource for human needs, well-being, and to achieve 'security', this suggests that these conceptual roots are present in international responses to environmental degradation. This may suggest that the perception of the environment contained in these documents is one of a commodity or resource for attaining security and securing human interests.

Therefore, this chapter turns to examine the representations of the environment contained in the environmental documents. It analyses the extent to which the prioritisation of economic, development, and trade considerations within the paradigm of sustainable development has altered the perception of the environment itself. By examining the ways in which the environment is represented and portrayed in the environmental documents, it is possible to identify the underlying beliefs, values and assumptions that have shaped the ways in which the international community perceives the environment. In doing so, this chapter reveals whether there are any shared assumptions, values, and beliefs between the representations of the environment in environment/security literature and those contained in the IEL documents. Where there are similarities, it may suggest that the prioritisation of sustainable development in the environment/security discourse and in IEL has altered the perception of the environment itself in the environmental documents.

## 1. FINDINGS

Given that ecofeminist approaches to nature represent a counter-hegemonic approach, it is expected that some of the documents may not reflect very many of their values. This is the case for those documents developed and adopted before the start of the environmental and feminist movement in the 1960s and 1970s, such as the documents from the Stockholm Conference. As a result of the age of the documents, it may not be surprising that these documents represent the patriarchal status quo.

Nevertheless, I argue that reading the documents from the Stockholm Conference onward still offers an opportunity to examine the extent to which the status quo has been consolidated, subverted, or altered, in a way that reflects ecofeminist goals. This is because the language contained in these documents helped shape the future direction of IEL and the ways in which the international community balanced environmental, development, and economic considerations. Analysing the representations of the environment in these documents can build on earlier conclusions in this thesis. It can examine the extent to which

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<sup>17</sup> Above, Chapter 3, 95-96.

the broadening and deepening of the participation by NSAs, as well as the recognition of socio-cultural and environmental/social interrelationships in some of the environmental regimes, may have subverted the dominant representations of the environment. Therefore, undertaking a critique of these pre-ecofeminist documents is still highly relevant to the overall objective of this thesis.

With this caveat in mind, I initially read the documents and identified different representations of the environment that reflected characteristics of the different ecofeminist values of inclusivity, structural pluralism, contextualism, and openness. Drawing on the analysis undertaken previously, I identified the different ways in which the environment was represented in documents, and the assumptions, values and beliefs that may have informed the way in which the environment was represented in the documents. During this process, I highlighted the different ways in which the environment was represented that shared similarities with the values forming the interconnecting ecofeminist lenses.

Representations of the environment that reflected the ecofeminist value of inclusivity recognise that humans are ecological and embodied in nature.<sup>18</sup> These representations take a relationship-oriented approach that acknowledges differences in a non-reductive, non-centrist and non-anthropocentric way. Representations of the environment that reflect the structurally plural value take into account the connections between communities (nonhuman and human), and the different relationship between nonhuman and humanity depending on location, context and culture.<sup>19</sup> References to the environment reflect characteristics of contextualism occur where the documents question the dominance of certain views and contextual locations that privilege dominant western cultural, social, economic, scientific, and historical constructions of the environment and associated others. Representations of the environment that contain characteristics of the openness value occur where the documents disseminate different knowledge, values, and experiences of the environment into the public sphere.

Following this, I re-examined the documents and categorised them depending on the extent to which they reflected an ecofeminist understanding of the environment as interdependent and interconnected living systems which recognises that humans are materially embedded in ecological systems.<sup>20</sup> Where the documents appeared to include representations of the environment that subverted the dominant representation of the environment, I categorised it as a document that had 'high-level' integration of the ecofeminist values. Where they appeared to consolidate or reinforce the status quo, and represented the environment primarily as a commodity or resource for economic growth and development, I categorised the document as reflecting 'low-level' integration of the

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<sup>18</sup> Mellor, *Feminism & Ecology*, 68; Warren, *Ecofeminist Philosophy*, 100; Plumwood, *Environmental Culture*, 19.

<sup>19</sup> Warren, 'Power and Promise', 142.

<sup>20</sup> Mellor, *Feminism & Ecology*, 184-189.

ecofeminist values. Given the conclusions of Chapters 5 and 6, I was interested to discover where, if at all, subversion of the dominant representation occurred, and if the representation of the environment altered where there is greater inclusion of non-environmental considerations, or where there was greater participation by NSAs in the creation of the environmental document.

Building on Chapters 5 and 6, my initial findings revealed that the environmental area, age of the document, and forum in which the document created affected the extent to which the representations of the environment reflected a high-level integration of the ecofeminist values. These findings are similar to those discussed in the previous chapter concerning the arguments used to support the integration of non-environmental considerations into IEL. These initial findings suggest that the extent to which the documents include representations of the environment reflecting ecofeminist characteristics alters depending on the extent to which the documents reflect inclusive participatory approaches, and the types of non-environmental considerations that they prioritised within the texts. I will outline my findings in the discussion below.

## 1.1 High-Level Integration

Very few of the documents' references to the environment display higher-level integration of ecofeminist characteristics. The documents including high-level integration of these characteristics are generally found in the environmental regimes developed during the Rio Conference and afterwards. This is because these documents exhibit contextualism and a contextual understanding of the environment by recognising that social groups may experience and utilise their environment differently.

### 1.1.1 Sustainable Development

References to the environment that reflect high-level integration of contextualism were found in the preparatory documents of the sustainable development conferences. These conferences generally supported more inclusive participation by NSAs, especially in the post-Cold War period. As this inclusive participation generally occurred after the end of the Cold War, such references are generally included in the documents produced during the Rio and post-Rio periods.

The documents produced by the 1992 Rio Preparatory Committee incorporate references that recognise the experiences and uses of the environment may differ depending on social group. Decision 3/7 takes into account that these social groups are holders of traditional knowledge that may be useful for the conservation and protection of the local environment.<sup>21</sup> Decision 3/7 also states that the cultural and traditional practices, and

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<sup>21</sup> Decision 3/7 (1991) Indigenous People and Local Communities (4 September 1991), ¶1(b).

knowledge of local communities and indigenous peoples should be respected.<sup>22</sup> Decision 2/18 referred to the 'need to recognise the special relationship of indigenous peoples, and the importance of traditional knowledge, with the conservation and utilisation ... of ... living marine resources'<sup>23</sup> These references reflect a more contextual understanding of human/environment interrelationships, which is one aspect of the contextualism value. They suggest that the participants acknowledge that differences in location, geography, cultures, and communities affect the ways in which people may interact and view their environment. In doing so, these references suggest that the preparatory committee recognised that representations of the environment are located in different, interconnected, and intersecting contexts, which include social, historical, and cultural contexts.<sup>24</sup>

However, the Rio Conference documents and those produced afterwards include very few references that reflect the ecofeminist values of inclusiveness, structural pluralism and openness in their references to the environment. As will be discussed below, outcome documents, such as the 1992 Rio Declaration and Agenda 21 generally reaffirm or consolidate the dominant perception of the environment-as-commodity. Therefore, these initial findings suggest that in the context of sustainable development, even where the forum supports the participation by NSAs, the dominant representation of the environment generally prevails.

## 1.2 Mid-Level Integration

Once again, the age, forum, and type of document affect the extent to which the references to the environment incorporated the ecofeminist values. I found that documents from the biodiversity, sustainable development, and desertification regime include provisions recognising the interrelationships between humanity and the environment in a non-hierarchical, integrated, and inclusive language. These regimes also support the protection of traditional knowledge and cultural practices. These findings suggest that that the participants in these regimes increasingly recognise the contextualism value in relation to the environment. In doing so, this analysis may indicate that the international community recognises that communities and social groups have different perceptions and views of human/environment interrelationships, and of the environment itself.

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<sup>22</sup> Ibid, ¶1(a).

<sup>23</sup> Decision 2/18 (1991) Protection of the Oceans and all kinds of Seas (5 April 1991), ¶(1)g; see also Decision 2/20 'Protection of the Quality and Supply of Freshwater Resources: Application of Integrated Approaches to the Development, Management and Use of Water Resources' in Preparatory Committee for the United Nations Conference on Environment and Development (UN GAOR 46th Session, Supplement No 48) (1991) UN Doc A/46/48(Vol.I)(SUPP) (5 April 1991), ¶3(w)

<sup>24</sup> Warren, *Ecofeminist Philosophy*, 99.

### 1.2.1 Sustainable Development

The post-2001 preparatory documents contain references to the environment that recognise the interrelationship between humanity and the environment. These references to the environment are included in the submissions by some NSAs and states during the preparatory process for the 2012 Rio+20 Conference. They suggest that some participants have begun to adopt a more inclusive perception of the environment and view humanity as part of ecological systems, rather than separate and distinct entities.

The Rio+20 Preparatory Reports include similar references. However, these reports use more qualified language and there are fewer provisions that recognise the interrelationship between humanity and the environment. These examples suggest that documents created with more inclusive participatory practices, such as those made by large multilateral conferences, contain references to the environment that may subvert the dominant perception of the environment-as-commodity.

The preparatory documents produced prior to the 2002 Johannesburg Summit include references to the environment that adopt a more contextual understanding of the environment. They recognise the cultural and spiritual values of different communities which may affect the way in which communities experience and view their local environment. Building on the earlier sustainable development documents, the Johannesburg preparatory documents also contain provisions taking into account cultural practices, traditional knowledge, and practices which may have a bearing on the ways in which local communities utilise and experience their environment. The inclusion of these references in the preparatory documents suggests that the international community recognises the contexts in which people interact with their local environment, and that these contexts have a bearing on the way in which they view and interact with it. In doing so, it may suggest that states and NSAs increasingly adopted a more contextual understanding of human/environment interrelationships and the environment itself.

Therefore, the post-2001 adopted texts include some references that reflect a contextual understanding of the environment. This contextual understanding is included in the 2002 Johannesburg Plan of Implementation and the later 2012 Rio+20 Outcome Document. Both of these documents emphasise the value of cultural differences, traditional practices, and traditional knowledge for sustainable development. Further, the Rio+20 Outcome Document makes limited reference to humanity as ecological beings embodied in nature. Nonetheless, the overall tone from these post-2001 sustainable development documents suggests that the view of environment-as-commodity, epitomised in the dominant social paradigm, remains dominant.

### 1.2.2 Desertification

The type of document affects the extent to which it moves beyond the dominant, environment-as-commodity perception of the environment. The documents in the



desertification regime challenged the overall trend in which softer law documents generally included more references that subverted dominant perception of the environment. The reports by the INCD suggest that the participants during the negotiations of the convention recognised that humans were interrelated and integrated into an ecological community. The references to the environment in these reports indicate that participants recognise that economic, trade, and development considerations were interconnected to the way in which different communities viewed and interacted with their local environment. These references reflect a more inclusive understanding of humanity's relationship with the environment and suggest that the desertification regime may have subverted the dominant perception of the environment, to a greater degree.

In addition, the INCD documents also took into account differences between communities in their interactions with their local environment. The documents referred to the environment in ways that took into account the geographic location, the ways in which different communities use and experience their local environment, and that such experiences may be affected by their class, race, gender, ethnicity, and social or cultural contexts. Extending this structurally plural approach towards the environment, the documents supported the protection and conservation of traditional knowledge, and cultural practices. This differentiated approach may have occurred because the INCD supported the participation by NSAs, and specifically grassroots organisations, whose participants directly experience the impact of desertification and drought in their daily lives.

The adopted 1994 Desertification Convention similarly included references that reflect inclusive and structurally plural characteristics in relation to the environment. The preamble to the convention recognises that humans are interrelated and integrated into an ecological community. The preamble recognises that development, economic, cultural and other considerations were interconnected and affected the way in which local communities experience the environment. Furthermore, Articles 10, 17-19 of the convention also support the protection and conservation of traditional knowledge, cultural practices and 'know-how'.<sup>25</sup> Building on the preparatory documents, this differentiated approach may suggest that the participants in the creation of the convention recognised that the way in which communities use and experience their environment is different depending on location, culture and tradition.

These findings suggest that in the post-Rio period, some regimes include provisions relating to the environment that subverted the dominant perception of the environment-as-commodity. Once again, the analysis of the desertification regime suggests that participatory approaches and ways in which the participants sought to balance environmental and non-environmental interests affected the way in which the environment was represented in the

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<sup>25</sup> Desertification Convention 1994, arts 10, 17-19.

documents. As my findings in the previous two chapters reveal, the desertification regime incorporated inclusive participatory provisions, and adopted a more balanced and differentiated approach towards including non-environmental considerations. These findings may alter the extent to which the desertification documents include representations of the environment that subvert the dominant perception of the environment.

However, the documents produced by the CRIC indicate a consolidation of the dominant perception of the environment. This is different to the earlier documents, where the references to the environment reflected inclusiveness, structural pluralism, and a contextual understanding of human/environment interrelationships. Instead, the documents produced by the CRIC approach human/environment interrelationships from a primarily anthropocentric perspective and refer to the environment as a resource for sustainable development. As noted above, the documents do acknowledge that communities interact and experience their environment differently, depending on the context in which they are situated. Nevertheless, the content of the CRIC documents indicates a consolidation of the dominant perception of the environment as commodity by promoting the use of cultural practices to increase the productivity, security and well-being of local communities.

### 1.2.3 Natural Resources: Biodiversity

Some of the documents developed in the biodiversity regime exhibit mid-level integration of contextuality in their references to the environment. This is an anomaly because many of the documents were developed in working groups, with had less inclusive participatory practices. Therefore, while the biodiversity documents include fewer references to the environment that reflect ecofeminist values, those present are notable because they are incorporated into documents developed in a very different forum.

The documents produced by the AWG-Biodiversity and the AWG-LTB included some references that took into account differences between communities that may alter the way in which these communities experience their environment. This is a consistent theme across many of the environmental regimes and suggests that states may have increasingly acknowledged the diversity of cultures, locations, politics, and other differences that will alter the way in which social groups view and interact with the environment. Similarly, the 1992 Biodiversity Convention adopts a contextual understanding of the environment. Its preamble and Article 8 support the protection of local communities' traditional practices, knowledge, and cultures in relation to the conservation of biological resources.<sup>26</sup> Similarly, Article 12 of the Nagoya Protocol takes into consideration customary laws, protocols, and procedures and the qualified prohibition of restricting customary uses and exchanges of genetic resources among communities.<sup>27</sup> These rather limited references indicate that, in

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<sup>26</sup> Biodiversity Convention 1992, preamble, ¶12, art 8(j).

<sup>27</sup> Nagoya Protocol 2010, art 12.

some circumstances, states take into account other views of the environment, and not just as a commodity or resource.

### 1.3 Low-Level Integration

The majority of the documents include references and provisions relating to the environment that maintain the dominant perception of the environment-as-commodity. I found that the documents developed and adopted prior to the Rio Conference generally include low-level integration of the ecofeminist values of inclusiveness, structural pluralism, contextualism and openness in relation to the environment. As noted above, this may be because the documents were developed prior to the birth of ecofeminist theory and other ecological and feminist critiques of international responses to environmental degradation and development concerns. Nevertheless, the language used in the documents can be used to identify the 'benchmark' for what the dominant representation of the environment looks like. Furthermore, the documents developed and created in the Rio and post-Rio period suggest that the dominant perception of the environment-as-commodity has generally been consolidated.

#### 1.3.1 Sustainable Development

The documents developed during the 1972 Stockholm Conference adopt an anthropocentric perspective of the environment. The content of the 1972 Stockholm Declaration does not recognise the interrelated and integrated relationship between humanity and ecological systems. The declaration and the Stockholm Action Plan maintain a view of humanity as disembedded and disembodied from the environment. This may occur because these documents were created and adopted at the cusp of the environmental movement. However, the Stockholm Declaration and Stockholm Action Plan are considered as some of the foundational documents for the international community's response to environmental and development problems.<sup>28</sup> Therefore, this anthropocentric perspective may have had significant influence on subsequent approaches to environmental problems.

The Stockholm Declaration and the Stockholm Plan of Action maintain the dominant perception of the environment. Unlike the later sustainable development documents, these outcome documents include few references that took into account differences between communities which may affect the way in which they experience the environment and environmental degradation. Further, they did not include provisions supporting the protection of cultural practices or traditional knowledge. This suggests that states did not recognise that human/environment interactions are context specific and may generate different knowledge frameworks depending on location, culture, geography, and other contexts. Nor do these documents take into account to any great degree, support for

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<sup>28</sup> Brunnée, 'The Stockholm Declaration', 2.

different knowledge, values, and experiences of the environment to be disseminated into the public sphere.

The post-2001 documents also display low-level integration of the ecofeminist values. Many of the references to the environment in the adopted outcome documents maintain separation between humanity and the environment. This was noticeable in the content of the 2000 Millennium Declaration and in the 2005 World Summit Outcome. Both of these documents were created and adopted by the UNGA and demonstrate lower level participation by NSAs. The 2002 Johannesburg Declaration, the 2002 Johannesburg Plan of Implementation and the later Rio+20 Outcome Document similarly maintained a separation between humanity and the environment in their references to the environment.

However, unlike the later adopted outcome documents in the sustainable development regime, the Millennium Declaration and the 2005 World Summit Outcome include few references that support the dissemination of cultural diversity, values, and experiences of the environment in the public sphere. Furthermore, they include few provisions that recognise the differences between communities in their references to the environment. These findings suggest that the later sustainable development outcome documents may increasingly consolidate the dominant perception of the environment as a commodity or resource for economic development.

### 1.3.2 Climate Change

The documents produced by the INC/FCCC refer to the environment in separating, dissociative language. This may indicate that the participants in the negotiation process took an anthropocentric perspective of the human/environment interrelationship. The continuing development of the climate change regime further exemplifies this trend. The documents produced by the BSWG, AWG-KP, and the AWG-LCA contain few references to the environment at all. The references present in the documents refer to the environment in anthropocentric terms and indicated little consideration that other cultures and traditions may view and experience their environment differently.

### 1.3.3 Natural Resources: Tropical Timber, Fisheries, UN Watercourses & Biodiversity

The other natural resource regimes analysed in the thesis similarly reveal a consolidation of the dominant perception of the environment as a commodity. The preparatory documents by the Fish Stocks Conference, and the 1995 Fish Stocks Agreement itself contained few references to the environment. Those present did not reflect inclusiveness because they positioned the environment as separate and subordinate to the well-being of human beings. The references to traditional knowledge support the protection of traditional and local practices to the extent that they could be used for the sustainable conservation and exploitation of this natural resource. This indicates a domination of other cultures by western, Eurocentric culture instead of a more contextual and plural understanding.

Furthermore, the documents do not include any provisions that support the open dissemination and endorsement of alternative forms of knowing in which the environment may not be seen as a subordinate or distinct entity.

Other natural resources regimes echo the above finding. The reports by the International Law Commission during the creation of the 1997 UN Watercourse Convention contains significant discussions concerning the biophysical, hydrological, and geological aspects of watercourses. The language used to discuss these considerations reaffirms and maintains separation between humanity and the environment. In the documents, the central interests were those of states and their sovereignty, rather than recognising the complex interrelationships between humans and the environment. The UN Watercourse Convention maintains this perspective and includes very few provisions that challenge the dominant framework of human/environment interrelationships. Unlike the Biodiversity Convention and the Nagoya Protocol, I found that the content of the UN Watercourses Convention included very little recognition of different types of knowledge, experience, and understanding of the environment. This low-level integration was similarly contained in the content of the 1983, 1994, and 2006 ITTAs.

Therefore, my findings suggest that the representation of the environment continues to be as a resource or commodity to be utilised for human interests. Very few of the documents analysed included references to the environment that subverted this dominant view of the environment. Where such references were found, they were contained in the preparatory documents produced in forums with more inclusive participatory practices, such as the preparatory reports for the different sustainable development conferences, and in the INCD. However, the above analysis reveals that the later documents have consolidated the dominant perspective of the environment. This is notable in the climate change, natural resources, and later sustainable development documents. These initial findings share similarities with those found in Chapter 5, as my findings indicate that the extent to which the regime supported the inclusive participation by NSAs has some bearing on the way in which the documents refer to the environment.

In addition, the documents consistently maintained an anthropocentric perception of the environment. These findings suggest that the dominant perspective been consolidated in later documents with the commoditisation of the environment being included as a mechanism for its protection. This is further consolidated in the references to traditional knowledge. Many of the documents supported the utilisation of traditional and cultural practices for the purpose of economic and sustainable development. These findings suggest that the prioritisation of the economic and development considerations has altered the way in which the international community views the environment. I will unpack these findings in the following discussion and examine the underlying assumptions, values, and beliefs that inform the representations of the environment included in the documents. In doing so, I

hope to reveal any assumptions and values that are shared between the content of the IEL documents and the environment/security discourse. This can identify the extent to which these shared values, if any are found, may have altered not only the basis for which states seek to protect the environment but the perception of the environment itself within IEL.

## 2. ANALYSIS

In the introduction to this chapter, I gave a brief overview of the critiques of the dominant social paradigm and the way in which western culture subordinates and devalues the environment. I suggested that many of the assumptions, values and beliefs that ecofeminists, and other critical approaches, identify as exploitative and destructive are reflected in the arguments linking security and the environment together.<sup>29</sup> In the following discussion, I will draw on these criticisms and examine the representation of the environment in the documents.

### 2.1 Inclusivity

Both anthropocentrism and androcentricism are central to the documents' approaches towards the environment. This is because these documents place humans at the centre of international considerations surrounding the environment. These constructions also maintain that humans belong to a superior, rational sphere that is made up of exclusively 'human ethics, technology, and culture dissociated from nature and ecology.'<sup>30</sup> This perspective has been criticised because rationalist constructions of anthropocentrism and their associated exclusions have supported western culture. They also maintain the economic rationality of capitalism to achieve the dominant position 'by maximising the class of other beings that are available as 'resources' for exploitation without support.'<sup>31</sup> As I will discuss below, the documents from the sustainable development, desertification, and climate change regimes reveal these underlying structures in their references to the environment and the associated arguments for the commoditisation and exploitation of the environment for sustainable development. These assumptions share striking similarities with those that inform the securitisation of the environment discussed in Chapter 2.

Very few of the documents contained references that recognised human beings as integrated and part of an ecological system. Instead, they incorporated an anthropocentric worldview and placed human beings and their interests as the central consideration when addressing environmental concerns. The use of such anthropocentric and androcentric language suggests that exploitative and gendered conceptual frameworks that underpin the dominant and rational discourses in western society have been integrated into the content of

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<sup>29</sup> Above, Chapter 7, 231-233; Chapter 3, 89-95; Chapter 2, 73-75.

<sup>30</sup> Plumwood, *Environmental Culture*, 99.

<sup>31</sup> *Ibid*, 100.

these IEL documents.<sup>32</sup> As these conceptual frameworks function as a ‘socially constructed lens through which one perceives reality,’<sup>33</sup> it could suggest that the creators of environmental law continue to exclude, devalue and subordinate human others and the environment.

Val Plumwood argues that, historically, anthropocentrism and androcentricism have been ‘intimately connected’ within the western philosophical tradition.<sup>34</sup> Plumwood argues that anthropocentrism has taken the form of androcentricism in many contexts.<sup>35</sup> Androcentricism refers to ‘male-centred thinking that assumes the superiority of men over women,’<sup>36</sup> that ‘naturalises and justifies a certain sort of self-centredness, self-imposition, and dispossession, [and] provides... a very distorted framework for perception of the other.’<sup>37</sup> This anthropocentric framework is built on logical structures which create a ‘false universalism in culture in which the experiences of the dominant ‘centre’ are represented as universal, and the experiences of those subordinated in the structure are rendered as secondary, or irrational.’<sup>38</sup> Therefore, alternatives to these structures are rendered invisible once the master standpoint has become part of the framework of thought. Both anthropocentric and androcentric frameworks may be seen in the environmental documents.

For example, the founding documents of the contemporary responses to transboundary environmental problems contain androcentric and anthropocentric language. This is seen in UNGA Resolution 2581 (1969), convening the Stockholm Conference, which refers to the ‘human environment.’<sup>39</sup> The Stockholm Conference Preparatory Committee reports include provisions that refer to the ‘human environment,’<sup>40</sup> ‘man’s environment’<sup>41</sup> and to ‘man and his environment.’<sup>42</sup> These references indicate both a possessive perception of the environment, and a gendered perception of the environment where women are silenced as well.<sup>43</sup>

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<sup>32</sup> Above, Chapter 2, section 3.2.

<sup>33</sup> Warren, *Ecofeminist Philosophy*, 46.

<sup>34</sup> *Ibid.*, 24.

<sup>35</sup> Plumwood, ‘Nature, Self and Gender’, 22.

<sup>36</sup> Warren, *Ecofeminist Philosophy*, 24.

<sup>37</sup> Plumwood, *Environmental Culture*, 118.

<sup>38</sup> *Ibid.*, 99.

<sup>39</sup> UNGA Res 2581 (XXIV) (1969), preamble, ¶6.

<sup>40</sup> ECOSOC, *Problems of the Human Environment: Report of the Secretary-General* (New York) (26 May 1969) UN Doc E/4667, ¶71; see also UNGA Res 2581 (XXIV) (1969), ¶2.

<sup>41</sup> UNGA, ‘Agenda Item 21: Problems of the Human Environment. Report of the Secretary-General’ (15 December 1969) UN Doc A/PV.1834, ¶77; see also UNGA Res 2398 (XXIII) (1968), preamble ¶5.

<sup>42</sup> UNGA Res 2398 (XXIII) (1968), preamble, ¶4; see also Report of the Preparatory Committee for the UNCHE. 1st Session (1970), ¶19.

<sup>43</sup> Charlesworth, ‘Feminist Methods in International Law’, 382; Mallory, ‘Ecofeminist Environmental Jurisprudence’, 13; Gaard, ‘Women, Water, Energy’, 159

Similarly, the Preamble to the Stockholm Declaration states that 'man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social, and spiritual growth.'<sup>44</sup> Principle 1 affirms that 'man has the fundamental right to ... 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.'<sup>45</sup> The Stockholm Action Plan suggests that particular attention should be paid to those species of wildlife that may serve as indicators for future wide environmental disturbances, and an ultimate impact upon human populations.<sup>46</sup> These references place 'man' central in the international communities' environmental response. This marginalises women, and positions the environment as subordinate to the androcentric interests of 'man.' The content of these reports and the adopted outcome documents from the Stockholm Conference indicate that the early foundations of the sustainable development concept and international responses to environmental degradation that incorporated an androcentric model. This meant that male-oriented values, beliefs, and assumptions were considered the standard, and the environment was defined and perceived in relation to these standards.<sup>47</sup>

The above analysis indicates that the earliest sustainable development documents incorporated anthropocentric and androcentric references to the environment. These references suggest that the participants, and those who drafted the documents, sought to conserve the environment as a resource to be used to pursue economic and development goals in order to attain human well-being and security. In doing so, the documents incorporated value dualisms that legitimised the exploitation of the environment for the benefit of dominant groups of humans.

This anthropocentric approach is explicitly incorporated in the Principle 1 of the Rio Declaration as the basis for any response to the interrelated concerns of underdevelopment and environmental degradation.<sup>48</sup> As will be discussed below, other principles contained in the Rio Declaration instrumentalise the usefulness of women, indigenous peoples, and local communities and their value for the purpose of attaining sustainable development and addressing the drivers of underdevelopment.<sup>49</sup> This has similarities with the conclusions from the previous chapter which indicated that the prioritisation of economic and development considerations were made on the basis that such activities can be used to achieve environmental objectives. This instrumentalises the environment and maintains an anthropocentric perspective of human/environment relationships.

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<sup>44</sup> Stockholm Declaration 1972, preamble ¶1.

<sup>45</sup> Ibid, Principle 1; see also Principle 4.

<sup>46</sup> Stockholm Action Plan 1972, Recommendation 29; see also Recommendations 76, 79, 89, and 108.

<sup>47</sup> Plumwood, *Environmental Culture*, 20, and 22-23.

<sup>48</sup> Rio Declaration 1992, Principle 1.

<sup>49</sup> E.g. Ibid, Principle 20 and 22. Plumwood, *Environmental Culture*, 108-109.



The later sustainable development and climate change documents display an extension of the human-centric model in which 'economic rationalism' is mapped onto androcentric structures and the radical separation of male-coded reason from female-coded spheres of emotions and the body.<sup>50</sup> The UNGA resolutions convening the Johannesburg Summit and the Rio+20 Conference refer to the environment as the 'natural resource base for economic and social development.'<sup>51</sup> This perspective is reaffirmed in the preparatory reports which state that a 'people-centred approach should be taken to sustainable development.'<sup>52</sup> Similarly, the objectives for the Rio+20 Conference state that that 'managing the natural resource base of economic and social development are the overarching objectives of and essential requirements for sustainable development.'<sup>53</sup> The content of UNGA Resolution 64/236 (2010), which convened the Rio+20 Conference, similarly prioritises the role of the environment as a producer and resource base for economic and social development.<sup>54</sup> This perception in turn informs the justifications for the environment's protection.

These statements reaffirm the priority of economic development and defines the value of the environment solely in terms of its economic and social value. The inclusion of non-environmental considerations such as economic development into the sustainable development paradigm consolidates the positioning of humanity as disembodied and disembedded from the ecological systems which sustain both humanity and other nonhuman species.<sup>55</sup> In doing so, these documents indicate that the androcentric perspective revealed in the Stockholm Declaration and Stockholm Action Plan has been refined and consolidated in the later documents. This suggests that the current sustainable development documents have incorporated economic rationalism into the sustainable development paradigm. This extends the underlying structures of androcentricism and therefore maintains and reinforces the logical structures that subordinate, instrumentalise and backgrounds the environment and human others, while prioritising the interests and needs of the economic elite.<sup>56</sup>

This perspective of the environment legitimises its exploitation for the benefit of humanity, and discussed previously, informs the arguments used to support its protection. Many of the arguments supporting the protection of the environment were framed in economic rationalism, in which the free market could be used to incentivise environmental

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<sup>50</sup> Plumwood, *Environmental Culture*, 20-22.

<sup>51</sup> Rio+20 Outcome Document (2012), ¶3; Johannesburg Declaration (2002), ¶11; Plan of Implementation 2002, ¶2; Report of the Preparatory Committee of the WSSD. 4th Session (2002), Annex I ¶3; World Summit Outcome (2005), ¶22(g).

<sup>52</sup> Report of the Preparatory Committee of the WSSD. 4th Session (2002), Annex ¶3.

<sup>53</sup> UNGA Res 64/236 (2009), preamble ¶12; see also UNGA Res 65/152 (2010), preamble ¶9; Report of the Preparatory Committee for the UNCSD. 1st Session (2010), Annex I ¶57.

<sup>54</sup> UNGA Res 64/236 (2009), preamble ¶12.

<sup>55</sup> Mellor, 'Ecofeminist Political Economy', 143; Mellor, 'Women, Nature', 138.

<sup>56</sup> Plumwood, *Environmental Culture*, 83.

conservation, and also support the economic development of developing countries. Similar arguments were used to promote sustainable development as the solution to conflict and insecurity by supporting the economic growth and development of conflict prone countries.<sup>57</sup> This analysis indicates that the dominant perception of the environment informs the arguments supporting the inclusion of non-environmental considerations into IEL. It may also signal that the environment/security connections may simply be a manifestation of the dominant social paradigm which views the environment as a resource or commodity.

Furthermore, many of the documents referred to the environment as a commodity and privileged this view of the environment in their text. Ecofeminists argue that anthropocentrism legitimises the exploitation of the environment and thus reinforces the perception of the environment either as a resource or commodity.<sup>58</sup> For example, the Rio Preparatory Committee reports contain references that reduce the environment to individual components to be utilised for sustainable development. Decision 1/20 (1990) and Decision 1/14 (1990) both emphasise the value of specific natural resources for sustainable development. Decision 1/20 refers to developing measures for the 'conservation, rational use, and sustainable development of living resources of the high seas.'<sup>59</sup> Decision 1/14 includes similar references viewing non-living natural resources in terms of their potential to support (economic) development through rational usage and sustainable management.<sup>60</sup> These references to the environment reduce complex ecological systems into discrete components that can be commoditised and utilised for the purpose of economic growth and social development.<sup>61</sup> This is indicative of an anthropocentric perception of the environment, and the resulting commoditisation of the environment itself.

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<sup>57</sup> Above, Chapter 2, 59-73.

<sup>58</sup> Above, Chapter 3, 95-98; see also, Chapter 4, 113-114.

<sup>59</sup> Decision 1/20 'Protection of the Oceans and all kinds of Seas, including Enclosed and Semi-Enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of their Living Resources' in Report of the Preparatory Committee for the United Nations Conference on Environment and Development (UN GAOR 45th Session, Supplement No 46) (1991) UN Doc A/45/46 Annex I (31 August 1990), ¶1(p); see also Decision 1/14 'Combating Deforestation' in Report of the Preparatory Committee for the United Nations Conference on Environment and Development (UN GAOR 45th Session, Supplement No 46) (1991) UN Doc A/45/46 Annex I (30 August 1990), ¶2(d), ¶2(e), ¶2(h); Decision 1/11 'Climate Change' in Report of the Preparatory Committee for the UN Conference on the Environment and Development, General Assembly Supplement No. 46 (31 August 1990) UN Doc A/45/46 (Annex I) (30 August 1990), ¶(b); Decision 1/16 'Conservation of Biological Diversity' in Report of the Preparatory Committee for the United Nations Conference on Environment and Development (UN GAOR 45th Session, Supplement No 46) (1991) UN Doc A/45/46 Annex I (30 August 1990), ¶(a)

<sup>60</sup> Decision 1/14 (1990) Combating Deforestation (30 August 1990), ¶2(d), ¶2(e), ¶2(h); Decision 1/11 (1990) Climate Change (30 August 1990) ¶(b); Decision 1/16 (1991) Conservation of Biological Diversity (30 August 1990) ¶(a).

<sup>61</sup> INC/FCCC, 'Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the work of its First Session, held at Washington, DC from 4 to 14 February 1991' (8 March 1991) UN Doc A/AC.237/6, ¶26 and ¶46; Report of the INC/FCCC, 2nd Session (1991), ¶51; above, Chapter 5, section 2.1.

The extension of the androcentric, rationalist model is evident in the content of the climate change documents where the documents privilege market mechanisms and processes as dominant response in reducing carbon emissions. This approach transforms nature into profit through processes that erode and pollute it.<sup>62</sup> This is seen in the 1992 UNFCCC and the 1997 Kyoto Protocol.<sup>63</sup> During the negotiations of the Kyoto Protocol, state participants supported the use of market measures to promote emissions reductions and support sustainable development. The participants argued that the use of such measures would support efficiency in emissions reductions, while also supporting the economic development in developing countries. This analysis suggests that the participants in the AGBM viewed the environment in terms of what it could provide for economic gains.<sup>64</sup> These references indicate a commoditisation of the environment, in order for it to be traded on newly-established markets.<sup>65</sup>

The Kyoto Protocol operationalises the overall objective of the UNFCCC for Annex I Parties in a way that reflects the commoditisation of the environment. This is because it transforms components of the global atmosphere into economic goods. The flexibility mechanisms introduced in the protocol structures emissions reductions in economic terms by placing cost-effectiveness and flexibility at the centre of greenhouse gas mitigation strategies.<sup>66</sup> While Article 3 establishes the core obligations in the protocol, parties to the protocol may individually choose the mechanisms or policies necessary to implement their obligations.<sup>67</sup> Article 17 introduces the option of 'trading' unused 'emission' quotas to another participating party.<sup>68</sup> Other mechanisms are included in the protocol that allow Annex I Parties to contribute to projects in developing states to achieve sustainable development, contribute to the objectives of the UNFCCC, and assist parties in meeting their targets.<sup>69</sup> These two approach emissions reductions as a commercial venture that enables the environment to be privatised as part of the response to environmental problems.<sup>70</sup>

Chapter 6 identified an expansion of the use of market mechanisms and the incorporation of the free-market environmental protection during the post-2001 period.

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<sup>62</sup> Mellor, *Feminism & Ecology*, 62.

<sup>63</sup> UNFCCC 1992, art 2 and art 3(1).

<sup>64</sup> Braidotti and others, *Women, the Environment*, 149-150.

<sup>65</sup> UNFCCC AGBM, 'Report of the Ad Hoc Group on the Berlin Mandate on its First Session, held at Geneva from 21 to 25 August 1995' (28 September 1995) FCCC/AGBM/1995/2, ¶3; Report of the AGBM. 4th Session (1996), ¶17 and Annex III ¶5-8.

<sup>66</sup> Kyoto Protocol 1997, art 3(10), art 6(1), art 12(3)(b); Cinnamon P Carlarne, 'Risky Business: The Ups and Downs of Mixing Economics, Security and Climate Change' (2009) 10 *Melb J Int'l L* 439, 442.

<sup>67</sup> Kyoto Protocol 1997, art 3(1); Farhana Yamin, 'The Kyoto Protocol: Origins, Assessment and Future Challenges' (1998) 7(2) *RECIEL* 113, 121-122.

<sup>68</sup> Kyoto Protocol 1997, art 17; see also Yamin and Depledge, *The International Climate Change Regime*, 157-159.

<sup>69</sup> Kyoto Protocol 1997, art 12; Yamin and Depledge, *The International Climate Change Regime*, 159-160.

<sup>70</sup> See Yamin, 'Equity, Entitlements and Property Rights', 269-270; Warren, 'Response to My Critics', 39; Waring, 'Counting for Something!', 36; Mellor, 'Women, Nature', 130; Waring, 'The Invisibility of Women's Work', 31.

This chapter suggests that the use of market mechanisms commoditises the environment and maintains the disembeddedness of the market from any 'social responsibility or any recognition of our embedment in a constraining ecological order.'<sup>71</sup> This commoditisation is seen in the transformation of ecological functions to ecological 'services' that can then be traded or sold on international markets to 'incentivise' conservation and the sustainable management of the environment.<sup>72</sup> The concept of 'ecosystem services' itself has been criticised as an 'exploitative and androcentric construction of the living order which continues to perpetuate a hierarchical way of thinking that separates humans from nature and renders nature subordinate.'<sup>73</sup> Therefore, redefining ecological functions as 'services' in international responses to environmental problems may recast the environment as providing a 'service' to humanity without examining the exploitative ideology that is implicit in the language.<sup>74</sup>

The desertification and sustainable development regimes promote the use of ecosystem services as a solution to protect degrading ecosystems while maintaining economic growth and achieving sustainable development objectives. The CRIC note that payment for ecosystem services could offer potential for sustainable livelihoods and provide additional incentives to ensure resource conservations.<sup>75</sup> Their reports suggest that the concept of 'the ecosystem services approach' can provide a renewed focus on the socio-economic significance of these services in the drylands.<sup>76</sup> However, some participants challenged the assumptions informing the concept and argued that its effectiveness was not yet established.<sup>77</sup> These discussions suggests that there is a growing focus on commercialising nonhuman nature as part of its protection and a perception of the environment in terms of profitable products and services.<sup>78</sup>

Similarly, the High-Level Ministerial Segment during the preparatory process for the Johannesburg Summit include proposals to swap debt for ecological services to support

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<sup>71</sup> Plumwood, *Environmental Culture*, 24

<sup>72</sup> Spash, 'How Much is that Ecosystem in the Window?'

<sup>73</sup> Wilkinson, 'Payment for Ecosystem Services', 169 at fn 7.

<sup>74</sup> Hughes, 'Fishwives and Other Tails', 503-504; Wilkinson, 'Payment for Ecosystem Services', 169.

<sup>75</sup> Report of the CRIC. 5th Session (2007), Annex I ¶10, and ¶34.

<sup>76</sup> Report of the CRIC. 3rd Session (2005), ¶61; see also Millennium Ecosystem Assessment, *Ecosystems and Human Well-Being: Desertification Synthesis* (World Resources Institute, Washington DC 2005), 1, 4-5.

<sup>77</sup> Changbo Bai and others, 'Summary of the Third Session of the Committee for the Review of the Implementation of the Convention to Combat Desertification: 2-11 May 2005' Earth Negotiations Bulletin <<http://www.iisd.ca/download/pdf/enb04175e.pdf>> accessed 1 July 2015, 17.

<sup>78</sup> UNCCD CRIC, 'Review of Available Information Regarding the Mobilization and Use of Financial Resources and other Support by Multilateral Agencies and Institutions, with a view to Enhancing their Effectiveness And Efficiency Towards the Achievement of the Objectives of the Convention, including Information on the Activities of the Global Environment Facility and the Global Mechanism and its Facilitation Committee' (7 December 2006) ICCD/CRIC(5)/7, ¶20; Mellor, 'Ecofeminist Political Economy', 141; Bai and others, 'Summary of the Third Session of the CRIC'.

LDCs.<sup>79</sup> The Johannesburg Summit Report states that ecosystems ‘generate a wide range of goods and services on which the world economy depends.’<sup>80</sup> The notion of ‘payment for ecosystem services’ and the use of ecological services to support economic growth and sustainability is further contained in the Rio+20 Preparatory Committee reports, and in the submissions by state and NSA participants. The preparatory committee report notes that several delegations proposed an evaluation of the costing of ecosystem services and internalising of environmental externalities as key elements of a green economy, as well as green accounting.<sup>81</sup> Submissions by states and NSAs to the ‘zero draft’ compilation document proposed that ecosystem services should be an integral part of an ecosystem that promotes sustainable growth and human well-being.<sup>82</sup> These examples indicate the support for the approach in both the sustainable development and desertification regimes.

The incorporation of reducing carbon emissions by reducing deforestation and forest degradation in developing countries (REDD) in the climate change regime may be seen as the most comprehensive example of commoditising the environment.<sup>83</sup> The AWG-LCA and AWG-KP reports include references to REDD activities as a way to incentivise the ‘the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.’<sup>84</sup> The AWG-KP reports consolidated this perception of natural forests as ‘ecosystem services’ by referring to them as ‘stocks’ which have a monetary ‘external global benefit’ to the climate system and have ‘socially optimal

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<sup>79</sup> Report of the Preparatory Committee of the WSSD. 4th Session (2002), Annex I ¶28.

<sup>80</sup> United Nations, *Report of the World Summit on Sustainable Development* (Johannesburg, 26 August-4 September 2002) (New York, 2002) UN Doc A/CONF.199/20\*, Chapter III, ¶45.13.

<sup>81</sup> Report of the Preparatory Committee for the UNCSD. 2nd Session (2011), ¶53(c).

<sup>82</sup> Japan, ‘Input to the Rio+20 Outcome Document’ (31 October 2011), 10; Kingdom of Norway, ‘Norway’s National Submission’ (1 November 2011), 4; Montenegro, ‘Full Submission to ‘Zero Draft’ Compilation Document’ (2 November 2011), 11; European Union, ‘Final Submission to the ‘Zero Draft’ Compilation Document’ (1 November 2011); Federal Democratic Republic of Nepal, ‘Full Submission to the ‘Zero Draft’ Compilation Document’ (1 November 2011), 5; Business and Industry Major Group, ‘Business Action for Sustainable Development 2012: Contribution for Rio+20 Compilation Document’ (1 November 2011), 8 and 18; The World Bank Group, ‘The Road to Rio+20 and Beyond: World Bank Group’ <<http://www.uncsd2012.org/content/documents/582World%20Bank%20Group1.pdf>> accessed 2 September 2013, 10.

<sup>83</sup> E.g. Richard Wrainwright and others, *From Green Ideals to REDD money: A brief history of schemes to save forests for their carbon* (Briefing Note 2, FERN, Moreton-in-Marsh, UK and Brussels, Belgium, 2008); Esteve Corbera and Heike Schroeder, ‘Governing and Implementing REDD+’ (2011) 14(2) *Environmental Science & Policy* 89; Corbera, ‘Problematizing REDD+’; Pavan Sukhdev and others, *REDD+ and a Green Economy: Opportunities for a Mutually Supportive Relationship* (Policy Brief #1, UN-REDD Programme, Geneva); UNEP, *Building Natural Capital: How REDD+ can Support a Green Economy* (Report of the International Resource Panel, United Nations Environment Programme, Nairobi, Kenya, 2014); Alain Karsenty, Aurélie Vogel and Frédéric Castell, ‘“Carbon Rights”, REDD+ and Payments For Environmental Services’ 35(0) *Environmental Science and Policy* 20;

<sup>84</sup> UNFCCC AWG-LCA, ‘Report of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention on its Eighth Session, held in Copenhagen from 7 to 15 December 2009’ (5 February 2010) FCCC/AWGLCA/2009/17, Annex I(G) ¶2(e).

area[s] of forest retention.’<sup>85</sup> Similar views of the environment are contained in the parties’ submissions to the AWG-LCA. Some parties suggest that REDD may be ‘one of the most cost-effective means to reduce emissions in the short term,’<sup>86</sup> and that a ‘well designed market-linked approach can contribute to long-term action.’<sup>87</sup> These statements suggest that economic and development considerations have been privileged in recent discussions. They indicate that economic rationalism has informed these arguments as they seek to monetise the environment and trade it on global markets.

Therefore, ecosystem services may be seen as a manifestation of economic rationalism because it seeks to translate the protection of the environment itself into an economic process, thereby disembedding ecosystems themselves. The above references reveal that the conceptual frameworks and logical structures informing these arguments continue to view the environment as separate and subordinate, therefore legitimising its exploitation and reinforcing its value as a commodity or resource for economic gain. This use of distancing, rationalist, and economic language in the documents enclose nonhuman nature and privatise natural environments.<sup>88</sup> In doing so, the language maintains the hierarchical

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<sup>85</sup> UNFCCC AWG-LCA, 'Report of the Workshop on Policy Approaches and Positive Incentives on Issues Relating to Reducing Emissions from Deforestation and Forest Degradation in Developing Countries; and of the Role of Conservation, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks in Developing Countries. Summary by the Chair of the Workshop' (25 August 2005) FCCC/ANGLICAN/2008/CR.P5, ¶15.

<sup>86</sup> UNFCCC AWG-LCA, 'Ideas and Proposals on the Subjects of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention Workshops Scheduled for 2008. Submissions from Parties. Addendum ' (14 August 2008) FCCC/AWGLCA/2008/MISC.4/Add.1, 4 (Australia).

<sup>87</sup> UNFCCC AWG-LCA, 'Ideas and Proposals on the Subjects of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention Workshops Scheduled for 2008. Submissions from Parties' (14 August 2008) FCCC/AWGLCA/2008/MISC.4, 7 (Paper No. 1A: France on behalf of the European Community and its Member States); 8 (Paper No. 3: Japan), 'Introduction of market mechanism to REDD activities needs careful consideration, taking into account the balance between the robustness of the methodologies and the impact of the market linkage.' However, some Parties suggested that Parties must 'find a way to facilitate the involvement of the private sector. See, 4 (Paper No. 1A Australia) and UNFCCC AWG-LCA, 'Ideas and Proposals on the Elements Contained in Paragraph 1 of the Bali Action Plan. Submissions from Parties. Addendum (Part II)' (10 December 2008) FCCC/AWGLCA/2008/MISC.5/Add.2 (Part II), 11 (Paper No. 17: Indonesia on behalf of Brunei, Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam); UNFCCC AWG-LCA, Report of the Workshop on Policy Approaches and Positive Incentives on Issues Relating to Reducing Emissions from Deforestation (25 August 2005), ¶18.

<sup>88</sup> See criticisms by Latin American Indigenous Forum on Climate Change, 'Declaration of the Latin American Indigenous Forum on Climate Change' (*Indigenousclimate.org*, 2010)

<[http://www.indigenousclimate.org/index.php?option=com\\_content&view=article&id=108:declaration-of-the-latin-american-indigenous-forum-on-climate-change&catid=40:ip-declarations](http://www.indigenousclimate.org/index.php?option=com_content&view=article&id=108:declaration-of-the-latin-american-indigenous-forum-on-climate-change&catid=40:ip-declarations)> accessed 1 July 2015; Stephen Leahy, 'Indigenous Peoples Call for REDD Moratorium' *Inter Press Service News Agency* (12 December 2011) <<http://www.ipsnews.net/2011/12/indigenous-peoples-call-for-redd-moratorium/>> accessed 14 June 2015; H C Peach Brown, 'Gender, Climate Change and REDD+ in the Congo Basin forests of Central Africa' (2011) 13(2) *International Forestry Review* 163, 171; Joyeeta Gupta, 'Glocal Forest and REDD+ Governance: Win-Win or Lose-Lose?' (2012) 4(6) *Current Opinion in Environmental Sustainability* 620, 623; Betsy A. Beymer-Farris and Thomas J. Bassett, 'The REDD Menace: Resurgent Protectionism in Tanzania's Mangrove Forests' (2012) 22(2) *Global Environmental Change* 332, 336.

dualisms of western culture in which the abstract, autonomous, individual is universalised.<sup>89</sup> This reinforces the subordination of nonhuman nature and individuals who are unable to achieve the power to function independently, economically, socially, or politically.<sup>90</sup>

The commoditisation of the environment continues to maintain dominant assumptions and conceptual frameworks that position hu(man)ity as external to, and transcending the living and natural world.<sup>91</sup> The use of commoditising language reflects a desire to subject environmental conservation to the whims of the global economy and is suggestive that the value of the environment relates to the products and services, which are profitable. Thus the inclusion of sustainable development and international economic and trade interests in IEL has consolidated the perception of the environment in terms of its economic value as a commodity, service, and producer, and does not take into account the other ways in which human/environment connections may be manifested.

Turning to the environment/security literature, and the references to 'security' contained in the IEL documents, I suggest that the emerging connections between the environment and security are a manifestation of the perception of the environment as a commodity or resource that needs to be secured for potential economic gain. Should this be the case, this analysis supports the conclusions drawn in the previous chapter that the connections between environment and security in international discourse has altered the basis for which states seek to protect the environment. This is because they emphasise the importance of economic growth and sustainable development as the dominant approach to responding to the interrelated problems of underdevelopment, insecurity, and environmental degradation.

In the literature review, I identified that many of the concerns relating to environmental degradation, conflict, and insecurity referred to the environment as a resource for sustainable development and as a commodity for economic growth. I suggested that the research connecting natural resources and conflict framed the environment as a resource or commodity that individuals, communities, and states competed over.<sup>92</sup> This perception of the environment is evident in publications by UNEP, the UNDP and by states who promoted sustainable development activities as a solution to address the drivers of underdevelopment and insecurity.<sup>93</sup> These examples highlight the similarities in the way in which the documents refer to the environment and support commoditisation and exploitation of it for benefit of individuals.

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<sup>89</sup> Mellor, *Feminism & Ecology*, 173.

<sup>90</sup> *Ibid.*, 173.

<sup>91</sup> Mellor, 'Women, Nature', 130; Mellor, *Feminism & Ecology*, 171; Julie A. Nelson, 'Rethinking Development and Globalization: Insights from Feminist Economics' (2005) 14(5) *The Good Society* 58, 59-60; Mellor, 'The Politics of Money', 254.

<sup>92</sup> Above, Chapter 2, 64.

<sup>93</sup> Above, Chapter 2, 61-63, see esp fn 194, fn 195, and fn 199.

The preceding analysis suggests that the representation of the environment in the IEL documents and security documents is informed by the same androcentric conceptual model. This similarity in the logical structures and conceptual frameworks that shape the way in which the international community views the environment in IEL and in security discourses suggests that concerns over environmental degradation exacerbating insecurity stem from a shared view of the environment as separate, subordinate, and as a resource. Thus, while the environment/security connections may increasingly be prioritising sustainable development and economic growth as the solutions to the shared problems of environmental degradation, underdevelopment, and insecurity, the assumptions and beliefs that inform this prioritisation stem from shared conceptual frameworks and logical structures that are reflected in the content of both types of documents.

The emerging references to 'security' in the IEL documents reflect these shared perceptions of the environment. The post-Cold War sustainable development documents include some provisions that make explicit connections between environment degradation, increasing productivity, and attaining security. UNGA Resolution 42/186 (1987) encourages farmers to adopt practices that are 'ecologically sustainable in their own areas and promote national food security.'<sup>94</sup> In the post-2001 sustainable development documents, references to food security made the connection between increasing the productive capacity of the environment and attaining broader goals of sustainable development more explicit. The references reveal the influence of economic rationalism and the reliance on economic growth to support development and attain security. The contribution by UNEP and UNDP to the 'Zero Draft' Outcome Document of the Rio+20 Conference both state that 'growth must lead to strengthened resilience – of households, ecosystems, and economies, and improved water, food, and nutrition security.'<sup>95</sup> Similarly, the Nature Conservancy and the World Bank Group both connect the use of the private sector and the commodification of ecosystem services for food security and poverty alleviation.<sup>96</sup> These references associate the productive capacity of the environment with attaining security. This reinforces the anthropocentric perspective of the environment, which my analysis indicates is the foundation of the paradigm of sustainable development, and in the economic rationalism that also informs international responses to insecurity and environmental degradation.

The Johannesburg Plan of Implementation and Rio+20 Outcome Document also include references that connect the productiveness of the environment with attaining development

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<sup>94</sup> UNGA Res 42/186 (1987), ¶25(a).

<sup>95</sup> UNEP, 'Secretariat of the United Nations Environment Programme Input to the Compilation Document for UNCSD' (1 November 2011), 1, ¶VIII; see also, UNDP, 'UNDP's Submission to the Rio+20 Preparatory Process', 6.

<sup>96</sup> The Nature Conservancy, 'Submission from the Nature Conservancy to the Compilation Document, as the basis for Preparation for the Zero-Draft Outcome Document for UNCSD 2012 (Rio+20)' (1 November 2011) 1-2; The World Bank Group, 'The Road to Rio+20 and Beyond: Twenty Years on from the Earth Summit' (1 November 2011), 12-13.



goals, economic growth and achieving human security. The Johannesburg Plan of Implementation calls for action to enhance the productivity and efficiency of land and water resources.<sup>97</sup> It refers to the need to develop public-private partnerships aimed at ‘increasing agricultural production and food security.’<sup>98</sup> It identifies marine resources as ‘critical for global food security and for sustaining economic prosperity.’<sup>99</sup> Similarly, the Rio+20 Outcome Document refers to the role of farmers in contributing to sustainable development ‘through production activities that ... enhance food security ... and invigorate production and ... sustained economic growth.’<sup>100</sup> Subsequent provisions concerning marine resources, biodiversity, and mountain ecosystems also associate the productive capacity of the environment with attaining food security, human security, and economic growth.<sup>101</sup> These references suggest that responses to the perceived insecurity of access to food has been subject to economic rationalism which reinforce the anthropocentric perspective of the environment. This analysis indicates that the connections between security and the environment in the IEL documents reinforce the dominant perception of the environment as a commodity or resource for human well-being.

This perspective of the environment is ingrained within the paradigm of sustainable development. Both the Stockholm Declaration and Rio Declaration explicitly place humans as the central concern for any international responses to environmental concerns, and this anthropocentric approach has been refined in the later environmental documents. The post-Cold War period consolidated and expanded this anthropocentric perspective by subjecting environmental considerations to economic rationalism and thus reinforcing the perception of the environment, and some subordinate groups as resources for economic and development objectives. Building on this, I suggest that the connections between security and the environment in the IEL documents reinforce this perspective of the environment and thus indicate that assumptions and beliefs that inform this prioritisation stem from shared conceptual frameworks and logical structures that are reflected in the content of both types of documents.

Unlike in the previous chapters, this chapter’s analysis suggests that the forum, age of the document, and type of document has little bearing on the way in which the environment is represented in its contents. Furthermore, it indicates that even where the regime supports the inclusive participation by NSAs, the representation of the environment in the adopted outcome document remains informed by the dominant social paradigm in which the environment is viewed as a resource or commodity to be shaped and manipulated by

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<sup>97</sup> Plan of Implementation 2002, ¶40(d).

<sup>98</sup> *Ibid.*, ¶7(j).

<sup>99</sup> *Ibid.*, ¶30.

<sup>100</sup> Rio+20 Outcome Document (2012), ¶52, ¶23.

<sup>101</sup> *Ibid.*, ¶158, ¶205, ¶211.

humanity for solely human benefit.<sup>102</sup> This disconnect is noticeable in the post-2001 desertification and sustainable development regimes that supported the inclusive participation by NSAs, and whose adopted outcome document contained inherent anthropocentric perceptions of the environment as subordinate and as a resource to be used for human purposes. This perception of the environment is incorporated into dominant social paradigms in which other uses of the environment are silenced, and those communities who do not perceive the environment in this way are assimilated and dominated. The issue of domination will be examined in the next section.

## 2.2 Structural Pluralism

One of the main criticisms of anthropocentrism is that its chief structural features sets up one group as the 'privileged centre' and defines others as secondary or derivative in relation to it.<sup>103</sup> In this way, anthropocentrism shares the same conceptual structure with ethnocentrism, eurocentrism, sexism, and racism.<sup>104</sup> As noted in Chapter 3, these 'isms of domination' are mutually supportive and confirm one another.<sup>105</sup> Logical characteristics of radical exclusion, backgrounding, assimilation, and instrumentalism serve to maintain the privilege of the central group by maintaining power and subjecting others to either assimilate into the dominant cultural concepts and identities, or to remain 'other' and separate and subordinate.<sup>106</sup> This is in contrast with the ecofeminist value of structural pluralism which recognises the interconnections between humans and the environment while also acknowledging that the different features of communities mean that they experience and perceive their local environment differently.<sup>107</sup> Therefore, it supports individuals and communities to live with ecological integrity by recognising that their differences may affect the 'choices' each community may make in relation to their interconnection and relationship with the environment.<sup>108</sup>

In this section, I suggest that the references to the environment reveal that the IEL documents assimilate different communities' experiences and views of their local environment into the dominant conceptual model that views the environment as a commodity or resource for economic gain. In doing so, few of the documents recognise the differences between communities and that their experiences may mean they view

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<sup>102</sup> Above, Chapter 3, 77; see also Chapter 4, 113-118.

<sup>103</sup> Plumwood, *Environmental Culture*, 100-101.

<sup>104</sup> *Ibid.*, 101.

<sup>105</sup> Above, Chapter 3, 94.

<sup>106</sup> Plumwood, *Feminism and the Mastery of Nature*, 47.

<sup>107</sup> Moore, 'Eco/Feminism', 11; Warren, 'Taking Empirical Data Seriously', 13-14; Warren, 'Power and Promise', 140.

<sup>108</sup> Victoria Davion, 'The Earth Charter and Militarism: An Ecological Feminist Analysis' (2004) 8 *Worldviews: Global Religions, Culture, and Ecology* 112, 115.

human/environment relationships differently.<sup>109</sup> Instead, these documents indicate that the international community view difference in terms of ‘deficiency’, measured in economic and developmental terms.<sup>110</sup> I suggest that these references reflect similar assumptions that inform the securitisation of non-traditional threats discussed in the literature review and indicate that environment/security connections may be a manifestation of a broader conceptual structure that informs both IEL and security.

Once again, the documents that incorporate some references to the environment recognising and supporting difference were developed in environmental regimes that encouraged inclusive participation by NSAs. The documents from the sustainable development regimes recognise the different ways in which specific communities, such as indigenous peoples and local communities, utilise and experience their local environment. The Rio Conference’s preparatory documents recognise the special relationship that indigenous peoples and local communities have with their environment.<sup>111</sup> This suggests that the participants at the Rio Conference recognised that natural resources and ecosystems ‘continues to be essential to the cultural, social, economic and physical well-being of indigenous people and local communities.’<sup>112</sup> Similar provisions are also contained in Agenda 21. Chapter 10 takes into account the ‘weaknesses in the policies, methods and mechanisms adopted to support and develop the multiple ecological, economic, social and cultural roles of trees, forests, and forest lands.’<sup>113</sup> It recognises the different roles that local resources, such as forests, may play in different communities. These statements suggest that states presuppose and maintain difference between communities because they acknowledge that such communities utilise and experience the environment differently.

Similar statements are included in the Johannesburg Summit and Rio+20 Conference outcome documents. The Johannesburg Plan of Implementation and Rio+20 Outcome Document both take into account the vital role of biodiversity as a critical foundation for sustainable development and human well-being. They both acknowledge the role of biodiversity in the cultural, social, and economic lives of the poor and indigenous communities. For example, the Plan of Implementation calls for action to develop policies that recognise that ‘traditional and direct dependence on renewable resources and ecosystems ... continues to be essential to [the] cultural ... and physical well-being of indigenous people and their communities.’<sup>114</sup> The Rio+20 Outcome Document similarly recognises that ‘many people, especially the poor, depend directly on ecosystems for their

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<sup>109</sup> Moore, ‘Eco/Feminism’, 11; Warren, ‘Taking Empirical Data Seriously’, 13-14; Warren, ‘Power and Promise’, 140.

<sup>110</sup> Plumwood, *Environmental Culture*, 105.

<sup>111</sup> Decision 2/7 (1991) Indigenous People and Local Communities (5 April 1991), ¶1(b); Decision 3/7 (1991) Indigenous People and Local Communities (4 September 1991), ¶1(a) and ¶1(e).

<sup>112</sup> Decision 3/7 (1991) Indigenous People and Local Communities (4 September 1991) ¶1(b).

<sup>113</sup> Agenda 21 1992, Chapter 11 ¶1.

<sup>114</sup> Plan of Implementation 2002, ¶7(e).

livelihoods ... and their cultural heritage.<sup>115</sup> These provisions recognise that the relationship between indigenous communities and their environment can be affected by social, economic, and cultural factors. In doing so, they indicate that in some contexts, the international community recognised that the different situations, cultures, and experiences of communities alter the way in which they view and experience nonhuman nature.

However, the analysis undertaken in Chapters 5 and 6 suggests that these differences are supported only to the extent that they may contribute to sustainable development and economic growth. The references to the environment in these provisions indicates that they have integrated the dominant perception of the environment. In this way, they suggest that the international community recognises and celebrates 'difference' insofar as it can be assimilated into the dominant social paradigm, in which the environment is viewed as a commodity or resource for human interests. For example, Agenda 21 proposes that that state governments should 'maintain and increase the ecological, biological, climatic, socio-cultural and economic contributions of forest resources.'<sup>116</sup> Once again, the language in this statement starts from the position that humanity is separate and distinct from nonhuman nature – a statement that does not recognise the differences between communities and the way in which they may position themselves differently in relation to the environment.

Furthermore, analysis of the documents suggests that the international community acknowledged that ecological and geographic differences may affect the ability of some communities and states to achieve sustainable development. The recognition of such objective and measurable factors may take into account the differences between communities and that such differences may alter the way in which individuals interact with their communities. These differences were identified by the participants in the drafting of the law of the non-navigational uses of international watercourses, who recognised that the international management of water will likely call for different solutions, depending on the geographic situation.<sup>117</sup> A similar focus on the management of shared resources is contained in the reports by the BSWG, which noted that action would need to take into account the different behaviour of living modified organisms in ecosystems and geographical regions.<sup>118</sup> The Johannesburg Summit preparatory reports focused on the transboundary challenges facing the 'management and equitable use of natural resources.'<sup>119</sup> Each of these forums emphasised the importance of action at the regional or sub-regional level in order to ensure

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<sup>115</sup> Rio+20 Outcome Document (2012), ¶30.

<sup>116</sup> Agenda 21 1992, Chapter 11 ¶12(d); see also, Chapter 14 ¶37(a).

<sup>117</sup> International Law Commission, *The Law of the Non-Navigational Uses of International Watercourses* (Yearbook of the International Law Commission Volume II(I): Documents of the Forty-Fifth Session) UN Doc A/CN.4/SER.A/1993/Add.1 (Part 1), 148(¶3).

<sup>118</sup> CBD, 'Report of the Open-Ended *Ad Hoc* Group of Experts on Biosafety' (Jakarta 6-17 November 1995) (3 August 1995) UNEP/CBD/COP/2/7, ¶12, ¶21(e).

<sup>119</sup> United Nations, *Report of the WSSD* (2002), Chapter III ¶53.6.

natural resource management.<sup>120</sup> These references recognise that objective factors such as geographic location and ecological specificities may alter the attainment of sustainable development. However, the underlying assumption in these references is that such communities may use and interact with their environment in ways that are informed by the human/environment dichotomy which legitimises the exploitation of such ecological resources.

This process of assimilation is repeated in the natural resource agreements. As noted previously, the ITTAs include few references supporting the inclusive participation by local communities and prioritises the economic and development opportunities from tropical timber exploitation. The few references that refer to the environment frame tropical forests in terms of the services that it provides to local communities and states. For example, the 1994 ITTA mentions in passing the need to consider the interests of local communities, while emphasising the importance of tropical timber in sustainable development.<sup>121</sup> Similarly, the 2006 ITTA refers to the ‘multiple economic, environmental and social benefits provided by forests... and the contribution of sustainable forest management to sustainable development.’<sup>122</sup> These documents universalise one view of the environment and, in doing so, assimilate indigenous communities into it. In this way, these provisions reflect the dominant assumption that sustainable development is predicated on the exploitation of natural resources and do not take into account differences in cultural, social, political, and geographical factors that may alter the way in which individuals and communities interact with their environment.

This assimilation of differences into the dominant paradigm shares similarities with the proposed solutions to conflicts over natural resources. Previously, I identified that much of the research concerning the relationship between security and the environment view natural resources solely in terms of its economic value to local communities and developing countries.<sup>123</sup> This approach demonstrates many of the chief structural features of anthropocentrism by assimilating and instrumentalising the environment for the benefit of the ‘privileged centre’. This is particularly notable in the UNSC resolutions concerning the use of natural resources in the post-conflict reconstruction phase in Liberia and the Democratic Republic of Congo.<sup>124</sup> Similarly, UN agencies and programmes, such as UNEP and UNDP, also demonstrate characteristics of assimilation and instrumentalising of local communities and indigenous peoples in their discussion of natural resources, post-conflict reconstruction, and human security. Both UNEP and UNDP emphasise the importance of

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<sup>120</sup> Ibid, ¶53.6; Report of the CRIC. 1st Session (2002), ¶146; Report of the Review Conference on the UN Fish Stocks Agreement (2006), ¶60.

<sup>121</sup> Tropical Timber Agreement 1994, art 1(j) and art 1(c).

<sup>122</sup> Tropical Timber Agreement 2006, preamble ¶(f); see also art 1(c).

<sup>123</sup> Above, Chapter 2, 60-65.

<sup>124</sup> UNSC Res 2128 (2013), ¶12; see also UNSC Res 1903 (2009), ¶9(d); UNSC Resolution 2021 (2011), preamble; UNSC Res 2198 (2015), preamble.

supporting the participation by marginalised communities and other vulnerable user groups in the creation of post-conflict natural resource management programmes.<sup>125</sup> However, the assumptions informing these approaches seek to assimilate these social groups into the dominant social paradigm by undertaking programmes of sustainable development based on the exploitation of natural resources and commodification of traditional knowledge. These programmes may not take into account the differences between communities and their interaction with the local environment. This analysis suggests that the environment/security connection is a manifestation of the underlying perceptions of the environment.

The analysis undertaken thus far supports the conclusions made earlier in this thesis. Chapter 5 concluded that support for the participation by different communities suggests that the international community recognised the diverse experiences and contexts in which common environmental concerns may have significantly different impacts. It proposed that participation has been encouraged to respond to potential national and international security risks caused by the marginalisation of communities. Similarly, Chapter 6 concluded that differentiation has been hotly contested in the context of the climate change. It identified that economic considerations were prioritised when taking into account differences between states. In both of these contexts, the references to the environment reflect a process of assimilation where other values, experiences, and understandings of the environment are backgrounded and the view of the environment taken by the privileged centre is imposed on the way in which the international community seeks to respond to the environment and associated concerns – such as economic development and security.

This assimilation of difference is also evident in the references to the environment that deny agency on the behalf of local and indigenous communities. When discussing my analytical framework, I suggested that structural pluralism takes into account that the way in which communities experience their local environment may be affected by their location, class, race, gender, ethnicity, and social or cultural contexts.<sup>126</sup> The analysis of the references to the environment suggests that very few of the environmental documents recognise that the specificity of location means that individuals and their communities interact with their environment differently, and that this will inform their choices concerning ecological integrity. Instead, the provisions indicate that the participants developing these environmental documents focus on the attainment of other international considerations, such as economic, development and security considerations. This suggests that once again,

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<sup>125</sup> Framework Team, *Strengthening Capacity for Conflict-Sensitive Natural Resource Management* (Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict, UN Interagency Framework Team for Preventative Action, 2012), 28; see also UNEP, *From Conflict to Peacebuilding* (2009); United Nations Development Group, *Natural Resource Management* (2013).

<sup>126</sup> Above, Chapter 4, 115-116; see also Warren, 'Power and Promise', 140; Warren, *Ecofeminist Philosophy*, 100-101; Davion, 'The Earth Charter and Militarism', 115; Moore, 'Eco/Feminism', 11.

the documents, while celebrating the ‘diversity’ of communities across the globe, universalise the dominant social paradigm in which the environment is viewed in terms of its productive capacity for economic and social development.

The references to shared natural resources and their management reflect this universalism of the dominant social paradigm and its view of the environment. During the Cold War period and immediately afterward, the reports prepared by the AWG-LTB<sup>127</sup> refer to the conservation and management of biodiversity as a contribution to the well-being of societies’ and their economies.<sup>128</sup> The state-appointed experts comprising the working group refer to the potential for biotechnology to enhance the conservation and promote the rational use of biodiversity.<sup>129</sup> These sentiments are repeated in the obligations and provisions in the adopted biodiversity convention.<sup>130</sup> The underlying assumption of these statements reveals a universalisation of the perception of the environment as inert and therefore may be used to support local communities’ integration into the productive and capitalist markets.<sup>131</sup> The proposed solution to this perceived ‘underdevelopment’ is through assimilating seemingly ‘backward’ communities into the productive economy through the use of technology, modern agrarian practices, and chemicals.<sup>132</sup> The underlying assumption in these references indicates that states viewed economic development as the primary solution to causes of underdevelopment and poverty, without considering other cultural systems, land uses, or experiences of nature that may not view it purely as a resource.

Similar assumptions are contained in the references concerning the importance of natural resource management for sustainable development in the post-Cold War sustainable development documents. Decision 2/13 (1991) refers to the need to quantify the ‘respective economic values’ of forest.<sup>133</sup> References to the economic and development value of natural resources are also affirmed in the adopted outcome such Agenda 21 and the 1992 Statement of Forest Principles. The Forest Principles state that ‘forests are essential to economic development’<sup>134</sup> and that ‘decisions taken on the management, conservation, and sustainable development of forest resources should benefit... from a comprehensive assessment of

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<sup>127</sup> Working Group of Legal and Technical Experts on Biological Diversity

<sup>128</sup> Decision 2/13 Combating Deforestation ‘Combating Deforestation ’ in Report of the Preparatory Committee for the United Nations Conference on Environment and Development (UN GAOR 45th Session, Supplement No 46) (1991) UN Doc A/46/48 Annex (5 April 1991) ¶7(a).

<sup>129</sup> Agenda 21 1992, Chapter 16 ¶1 and ¶7; Report of the AWG of Legal and Technical Experts on Biological Diversity. 1st Session (1990), Appendix I (Annex I) Part V ¶9; Report of the AWG of Legal and Technical Experts on Biological Diversity. 2nd Session (1991), ¶6.

<sup>130</sup> Biodiversity Convention 1992, art 1 and art 19.

<sup>131</sup> Shiva, *Staying Alive*, 3; Mies and Shiva, *Ecofeminism*, 59.

<sup>132</sup> Candice Bradley, ‘Keeping the Soil Good at Heart: Women Weeders, the Environment and Ecofeminism’ in Karen J. Warren (ed), *Ecofeminism: Women, Culture, Nature* (Indiana University Press 1997), 290.

<sup>133</sup> Decision 2/13 (1991) Combating Deforestation (5 April 1991), ¶4(b)-(c); ¶7(c).

<sup>134</sup> Statement of Principles on Forests 1993, preamble (g).

economic ... values of forest goods'<sup>135</sup> Chapter 11 of Agenda 21 identifies the 'vast potential of forests and forest lands as a major resource for development' that has not yet been fully realised.<sup>136</sup> These references to forests and their economic values indicate that the dominant perception of the environment has been universalised within the foundational documents of sustainable development.

Later sustainable development documents reaffirm this view. Chapter 6 discussed the introduction of the green economy and the commodification of the environment.<sup>137</sup> The introduction of the green economy in the Rio+20 Outcome Document reveals a universalisation of the dominant social paradigm in which the environment is seen as separate, and subordinate. Therefore, while the Rio+20 Outcome Document acknowledges the cultural and social diversity of different indigenous peoples and local communities,<sup>138</sup> it emphasises the productivity of the environment, which is to be used for human purposes and human well-being.<sup>139</sup> The emphasis on productivity of natural resources, agriculture and other uses of the environment is reaffirmed in other post-2001 environmental documents.<sup>140</sup> These references reveal the underlying perception of the environment in the environmental documents. They suggest that the recognition of cultural and social diversity in these documents does not extend to recognise multiple perceptions of the environment. This universalisation rests on the assumption that development relies on the exploitation of natural resources for economic gain found in the environment/security literature.<sup>141</sup>

The significance of this analysis is that these documents contain only passing references to the interconnections between humans and the environment which may be affected by the different factors that affect the way in which individuals and communities may interact and experience their environment. Where the documents recognise differences in culture, societies, location, and other factors, the references to the environment are still informed conceptual frameworks that are supported by damaging logical dualisms. Therefore, the overriding thrust of the provisions aim to incorporate such communities into the dominant paradigm in which humans and environment are viewed as separate and distinct. This does not reflect the ecofeminist value of structural pluralism because it does not acknowledge the plurality of ways in which communities may experience difference outside of one constructed in a dichotomy. Instead, the way in which different experiences have been taken

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<sup>135</sup> Ibid, ¶5(c); see also, ¶4, ¶7, ¶13.

<sup>136</sup> Agenda 21 1992, Chapter 11 ¶20.

<sup>137</sup> Above, Chapter 6, 195-196.

<sup>138</sup> Rio+20 Outcome Document (2012), ¶58(j).

<sup>139</sup> Ibid, ¶23, ¶110, ¶158.

<sup>140</sup> ECOSOC, 'Agriculture, Land and Desertification: Report of the Secretary General' (29 March 2001) E/CN.17/2001/PC/13, ¶13-¶16; Report of the Preparatory Committee for the WSSD. 2nd Session (2002), Annex I ¶53, ¶63-¶71.

<sup>141</sup> E.g. Decision 2/13 (1991) Combating Deforestation (5 April 1991), ¶4(e); Rio+20 Outcome Document (2012), ¶193. Compare with discussion in Chapter 2, Section 3.3.



into consideration presents a universalisation of the dominant paradigm of the environment as separate, and as a commodity.

These conclusions support my previous analysis where I suggested that differences between members of the international community have been recognised to the extent that they support sustainable development and provide solutions to security concerns. Where such differences do not reflect the dominant paradigm or are viewed as ‘other’, ‘backward’ or inferior, those differences are themselves backgrounded and instrumentalised. This means that indigenous peoples, local communities, and other social groups’ views, experiences, and traditions in relation to the environment are instrumentalised to the extent that they support the interrelated goals of responding to environmental degradation, addressing poverty alleviation, and underdevelopment. This instrumentalisation reflects the universalisation of the dominant social paradigm. It further suggests that the later IEL documents share underlying similarities in the conceptual frameworks and logical dualisms that inform their perception of the environment.

### 2.3 Contextualism

The previous section concluded that non-western views, experiences, and traditions in relation to the environment have been instrumentalised or backgrounded depending on the extent to which they can support development and economic growth. In doing so, the dominant perception of the environment has been universalised in the IEL documents. Another manifestation of the imposition of dominant norms is the privileging of western, rationalist science to repair and alleviate environmental degradation, and to exploit nonhuman nature for future human well-being.<sup>142</sup> Plumwood uses the term ‘technoscience’ to reveal the ‘relationship between science and capitalism.’<sup>143</sup> I adopt this phrase in this research to connote an approach towards the use of science and technology, which ecofeminists argue reaffirms the powerful subject/object, human/nature dualisms that inform the epistemic foundations of modern science.<sup>144</sup> Ecofeminists criticise the incorporation of these conceptual frameworks into science because they maintain the perception of nonhuman nature as a ‘machine – dead, inert, and insensitive to human action.’<sup>145</sup>

In the following discussion, I argue that the documents incorporate ‘technoscience’ approaches to environmental problems in two ways. First, they incorporate ‘technoscience’

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<sup>142</sup> Warren, *Ecofeminist Philosophy*, 99.

<sup>143</sup> Plumwood, *Environmental Culture*, 39 fn 10. She argues that ‘strategic boundary shifts’ between politics, science and technology ‘help maintain the ideology that ‘science proper’ can do no wrong by displacing attention and responsibility for any ill-effects onto externalised activities or parties identified as ‘outside’ science proper.’

<sup>144</sup> Merchant, *The Death of Nature*, 227-235; Plumwood, *Feminism and the Mastery of Nature*, 42-48; Code, *Ecological Thinking*, 47-51.

<sup>145</sup> Merchant, *Radical Ecology*, 46.

as a solution to environmental problems. Second, they suggest that it can be used as a way to benefit local communities through economic growth and sustainable development. In each of these approaches, the references to the environment do not reflect contextualism because they devalue or exclude more relational and experiential knowledge of the environment unless it can be utilised for the benefit of economic growth and development.<sup>146</sup>

Many of the documents contain provisions that refer to nonhuman nature in the context of science and technology. These provisions are further demarcated between those that refer to the use of ‘technoscience’<sup>147</sup> to repair and alleviate environmental degradation and those that refer to the potential discoveries by science in untapped nature. The analysis of the documents suggests that the potential of technoscience to alleviate environmental degradation while also maintaining economic growth has been a consistent assumption from the pre-Rio Conference period onwards.

The documents produced during the preparations for the Stockholm Conference indicate that the participants viewed technoscience as the solution to redress environmental degradation while maintaining necessary economic growth and development. The Stockholm Conference preparatory reports demonstrate a confidence in science and technology to solve environmental problems. The reports note the importance of international action to support the exchange of technology and experience on the planning and management of basic natural resources.<sup>148</sup> In this context, the reports refer to the potential technological solutions to ensure ‘optimum environmental quality.’<sup>149</sup> UNGA Resolution 2849 (1971) further noted that the focus on science and technology would facilitate an equilibrium between development needs and the preservation and ‘enhancement’ of the environment.<sup>150</sup> The resolution stated that the development ‘of adequate technologies ... represents ... the best possible solution for most of the environmental problems in developing countries.’<sup>151</sup> These references to the use of technoscience show that states viewed new and emerging technology as a central part of the solutions to environmental problems and to support the necessary economic development for developing countries. Therefore, technology, environment, and the economy were viewed as mutually supportive elements of development.

Both the IEL documents and the environmental security literature share similar assumptions concerning the role of technology and science to ‘solve’ environmental

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<sup>146</sup> See Shiva, *Staying Alive*, 23-24; see also, Mies and Shiva, *Ecofeminism*.

<sup>147</sup> Plumwood, *Environmental Culture*, 39 fn 10.

<sup>148</sup> Report of the Preparatory Committee for the UNCHE. 3rd Session (1971), ¶37(iv), ¶94.

<sup>149</sup> Report of the Preparatory Committee for the UNCHE. 2nd Session (1971), ¶20; see also Report of the Preparatory Committee for the UNCHE. 1st Session (1970), ¶18, ¶27(25)(e), ¶27(7)(c).

<sup>150</sup> UNGA Resolution 2849 (XXVI) Development and the Environment (20 December 1971) UN Doc A/RES/2849 (XXVI), preamble ¶20.

<sup>151</sup> *Ibid*, preamble ¶20.

problems. For example, the references to energy and food security in the sustainable development, biodiversity, and climate change documents refer to the importance of scientific and technological solutions to ‘future proof’ access to energy and food for future generations.<sup>152</sup> One solution for achieving food security is from the development of traditional and modern biotechnology to improve the productivity of degraded lands, and in the development of new ‘improved’ varieties for improved agriculture. Agenda 21 stated that the major focus of food security is to ‘bring about a significant increase in agricultural production in a sustainable way.’<sup>153</sup> Another solution to achieve increased productivity is by using traditional and modern biotechnologies to ‘improve productivity, nutritional quality and shelf-life of food’ and to increase the yields of food sources.<sup>154</sup> The later BSWG and AWG-ABS reports similarly affirm the potential for biotechnology and genetic resources to improve productivity and ensure food security.<sup>155</sup> The AWG-ABS connected food security and poverty eradication as the overriding objective in ‘developing effective international policies for agricultural genetic resources.’<sup>156</sup> In this context, the solution to food security is addressed through ensuring increased production through technoscientific solutions.

This response to food security has been criticised by ecofeminists. Shiva argues that the focus on attaining food security through biotechnology and linear monoculture excludes and marginalises the contribution of women farmers.<sup>157</sup> She argues that the privilege conferred to western, rationalist science to linear monoculture and its associated use of pesticides has marginalised and devalued the shared knowledge and productivity by rural women.<sup>158</sup> In particular, women farmers contribute to food security in ways that work in ‘partnership with other species.’<sup>159</sup> This approach is centred in sharing knowledge, viewing other species and plants as kin, and regeneration of biodiversity.<sup>160</sup> She argues that in this context, knowledge is shared and productivity occurs through varietal planting and the

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<sup>152</sup> E.g., UNCCD CRIC, ‘Review of Reports on Implementation by Affected African Country Parties, Including on the Participatory Process, and on Experience Gained and Results Achieved in the Preparation and Implementation of Action Programmes. Addendum: Compilation of Summaries of Reports Submitted by African Country Parties’ (23 October 2002) ICCD/CRIC(1)/2/Add.2, 29 (Cape Verde) *Decision 1/COP.5 Additional Procedures or Institutional Mechanisms to Assist in the Review of the Implementation of the Convention*, ¶10, and Annex, ¶1(a)(viii); Rio+20 Outcome Document (2012), ¶48, ¶72, ¶109-¶110.

<sup>153</sup> Agenda 21 1992, Chapter 14 ¶6.

<sup>154</sup> E.g. Ibid, ¶16.5. The document suggests that traditional and modern biotechnologies could ‘improve productivity, nutritional quality and shelf-life of food’ and to increase the yields of food sources.

<sup>155</sup> CBD BSWG, ‘Report of the First Meeting of the Open-Ended *Ad Hoc* Working Group on Biosafety’ (Aarhus, 22-26 July 1996) UNEP/CBD/BSWG/1/4, ¶19; Report of the BSWG. 6th Session (1999), ¶26.

<sup>156</sup> CBD AWG-ABS, ‘Report of the *Ad Hoc* Open-Ended Working Group on Access and Benefit-Sharing on the Work of its Fifth Meeting’ (Montreal, 8-12 October 2007) (15 October 2007) UNEP/CBD/WG-ABS/5/8, ¶34.

<sup>157</sup> Vandana Shiva, ‘Special Report: Golden Rice and Neem: Biopatents and the Appropriation of Women’s Environmental Knowledge’ (2005) 29(1/2) *Women’s Stud Q* 12, 14; see also Shiva, *Staying Alive*, 145.

<sup>158</sup> Mies and Shiva, *Ecofeminism*, 64-68, 165-173; Dean Curtin, ‘Women’s Knowledge as Expert Knowledge’ in Karen J. Warren and Nisvan Erkal (eds), *Ecofeminism: Women, Culture, Nature* (Indiana University Press 1997).

<sup>159</sup> Shiva, ‘Biopatents’, 14.

<sup>160</sup> Ibid, 14.

regeneration of soil, water, and biodiversity.<sup>161</sup> This response to food security does not draw on technoscientific solutions to agricultural and environmental productivity, instead, it recognises the different interconnections between humanity and nonhuman nature in which food security could be assured.

The documents also contain references to the environment that emphasise the need to protect the energy security of states and local communities. The climate change and sustainable development documents refer to need to disseminate renewable energy technology to local communities and to develop new energy technologies to support the economic development of developing countries.<sup>162</sup> During the negotiations in the AWG-LCA, participants at a workshop on the economic and social consequences of response measures noted that technological innovation could have a positive impact on development and on energy security.<sup>163</sup> Similarly, the post-2001 sustainable development documents coupled technoscience with energy security and environmental conservation. The Johannesburg Plan of Implementation refers to energy security and energy sector development in the context of developing environmentally-sound energy services and supporting technology transfer.<sup>164</sup> These provisions indicate a continued perception of environmental problems as primarily scientific in nature, and that achieving a technoscientific solution to the externalities of the economic market can ensure both energy security, environmental protection, and economic growth. They also highlight the growing anxieties states have about their ability to access adequate energy supplies in line with climate change.<sup>165</sup> As such, the links between security and the environment in these documents may be indicative of another manifestation of western dualist thinking in which security is viewed predominantly in terms of economic well-being.

These provisions complement the arguments contained in the environmental security literature which suggest that science and technology could reduce the factors that cause states to use coercive power to secure access to natural resources in order to ensure energy

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<sup>161</sup> Shiva, *Staying Alive*, 152; Shiva, 'Biopatents', 14.

<sup>162</sup> Decision 1/CP.13 Bali Action Plan (14-15 December 2007), ¶1(d), ECOSOC, 'Energy for Sustainable Development, Industrial Development, Air Pollution/Atmosphere and Climate Change: Integrated Review of Progress in Meeting the Goals, Targets and Commitments of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the Plan of Implementation of the World Summit On Sustainable Development. Report of the Secretary General' (17 February 2006) E/CN.17/2006/3, part VII; Cancún Agreements (2010) (10-11 December 2010), ¶2; Rio+20 Outcome Document (2012), ¶114, ¶126-¶129.

<sup>163</sup> UNFCCC AWG-LCA, 'Workshop on Economic and Social Consequences of Response Measures. Report by the Chair of the Workshop' (2 April 2009) FCCC/AWGLCA/2009/CRP.1, ¶11; see also Report of the AWG-KP. Resumed 6th Session (2008), Annex I, ¶17;

<sup>164</sup> Plan of Implementation 2002, ¶9.

<sup>165</sup> Klare, 'Climate Change Blowback: The Threats to Energy Security', 62.

security.<sup>166</sup> Similar assumptions are incorporated in reports arguing that technological improvements could reduce incidences of conflict over energy sources in conflict prone regions, such as the central African region.<sup>167</sup> In the context of food security, NGOs propose that conflict can be reduced by using technology to improve agricultural production and attaining food security.<sup>168</sup> In both the environmental security literature and in the IEL documents, technoscientific solutions are viewed as part of the strategy for achieving energy and food security, and in turn, part of the international responses to the drivers of insecurity. Furthermore, both arguments reveal assumptions that technoscience can alleviate the drivers of insecurity through improving the environment or maximising environmental resources for human benefit.<sup>169</sup> These references suggest that the IEL documents continue to integrate a perception of the environment as a tool or resource that can be altered and improved through technology for human interests.

This perception is reaffirmed in the climate change documents. The focus on technology, as well as sustainable and economic development, is contained in the submissions to the INC/FCCC by participating states. Austria and Switzerland proposed that the commitments in the UNFCCC should promote the 'development and transfer of environmentally sound technologies, and technical as well as financial assistance.'<sup>170</sup> Other parties also supported the inclusion of cooperation by 'means of systematic and sustained research ... in order to better understand the causes and impacts of climate change and the response strategies required to deal with such change.'<sup>171</sup> These submissions suggest that states saw technical and scientific solutions to climate change as a central feature in the future climate change regime and this suggests that many participants viewed climate change as primarily scientific and technical in nature and resolvable by science and technology.<sup>172</sup> These

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<sup>166</sup> Kamila Proninksa, 'Energy and Security: Regional and Global Dimensions' in Stockholm International Peace Research Institute (ed), *SIPRI Yearbook 2007: Armaments, Disarmament and International Security* (Oxford University Press 2007), 215.

<sup>167</sup> Jeffrey Stark and others, 'Energy Security and Conflict: A Country-Level Review of the Issues' (CMM Discussion Paper No 2, Office of Conflict Management and Mitigation, United States Agency for International Development August 2010) <[http://pdf.usaid.gov/pdf\\_docs/Pnadw664.pdf](http://pdf.usaid.gov/pdf_docs/Pnadw664.pdf)> accessed 9 March 2016, 16 and 35.

<sup>168</sup> Breisinger and others, *The role of food security*, 22.

<sup>169</sup> Lacy, *Security and Climate Change*, 86.

<sup>170</sup> INC/FCCC, 'Compilation of Proposals related to Commitments Submitted by the Bureau of Working Group I' (15 August 1991) A/AC.237/Misc.7, Part A (I.1), 3-4 (proposal by Austria and Switzerland); see also, Part A(II.1) 14, (proposal by the European Economic Community); INC/FCCC, 'Preparation of a Framework Convention on Climate Change: Set of Informal Papers Provided by Delegations, Related to the Preparation of a Framework Convention on Climate Change. Addendum' (22 May 1991) A/AC.237/Misc.1/Add.1, 7 (Paper No. 2 Austria/Switzerland), and 17, 22 (Paper no. 4 Germany).

<sup>171</sup> INC/FCCC, 'Compilation of Proposals related to Commitments, A/AC.237/Misc.7 (15 August 1991), Part A (I.1), 6 (Malaysia); see also French Republic, 'Alternative Proposal for Annex I (Research and Development and Systematic Observation) Contained in a Revised Single Text on the Elements Relating to the Mechanisms (A/AC.237/Misc.13) Submitted by the Co-Chairmen of Working Group II' (17 December 1991) A/AC.237/WG.II/CRP.7, 1(a), 2(a), 3.

<sup>172</sup> E.g. UNFCCC AGBM, 'Strengthening the Commitments in Article 4.2(A) and (B) Policies and Measures: Synthesized List of Policies and Measures Identified by Annex I Parties in their National Communications. Note

assumptions support the ‘techno-optimism’<sup>173</sup> of some security scholars who suggest that the technological improvements emerging from capitalist societies and liberal democracies will solve the problems of environmental degradation and the related security concerns emerging from this degradation.<sup>174</sup> The shared belief in technoscience solutions reflected in the IEL documents and the environmental security literature reveals a view of the environment as a resource that can be ‘improved’ through technological manipulation.

The adopted outcome documents from the climate change regime also associate the promotion of economic and technological solutions to climate change with attaining sustainable development through economic development. The Kyoto Protocol and UNFCCC both affirm that responses to climate change will be more effective if they ‘are based on relevant scientific, technical, and economic considerations.’<sup>175</sup> They both link the promotion of sustainable development with the development and transfer of new technologies to mitigate and adapt to the effects of climate change while also ensuring the sustainable and economic development of party states.<sup>176</sup> The texts of the post-2001 COP decisions concerning long-term cooperative action, introduce new financial and trade mechanisms to support technical development for climate change mitigation and adaptation.<sup>177</sup> These references associate such responses with the ‘legitimate needs of developing country parties for the achievement of sustained economic growth and the eradication of poverty, so as to be able to deal with climate change.’<sup>178</sup> These examples indicate that both the adopted outcome documents and the preparatory documents contain provisions that promote technoscientific and economic solutions while enabling economic growth.

The analysis thus far reveals that the content of the IEL documents continue to promote technoscience solutions to the drivers of environmental degradation. This approach privileges western, rationalist science and indicates a continued belief in human innovation to repair environmental degradation and solve future problems caused by human activities.

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by the Secretariat’ (23 October 1995) FCCC/AGBM/1995/6, Annex 4-5; *ibid*; UNFCCC AGBM, ‘Synthesis of Proposals by Parties. Note by the Chairman’ (19 November 1996) FCCC/AGBM/1996/10 ¶13; UNFCCC, ‘Ideas and Proposals on the Elements Contained in Paragraph 1 of the Bali Action Plan: Submissions from Parties’ (27 October 2008) FCCC/AWGLCA/2008/MISC.5, 29; and *ibid* 10-11 (Argentina) and 26-27 (Brazil).

<sup>173</sup> Lacy, *Security and Climate Change*, 11.

<sup>174</sup> *Ibid*, 61, 86-89; Laurence Reynolds and Bronislaw Szerszynski, ‘Neoliberalism and Technology: Perpetual Innovation or Perpetual Crisis?’ in Marja Ylönen and Luigi Pellizzoni (eds), *Neoliberalism and Technoscience* (Ashgate 2012), 37; also, Ben Wattenburg, ‘Malthus, Watch Out’ *Asian Wall Street Journal* (Victoria, Hong Kong, 12 February 1998) 10; David J Hess, ‘The Green Transition, Neoliberalism, and the Technosciences’ in Marja Ylönen and Luigi Pellizzoni (eds), *Neoliberalism and Technoscience* (Ashgate 2012), 223-227; compare Elizabeth Popp Berman, ‘Not Just Neoliberalism: Economization in US Science and Technology Policy’ (2014) 39(3) *Sci Technol Human Values* 397, 399.

<sup>175</sup> UNFCCC 1992, preamble ¶16.

<sup>176</sup> E.g. *Ibid* art 4(1); art 5; Kyoto Protocol 1997, art 2 and art 10(c) and art 10(d).

<sup>177</sup> Cancún Agreements (2010) (10-11 December 2010), preamble, ¶72, ¶120(a), see in general Part IV(B).

<sup>178</sup> *Ibid*, preamble, ¶72, ¶120.

This belief shares similarities with the arguments set forth in the environmental security literature and their support for technological and scientific solutions to the problems of insecurity, such as poverty, underdevelopment, and environmental degradation. In each of these discourses, the perception of the environment remains informed by the dominant social paradigm, in which it is viewed as a resource for human interests. Therefore, this analysis suggests that the environment/security connections may be a manifestation of a common perception of the environment that informs both IEL and security discourses.

The second way in which the IEL documents incorporate technoscience is as a way to benefit local communities through economic growth and sustainable development. This approach is evident in the references to biodiversity resources in the biodiversity regime which impose a western, rationalist and scientific perception of the value of these resources for scientific and economic benefit. For example, the reports by the negotiating groups for the Biodiversity Convention, Cartagena Protocol and the Nagoya Protocol refer to the environment in terms of its scientific and economic value. They note the ‘immense scientific value’ of biodiversity as the ‘foundation of biological science and an understanding of organic evolution, including the human biological heritage.’<sup>179</sup> Not only does this present a human-centric justification for biodiversity conservation, but the discussions surrounding the role of biotechnology suggest that states viewed the role of technology as a way to unlock commercial benefits from biodiversity. The reports refer to the potential for biotechnology to support sustainable development by developing ‘win-win’ deals between technology rich developed countries and gene-rich developing countries.<sup>180</sup> They further link biotechnology with the potential for conservation, agriculture, and forestry.<sup>181</sup> These statements indicate that the participants viewed the potential of biodiversity and genetic resources for future economic and scientific development – both for developed countries and developing countries.<sup>182</sup> In this way, they share a universalising perception of the environment as a commodity and resource to be used for development and economic growth.

The reports by the AWG-ABS and BSWG similarly include references to the potential of biodiversity and genetic resources for future economic and scientific advancement.<sup>183</sup> These provisions suggest that the state and non-state participants attending these working groups

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<sup>179</sup> INC/CBD, 'Report of the Intergovernmental Committee for a Convention on Biological Diversity on the Work of its Third Session/Fifth Negotiating Session' (Geneva, 25 November - 4 December 1991) (5 December 1991) UNEP/Bio.Div/N5-INC.3/4, ¶25.

<sup>180</sup> Report of the AWG of Experts on Biological Diversity. 3rd Session (1990), ¶7, ¶35; Report of the AWG of Legal and Technical Experts on Biological Diversity. 1st Session (1990), ¶66-73.

<sup>181</sup> Report of the AWG of Legal and Technical Experts on Biological Diversity. 1st Session (1990), Appendix I, Annex ¶2-¶4.

<sup>182</sup> Report of the AWG on Biological Diversity. 2nd Session (1990), ¶22; Report of the AWG of Experts on Biological Diversity. 3rd Session (1990), Annex I ¶1.

<sup>183</sup> Decision VII/19(D) 'International Regime on Access to Genetic Resources and Benefit Sharing' in Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, held in Kuala Lumpur 9-20 and 27 February 2004 (13 April 2004) UNEP/CBD/COP/DEC/VII/19, ¶d(iii).

viewed biodiversity and genetic resources in terms of their ‘immense strategic, economic and social value’<sup>184</sup> that offers development opportunities to all communities. State delegates attending the BSWG stressed that any potential biosafety protocol should ‘avoid hindering access to and transfer of biotechnology.’<sup>185</sup> The documents from the negotiations of the Nagoya Protocol similarly emphasise the importance of capacity building and technology transfer so developing countries can use their genetic resources for sustainable and economic development.<sup>186</sup> The AWG-ABS listed the shared benefits envisaged through access and benefit schemes to include benefits from research and technology linked to conservation and sustainable use,<sup>187</sup> research funding,<sup>188</sup> and participation in product development.<sup>189</sup> The technoscientific focus of these benefits suggests that the participant’s view of nonhuman nature is informed by western rationalist ideology in which the primary benefits of ‘nature’s cornucopia’<sup>190</sup> are defined in terms of their potential scientific and economic contributions to human well-being.<sup>191</sup>

The references to technology transfer and scientific cooperation in the Biodiversity Convention and Nagoya Protocol are similarly couched in language that frames the protection of the environment in order to protect future economic value. Article 15 of the Biodiversity Convention refers to the potential ‘benefits’ emanating from the ‘commercial and other utilisation of genetic resources’ arising from scientific research.<sup>192</sup> It requests contracting parties to provide access to and transfer of technology that makes use of genetic resources provided by developing countries.<sup>193</sup> These references to biodiversity suggest many states viewed biodiversity in terms of its potential economic and scientific value for developing countries. This perception is reiterated in the Nagoya Protocol. Article 5 introduces the fair and equitable benefit sharing procedure for in connection to the utilisation of genetic resources and subsequent commercialisation of these resources.<sup>194</sup> As part of this procedure, the article outlines the type of measures to support the transfer of

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<sup>184</sup> CBD AWG-ABS, ‘Report of the Eighth Meeting *Ad Hoc* Open-Ended Working Group on Access and Benefit-Sharing’ (Montreal, 9-15 November 2009) (20 November 2009) UNEP/CBD/WG-ABS/8/8 Annex I, 25 ¶4; see also, Report of the AWG-ABS, 7th Meeting (2009), Annex I, 25 ¶4.2(3)(b)-(c), and ¶4.3(3); see also Report of the AWG-ABS, 5th Meeting (2007), ¶9. ‘An international regime on access and benefit-sharing could form the foundation of a fair and equitable partnership between today’s and future providers and users of nature’s cornucopia.’

<sup>185</sup> Report of the BSWG, 2nd Session (1997), ¶17.

<sup>186</sup> Report of the AWG-ABS, 5th Meeting (2007), ¶25, ¶86; Report of the AWG-ABS, 7th Meeting (2009), ¶123.

<sup>187</sup> Report of the AWG-ABS, 8th Meeting (2009) Annex I ¶4.2(3)(c), ¶4.3(3).

<sup>188</sup> *Ibid* Annex I ¶4.2(3) [Option 1].

<sup>189</sup> *Ibid* Annex I ¶4.2(3) [Option 1].

<sup>190</sup> Report of the AWG-ABS, 5th Meeting (2007), ¶19.

<sup>191</sup> Merchant, *The Death of Nature*, 227-235.

<sup>192</sup> Biodiversity Convention 1992, art 15(7).

<sup>193</sup> *Ibid*, art 16(3). The article further requests Contracting Parties to take measures ‘with the aim that the private sector facilitates access to, joint development and transfer of technology .... for the benefit of both governmental institutions and the private sector of developing countries.’

<sup>194</sup> Nagoya Protocol 2010, art 5(1).



benefits arising from the utilisation of genetic resources. These benefits include monetary and non-monetary 'benefits,'<sup>195</sup> such as research funding, intellectual property rights, cooperation in scientific research and development, and access to scientific information relevant to conservation and sustainable use of biological diversity.<sup>196</sup> The emphasis on the scientific and economic potential of biodiversity in these provisions indicates the primary view of the environment is as a commodity for productive economic value, rather than acknowledging the different values, principles and experiences of nonhuman nature by other cultures.

The documents from the climate change, biodiversity, and sustainable development regime include references that focus on technoscientific solutions to environmental degradation. These proposals indicate that state actors and NSAs believe that such solutions can enable continued economic growth, and achieve sustainable development while, at the same time, mitigating the effects of these commercial activities on the environment. These proposals exemplify underlying ideologies that present humanity as disembodied and disembedded from nonhuman nature and thus legitimise the commoditisation of the environment through activities such as emissions trading and 'improving' nature by geo-engineering, biotechnology and other technoscience solutions.<sup>197</sup>

As already discussed, dominant norms in the IEL documents privilege western rationalist science to both repair and alleviate environmental degradation and to support the economic development of states through the scientific and technological utilisation of environmental resources. However, some references in the sustainable development regime and desertification regime acknowledge the differences in values, principles, and experiences of the environment that may alter the ways in which 'other' communities perceive and use the environment. One particular example is the references to the 'special relationship' between indigenous peoples and local communities and their environment.<sup>198</sup> Decision 3/7 (1991) of the Rio Preparatory Committee acknowledged the traditional and direct dependence on ecosystems by indigenous people and local communities. This decision recognised this

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<sup>195</sup> Ibid, art 5(4).

<sup>196</sup> Ibid, Annex I ¶2(k), ¶1(h), ¶1(j), ¶2(b). Other non-monetary benefits include participation in product development, sharing of research and development results, transfer of knowledge and technology that make use of genetic resources, training relating to genetic resources, social recognition, joint ownership of relevant intellectual property rights. See Annex I, ¶2(c), ¶2(f), ¶2(j), ¶2(q).

<sup>197</sup> Merchant, *Earthcare*, chapter 7; Gaard, 'Ecofeminism and Climate Change', 24; see in general, Merchant, *The Death of Nature*; Joseph R. Loer, 'Ecofeminism in Kenya: A Chemical Engineer's Perspective' in Karen J. Warren and Nisvan Erkal (eds), *Ecofeminism: Women, Culture, Nature* (Indiana University Press 1997); Naomi Klein, 'Geoengineering: Testing the Waters' *The New York Times* (New York, 27 October 2012) <[http://www.nytimes.com/2012/10/28/opinion/sunday/geoengineering-testing-the-waters.html?pagewanted=all&\\_r=2](http://www.nytimes.com/2012/10/28/opinion/sunday/geoengineering-testing-the-waters.html?pagewanted=all&_r=2)> accessed 11 May 2015.

<sup>198</sup> Above, Chapter 7, 237-238.

relationship to be essential to their ‘cultural, social, economic and physical well-being.’<sup>199</sup> Agenda 21 identified this special relationship and the ‘holistic traditional knowledge’ of indigenous peoples and communities in relation to their lands, natural resources, and environment.<sup>200</sup> These types of references indicate that states and NSAs continue to universalise the dominant perception of the environment on other cultures, and thus prioritise the economic value of the environment. In doing so, these references share similar assumptions with those articulated by the environmental security literature and suggest that the dominant perception of the environment is common across the IEL and security discourses.

In the post-2001 period, the CRIC acknowledged the potential cultural and socioeconomic implications of desertification and drought strategies.<sup>201</sup> The reports produced by CRIC include the recognition that initiatives for natural resource management should respect cultural specificities, while also ‘promoting the customary land tenures of local communities, [and] strengthening and legalizing their traditional institutions.’<sup>202</sup> Similarly, the 2003 Decision 1/COP.6 Further Steps in the Implementation of the Convention encouraged parties to take ‘action at a specific spatial scale so as to address the local ecological and socio-economic conditions in a more holistic manner.’<sup>203</sup> These statements indicate that in the context of the desertification regime, some parties recognise that desertification and drought strategies may marginalise some communities. By explicitly linking management strategies to cultural specificities, these references take into account the differences between communities and groups.

Sustainable development does seek to take into account differences in respect to environment and development concerns. General statements to this effect are included in the post-2001 sustainable development documents produced during the Johannesburg Summit, the Rio+20 Conference and the Millennium Assembly.<sup>204</sup> In these forums, the references to cultural and value differences include generalised language and relate specifically to the issue of sustainable development. For example, the executive director of UNEP noted the diverse cultural and spiritual values were a ‘prerequisite for the

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<sup>199</sup> Decision 3/7 (1991) Indigenous People and Local Communities (4 September 1991), ¶1(b), see also ¶1(e); Agenda 21 1992, Chapter 11 ¶13(b). This recognises the ‘social, spiritual functions and values of forest ecosystems,’ Chapter 16 ¶4, which recognises that biotechnology may wider socio-economic and cultural impacts on different communities.

<sup>200</sup> Agenda 21 1992, Chapter 26 ¶1.

<sup>201</sup> Report of the CRIC. 1st Session (2002), ¶35.

<sup>202</sup> Report of the CRIC. 5th Session (2007), ¶84, see also, ¶85.

<sup>203</sup> Decision 1/COP.6 ‘Further Steps in the Implementation of the Convention’ in Report of the Conference of the Parties on its Sixth Session, held in Havana from 25 August to 5 September 2003, Addendum, Part Two: Action Taken by the Conference of the Parties at its Sixth Session (7 November 2003) ICCD/COP(6)/11/Add.1 (3 September 2003), ¶9.

<sup>204</sup> E.g. Report of the Preparatory Committee for the WSSD. 2nd Session (2002), Annex I ¶31; United Nations, *UNSCD Report* (2012), Chapter IV, ¶54.3.

globalisation agenda,' when taking part in the preparations for the Johannesburg Summit. This point was reaffirmed during the Millennium Assembly and 2005 World Summit, in which Qatar stated that cultural, social, and economic rights should be taken into account in the context of international responses to globalisation and sustainable development.<sup>205</sup>

The outcome documents from these forums similarly affirm the importance of cultural diversity to achieve sustainable development.<sup>206</sup> The Johannesburg Plan of Implementation notes that 'respect for cultural diversity... [is] essential for achieving sustainable development.'<sup>207</sup> The Rio+20 Outcome Document states that in the context of sustainable development, green economy policies should enhance the welfare of communities, 'recognising and supporting their identity, culture, and interests, and avoid endangering their cultural heritage, practices and traditional knowledge.'<sup>208</sup> These provisions indicate that in some environmental regimes, the post-2001 documents contain provisions that acknowledge the diversity of peoples in the context of achieving sustainable development.

These references suggest that some environmental regimes developed with the participation by NSAs include provisions relating to the environment that take into account the interrelated contexts that alter the way in which communities experience their local environment. The above references demonstrate greater contextual understanding by explicitly referring to the customs, traditions, cultures, and social contexts that may affect local communities' experiences and views of their environment. However, these references also emphasise the value of culture, traditional knowledge, and practices relating to the environment to the extent that they support sustainable development. This analysis is similar to the conclusions drawn in Chapter 6 where the prioritisation of economic and development considerations framed traditional knowledge, culture, and practices as a potential commodity for achieving sustainable development objectives.<sup>209</sup> This connection between traditional knowledge, the environment, and sustainable development suggests a continued universalisation of the dominant paradigm in which other cultural contexts are assimilated to the extent that they support the exploitation and commodification of the environment. In doing so, these references indicate an imposition of the dominant norms contained within western, rationalist thinking on other cultures who may view the environment entirely differently.

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<sup>205</sup> UNGA Verbatim Record (15 September 2005) UN Doc A/60/PV.5, 27 (Qatar) and 20 (Zimbabwe); *ibid*, 9 (Iraq); see also UNGA Verbatim Record (6 September 2000) UN Doc A/55/PV.4, 31 (Brazil), 21 (Gabon Republic);

<sup>206</sup> Plan of Implementation 2002, ¶5, ¶7(e); World Summit Outcome (2005), ¶14; Rio+20 Outcome Document (2012), ¶30.

<sup>207</sup> Plan of Implementation 2002, ¶5, ¶7(e).

<sup>208</sup> Rio+20 Outcome Document (2012), ¶58(j).

<sup>209</sup> Above, Chapter 6, 225.

This is notable in the Rio Conference documents onward. These documents include significant references to the utilisation of traditional knowledge and technology to achieve sustainable economic and social development. The references to traditional knowledge in the context of the environment instrumentalises experiential and relational knowledge where it can be utilised for the benefit of economic growth, security and development. This instrumentalising of traditional knowledge is evident in the reports by the AWG-Biodiversity and the AWG-LTB. Both working groups emphasise that the rights of indigenous peoples must be recognised in order to benefit from ‘their highly practical knowledge of organisms and to incorporate their traditional uses of local systems that are often consistent with conservation goals.’<sup>210</sup> They stressed the importance of traditional technologies to achieve food security, and the conservation, development, and sustainable utilisation of biodiversity and natural resources.<sup>211</sup>

These references to instrumentalising traditional knowledge for sustainable development reinforce the assumptions contained in the dominant development paradigm. In this paradigm, those societies denoted as ‘underdeveloped’ are made to look beyond their own culture to achieve salvation. This is because dominant elites consider them to lack the autonomous capacity to mobilise or control socio-economic formations for economic growth.<sup>212</sup> Therefore, development programmes seek to utilise traditional knowledge and practices relating to environmental conservation as an opportunity for development through technological, scientific, and commercial innovation. In this way, the references to the adaptation of traditional knowledge and practices relating to the environment in the IEL documents continue to represent the environment and experiential knowledge of local communities and indigenous peoples as serving the ‘interests of western-style conservation’<sup>213</sup> and as commodities for economic benefit.

This representation of the environment and traditional knowledge as commodities is contained in the Rio Declaration. The declaration recognises the ‘vital role’ that indigenous people and local communities have in environmental management and development ‘because of their knowledge and traditional practices.’<sup>214</sup> This statement views the knowledge of local and indigenous communities in terms of its usefulness for development and

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<sup>210</sup> Report of the AWG on Biological Diversity. 2nd Session (1990), Annex I, 11.

<sup>211</sup> UNGA Res 42/186 (1987), Annex ¶25(a); Report of the AWG on Biological Diversity. 2nd Session (1990), Annex I, 11; Report of the AWG of Legal and Technical Experts on Biological Diversity. 1st Session (1990), Appendix I ¶12; Decision 2/7 (1991) Indigenous People and Local Communities (5 April 1991), ¶1(a); Decision 2/18 (1991) Protection of the Oceans and all kinds of Seas (5 April 1991), ¶1(h); Decision 3/7 (1991) Indigenous People and Local Communities (4 September 1991), ¶1(a) and ¶1(d).

<sup>212</sup> Pahuja, *Decolonising International Law*, 105-108; see also, Anghie, *Imperialism, Sovereignty*, 238, 263-268; B.S. Chimni, ‘Third World Approaches to International Law: A Manifesto’ (2006) 8 *IntCLRev* 3, 6-7; Chimni, ‘Capitalism, Imperialism, and International Law’, 29-31; 267-268.

<sup>213</sup> Arturo Escobar, ‘Whose Knowledge, Whose Nature? Biodiversity, Conservation, and the Political Ecology of Social Movements’ (1998) 5 *J Polit Ecol* 53, 61.

<sup>214</sup> Rio Declaration 1992, Principle 22.

management projects.<sup>215</sup> Similar references to traditional knowledge and technology are contained in Agenda 21 and the Biodiversity Convention that refer to both as a potential economic commodity.<sup>216</sup> Viewing knowledge and technology through the lens of sustainable development with its emphasis on economic growth does not take into account the ways in which ‘local and modern forms of knowledge entail different ways of apprehending the world’<sup>217</sup> that are informed by different principles, values, and knowledge.<sup>218</sup> Therefore, these references do not reflect contextual understanding of the different ways in which communities and people may experience and understand the environment.

The references to indigenous knowledge and traditional technology in the post-2001 documents indicate that the participants in the preparatory processes continue to view the interconnection between human/nonhuman nature in terms of a nature/society dichotomy. The post-2001 sustainable development documents emphasised that efforts on sustainable development required ‘harnessing sound science and traditional knowledge’ as the basis of sustainable development policy and implementation.<sup>219</sup> The Johannesburg Summit preparatory reports noted the importance of preserving traditional knowledge of indigenous and local communities whose practices were ‘harmonious with sustainable development objectives’<sup>220</sup> as such knowledge could enhance food security by increasing agricultural productivity.<sup>221</sup> The Plan of Implementation called for states to promote the ‘conservation, and sustainable use and management of traditional and indigenous’ systems relating to agricultural production.<sup>222</sup>

The biodiversity regime similarly includes references that identify the interrelationship between genetic resources, traditional knowledge and biological conservation. The Nagoya Protocol affirms the importance of traditional knowledge for the sustainable use of components, and for the sustainable livelihoods of these communities.<sup>223</sup> The parties to the Biodiversity Convention recognised that some communities consider biodiversity as a

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<sup>215</sup> Braidotti and others, *Women, the Environment*, 88.

<sup>216</sup> Biodiversity Convention 1992, preamble ¶12, art 8(j), see also art 10(c) and 17(2); Agenda 21 1992, Chapter 8 ¶5(d), Chapter 11 ¶3, Chapter 15 ¶5, and Chapter 26 ¶1.

<sup>217</sup> Escobar, ‘Whose Knowledge, Whose Nature?’, 61, citing Leff E, ‘Epistemología Política, Apropiación de Saberes Etnobotánicos y Manejo Sustentable de la Diversidad Vegetal’ (Second International Congress of Ethnobotany, Mérida, México, 16-17 October 1997)

<sup>218</sup> *Ibid*, 61; Warren, *Ecofeminist Philosophy*, 99.

<sup>219</sup> Report of the Preparatory Committee for the WSSD. 2nd Session (2002), Annex I ¶107, ¶108 and Annex II, ¶14. The representative of the Indigenous Peoples Major Group supported strengthening existing indigenous capacity on the basis of traditional knowledge and indigenous institutions, complementarity between scientific and indigenous knowledge, and technology transfer that respected indigenous identities.’

<sup>220</sup> *Ibid*, Annex I ¶118; see also ¶108; Plan of Implementation 2002, ¶44(j); World Summit Outcome (2005), ¶56(e).

<sup>221</sup> Plan of Implementation 2002, ¶44(m), ¶67, and ¶32(a).

<sup>222</sup> *Ibid*, ¶40(r).

<sup>223</sup> Nagoya Protocol 2010, preamble ¶22.

‘relational category that is ecologically and culturally embedded.’<sup>224</sup> This is further emphasised in the protocol recognising community protocols and customary laws surrounding traditional knowledge associated with genetic resources.<sup>225</sup> This recognition could be evidence that the parties acknowledged that local communities and indigenous people may perceive connections between human/environment nature that are distinct from the dominant western ideology, which is premised on the separation of human/nonhuman nature.

The protocol establishes an access and benefit regime that requires the prior, informed consent or approval and involvement of indigenous and local communities for access to genetic resources where they have the established right to grant access to such resources.<sup>226</sup> The prior, informed consent is further repeated for access to the traditional knowledge associated with genetic resources.<sup>227</sup> Nevertheless, while protecting the rights of indigenous communities and ensuring that the benefits derived from their local environment are shared with them, this regime still continues to reinforce the dominant perception of the environment as a resource or commodity for commercial, economic gain. This has been criticised by ecofeminists who argue that it reflects another form of colonisation.<sup>228</sup> They argue that utilisation of traditional knowledge for the purpose of biodiversity protection is a form of ‘bio-colonialism’ in which transnational companies engage in utilising it for private, economic gain.<sup>229</sup> They criticise the inclusion of intellectual property rights in the biodiversity regime as it opens the way to privatise women’s knowledge while also reaffirming the dominant perception of nature as inert until modified.<sup>230</sup>

Other environmental regimes similarly reflect this incorporation of indigenous knowledge into the dominant western, rationalist sustainable development paradigm.<sup>231</sup> The discussion concerning indigenous knowledge and traditional knowledge systems in the CRIC stated that this knowledge ‘must be more systematically exploited and innovations based on such knowledge encouraged and, where appropriate, in combination with modern technologies adapted to local conditions.’<sup>232</sup> The CRIC further proposes that traditional technologies could be introduced under secure market conditions,<sup>233</sup> and refers to

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<sup>224</sup> Ana Isla, ‘An Ecofeminist Perspective on Biopiracy in Latin America’ (2007) 32(2) Signs 323, 328; see also Nagoya Protocol 2010, art 12(1). The Protocol also contains explicit references that formally recognise community protocols and customary laws with respect to traditional knowledge associated with genetic resources.

<sup>225</sup> Nagoya Protocol 2010, art 12(1).

<sup>226</sup> Ibid, art 6(2).

<sup>227</sup> Ibid, art 7.

<sup>228</sup> Hawthorne, ‘Wild Politics: Beyond Globalization’, 244; Mies and Shiva, *Ecofeminism*, 267-271.

<sup>229</sup> Hawthorne, ‘Wild Politics: Beyond Globalization’, 244.

<sup>230</sup> Merchant, *The Death of Nature*, 193.

<sup>231</sup> Report of the Resumed Review Conference on the UN Fish Stocks Agreement (2010), ¶72.

<sup>232</sup> Report of the CRIC. 1st Session (2002), ¶161.

<sup>233</sup> Ibid, ¶68.

traditional knowledge as the 'main wealth' of communities.<sup>234</sup> These provisions do not reflect the diversity of values, knowledge, or recognise that other cultures may perceive the environment as intrinsically linked into ethical, social, and cultural values, and as a continuum between the different spheres of the material and human worlds.<sup>235</sup>

This section has analysed the contexts in which the international community refers to the nonhuman environment. The analysis reveals that the international community refers to the nonhuman environment in the context of its productive capabilities for achieving scientific and technological progress, ensuring the security of food and energy services while also supporting continued efforts for economic and social development. These contexts reflect a perception of the environment in which it is seen as an entity for supporting human well-being. Such a perception does not reflect an ecofeminist understanding of the environment because it continues to portray nonhuman nature in terms of its extrinsic value for the benefit of humanity. As such, this analysis suggests that not only has the inclusion of other non-environmental considerations (such as the economy, security, science, and development) altered the focus of IEL, the perception of the environment in these documents is also informed by a world view that considers its value in terms of its extrinsic worth for human well-being.

## 2.4 Openness

In Chapter 4, I argued that openness relies on the other boundary conditions of an ecofeminist ethic, such as inclusivity and contextuality.<sup>236</sup> This means that documents which take into account different forms of knowledge, such as relational and experiential knowledge may also reflect greater openness. This is because these documents may disseminate these alternative forms of knowledge, values and experiences of the environment into the public sphere rather than reinforcing western, rationalist informed perceptions of the environment. The analysis undertaken in the previous sections suggest that the references to the environment in the IEL documents continue to privilege western, rationalist thinking. Therefore, the extent to which the documents reflect openness in their references to the environment is less apparent because they suggest a continued privileging of economic rationalism and a preference for objective, quantifiable data.<sup>237</sup> Both of these findings indicate that while marginalised communities may be included in discussions surrounding the environment, their experiences of the environment have been marginalised and backgrounded in the adopted outcome documents. In doing so, the references to the environment do not reflect openness as they do not recognise the different ways in which

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<sup>234</sup> Report of the CRIC. 5th Session (2007), ¶111-¶113.

<sup>235</sup> Isla, 'Biopiracy in Latin America', 328.

<sup>236</sup> See Chapter 4, 118-119.

<sup>237</sup> Davion, 'The Earth Charter and Militarism', 113; see also Karen J. Warren, 'Introduction' in Karen J. Warren and Barbara Wells-Howe (eds), *Ecological Feminism* (Routledge 1994).

communities across the globe may experience or perceive the environment. Instead, the adopted outcome documents maintain a rationalist informed perception of the environment in the type of information that they require states to disseminate to the public.

The previous chapter identified that some environmental regimes supported transparency and accountability mechanisms in the implementation of its objectives. The climate change regime incorporated transparency in information sharing between parties to the protocol, and between parties and civil society. I suggested that these provisions reflected openness because they support the dissemination of information into the public sphere. However, the type of information disseminated maintains economic rationalism and the economisation of environmental conservation. For example, the discussions concerning transparency and accountability in the climate change working groups emphasise the need to disseminate emissions and market data in order to allocate emission reduction obligations.<sup>238</sup> They emphasise the need for confidence in data accuracy for accountability.<sup>239</sup> Participants in the AWG-KP further stated that transparency could be 'supported by providing quantitative and qualitative information on a common set of elements.'<sup>240</sup> These references to the sharing of data focus primarily on the economic and market-related mechanisms of the climate change regime. In doing so, they suggest that the androcentric perception of the environment reflected in the content of the documents continues when parties choose what type of information is relevant to ensure transparency and accountability.

However, the Cartagena Protocol supports stronger accountability and transparency mechanisms that refer to the environment in a way that broadens the type of information disseminated. In doing so, it recognises that the activities undertaken in this protocol may have an adverse effect on the well-being of local communities. For example, the protocol requests parties to take into account the socio-economic considerations 'arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities.'<sup>241</sup> It encourages parties to 'cooperate on research and information exchange on any socio-economic impacts of living modified organisms, especially on indigenous and

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<sup>238</sup> UNFCCC AWG-KP, 'Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on the First Part of its Fifth Session, held in Bangkok from 31 March to 4 April 2008' (15 May 2008) FCCC/KP/AWG/2008/2, ¶15; see also Report of the AWG-KP. Resumed 6th Session (2008), Annex I ¶20; UNFCCC AWG-KP, 'Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on its Seventh Session, held in Bonn from 29 March to 8 April 2009' (13 May 2009) FCCC/KP/AWG/2009/5, Annex I ¶20.

<sup>239</sup> Report of the AWG-KP. 13th Session (2010), Annex I ¶8.

<sup>240</sup> Ibid, Annex I ¶20; see also Decision 2/CP.17 Outcome of the Work of the AWG-LCA (11 December 2011) ¶9. This provision acknowledges the 'need to elaborate rigorous, robust and transparent approaches in a systematic manner to measure progress towards the achievement of economy-wide emission reduction targets.'

<sup>241</sup> Cartagena Protocol 2000, art 26(1).



local communities.<sup>242</sup> Finally, it supports public awareness and education in the issues surrounding living modified organisms.<sup>243</sup> These references to information dissemination and transparency indicate some recognition that the manipulation of genetic resources can adversely affect local communities. It suggests that some states recognise the different ways in which communities may utilise and experience their environment that may be adversely affected by the manipulation of genetic resources. By supporting the dissemination of research and information on these impacts, the protocol demonstrates a more open response to the different ways in which communities utilise and experience their environment.

Further, the technical nature of the environmental subject matter affects the type of knowledge and information shared with the public. Chapter 5 suggested that the narrow participatory approach adopted in the working groups that developed the Ozone Layer Convention and the Montreal Protocol may reflect the technical nature of this issue under negotiation, unlike the broader and interrelated concerns of environmental degradation and underdevelopment addressed by other environmental regimes. In these working groups, the primary participants were state-appointed legal, scientific, and technical experts, often from industrialised countries, as well as some observers from industry and a small number of environmental NGOs.<sup>244</sup> As the technical nature of the subject matter shapes the regime developed in response, it is not surprising that the Ozone Layer Convention empowers the COP to 'seek where appropriate the services of competent international bodies and scientific communities.'<sup>245</sup> In this context, experiential and relational knowledge may not be appropriate in the evolution of international responses to the depletion of the ozone layer. This analysis suggests that in some contexts, the overt preference for technological and scientific expertise, and the dissemination of such expertise may be appropriate given the technical nature of the environmental regime.

This analysis suggests that the extent to which the documents reflect openness in their references to the environment is less apparent because few of the documents included references relating to the environment and the dissemination of information. Where such references were present, the documents adopted different approaches towards the dissemination of information and the type of information that should be included. Some environmental documents, particularly those from the climate change regime indicate a continued privileging of economic rationalism and a preference for objective, quantifiable data. In others, the documents indicate states recognised that other forms of information

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<sup>242</sup> Ibid, art 26(2).

<sup>243</sup> Ibid, art 23.

<sup>244</sup> Decision 9/13(B) 'Protection of the Ozone Layer' in Report of the Governing Council on the Work of its Ninth Session (UN GAOR 36th Session, Supplement No 25) (1981) A/36/25 (Annex) (26 May 1981), ¶2; see also UNEP Governing Council, *Report of the Governing Council on the Work of its Ninth Session* (1981), ¶353; Report of the Working Group of Legal and Technical Experts. 2nd Session (1983), ¶3 and ¶25.

<sup>245</sup> Ozone Layer Convention 1985, art 6(j).

relating to human/environment interactions should be disseminated. This is particularly notable in the biodiversity regime and the recognition that the transport of LMOs may adversely impact local communities and indigenous peoples. Others still, adopt a technical and scientific approach towards information sharing and the type of experts used in the creation of information. The analysis indicated that in some contexts, such an approach may be appropriate given the nature of the regime. Overall, this indicates that type of information and the extent to which it reflects openness is highly dependent on the extent to which the environmental documents include references to the environment that reflect the other ecofeminist values such as inclusivity, structural pluralism and contextualism.

### 3. CONCLUSION

This chapter examined the representations of the environment contained in the IEL documents to reveal the extent to which the perception of the environment may have altered with the increasing convergence between IEL and security. This chapter also examined the extent to which the environment/security connection has altered the perception of the environment from one that recognises its intrinsic value for both humanity and nonhuman nature to one that views it purely in terms of its utility for human interests.

There were three core factors that meant many of the IEL documents did not include references to the environment reflecting ecofeminist values. I found that the documents incorporated anthropocentric and androcentric perspective to the environment. This was evident in the Rio Declaration and other sustainable development documents that explicitly include a human-centric model in which the environment was seen as a resource to achieve sustainable development and address the drivers of underdevelopment. Similar references were included in the climate change and biological environmental regimes. These representations to the environment indicate that the anthropocentric perspective evident in the earlier documents has been refined and consolidated. Furthermore, the later climate change and sustainable development documents incorporated economic centrism, meaning that the references to environment maintain and reinforce the logical structures that subordinate, instrumentalise, and background the environment and human 'others' while also prioritising the needs, interests, and values of the economic elite. Interestingly, the sustainable development and biodiversity regimes, both of which include explicitly anthropocentric references to the environment, are regimes that supported the increased participation by NSAs during the creation, content, and implementation of their objectives.

Second, I found that the dominant view of the environment is as a commodity or resource for development or economic growth. The climate change, sustainable development, biodiversity, tropical timber, and other natural resources regimes portrayed the environment as a resource base for development. This portrayal is incorporated into the foundation of the sustainable development regime and informs the objectives of the

biodiversity and climate change regimes. These regimes also depicted the environment as potential market for commercialisation and economic gain. The Kyoto Protocol and its implementing provisions makes this representation of the environment a central part of the international community's responses to climate change. Similarly, the biodiversity, desertification, and sustainable development regimes commodify the environment through payment for ecosystem services schemes in order to support the economic and social development of developing countries. Therefore, this representation of the environment as a potential market reveals a perception of the environment as a commodity and source of economic growth.

Third, some documents include references to the environment that acknowledge differences between communities which may affect the way in which they experience and perceive their local environment. This recognition is evident in some of the sustainable development and biodiversity documents. These documents took into account the relationship between indigenous communities and their environment. However, even in these provisions, references to the environment and indigenous knowledge emphasise the utility of such knowledge for economic growth and development. In doing so, they indicate that the dominant perspective of the environment remains one where it is a resource to be manipulated, utilised, and adapted for human needs remains. This perception was evident in the biodiversity regime and its references to the use of traditional and indigenous knowledge through technoscience to attain food and energy security. Once again, this representation of the environment reveals a perception of it as inert, and as an object that science and technology can improve for human advancement.

It is possible to draw three interrelated conclusions from these findings. First, while the inclusion of non-environmental considerations such as development, economic, security, or science and technology has altered the reasons for which states protect the environment, the perception of the environment remains informed by western, anthropocentric and androcentric assumptions. Second, this androcentric perspective has been universalised within the IEL documents. Therefore, these documents are informed by damaging conceptual frameworks and dualisms in which the environment is viewed as inert, and solely valuable in terms of its productive capacity. Third, alternative or non-western worldviews and their perspectives of the environment are supported to the extent that they are assimilated into the dominant worldview in which their value is defined in terms of their utility for economic growth and development objectives.

Therefore, the analysis concludes that association between environment and security, as included in IEL, remains informed by a Western anthropocentric worldview. The manifestation of security in terms of food or energy security can be understood as an extension of the underlying ideologies that inform justifications for the inclusion of other international interests into environmental law. The associations between environment and

security reflect one aspect of this ideology by framing security in terms of using the environment for human well-being rather than an examination of why such concerns need to be securitised in the first place (something reflected in the literature). In both contexts, the environment is perceived as separate and inert, and humanity is disembodied and disembodied from it.

The implications of this conclusion are highly relevant for both the future development of IEL and the continuing discussions of environment/security links. These conclusions indicate that the dominant perspective of the environment has been consolidated and reinforced with the integration of economic rationalism and the economisation of environmental objectives. These conclusions further suggest that the environment/security connections in international discourses are a manifestation of this dominant perspective of the environment. This is because both IEL and security discourses support the sustainable exploitation and utilisation of the environment for the purpose of achieving development and responding to the drivers of insecurity.

Therefore, the adoption of sustainable development as the solution to environmental and security concerns in both IEL and broader discourses may simply reaffirm the dominant perception of the environment as a commodity or resource for human interests. This is because they may not engage in an interrogation of the beliefs, values, and assumptions that inform this view. Continuing to perceive the environment as a commodity and humanity as disembodied and disembodied from the environment means that future responses to environmental degradation and insecurity may well perpetuate underlying structural, ideological and material inequalities.



## 8. Conclusion

This thesis set out to examine the extent to which the association between environment and security has altered the basis on which the international community protects the environment, and in turn, what this suggests about states' perception of the environment. Over the course of the research, I arrived at two broad conclusions concerning the perception of the environment held by states and their reasons put forward for protecting it in the development of international environmental law IEL. First the environmental topic, the forum, and the age of the document had an effect on the ways in which states view the environment, and the arguments put forward for its protection. Second, the prioritisation of development, economy, security, science, and technology interests through the paradigm of sustainable development in IEL has an effect on the perception of the environment itself. However, the underlying western, anthropocentric *perception of the environment*, as reflected in these environmental documents has prevailed. This perception has been consolidated by the securitisation of the environment in the broader security discourse. Therefore, the research showed that, though the justifications for the protection of the environment have changed over time, the western, anthropocentric worldview remains the same.

In this chapter I offer the main conclusions and findings of this study. The chapter is divided into four sections. First, I give a brief overview of the research. Second I reflect on, and evaluate, the methodological approach used in this research. Third, I summarise the key findings of this thesis and consider their implications for future responses to environmental problems. Fourth, I identify what I consider as some of the most fruitful avenues for future research in this area.

### 1. RESEARCH OVERVIEW

The first part of the thesis introduced the context and background to the research, its theoretical foundation, and explained the methodological approach developed to examine the research question stated in Chapter 1 (Introduction). To recap, this thesis set out to answer the following question:

*To what the extent has the association between environment and security has altered the basis on which states and NSAs that make up the international community seek to protect the environment, and in turn, what does this suggest about their perception of the environment?*

Chapter 2 undertook a review of the evolution of international responses to environmental problems and international security. My analysis of the academic literature concluded that both IEL and international responses to international peace and security have broadened through the introduction of the interrelated concepts of sustainable

development and human security. The literature showed that the paradigm of sustainable development has received notable support in both international responses to underdevelopment, and the associated drivers of insecurity, and in the collective responses to environmental vulnerability through the interrelated principles of common concern for humankind and common, but differentiated, responsibility and respective capabilities (CBDRRC). As the result of this literature review, I came to three conclusions. First, sustainable development has had a profound influence on the evolution of international responses to IEL. Second, sustainable development has been co-opted by the international community as both a goal and solution to insecurity during the post-Cold War period. Third, this co-option may be a cause for concern for the subsequent development of IEL because liberal responses to insecurity are inherently anthropocentric and focus on economic and social development.

Extending from these conclusions, I suggested that securitisation of the environment has occurred, and with the co-option of sustainable development by global security actors, it may have implications for the justifications for environmental protection and evolving perceptions of the environment by the international community. This review of the literature indicated that little of the research focused on the attitudes, values, and beliefs that formed states' perceptions of the environment in the evolution of environmental law and international responses to insecurity. Therefore, my research sought to address this gap by examining the evolving perception of the environment by states in IEL documents, and the reasons for which states protect the environment, in light of the securitisation of the environment.

Chapters 3 and 4 introduced ecofeminism as the theoretical foundation of the thesis and the methodological approach used to analyse IEL. In Chapter 3, I argued that ecofeminism is able to develop a more complete analysis of the underlying attitudes, beliefs, and values that inform the international community's perception of the environment, and how these may have altered with the securitisation of the environment. In Chapter 4, I drew on ecofeminist theory to develop an analytical framework by which to examine the preparatory documents and outcome texts of eight different environmental regimes (climate change, biodiversity, the ozone layer, tropical timber, desertification, highly migratory and straddling fish stocks, sustainable development, and transboundary watercourses) and four time periods (Pre-Rio Conference (1980-1987), the Rio-period (1987-1992), post-Rio period (1993-2000), and post-2000-period (2001-2012)). This breadth of documentation made possible a close analysis of the evolution of factors and influences on hard and soft environmental law-making.

The second part of the chapter introduced my analytical framework and method used to examine the IEL documents. I explained how the different boundary conditions of an ecofeminist ethic were used to develop the four analytical lenses (inclusivity, structural

pluralism, contextualism, and openness) through which I examined the environmental documents. I explained my method of content analysis which enabled me to build a more holistic understanding of the different ways in which the international community mediates its experiences of the environment and its connections with other non-environmental considerations. This more 'open' method enabled concepts to emerge from the data and allowed me to identify specific categories emerging from the data that formed the key foci for the analytical chapters. These categories included participation, the integration of non-environmental considerations, and the perception of the environment itself. The strengths, drawbacks, and limitations of the use of an ecofeminist analytical framework to undertake feminist content analysis is discussed below.

The second part of the thesis examined three interrelated topics in the development of international environmental law and the subsequent evolution of environmental regimes. These concern the participation by states and NSAs in the creation, development, and implementation of international environmental law, the inclusion of other international interests in international responses to environmental problems, and the representation of the environment itself in preparatory documents and adopted environmental law. The degree to which environment/security links may have altered the perceptions of the environment and the basis on which members of the international community protect the environment were examined through these three topics and they became the focus of the three analytical chapters in this research.

The first analytic chapter examined the participation by states and NSAs in the creation, development, and implementation of IEL. I analysed this category first because I wanted to reveal who participated, and in what environmental areas they were able to participate. Furthermore, analysing the justifications put forward for broader participation in the creation, development, and implementation of IEL meant that I could identify any non-environmental considerations and environmental regimes in which the participation by NSAs or states were excluded. This could reveal any tensions between the emerging principle of participation in sustainable development and the exclusionary practices that occurred in the negotiations of some environmental areas closely connected to the environment and national interests. The findings of this chapter established the foundation and informed the analysis undertaken in the next chapter.

I examined the integration of non-environmental considerations into IEL in the second analytic chapter. This category meant that I could identify the types of considerations included in IEL, such as development, trade, economic, scientific, technological, and security, and the justifications used in order to include them into IEL. More specifically, I examined the consolidation of sustainable development as the dominant paradigm in IEL, and its integration of non-environmental considerations, and how the justifications for their consideration has altered the basis on which the international community protects the



environment. Undertaking this examination meant that I could identify any assumptions, values, and beliefs shared between the arguments supporting the integration of non-environmental considerations into EIL and those used to securitise non-traditional threats (such as the environment or underdevelopment) in the broader security discourse. Therefore, I could examine the extent to which the securitisation of the environment has altered the basis for protecting the environment.

I analysed the different representations of the environment in the final analysis chapter because I wanted to examine the ways in which the international community perceived that the environment had altered over time, in light of the prioritisation of non-environmental considerations through the paradigm of sustainable development. I hoped to discern if there were shared assumptions, values, and beliefs between the different representations included in the IEL documents and those in the environment/security literature. Where similarities in the references to the environment arose between the IEL documents and security literature, I hypothesised that this may indicate that the co-option of sustainable development by the broader security discourse as part of a broader strategy to address the drivers of underdevelopment.

Analysing the documents with reference to these categories enabled me to answer the overall research question of this study. Throughout the analysis, a number of themes, reflections, and findings emerged and informed the analysis, as intended by my use of reflexive and iterative content analysis. Hence, before I discuss the findings of this research project, I will evaluate the methodological approach used in this research project as it helped shape the findings and conclusions drawn from the environmental documents. Following this evaluation, I identify the findings from the three analytical chapters before drawing out the key conclusions of the thesis and the implications of these more broadly.

## 2. EVALUATION OF METHODOLOGY

The ecofeminist analytical framework proved to be very successful as a tool for analysing the international environmental documents. Drawing on an ecofeminist ethic to form the basis of my critical analysis enabled me to examine the interconnecting structures of western culture that I argue have informed the assumptions and justifications promulgated by states to protect the environment. This framework was informed by the four ecofeminist values of inclusivity, structural pluralism, contextualism and openness that describe the boundary conditions within which actions, decisions, and ethics may be seen as ecofeminist. Through this framework I was able to examine the content of these documents and reveal the beliefs, values, and attitudes that underpin the international community's understanding of the environment, inform states' *perception* of the environment, and the part that these perceptions play in the creation of IEL. This understanding facilitated my examination of

the securitisation of the environment, sustainable development, and environmental protection as contained in the documents.

On reflection, the methodology adopted in this research had benefits and drawbacks. I purposefully decided to draw on a range of environmental documents from four different environmental areas (natural resources, general principles of IEL, atmosphere, and desertification) and the eight environmental regimes described above. However, the number of documents that I analysed meant that there was a lot of information, themes, differences, and other variables which I was unable to integrate or discuss in this research. In hindsight, by restricting the documentary analysis to two or three regimes, I could have then analysed other documentation submitted by the parties, NSAs and other actors during the negotiation process rather than focusing primarily on the preparatory reports. Nevertheless, this is something that I can undertake in future research.

Furthermore, there are limitations of this methodological approach which may have implications on the findings. As I stated in Chapter 5, there are many reasons why some NSA voices are more represented in the documents than others. By restricting my analysis to meeting reports, only certain voices were recorded in the documents. Had I restricted the documentary analysis to two or three regimes, I could have then analysed the other documentation by NSAs and other actors during the negotiation process. This could have enabled me to contextualise the type of voices recorded in the meeting reports themselves.

Nevertheless, the findings in Chapter 5 are still relevant because states and other institutions – who control the participation by NSAs – referred to NSA participation in a variety of ways. This signified the issues, areas and topics that states consider closely aligned to their interests, and to security. Furthermore, the justifications for NSA participation set out by states and other international institutions revealed underlying values, beliefs and assumptions concerning the role of environmental protection in addressing other international issues, such as peace, development and security. Therefore, while the findings specifically related to the voices of NSAs may not be generalisable, the findings relating to the ways in which states refer to NSA participation, the justifications put forward for their participation or exclusion, and the ways in which NSA participation, environmental and non-environmental considerations are connected by states informed and supported the subsequent analysis of the documents in Chapters 6 and 7. These findings are significant and reveal underlying assumptions, values and beliefs that shape the reasons for supporting the participation by NSAs and also the emerging tensions between the principles of participation in sustainable development, when deployed in environmental areas that may adversely affect the economic or other national interests of states.

In addition, the strength of the findings and conclusions drawn from the breadth of documentation outweighs the potential benefits from undertaking a deeper analysis of fewer

regimes. This is because the scope of the analysis offers diversity in perspectives and, therefore, I was able to identify overall themes that emerged across the different regimes and environmental areas. Furthermore, as I wanted to analyse the evolution of IEL, some of the environmental regimes I drew on were significantly older and therefore did not have the same range of preparatory documents. This was particularly the case for the earlier ITTAs and the preparations for the 1972 Stockholm Conference. Therefore, I would not have been able to undertake a deeper analysis of these regimes, as compared to the more recent negotiations in the climate change.

The use of reflexive content analysis in conjunction with the ecofeminist analytical framework enabled me to undertake an iterative analysis of the documents. This helped compensate for the breadth of documentation because it meant that I analysed the text of the documents more than five times during the process of analysis: One initial reading, a reading through each of the four ecofeminist lenses, and then again when I was analysing the content of other documents. On reflection, I think that I could streamline this process, and develop a more useful database for holding my analysis by using a computer aided program, such as HyperRESEARCH.<sup>1</sup> Once again, this is something that I develop in future research.

The method itself and the analytical framework is highly transferable to other areas of international law. I envisage that it could be used to examine the content of international human rights law, and other international legal systems with some tweaking. One of the benefits of the analytical framework is that it recognises the inherent complexity and ‘messiness’ of international law and that different assumptions, values, and beliefs inform the content of the documents. It also enables those underlying assumptions, values, and beliefs to be rendered visible and discussed with reference to, and informed by, an ethic that acknowledges that the relationships and interconnections between issue areas are just as important as the content of those documents themselves. Therefore, one of the strengths of this method and analytical framework is that it offers a system and framework in order to analyse these increasingly complicated and interconnected international legal regimes in a way that recognises that the relationships between such areas are informed by context, history, and other, less ‘objective’ ethical considerations.

Finally, the analytical framework is a work in progress. One of its benefits is the flexibility in its terms and categorisations. However, there could still be some more clarity between the different lenses, especially between inclusivity, structural pluralism, and contextualism. Furthermore, the open lens is less developed than the other ones. Upon reflection, I think

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<sup>1</sup> Researchware Inc, ‘Qualitative Analysis with HyperRESEARCH’ (*Researchware Inc. Simply Powerful Tools for Qualitative Research*, ND) <<http://www.researchware.com/products/hyperresearch.html>> accessed 28 April 2016; see also Patricia Lina Leavy, ‘Feminist Content Analysis and Representative Characters’ (2000)(1-2) *The Qualitative Report* 1.

that it could be more developed with reference to Catriona Sandilands' work on ecological citizenship and democratic openness.<sup>2</sup> When re-reading her work after completing the thesis, I was drawn to her discussion of 'openness' and democracy. I believe that these ideas could strengthen the open lens and contribute to the overall usefulness of the analytical framework for future research.

Nevertheless, I am pleased with the contribution that the analytical framework made to my research. The methodological approach was suited to answering the research question, and I consider it one of the original contributions that my thesis has made and something that I intend to develop in future research.<sup>3</sup> This is because it gave an interesting framework through which I was able to examine the different environmental regimes by drawing on ecofeminist theory and utilising a holistic and iterative method of content analysis. In doing so, this methodology enabled me to look beyond the content of the documents to analyse the underlying assumptions, values, and beliefs that informed their content. I could therefore examine the extent to which these documents shared similar underlying assumptions, values, and beliefs towards the environment as those incorporated in the environment/security literature. This meant that I could examine the extent to which the securitisation of the environment has altered the basis for which the international community protects the environment, and in turn, the perception of the environment itself. In the following sections, I discuss the findings of this research project discovered through the use of this analytical framework.

### 3. SUMMARY AND IMPLICATION OF FINDINGS

#### 3.1 Summary of Findings

By using the analytical framework, I was able to reveal that the securitisation of the environment has altered the basis on which the international community seeks to protect the environment. However, as noted in the introduction, I found that the perception of the environment has remained static across the time-periods under analysis. The findings from each of the three analysis chapters informed the overall conclusions of this research project. In the following section, I outline the key findings from each of the chapters before discussing the implications of these findings for the future direction of IEL.

In general, the post-Rio environmental documents included more provisions that reflected inclusive and structurally plural participatory approaches. This reflects the principles of participation encapsulated in Principle 10 of the Rio Declaration (1992) and

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<sup>2</sup> Sandilands, *The Good-Natured Feminist*, 144, referring to Lee Quinby, *Anti-Apocalypse: Exercises in Genealogical Criticism* (University of Minnesota Press 1994), 46.

<sup>3</sup> Kate Wilkinson, 'A Case for an Ecofeminist Critique of International Environmental Law' in Douglas A Vakoch and Sam Mickey (eds), *Ecofeminism in Dialogue* (Forthcoming 2017).

the emerging discussion of the potential benefits of such participation for poverty alleviation, and other international concerns.

However, some environmental regimes did not reflect inclusive or structurally plural participatory approaches. These regimes were generally addressing environmental areas that have a significant effect on state interests, particularly economic or commercial interests. The climate change regime was the most notable example of exclusionary participatory approaches because overall approach was quite exclusionary. Both NSAs, and in some contexts, states were often excluded where the negotiations related to non-environmental considerations such as commercial or economic interests, both of which have an impact on the security and well-being of states.

Furthermore, the analysis revealed that the justifications used to support structurally plural and contextual participation were based on two assumptions. First, the voices and experiences of marginalised communities are necessary for the success of environmental projects and can add benefit to broader sustainable development goals as well. Second, that local-level participation in environmental or sustainable development projects can support broader security goals by supporting economic and social development within marginalised communities. These two findings indicate that many of the justifications for greater participation by NSAs are based on an emerging assumption that increasing the participation by NSAs may also have an effect on the security of states by enabling economic and social development, increasing democratic governance and therefore enabling peaceful and stable societies. These findings indicate that participation by NSAs within IEL may be seen as part of a broader solution to addressing the drivers of insecurity through the paradigm of sustainable development.

Therefore, these findings suggest that a tension is emerging between the principles of participation within sustainable development, compared with the participation by states and NSAs in environmental areas that have a direct impact on the economic and national well-being of states. Overall, the participation by NSAs in the creation, development, and implementation of IEL has grown. However, the extent to which it reflects a contextual understanding of participation, and actually engages with traditionally excluded or marginalised communities is significantly lower where there is a relationship between the environmental area and broader security interests.

The analysis of the integration of non-environmental considerations revealed that there is been a prioritisation of economic, trade, and commercial interests in IEL, especially through the paradigm of sustainable development. I found that the justifications for such prioritisation were made on the basis that economic growth is viewed as a precursor to achieving environmental protection and part of the solution to prevent future problems. The justification for the prioritisation of economic considerations signifies a deeply seated

assumption held by states, in which economic growth and economic development are seen as essential to achieve sustainable development and to respond to the drivers of underdevelopment. As noted in Chapter 2, underdevelopment has been increasingly viewed as the driver for environmental degradation, insecurity, and low-level conflict within broader security discourses. Therefore, the integration of such considerations indicate shared assumptions, values, and beliefs between IEL and those in the broader security discourse, and that environmental projects or obligations can be used as part of a broader response to the drivers of insecurity.

In addition, my findings revealed that the justifications for integrating some non-environmental considerations into IEL were based on the recognition of difference between developed and developing states. By recognising these differences, the environmental documents reflect some elements of structural pluralism and a contextual understanding of difference. These references were prevalent in the climate change, ozone layer, and sustainable development regimes, which acknowledged the 'special situation' of developing countries and linked their obligations and commitments with the provision of additional support by developed States. The climate change regime not only acknowledged the special circumstances of developing states, but also that there were historical differences between developed and developing states in relation to their contributions to climate change.

Furthermore, the documents from the climate change regime indicate that the practice of differentiating between states based on historical contributions to environmental degradation has been increasingly contested. In particular, the concept of CBDRRC has become challenged – particularly in relation to differentiation based upon historical contributions – in light of the rapid development of some developing countries. The limited references to the concept in the later COP decisions suggested that the inclusion of economic, trade, and development interests has affected the way in which states respond to shared environmental concerns in a differentiated way.

The significance of this is twofold. First, it suggests that the prioritisation of economic interests, within the context of sustainable development, in the documents has altered the extent to which the international community responds to environmental degradation in a way that reflects a contextual understanding of difference. Instead, the challenges to CBDRRC suggest that some states favour measuring difference on objective measures, such as economic considerations. Second, it suggests that future responses to environmental problems may not occur in a way that acknowledges historic difference between members of the international community, which ecofeminists argue have been perpetuated through the colonising logic of western rationalism, culture, and its underlying assumptions.

Furthermore, I found that the justifications for integrating non-environmental considerations were made on the basis that they can support the well-being of local

communities and their natural resources. However, the analysis revealed that the justifications used to protect indigenous and traditional knowledge were made on the basis that such knowledge could be utilised for sustainable development, economic growth, and scientific and technological innovation for the purpose of attaining food and energy security, as well as the conservation and sustainable management of natural resources. In this way, the protection of such knowledge was justified on economic, scientific, and development grounds, rather than recognising the cultural and ontological differences between communities. These justifications universalise the dominant development model and do not reflect a contextual understanding of difference. In addition, they may also maintain the subordination of traditionally marginalised communities because the prioritisation of economic development means that their knowledge is commodified in a way that may not recognise other contextual understandings of the environment and mechanisms for knowledge creation.

In the final analysis chapter, I found that the representation of the environment has not changed over time. Through my analysis, I discovered that the documents generally included references that represented the environment in three interconnected ways: As a natural resource base for economic and social development; an inert objective to marketise and commoditise on global markets; and as an object to manipulate into other, more 'valuable' products to sell. These representations of the environment correlated with the inclusion of wider international interests and the emergence of environmental/security connections in broader security discourses. Their inclusion on the documents revealed an anthropocentric perception of the environment which disembodies and disembeds humanity from the material reality in which we live.

These findings indicate that implicit in the references to the environment are connections to broader security discourse and colonisation of such discourse by a more powerful body of international law and policy. My analysis of the documents revealed that the references to 'security' in the sustainable development, climate change, desertification, and biodiversity regimes indicate that the environment is seen as a commodity, an object for attaining human security, a tool for sustainable development, and a precursor for international peace and security. These perceptions were present in the post-2001 sustainable development documents, particularly the speeches given by member states during the high-level summits by the United Nations General Assembly. Notably, this narrative was further revealed in the work undertaken in the post-2001 desertification regime, where human security was explicitly linked with attaining food security and economic security through the commoditisation of the local environment. These perceptions exemplify a view of the environment as a potential commodity for economic and social development, and the assumption that sustainable development, peace, and security are mutually supportive.

Finally, the analysis of the representations of the environment indicate that the content of IEL does not recognise different ontologies or values of the environment. Some environmental regimes did recognise that the relationship between local communities and the environment may differ depending on the context in which they live. This recognition indicates some acknowledgement of different ontologies in relation to the environment that may also affect the way in which these communities may perceive and interact with their local environment. Such references were present in some of the more recent sustainable development and biodiversity documents, such as the Rio+20 Outcome Document (2012) and the Nagoya Protocol (2010). Nevertheless, even in these documents, the references to traditional knowledge, local communities, and indigenous peoples emphasise the value and utility of such knowledge for economic growth and development. In doing so, they indicate that the dominant perspective of the environment remains one where it is a resource to be manipulated, utilised, and adapted for human needs. This perception was evident in the biodiversity regime and its references to the use of traditional and indigenous knowledge through technoscience to attain food and energy security. Once again, this representation of the environment reveals a perception of it as inert, and as an object that science and technology can improve for human advancement.

Therefore, these findings suggest that the integration of sustainable development as the dominant paradigm of IEL, and its co-option by security discourse reveals an inherent tension in the concept. These findings reveal a tension because of the integrationist nature of the concept, which seeks to balance the different needs and interests of both states and individuals. These findings also suggest, however, that this balance has been altered in line with the increasing securitisation of non-traditional threats, such as the environment and underdevelopment. The prioritisation of economic growth, economic development, and social development which emerges in the more recent environmental documents reflects the underlying assumptions inherent in the security discourse that insecurity and conflict is driven by (primarily) underdevelopment, which in itself is driven by poor economic development and social development. Therefore, the prioritisation of these considerations in the environmental documents indicates that for some states and international actors, international responses to environmental problems are increasingly conflated with responding to addressing drivers of underdevelopment in order to reduce global insecurity and drivers of conflict.

Finally, there is a broader tension surrounding the concept of differentiation and the type of development which is supported by both IEL and in broader environmental discourses. This tension has been particularly notable in the negotiations in the AWG-LCA and the discussion surrounding CBDRRC. While the most recent 2015 Paris Climate Agreement



does include the principle of CBDRRRC in its text,<sup>4</sup> the focus of difference has moved from one that takes into account historical and other contextual forms of difference towards focusing much more on the objective, rationalist measures of difference through global economic participation and wealth. This tension suggests that conflicts surrounding economic, trade, and other measures have pervaded the negotiations surrounding shared responses to transboundary environmental conditions.

Building on the above conclusions, the findings suggest that while the inclusion of non-environmental considerations has altered the reasons for which states seek to protect the environment, the perception of the environment remains informed by western, anthropocentric, and androcentric assumptions. This androcentric perspective of the environment has been universalised within the IEL documents, and means that they are informed by conceptual frameworks and dualisms that view the environment as inert, and solely valuable because of its productive capacity. Non-western worldviews and alternative perspectives of the environment are supported in these documents to the extent that they can be assimilated into the dominant worldview, in which their value is defined in terms of their utility for economic growth and development objectives, as part of the global strategy to maintain peace and address the drivers of underdevelopment and insecurity.

### 3.2 Implications of Findings

The above findings present a number of implications for the future development of IEL, sustainable development, and the treatment of the environment more generally. First of all, there is no doubt that the international responses to global environmental degradation have gone some way to protecting the planet from significant harm. In some contexts, these responses reflect an ethic of environmental care that responds to the existential nature of environmental degradation in a manner that is non-hierarchical and respectful. Some of the environmental regimes developed prior to the turn of the 21<sup>st</sup> century, such as the desertification and sustainable development regimes, indicate an inclusive, structurally plural, contextual, and open approach in their negotiation process and are included in the objectives themselves. While more recent documents acknowledge the greater independency between humanity and nonhuman nature, as well as the interdependency between communities, states, and other international bodies, the extent that the international community's responses reflect an ecofeminist understanding of environmental conservation is less apparent.

This is because the continuing commoditisation of the environment is presented as a solution to environmental and security problems and therefore maintains a worldview in which the environment is separate and subordinate of humanity. It maintains the dominant

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<sup>4</sup> Paris Agreement (Paris) (adopted 12 December 2015, not yet in force) FCCC/CP/2015/10/Add.1 Annex (12 December 2015), preamble ¶3, art 2(2).

conceptual framework that will continue to perpetuate this exploitative approach based upon logical dualisms and the valorisation of rationalism, over other experiential and collective understandings of environment and human interrelationships. To continue to maintain such a western, Eurocentric and arguably androcentric perspective of the environment in IEL and broader security discourses may in fact undermine the security of some marginalised communities because it does not require powerful social groups to re-evaluate their actions and approaches to the environment. Further, it may also legitimise the siphoning off of 'valuable' environmental resources to states and NSAs who already hold significant power within the international community, dominant international institutions, and systems. Therefore, the proposed solutions to environment and security problems may perpetuate the insecurity facing already marginalised communities.

These findings suggest that the securitisation of the environment and the apparent co-option of sustainable development by the security discourse privileges the dominant development model. They indicate that western cultural beliefs, assumptions, and understandings of the world inform the development of IEL and the framework for collective responses to environmental problems. This model continues to affirm the association between economic growth and technoscientific solutions as the solution to environmental problems, which they argue degrades the global environment, marginalises communities, and excludes other, non-dualised interconnections between human and nonhuman nature. An ecofeminist response to the current state of affairs would call for a critical reappraisal of the ethical, epistemological, and logical basis for international responses which they argue maintain a remote, dispassionate, disembodied, and disembodied responses to environmental problems. Ecofeminists would argue that any IEL and indirectly, the wider responses to questions of insecurity and conflict prevention, would not be effective because they continue to maintain a separation and devaluation of humanity's embodiment in the environment, and by extension those communities, activities, and processes that rely on the environment.

Furthermore, the prioritisation of economic growth and development in the environmental documents reveals an underlying assumption that such activities, undertaken in the course of sustainable development, are the solution to underdevelopment, and its associated security concerns. The inclusion of references to security found in the post-2001 documents is indicative of the anthropocentric nature of the justifications for protecting the environment. The references to food security, livelihood security, and energy security presented a narrow notion of security that focused on the individual's needs in order to achieve sustainable development. The inclusion of such references in the sustainable development, desertification, and biodiversity regimes revealed a prioritisation of human-centred development as a response to insecurity by emphasising the security of human needs. Therefore, the justifications for the inclusion of economic, development, security, and

technology interests in these documents reveal a continued prioritisation of these interests as a preliminary step towards responding to the drivers of environmental degradation, underdevelopment, and insecurity.

As we saw in Chapter 6, the significant emphasis on socio-economic development in the negotiations and outcome texts developed in the post-Rio period, indicate that the sustainable development paradigm is premised on the notion of sustained economic growth in a global market economy. This approach, while tempered by the modish notion of a 'green economy', continues to ignore the possibility that continuous economic growth exacerbates the existing environmental crisis, and the uneven power relations within the international community; between the rich and poor and between men and women. Ecofeminism argues that these inequalities are inherent in the global market economy. Adopting a more ecological and socially tenable understanding of sustainable development could not only enable the international community to respond to global environmental degradation in a more collective and equitable way, but it could go a long way in responding to the notion of 'human security' in a manner that acknowledges differences and the inherent power relations between individuals.

In addition, the findings indicate that the IEL documents primarily take into account economic and social differences between communities and states. This reinforces the dominant conceptual frameworks that inform economic rationalism and the dominant responses to environmental problems. In doing so, current responses to economic differentiation maintain the subordination and devaluation of other forms of non-productive values of human/environment interrelationships. This approach towards differentiation reveals a very western conceptualisation of difference which does not take into account other differences, such as historical, social, cultural, conceptual, or ontological. Should these differences be engaged with, it could enable a more respectful and contextualised discussion of international responses to environmental, and potentially, security problems. This discussion highlights the importance of developing a more contextual understanding of human/environment interrelationships which could inform the creation, content and implementation of IEL objectives. This could recognise the plurality of communities, perspectives, values, and ontologies in relation to the environment.

Taking stock of the inherent contradictions as discovered throughout this thesis, the conclusions point to the need for the international community to take note and consciously acknowledge the assumptions and conceptual framework that underpin their justifications for the protection of the environment. The references to environment/security links can be understood as a manifestation of this destructive framework, which this thesis argues informs the paradigm of sustainable development. Therefore, to develop effective international responses to the existential crisis of global environmental destruction, a radical re-evaluation of humanity's role and position in the environment is required.

The overall idea of sustainable development does not have to be an oxymoron. Principles such as precaution, common but differentiated responsibilities, intra- and inter-generational equity, can reflect a collective response to the environmental crisis in a way that recognises the integration between the international community and humanity's position as part of an ecological community. These principles can also inform the environment/security discourse in other disciplines in such a way that recognises the existential crisis of environmental degradation, and the need for a collective response to it. However, without states openly acknowledging that their perceptions of the environment inform not only the basis on which they protect it, but the ways in which they seek to protect it, the development of IEL and the future response to environment/security linkages will continue to reaffirm the dominant social paradigm.

Finally, extrapolating from my findings in Chapter 5, some broader comments can be made concerning the participation by all sectors of society in environmental issues. Most of the post-Rio documents acknowledge the importance of inclusive participation by all sectors of society in environmental decision-making. However, as we saw in Chapter 5, there are emerging tensions between the principles of participation, as deployed within sustainable development, contrasted with the participation within those environmental areas that have a direct impact on the economic and national well-being of states. These tensions maintain an androcentric and market-based perspective of human/nonhuman interactions that has historically not valued the non-productive contributions by women in its strategies. Recent conferences and documents have acknowledged this issue and have called for inclusion of unpaid labour to be included in economic indicators.<sup>5</sup> However, doing so continues to maintain a dominant social paradigm that does not acknowledge the material embeddedness of humanity in nonhuman nature. Reimagining sustainable development to acknowledge humanity's true position in an ecological world, together with the meaningful participation by all members of the international community in a way that honestly recognises power relationships, would go far in developing international responses to environmental degradation that support the livelihood and existence of all humanity, and develop effective policies to ensure the security of all.

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<sup>5</sup> E.g. Shirin Rai, Catherine Hoskyns and Dania Thomas, 'Depletion and Social Reproduction' (CSGR Working Paper 274/11 Centre for the Study of Globalisation and Regionalisation, University of Warwick) <<http://www2.warwick.ac.uk/fac/soc/pais/research/researchcentres/csgr/papers/workingpapers/2011/27411.pdf>> accessed 10 May 2016; Rio+20 Outcome Document (2012), 153; Gaëlle Ferrant, Luca Maria Pesando and Keiko Nowacka, 'Unpaid Care Work: The Missing Link in the Analysis of Gender Gaps in Labour Outcomes' (Issues Paper OECD Development Centre, Organisation for Economic Cooperation and Development December 2014) <[https://www.oecd.org/dev/development-gender/Unpaid\\_care\\_work.pdf](https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf)> accessed 10 May 2016; UNRISD, 'Social Inclusion and the Post-2015 Sustainable Development Agenda' (*United Nations Research Institute for Social Development*, 2014) <<http://www.unrisd.org/unitar-social-inclusion>> accessed 10 May 2016; UNDP, *Human Development Report 2015: Work for Human Development* (United Nations Development Programme 2015), 12-13, 116-117; Nancy Folbre, 'Valuing Non-Market Work' (Think Piece 2015 UNDP Human Development Report Office, United Nations Development Programme 2015) <[http://hdr.undp.org/sites/default/files/folbre\\_hdr\\_2015\\_final\\_0.pdf](http://hdr.undp.org/sites/default/files/folbre_hdr_2015_final_0.pdf)> accessed 10 May 2016.

#### 4. LOOKING AHEAD AND CONCLUDING REMARKS

The above conclusions present opportunities for future research. As a result of the relatively broad focus of this thesis on the evolution of IEL over the last 40 years, there is scope to focus on the international legal framework for a specific environmental topic. One opportunity for future research is the development of the climate change regime following the adoption of the 2015 Paris Climate Agreement, and changing understanding of 'differentiation' within its text.<sup>6</sup> In addition, the broad scope of this thesis meant that there was no opportunity to examine the implementation of these environmental regimes. Therefore, future research could analyse specific environmental regimes and the implementation approach used in countries facing different anxieties, such as insecurity, unequal levels of development and complex environmental degradation.

The second area takes a very different approach. It became clear through the analysis that current approaches to international environmental conservation intend to secure participation by the private sector. In the context of the biodiversity and climate change regimes, this participation is secured through the commodification of knowledge, genetic resources, and other schemes that involve payment for ecosystem services. A critical examination of the interplay between relevant trade related treaties, such as the 1994 TRIPs Agreement,<sup>7</sup> the ongoing negotiations of an instrument on intellectual property and genetic resources, traditional knowledge and folklore by the World Intellectual Property Organisation,<sup>8</sup> and the 2010 Nagoya Protocol could offer an exciting opportunity for employing the ecofeminist analytical framework developed in this research project. In particular, employing this framework could examine the differences between the way in which knowledge is understood in relation to the environment, economic considerations, and the way in which this sector could change communities' perception of the environment.

Building on the above, a third area of future work could focus on the intersection between the law of international development and human rights in relation to the environment.<sup>9</sup> I intend to contribute to the body of existing work by examining the tensions

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<sup>6</sup> Decision 1/CP.17 (2011) Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action (11 December 2011), ¶2; Decision 1/CP.21 Adoption of the Paris Agreement (12 December 2015); Paris Climate Agreement 2015

<sup>7</sup> TRIPs Agreement 1994; see also *International Convention for the Protection of New Varieties of Plants, as Revised in 1972, 1978 and 1991* (Brussels) (adopted 2 December 1961, revised 10 November 1972, 23 October 1978, and 19 March 1991, entered into force 24 April 1998) [2000] ATS 6 / 33 UST 2703 / 815 UNTS 89; *International Treaty on Plant Genetic Resources for Food and Agriculture* (Rome) (adopted 3 November 2001, entered into force 29 June 2004) 2400 UNTS 303 (2010).

<sup>8</sup> WIPO, 'Decision on Agenda Item 5: Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore'; WIPO, 'Draft Provisions/Articles for the Protection of Traditional Knowledge and Traditional Cultural Expressions, and IP & Genetic Resources' (*World Intellectual Property Organization*) <[http://www.wipo.int/tk/en/igc/draft\\_provisions.html](http://www.wipo.int/tk/en/igc/draft_provisions.html)> accessed 3 July 2015.

<sup>9</sup> John H. Knox, 'Linking Human Rights and Climate Change at the United Nations' (2009) 33(2) *Harv Envtl L Rev* 477; Linda Hajjar Leib, *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives*

between these two areas, drawing on the ethic of care articulated by Karen Warren and incorporated within the analytical framework developed in this research. This future research offers the opportunity to refine the framework while also exploring whether the tensions between development, environment and human rights may be resolved by drawing on the ecofeminist ethic of care, takes into account the networks of relationships between individuals rather than simply focusing on the rights, duties, and rules that apply.<sup>10</sup> Therefore, it recognises commonalities and differences between human and nonhuman nature, as well as between humans. This research could feed into the ongoing work by the special rapporteur on human rights and the environment and the United Nations Human Rights Council on the relationship between human rights and the environment.<sup>11</sup>

A fourth area of work could focus on the principles incorporated within sustainable development, such as CBD/RR, and the precautionary principle. Article 2(2) of the recently adopted Paris Climate Agreement requires that the objectives of the agreement are addressed in light of equity and the CBD/RR.<sup>12</sup> I believe that an ecofeminist critique of equity and the different understandings of equity could shed further light on the underlying assumptions, interests, and beliefs that inform state action in relation to the environment. A similar project could be undertaken for the precautionary approach. This project would offer the opportunity to undertake a reflexive content analysis of case law and other sources of international law. This research would enable me to engage with different types of actors from both national and international spheres, who mediate the competing interests between states and the international community as a whole.

Finally, a fifth area of future research could focus on the notion of 'security' in the context of environmental degradation and livelihood destruction. In this context, the use of an ecofeminist analytical framework could interrogate the international responses to insecurity and the way in which these take into account gender, the environment and the competing interests of different groups.

As the environmental crisis is only going to deepen in the near future, the international response has to be radically different. Current reactions to environmental degradation have

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(Martinus Nijhoff 2011); Lyuba Zarsky, *Human Rights and the Environment* (Routledge 2012); Gunnar G. Schram, 'Human Rights and the Environment' (2014) 61(1-4) Nord J Intl L 141.

<sup>10</sup> Warren, *Ecofeminist Philosophy*, 99.

<sup>11</sup> UN Human Rights Council Resolution 19/10 Human Rights and the Environment (22 March 2012) UN Doc A/HRC/RES/19/10; UNHRC, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. John H. Knox* (24 December 2012) A/HRC/22/43, esp. ¶60-¶61; UN Human Rights Council Resolution 26/27 Human Rights and Climate Change (27 June 2014) UN Doc A/HRC/RES/26/27; OHCHR, *Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Focus Report on Human Rights and Climate Change* (June 2014), preamble; OHCHR, *The Effects of Climate Change on the Full Enjoyment of Human Rights* (Office of the United Nations High Commissioner for Human Rights, 2015).

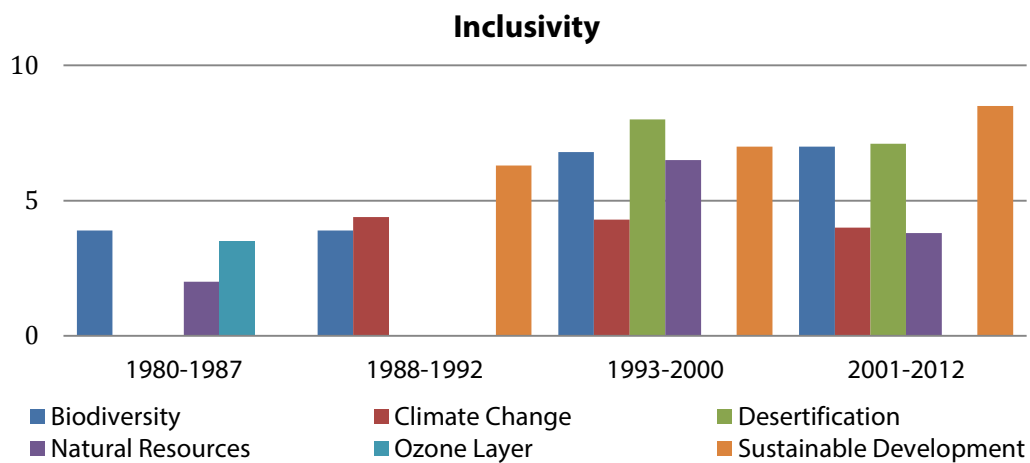
<sup>12</sup> Paris Climate Agreement 2015, art 2(2).

made some progress in the conservation of the environment and local communities' livelihoods. However, the perception of environmental degradation as a concern for national and international interests, defined by socio-economic needs and economic well-being, means that any responses to the environmental crisis are framed in a way that conflates the environment-as-commodity or environment-as-utility for human needs. Ecofeminism argues that they will fail because they are premised on assumptions that devalue nature, devalue women, and are inherently androcentric in perspective. Therefore, international dealings with the environment should properly identify and recognise the common concern for all humankind that is the environmental crisis.

## Appendix 1

These graphs present the findings from my analysis of the documents undertaken in Chapter 5. They are intended to show any changes in the extent to which references in the documents reflect inclusivity, structural pluralism, and openness values in relation to the participation by state and NSAs in the creation, development, and implementation of IEL.

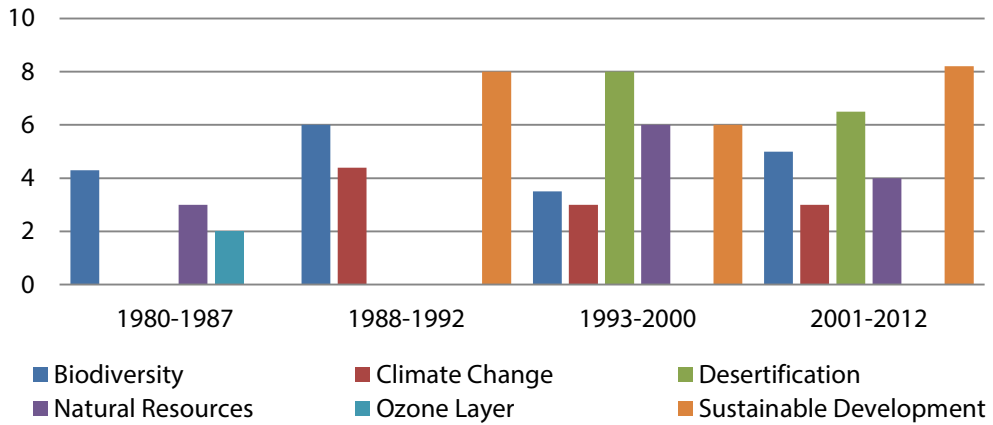
As explained in Chapter 4 section 1, I categorise the documents into those which reflect higher-level integration and lower-level integration. In these graphs, 'higher' integration is depicted at above 7, and lower level integration is depicted by those columns below 4. Those documents depicted between 4-7 reflect 'mid'-level integration.



This graph shows that references supporting the participation by NSAs that reflect the inclusive value have increased after the Rio Conference. It indicates that the documents from the biodiversity, desertification, and sustainable development environmental areas include the most references that reflect this integration.

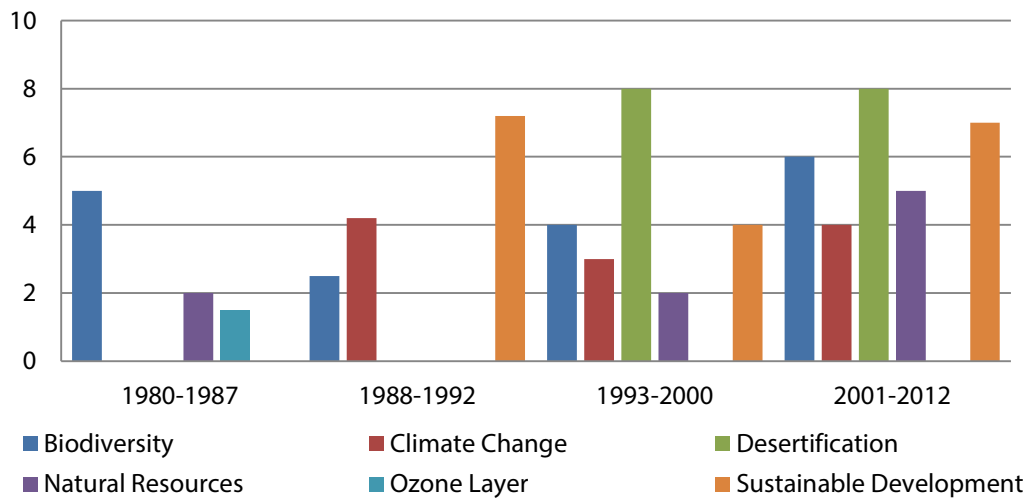


### Structural Pluralism



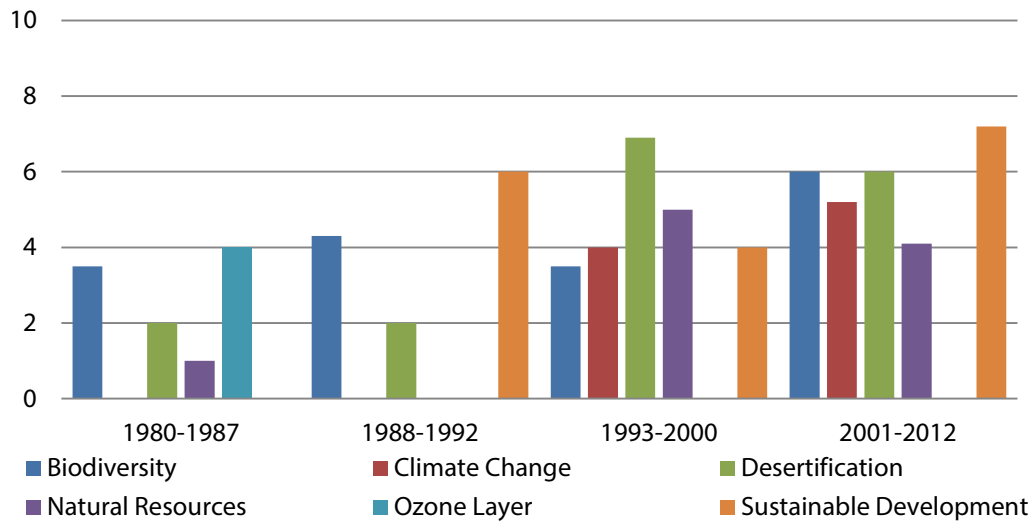
This graph shows that certain environmental areas, such as desertification and sustainable development include more references that reflect structurally plural participation.

### Contextualism



This graph indicates that more of the biodiversity, desertification, and sustainable development reflect contextualism. However, overall, fewer documents include provisions that reflect this value.

## Openness

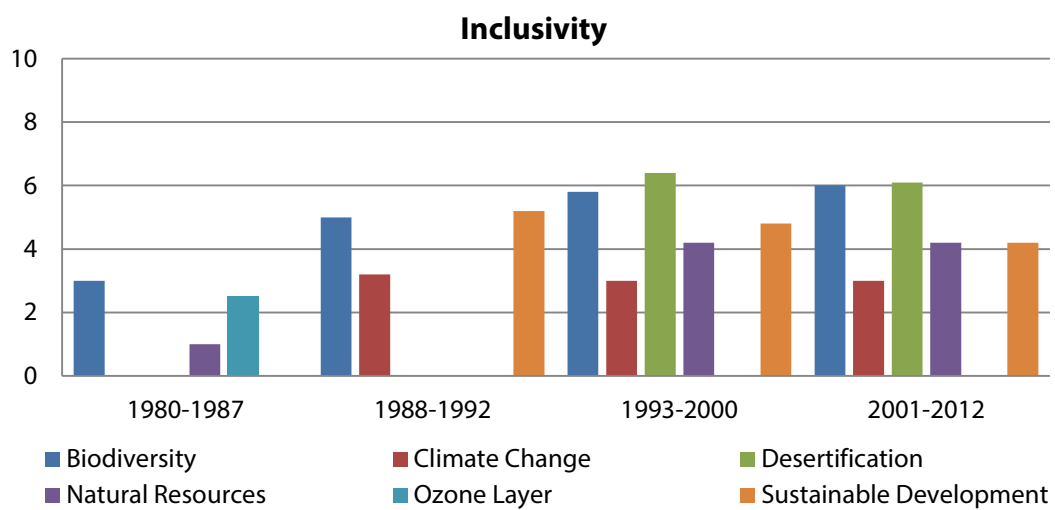


This graph indicates that most of the documents reflect low-level to mid-level integration of the *open* value. It also suggests that documents in the post-Rio and post-2001 periods include more references to transparency and openness across the board. However, while there are some references to open participation, the overall analysis suggests that this value is still lower.



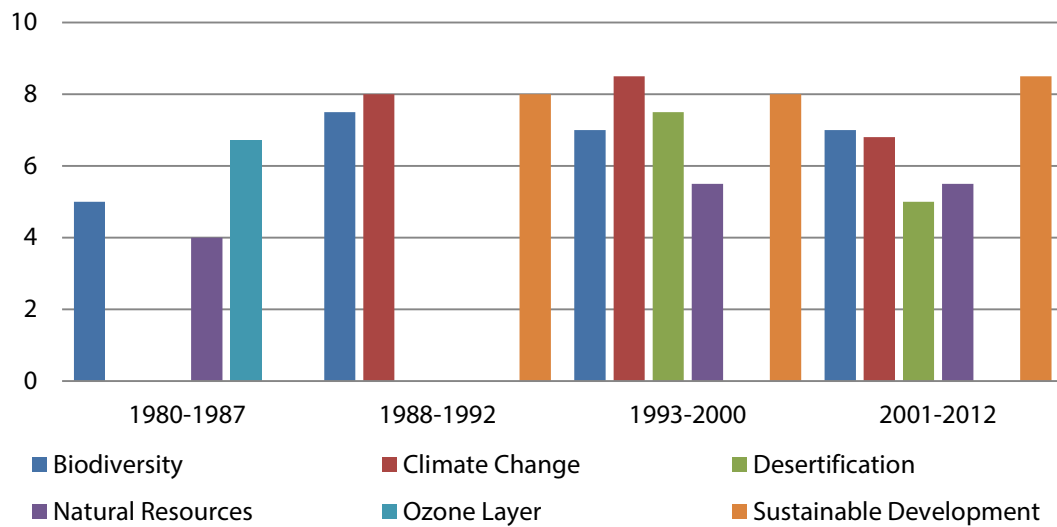
## Appendix 2

These graphs present the findings from my analysis of the documents undertaken in Chapter 6. They are intended to show any changes in the extent to which references in the documents reflect inclusivity, structural pluralism, and openness values in relation to the inclusion of non-environmental considerations into IEL. Once again, I categorise the documents into those which reflect higher-level integration and lower-level integration. In these graphs, higher-level integration is depicted at above 7, and lower level integration is depicted by those columns below 4. Those documents depicted between 4-7 reflect ‘mid’-level integration.



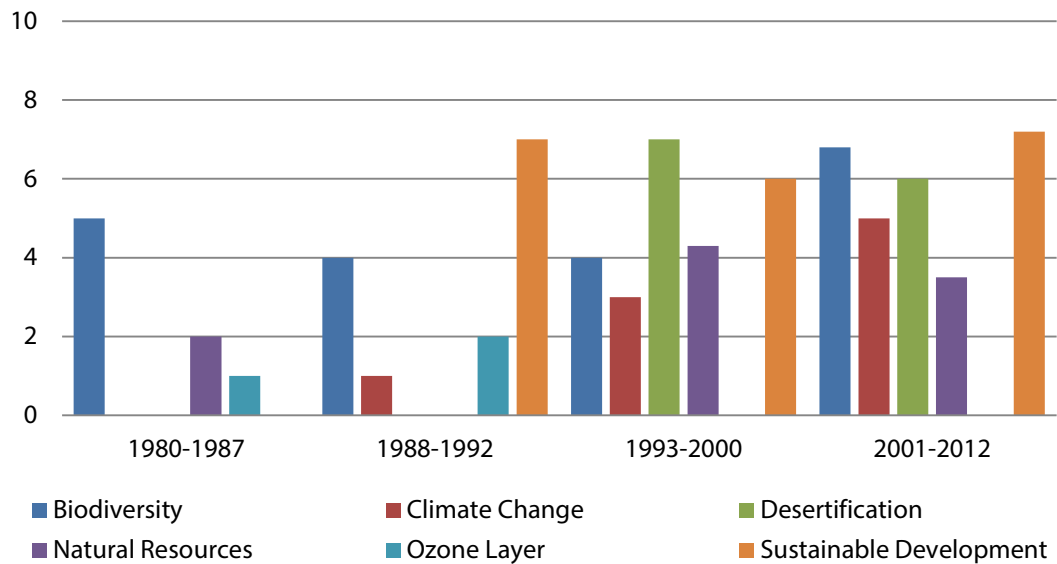
This graph indicates that many of the documents produced in the Rio period and after reflect lower-level integration of inclusivity. It is particularly notable that the sustainable development documents in the post-2001 period reflect a lower-level integration. This is unlike the analysis undertaken in the previous chapter.

### Structural Pluralism

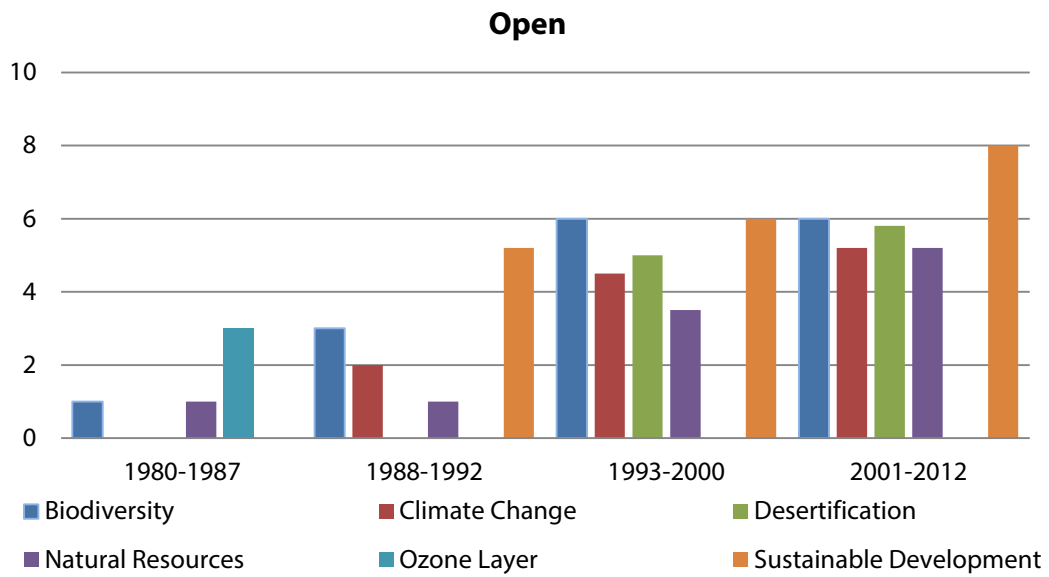


The analysis found that many of the documents from the biodiversity, climate change, desertification and sustainable development environmental areas reflect structural pluralism. However, the ozone layer documents also include greater references to this value as well, as can be seen in the 1980-1987 period.

### Contextualism



This graph shows that after 1993, documents from the biodiversity, desertification and sustainable development regime reflect higher-level integration of contextualism. However, most of the documents reflect mid-level or low-level integration of this value in relation to the inclusion of non-environmental considerations.

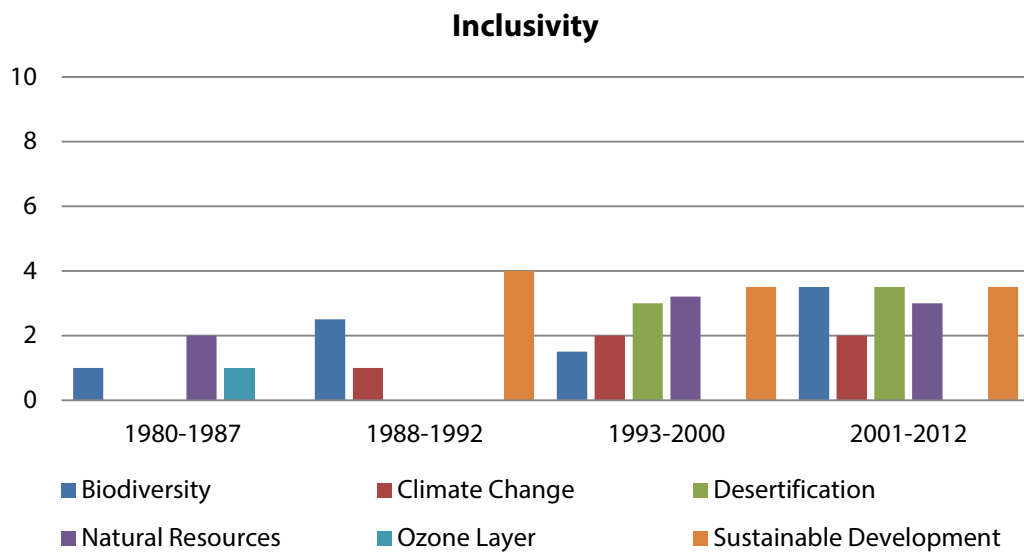


This graph shows that after the Rio Conference, more of the documents include provisions that reflect openness. This is notable in the climate change and natural resources areas, both of which include references that reflect mid-level integration of this value.



## Appendix 3

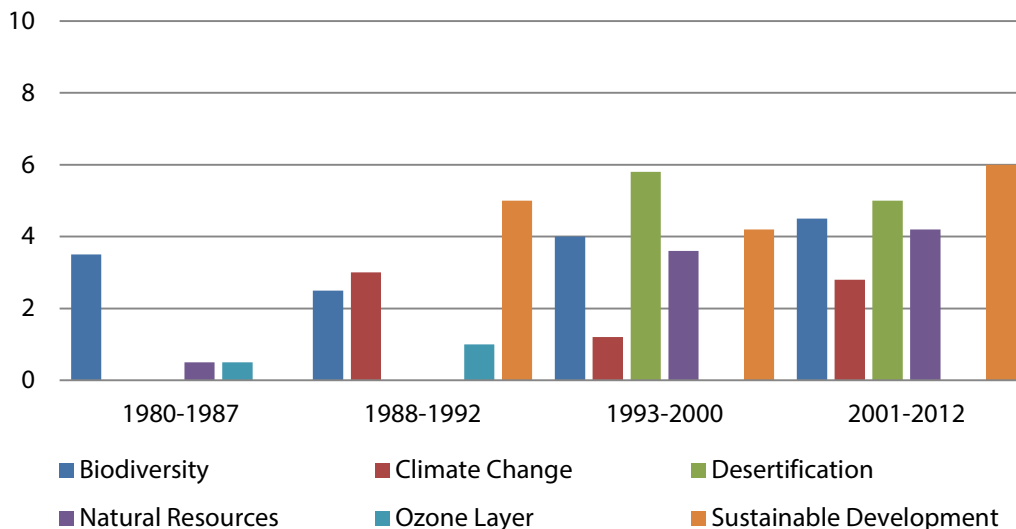
These graphs present the findings from my analysis of the documents undertaken in Chapter 7. They are intended to show any changes in the extent to which references in the documents reflect inclusivity, structural pluralism, and openness values in relation to the representation of the environment in IEL. I categorise the documents into those which reflect higher-level integration and lower-level integration. In these graphs, higher-level integration is depicted at above 7, and lower level integration is depicted by those columns below 4. Those documents depicted between 4-7 reflect 'mid'-level integration.



This graph indicates that significantly few of the references in the six environmental areas include references to the environment that reflect inclusivity. In general, none of the documents include many references to this value.

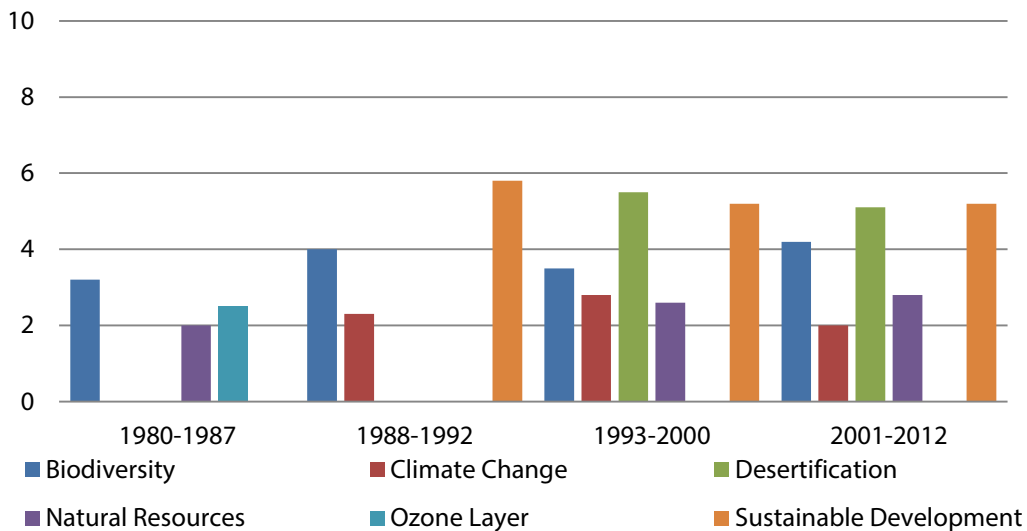


### Structural Pluralism



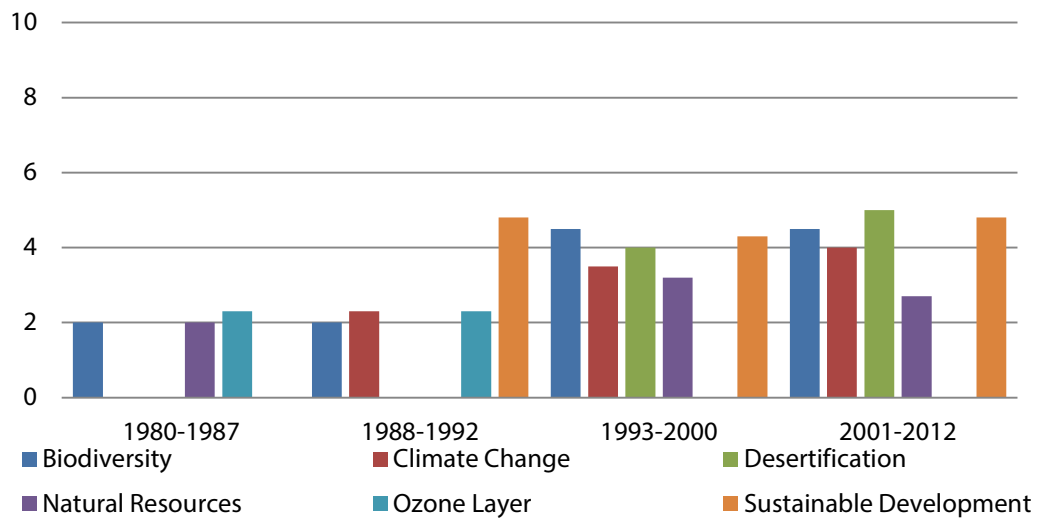
This graph shows that few of the documents developed prior to the Rio Conference reflect structural pluralism in their references to the environment. The documents produced after 1992, indicate that more references to the environment were included. However, those references generally demonstrate low-mid level integration of structural pluralism..

### Contextualism



This graph shows that fewer of the documents reflect contextualism. Once again, the biodiversity, desertification and sustainable development documents include more references that reflect this value. However, overall the graph depicts that few documents reflect mid or higher level integration.

## Openness



This graph shows that most documents in the different environmental regimes reflect lower-level integration of openness in their references to the environment.



## Appendix 4

### List of Documents Analysed in this Research

Permanent Representative of Sweden, 'The Question of Convening an International Conference on the Problems of Human Environment'. Letter dated 20 May 1968 from the Permanent Representative of Sweden addressed to the Secretary-General of the United Nations' 22 May 1968) UN Doc E/4466/Add.1

ECOSOC, 'Question of Convening an International Conference on the Problems of the Human Environment: Activities of United Nations Organizations and Programmes Relevant to the Human Environment. Report of the Secretary General' (United Nations Economic and Social Council, Forty-Fifth session, Agenda item 12 (11 July 1968) ) UN Doc E/4553

UNGA Res 2398(XXIII) 3 December 1968 UN Doc A/RES/2398(XXIII)

ECOSOC, 'Problems of the Human Environment: Report of the Secretary-General' (Forty-seventh session (New York, 26 May 1969)) UN Doc E/4667E/RES/1448(XLVII)

ECOSOC Res 1436(XLV) 30 July 1968 UN Doc E/RES/1436(XLV)

UNGA Agenda Item 21: Problems of the Human Environment. Report of the Secretary-General 15 December 1969 UN Doc A/PV.1834

UNGA Res. 2581(XXIV) (15 December 1969) A/RES/2581(XXIV)

United Nations, 'Report of the Preparatory Committee for the United Nations Conference on the Human Environment' (New York, 10-20 March 1970) (6 April 1970) UN Doc A/CONF.48/PC/6

ECOSOC, 'United Nations Conference on the Human Environment. Report of the Secretary General' (19 June 1970) UN Doc E/4828

ECOSOC Res 1536 (XLIX) 27 July 1970 UN Doc E/RES/1536(XLIX)

ECOSOC Agenda Item 16: United Nations Conference on the Human Environment (E/4828, E/4877, paras 50-54; E/AC.24/L.371, E/L.1352) (27 July 1970) UN Doc E-SR.1719

UNGA Res. 2657(XXV) (7 December 1970) United Nations Conference on the Human Environment, UN Doc. A/RES/2657(XXV)

United Nations, 'Report of the Preparatory Committee for the United Nations Conference on the Human Environment on the Work of its Second Session' (Geneva, 8-19 February 1971) (26 February 1971) UN Doc A/CONF.48/PC/9

United Nations, 'Report of the Preparatory Committee on its Third Session' (New York, 13-24 September 1971) UN Doc A/CONF.48/PC/13

UNGA Res. 2849 (XXVI) (20 December 1971) UN Doc A/RES/2849 (XXVI)

UNGA Res. 2850(XXVI) (20 December 1971) UN Doc. A/RES/2850(XXVI)

United Nations, 'Report of the Preparatory Committee on its Fourth Session' (New York, 6-10 March 1972) (15 March 1972) UN Doc A/CONF.48/PC/17

Declaration of the United Nations Conference on the Human Environment (16 June 1972)  
U.N. Doc. A/Conf.48/14/Rev. 1(1973); 11 ILM 1416 (1972)

Stockholm Action Plan of the Human Environment U.N. Doc. A/Conf.48/14/Rev. 1(1973);  
11 I.L.M. 1421 (1972)

International Tropical Timber Agreement (adopted 18 November 1983, entered into force 1 April 1985) 1393 UNTS 119 (1985)

UNEP, Decision 9/13(B) 'Protection of the Ozone Layer' in Report of the Governing Council on the Work of its Ninth Session (UN GAOR 36th Session, Supplement No 25) (New York, 1981) A/36/25 (Annex) (26 May 1981)

UNEP Coordinating Committee on the Ozone Layer, 'An Environmental Assessment of Ozone Layer Depletion and its Impact. Paper prepared by the UNEP Co-ordinating Committee on the Ozone Layer' (16 October 1981) UNEP/WG.69/6  
<[http://ozone.unep.org/Meeting\\_Documents/adhoc/adhoc-gfc-69-6-an\\_enviroment\\_assessment.82-01-20.pdf](http://ozone.unep.org/Meeting_Documents/adhoc/adhoc-gfc-69-6-an_enviroment_assessment.82-01-20.pdf)> 19 June 2015

UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer on its Second Session' (Geneva, 10-17 December 1983) (5 January 1983) UNEP/WG.78/8

UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer on the Second Part of its Second Session' (Geneva, 11-15 April 1983) (17 June 1983) UNEP/WG.78/13

UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer on the First Part of its Third Session' (Geneva, 17-21 April 1983) (10 November 1983) UNEP/WG.94/5

UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer on

the Second Part of its Third Session' (Vienna, 16-20 January) (13 February 1984) UNEP/WG.94/10

UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer on the First Part of its Fourth Session' (Geneva, 22-26 October 1984) (9 November 1984) UNEP/WG.110/4

UNEP, 'Final Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer' (Vienna, 18-22 March 1985) (28 January 1985) UNEP/IG-53/4

Vienna Convention on the Protection of the Ozone Layer (adopted 22 March 1985, entered into force 22 September 1988) 1513 UNTS 323 (1988); 26 ILM 1529 (1987)

UNEP, 'Report on the Second Part of the Workshop on the Control of Chlorofluorocarbons' (Leesburg, USA 8-12 September 1986) (15 October 1986) UNEP/WG.151/Background 2

UNEP, 'Draft Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Protocol on the Control of Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer on the work of its First Session' (Geneva, 1-5 December 1986) UNEP/WG.151/L.4

UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Protocol on the Control of Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer on the Work of its Second Session' (Vienna, 23-27 February 1987) (4 March 1987) UNEP/WG.167/2

UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Protocol on the Control of Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer on its Third Session' (Geneva, 27-30 April 1987) (8 May 1987) UNEP/WG.172/2

Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3; 26 ILM 1550 (1987)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (London, adopted 29 June 1990, entered into force 10 August 1992) 30 ILM 537 (1991); 1598 UNTS 469 (1991)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (Copenhagen, 23-25 November 1992), UN Doc UNEP/OzL.Pro.4/15, Annex III, Decision IV/4, 32 ILM 874 (1993), 1785 UNTS 517 (1994)

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal, 15-17 September 1997), UN Doc UNEP/OzL.Pro.9/12, Annex IV, Decision IX/4

Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (Beijing, 3 December 1999), UN Doc UNEP/OzL.Pro.11/10, Annex V, Decision XI/5, 2173 UNTS 183 (2004)

UNEP, 'Report of the *Ad Hoc* Working Group of Experts on Biological Diversity on its First Session' (Geneva, 16-18 November 1988) (9 November 1989) UNEP/Bio.Div.1/3

UNEP, 'Report of the *Ad Hoc* Working Group of Experts on Biological Diversity on the Work of its Second Session' (Geneva, 19-23 February 1990) (23 February 1990) UNEP/Bio.Div.2/3

UNEP, 'Report of the *Ad Hoc* Working Group on the Work of its Third Session in Preparation for a Legal Instrument on Biological Diversity of the Planet' (Geneva, 9-13 July 1990) (13 August 1990) UNEP/Bio.Div.3/12

UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts on Biological Diversity on the Work of its First Session' (Nairobi, 19-23 November 1990) (28 November 1990) UNEP/Bio.Div/WG.2/1/4

UNEP, 'Report of the *Ad Hoc* Working Group of Legal and Technical Experts on the work of its second session' (Nairobi, 25 February - 6 March 1991) (7 March 1991) UNEP/Bio.Div/WG.2/2/5

INC/CBD, 'Report of the Intergovernmental Negotiating Committee for a Convention on Biological Diversity on the Work of its Fourth Negotiating Session/Second Session' (Nairobi, 23 September - 2 October 1991) (2 October 1991) UNEP/Bio.Div/N4-INC.2/5

Convention on Biological Diversity (adopted 5 June 1992, entered in force 29 December 1993) 1760 UNTS 79; 31 ILM 818 (1992)

UNGA Res 47/187 (11 December 1987) UN Doc. A/RES/47/187

UNGA Res 43/196 (20 December 1988) UN Doc A/RES/43/196

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United Nations, 'Report of the Preparatory Committee for the United Nations Conference on Environment and Development' (UN GAOR 45th Session, Supplement No 46) (New York, 1991) UN Doc A/45/46

UNGA Res 45/211 (21 December 1990) UN Doc A/RES/45/211

United Nations, 'Report of the Preparatory Committee for the United Nations Conference on Environment and Development: Volume I' (Geneva, 18 March – 5 April 1991 ) (New York, 1991) UN Doc A/46/48 (vol I)

United Nations, 'Report of the Preparatory Committee for the United Nations Conference on Environment and Development: Volume II' (Geneva, 12 August – 4 September 1991) (New York, 1992) UN Doc A/46/48 (vol II)

UNGA Res 46/168 (19 December 1991) UN Doc. A/RES/46/168

Rio Declaration on Environment and Development (13 June 1992) UN Doc A/CONF.151/26 (vol I); 31 ILM 874 (1992)

Agenda 21: Programme of Action for Sustainable Development (14 June 1992) UN Doc A/Conf.151/26 (1992)

UNGA Res 44/207 (22 December 1989) UN Doc A/RES/44/207

UNGA Res 45/212 (21 December 1990) UN Doc A/RES/45/212

INC/FCCC, 'Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the work of its First Session, held at Washington, DC from 4 to 14 February 1991' ( ) (8 March 1991) UN Doc A/AC.237/6

INC/FCCC, 'Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of its Second Session, held at Geneva from 19 to 28 June 1991' (19 August 1991) UN Doc A/AC.237/9

INC/FCCC, 'Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of its Third Session, held in Nairobi from 9-20 September 1991' (23 October 1991) UN Doc A/AC.237/12

INC/FCCC, 'Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of the First Part of its Fifth Session' (New York, 30 April - 9 May 1992) (16 October 1992) UN Doc A/AC.237/18 (Part I)

INC/FCCC, 'Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of the Second Part of its Fifth Session' (New York, 30 April - 9 May 1992) (16 October 1992) UN Doc A/AC.237/18 (Part II)

United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (2000); 31 ILM 849 (1992)

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United Nations, 'Report of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in those Countries



Experiencing Serious Drought and/or Desertification, particularly in Africa on its First Session' (Nairobi, 24 May - 3 June 1993) (20 July 1993) UN Doc A/48/226 Annex

United Nations, 'Report of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa on its Second Session' (Geneva, 13-24 September 1993) (15 October 1993) UN Doc A/48/226/Add.1 Annex

United Nations, 'Report of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, on its Third Session' (New York 17-28 June 1994) (28 February 1994) UN Doc A/49/84 Annex

United Nations, 'Report of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, on its Fourth Session' (Geneva, 21-31 March 1994) (20 April 1994) UN Doc A/49/84/Add.1 Annex

United Nations, 'Report of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, on its Fifth Session' (Paris, 6-17 June 1994) (27 July 1994) UN Doc A/49/84/Add.2

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (adopted 17 June 1994, entered into force 26 December 1996) 1994 UNTS 3; 33 ILM 1328 (1994)

International Tropical Timber Agreement (adopted 16 January 1994, entered into force 1 January 1997) 1995 UNTS 143 (1997); 33 ILM 1016 (1994)

UNGA Res 47/192 (22 December 1992) UN Doc A/RES/47/192

Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (28 July 1994) UN Doc A/RES/48/263

United Nations, 'Report on the Organisational Session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks' (New York, 19-23 April 1993 ) (2 June 1993) UN Doc A/CONF.164/9

United Nations, 'Report on the Second Session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks' (New York, 12-30 July 1993) (17 August 1993) UN Doc A/CONF.164/16

UNGA Res 48/194 (21 December 1993) UN Doc A/RES/48/194

United Nations, 'Report on the Third Session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks' (New York, 14-31 March 1994) (26 May 1994) UN Doc A/CONF.164/20

United Nations, 'Report on the Fourth of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks' (New York, 15-26 August 1994) (11 October 1994) UN Doc A/CONF.164/25

United Nations, 'Report on the Fifth Session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks' (New York, 27 March – 12 April 1995) (18 May 1995) UN Doc A/CONF.164/29

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (adopted 4 August 1995, entered into force 11 December 2001) 2167 UNTS 3; 34 ILM 1547 (1995)

UNFCCC, Decision 1/CP.1 'The Berlin Mandate: Review of the Adequacy of Article 4, Paragraph 2(a) and (b), of the Convention, including Proposals Related to a Protocol and Decisions on Follow-Up' in Report of the Conference of the Parties on its First Session, held at Berlin from 28 March to 7 April 1995, Addendum, Part Two: Action Taken by Conference of the Parties at its First Session, (6 June 1995) FCCC/CP/1995/7/Add.1 (7 April 1995)

UNFCCC AGBM, 'Report of the *Ad Hoc* Group on the Berlin Mandate on the Work of its First Session held at Geneva From 21 to 25 August' (28 September 1995) FCCC/AGBM/1995/2

UNFCCC AGBM, 'Report of the *Ad Hoc* Group on the Berlin Mandate on the Work of its Second Session held at Geneva from 30 October to 3 November 1995' (21 November 1995) FCCC/AGBM/1995/7

UNFCCC AGBM, 'Report of the *Ad Hoc* Group on the Berlin Mandate on the Work of its Second Session held at Geneva from 5 to 8 March 1996' (23 April 1996) FCCC/AGBM/1996/5

UNFCCC AGBM, 'Report of the *Ad Hoc* Group on the Berlin Mandate on the Work of its Fourth Session, Geneva 11-16 July 1996' (7 October 1996) FCCC/ABGM/1996/8

UNFCCC, Report of the *Ad Hoc* Group on the Berlin Mandate on the Work of its Fifth Session (UN Framework Convention on Climate Change, *Ad Hoc* Group on the Berlin Mandate, Fifth session (Geneva 9-12 December 1996) (17 February 1997), UN Doc FCCC/AGBM/1996/11, 1997)

UNFCCC AGBM, 'Report of the *Ad Hoc* Group on the Berlin Mandate on the Work of its Sixth Session' (Bonn 3-7 March 1997) (8 April 1997)

UNFCCC AGBM, 'Report of the *Ad Hoc* Group on the Berlin Mandate on its Work on the First Part of its Eighth Session, Bonn, 22-31 October 1997' (19 November 1997) CCC/AGBM/1997/8

UNFCCC AGBM, 'Framework Compilation of Proposals from Parties for the Elements of a Protocol or another Legal Instrument' (27 February 1997) FCCC/AGBM/1997/2/Add.1

Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 6 February 2005) 37 ILM 32 (1998)

International Law Commission, 'Draft Articles on the Law of the Non-Navigational Uses of International Watercourses' (Yearbook of the International Law Commission, Volume II, Part Two: Report of the Commission to the General Assembly on the Work of its Forty-Third Session) UN Doc A/CN.4/SER.A/1991

International Law Commission, 'The Law of the Non-Navigational Uses of International Watercourses' (Yearbook of the International Law Commission, Volume II, Part One: Documents of the Forty-Fifth Session) UN Doc A/CN.4/SER.A/1993/Add.1 (Part 1)

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CBD, 'Report of the Open-Ended *Ad Hoc* Group of Experts on Biosafety' (3 August 1995) UNEP/CBD/COP/2/7

CBD BSWG, 'Report of the First Meeting of the Open-Ended *Ad Hoc* Working Group on Biosafety' (Aarhus, 22-26 July 1996) UNEP/CBD/BSWG/1/4

CBD BSWG, 'Report of the Second Meeting of the Open-Ended Working Group on Biosafety' (Montreal, 12-16 May 1997) (11 June 1997) UNEP/CBD/BSWG/2/6

CBD BSWG, 'Report of the Third Meeting of the Open-Ended *Ad Hoc* Working Group On Biosafety' (Montreal, 13-17 October 1997) (17 October 1997) UNEP/CBD/BSWG/3/6

CBD BSWG, 'Report of the Fourth Meeting of the Open-Ended Working Group on Biosafety' (Montreal, 5-13 February 1998) (13 February 1998) UNEP/CBD/BSWG/4/4

CBD BSWG, 'Report of the Fifth Meeting of the Open-Ended *Ad Hoc* Working Group on Biosafety' (Montreal, 17-28 August 1998) UNEP/CBD/BSWG/5/3

CBD BSWG, 'Report of the Sixth Meeting of the Open-Ended *Ad Hoc* Working Group on Biosafety' (Cartagena 22-23 February 1999) (15 February 1999) UNEP/CBD/ExCOP/1/2

CBD, 'Report of the Extraordinary Meeting of the Conference of the Parties for the Adoption of the Protocol on Biosafety to the Convention on Biological Diversity' (Cartagena, 22-24 February 1999, and Montreal, 24-29 January 2000) (20 February 2000) UNEP/CBD/ExCOP/1/3

Cartagena Protocol on Biosafety to the Convention on Biological Diversity (adopted 29 January 2000, entered into force on 11 September 2003) 2226 UNTS 208; 39 ILM 1027 (2000)

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UNGA Res 55/199 (20 December 2000) UN Doc A/RES/55/199

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Commission on Sustainable Development, 'Report of the Commission on Sustainable Development acting as the Preparatory Committee for the World Summit on Sustainable Development' (28 January - 8 February 2002) (New York, 2002) UN Doc A/CONF.199/PC/2

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## BOOK CHAPTERS

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## INTERNATIONAL & NATIONAL CASES

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## INTERNATIONAL LEGISLATION & OTHER INSTRUMENTS

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## NATIONAL LEGISLATION

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