

TI 1-4 Activities

Political Sustainability

Related to the policies and governments of a country, the political axis tries to create regulations that serve to achieve the objectives proposed in the other areas.

To do this, it must combine growth with sustainability through the creation of policies based on rationality and changes in the reality of each country.

Responsible for promoting forms of leadership in countries that achieve a balance between productivity and sustainability.

-In teams of three elaborate a synoptic chart with 3 keys per principle.

3.1-3.6

- In another section of homework, find 1 law in Mexico and 1 law in another country that you consider politically sustainable, Explain why based on the principles from PDF.

-Print document

Declaration, are central principles of most international treaties related to sustainable development, and are recognized and reaffirmed throughout the 2002 Johannesburg Plan of Implementation. Detailed analysis is beyond the scope of this chapter and can be found elsewhere.¹⁸⁵ However, given the comprehensive and balanced decade of study and analysis conducted by the Committee and the relative normative clarity of their findings, the 2002 *New Delhi Declaration* provides the most current benchmark of the important principles of international law on sustainable development.¹⁸⁶ Indeed, this Declaration, though essentially a recommendation of a global legal experts committee after ten years of study and review, was included as a submission from the Netherlands in the outcomes of the 2002 World Summit on Sustainable Development.

These seven principles, reflecting as they do important advances in international and national law in the interests of future generations, provide a good starting point for any attempt to develop criteria for the selection of best ‘future justice’ policies or laws. In particular, the universal principles provide a useful set of benchmarks that, ideally, a ‘best policy’ could meet.

3. Proposed Future Justice Principles to Select Best Laws and Policies in the Interests of Future Generations

The New Delhi Declaration starts by recognizing the need to further develop international law in the field of sustainable development, with a view to according due weight to both the developmental and environmental concerns, in order to achieve a balanced and comprehensive international law on sustainable development, as called for in Principle 27 of the Rio Declaration and Chapter 39 of Agenda 21 of the UN Conference on Environment and Development. Then, seven ‘principles’ are highlighted.

3.1 The duty of states to ensure sustainable use of natural resources

Communities form countries, which have sovereign rights over their natural resources, and a duty not to cause (or allow) undue damage to the environment of others in the use of these resources. Future ‘best laws and policies’ should promote the management of natural resources, including natural resources within their own territory or jurisdiction, in a rational, sustainable and safe way so as to contribute to the development of their peoples, with particular regard for the rights of indigenous peoples, and to the conservation and sustainable use of natural resources and the protection of the environment, including ecosystems. Further, ‘best laws and policies’ should take into account the needs of future generations in determining the rate of use of natural resources, working to fulfill a community or country’s duty to avoid wasteful use of natural resources and promote waste

¹⁸⁵ N Schrijver and F Weiss, *International Law and Sustainable Development: Principles and Practice* (Martinus Nijhoff, Lieden 2004) 1-152, 699-706; Cordonier Segger and Khalfan (n 241) 95 - 191; D French, *International Law and Policy of Sustainable Development* (Manchester University Press, Manchester 2005).

¹⁸⁶ M C Cordonier Segger, ‘Significant Developments in Sustainable Development Law and Governance: A Proposal’ (2004) 28 Natural Resources Forum 61; FAO, *International Law and Sustainable Development Since Rio* (FAO, Rome 2002); M C Cordonier Segger and others, ‘Prospects for Principles of International Sustainable Development Law after the WSSD: Common but Differentiated Responsibilities, Precaution and Participation’ (2003) 12:1 RECIEL 54.

¹⁸⁸ Cordonier Segger and Khalfan (n 241) 109 – 122 argues that both central norms highlighted by this principle have been recognised as rules of customary international law. See also K Bottriel and D French, ‘The Duty of States to Ensure Sustainable Use of Natural Resources’, *CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development* (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Sustainable_Use.pdf> (last accessed Feb 04 2008).

minimization policies. The actual meaning of ‘rational, sustainable and safe ways’ of management, and how the needs of future generations can be taken into account, likely depends on the actual resources in question, and the limits of present technology and science of the managers. However, the ‘best law or policy’ should recognize that certain resources may be ‘common concerns of mankind’ (e.g. the climate system, biological diversity and fauna and flora of the Earth) or part of the ‘common heritage of mankind’ (e.g. the resources of outer space and celestial bodies, sea-bed, ocean floor and subsoil beyond the limits of national jurisdiction).¹⁸⁸

This principle has been reflected and strongly reaffirmed in several international treaties on sustainable development with extremely broad membership in the past two decades. In the UN Framework Convention on Climate Change, at the Preamble, Parties recognize the rights of sovereignty over natural resources and related responsibilities to protect the world’s climate system. Similar recognition is found in the Preamble of the UN Convention on Biological Diversity, and is highlighted as a principle of sustainable use of biological resources in Article 3 and Article 10. Similarly, in the UN Convention to Combat Desertification and Drought, at Art 3(c), Parties agree on a principle to work toward sustainable use of scarce water and land resources and in Art 10.4 on national action plans, Art 11 on regional and sub-regional actions, Art 17.1(a) on research and development, and Art 19.1(c) and (e) on capacity-building, the principle is reaffirmed. The WTO Agreement also recognizes, in its Preamble, the need to ensure optimal use of the world’s resources in accordance with the objective of sustainable development. And the FAO Seed Treaty, at Art 1.1, sets the conservation and sustainable use of plant genetic resources for food and agriculture, making the commitment operational in Art 6 which lays out a series of specific law and policy measures that States should adopt to ensure sustainable use of plant genetic resources.

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy respects the duty of countries to ensure sustainable use of natural resources, the World Future Council will assess:

- whether the law/policy helps to ensure that the Earth’s scarce resources will be used in a more sustainable way,
- whether it helps to address a common concern of humankind (such as climate change, global extinction of species, collapse of world fish stocks), and
- whether it respects natural areas and artifacts which are common heritage of humankind.

3.2 The principle of equity and the eradication of poverty

As part of sustainable development, laws and policies shall promote a just distribution of resources among members of the present generation, and shall take into account the needs of future generations in making decisions about allocations of resources. Furthermore, all

law and policy-makers have a duty to progressively reduce poverty. The principle of equity refers to both *inter-generational equity* (a right of future generations to enjoy a fair level of the common patrimony) and *intra-generational equity* (a right of all peoples within the current generation of fair access to the current generation's entitlement to the Earth's natural resources). The definition of 'fair' is open to interpretation, but inter-generational equity evokes an obligation to take into account the long-term impact of activities and to sustain the resource base and the global environment for the benefit of future generations. The law or policy should recognize, where appropriate, the right to development, though this right should be implemented so as to meet developmental and environmental needs of present and future generations in a sustainable and equitable manner. In essence, a law or policy that respects the principle of equity includes a duty to cooperate to secure development opportunities of developed and developing countries and communities, and a duty to cooperate for the eradication of poverty, as noted in Chapter IX on International Economic and Social Co-operation of the Charter of the United Nations. Whilst it is the primary responsibility of a law or policy-maker to secure conditions of equity in their own communities or countries, all actors which are in a position to do so have a responsibility to assist.¹⁹⁰

This principle is also clearly reflected in international treaty law on sustainable development. In the UN Convention on Biological Diversity, the principle is reflected in Article 15.7 on access to the benefits of biological resources and related obligations to ensure that the benefits are equitably shared. In the Preamble of the 1992 UN Framework Convention on Climate Change, Parties commit to take into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty, while also noting their determination to protect the climate system for present and future generations. Indeed, the first two principles of the treaty, as laid out in Article 3, state an intention to "protect the climate system for the benefit of present and future generations of humankind, on the basis of equity..." and commit that accordingly, "developed country Parties should take the lead in combating climate change..." The second principle notes that "the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration." In the UN Convention to Combat Desertification and Drought, Parties included provisions on poverty eradication and intra-generational equity at Article 16(g) on the sharing of traditional knowledge sharing, at Article 17.1(c) on research and development related to traditional knowledge, and in Article 18.2(b) on technology transfer. Further, a responsibility for inter-generational and intra-generational equity in sharing the benefits of plant genetic resources is recognised in the Preamble of the FAO Seed Treaty, as well as at Article 1.1 as an objective of access and benefit-sharing provisions, and Articles 10, 11, 12, 13 which operationalize the principle by establishing a multilateral system of access and benefit sharing for plant genetic resources.

¹⁹⁰ Cordonier Segger and Khalfan (n 241) 122 – 132 argues that while this principle guides a significant number of social and other treaties related to sustainable development, it has not yet been recognised as a customary rule, due in part to difficulties in identifying with certainty the needs of future generations and a lack of consensus between States on actual obligations related to distributional justice. See also J Hepburn and A Khalfan, 'The Principle of Equity and the Eradication of Poverty', CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Equity.pdf> (last accessed Feb 04 2008).

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy realises the principle of equity and the eradication of poverty, the World Future Council will assess:

- whether the law/policy help to address pressing poverty and human rights challenges,
- whether it demonstrates respect among generations, by including provisions that take into account the needs and aspirations of future generations of life,
- whether it promotes respect within the present generation of life, by promoting social justice, equity for all peoples, an end to poverty and discrimination among species.

3.3 The principle of the precautionary approach to human health, natural resources and ecosystems

In order to protect the environment, natural resources and human health, the precautionary approach shall be widely applied by law and policy makers, according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent degradation. The precautionary principle shifts the burden of proof to those proposing activities which might cause serious harm. It favours prevention over re-mediation, focuses on the relevance and robustness of scientific data to development decision-making and carries an obligation to use precautionary measures in proportion to potential damage and the likelihood or degree of risk involved in each case.¹⁹¹

This principle is reflected in *UN Convention on Biological Diversity* in its Preamble, and made operational through Article 14.1(b) which addresses likely adverse impacts and Article 8(g) on transboundary movement of living modified organisms (LMOs). It is also central to the *Cartagena Protocol on Biosafety*, both through explicit reaffirmation of the principle in its Preamble, at Article 1 that lays out the precautionary objective of the Protocol, and in the way that it is operationalised at Article 7 on advanced informed agreement requirements that must be fulfilled prior to the first transboundary movement of an LMO, at Article 10.6 with regards the decision-making procedures that will be followed in implementation of the Protocol, at Article 11.8 which establishes simplified procedures for LMOs destined for food, feed and processing uses, at Article 15 on risk assessment which references Annex III.4 in which precautionary decision-making is explicitly permitted. Precaution also appears in the *UN Framework Convention on Climate Change* at Article 3 as a Principle of the treaty. The precautionary principle is outlined in the 1998 *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, which requires exporters of certain hazardous substances to obtain the prior informed consent of importers before proceeding. The 2001 *Stockholm Convention on Persistent Organic Pollutants* acknowledges, at its Preamble, that “precaution underlies the concerns of all the Parties and is embedded within this Convention.” At Article 1, Parties note that they are mindful of the precautionary approach as set forth in Principle 15 of the *Rio Declaration* in setting their objective to protect

¹⁹¹ Cordonier Segger and Khalfan (n 241) 143 – 155 suggests that a good argument can be made that this principle is emerging as an international customary rule to address certain specific problems related to health, ecosystems and natural resources. See also J Hepburn, MC Cordonier Segger and M Gehring, ‘The Principle of the Precautionary Approach to Human Health, Natural Resources and Ecosystems’, CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Precaution.pdf> (last accessed Feb 04 2008).

human health and the environment from persistent organic pollutants. At Article 8, making precaution operative, Parties agree to use “a precautionary manner” when deciding which chemicals to list in the Annexes of the Convention, where lack of full scientific certainty shall not prevent a proposal to list from proceeding. Further, Part V(B) of Annex C specifies that “precaution and prevention” should be considered when determining the best available techniques. In the 1995 *Agreement for the Implementation of the Provisions of the U.N. 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* at Article 6, Parties agree that “States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks... States shall be more cautious when information is uncertain, unreliable, or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.” The *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*, according to the WTO Appellate Body,¹⁹² enshrines the precautionary in Article 5.7 which permits provisional measures to be taken to restrict trade where scientific data is uncertain, though this does not exhaust its relevance in WTO law.

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy provides for the principle of the precautionary approach to human health, natural resources and ecosystems, the World Future Council will assess:

- whether the law/policy promotes prevention and precaution in the face of scientific uncertainty about a threat of serious or irreversible harm,
- whether it places the burden of proof for demonstrating that a project or activity is safe, or that risks are reasonable, on the proponent of the venture,
- where there is insufficient scientific evidence, whether it ensures that those most affected by a project can set the acceptable level of risk or threat.

3.4 The principle of public participation and access to information and justice

Future justice issues are best handled with participation of all concerned citizens, at the relevant level. According to this principle, law and policy-makers have a duty to ensure that individuals have appropriate access to “appropriate, comprehensible and timely” information concerning sustainable development that is held by public authorities, and the opportunity to participate in decision-making processes. Best laws and policies shall facilitate and encourage public awareness and participation by making relevant information available. Effective access to judicial and administrative proceedings, including redress and remedy, shall also be provided, in a way that respects privacy, confidential business information and does not impose undue financial burdens. This principle is founded upon universal rights related to expression and association. There are three main elements. First, a best law or policy will defend that people should be able to participate in decision-making processes which affect and impact their lives and well-being. Second, in order to participate fully, the best law or policy will ensure that the public has access to adequate information. And third, the law or policy will ensure that citizens can have access to independent review if their concerns are

¹⁹² EC – Measures Concerning Meat and Meat Products (Hormones) (Compliance USA and Canada) (13 February 1998), WTO Doc WT/DS26/AB/R, WT/DS48/AB/R (Appellate Body Report) [124].

not addressed.¹⁹³ The 1992 Agenda 21 highlights this point. With regards to the establishment of judicial and administrative procedures, at 8.18 it notes that: "Governments and legislators, with the support, where appropriate, of competent international organizations, should establish judicial and administrative procedures for legal redress and remedy of actions affecting environment and development that may be unlawful or infringe on rights under the law, and should provide access to individuals, groups and organizations with a recognized legal interest." And with regards to the provision of legal reference and support services, they stated at 8.19 that "Competent intergovernmental and non-governmental organizations could cooperate to provide Governments and legislators, upon request, with an integrated programme of environment and development law (sustainable development law) services, carefully adapted to the specific requirements of the recipient legal and administrative systems."

The 1998 *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*¹⁹⁴ is an example of an international legal instrument based on this principle. Many international human rights instruments also provide specifically for public participation, access to information, and access to justice, including through the UN Commission on Human Rights itself, which has public participation procedures similar to those of the UN Commission on Sustainable Development. Provisions to ensure public participation in the international treaty-making processes are also reflected in *UN Convention on Biological Diversity* at Article 13 on public education and awareness, and Article 14.1(a) on participation in impact assessment. The *Cartagena Protocol on Biosafety* contains similar provisions at Article 23 on public awareness and participation; and the *UN Convention to Combat Desertification and Drought* reaffirms the principle in Article 3 (a), and in Article 10.2(f) which recommends public participation in the development of national action plans. Even the *WTO Agreement* contains provisions on consultation with non-governmental organizations at Article V.2, and the *North American Agreement on Environmental Cooperation*, which runs parallel to the *North American Free Trade Agreement*, allows citizens to make claims under Article 14 and 15 processes to prompt the investigation of non-enforcement of environmental laws. Furthermore, the *FAO Seed Treaty*, at Article 9.2(c), has specific provisions to recognize farmers rights to participate in decision-making concerning the sustainable use of plant genetic resources.

As such, this principle can be used to inform the selection of domestic or international 'best policies' or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy respects the principle of public participation and access to information and justice, the World Future Council will assess:

- whether the law/policy provides for public consultation and genuine engagement, in both its design and implementation,
- whether it specifically provides for transparency and access to information for concerned citizens, local communities, and others who might be affected, and
- whether it provides avenues for appeal and redress for citizens, communities and others?

¹⁹³ Cordonier Segger and Khalfan (n 241) 156 – 166 notes that participation, including access to information and justice, is one of the most recognized and operationalized principles of treaty law on sustainable development, but may only be emerging as an international customary obligation between States, as consensus has mainly focused on its relevance in national decision-making. See also K Bottrel and MC Cordonier Segger, 'The Principle of Public Participation and Access to Information and Justice', CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Participation.pdf> (last accessed Feb 04 2008).

¹⁹⁴ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (open for signature 25 June 1998, entry into force on 30 October 2001) 2161 UNTS 447, (1999) 38 ILM 517.

3.5 The principle of governance and human security

In principle, best laws and policies should include measures to combat corruption, taking into account the negative effects of corruption on future justice and on future generations. Good governance is based on respect for the rule of law, democracy, political accountability, government flexibility and responsiveness for its citizens. Best laws and policies, *inter alia*, should help responsible authorities to adopt democratic and transparent decision-making procedures and financial accountability; to take effective measures to combat official or other corruption; to respect the principle of due process in their procedures and to observe the rule of law and human rights. The coin has two sides, though. Best laws and policies will also recognize that non-state actors should be subject to internal democratic governance and to effective accountability, and encourage corporate social responsibility and socially responsible investment among private actors. Furthermore, it is fundamental for human security to promote the prevention and peaceful resolution of conflicts, so that humanity can live in freedom from need, and freedom from fear.

Good governance is specifically noted as a priority in the *Johannesburg Plan of Implementation*, and the *Commission on Human Rights Resolution 2001/72 on the Role of Good Governance in the Promotion of Human Rights* has also underlined the importance of this principle.¹⁹⁶ While an international organization or government that did not meet any of the ‘good governance’ criteria described above would certainly be subject to critique, international treaties are only just beginning to incorporate such obligations. The main treaty in this area is the *UN Convention Against Corruption*,¹⁹⁷ which is founded on international support for good governance. This Convention notes in its Preamble that corruption threatens the political stability and sustainable development of States, and obliges, as noted at Article 5.1, all State Parties to, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.” Further, Article 62.1 commits that with regards economic development and technical assistance, States will take measures to implement the Convention in their international cooperation, taking into account “the negative effects of corruption on society in general, in particular on sustainable development.” A commitment to good governance is also prominent in *UN Convention to Combat Desertification and Drought* at Article 3(c) which lays out the principles of the treaty, and Article 10.2(e) on establishing institutional frameworks for national action plans, as well as in Article 11 on sub-regional and regional action plans, and Article 12 on international cooperation.

¹⁹⁶ Cordonier Segger and Khalfan (n 241) 166 – 170 argues that while this principle is becoming increasingly influential in international discourse, it is doubtful that it would be recognized as a customary rule due to lack of consensus among States on its actual meaning, normative character and practical implications. See also N Chowdry and CE Skarstedt, ‘The Principle of Good Governance’, CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Good_Governance.pdf> (last accessed Feb 04 2008).

¹⁹⁷ United Nations Convention against Corruption (adopted 31 October 2003, entry into force 14 December 2005) (2004) 43 ILM 37, art 62.1.

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy reflects the principle of good governance, the World Future Council will assess:

- whether the law/policy establishes adequate institutions to ensure transparent, prompt, effective and fair implementation of its provisions,
- whether the law/policy includes provisions to ensure that its intentions are not thwarted by corruption or unethical conduct, and
- whether it provides appropriate penalties for abuse of rights, or for mis-implementation.

3.6 The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives

Principle 4 of the Rio Declaration 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.”¹⁹⁸ This principle strongly emphasizes the need to recognise the social and human rights pillar of sustainable development, essentially by advocating an integration principle which requires laws and policies to take social and human rights, as well as environmental priorities, into account in the development process. It further notes that in the interest of sustainable development, law and policy-makers should strive to resolve apparent conflicts between competing economic and financial, social and environmental considerations.¹⁹⁹ One corollary of this principle that is enshrined in the 1972 *Stockholm Declaration*, and is central to the 1992 *Rio Declaration*, which is also recognized in the Preambles of both the *UN Framework Convention on Climate Change* and the *UN Convention on Biological Diversity*, involves the explicit recognition that “States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.” This recognition, like the right to promote sustainable economic development that is enshrined as a principle of the *UN Framework Convention on Climate Change*, is important to understand the implications of integrating environmental protection with social and economic development – while there is a commitment to take priorities into account in decision-making, and seek mutually supportive, balanced solutions, this principle is not a trump card for the environment. It is a commitment to compromise in good faith.

The principle is core to international treaties on sustainable development. It is reflected in the Preamble of the *UN Convention on Biological Diversity* and at Article 6 on integrating conservation and use objectives in policies and plans; in the *Cartagena Protocol on Biosafety* at the Preamble where trade and environment regimes are referred to as mutually supportive, and set in practice by Articles 2.4 and 2.5 on the relationship of the Protocol to other

¹⁹⁸ Rio Declaration (n 45).

¹⁹⁹ Cordonier Segger and Khalfan (n 241) 102 – 109 suggests that if formulated as a norm to regulate sustainable development-related decision-making processes, such as that States “must ensure that social and economic development decisions do not disregard environmental considerations and not undertake environmental protection without taking relevant social and economic implications into account”, this principle is highly likely to be recognized as a rule of customary international law. See also S Jodoin, ‘The Principle of Integration’, CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Integration.pdf> (last accessed Feb 04 2008).

international instruments. The principle also governs the FAO *Seed Treaty*, in the Preamble of which Parties note the need for synergies between environment and development objectives, and in Article 5.1 they commit to promote an integrated approach to the use of plant genetic resources for food and agriculture. Arguably, the GATT at Article XX provides exceptions for health, environment and the conservation of natural resources in order to take social and environmental objectives into account, and the NAFTA through Articles 103, 104 and 104.1, which govern the relationships with other accords, as well as Article 1114 on not lowering environmental standards to attract investment, and Article 2101 on general exceptions, also seeks to take environmental protection into account the development process related to trade.

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy realises the principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives, the World Future Council will assess:

- whether the law/policy integrates social justice and environmental protection into economic development plans and projects,
- whether it ensures that development decision-making takes environmental and social impacts into account, providing for mitigation, modification or cancellation, and
- whether it provides or enhances benefits for the environment, and the society.

3.7 The principle of common but differentiated obligations

According to this principle, law and policy-makers have a common responsibility for the protection of the environment and defense of the rights of future generations at the national, regional and global levels. However, this responsibility is balanced by the need to take account of different circumstances, particularly in relation to each country or community’s historical contribution to the creation of a particular problem, as well as its ability to prevent, reduce and control the threat. For instance, developed countries bear a special burden of responsibility in reducing unsustainable patterns of consumption and providing assistance to developing countries to meet global sustainable development goals.²⁰⁰

This principle is reflected in *UN Framework Convention on Climate Change* at its Preamble, as well as in Article 3 on Principles and Article 4 on commitments which establishes the differentiated obligations of Annex 1 and non-Annex 1 Parties. Parties also affirm and operationalise the principle in the *Kyoto Protocol* at Article 10, which recognizes common but differentiated responsibilities to establish inventories and programmes to abate greenhouse gas emissions, and Article 12 which operationalizes the principle by establishing a Clean Development Mechanism to help cover the costs of low emission technologies and energy systems. The principle is also prominent in *UN Convention to Combat Desertification and Drought*, where Parties reaffirm, in Article 3 on principles, the need to respect the common but differentiated responsibilities of States, in Articles 4 through 6, which lay out the obligations

²⁰⁰ Cordonier Segger and Khalfan (n 241) 132 – 143 argues that while this principle guides a significant number of treaties related to sustainable development, it has not yet been recognised as a customary rule, due in part to a lack of consensus between States on the extent of greater responsibility by developed countries. See also I Ahmad, ‘The Principle of Common but Differentiated Responsibilities’, CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Common_but_Diff.pdf> (last accessed Feb 04 2008).