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INTERNATIONAL ENVIRONMENTAL LAWS ON BIODIVERSITY, NATURE, CONSERVATION AND THE PROTECTION OF CULTURAL HERITAGE IN NIGERIA FOR SUSTAINABLE DEVELOPMENT*

Abstract

The term biodiversity from 'biological diversity' refers to the variety of life on Earth at all its levels from genes to ecosystems and can encompass the evolutionary ecological and cultural processes that sustain life. Biodiversity includes not only species we consider rare, threatened or endangered but also every living thing from humans to organisms we know little about, such as microbes, fungi and invertebrates. At the centre for Biodiversity and Conservation, we include humans and human cultural diversity as a part of biodiversity. We use the term "biocultural" to describe the dynamic, continually evolving and interconnected nature of people and place and the nation that social and biological dimensions are interrelated. The world had continued to lose its biodiversity as a result of both direct and indirect pressures, including habitat destruction, over exploitation, the spread of invasive alien species, climate change and population pressure. Laws on biodiversity, natural conservation and the protection of cultural heritage depict those rules or set of rules, enforceable by the courts, regulating the government of a state, the relationship between the organs of government and the subjects of the state and the relationship or conduct of subjects towards each other in order to maintain and sustain their earthly existence for sustainable development. National, bilateral and multilateral efforts to halt and reverse the loss has given rite to a number of legal regulatory and policy regimes that are currently under implementation. We shall take this legal enforcement on biodiversity laws in Nigeria. The objective of this paper is to see how the enforcement and implementation of laws (whether national or international) on biodiversity can ensure healthy ecosystems, clean our water, purify our air, maintain our soil, regulate the climate, recycle nutrients and provide us with good for sustainable living. We adopted doctrinal methodology. We concluded by saying that biodiversity can be maintained and sustained when man is made and compelled to restrain from unnecessary tampering with natural habitat in the environment. This can be done through legal regulation, policy and sustainable life style. We recommended the use of laws (whether national or international) to checkmate the excesses of man against the environment. Punitive measures should be adopted to ensure compliance.

Keywords: International, Environmental Law, Nigeria, Biodiversity and Sustainable Development.

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Introduction

International environmental law is the set of agreements and principles that reflect the world's collective effort to manage our transition to the Anthropocene by resolving our most serious environmental problems including climate change, zone depletion and mass extinction of wildlife.[1] While it is unquestionably correct that international environmental law is merely part of international law as a whole, rather than some separate self contained discipline and no serious Lawyer would suggest otherwise, the problem with over-emphasizing the role of general international law as one writer points out has been that the international legal order of the environment is essentially a laissez-faire system oriented toward the unfettered boredom of states.[2]

Biodiversity connotes the existence of a large number of different kinds of animals and plants which make a balanced environment:[3] Conservation is the act of maintaining things in its natural state without any form of adulteration. It is the act of preservation, prevention of loss, waste , damage etc.[4] Where environmental conservation is practiced, the exclusive area mapped out for that purpose is known as 'nature reserve.'[5] According to the Halsbury's Laws of England,[6] nature reserve means, "land managed for the purpose of providing, under suitable conditions and control, special opportunities for the study of, and research into matters relating to the fauna and flora."

Cultural heritage depicts artifacts, monuments, a group of buildings, and sites, museums that have a diversity of values including symbolic, historic, artistic, aesthetic, ethnological or anthropological scientific and social significance.[7] It also means the heritage of tangible and intangible heritage assets of a group or society that is in heritage from past generations.[8] Conservation Law therefore, is the branch or aspect of environmental law that examines the laws used in the preservation of flora and fauna; researches into matters relating to animal study of geological and physiographical features of specially selected areas for preserving of plant and animal life, for tourism and ultimately for a healthy environment. It is the law of preservation of the environment in her natural state or to reflect same for future generations. Pollution, decay and damage start where conservation ends. Pollution, which is a major concern of environmental law is antonymous to conservation. Therefore, to maintain our environment from vagrant abuse and decay arising from artificialities brought by misguided industrialization, nature conservation is the key.[9] This paper, therefore, intends to x-ray those conservation laws that conserve and protect the natural make up of the environment including plants and animals within the ecosystem; to avoid their unnatural and unwarranted extinction from the environment. The scope of the study is Nigeria.

[1]See: https: ///www.americanbar.an>insights-vol-19-issues accessed on 20/1/23.
[2]See P Birne and A Boyle, International Law & The Environment (New York: 2nd edn., Oxford University Press, 2004) p. 1.
[3] A S Hornby Oxford Advanced Learner's Dictionary, (United Kingdom: New 9th edn, Oxford University Press, 2015) p. 140.
[4] A Omaka, Nigerian Conservation Law and International Environmental Treaties (Lagos: 2nd edn, Princeton & Associates Publishing Co. Ltd, 2015) p. 7.
[5] Footnote (n=2).
[6] Halsbury's Laws of England, vol. 28 p. 210.
[7] Google search available online at https://uis.unesco.org accessed on 11th December, 2022.
[8] See Wikipedia at https://en.m.wikipedia.org accessed on 11th December, 2022.
[9] Footnote (n=2) p. 7.

Nature, like environment is not a term of art and has never been clearly defined in International Laws. Forty years ago dictionaries did no more than to refer to a 'state of nature', being the condition of man before society was organized and animals and plants were uncultivated or undomesticated.[10] More recently such definitions have been refined to include the external world in its entirety; a creative and controlling force in the universe.[11]

Historically, concern was first generated by the destruction and even disappearance of wildlife and trees, though they have long been valued by human kind as exploitable natural resources, prized for their economic rather than their intrinsic value.[12]

Ecologists, however, traditionally approached nature not as a collection of discrete exploitable resources but as a series of overlapping but integrated biological systems or ecosystems. In their view the natural world is intricately organized and vital to human existence; nature is a world of living things, constantly busy in discernible patterns producing goods and services essential for one another. An ecosystem is a subset of nature's global economy, a local or regional system of plants, micro-organisms, and animals working together to survive.[13] These are the living (biotic) components of an ecosystem and their functioning in this way provides the services upon which life on earth depends.[14] A less rigid view has since been adopted by some ecologists rejecting the idea of natural stability, balance, and order and emphasizing the profound changes that have already occurred in nature over the aeons.[15] This allows for a more permissive approach to human activity, within which some change, albeit at a slower rate, is acceptable, but it creates ambiguity concerning previous theory, ecologists having impressed upon us how ecosystems could collapse if exploitation reaches a critical level. Effective conservation of nature thus depends heavily on scientific advice relating to the working and inter-relationships of the component species 'and of their ecosystems in order to devise formulae on which ecological attainability can be built. In all these circumstances it is not surprising that a more precautionary approach to conservation has been called for in the Rio Declaration,[16] despite the somewhat restrictive and ambiguous language in which this approach was articulated in that instrument, and in numerous new or revised treaties and protocols concerning conservation of various aspects and components of nature.

Natural Resources

The commonly used term 'natural resources' is unpopular with many environmentalists since it comprehends both living and non-living resources; the former are distinguished from the latter by the fact that they are renewable if conserved and destructible if not whereas the latter include non-renewable minerals such as oil, gas, coal, and metals mined commercially on land and at sea, sometimes to the point of virtual exhaustion, for human purposes. This activity is mostly subject to national regulation, with very little international overview, if any, unless some form of environmental harm ensues. The conservation of living resources requires inclusion of plants, animals, micro-organisms, and the non-living elements of the environment on which

[10] E.g. Concise Dictionary (Oxford: 5th edn., 1964) 303.
[11] P Pocket English Dictionary (London: 2nd edn., 1987).
[12] P Birnie and Boyle, International Law and the Environment (Oxford: 2nd edn., Oxford University Press, 2004) 547.
[13]Worster, The Wealth of Nature (Oxford, 1993), 52, 149.
[14]Glowka, et al., A Guide to the Convention on Biological Diversity, IUCN, Environmental Policy and Law Paper No. 30 (Cambridge, 1994), 20, hereafter Guide to the CBD.
[15]Worster, The Wealth of Nature (Oxford, 1993), 150-3
[16] Principle 15; for discussion of this and it status in International Law see Ch. 3, section 2(e).

they depend.[17] Preservation of their habitat and of related species is thus an important part of their conservation.

There are, however, also important differences between terrestrial and marine living resources. The latter will more often constitute common property or shared resources, and, though subject to over-exploitation, are at least in principle regulated in international law by obligations of conservation and equitable utilization.[18] The former, apart from a few migratory species, will generally remain within the territory of the state or states where they are found, and their international regulation is accordingly more difficult, requiring as it does limitations on the permanent sovereignty of states over their own natural resources, and resort to concepts such as common interest, common concern, or common heritage to justify such interference, or to the language of animal rights which is discussed below. Moreover, although some species of animals and plants reproduce prolifically and can thus recover quickly from over-exploitation, as can some species of fish, mammals reproduce more slowly and are-thus more susceptible to. extinction resulting from over-exploitation, habitat destruction, and other adverse environmental factors, such as pollution. Animals and plants are also generally more easily accessible to plunder on land. On the other hand, terrestrial species are more often domesticated, while only a few marine species are tamed, mainly in zoos, dolphinaria or so called 'Sea Worlds'. Terrestrial species, especially the so-called 'charismatic mega-fauna', are also more likely to be-valued for their own sake, for example elephants, eagles, and many other large mammals and birds, whereas in the seas such value is placed mainly on whales, dolphins, and pinnipeds, although recently smaller species such as turtles and corals have attracted attention.

The threats to wildlife arise from a wide variety of sources. Various species have been captured throughout the centuries not only for food, but for their skins, feathers, and other products used or traded by man, for display in zoos, for scientific research, as pets, and for medicinal, cultural, religious, and artistic purposes, amongst others. Such activities, if excessive, are now seen not only as threats to the existence of individual species or habitats but also to the biodiversity they represent, which provides, *inter alia,* a gene pool of immense present and future value to humankind, as now recognized in the Biological Diversity Convention.

International law has, until recently, tended to adopt an *ad hoc* approach to wildlife protection, related to identification of endangered species', that is, species or discrete populations thereof, that are threatened with extinction, such as those endangered by trade, habitat loss or excessive exploitation. In contrast, the law concerning conservation of fisheries has been dominated by their exploitation and has thus concentrated on the need to maintain catches at sustainable levels whilst respecting the principle of equitable utilization through quota systems. Though public perspectives and the law in relation to their preservation are changing, they are doing so only slowly and problems remain, especially in relation to infusing the post-UNCED principles and perspectives, based on the need for conservation of biodiversity, ecosystems, and more precautionary approaches, into existing agreements concluded before UNCED.

The Concept of Biological Diversity

Biological diversity, or biodiversity, is the variability of life in all its forms, levels, and combinations. It is not, as is often wrongly assumed, the sum of all ecosystems, species, and

[17] De Klemm, 29 NRI (1989), 932-78; ibid., 9 EPL (1982), 117.
[18] See Infra, Ch. 13.

genetic materials. Rather, as ITJCN's guide to the 1992 Convention on Biological Diversity puts it, 'it represents the variability within and among them and is, therefore, an *attribute* of life, in contrast with "biological resources" which are tangible biotic components of ecosystems'.[19]

The 1992 Convention on Biological Diversity thus defines 'biojogical diversity' as meaning 'the variability among living organisms from all sources, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they"-are part' including diversity 'within species, between species and of ecosystems' (Article 2). According to IUCN, biodiversity is most conveniently, but not exclusively, defined in terms of three conceptual levels: ecosystem diversity, species diversity, and genetic diversity- the frequency and diversity of different genes and/or genomes.

The Role of Law in the Protection of Nature

Early Approaches

Law can and has served a number of functions in relation to living resources: it can be distributive, determining who is to have ownership or access to the resources; conservatory, preserving the resources as such, or at least doing so at levels that can sustain exploitation; or prescriptive, prohibiting, for conservatory, ethical or moral reasons, exploitation of the resource or particular forms and methods of exploitation.

Although there have been national laws protecting terrestrial and marine living resources since comparatively early times, the perception that species require conservation under an international legal regime is of comparatively recent origin. It was not until over-exploitation of living resources, especially those hunted by two or more states, began to lead to failures of stocks or herds of particular species so severe that they might be in danger of extinction that serious interest was taken in the need to develop legal obligations and principles for their protection and conservation on a sustainable basis. Birds, salmon, and whales were amongst the first species to excite such interest, originally at the national level. Whales, for example, were regulated *ad hoc* by one or two states from 1597 onwards; national control of the taking of such migratory species was recognized not to be sufficient to conserve them since it could not be enforced on foreign territory or on foreign vessels outside national jurisdiction.[20] The first relevant treaties were the 1882 North Sea Overfishing Convention, and the 1885 Convention for the Uniform Regulation of Fishing in the Rhine.[21] But by then, the exploitation of such species had in many cases been taking place for hundreds of years, without any control and the theoretical basis of the first legal regimes to be developed necessarily had to take account of this fact.[22] Living species were not treated very differently from other resources, such as minerals, and indeed to this day are frequently included, as we have seen, within the general description of natural resources', though as sustainable living creatures they - especially those that migrate - are very different from static non-renewable minerals. As a result, both living and nonliving resources were long regarded as being as 'mineable' as minerals.[23] Even

[19]Glowka, et al., A Guide to the CBD. The use of these and other terms are defined at 16-24

[20]Birnie, International Regulation of Whaling (Dobbs Ferry, NY, 1985), 1, 102-4, gives examples of whaling regulations.

[21] Reprinted respectively in Marine Mammal Commission, Compendium of selected Treaties, 2nd Update, 475 and Ruster and Simma, xxv, 200.

[22] Johnston, The International Law of Fisheries: A Framework for Policy Orientated Enquiries (New Haven, Conn., 1965), 157-252.

[23] Holt, 9 Marine Policy (1985), 192-213.

the Convention on Biological Diversity refers to 'biological resources', which it defines as including 'genetic resources, organisms or parts thereof, populations, or any other biotic components of ecosystems with actual or potential use or value for humanity',[24] under the heading of 'Sustainable Use of Biological Diversity', requiring its Parties to 'integrate consideration of the conservation and sustainable use of biological resources into national decision-making'.[25] The implications of this definition and the limitations placed on this requirement are discussed below.

Since throughout history mankind has sought to exploit the wealth that such resources bring, the law has primarily been concerned with the problems of allocation of rights over them. The first approaches to this problem were simplistic; as territorial states had sovereignty over their territory, they were assumed to have exclusive rights to all the natural resources found therein and this was extended to the territorial sea and airspace, whether or not the resources were living and migratory. Thus once they were found in areas subject to sovereignty no other state could have access to them or play a role in their management without the express consent of the territorial sovereign. Natural resources found in areas beyond national jurisdiction, for example, on the high seas or the seabed below it or in the airspace above it, and indeed the air itself were regarded as common property and a doctrine of freedom of access for all states was applied.

It was only following increasing evidence of the serious adverse effects of over-exploitation of certain species, particularly at sea, that development of more sophisticated legal regimes began, mainly, but not exclusively, in the second half of the twentieth century. Until the late nineteenth century scientists had taken little interest in marine biology and it was not until 1902 when the International Council for the Exploration of the Sea (1CES)[26] was formed, following proposals first made at the International Geographic Congress of 1895, that international efforts were made to co-ordinate, on the basis of an informal 'Gentlemen's Agreement', scientific research on fisheries and to plan, collect, and evaluate data on an international basis."[27] Even today, it is often the research of scientists in a few countries that initiates conservatory legal developments. But as scientific knowledge has grown so too have the perceived dimensions of the legal problems of conservation.

Legal developments have also been influenced by the changing perceptions of philosophers and moralists in relation to living creatures. Early philosophers, such as Plato, made no attempt to distinguish individual animals or accord them right. They viewed their special attributes as representative of the whole species; it was not considered that the taking of individuals from that species damaged the species as a whole.[28] This belief was reinforced by the view that, unlike humans, animals could not be subject to duties.[29] Even when science and philosophy combined in the Middle Ages in the doctrine of 'natural philosophy' each discipline continued to embrace the generalized concept of 'species' rather than concentrating on individual specimens.

[24] Article 2.
[25] Article 10; on the legal status of natural resources see Ch. 3., section 5.
[26] Went, Seventy, Years Agrowing: A History of the International Council for the Exploration of the Sea 1920-1972 (Charlotteslund, 1972).
[27] *Ibid*.
[28] Clark, The Moral Status of Animals (Oxford, 1977), 64-5.
[29]Linzey, Animal Rights (London, 1976); ibid, 12 Jnl of Legal Education (1964-5).

These concepts were underpinned by the Roman law doctrine that animals *ferae naturae* did not belong to any person and could, therefore, be captured by anyone when found in international areas, such as the hig.fi seas and the airspace above them. Species which could not be corralled and domesticated, such as fish, marine mammals, and birds outside national territory, were thus regarded as common property resources.[30] These perceptions are now beginning to change, however.[31] Renewed attention is being paid to the concept of animal rights and the common property doctrine is being overlaid with new concepts of 'common heritage', 'common inheritance', 'common interest', and 'common concern'.

Development of New Approaches

(a) Animal rights

In national law states at first simply regarded animals as either useful or vicious[32] and thus protected only the economic value of wildlife as a source of food and clothing, limiting the hunting of certain species to maintain their population levels for these purposes or encouraging the killing of animals thought harmful to humans and their activities, later wildlife law responded to protect the value placed on hunting and fishing as recreational activities. It is only fairly recently that public concern has developed for protection of animals and for their welfare, as species valuable for their own sake, with special emphasis on endangered .species, habitats, and rational management.[33] Legal writers, following the first preoccupations of environmental activists in the Western Hemisphere, have been concerned initially with protection of a few species, for example, whales, polar bears, porpoises, dolphins, sea otters, bald eagles, condors, and the snail darter, in isolation [rom land-use regulation.[34] A major problem of this topic, presented in this context, is that it is highly complex, involving a wide variety of subjects and issues as well as different jurisdictions and disciplines. It is thus difficult, at both national and international levels, to identify a discrete body of law protecting animals although recent publications will facilitate research on this[35] and increasing attention is being paid to the close relationship between legislation protecting animal welfare and its role in conserving animals and incidentally biodiversity, as we shall see.[36]It is important at this stage to distinguish the different perspectives of animal rights and welfare advocates,[37] who consider that all species should be protected for ethical and humanitarian reasons however adverse their effect on humans or on populations or individuals of other species,[38] and of environmentalists who urge that particular species should be protected for ecological reasons, that is, as part of an ecosystem, which includes the animals, plants, and micro-organisms together with the non-living components of their environment. This difference in views is reflected in the progress of both national and international law and the number and nature of the instruments adopted. It is not possible here, for reasons of space, to examine in detail the arguments of the animal rights

[30] Fulton, The Sovereignty of the Seas (Edinburgh, 1911), v-vii.
[31] Gillespie, International Environmental Law, Politics and Ethics (Oxford, 1997), passim, and the extensive bibliography provided at 179-210.
[32] Linder, 12 Harv. ELR (1988), 157-200.
[33] Bean, The Evolution of National Wildlife LAW (Washington DC, 2nd edn., 1983) .
[34] Coggins and Patti, 4 Harv. ELR (1980), 181.
[35] E.g. Wilkins (ed.), Animal Welfare in Europe European Legislation and Concerns (The Hague, 1997), passim, Austen and Richard (eds.), International Animal Welfare Law (The Hague, 2000), collect the texts of relevant international , regional, and European instruments.
[36] On this, see Bowman, I JIWLP (1998), 9 – 63.
[37] On the notion of 'rights' in this context see supra, Ch. 5, section 1(1) and Stone, 45 S. Cal. LR (1972), 450, 488.
[38] See Linder, 12 Harv. ELR (1988), 175ff; Regan, The Case for Animal Rights (New York, 1983); Singer, Practical Ethics (New York, 1979).

group based on the moral considerability of animals, although there is a growing literature on this aspect,[39] and drafts of an international Declaration of Animal Rights,[40] as well as of a "convention, have been under consideration for some years at the non-governmental level. This draft declaration is without legal status but has served to focus attention on gaps in the law by laying down in detail certain principles relating in animal protection. So far, however, the international community has not developed a specific legislative response to the question whether killing animals is wrong or whether all or only some animals are to be regarded as sharing sufficient human characteristics to have individual rights attributed to them and to be legally protected from so-called 'speciesism', as humans are protected from racism. It has, rather, followed the environmentalist view.

Gillespie's examination of international law, policy, and ethics concluded that the central basis of international environmental law remains anthropocentric, based on a melange of self interest and economic advantage (especially in the case of developing states) as well as some religious, aesthetic, and cultural practices but finds, nonetheless, that new non-anthropocentric developments reveal growing recognition of intrinsic values, ecological inter-dependence, and the need for a holistic approach. He accepts that international law still does not recognize animal rights, apart from in those treaties which aim to prevent extermination of certain species, and that the anthropocentric justification for nature protection fails to encapsulate its essential value. Alternative approaches, based on the moral considerability of animals and utilitarianism, are similarly flawed since they do not provide for inclusion of wider environmental considerations embracing entities and eco-systems which are neither sentient nor of intrinsic value. Even the so-called 'life approach', recognizing the moral worth of all living entities, fails to include ecosystems. Similarly, the 'land ethic' or 'deep ecology' perspectives, though they do emphasize ecological and ecosystemic holism, are regarded by Gillespie as too misanthropic, providing no social system for implementation of their goals.[41]

Cheyne, on the other hand, in examining the role of new ethical theories in the trade and environment debate arising out of US attempts to prevent incidental catch of dolphins in the purse-seine nets of Mexican fishermen, notes that the GATT panel did not consider the environmental or ethical issues.[42] They were, however, raised in the US Congressional debate on the subsequent amendment of the US Marine Mammal Protection Act which focused, *inter alia*, on the moral considerability of animals and the differences between biocentric (all life has intrinsic value) and geocentric (all life has value as part of a complex ecosystem) approaches. She concluded that the debates revealed that the relationship between law and ethics remained complex and dynamic and that national law-making, international trade policy, and competing ethical theories could not easily be subsumed within the competition between trade and environment. She suggests that they even throw doubts on 'the rhetoric of sustainable development' and its goals, the incompatibility of which, is revealed by further examination of the ethical dimension. The value placed on dolphins by Congress was 'anthropocentric in every

[39] Universal Declaration of the Rights of Animals, proclaimed on 15 Oct. 1978 by the International League of Animal Rights. Its Preamble recognizes that 'all animals have rights', Article 1 provides that 'All animals are born with an equal claim on life and the same rights to existence'; Article 2 that 'Man as an animal species shall not arrogate to himself the rights to exterminate or inhumanly exploit other animals'; Article 3 that 'All Animals shall have the right to the attention, care and protection of man.'

[40] Progress on this is reported passim in the Newsletter of the International Committee for a Convention for the Protection of Animals.

[41] Gillespie, International Environmental Law, Politics and Ethics (Oxford, 1997), 176-8.

[42] Cheyne, 12 JEL (2000), 293. But see infra, Ch. 14 and discussion there of the WTO Appellate Body's Shrimp-Turtle decision.

respect' and exposed the risk of ignoring species with which humankind has little or no affinity.[43] Some-speakers were prepared to sacrifice turtles were this necessary to save dolphins; other found a certain level of dolphin mortality acceptable. It was assumed by most speakers that there was a right to exploit the resources of the sea even if .it resulted in killing dolphins and turtles.[44]

The Convention on Biological Diversity

On the eve of UNCED, in a major breakthrough, a global Convention on Biological Diversity, under negotiation since 1988, was concluded. This has significantly enhanced the scope and potential effectiveness of the international legal regime for conserving the earth's biological diversity and ensuring the sustainable use of its components. It goes well beyond conservation of biological *diversity per se* and comprehends such diverse issues as sustainable use of biological resources, access to genetic resources, the sharing of benefits derived from the use of genetic material and access to technology, including biotechnology.[45] This Convention, which was opened for signature at UNCED and entered into force on 29December 1993, had 177 parties by the end of the year 2000, and has thus become one of (he most widely ratified of all environmental conventions.

The Background to its Negotiation

As we have noted earlier, previous strategies and conventions have been concerned with ensuring, on an *ad hoc* basis, the 'rational' or 'wise' use of common property or shared resources such as fish and marine mammals,[46] with the protection of migratory species and their habitats or with preventing over-exploitation of certain species of wild fauna and flora through control of international trade.[47] More recently treaties have addressed conservation of the ecosystems of particular areas such as Antarctica, certain regions in South-East Asia, the Caribbean and the Western Indian Ocean, or outstanding natural sites listed under the World Heritage Convention. These have all contributed considerably to protection of biodiversity, and continue to do so, but in a piecemeal fashion.[48]An other significant initiative was the adoption in 1983 by an FAO Conference of an Undertaking on Plant Genetic Resources which aimed to ensure that these should *be* explored, preserved, evaluated, and made available for plant breeding and scientific purposes.[49]

This nascent regime, however, did not represent a comprehensive global approach to protection of the earth’s biodiversity and did little to protect resources found wholly within a State's national jurisdictions limits. The Convention on Biodiversity is therefore the first attempt to deal with the lacunae arising from the old system by establishing a more comprehensive and inclusive regime for conservation of biodiversity as such. While recognizing the intrinsic value of biodiversity to humankind and its future survival, at the same time it also allows for sustainable use of biological resources and incorporates many of the new conservatory principles and strategies that have developed in contemporary environmental law.

[43]Cheyne, *loc. Cit,* 314.
[44]Cheyne, *loc. Cit,* 310.
[45]Burhenne-Guilmin and Casey-Lefkowitz, 3 YbIEL (1992), 43.
[46] *Infra,* Ch. 13.
[47] *Infra,* Ch. 12.
[48] Footnote (n =16).
[49] Resolution 8/83 adopted by the 22nd FAO Conference on 23 November 1983 as amended by ‘Interpretations’ adopted in 1989 and 1991. On this see Rose, in Bowman and Redgwell (eds.), International Law and Biodiversity (The Hague, 1996), 150.

The WCED's Expert Group on Environmental Law was, however, the first to articulate specific legal principles requiring states to maintain ecosystems for the functioning of the biosphere 'in all its diversity', to maintain 'maximum biodiversity' by ensuring the survival and promoting the conservation of all species of flora and fauna in their natural habitat, based on observance of the optimum sustainable yield principle of exploitation.[50] This Group's proposals were followed by a report from UNEP's Executive Director on rationalization of existing international conventions on biodiversity which in turn, led UNEP's Governing Council in 1989 to initiate the drafting of a convention,[51] building on work already initiated by IUCN. However, although the need for such a convention was by then widely recognized, the difficulties encountered in negotiating the convention which was ultimately adopted have been described in detail by numerous informed commentators.[52]

Securing a consensus resulted in a text with many ambiguities and omissions, much bland language and qualified commitments. Major discrepancies in the views of developed and developing states emerged. Developing states envisaged the Convention as part of their agenda for restructuring world economic relations in order to gain access to resources, technology, and markets to enable sufficiently speedy and sustainable development to meet the needs of their populations.[53] They thus proposed establishment of (i) a special system of Intellectual Property Rights; (ii) mechanisms for compensating them for the use of biodiversity resources which their countries provided; (iii) mechanisms that would provide them with access to the biotechnology developed through use of the genetic resources provided by them; (iv) additional sources of funding to facilitate implementation of the Convention and access to technology. Most of these objectives were achieved.

Developed states also pursued economic objectives but from a different perspective. The USA contested the draft Convention's proposals concerning transfer of technology, financing, biotechnology, and access to resources and initially refused to sign it stating that the final text 'threatened to retard biotechnology and undermine the protection of ideas'.[54] On signing the Final Act of the Conference[55] it drew attention to weaknesses in its provisions on intellectual property rights (IPR); finance (including the role of the GEF); environmental impact assessment; its relation to other conventions and the scope of its obligations concerning the marine environment. It regretted that ‘a number of issues of serious concern to the US had not been adequately addressed ...’ and that, therefore, in its view the text was seriously flawed 'whether because of the haste with which we have completed our work or the result of substantive disagreement. It believed 'the hasty and disjointed approach' to the wholebefore adoption. Nonetheless, it confirmed that the US 'strongly supports the conservation of biodiversity' and noted that it 'was an original proponent of a convention on this important subject', adding that 'we continue to view international cooperation in this area as extremely desirable'. In the event, President Clinton's administration signed the Convention but the USA has still not ratified it. It seems unlikely at the time of writing that will do so in the foreseeable

[50] *Supra*, previous section.
[51] UNEP/GC/Res. 15/34, 1989.
[52] E.g. Burhenne-Guilmin and Casey-Lefkowitz, 3 YbIEL (1992), 43; McConnell, The Biodiversity Convention: A Negotiating History (The Hague, 1996); Koester, 27 EPL (1997), 175.
[53] South Centre, Environment and Development: Towards a Common Strategy of the South in the UNCED Negotiations and Beyond (Geneva, 1991); Ansari and Jamal, 88 Ind. JIL (2000), 134.
[54] Statement by President Bush, USA, to the UNCED, 12 June 1992; See Coughlin, 31 Col. JTL (1993), 337.
[55] The Convention was adopted by the Intergovernmental Negotiating Committee for a Convention on Biological Diversity, during its Fifth Session, held at Nairobi from 11 – 22 May 1992. It was opened for signature at Rio de Janeiro by all states and regional economic integration organizations.

future, although the European Community has approved it. China and the Russian Federation have ratified it, but nineteen states made declarations concerning various aspects of the Convention either on its adoption or on signing or ratifying or both.[56]

The final text, in order to attract agreement, included many of the changes proposed by the developing slates but omitted several substantive provisions on which no agreement could be reached. These included the precautionary principle, referred to only in the Preamble; responsibility for damage to biodiversity, whether in national or international areas, a provision rare, in any case, in international conventions; and a compilation of global lists of protected areas and species, as, *inter alia*, in the World Heritage Convention, and, for their particular purposes, the Bonn and Berne Conventions and CITES. These lists are left to the parties' national measures but could still be added in a subsequent Protocol or Protocols to the CBD. The process by which final agreement was reached on a text notably different from the fifth draft produced by the INC,[57] and the trade-offs involved, have been described and illuminated by Koester amongst others.[58]

It is notable that none of the national experts involved at the start of this process recommended a new 'umbrella' convention though most did support elaboration of a new convention.[59] As Koester points out 'The Convention .represents a North/South political compromise and hence the art of the possible and should be assessed bearing this in mind although judgments vary' as indeed they do. He notes, for example, the view of the US delegation's chief legal negotiator that for the reasons outlined earlier, the text would 'cause the utmost distress for international lawyers and policy makers'[60] and of Boyle's guarded support for the US view of its unsatisfactory nature,[61] and that others support this view, though not without qualification.[62] Koester's own view is that as the Convention is process-oriented it can be considered, from that perspective, a success given the large number of parties, which include developed and developing states and those with economies in transition.[63] Other commentators taking a more positive view have noted that a treaty is only useful if it results in measures that would not otherwise have been taken[64] and that 'the most effective treaties are not necessarily those that are the most precisely drafted',[65] whilst an NGO representative from India considered that it is likely to become one of the world's most significant treaties. In contrast a French legal expert has suggested that as the final text was one that included contradictory compromises, losing

[56] For the 26 Declarations made on adoption or signature see Sec. VII, Handbook of the Convention on Biological Diversity (London, 2001).
[57] UNEP/Bio.Div/N7-ING 5/2 (1992).
[58] Head of the Danish delegation at all the CBD negotiation meetings. He notes that the role of UNEPs then Executive Director, Dr. M.K. Tolba, in facilitating the final agreement has been remarked upon by several writers. See Koester, 27 EPL (1997), 175 at 181.
[59] Ad hoc Working Group of Experts on Biological Diversity convened by UNEP in 1988. UNEP acted as Secretariat for the negotiating process.
[60] 27 EPL (1997), 175 at 187.
[61] "There is much sense in the US objections to the weakness and unsatisfactory nature of the 'Treaty text', in Bowman and Redgwell (eds.), International Law and the Conservation of Biological Diversity (The Hague, 1996), at 48.
[62] 27 EPL (1997), 175 at 187.
[63] E.g. Burhenne-Guilmin and Casey-Lefkowitz, 3 YbIEL (1992), 43.
[64] The UN Secretary General took a similar view in relation to reform of aspects of the UN system, in coining the phrase 'reform is not an event but a process'; as cited by Asadi, 30 EPL (2000), 2 – 17, at 17. The process could, of course, be never ending.
[65]Sjostedt, et al., International Environmental Negotiations: Process, Issues and Context (Stockholm, 1993), 184.

sight of its original objective, its ecological objectives might have been more effectively achieved by simply extending existing international instruments to cover biodiversity aspects.[66]

Trade Laws of Nature: Biodiversity Provisions and the AFCFTA

Free trade agreements (FTAs) are expected to do more than merely establish a trade area between cooperating states. There is mounting pressure for deals to address issues from gender inequity to climate change by including non-trade provisions, and biodiversity is a key topic that FTAs can help regulate. Although contemporary agreements have incorporated biodiversity clauses, the recent African Continental Free Trade Area (AfCFTA) agreement does not. But it should. The need for robust environmental protections is rooted in Africa's abundance of diverse ecological resources. Home to 20 percent of the world's plant and animal species and higher rates of carbon capture than the Amazon via its intact rainforest and jungle ecosystems, the continent is prime for protecting the natural capital from which an average of 30 to 50 percent of the region's total wealth is obtained. Trade in biodiversity-derived products made up nearly $78 billion of goods exported by AfCFTA members and regional states in 2017, further underpinning the economic importance of the region's natural resources and the need to protect their ecosystems and assets with all tools available, including the AfCFTA[67]

Biodiversity should be an important consideration in the AfCFTA

Thus, after five years of negotiations, the launch of AfCFTA in 2021 created the largest free trade area by total number of countries. With the capacity to connect over one billion people and 54 countries, the agreement has been hailed as an opportunity to lift millions of people out of poverty while facilitating trade between members by accelerating growth, enhancing the diversity of intra-African exports, and attracting more foreign direct investment through uniting the region into a single market. Beyond eliminating tariffs, the AfCFTA covers some non-tariff barriers and trade facilitation provisions. It also harmonizes customs standards alongside a complementary protocol that establishes clauses on dispute settlement, intellectual property rights, intra-African competition, and foreign investment. The agreement is to be negotiated and implemented in three phases, with Phases 2 and 3 not yet negotiated. The first phase covers trade in goods and services; the second phase will handle investment, competition, and intellectual property policies; and the third phase will manage e-commerce.[68]

The agreement currently contains limited environmental language. The preamble affirms the rights of parties to regulate and practice flexibility in trade to achieve domestic policy objectives - including those related to the environment - but includes no legally binding obligation to do so. Although the agreement allows for these exceptions, there is no jurisprudence regarding how an adjudicatory body would approach potential disputes, making them comparatively weaker. Currently, the AfCFTA acknowledges existing commitments made by nations under other multilateral environmental agreements (MEAs), which would include the Convention on Biological Diversity (CBD). But, for large-scale change, the United Nations Conference on Trade and Development (UNCTAD) notes that sustainable trade would be best promoted by developing synergies between existing MEAs with the AfCFTA arid implementing binding environmental protocols under a new chapter in a future phase of the agreement. In the same report, UNCTAD acknowledges the need to identify, categorize, and

[66] Palmer, 86 AJIL 259 (1992), 269.
[67] See P. Martell, **Trade Laws of Nature: Biodiversity Provisions and the AFCFTA**
, Online at https://www.csi5.org/analysis/trade-la\vs-nature-biodivcrsit\-provisions-and-afcfiLaaccessed on 13/1/2023.
[68] Footnote (n.67).

diagnose how to limit non-tariff barriers (NTBs) on biodiversity-based goods in an African context, which would involve broad coordination across government organizations and stakeholders.

The study also determined that there is an opportunity to find a better balance between foreign investment and government prioritization of sustainable development goals, which could be handled by performance requirements -compatible with World Trade Organization and AfCFTA regulations intended to promote trade in biodiversity products. A robust assessment framework through which to provide feedback on the links between the social, environmental "and economic impacts of trade is also essential for assessing how to optimize a relationship between trade liberalization and sustainable development goals across regions and industries. Overall, the agreement contains a lack of explicit clauses through which to protect biodiversity, broadly indicating a need for specificity and harmonization in policies across regionally adopted MEAs, NTBs for products sourced from biodiversity, investment policy, and the AfCFTA's feedback mechanisms.

Biodiversity as a relevant topic in FTAs

Note that it is vaguely as lives and organisms in a particular habitat or ecosystem, the all-encompassing nature of biodiversity makes it a challenge to grasp and even more challenging to protect. The flow of goods and services between nations has long challenged biodiversity through multiple avenues - overexploitation of resources, the spread of invasive species, wildlife poaching, and harmful agricultural practices. Trade has grown as a share of global GDP, up from 36 percent in 1979 to 60 percent in 2020, indicating that sustainable practices and resource management arc vital to establishing more resilient and long-lasting trading systems. Moreover, as talk of building sustainable economics shifts toward building regenerative ones, the international community should not overlook the importance of biodiversity.

FTAs present an opportunity for the enforceable accountability of parties who have agreed to biodiversity standards. On matters of sustainability, countries are often able to shirk commitments when made to nonbinding, multilateral accords, such as the Paris Agreement, wherein countries set their own requirements with no enforcement mechanisms. Without binding requirements, most nations have made insufficient efforts to meet their modest goals and, in the case of the United States, can easily exit and reenter the agreement. With economic priorities in the balance, nations are forced to comply with biodiversity requirements laid out in FTAs or face the agreed-upon dispute resolution system in response to breaches. With economic viability essential to governments in an era of heavy trade reliance, FTAs are one of the best mechanisms through which to support mandatory biodiversity provisions.[69]

Conclusion

International environmental law has indeed regulated how biodiversity, nature and cultural heritage are managed and conserved in Nigeria which followed the standard put in place by the United Nations through their agencies on environment conservation being the act of preservation, prevention of loss, wastes, damage etc. The United Nations in their various programmes, policies and agreements have mandated, made and directed nations of the world including Africa and Nigeria to adopt programme and policies that will encourage environmental sustainability. Most of these programmes and policies have given rise to

[69] Footnote (n 68).

international laws on environment which was put in place to regulate the activities of man to the environment. Nigeria has no option than to follow suit by adhering to these laws and where possible, adopt and engage in bilateral or multilateral agreements in these regards. International environmental law, being the set of agreements and principles that reflect the world's collective effort to manage our transition to the Anthropocene by resolving our most serious environmental problems including climate change, zone depletion and mass extinction of wildlife

Recommendations

There is imperative need for nations of the world including Nigeria to adopt policies and programmes of the United Nations in the area of managing biodiversity, nature, conservation and cultural heritage to manage their environment for sustainable development. They can do this by enacting their own countries' environmental laws in this regard, being and adopt many of international environmental agreements listed above. Sanctions can be adopted against members who go contrary to the laws to serve as deterrence. To achieve this, biodiversity clauses should be incorporated into contemporary agreements to enable weaker members solve their environmental problems for sustainable development.