

<AT>SDG 15: Protect, Restore, and Promote Sustainable Use of Terrestrial Ecosystems, Sustainably Manage Forests, Combat Desertification, and Halt and Reverse Land Degradation and Halt Biodiversity Loss

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<AB>Abstract

This chapter illuminates the extent to which the targets of SDG 15, Life on Land, reflect the international obligations of, and guidance adopted under, the 1992 Convention on Biological Diversity as an umbrella convention with overarching legal principles and concepts. In doing so, it demonstrates the extent to which international human rights law can support joined-up implementation of the convention and other international environmental agreements with a view to realizing SDG 15 through policy coherence, notably in the context of land-based investments.

<K>Keywords

SDG 15, terrestrial biodiversity, land, sustainable use, conservation, human rights, investment, forest, desertification, wetlands, Indigenous peoples.

<H1>1 Introduction

The 2019 *Global Assessment of Biodiversity and Ecosystems Services* report (*Global Assessment* report) underscored that the rate of global biodiversity degradation during the past fifty years is unprecedented in human history.¹ For instance, the average abundance of native species in most major terrestrial biomes has fallen by at least 20 percent. As a result, current negative trends in biodiversity will undermine progress towards 80 percent of targets (thirty-five out of forty-four) assessed within the Sustainable Development Goals (SDGs) related to poverty, hunger, health, water, cities, climate, and oceans (SDG 1, No Poverty;

¹ Sandra Díaz et al., *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES Secretariat, 2019), 11, doi.org/10.5281/zenodo.3553579.

SDG 2, Zero Hunger; SDG 3, Good Health and Well-being; SDG 6, Clean Water and Sanitation; SDG 11, Sustainable Cities and Communities; SDG 13, Climate Action; and SDG 14, Life below Water).² The direct drivers of biodiversity loss have been identified as changes in land use (such as unsustainable agriculture), direct exploitation of organisms (such as overgrazing), climate change, pollution, and invasion of alien species, with climate change also increasingly exacerbating the impact of other drivers.³

The *Global Assessment* report also noted that biodiversity is generally declining more rapidly elsewhere than in Indigenous peoples' lands, which cover at least a quarter of the global land area. At the same time, areas of the world projected to experience significant negative effects from global changes in climate and biodiversity are also home to large concentrations of Indigenous peoples and many of the world's poorest communities.⁴ For that reason, the *Global Assessment* report has underscored the need for transformative processes to address biodiversity loss as well as inequalities, especially regarding income and gender. These inequalities undermine the capacity for sustainability; inclusive decision-making; the fair and equitable sharing of benefits arising from the use of biodiversity and its conservation; and the respectful inclusion of the knowledge and innovations of Indigenous peoples and local communities in environmental governance.⁵

SDG 15, Life on Land, and its targets mainly confirm existing international environmental law objectives on terrestrial biodiversity that focus specifically on forests, wetlands, drylands, and mountains ecosystems as well as, more generally, on endangered species and genetic resources.⁶ They are all addressed under the 1992 Convention on Biological Diversity (CBD) and other biodiversity-related treaties of global scope,⁷ the 1994 UN Convention to Combat Desertification in Countries Experiencing Serious Drought and/or

² *Id.*, 15.

³ *Id.*, 12.

⁴ *Id.*, 15.

⁵ *Id.*, 16.

⁶ See Alessandro Fodella, "Mountain Biodiversity", in Elisa Morgera & Jona Razzaque (eds.), *Encyclopedia of Environmental Law: Biodiversity and Nature Protection Law* (EE, 2017), 161; Analisa Savaresi, "Forest Biodiversity", in Morgera & Razzaque, *id.*, 203; Feja Lesniewska, "Forests: Learning Lessons from Our Interventions", in Elisa Morgera & Kati Kulovesi (eds.), *International Law and Natural Resources* (EE, 2016), 155; Elsa Tsioumani, "Dryland Biodiversity: Ecosystems, People and the Law", in Morgera & Razzaque, n. 6, 215; Erika J. Techera, "Species-based Conservation", in Morgera and Razzaque, *id.*, 97; Riccardo Pavoni & Dario Piselli, "Access to Genetic Resources and Benefit-sharing", in Morgera & Razzaque, *id.*, 237.

⁷ Other international biodiversity treaties include the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS); the 1951 International Plant Protection Convention; the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture; the 1971 Convention on Wetlands of International Importance (Ramsar Convention); and the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage.

Desertification, Particularly in Africa (UNCCD) as well as in regional biodiversity-related and mountain conventions.⁸ In addition, these objectives have been addressed indirectly under other international environmental treaties (such as on climate change and international freshwater agreements).⁹ Given the vast array of international legal instruments related to SDG 15,¹⁰ this chapter will focus mainly on the CBD as the umbrella convention that has provided overarching legal concepts and approaches for the more specific objectives of other biodiversity-related conventions and other environmental treaties. In effect, the SDG 15 targets are largely based on an earlier global goal-setting process under the CBD that encompassed other biodiversity-related conventions. In that respect, SDG 15 does not add to the coordination of existing legal frameworks already attempted under the CBD's Aichi Biodiversity Targets.¹¹

SDG 15 also interacts (positively and negatively) with international economic law. International trade in endangered species, for instance, is the specific object of the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), whereas trade in timber or trade in goods that may contribute to the spread of invasive alien species are regulated in non-environmental regimes.¹² Although repeated concerns have been voiced over tensions and conflicts with the international regulation of trade, investment, and intellectual property and the realization of international environmental objectives to conserve and use sustainably terrestrial biodiversity,¹³ these issues appear to have been left out of the framing of the SDG 15 targets. In this chapter, attention will be focused in particular on the tensions between land-based investment and biodiversity protection as an illustration of a wider range of tensions between international biodiversity and economic objectives. This focus is in line with the finding contained in the 2019 *Global Sustainable Development Report* that the negative long-term trend for SDG 15 should be addressed through “a

⁸ 1991 Convention for the Protection of the Alps; 2003 Framework Convention on the Protection and Sustainable Development of the Carpathians.

⁹ Ruby Moynihan, “Inland Water Biodiversity: International Law on Protection of Transboundary Freshwater Ecosystems and Biodiversity”, in Morgera & Razzaque, n. 6, 189.

¹⁰ For an earlier discussion, see Werner Scholtz & Michelle Barnard, “The Environment and the Sustainable Development Goals: ‘We Are on a Road to Nowhere’”, in Duncan French & Louis J. Kotzé (eds.), *Sustainable Development Goals: Law, Theory and Implementation* (EE, 2018), 222; Rakhyun E. Kim, “The Nexus between International Law and the Sustainable Development Goals” (2016) 25(1) *Review of European, Comparative and International Environmental Law (RECIEL)* 15.

¹¹ *The Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets: CBD*, Decision X/2, 2010.

¹² 2006 International Tropical Timber Agreement. Stanley W. Burgiel, “Invasive Alien Species”, in Morgera & Razzaque, n. 6, 145.

¹³ See, e.g., Shawkat Alam, “Trade, Investment and Biodiversity Conservation”, in Morgera & Razzaque, n. 6, 320.

reduction in the total amount of land appropriated for food production”.¹⁴ Instead, supporting the use of terrestrial biodiversity for a broader notion of bio-economy¹⁵ should rely on the “scientific understanding of complex social-ecological dynamics” revealing trade-offs necessary to achieve SDG 15, including “who will be impacted and how and who holds the key to transformative pathways”.¹⁶

Conflicts with the objectives promoted under international economic law are often raised, but not directly addressed, under the CBD.¹⁷ The challenges that SDG 15 gives rise to for international law are therefore the same challenges that the implementation of international biodiversity law has been facing for a while. These challenges do not only concern conservation efforts but also the sustainable use of living organisms, which remains an elusive objective in international law. The CBD defines it as “the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations”.¹⁸ Even if sustainable use can be considered a customary international rule in as far as living natural resources are concerned, however, it is “highly contextualized and has no single fixed meaning” in different sectors (sustainable forest management, sustainable land management, and the wise use of wetlands).¹⁹ As such, this objective is particularly dependent on the valuation and mainstreaming of biodiversity in different sectors that directly or indirectly affect the use of forests, wetlands, and freshwater (such as mining and infrastructure development, for instance). Thus, in its decisions under the CBD, the Conference of the Parties (COP) has focused on biodiversity mainstreaming in various sectors as a contribution to the implementation of Agenda 2030, which is also captured in target 15.9.²⁰

¹⁴ Independent Group of Scientists Appointed by the Secretary-General, *Global Sustainable Development Report 2019: The Future Is Now – Science for Achieving Sustainable Development* (United Nations, 2019), 70.

¹⁵ *Id.*

¹⁶ *Id.*, 114.

¹⁷ On the missed opportunity to address intellectual property and other aspects of World Trade Organization (WTO) law under the 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization (Nagoya Protocol), see Riccardo Pavoni, “The Nagoya Protocol and WTO Law”, in Elisa Morgera, Matthias Buck & Elsa Tsioumani (eds.), *The 2010 Nagoya Protocol on Access and Benefit-Sharing in Perspective: Implications for International Law and National Implementation* (Brill & Martinus Nijhoff, 2013), 185.

¹⁸ 1992 Convention on Biological Diversity (CBD), art. 2.

¹⁹ Catherine Redgwell, “Sustainable Use of Natural Resources”, in Ludwig Krämer & Emmanuela Orlando (eds.), *Principles of Environmental Law* (EE, 2018), 103, 115.

²⁰ CBD Decision XIV/3, 2018; CBD Decision XIII/3, 2016; *Transforming Our World: The 2030 Agenda for Sustainable Development*, Doc. A/Res/70/1, 25 September 2015.

The notion of trade-offs chimes with the balancing exercises that characterize international human rights law and its monitoring and enforcement mechanisms, which may become increasingly relevant for supporting the realization of SDG 15. They can complement the international biodiversity compliance structures, which remain unevenly developed (as will be discussed below). In addition, several land-based interventions that threaten biodiversity are also intertwined with human rights violations: agribusiness has become the sector that is “most often implicated in killings of land and environmental defenders” due to land tenure-related conflicts²¹ as well as raising human rights concerns because of the use of pesticides.²² Equally, the realization of SDG 15 can contribute to the realization of economic, social, and cultural rights.²³

In this connection, the legal concept of fair and equitable benefit sharing is relevant at the intersection of international biodiversity, human rights, and economic goals dependent on terrestrial ecosystems. Such benefit sharing is particularly important in relation to the human rights of Indigenous peoples,²⁴ the lack of reference to whom under the SDGs has been considered “the most shocking weakness in the 2030 Agenda in the area of equality and non-discrimination”.²⁵ Regrettably, SDG 15 limits itself to address fair and equitable benefit sharing only in relation to access to genetic resources²⁶ for bioprospecting purposes – that is, transnational bio-based research and development. This focus reflects the prominent role of benefit sharing as the third objective of the CBD, which has received more political priority in this process. But benefit sharing has also emerged under the CBD as a component of the ecosystem approach, in conjunction with the need to protect and reward the conservation and sustainable use of Indigenous peoples’ and local communities’ lands and their traditional knowledge.²⁷

²¹ Karol Boudreaux & Scott Schang, “Threats of, and Responses to, Agribusiness Land Acquisitions” (2019) 4(2) *Business and Human Rights Journal* 365, 366.

²² Concerning impacts of pesticides on human rights, see David C. Strouss, “Bringing Pesticide Injury Cases to US Courts: The Challenges of Transnational Litigation” (2019) 4(2) *Business and Human Rights Journal* 337; Hilal Elver, *Report of the Special Rapporteur on the Right to Food*, UN Doc. A/HRC/34/48, 2017.

²³ Lynda M. Collins, “Sustainable Development Goals and Human Rights: Challenges and Opportunities”, in French & Kotzé, n. 10, 66.

²⁴ See Principle 15 in *Report of the UN Special Rapporteur on Human Rights and the Environment: Framework Principles on Human Rights and the Environment*, UN Doc. A/HRC/37/59, 2018 (*UN Framework Principles*). For a discussion, see Elisa Morgera, “Under the Radar: Fair and Equitable Benefit-sharing and the Human Rights of Indigenous Peoples and Local Communities Connected to Natural Resources” (2019) 23(7) *International Journal of Human Rights* 1098.

²⁵ Collins, n. 23, 87.

²⁶ Nagoya Protocol. See Morgera, Buck & Tsioumani, n. 17.

²⁷ Principles of the Ecosystem Approach, CBD Decision V/6, 2000, para. 9; Bonn Guidelines on Access and Benefit-sharing, CBD Decision VI/24, 2002, Annex, para. 48; Tkarihwaié:ri Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, CBD Decision X/42,

This approach is in recognition of the relationship between the stewardship of lands, natural resources, and ecosystems that are traditionally used by Indigenous peoples (even where their formal property is not recognized). It equally applies to the production and inter-generational transmission of traditional knowledge, which embodies traditional lifestyles (a communal way of life) based on the link between communities' shared cultural identity, the biological resources that they use, and their customary rules about natural resource management.²⁸ Along similar lines, but based on different premises (human rights to property, development, and culture), benefit sharing has been increasingly recognized by international human rights judicial and quasi-judicial bodies²⁹ as an implicit component of Indigenous peoples' rights to their territories and natural resources.³⁰ In the human rights context, however, benefit sharing is mainly conceived as a tool to protect communities against third parties' natural resource development (mining and logging) or conservation measures that can negatively affect these communities' way of life.³¹ These international developments remain outside the explicit scope of SDG 15, perhaps as a reflection of the fact that the engagement of the CBD parties with the international human rights of Indigenous peoples remains a matter of contention.³²

The main reason for this reluctance is that terrestrial biodiversity is still perceived as a matter close to the core of national sovereignty.³³ States have accepted that certain parameters are set at the international level to address matters of shared concern (such as migratory species or species subject to international trade). States, however, have otherwise been very cautious in allowing other interferences of international law on the exercise of their sovereignty on the basis of a common concern in the health of the global biosphere.³⁴ For this reason, states have accepted broadly formulated treaty obligations on biodiversity and have

2010, Annex, para. 14; Refinement and Elaboration of the Ecosystem Approach, CBD Decision VII/11, 2004, Annex, rationale to Principle 4.

²⁸ On the basis of the wording of CBD's art. 8(j). See generally Brendan Tobin, *Indigenous Peoples, Customary Law and Human Rights: Why Living Law Matters* (Routledge, 2014).

²⁹ African Commission on Human and Peoples' Rights, Centre for Minority Rights Development (Kenya), and Minority Rights Group International, *Endorois Welfare Council v Kenya*, Communication no. 276/2003, 25 November 2009; IACtHR, *Case of the Kaliña and Lokono Peoples v. Suriname*, Judgment (Merits, Reparations and Costs), 25 November 2015 (*Kaliña and Lokono*).

³⁰ Namely, *UN Declaration on the Rights of Indigenous Peoples*, UNGA Resolution 61/295, 2007, arts. 25–26; *Report of the UN Special Rapporteur on Indigenous Peoples Rights*, UN Doc. A/HRC/15/37, 2010, paras. 76–77; *UN Framework Principles*, n. 24, where benefit sharing is included under Principle 15.

³¹ Morgera, n. 24.

³² Elisa Morgera, "Dawn of a New Day? The Evolving Relationship between the Convention on Biological Diversity and International Human Rights Law" (2018) 53(4) *Wake Forest Law Review* 101.

³³ Lorenzo Cotula, "Land", in Morgera & Kulovesi, n. 6, 137.

³⁴ Duncan French, "Common Concern, Common Heritage and Other Global(-ising) Concepts: Rhetorical Devices, Legal Principles or a Fundamental Challenge?", in Michael Bowman, Peter Davies & Edward Goodwin (eds.), *Research Handbook on Biodiversity and the Law* (EE, 2016), 334.

resisted the application of international human rights law that can more clearly determine the limit of their margin of manoeuvre under the CBD and other biodiversity-related conventions.³⁵ Nevertheless, states have prolifically engaged in the development of soft law guidance under the CBD in order to further specify good practices (if not the legal interpretations of their obligations).³⁶ They have also developed regional agreements for transboundary cooperation of different legal status.³⁷

Against this background, this chapter will focus on the extent to which the targets of SDG 15 reflect the international obligations of, and guidance adopted under, the CBD. It will also consider to what extent international human rights law can support coordinated implementation of the CBD and other international agreements with a view to realizing SDG 15 through policy coherence, notably in the context of land-based investments.

<H1>2 Positioning the Content of SDG 15 in the Context of the Other SDGs

SDG 15 is strongly connected to all other SDGs, notably poverty, hunger, health, gender, freshwater, energy, climate change, and oceans (SDGs 1–3; SDG 5, Gender Equality; SDG 6; SDG 7, Affordable and Clean Energy; SDGs 13–14). These SDGs, in effect, find correspondence with the CBD areas of work/programmes.³⁸ Several of these connections can be best explored through the lens of the interdependency of biodiversity and international human rights. For instance, factual and legal correlations between biodiversity and the right to food have been clear for a while,³⁹ so the connection between SDG 15 and SDG 2 finds resonance in a series of international legal instruments addressing the responsible tenure of

³⁵ See generally Morgera, n. 24.

³⁶ *Id.*

³⁷ There are numerous regional regimes for the protection of nature, mountain, and freshwater ecosystems that complement the global regimes by developing more specific institutional structures to apply the global-level rules. See, e.g., CMS agreements, www.cms.int/en/cms-instruments/agreements.

³⁸ The CBD's Conference of the Parties (COP) has established seven thematic work programmes – namely, on agricultural biodiversity, dry and sub-humid lands biodiversity, forest biodiversity, inland waters biodiversity, island biodiversity, marine and coastal biodiversity, and mountain biodiversity – and five cross-cutting work programmes on incentive measures – namely, the Global Taxonomy Initiative, protected areas, Article 8(j) (traditional knowledge), and technology transfer and cooperation. Work has also been undertaken on a series of other cross-cutting issues, including climate change and biodiversity, the ecosystem approach, and sustainable use of biodiversity. See “Thematic Programmes and Cross-cutting Issues”, *Convention on Biological Diversity*, www.cbd.int/programmes/.

³⁹ Hilal Elver, *Critical Perspective on Food Systems, Food Crises and the Future of the Right to Food*, *UN Special Rapporteur on the Right to Food*, UN Doc. A/HRC/43/44, 2020; Tsioumani, n. 6, 224–25; Claudio Chiarolla, “Agriculture and Biodiversity Conservation”, in Morgera & Razzaque, n. 6, 251, 261.

land and responsible agribusiness.⁴⁰ Similarly, SDG 15 connects to the human right to water,⁴¹ although there are complex trade-offs to be addressed in the interplay between the human right to water, the human right to food, non-discrimination, and environmental sustainability.⁴²

Clarity on the factual relationship between biodiversity and the human right to health is a more recent international development. For instance, reduced human contact with biodiversity may lead to reduced diversity in the human microbiota, weakening human immune-regulatory systems and favouring the onset of non-communicable diseases.⁴³ In addition, human-caused changes in ecosystems, such as modified landscapes, intensive agriculture, and antimicrobial use, are increasing the risk and impact of infectious disease transmission.⁴⁴ The linkages between SDG 3 and SDG 15 are thus crucial from a human rights perspective but still little understood. For that reason, the CBD parties and the Assembly of the World Health Organization have recommended addressing the unintended negative impacts of health interventions on biodiversity and incorporating ecosystem concerns into public health policies, considering relevant health-biodiversity linkages in developing and updating national health policies, and adopting preventive measures for human health based on strengthening the resilience of socio-ecological systems.⁴⁵

The linkages between SDG 15 and SDG 5 can be explained also in human rights terms.⁴⁶ Women's human rights in the ownership, acquisition, management, administration, enjoyment, and disposition of land, non-discrimination in rural areas, as well as participation in rural development⁴⁷ (which is understood to comprise agricultural and water policies, forestry, livestock, fisheries, and aquaculture) can be affected by decisions on the conservation and sustainable use of terrestrial biodiversity.⁴⁸ Accordingly, the Committee of the 1979 Convention on the Elimination of Discrimination against Women (CEDAW) has

⁴⁰ See Organisation for Economic Co-operation and Development (OECD) & Food and Agriculture Organization (FAO), *Guidance for Responsible Agricultural Supply Chains*, 2016, doi.org/10.1787/9789264251052-en.

⁴¹ See generally Owen McIntyre, "International Water Law and SDG 6: Mutually Reinforcing Paradigms", in French & Kotzé, n. 10, 173.

⁴² Elisa Morgera et al., *The Human Right to Water for Food and Agriculture* (FAO, 2020).

⁴³ World Health Organization (WHO), *Report by the Director-General: Health, Environment and Climate Change – Human Health and Biodiversity*, Doc. A71/11, 2018.

⁴⁴ *Id.*

⁴⁵ *Id.*; CBD Decision XIII/6, 2016; CBD Decision XIV/4, 2018.

⁴⁶ Karen Morrow, "Gender and the Sustainable Development Goals", in French & Kotzé, n. 10, 149.

⁴⁷ 1979 Convention on the Elimination of Discrimination against Women (CEDAW), arts. 16(1)(h), 14(2).

⁴⁸ Naomi Kenney & Mika Schröder, "Gender Equality and Benefit Sharing: Exploring the Linkages in Relation to Land and Genetic Resources", *BENELEX Blog Post*, 5 December 2016, benelexblog.wordpress.com/2016/12/05/gender-equality-and-benefit-sharing-exploring-the-linkages-in-relation-to-land-and-genetic-resources/.

recommended ensuring that rural development projects are implemented only after participatory gender and environmental impact assessments are conducted with the full participation of rural women, obtaining their free, prior-informed consent and ensuring fair and equitable benefit sharing (for instance, in revenues generated by large-scale development projects).⁴⁹ While the CBD's 2015–20 Gender Plan of Action merely refers to a list of “possible actions for State Parties”,⁵⁰ states that are both party to CEDAW and the CBD should consider their legally binding human rights obligations in their implementation of CBD guidance.⁵¹

A human rights lens, furthermore, is critical to understand the interface between SDG 15 and SDG 16, Peace, Justice and Strong Institutions.⁵² Matters that are generally labelled as “good governance” under international biodiversity law should be understood in legally binding terms when considered as procedural environmental rights.⁵³ According to their general human rights treaty obligations, once applied to the interdependence of human rights and biodiversity, states must ensure affordable, effective, and timely public access to information on biodiversity, in a language that is understandable to those affected; public participation in decision-making on biodiversity and taking the views of the public, including children's views, into account; and access to effective remedies for violations of human rights and biodiversity laws by private and public actors.⁵⁴ In addition, states must develop laws and institutions that effectively “regulate harm to biodiversity from private actors as well as government entities in a way that is non-retrogressive and non-discriminatory”,⁵⁵ including additional measures to protect the human rights of the most vulnerable (children and

⁴⁹ CEDAW Committee, General Recommendation no. 34 on the Rights of Rural Women, Doc. CEDAW/C/GC/34, 2016; CEDAW Committee, *Concluding Observations on the Seventh Periodic Report of Argentina*, Doc. CEDAW/C/ARG/CO/7, 2016.

⁵⁰ CBD Decision XII/7, 2014; see Victoria Jenkins, “Gender and the Convention on Biological Diversity”, in Morgera & Razzaque, n. 6, 331.

⁵¹ Elisa Morgera, *Biodiversity as a Human Right and Its Implications for the EU's External Action: Report to the European Parliament*, 2020,

[www.europarl.europa.eu/RegData/etudes/STUD/2020/603491/EXPO_STU\(2020\)603491_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/603491/EXPO_STU(2020)603491_EN.pdf).

⁵² Collins, n. 23, 78–83; see generally Niko Soininen, “Torn by (Un)certainty: Can There Be Peace between the Rule of Law and Other Sustainable Development Goals?”, in French and Kotzé, n. 10, 222.

⁵³ John Knox, “Human Rights, Environmental Protection and the Sustainable Development Goals” (2015) 24 *Washington International Law Journal* 517; Marcos Orellana, “Governance and the Sustainable Development Goals: The Increasing Relevance of Access Rights in Principle 10 of the Rio Declaration” (2016) 25 *RECIEL* 50.

⁵⁴ John Knox, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc. A/HRC/34/49, 2017, paras. 27–32. Reiterated, in general terms, in the *UN Framework Principles*, n. 24, Principles 4–5, 7–10, 12; see also discussion in Lalanath de Silva, “Public Participation in Biodiversity Conservation”, in Morgera & Razzaque, n. 6, 217.

⁵⁵ Knox, n. 54, para. 69.

communities that have a close relationship with lands and resources on which they depend for their material needs and cultural life).⁵⁶ Furthermore, states authorizing any activity – either conservation or sustainable use of biodiversity – must ensure that no unjustified, foreseeable infringements of human rights may arise from their decisions by conducting prior assessments of possible socio-cultural and environmental impacts of projects or policies that may affect biodiversity.⁵⁷ States’ obligations also extend to preventing business entities from violating human rights as well as in the context of land-based extractives, agriculture, the creation of protected areas, climate change response measures, or renewables development.⁵⁸ Finally, states must protect biodiversity defenders as human rights defenders, including activists that “protect components of ecosystems whose benefits to humans may be less obvious, such as endangered species”.⁵⁹

Based on the interconnectedness of marine, terrestrial, and freshwater ecosystems, SDG 15 is also related to SDG 14. Certain targets under SDG 15 (such as those related to halting biodiversity loss, preventing species extinction, sharing benefits from access to genetic resources, addressing invasive alien species, and integrating biodiversity values into planning and accounts) are also relevant for the conservation and sustainable use of marine biodiversity. In turn, certain targets under SDG 14 are clearly intertwined with the conservation and sustainable use of terrestrial and freshwater biodiversity, such as reducing land-based marine pollution, protecting coastal ecosystems, and sustainably managing tourism. In addition, target 14.b on ensuring access to resources and markets for small-scale fisheries raises questions related to the human rights of small-scale fishing individuals and communities, who also rely on the conservation and sustainable use of terrestrial ecosystems.⁶⁰ While states may be already alerted to the need to address in integrated ways terrestrial and marine ecosystems within their national jurisdiction, as well as of the opportunities to apply relevant human rights standards across terrestrial and marine

⁵⁶ As reflected in more general environmental terms in the *UN Framework Principles*, n. 24, Principles 11, 14–15.

⁵⁷ Knox, n. 54, para. 69; as reflected in more general environmental terms in the *UN Framework Principles*, n. 24, Principle 8.

⁵⁸ Knox, n. 54, paras. 33–34.

⁵⁹ *Id.*, paras. 31–32, 68; see also Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UNGA Res 53/144, 8 March 1999.

⁶⁰ *United Nations Declaration on the Rights of Peasants*, UN Doc. A/HRC/RES/39/12, 28 September 2018; *Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication* (FAO, 2018); Elisa Morgera & Julia Nakamura, “Shedding a Light on the Human Rights of Small-scale Fisherfolk: Complementarities and Contrasts between the UN Declaration on Peasants’ Rights and the Small-Scale Fisheries Guidelines”, in Margherita Bruonori et al., *Commentary on the Declaration on the Rights of Peasants* (forthcoming).

ecosystems,⁶¹ current implementation levels leave much to be desired. In addition, states have conflicting views on whether and to what extent to apply the CBD to marine areas beyond national jurisdiction.⁶² On this basis, the CBD remains an underutilized international instrument in the ongoing UN negotiations on areas of marine biodiversity beyond national jurisdiction (BBNJ).⁶³ More generally, several questions remain as to the relevance of the various SDGs in the BBNJ negotiations as well as their relevance from an international human rights perspective.⁶⁴

The links between SDG 15 and SDG 13 (and their relevance for SDG 14) have been extensively explored under the CBD.⁶⁵ The CBD parties have systematically identified potential and actual threats that climate change and climate change response measures pose to the conservation and sustainable use of biodiversity, along with ways to assess and prevent negative impacts on biodiversity through mutually supportive interpretation and application of international climate and biodiversity law.⁶⁶ These contributions have been based on the CBD's ecosystem approach and have (often implicitly) contributed to defining a rights-based approach to climate change adaptation and mitigation, mainly with regard to the human rights of Indigenous peoples and local communities.⁶⁷ At a high level, the CBD parties have committed to integrating ecosystem-based approaches when updating their nationally determined contributions, taking into account the importance of ensuring the integrity and functionality of all ecosystems, including oceans; recognizing that ecosystems can be managed to limit climate change impacts on biodiversity and support people's resilience,

⁶¹ For instance, in relation to the creation and management of marine protected areas, see David R. Boyd, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc. A/75/161, 2020.

⁶² Elisa Morgera, "Competence or Confidence? The Most Appropriate Forum to Address Multi-Purpose High Seas Protected Areas" (2007) 16(1) *RECIEL* 1.

⁶³ Elisa Morgera & Mara Ntona, "Linking Small-Scale Fisheries to International Obligations on Marine Technology Transfer" (2018) 93 *Marine Policy* 214.

⁶⁴ As UN Special Rapporteur on Human Rights and the Environment, David Boyd recommended in 2020 that states need to "[e]nsure that the proposed agreement on the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction includes appropriate consideration of human rights". Boyd, n. 61, para. 90(j). For an exploration, see Elisa Morgera, "Fair and Equitable Benefit-sharing in a New International Instrument on Marine Biodiversity: A Principled Approach towards Partnership Building?" (2018–19) 5 *Maritime Safety and Security Law Journal* 48; Nadia Sánchez Castillo-Winckels, "How the Sustainable Development Goals Promote a New Conception of Ocean Common Governance", in French & Kotzé, n. 10, 117.

⁶⁵ See, e.g., Sandrine Maljean-Dubois & M. Wemaëre, "Biodiversity and Climate Change", in Morgera & Razzaque, n. 6, 295; Harro van Asselt, "REDD+ and Biodiversity", in Morgera & Razzaque, n. 6, 309; Seita Romppanen, "Biofuels", in Morgera & Razzaque, n. 6, 346.

⁶⁶ Elisa Morgera, "No Need to Reinvent the Wheel for a Human Rights-Based Approach to Tackling Climate Change: The Contribution of International Biodiversity Law", in Erkki Hollo, Kati Kulovesi & Michael Mehling (eds.), *Climate Change and the Law* (Springer, 2013), 350.

⁶⁷ *Id.*

taking into account multiple social, economic, and cultural co-benefits for local communities; and recognizing the role of Indigenous and community conserved areas and biodiversity-based livelihoods in the face of climate change.⁶⁸

In addition, the CBD parties have adopted more specific guidance on the ecosystem-based approach to mitigation on geo-engineering,⁶⁹ biofuels production,⁷⁰ and reducing emissions from deforestation and forest degradation,⁷¹ which can affect the mountain, wetland, and forest ecosystems addressed under SDG 15. However, despite these contributions to policy coherence and gap filling by the CBD's COP,⁷² there is still limited impact from the CBD's guidance on implementation practices under the international climate change regime.⁷³ The CBD parties have further adopted voluntary guidelines for the design and effective implementation of ecosystem-based approaches to adaptation and disaster risk reduction⁷⁴ and voluntary guidelines on socio-ecological resilience in relation to coral reefs and closely associated ecosystems (such as mangroves and sea grasses),⁷⁵ which can support coherent action across SDGs 13, 14, and 15.

The main implication for international law is that guidance intergovernmentally adopted under the CBD can contribute to ensure mutually supportive interpretation of international law in the areas of the sea, climate change, and human rights with a view to supporting synergies among SDG 15 and many other SDGs, thereby contributing to policy coherence (target 17.14).

<H1>3 Positioning SDG 15 in International Law

<H2>3.1 The CBD as a “Catch-All Regime”

⁶⁸ CBD Decision XIV/5, 2018.

⁶⁹ CBD Decision X/33, 2010; CBD Decision XI/20, 2012, paras. 6–7; CBD Decision XIII/14, 2016, para. 4.

⁷⁰ CBD Decision IX/2, 2008.

⁷¹ *Id.*

⁷² Harro van Asselt, “Managing the Fragmentation of International Environmental Law: Forests at the Intersection of the Climate and Biodiversity Regimes” (2010) 44(4) *New York University of International Law and Politics* 1205, 1258.

⁷³ The lack of cross-reference in decisions taken in the context of the international climate change regime to relevant decisions taken in the context of the CBD has been emphasized by van Asselt. *Id.*, 1258–59 (referring specifically to decisions on forests); Jamie Pittock, “A Pale Reflection of Political Reality: Integration of Global Climate, Wetland and Biodiversity Agreements” (2010) 1(3) *Climate Law* 343, 355.

⁷⁴ CBD Decision XIV/5, 2018.

⁷⁵ CBD Decision XII/23, 2014.

This section takes a deeper look at the nature and significance of the international biodiversity law objectives covered by SDG 15. Terrestrial biodiversity is addressed in international law through a series of independent treaties that differ in terms of membership, approaches, and compliance mechanisms, due to the diverse history and scope of each instrument's application.⁷⁶ Despite this multiplicity of international legal instruments, all of the treaties have as their objective the conservation and sustainable use of biological resources, thus being aligned substantively with the overarching normative framework provided by the CBD. Because of its broad coverage and openness to inputs from non-state actors (including Indigenous peoples' and local communities' representatives), the CBD has functioned as a "catch-all regime" that has addressed, far beyond the expectation of its drafters, new threats to biodiversity and the livelihoods of Indigenous peoples and local communities.⁷⁷ It has influenced how other international biodiversity treaties have been interpreted.⁷⁸ It has also been relied upon by international human rights bodies, notably with respect to Indigenous peoples' rights in the context of land-based extractives, agriculture, renewables, and conservation.⁷⁹

The CBD has developed a multitude of sub-processes for the further refinement of its provisions, which have led to the intergovernmental development of guidelines for national implementation, often recommending reforms of national laws, policies, and administrative practices. In addition, guidance developed under the CBD provides indications to intergovernmental organizations, business enterprises, and civil society in the context of complex biodiversity governance processes. In terms of the legal status of these international guidelines, the CBD parties often emphasize their voluntary nature; however, this does not exclude the value of CBD decisions as interpretative tools of the convention obligations as they can be considered the expression of subsequent agreement or subsequent practice related to the convention. In the few exceptional cases in which parties have excluded their value as treaty interpretation tools,⁸⁰ in order to pre-empt limitations to states' discretion in developing

⁷⁶ Antonio Cardesa-Salzmann, "Monitoring and Compliance Mechanisms", in Morgera & Razzaque, n. 6, 55.

⁷⁷ Elisa Morgera & Elsa Tsioumani, "Yesterday, Today and Tomorrow: Looking Afresh at the Convention on Biological Diversity" (2011) 21(1) *Yearbook of International Environmental Law* 3.

⁷⁸ For instance, the CBD Addis Ababa Principles and Guidelines on Sustainable Use of Biological Resources have also been adopted under the Ramsar Convention: *Ramsar Convention COP-9*, Doc. 23, 2005, para. 41. See, however, controversy on this under the Convention on Migratory Species: "Sustainable Use", Resolution 08.01 (2005).

⁷⁹ Morgera, n. 24, 1100.

⁸⁰ CBD Decision VII/12, 2004, para. 2(c), with reference to the 1969 Vienna Convention on the Law of Treaties, art. 31(3)(a), (b) or special meaning as provided for in art. 31(4). This is without prejudice to the interpretation or application of the convention in accordance with art. 31(3)(c).

national legislation,⁸¹ the CBD’s guidelines can be considered “best practices” that serve to “facilitate the implementation” of existing international obligations.⁸² It becomes increasingly difficult for a state to defend any substandard approach, particularly when the state has joined the consensus in accepting these guidelines after its participation in intergovernmental negotiations.⁸³

<H2>3.2 Human Rights Law

For his part, the UN special rapporteur on human rights and the environment assessed the CBD’s obligations in 2017 as a matter of international human rights law, based on the unequivocal understanding that the full enjoyment of everyone’s human rights to life, health, food, and water depend on healthy ecosystems and their benefits to people.⁸⁴ These clarifications are critical to guide individual states’ endeavours to contribute to the realization of SDG 15. Furthermore, international obligations about interstate cooperation at the nexus of biodiversity and human rights⁸⁵ should guide states’ bilateral and multilateral efforts to support the realization of SDG 15. As donors, for instance, states should ensure integrating certain human rights considerations into biodiversity finance,⁸⁶ technology transfer, capacity building, information sharing, and scientific cooperation.⁸⁷ Furthermore, states are expected to consider the linkages between international biodiversity law and human rights in the context of international trade and investment agreements.⁸⁸

<H2>3.3 International Economic Law

As anticipated above, the relationship between international biodiversity law as reflected in SDG 15 and international economic law is one fraught with actual and potential tensions. It

⁸¹ The *Mo’otz Kuxtal Voluntary Guidelines*, CBD Decision XIII/18, 2016, for the development of mechanisms, legislation, or other appropriate initiatives to ensure the “prior and informed consent,” “free, prior and informed consent,” or “approval and involvement,” depending on national circumstances, of Indigenous peoples and local communities for accessing their knowledge, innovations, and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations, and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge.

⁸² Morgera, n. 42, 15. This applies by analogy the reasoning in *UN Framework Principles*, n. 24, para. 9.

⁸³ See Alan Boyle & Christine Chinkin, *The Making of International Law* (OUP, 2007).

⁸⁴ Knox, n. 54, para. 5.

⁸⁵ *Id.*, paras. 36–48

⁸⁶ CBD Decision XII/3, 2014.

⁸⁷ Elisa Morgera, “Fair and Equitable Benefit-sharing at the Crossroads of the Human Right to Science and International Biodiversity Law” (2015) 4(4) *Laws* 803; Morgera & Ntona, n. 63.

⁸⁸ Knox, n. 54, paras. 36–39.

has been widely documented that international trade and foreign investment can increase pressures on biodiversity as well as lead to violations of biodiversity-dependent human rights. International trade law, international investment law, and intellectual property law can also place limitations on the capacity of states to conserve or ensure the sustainable use of biodiversity. On the other hand, biodiversity conservation can both provide opportunities for foreign investment and justify interference with foreign investments that may damage biodiversity. Thus, in the international investment arbitration *David Aven v Costa Rica*, the tribunal found that Costa Rica's actions to protect wetlands in an investment area was in line with the 1971 Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention) and the CBD and therefore did not breach the relevant investment agreement and the international obligations to ensure fair and equitable treatment.⁸⁹

Furthermore, bilateral investment treaties have been increasingly used to make a positive impact on biodiversity conservation and sustainable use. Introducing incentives based on access to international market has proven to be beneficial to generate political will to engage with bilateral biodiversity cooperation. For instance, European Union (EU) bilateral trade agreements refer in their trade and sustainable development chapters to the CBD and CITES,⁹⁰ including detailed provisions related to climate change⁹¹ and forestry⁹² that are of relevance for SDG 15. Occasionally, these provisions make reference to human rights implications,⁹³ such as ensuring the protection of traditional knowledge,⁹⁴ promoting the inclusion of forest-based local communities and Indigenous peoples in sustainable supply chains of timber and non-timber forest products,⁹⁵ and providing benefits to stakeholders in the value-chain of CITES-listed species.⁹⁶ Another notable example is provided by the EU's

⁸⁹ ICSID, *David Aven et al. v Republic of Costa Rica*, ICSID Case no. UNCT/15/3, Award, 18 September 2018, paras. 390, 394, 418, 419, 423, 708, www.italaw.com/sites/default/files/case-documents/italaw9955_0.pdf.

⁹⁰ See, e.g., 2012 Trade Agreement between the European Union and Its Member States, of the One Part, and Colombia and Peru, of the Other Part, arts. 267(2)(b), 270(2) (EU-Colombia and Peru FTA).

⁹¹ In particular, the 2000 Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part and the European Community and Its Member States of the Other; *Second Revision of the Cotonou Partnership Agreement*, 11 March 2010, arts. 1, 8, 11, 32bis, www.ec.europa.eu/development/icenter/repository/second_revision_cotonou_agreement_20100311.pdf.

⁹² See, e.g., 2019 EU-Mercosur Association Agreement, Trade and Sustainable Development Chapter, art. 8, trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158166.%20Trade%20and%20Sustainable%20Development.pdf (EU-Mercosur Association Agreement).

⁹³ Morgera, n. 64.

⁹⁴ Eg EU-Colombia and Peru FTA, n. 90, art. 272.

⁹⁵ EU-Mercosur Association Agreement, n. 92, Trade and Sustainable Development Chapter, art. 8.2.b.

⁹⁶ 2018 EU-Mexico Agreement, Trade and Sustainable Development Chapter, art. 6.3.c, trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156791.pdf.

Forest Law Enforcement, Governance and Trade Action Plan,⁹⁷ which has explicitly drawn on global soft law commitments⁹⁸ and sought compatibility with ongoing, albeit partial, multilateral efforts to address deforestation by exporter and importer countries.⁹⁹ Relying on potential bilateral trade sanctions to enhance compliance with the CBD,¹⁰⁰ however, has proven to have had negative impacts on the rights of Indigenous peoples, as it has been documented in the context of the United States’ bilateral agreements.¹⁰¹ These results appear consistent with Gracia Marín Durán’s argument that bilateral trade sanctions are not suitable to support sustainable development objectives because of “scant and mixed” empirical evidence on their presumed compliance-inducing effect and because of the “risk of compromising the current value-based purpose and comprehensive scope of [bilateral agreements]”.¹⁰²

Another key aspect to consider is the extent to which international law has addressed the role of the private sector in contributing to efforts towards realizing SDG 15. The CBD expressly calls for private sector involvement in ensuring the sustainable use of biodiversity components and has developed a series of guidelines that can be directly applied to private actors.¹⁰³ As a result, several self-regulation initiatives have contributed to addressing the concerns enshrined in SDG 15 on the basis of the CBD and its guidelines.¹⁰⁴ The Organisation for Economic Co-operation and Development and the Food and Agriculture Organization’s (FAO) joint Guidance for Responsible Agricultural Supply Chains, for instance, calls upon agribusiness to control and minimize the spread of invasive alien species and spells out sustainable use standards in terms of “good agricultural practices”, such as maintaining or improving soil fertility, avoiding soil erosion, and supporting habitats and related livelihoods against the effects of climate change through adaptation measures.¹⁰⁵ The relevance of the CBD’s guidance for the private sector has also been recognized by

⁹⁷ European Commission, *Forest Law Enforcement, Governance and Trade Action Plan: Conclusions – Forest Law Enforcement, Governance and Trade (FLEGT)*, [2003] OJ C268/1.

⁹⁸ World Summit on Sustainable Development, *Johannesburg Plan of Implementation*, UN Doc. A/CONF.199/20, 2002, Resolution 2, 5.

⁹⁹ Namely, timber species listed under CITES. European Commission, n. 97, 109, 20.

¹⁰⁰ Sikina Jinnah & Elisa Morgera, “Environmental Provisions in American and EU Free Trade Agreements: A Preliminary Comparison and Research Agenda” (2013) 22(3) *RECIEL* 324.

¹⁰¹ *Id.*

¹⁰² Gracia Marín Durán, “Sustainable Development Chapters in EU Free Trade Agreements: Emerging Compliance Issues” (2020) 57(4) *Common Market Law Review* 1031, at 1062.

¹⁰³ CBD, art. 10(e) reads as follows: “Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.” See discussion in Elisa Morgera, *Corporate Environmental Accountability in International Law*, 2nd ed. (OUP, 2020).

¹⁰⁴ See, e.g. Roundtable on Sustainable Palm Oil (RSPO), *Principles and Criteria for Sustainable Palm Oil Production* (RSPO, 2007), www.rspo.org/file/RSPO%20Principles%20&%20Criteria%20Document.pdf.

¹⁰⁵ OECD & FAO, n. 40.

international human rights bodies.¹⁰⁶ Whether the CBD’s guidance is fully upheld in multi-stakeholder standard-making exercises and leads to positive impacts on the ground, however, remains a matter for sustained empirical investigation.¹⁰⁷ On the whole, SDG 15 captures some, but not all, of the dimensions of the protection and sustainable use of terrestrial biodiversity as they are addressed under the CBD.

<H1>4 Positioning SDG 15 in the International Institutional Context Relevant for Its Implementation

This section focuses on the institutional dimensions of policy coherence in pursuing SDG 15, focusing, in turn, on inter-institutional coordination mechanisms, compliance mechanisms, and funding across different international treaties and organizations.

<H2>4.1 Inter-Institutional Coordination Mechanisms

While the CBD, the other biodiversity-relevant treaties, and the other two Rio Conventions – that is, the 1992 UN Framework Convention on Climate Change (UNFCCC) and the UNCCD – are independent international processes, they have been connected institutionally to some extent. The Liaison Group of Biodiversity-related Conventions, for instance, “explores opportunities for synergistic activities and increased coordination, and to exchange information”, which could support coordinated implementation of SDGs 14 and 15.¹⁰⁸ In addition, the Joint Liaison Group between the three Rio Conventions was established as an informal forum for exchanging information and exploring opportunities for synergistic activities among the officers of the conventions’ scientific subsidiary bodies, the executive secretaries, and members of the secretariats.¹⁰⁹ A further example is the Inter-agency Liaison Group on Invasive Alien Species,¹¹⁰ which is an initiative of the CBD’s Secretariat with membership extending to ten secretariats from intergovernmental organizations including the FAO, the International Maritime Organization, the International Civil Aviation Organization,

¹⁰⁶ See, e.g. Special Rapporteur James Anaya, *Extractive Industries Operating within or near Indigenous Territories*, UN Doc. A/HRC/18/35, 2011, para. 63; UN Expert Mechanism, *Advice no. 4: Follow-up Report on Indigenous Peoples and the Right to Participate in Decision-making, with a Focus on Extractive Industries*, UN Doc. A/HRC/21/55, 2012, para. 8.

¹⁰⁷ Morgera, n. 103, 263.

¹⁰⁸ See, e.g., CBD, Liaison Group of Biodiversity-related Conventions, www.cbd.int/blg/; CBD Decision VII/26, 2004; CBD Decision IX/27, 2008.

¹⁰⁹ See, e.g., CBD, Joint Liaison Group, www.cbd.int/cooperation/liaison.shtml.

¹¹⁰ See, e.g., CBD, Inter-agency Liaison Group on Invasive Alien Species, www.cbd.int/invasive/lg/.

and the World Trade Organization. The regular opportunity for dialogue provided for by this group is intended to “address the gaps and inconsistencies in the international regulatory frameworks for the prevention, control and eradication of invasive alien species” and aims to facilitate the development of norms and standards as well as promote information sharing and capacity building.¹¹¹

In addition, the UN Environment Programme and the FAO are both leading the international exchanges of lessons learned and good practices on the implementation of SDG 15 as well as providing advisory services to specific governments on the implementation of the international law that underpins SDG 15. Both bodies have made strides in integrating human rights into their work in this connection. The CBD’s decisions on biodiversity mainstreaming recognized these and other institutional connections, such as the Platform on Biodiversity and Agricultural Sectors launched by the FAO for governments and communities of practice to identify synergies and develop integrated cross-sectoral approaches to mainstreaming biodiversity in the agriculture and forestry sectors. The CBD’s parties also have underscored the Collaborative Partnership on Forests, which is an informal, voluntary arrangement among fifteen international organizations and secretariats with substantial programmes on forests (such as the secretariats of CITES, the FAO, the UNFCCC, and the UNCCD) to collaborate to streamline their work towards improving forest management and conservation and the production and trade of forest products.¹¹²

<H2>4.2 Compliance Mechanisms

On compliance, the CBD has yet to develop a systematic or credible system for monitoring implementation by states. The CBD’s COP does not review individual national reports but, rather, offers conclusions on the basis of the CBD Secretariat’s syntheses of these reports.¹¹³ This examination tends to focus only on the submission of the report and on a quantitative analysis of legislative developments (for instance, the percentage of parties with biodiversity-related legislation in place) rather than on a qualitative analysis of the content of the national reports, including the quality and comprehensiveness of national legislation and impacts of state measures on biodiversity and achievement of the CBD’s objectives. To complement

¹¹¹ *Id.*

¹¹² CBD Decision XIII/3, 2016.

¹¹³ Yibin Xiang & Sandra Meehan, “Financial Cooperation, Rio Conventions and Common Concerns” (2005) 14(3) *RECIEL* 212, 218.

these practices, since 2016, the CBD's Body on Implementation has engaged in a voluntary peer-review mechanism¹¹⁴ aimed at assessing the development and implementation of national biodiversity strategies and action plans (NBSAPs), providing opportunities for peer learning for parties directly involved and other parties and creating greater transparency and accountability for the development and implementation of NBSAPs to the public and other parties.¹¹⁵

A potential avenue for assessing compliance at the interface of international biodiversity law and human rights law could be the compliance mechanism under the CBD's 2014 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization, albeit this would have limited subject-matter application focused on bio-based innovation (research and development based on genetic resources). The Nagoya Protocol's Compliance Committee can receive information from Indigenous peoples and local communities on alleged non-compliance by parties, although the Secretariat will decide whether or not to trigger the compliance procedures after attempting to solve the issue among the Indigenous people/local community in question and the state concerned. Furthermore, in examining the cases brought to its attention, the Compliance Committee may seek information from affected communities and advice from community experts and undertake, upon invitation of the party concerned, information gathering in the territory of that party.¹¹⁶

Another interesting example is the review mechanism under the 1979 Convention on Migratory Species of Wild Animals (CMS), which allows for a trigger by any agency technically qualified in protection, conservation, and management of migratory species, which is either an international non-governmental agency or body or an accredited national non-governmental agency or body.¹¹⁷ One of the most sophisticated compliance regimes among biodiversity-related agreements is that of CITES. It initially focused on national-level implementation (the control of individual shipments by national authorities of member

¹¹⁴ CBD, *Voluntary Peer-Review Mechanism for National Biodiversity Strategies and Action Plans*, UN Doc. UNEP/CBD/SBI/1/10/ADD1, 2016; see also CBD, *Report of the Informal Working Group on the Development of a Methodology for Voluntary Peer-Review of the Implementation of the Convention on Biological Diversity*, UN Doc. UNEP/CBD/SBI/1/INF/27, 2015; CBD Decision XII/29, 2012, para. 3.

¹¹⁵ CBD, *A Methodology for Voluntary Peer Review of the Revision and Implementation of National Biodiversity Strategies and Action Plans*, UN Doc. UNEP/CBD/SBI/1/INF/30, 2016, Appendix 1.

¹¹⁶ CBD, *Cooperative Procedures and Institutional Mechanisms to Promote Compliance with the Nagoya Protocol and to Address Cases of Non-Compliance*, UN Doc. UNEP/CBD/NP/COP-MOP/DEC/1/4, 2014.

¹¹⁷ See CMS Resolution 12.9, 2017; CMS Decisions 12.6–12.9, www.cms.int/sites/default/files/document/cms_cop12_decisions_e_0.pdf and www.cms.int/en/activities/review-mechanism.

countries), and, more recently, it has relied on international monitoring and support.¹¹⁸ As a result, the compliance regime under CITES currently counts on a multiplicity of processes, with the possibility to impose trade sanctions on parties,¹¹⁹ and it has allowed, in practice, significant input from the international civil society.¹²⁰ Another innovative instance are the joint site inspections among the regional 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats, the Ramsar Convention, and the CMS to develop cross-treaty supportive compliance measures.¹²¹

In addition, international human rights monitoring systems are increasingly taking the opportunity to assess compliance with the CBD and other international biodiversity agreements. For instance, the Committee on the Elimination of Racial Discrimination has underscored state obligations to ensure adequate socio-cultural and environmental impact assessments in accordance with relevant CBD guidance as part of the obligations to respect Indigenous and tribal peoples' human rights.¹²² In 2015, in the *Kaliña and Lokono* decision, the Inter-American Court of Human Rights underscored states' obligations to protect, in a manner compatible with their international biodiversity obligations, Indigenous peoples' rights to a dignified life and to cultural identity connected with natural resources on their traditional territories,¹²³ including those obligations that are in line with the consensus guidance adopted under the CBD.¹²⁴

Furthermore, international economic law can support compliance with international biodiversity law. For instance, an international investor running a nature sanctuary in Barbados lodged a complaint against the government of Barbados for failing to implement its international obligations under the Ramsar Convention and the CBD, which had negatively affected the value of the investment in the sanctuary.¹²⁵ And the EU's bilateral trade agreements include a cooperative institutional apparatus to support the implementation of

¹¹⁸ See Cardesa-Salzmann, n. 76.

¹¹⁹ Based on CITES, art. XI, coupled with majority-voting decision-making. See CITES, *Countries Currently Subject to a Recommendation to Suspend Trade*, [cites.org/eng/resources/ref/suspend.php](https://www.cites.org/eng/resources/ref/suspend.php).

¹²⁰ Karen Scott, "Non-Compliance Procedures and the Implementation of Commitments under Wildlife Law", in Bowman, Davies & Goodwin, n. 34, 414, 424.

¹²¹ Scott, n. 120, 414, 426–27.

¹²² Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Thirteenth to Fifteenth Periodic Reports of Suriname*, UN Doc. CERD/C/SUR/CO/13-15, 2015, para. 26.

¹²³ *Kaliña and Lokono*, n. 29, paras. 181, 193.

¹²⁴ CBD, arts. 8(j), 10, 14; *Kaliña and Lokono*, n. 29, paras. 173–74, 177–78, 181, 214, n. 247 (making reference to the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity); CBD Decision VII/12, 2004, Annex II; CBD's work programme on protected areas. See note 38 above.

¹²⁵ PCA, *Peter Allard v Barbados*, PCA Case no. 2012-06, Final Award, 27 June 2016, paras. 178, 190, 198, 230, 238, 244, www.italaw.com/sites/default/files/case-documents/italaw7594.pdf.

their sustainable development and biodiversity commitments, with civil society and expert participation.¹²⁶

<H2>4.3 Funding across Different International Treaties and Organizations

The Global Environment Facility (GEF) contributes to biodiversity financing to support the implementation of targets 15.a and b. The GEF Council is obliged to “act in conformity” with the policies, priorities, and eligibility criteria decided by the CBD’s COP when acting as its financial mechanism.¹²⁷ Consequently, the CBD’s COP is empowered to review the effectiveness of the GEF serving as the convention’s financial mechanism.¹²⁸ Policy alignment between the GEF and the CBD’s COP, however, has been a matter of contention.¹²⁹ For instance, before the entry into force of the Nagoya Protocol, the CBD parties raised concerns about the use of a GEF-run fund to support the private sector’s engagement in transactions on genetic resources. This system seemed to run counter to the CBD parties’ prioritization of support to governments in implementing the Nagoya Protocol through the development of national legislation and consultations with national stakeholders.¹³⁰ Consultations with national stakeholders were also necessary to ensure respect for the human rights of Indigenous peoples. Other issues identified with the GEF’s support of the conservation and sustainable use of terrestrial biodiversity are the difficulty in tracking biodiversity finance and shifts in finance from protected areas to sustainable use

¹²⁶ 2012 Agreement Establishing and Association between the European Union and Its Member States, on the One Hand, and Central America on the Other, art. 296(2); 2011 Free Trade Agreement between the European Union and Its Member States, of the One Part, and the Republic of Korea, on the Other Part, art. 13.14(2); Rok Žvelk, “Environmental Integration in EU Trade Policy: The Generalised System of Preferences, Trade Sustainability Impact Assessments and Free Trade Agreements”, in Elisa Morgera (ed.), *The External Environmental Policy of the European Union: EU and International Law Perspectives* (CUP, 2012), 174.

¹²⁷ 2010 Instrument for the Establishment of the Restructured Global Environment Facility as amended by Fourth Assembly of the GEF, paras. 15, 26. See Jacob Werksman, “Consolidating Governance of the Global Commons: Insights from the Global Environment Facility” (1996) 6(1) *Yearbook of International Environmental Law* 27, 60; Patricia Birnie, Alan Boyle & Catherine Redgwell, *International Law and the Environment*, 3rd ed. (OUP, 2009), 94.

¹²⁸ CBD, art. 21(3).

¹²⁹ CBD Decision III/8, 1997, para. 2.

¹³⁰ Intergovernmental Committee for the Nagoya Protocol, Recommendation 2/1, 2012, Annex II, para. 3, which is integrated in CBD Decision XI/5, 2012 (financial mechanism); “Summary of the Second Meeting of the Intergovernmental Committee for the Nagoya Protocol” (2012) 9(579) *Earth Negotiations Bulletin* 15, enb.iisd.org/events/2nd-meeting-intergovernmental-committee-nagoya-protocol-access-and-benefit-sharing-cbd-5.

activities.¹³¹ In addition, the CBD's COP has already adopted safeguards against negative impacts on human rights of biodiversity financing.¹³²

An often underestimated international institution that contributes to the realization of SDG 15 through private sector efforts is the International Finance Corporation (IFC),¹³³ which has translated international biodiversity and human rights obligations into standards for corporate behaviour as part of its Performance Standards for private sector clients.¹³⁴ On the basis of the Performance Standards, the IFC's compliance advisor/ombudsman (CAO) investigates specific instances as well as systemic problems and provides recommendations to the IFC.¹³⁵ For instance, in a 2019 compliance investigation, it underscored the IFC's shortcomings in ensuring the integration of biodiversity concerns in impact assessments, the consideration of high biodiversity value and nationally protected areas, as well as ecosystem services in the context of an ecotourism project.¹³⁶ Nevertheless, the CAO found that the IFC requested the retention of a biodiversity expert to design and manage the implementation of a biodiversity monitoring programme,¹³⁷ and this discovery led to biodiversity concerns being addressed during project implementation on the basis of additional biodiversity studies that the client was expected to analyse in the context of the project's areas of influence and in consultation with the affected stakeholders.¹³⁸

While the CAO itself has not yet addressed human rights in explicit terms in its mandate, it often addresses instances that involve both human rights and biodiversity issues and is seen as "an opportunity for the implementation of practical human rights outcomes" as a result of its mediation.¹³⁹ In effect, it may provide a distinctive approach compared to other international compliance mechanisms, as it focuses on creating the conditions for more collaborative interactions between companies and human rights holders, setting out steps for

¹³¹ Soledad Aguilar, "The International Finance for Biodiversity and the Global Environment Facility", in Morgera & Razzaque, n. 6, 477.

¹³² CBD Decision XII/3, 2014.

¹³³ See Priscilla Schwartz, "International Financial Institutions and Biodiversity Conservation", in Morgera & Razzaque, n. 6, 399; Morgera, n. 120, 129–34. On the International Finance Corporation (IFC), see also chapter 9 in this volume.

¹³⁴ IFC, *2012 Performance Standards*,

www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards.

¹³⁵ *Id.*, 1297.

¹³⁶ IFC Compliance Advisor/Ombudsman (CAO), *Annual Report (CAO, 2019)*, 18, cao-ar19.org/.

¹³⁷ CAO, *Compliance Investigation Report (IFC Investment in Enso Albania, Complaint 01)*, 25 June 2018, 15.

¹³⁸ *Id.*, 22–23.

¹³⁹ Adam McBeth, *International Economic Actors and Human Rights* (Routledge, 2010), 231.

establishing or strengthening dialogue.¹⁴⁰ This process has arguably allowed consideration of the connections between conflicts around projects and the broader historical issues within a certain country. It has also supported trust-building processes through scientific assessments that respond to questions co-identified by concerned communities and addressed by independent experts co-selected by communities through a competitive process, with a view to changing the “dynamics of long-term conflicts”.¹⁴¹ Once again, SDG 15 does not add to the institutional connections pursued under or in relation to the CBD.

<H1>5 Conclusions

The main challenge that SDG 15 poses for international law and international institutions is the effective and urgent implementation of existing obligations under international biodiversity law in the face of competing economic pressures. The complexity of the trade-offs in part lies in the misrepresentation/misunderstanding of competing socio-economic issues. Nature protection is traditionally seen as an alternative or an obstacle to economic and social development in the short term. But the growing understanding of the interdependencies of biodiversity and human rights reveals that decisions favouring nature protection bring about socio-economic and cultural benefits for everybody’s long-term well-being (notably in relation to the human right to healthy, food, and water) as well as short-term impacts on specific groups (notably, Indigenous peoples, women, and children).¹⁴² Even when biodiversity is seen as an engine for a green economy, the complexity of the trade-offs lies in the mainstream neoliberal approach to sustainable development that assumes compatibility between economic growth and environmental constraints.¹⁴³ This situation has indeed been a frequent critique of SDG 15 in the academic literature as a missed opportunity to prioritize the respect of planetary boundaries for the realization of all the other SDGs.¹⁴⁴ That said, hegemonic strategies in the fragmentation of international law,¹⁴⁵ and the resulting power

¹⁴⁰ See, e.g., CAO, *Assessment Report of the Complaint Regarding the Electron Investment S.A. Pando-Monte Lirio Hydroelectric Project, Ciriqi Province, Panama*, July 2010, 20–21, www.cao-ombudsman.org/cases/document-links/documents/Panama_AssessmentReport_ENG.pdf.

¹⁴¹ *Id.*, 29, 31; Morgera, n. 120, 260.

¹⁴² Morgera, n. 62.

¹⁴³ Sam Adelman, “The Sustainable Development Goals, Anthropocentrism and Neoliberalism”, in French & Kotzé, n. 10, 15.

¹⁴⁴ Louis J. Kotzé, “The Sustainable Development Goals: an Existential Critique alongside three New-Millennial Analytical Paradigms”, in French & Kotzé, n. 10, 41.

¹⁴⁵ Eyal Benvenisti & George Downs, *Between Fragmentation and Democracy: The Role of National and International Courts* (CUP, 2017).

imbalances embedded in international economic law,¹⁴⁶ represent a much more concrete obstacle to the respect of planetary boundaries and human rights than the framing of SDG 15 in and of itself.

A possible way forward is harnessing international human rights to systematically underpin the urgency of, and limits to, the exercise of state sovereignty in implementing relevant international biodiversity law, including in the context of climate, ocean, renewables, gender, and other SDG-related areas.¹⁴⁷ Human rights emphasize the need for the transparency, inclusivity, and justiciability¹⁴⁸ of national biodiversity efforts and of international cooperation.¹⁴⁹ At best, SDG 15 can add to international biodiversity law when read in the light of Agenda 2030's overarching approach to "leaving no-one behind," which arguably requires everyone concerned "to prioritize the most marginalized."¹⁵⁰ In other words, SDG 15 can serve to call attention to instances in which conservation measures or "the expansion of extractivist models" in the use of terrestrial biodiversity result in human rights violations.¹⁵¹

¹⁴⁶ See, e.g., Lorenzo Cotula, *Human Rights, Natural Resource and Investment Law in a Globalized World: Shades of Grey in the Shadow of the Law* (Routledge, 2012).

¹⁴⁷ Francesco Francioni, "Human Rights", in Morgera & Kulovesi, n. 6, 66.

¹⁴⁸ Morgera, n. 24.

¹⁴⁹ On the latter, see *UN Framework Principles*, n. 24, Principle 13 ("States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights"); Principle 16 ("States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development").

¹⁵⁰ Graham Long, "Underpinning Commitments of the Sustainable Development Goals: Indivisibility, Universality, Leaving No One Behind", in French & Kotzé, n. 10, 91, 103.

¹⁵¹ Lorenzo Cotula, "Between Hope and Critique: Human Rights, Social Justice and Re-Imagining International Law from the Bottom Up" (2020) 48 *Georgia Journal of International and Comparative Law* 473, 484, 521.