Jean-Frédéric Morin

Canada Research Chair in

International Political Economy

Université Laval, Quebec City, Canada

[www.chaire-epi.ulaval.ca/en](http://www.chaire-epi.ulaval.ca/en)

Provisions coded in International Environmental Agreements

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Trade contributes to environmental protection

* Includes statements that the protection of the environment and trade are mutually supportive, or that trade agreements and environmental agreements are mutually supportive.
* Includes acknowledgment that trade and environment already affect one another.
* Excludes acknowledgment that trade and environment already affect one another, if it is unclear if the “affect” is positive or negative.
* Excludes statements that the protection of the environment should constitute a central component of growth, trade or development, as this is a normative claim rather than the expression of a causal belief.

2013 Minamata Convention, preamble: “Recognizing that this Convention and other international agreements in the field of the environment and trade are mutually supportive”

2006 Environmental Cooperation Agreement Between the United States and Peru, preamble : “EMPHASIZING the importance of building capacity for environmental stewardship in concert with the strengthening of trade and investment relations as reflected in the United States-Peru Trade Promotion Agreement;”

Recognition of a development gap or of different capabilities

* Includes provisions recognizing the development gap or developing countries “special needs” or “special requirements”.
* Includes provisions acknowledging that the Parties will give special attention to the needs or the initiatives proposed by developing or least developed countries.
* The recognition of a development gap in the management of an activity is not sufficient. Development refers to the development of the country. It does not refer to the way a country manages certain activities, except if it is strictly stated that its poor management of an activity is due to its lagging development, including the fact that the country is a developing one, or has limited capabilities.
* Provisions stating that the Parties shall implement obligations in a manner compatible with their capabilities or resources without explicitly stating that there is a difference or a gap between these capacities or resources between countries are not sufficient.
* The affirmation that an action is done to contribute to the well-being of people in developing countries is not sufficient, except if it is recognized that the well-being of these people is limited due to lagging development or limited capabilities of their home countries.
* For specific or general issues.
* Excludes measures related to assistance.

1980 Protocol for the Protection of the Mediterranean Sea Against Pollution from Land Based Sources, preamble: “Recognizing the difference in levels of development between the coastal States, and taking account of the economic and social imperatives of the developing countries.”

1992 UNFCCC, preamble: “[…] Taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty.”

Polluter pays principle

* Includes “user pays” principle when it concerns the use of natural resources.
* Not limited to the terms “polluter pays”.
* Refers to the principle according to which the polluter should bear the cost of pollution. In other words, environmental externalities should be internalized.

1994 Energy Charter treaty : “The Contracting Parties agree that the polluter in the Areas of Contracting Parties, should, in principle, bear the cost of pollution, including transboundary pollution, with due regard to the public interest and without distorting Investment in the Energy Cycle or international trade.”

2013 Beneguela Current Convention, art 4: “(1) The parties shall be guided by the following principles: [...] (e) the polluter pays principle;”

Cost-benefit analysis

* Includes taking into account costs and benefits when designing measures.
* Includes “economic effectiveness”, “cost effectiveness”, “economic efficiency”. As an exception, costs and benefits do not need to be explicitly about trade, but should at least include some economic dimension such as economic development or economic growth.
* Insufficient if mere mention of “economic feasibility”, “economic viability”, “economic sustainability”.

1998 Protocol on industrial policy amending the Treaty establishing the Caribbean Community, art. XI: “[...] 2. In formulating measures in relation to the environment, the Community shall take account of: [...] (c) the potential costs and benefits of action or inaction;”

1992 United Nations Framework Convention On Climate Change, art 3: “[...] policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.”

Trade should contribute to environmental protection

* Includes provisions that state the need to improve interaction between trade and environment, that commercial and environmental interests should be in synergy or should be mutually supportive.
* Includes provisions that state that improved interactions between trade and environment policies is an objective of the agreement.
* Insufficient if only harmony between environment and development.
* Insufficient if mere mention of “sustainable use of resources”.

2000 Cartagena Protocol, preamble: “Recognizing that trade and environment agreements should be mutually supportive with a view to achieving sustainable development.”

1998 Rotterdam Convention, art 1: “The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect […] the environment.”

Environmental measures should not hamper trade

* Includes provisions affirming that environmental protection should not be a mean to skirt trade obligations or to impose unjustified strict trade measures.
* Includes avoiding trade distortions.

1929 International Convention for the Protection of Plants, art 5: “The importation of plants and parts of plants which have to be accompanied by a health certificate or subjected to sanitary inspection shall be effected only through the Customs offices […] account being taken of the necessity of not hampering international trade.”

1992 United Nations Framework Convention On Climate Change, art 3: “Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.”

Inappropriate to relax environmental measures to encourage trade or investment

* Includes provisions that compel the Parties not to relax, waive or derogate from environmental law to attract investment or boost trade.

2001 Canada and Costa Rica, preamble: “Recognizing that it is inappropriate to relax environmental laws in order to encourage trade.”

2009 New Zealand-Malaysia Agreement on Environmental Cooperation, art 2: “Neither Party shall seek to encourage or gain trade or investment advantage by weakening or failing to enforce or administer its environment laws, regulations, policies and practices in a manner affecting trade between the Parties.”

Precautionary principle

* Not limited to the terms “precautionary principle” as it might not be used. However, the mention of the “precautionary principle” is sufficient.
* Refers to a duty or the possibility to prevent harm by taking action when there is a lack of scientific certainty. In other words, insufficient scientific evidence shall not be used as a reason for postponing or rejecting measures.
* Includes references to principle 15 of the Rio Declaration.
* Calling Parties to take account of scientific information is not sufficient.
* To be distinguished from the prevention principle (which is about risks rather than uncertainty).
* Does not need to be explicitly about health.

2012 Protocol for the Protection of the Caspian Sea against Pollution from Land-Based Sources and Activities, art. 2: “The Contracting Parties shall, in particular: (a) Apply the precautionary principle, by virtue of which where there are threats of serious or irreversible damage […] lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent such damage.”

1987 Montreal Protocol On Substances That Deplete The Ozone Layer, preamble: “DETERMINED to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it [...].”

International prevention principle

* The word “prevention” is neither necessary nor sufficient to identify this principle.
* Refers to the responsibility (best efforts) of the state to ensure that activities within its jurisdiction or control do not cause damage in other states or areas beyond the limit of its national jurisdiction.
* The risk in other states should be mentioned.
* Does not need to be about health issues.
* As opposed to the precautionary principle (which is about uncertainty, rather than risks).

1979 Convention on Long Range Transboundary Air Pollution, preamble: “Considering the pertinent provisions of the Declaration of the UN Conference on the Human Environment [...] which expresses the common conviction that States have [...] the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,”

2002 Framework Agreement on the Sava River Basin, art 9: “The Parties shall, in utilizing waters of the Sava River Basin in their territories, cooperate and take all appropriate measures to prevent causing significant harm to other Party (ies).”

Sovereignty over resources

* Resources include natural, biological and genetic resources as well as genetically modified resources. Excludes human and commercial resources.
* Can be direct or indirect, for instance the sovereign right to exploit natural resources.
* Includes references to GA resolution 1803 of 1962 (“Permanent sovereignty over natural resources”), A/RES/1803(xvii).
* Can take the form of a unilateral declaration.
* Excludes general statement about the autonomy or the regulatory sovereignty on a specific field. The sovereignty must be expressed over resources.
* Excludes the definition of a state’s territory.

1979 Agreement Senegal-EEC on fishing off the coast of Senegal, preamble: “Affirming that the exercise by coastal States of their sovereign rights in the waters within their jurisdiction for the purposes of exploring, exploiting, conserving and managing the living resources thereof must be in accordance with the principles of international law”

2006 Framework Convention on Environmental Protection for Sustainable Development in Central Asia, art 4: “States have the sovereign right to exploit their own resources pursuant to their policies on the environment.”

Common but differentiated responsibilities principle

* Not necessarily with these exact words.
* Could be on a specific issue, such as climate change.
* Includes two necessary and joint elements. The first concerns the common responsibility of states for the protection of the environment. The second concerns the need to take into account the different circumstances, such as state’s contribution to the problem or its ability to prevent, reduce and control the threat.
* Simply acknowledging a development gap between the Parties is not sufficient.
* A mention of “taking into account national circumstances” is not sufficient.
* Excludes simple sharing of responsibilities or distribution of tasks between countries of similar capabilities.

1992 UNFCCC, preamble: “Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries […], in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions”.

2009 Protocol on the Protection of the Marine Environment of the Black Sea from Land-Based Sources and Activities, art. 18: “The Contracting Parties, taking into account their capabilities, shall as far as possible ensure that adequate financial resources are available for the formulation and implementation of programmes, projects and measures necessary to achieve the objectives of this Protocol.”

Interaction between gender and the environment

* Includes any statement linking gender or women to environmental protection as interacting issues.
* For this norm, a reference to a pollutant or natural resources (such as forestry, fisheries, or genetic resources) is considered sufficient to refer implicitly to environmental issues.
* Can be a causal or a normative claim.
* Excludes coherence between international institutions.

2013 Minamata Convention on Mercury, preamble: “Aware of the health concerns, especially in developing countries, resulting from exposure to mercury of vulnerable populations, especially women, children, and, through them, future generations.”

1992 Convention On Biological Diversity, preamble: “Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,”

Interaction between indigenous community and the environment

* Includes any statement linking indigenous communities (in general or specific ones) or traditional knowledge to environmental issues, pollutant or natural resources, including fishing and hunting.
* Can be a causal or a normative claim.
* “Local communities” is not considered sufficient to refer to indigenous communities.
* Excludes coherence between international treaties.
* Excludes if “traditional” only means “earlier” and not some sustained practices repeated by a community over several generations.

2010 Nagoya Protocol, art. 5(5): “Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge.”

1957 Interim convention on conservation of North Pacific fur seals, art. VII: “The provisions of this Convention shall not apply to Indians, Ainos, Aleuts, or Eskimos dwelling on the coast of the waters mentioned in Article III, who carry on pelagic sealing in canoes […].”

Prohibition to import if export not allowed by exporter

* Includes the restriction of importation if the exportation is banned in the exporting state.

1975 Agreement between Brazil and Peru for the conservation of the flora and fauna, art. 5: “The two Governments […] undertake to curb the import into or transit through their respective territories of natural products, originating in either Party, the export of which is banned in the territory of that Party.”

1994 Agreement between the Federal Republic of Germany and the Government of the Republic of Poland concerning cooperation of the field of environmental protection, art 8: “The Contracting Parties shall vigorously oppose the export and import of waste and environmentally hazardous materials to the extent that it is contrary to the law of one of the Contracting Parties.”

Prohibition to export if import not allowed by importers

* Includes the restriction of exportation if the importation is banned in the importing state.

1993 NAAEC, art. 2(3): “Each Party shall consider prohibiting the export to the territories of the other Parties of a pesticide or toxic substance whose use is prohibited within the Party's territory.”

1978 Protocol On The Control Of Marine Transboundary Movements And Disposal Of Hazardous Wastes To The Kuwait Regional Convention For Cooperation On The Protection Of The Marine Environment From Pollution, art 4: “The Contracting States shall prohibit or shall not permit the export of hazardous wastes and other wastes to those Contracting States which have prohibited the import of such wastes.”

Trade in environmental goods or services

* Relates to goods or services that are intended to be environmental. Environmental goods and services can include renewable energy, energy-efficient goods and services, green goods and services. However, activities such as hydroelectricity and fisheries, even though they relate to the environment and can, in certain circumstances, be considered as “environmental” alternative to other production techniques or methods, are not intrinsically or intendedly environmental, and are therefore excluded.
* Concerns both international trade and domestic transactions.
* Includes requirement or wishes for Parties to cooperate in the exploitation, trade and development of environmental goods and services, for instance:
  + Harmonization of standards.
  + Cooperation under any aspect of the trade of an environmental good or service, including promotion and marketing.
  + Distribution or allocation of a transboundary or commonly managed environmental good.
  + Capacity building in the field of targeted environmental good or service.
* Includes requirement or wishes for Parties to facilitate the exchange of goods or services that aim to protect the environment, for instance:
  + Commercial exchange of environmental goods or services, including best available technologies.
  + Incentives for a better market penetration by environmental goods or services, including best available technologies.
  + Provisions eliminating or removing custom barriers in order to facilitate the transit of environmental goods and services.
* Includes the protection of traditional activities and trade in environmental goods and services.
* Includes an exemption to other dispositions of an agreement, where the good or service concerned by the exemption is intended to protect the environment.
* Includes mentions that trade in environmental goods and services shall contribute to the protection of the environment or to sustainable development.
* Includes considering other fields and creating synergies between an environmental good or service and other environmental goods, services, or practices.
* Excludes the promotion of substitute, label, certification, production method, or technology.

1994 Protocol for mountain agriculture, art. 11(1): “Les Parties contractantes s'efforcent de créer des conditions favorables à la commercialisation des produits de l'agriculture de montagne [...]”.

2006 International Tropical Timber Agreement, art 1: “Promoting and supporting research and development with a view to improving forest management and efficiency of wood utilization and the competitiveness of wood products relative to other materials [...]”.

Use of voluntary label, standards, and certification for marketing purpose

* Includes private voluntary measures, notably corporate social responsibility (stewardship), ISO standards, industrial guidelines, certifications, performance goals, codes of conduct, etc.
* The standards or processes can be outlined by the Parties, the government, the authorities, or by private operators.

2013 Minamata Convention, annex C, art. 2: “Each Party may include in its national action plan additional strategies to achieve its objectives, including the use or introduction of standards for mercury-free artisanal and small-scale gold mining and market-based mechanisms or marketing tools.”

2002 Protocol on forestry (Southern African Development Community, art. 18(1)b): “[…] the development and promotion of specific voluntary certification standards and guidelines.”

Emissions trading schemes

* Includes provisions related to cap and trade mechanism and carbon markets.
* Includes international, regional or national mechanisms.

1997 Kyoto Protocol, art. 17: “The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3. [...]”

1987 Montreal Protocol On Substances That Deplete The Ozone Layer, art. 2: “Any Party whose calculated level of production in 1986 of the controlled substances in Group I of Annex A was less than twenty-five kilotonnes may, [...], transfer to or receive from any other Party [...] provided that the total combined calculated levels of production of the Parties concerned does not exceed the production limits set out in this Article.”

Benefit sharing schemes

* Includes provisions that compel the user of a resource (a Party or a private actor) to share the commercial benefits (monetary or non-monetary) of this resource with the original providers of said resource. The terms and conditions of this sharing should be guided by principles such as fairness, justice, or equity, irrespective of normal market considerations. However, the details can be agreed contractually between the user and the provider.
* Includes norms that specifically refer to an already established mechanism or call for the creation of a mechanism.
* Includes norms that require Parties to adopt dispositions relating to benefit sharing in their national legislations.
* The sharing can take place between Parties, or between Parties and local communities.
* The provision does not have to use the expression “benefit sharing” or to be explicit as to how the sharing is to take place.
* Excludes costs sharing.
* Excludes the sharing of the resource itself.

1992 Convention on Biological Diversity, art. 15(7): “Each Contracting Party shall take legislative, administrative or policy measures, […] with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources.”

2001 International Treaty on Plant Genetic Resources for Food and Agriculture, art. 13(2): “The Contracting Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: […] the sharing of the benefits arising from commercialization.”

Commitment to enforce domestic environmental law

* Refers to the general commitment of states to enforce their environmental measures. The norm must cover the enforcement of domestic environmental law beyond the agreement’s specific obligations (norms that are only about the domestic enforcement of obligations provided for in the agreement are excluded).
* Enforcement refers to the identification and sanction of persons violating environmental measures.
* Failure to enforce includes derogating to or waiving environmental measures.
* Includes norms that compel Parties to cooperate while aiming at the enforcement of their respective environmental protection laws.
* Excludes norms about the implementation of international instruments or treaties.
* Affirmations of environmental obligations under domestic law and promoting compliance are not sufficient for enforcement.

1997 Agreement on Environmental Cooperation Between the Government of Canada and the Government of the Republic of Chile, art. 5(1): “With the aim of achieving high levels of environmental protection and compliance with its environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate government action, […]”.

2006 Protocol on Environment and Natural Resources Management to the Treaty for the Establishment of the East African Community, art 12(3): The Partner States shall harmonise and enforce national policies, laws and programmes to promote sustainable wildlife management.

Subsidies are limited

* Includes prohibition to provide subsidies for sectors or activities, notably because they are considered as a nuisance for the environment.
* Includes the reduction of a subsidy for sectors or activities because they are considered as a nuisance for the environment.

1987 Montreal Protocol on Substances That Deplete the Ozone Layer, art. 4(6): “Each Party shall refrain from providing new subsidies, [...] for the export to States not party to this Protocol of products, equipment, plants or technology that would facilitate the production of controlled substances.”

1999 Protocol To Abate Acidification, Eutrophication And Ground-Level Ozone To The Convention On Long-Range Transboundary Air Pollution, art 6: “[...] the progressive reduction or phasing-out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all sectors [...]”

Joint scientific cooperation

* Includes commitment to establish joint monitoring program, to conduct inspection, to collect data.
* The action undertaken must be joint.
* Includes cooperative or joint studies or investigations conducted by the Parties or their national entities.
* Includes mutually agreed programs.
* Includes jointly organized activities organized or attended by experts, scientists, researchers or scholars.
* Includes scientific activities conducted under the condition of reciprocity.
* Includes mentions of technical cooperation.
* Insufficient if it only includes the mere exchange of scientific information.
* Excluded if creation of a scientific organization.
* Excluded if just in the context of joint impact assessment.
* Excluded if does not involve expert or not done for scientific purposes.
* Excludes cooperation through an international organization or set up by such an organization.
* Excludes scientific research as a function or responsibility of a commission or committee.
* Excludes the promotion of research.

1979 Convention On The Conservation Of Migratory Species Of Wild Animals, art. 2: “[...] in particular, the Parties: a) should promote, co-operate in and support research relating to migratory species [...]”

2013 Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, art. 4:1: “[...] the parties undertake to organise, on a regular basis and when needed, scientific meetings to discuss scientific questions raised by the Joint [...]”

Exchange of scientific information

* The collect and exchange of information must be made between the Parties or via a shared institution.
* Scientific information includes for example information on technologies, biology, sanitary or veterinary, exchange of training for experts, statistics on fisheries, techniques, and knowledge.
* The exchange can take various forms, including consultation, policy dialogues, study tours, visits, exchange of views, workshops for officials or civil servants (not scientists), or any other jointly organized activity.
* Includes commitment to enhance communication channel and sharing of experiences.
* The information must be of a scientific nature and can be an object.
* Includes any specific means to exchange environmental information or knowledge as long as that information is linked to science or research.
* Includes exchange or visits of experts, scientists, researchers or scholars.
* Includes exchange of information between experts, scientists, researchers or scholars.
* Includes exchange of scientific/technical journals/literature or exchange of information about those journals/literature.
* The notification of a disease outbreak is not a scientific information.

1959 Antarctic treaty, art 3: “a. information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy of and efficiency of operations [...]”

1977Agreement between the Comision Federal de Electricidad of the United Mexican States and the USA Energy Research and Development administration, art 1: “[...] (3) Visits and exchanges of scientists, technicians or other experts, and the conduct of workshops as mutually agreed upon “

Other exchange of information between Parties

* Information can be economical or legal, among other things but scientific information is excluded.
* The collect and exchange of information must be made between the Parties or via a shared institution.
* The exchange can take various forms, including consultation, policy dialogues, study tours, visits, exchange of views, workshops for officials or civil servants (not scientists), or any other jointly organized activity.
* Includes commitment to enhance communication channel and sharing of experiences.
* Includes provision of information in case of natural catastrophe.
* Includes communications to the depositary if it subsequently notifies the other Parties to the agreement.
* Includes the establishment of a network of information or data sharing between the Parties.
* Excludes the establishment of a contact point/national coordinator and communication about the contact point/national coordinator.
* Excludes passive transparency or disclosure, such as commitment to “make information available to all Parties” or “maintain records”. There must be a concrete interaction between Parties, such as an “exchange”, a “request” or a “notification”.
* Excludes requests for consultation under a dispute settlement mechanism.
* Excludes measures related to communication for the specific transport or trade.
* Excludes provisions stating that the agreement enters into force after the Parties exchanged notifications of the completion of internal/constitutional procedures.
* Excludes provisions instructing states to send ratifications / accessions / amendments / reservations to the depositary, whether it is an international organization or a state.
* Excludes procedures/notifications related to signature, ratification, accession, amendments, reservations, protocols, annexes, appendices, withdrawal / denunciation / termination of the agreement, and/or other treaty-law-related procedural notifications (e.g. application of the agreement to colonies).
* Excludes the communication / reporting of information to an international organization, except if the information is communicated to other Parties through the organization.

2013 Minamata Convention, art. 17(1): “Each Party shall facilitate the exchange of: […] technical, economic and legal information concerning mercury and mercury compounds, including toxicological, ecotoxicological and safety information.”

1989 Basel Convention, art. 13(1): “The Parties shall […] ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those states are immediately informed.”

Establishment of contact point

* Contact point or focal point nominated by a Party for communication with the other Party or third parties, including request for consultations, notification, and request for information.
* Includes identification of specific national coordinator/entities/bodies to implement the agreement.
* Includes the nomination of a national secretariat for the administration of the agreement.
* Includes communication between Parties (or with a joint institution) about establishment/modification of contact point / national coordinators.
* Includes technical modalities of contact / communication with/between the contact point / national coordinators.
* There can be different contact point / national coordinators for different sections / tasks / aspects of the agreement.
* Excludes substantive communication / exchange of information between the contact persons / national coordinators.
* Excludes meetings of contact persons / national coordinators.
* Excludes formal identification of representatives/plenipotentiaries of the Parties for the conclusion / signature of the agreement itself (e.g. ambassadors, foreign ministers, heads of states).
* Excludes contact points specifically intended for access to information by the (national) public, not for communication / exchange with other Parties.
* Excludes national bodies / committees intended for communication / consultation with national stakeholders (public, private sectors, subnational entities), and not for implementation of the agreement and/or communication with other Parties.
* Excludes the visit of officials of one Party to the territory of the other Party.

1996 Agreement between the Government of the French Republic and the Government of the Russian Federation on cooperation in environmental protection, art.5: “The authorities responsible for organizing and coordinating work for the implementation of this Agreement shall be: For the Government of the French Republic, the Ministry of the Environment; For the Government of the Russian Federation, the Ministry for the Protection of the Environment and Natural Resources.”

1989 Basel Convention, art.5 (1): “To facilitate the implementation of this Convention, the Parties shall: Designate or establish one or more competent authorities and one focal point. […]”

Harmonization of domestic measures

* Includes commitment to adopt common guidelines, standardized methods, to harmonize domestic measures, be it policies, standards, procedures, joint measures, etc.
* Includes the adoption of new, common or uniform regulations.
* Can be general or focused on a specific issue.
* Includes avoidance of exceptional national standards.
* Unilateral harmonization with one Party’s standards is considered as harmonization.
* The implementation of international standards is not sufficient for harmonization.
* Cooperation or coordination is not sufficient to imply harmonization.

2001 Convention of the African Energy Commission, art 3: “For the purpose of this Convention, the Member States solemnly affirm and declare their adherence to the following principles: (h) Harmonization of standards and procedures in the energy sector”.

1964 Statute relating to the development of the Chad Basin, art.7: “The Member States shall draw up common rules to facilitate as far as possible navigation and transport on the Lake and the navigable waterways of the Basin and to ensure the security and control thereof.”

Impact assessment of the agreement

* Commitment to assess the environmental impact of the agreement.
* Presumed to be done jointly, except otherwise stated in which case it must be excluded.
* The assessment could be done by a consultant or an expert mandated by the Party.
* Includes communications with the other Party and the public on the environmental impact assessment.
* Includes ex ante and ex post assessments.
* Excludes assessments if only on environmental degradation or environmental state in general. The assessment must look specifically at the impact of the agreement.
* Excludes the monitoring of the implementation. This is not assessing the impact of the agreement.
* Simply receiving comments from the public on the impacts of the agreement is not considered sufficient to be an impact assessment study.
* Excludes impact assessment of future, unspecified projects, other than the agreement itself.
* Excludes impact assessment of other agreements or future/possible agreements.

1995 Agreement for the implementation of 1982 UNCLOS relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, art. 36 : “[…] 1. Four years after the date of entry into force of this Agreement, the UN-SG shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of [...] fish stocks”

1980 Protocol For The Protection Of The Mediterranean Sea Against Pollution From Land-Based Sources, art 14: “[...] 2. The functions of the meetings of the Parties to this Protocol shall be, inter alia: (a) To keep under review the implementation of the Protocol and to consider the efficacy of the measures adopted […]”

Negotiation of other agreements or through other international organizations

* Commitment to cooperate in the context of bilateral, regional or multilateral negotiations, including cooperation for negotiations taking place at the WTO Trade and Environment committee.
* Includes commitment to collaborate to develop international law.
* “Cooperation in other bilateral, regional and multilateral fora” is considered as referencing to negotiation. However, “cooperating with third Parties” is not sufficient.
* Includes cooperation in, within or through international organizations.
* Merely communicating through an international organization does not mean negotiation/cooperation.
* Excludes the negotiation of amendments, protocols or annexes to the given agreement.
* Excludes additional/separate/subsidiary agreements/protocols/regulations whose purpose is the implementation of certain provisions of the main agreement.
* Excludes when the Parties call for future negotiations about the implementation of the agreement already signed.
* Excludes negotiation of joint/common/harmonized national regulations.
* Excludes negotiations between companies/private bodies of the Parties, or negotiations between the state Parties and foreign companies/private bodies.
* Excludes negotiations for (or in the process of) dispute settlement.
* Excludes negotiations for seat/headquarters agreement (“accord de siège”) with the organization created.

2000 Cartagena Protocol on Biosafety to the Convention On Biological Diversity, art 14: “1. Parties may enter into bilateral, regional and multilateral agreements and arrangements regarding intentional transboundary movements of living modified organisms [...]”

1977 Agreement between the government of Denmark and the national executive of the Faeroe Islands on the one hand and the government of the USSR on the other hand concerning mutual fishery relations between the Faeroe, art 6: “The Contracting Parties shall co-operate within the competent international organizations to ensure proper management and conservation of the living resources of the sea [...]”

Participation of the public in the implementation of the agreement

* The participation of the public should be related to the implementation of the agreement.
* Excludes the promotion of cooperation between the public and governmental bodies or the private sector.
* Includes the capacity of the public to provide comments on the implementation of the agreement. Means to provide comments include dialogues, exchange of view, mechanisms for discussion, internet consultations, workshops, commitments to respond to request, designation of a contact point to receive comments forum the public, etc.
* Includes cooperation with NGOs for the implementation of the agreement.
* The public can be defined broadly (such as citizens or local stakeholders) or restrictively (ex: a selected group of domestic stakeholders that sit on an advisory committee), as long as they are non-state actors.
* Excludes subnational public authority (cities, regions, provinces).
* Excluded if concerns solely business actors.
* Comments “on any activities undertaken pursuant to the agreement” or “any matters related to the agreement” is considered to include “implementation”.
* Informing the public about the implementation of the agreement is not sufficient.
* Excludes norms strictly related to the participation of the public in the adoption of domestic measures or in the enforcement of these measures. It should be linked to the agreement.
* Excludes advisory committees.
* Involvement (or exchange) of experts or specialists is not sufficient for public participation. Neither is the training of scientists.
* Mention of “stakeholders” and “public organizations/agencies” is not sufficient for public participation.

1998 Protocol for the implementation of the alpine convention of 1991 in the field of energy, art. 19: “[…] 2. Non-governmental organisations active in this field may be consulted.”

2006 Environmental Cooperation Agreement Between the United States and Peru, art. IV: “[...] The Commission shall seek and consider, as appropriate, input from relevant local, regional or international organizations regarding how best to ensure that it is accurately monitoring the progress of cooperative activities.”

Commitment to communicate with the public on the implementation

* The communication can come from the Parties or their international institutions.
* The communication should be about the implementation of the agreement.
* Includes publication of information, public registries.
* Includes commitment to make open sessions of international organization.
* Includes commitment to communicate on cooperative activities undertaken under the agreement, to communicate the decisions or recommendations of joint institutions, to communicate communications received from the public.
* Excludes measures on product labelling, communication to importers, etc.

1997 Canada-Chile Agreement on environmental cooperation, art 4: “1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them. [...]”

1978 Revised Int’l Convention on the protection of plants, art 30(1)(c): “Each member State [...] shall [...] ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.”

Education or public awareness

* Refers to Parties’ efforts for the education or public awareness on matters related to the environment, including on environmental degradation and environmental law.
* Can be about the environment in general or about specific matters covered by the agreement.
* Does not include specialized or scientific training.
* Does not include general communication with the public about the agreement.

1979 Convention on the conservation of European wildlife natural habitats, art 3(3): “3. Each Contracting Party shall promote education and disseminate general information on the need to conserve species of wild flora and fauna and their habitats.”

1987 Montreal Protocol On Substances That Deplete The Ozone Layer, art 8: “[...] 2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of the emissions of controlled substances and other substances that deplete the ozone layer.”

Technical assistance, training or capacity-building

* Refers to any unidirectional transfers of expertise, know-how, or knowledge from one country to another or its nationals, including unidirectional advices and trainings on scientific, administrative, diplomatic matter, etc.
* Includes unspecified “support” from one country to another (assumed to be capacity building rather than financial support).
* Includes technical assistance to non-state actors or from non-state actors but excludes the request for assistance made by an international organization or the assistance between international organizations.
* Includes international assistance.
* Includes mention of the necessity of technical assistance.
* Includes the promotion of training or assistance through international organizations.
* Includes the development of human resources through training. The training can be the opening of places for nationals of a Party in the schools of another Party or the awarding of study or training grants to theses nationals.
* Includes the determination by an international organization of the level of assistance required by the Parties.
* Includes funding sources for capacity building but the management of the assistance is not included.
* Excludes cooperation between the Parties for research.
* As opposed to technology transfer.
* Excludes norms on assistance in case of natural disaster.

1994 Energy Charter Treaty, art 6(3): “Contracting Parties with experience in applying competition rules shall give full consideration to providing, upon request and within available resources, technical assistance on the development and implementation of competition rules to other Contracting Parties.”

1979 Convention for the conservation and management of the vicuna, art 7: “The Signatory Governments agree to provide to each other technical assistance for management and repopulation of the vicuna, including the training of personnel, as well as dissemination and extension activities aimed at the conservation and management of the species.”

Technology transfer

* Includes provisions dealing with the promotion of technology transfer.
* Includes the obligation to provide and facilitate access to technology.
* Includes specific norms about technology transfer for developing countries.
* Includes the transfer of materials.
* Includes the transfer of technology from an international organization to its members.

1994 Energy Charter Treaty, art. 8.1: “The Contracting Parties agree to promote access to and transfer of energy technology on a commercial and non-discriminatory basis to assist effective trade in Energy Materials and Products and Investment and to implement the objectives of the Charter”.

2010 Nagoya Protocol, art. 18(bis): “The Parties undertake to promote and encourage access to technology by, and transfer of technology to, developing country Parties […] in order to enable the development and strengthening of a sound and viable technological and scientific base for the attainment of the objectives of the Convention and this Protocol.”

Financial assistance

* Refers to financial aid, guaranties and loans to a governmental or a non-governmental actor of another country, usually a developing country (Party to the agreement or not), as well as funding machining. The financial help can be provided from a Party to another through an international organization.
* Includes financial help from developed countries Parties to developing countries Parties to assist in the implementation of the agreement.
* Includes norms about facilitation of financial help, notably for developing Parties.
* Includes financial assistance for specific projects.
* Includes grants, preferential loans or any other financial means to another Party or an individual.
* Includes funding provided by a joint institution.
* Includes economic assistance.
* Excludes funding of non-state actors or asked by non-state actors for the Parties.
* Excludes technical assistance and technology transfer.
* Excludes norms regarding the funding of joint institutions.
* Excludes financial compensation.
* Excludes norms on the financing of cooperative research.
* Excludes monetary enforcement mechanism for failure to enforce.
* Excludes the implementation of a Fund.

1987 Montreal Protocol, art 5(3): “The Parties undertake to facilitate bilaterally or multilaterally the provision of subsidies, aid, credits, guarantees or insurance programmes to Parties that are developing countries for the use of alternative technology and for substitute products.”

2001 Stockholm convention, art 13: “[…] 2. The developed country Parties shall provide new and additional financial resources to enable developing country Parties and Parties with economies in transition to meet the agreed full incremental costs of implementing measures which fulfill their obligations under this Convention […]”

Emergency assistance in case of natural disaster

* Includes all type of assistance for disaster preparedness. The assistance can be given through an international organization.
* Includes the cooperation of the Parties in case of natural disaster. As an exception, does not need to be unidirectional.
* Includes assistance from an international organization in cooperation with the Parties.
* Includes funding provided to a Party in case of natural disaster.
* Includes funding provided to third countries in case of natural disaster.
* Includes the creation of a fund for assistance in emergency situations.
* Not necessarily from a developed country to a developing country.
* Excludes joint activities related to prevention or management of natural disaster or preparedness to these disasters.

1961 Convention On The Protection Of Border Forests Against Fire, art X: “In the event of a fire in the area referred to in this Agreement, the forestry authorities of the country in which it occurs shall notify the authorities of the other country, which shall take the appropriate steps to co-operate in extinguishing it.”

2000 Protocol On Preparedness, Response And Cooperation To Pollution Incidents By Hazardous And Noxious Substances, art 5: “1. Parties agree that, subject to their capabilities and the availability of relevant resources, they will co-operate and provide advisory services, technical support and equipment for the purpose of responding to a pollution incident [...].”

Establishment of an international secretariat

* A secretariat has a permanent nature, and mainly administrative responsibilities.
* A secretariat can take various forms, including an agency or an organization. It might not be called a “secretariat”.
* A secretariat is a permanent organization with its own budget, its own personnel, its own headquarters.
* Includes dispositions related to the creation of a new international secretariat.
* Includes the designation of an already existing body to act as the secretariat or the establishment of a secretariat in an existing international institution.
* Includes all information on the composition, budget, function, mandates, obligations, locations, organizations, structure and competence.

1952 African Migratory Locust Convention, art IV : “(1) The Council shall have a Secretariat which shall consist of a Secretary-General and such technical and clerical staff as may be required for the working of the Council.”

1974 Convention On The Protection Of The Marine Environment Of The Baltic Sea Area, art 24: “5. The Executive Secretary shall be the chief administrative official of the Commission and shall perform the functions that are necessary for the administration of the present Convention, the work of the Commission and other tasks entrusted to the Executive Secretary by the Commission and its Rules of Procedure.”

Intergovernmental body

* An intergovernmental body punctually brings together representatives of governments/administrations/Parties. They could be cabinet level members, representatives, designees, officials, contact points or civil servants.
* The body can take various form, including an international commission, an assembly, a conference of the Parties, or a committee. It might not even have a name.
* Excludes the mere periodic consultation of Parties, if no specific institution (with functions, powers or mandate) is created.
* Includes dispositions related to the creation of a new intergovernmental body.
* Must include all members states. If it does not require representatives from all member states, it is excluded.
* Includes holding of ordinary and special meetings if functions, powers, locations, periodicity or mandate is established. The mere mention of ordinary meetings is not sufficient.
* Includes the designation of an already existing intergovernmental body.
* Includes precisions on the form, structure, and the functions of the intergovernmental body and the subsidiary body.
* Excludes the creation of a mechanism for compliance, a commission or an expert committee for dispute settlement, arbitration or mediation.

1996 Treaty between India and the Bangladesh on sharing of the Ganges waters at Farakka, art IV: “A Committee consisting of representatives nominated by the two Governments in equal numbers (hereinafter called the Joint Committee) shall be constituted following the signing of this Treaty.”

1958 Agreement concerning water-economy questions between the government of the Federal people’s Republic of Yugoslavia and the Government of the people’s Republic of Bulgaria, Statute of the Yugoslav-Bulgarian Water-Economy Commission, art 1 : “The functions and terms of reference of the Commission shall comprise all matters placed within its competence by the Agreement concerning water-economy questions [...]”

Advisory and stakeholder committees

* At least some members of these committees are not state representatives, even if they can be designated by states.
* Includes technical and scientific committees, and stakeholders’ committees.
* The committee should clearly be international, not national.
* Stakeholders can include NGOs, academics, scientists, or other non-state actors or member of the public, including members of domestic advisory groups or stakeholder forums.
* Can be limited or not in their scope.
* Includes dispositions related to the creation of a new advisory and stakeholder committee.
* Includes the designation of an already existing advisory or stakeholder committee.
* Includes precisions on the form, structure, and the functions of the advisory and stakeholder committee.
* Excludes the creation of a mechanism for compliance, be it a commission or an expert committee for dispute settlement, arbitration or mediation.

1996 Agreement on the conservation and development of fish resources in the border stretches of the Parana and Paraguay rivers, art IX : “The Coordinating Committee shall be assisted by an Advisory Council composed of representatives elected by the Committee with institutional, technical and scientific expertise in the area of fishing [...]”

1978 Treaty between Australia and the independent State of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as torres strait, and related matters, art 19: “2. The functions of the Advisory Council shall be - (a) to seek solutions to problems arising at the local level and not pursuant to Article 18 of this Treaty; (b) to consider and to make recommendations to the Parties on any developments or proposals which might affect the protection of the traditional way of life [...]”

Joint research institutions

* Includes the establishment of organizations or programs destined to do research, i.e. to collect and/or analyze data.
* Can be, among other things, a center or an institute.
* Can be conducted by the secretariat established or a commission.
* To be distinguished from punctual meeting of scientist for advisory purposes, but who are not conducting research together.
* To be distinguished from commitment to transfer technology or to conduct joint research.
* Includes dispositions related to the creation of a new joint research institution.
* Includes the establishment of an expanded network of research centres.
* Includes the designation of an already existing joint research institution.
* Includes precisions on the form, structure, and the functions of the joint research institution.
* Excluded if only a function of a Secretariat or a Commission to undertake scientific and technical studies.

1993 Establishment agreement for the center for international forestry research, art 1: “There shall be established an independent international organization entitled the “Center for International Forestry Research” […]”

1982 United Nations Convention on the Law of the Sea, art 27: “The functions of such regional centres shall include, inter alia: (a) training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geological exploration of the seabed, mining and desalination technologies [...]”

Mediation and good offices

* Includes conciliation.
* There must be a third party involved.
* Includes recommendations by a third party which can be the meeting of the Parties or an opinion from the council of ministers.
* Includes the submission of the conflict to a council for recommendation.
* Includes the establishment of a commission to settle disagreements or submission of the dispute before the committee or committee established by the agreement.
* The term mediation is not necessarily used as long as the procedure provided is similar to mediation.
* Excluded if the decision is legally binding.
* Peaceful means of settling dispute or negotiation is not sufficient.
* Excludes difficulties about the implementation of the agreement if there is no conflict between the Parties.
* Excludes consultations between the Parties in a committee.

1969 International Convention Relating To Intervention On The High Seas In Cases Of Oil Pollution Casualties, art 2(1): “A Conciliation Commission shall be established upon the request of one Party addressed to another in application of Article VIII of the Convention.”

1992 Convention On Biological Diversity, annex 2, part 2, art 1(2): “If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.”

Arbitrage, courts and tribunals

* Can be voluntary or mandatory.
* Includes arbitrage with an existing mechanism, including under another agreement.
* Includes ad hoc and permanent mechanism.
* Includes norms that provide procedure rules for the settlement of dispute regarding the interpretation or implementation of the agreement.
* Includes norms that refer to a new mechanism created for dispute settlement.
* Arbitral decisions must be binding for the Parties.
* The establishment of a commission to settle disagreements or submission of the dispute before the committee or committee established by the agreement is not sufficient unless it is mentioned that it has the functions of arbitrator or if the decision is binding for the Parties.
* Excludes the opinion of a commission or experts on the dispute.
* Excludes dispute settlement at a meeting of the Parties.
* Excludes investigations conducted by international organizations.
* Excludes the interpretation of a decision rendered.
* Excludes the dispute between citizens of the Parties if there is no dispute directly between the Parties.
* Excludes negotiations or consultation between the Parties.

1954 International convention for the prevention of pollution of the sea by oil, art XIII: “Any dispute between Contracting Governments relating to the interpretation or application of the present Convention which cannot be settled by negotiation shall be referred at the request of either party to the International Court of Justice for decision unless the parties in dispute agree to submit it to arbitration.”

2000 Framework Agreement for the Conservation of the Living Marine Resources of the High Seas of the South Pacific, art 14(2): “If an agreement cannot be reached, disputes must be submitted either to a conciliation commission or a technical arbitration body, unless both parties have agreed upon a different procedure.”

Sanction or suspension of benefits in case of non-conformity

* Includes provisions related to any sanction or the removal, reduction, or suspension rights, privileges or benefits of a Party that is in violation with its engagements.
* The non-fulfilment of its engagements by a Party due to a cause majeure, for example, a natural catastrophe, or unusual/severe/serious circumstances, is not a violation of its engagements.
* Includes suspension of voting rights.
* Includes measure following the procedure in arbitration, courts and tribunal.
* Includes the end of cooperation between the Parties.
* The sanction can be a reduction of the benefits of the Party that derives from the agreement or the end of the agreement.
* Includes the suspension of the right to vote in case of non-payment of contributions due to an international organization.
* Excludes the suspension of the benefits when there is a disagreement between the Parties on the implementation of the agreement.
* Excludes suspension of the agreement or revocation of membership.
* Excludes the return of material or equipment following the suspension or termination of the agreement.

1993 NAAEC, art 36(1): “Where a Party fails to pay a monetary enforcement assessment within 180 days after it is imposed by a panel: any complaining Party or Parties may suspend […] the application to the Party complained against of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment.”

2002 Agreement establishing the Caribbean Regional Fisheries Mechanism, art 18: “1. Subject to paragraph 2, a Member State whose contributions to the regular Budget of the Mechanism is in arrears for more than two years, shall not have the right to vote.”