

# **Biodiversity Loss under the Lens of Multilateralism: An Environmental Governance and International Law Perspective**

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## **Abstract**

More than ever, the United Nations is facing global environmental threats, due to poor governance strategy and various obstacles related to multilateralism. Environmental problems are, by definition, transboundary issues. This chapter will focus on one of the main challenges of environmental law and governance: biodiversity loss. The conservation of biodiversity has been recognized as a common concern of humanity. Nevertheless, even if a vast majority of UN member states agree on the importance of tackling environmental issues such as this one, the lack of binding regulations and good implementation leads to poor results.

Using Sustainable Development Goals 14 and 15, I will discuss governance and legal issues concerning the identified goals, and the international community's capacity to meet them in practice. One of the major problems concerning biodiversity conservation is the multiplication of instruments contained in its legal regime as well as the overlap of actors involved. This chapter will also evaluate the upcoming challenges that the world and the United Nations will have to solve in the next decades in terms of biodiversity challenges at a multilateral level.

## **Keywords**

biodiversity loss – multilateralism – environmental governance – international law – environment – Sustainable Development Goals – United Nations – biological diversity

The United Nations recently celebrated its 75th anniversary, while the international community is facing ever greater challenges such as climate change, democratic erosion and migration crises. One of these challenges is the unprecedented loss of biodiversity. The erosion of biodiversity is not a recent phenomenon, contrary to what the media claims. Five waves of species extinction have occurred in the history of our planet (Arbour et al. 2016). However, unlike the mass extinctions – the last of which occurred nearly 100 million years ago – the loss of biological diversity that our ecosystems are now experiencing is due to human activities (Barbault 2011, 485). Most international legal instruments have identified the loss of biodiversity as a major concern for several decades. This concern is becoming increasingly grave, especially as the international community must find solutions to the decline of biodiversity for which humanity is responsible.

Globalization has pushed the limits of natural resource management, urbanization, trade and productivity. Hence, the decline of biodiversity is not merely in its infancy (Otero et al. 2020, 3). One of the most fundamental problems in biodiversity governance is the tendency to dissociate biodiversity protection from human health and well-being. Yet the conservation of biodiversity is a basic concern for humanity (Convention on Biological Diversity 1992, preamble). Its erosion creates a myriad of consequences that are harmful to both humans and the planet, including deterioration of the environment in which humans live, depletion of food resources, increased health challenges, greater pressure on human rights and serious questions about the quality of the global economy.

The Food and Agriculture Organization of the United Nations (FAO) indicated in its 2020 report on the state of world fisheries and aquaculture that 34 percent of assessed fish stocks are caught at a biologically unsustainable level (FAO 2020, 50), while for a large number of developing and underdeveloped countries, fish is the primary source of food. It is also known that the ocean absorbs 30 percent of the carbon dioxide produced by humans, and that 80 percent of all terrestrial species of animals, plants and insects are found in forests. In another FAO report on the state of the world's forests, it is stated that the preservation of the area and quality of forests contributes to the good nutrition and food security of populations and also promotes the development of resources for human health. Medicines used in healthcare in Asia, Latin America and Africa are derived directly from forest resources (FAO 2020). Therefore, the protection of biodiversity must be at the heart of multilateral debates on climate change, health and nutrition.

These environmental issues challenge the standards and practices of the current model of multilateralism, which is criticized for its lack of effectiveness

and its inadequacy in the face of major global challenges. However, post-Second World War multilateralism was the predominant tool of international relations in the 20th century. It has allowed both developed and developing countries to sit at the same table and permitted new orientations to emerge from multilateral discussions. In so doing, the inclusion of developing countries in multilateral meetings has changed the international agenda and the forms of decision-making.

This change has been particularly noticeable in the UN system and in environmental issues. In 1992, the United Nations Conference on Environment and Development brought environmental protection issues to the forefront. This conference was prolific, as several legal instruments aimed at protecting the environment were adopted simultaneously by states (i.e., United Nations Convention on Biological Diversity; United Nations Convention on Combating Deforestation; United Nations Framework Convention on Climate Change; Declaration of Forest Principles; Rio Declaration on Environment and Development; Agenda 21). For example, paragraph 6 of the preamble to the Convention on Biological Diversity stated that the Contracting Parties are “[c]oncerned that biological diversity is being significantly reduced as a result of certain human activities.”

On September 30, 2020, at the Biodiversity Summit, and just days before the UN’s 75th anniversary, UN Secretary-General António Guterres put his finger on the major issue of environmental multilateralism: “Neglecting our precious resources can exacerbate geopolitical tensions and conflicts. Yet, too often, environmental health is neglected or downplayed by other government sectors” (UN 2020). Guterres’ words are powerful. They show that the biodiversity paradigm is undergoing an alarming shift: The protection of the planet’s resources, and especially biodiversity, is no longer just an environmental issue but is becoming a real geopolitical issue that should no longer be pushed aside in favor of other issues put forward by governments.

Consequently, 75 years after the creation of the United Nations, where do we stand in terms of environmental governance and multilateral action to protect biological diversity? This chapter first proposes to analyze the main challenges of biodiversity multilateralism. One of the major obstacles lies in the tangle of actors involved in the multilateral management of sustainable development objectives related to biodiversity protection, as well as in the multiplication of legal instruments and policies adopted by multilateral forums. This complicates the reading of states’ international obligations and does not benefit the integration of strategies and action plans. Second, it will present possible solutions to improve biodiversity governance at a multilateral level.

## Environmental Governance in the Era of the Sustainable Development Goals (SDGs)

Environmental governance refers to the set of rules, practices and institutions that surround the management of the environment in its various forms (Haque 2017). The traditional concept of multilateralism is based on the elaboration of treaties adopted by the international community as a whole or in part, and to which states are committed (Keohane 2020). In the field of environmental protection, this governance implies a multiplication of actors and specialized institutions, making multilateral actions a tangle of ideas whose vision may be common but whose implementation is not always concerted. However, the global nature of the issues related to biodiversity loss requires concerted and multilateral action on the part of international actors.

### *Biodiversity Governance: Toward a Defragmented Fragmentation*

The institutional landscape in international environmental governance is a nebulous system. For a long time reserved for specialized circles, biodiversity conservation has come to the forefront due to the complexity of the issues it raises, the rise of biotechnology, the scarcity of available natural resources and attempts at appropriation, but also due to the media coverage of its degradation. The fact that biodiversity extends from land to sea complexifies the institutional landscape, which explains why so many international and regional organizations have chosen to take up these issues. The organizations whose task is based in whole or in part on biodiversity conservation issues have not only multiplied but have also become sectorized. However, the global nature of these issues requires specialized institutions to collaborate and find joint solutions.

Within the UN system itself, several specialized agencies, organizations, funds and programs are mandated to work on biodiversity issues. This does not include the treaty institutions, such as the United Nations Environment Programme (UNEP), the Secretariat of the Convention on Biological Diversity, the United Nations Conference on Trade and Development (UNCTAD), the International Seabed Authority (ISA), the High-Level Political Forum on Sustainable Development, the United Nations Forum on Forests, the FAO or the International Maritime Organization. These are all actors involved in biodiversity issues. Whether the multiplication of these actors benefits the governance of biodiversity is a justifiable question.

The multiplication of international actors involved in setting agendas, actions and regulations makes the achievement of the SDGs laborious. In recent

decades, environmental multilateralism has led to the adoption of numerous legal instruments aimed at conserving the marine environment and combating pollution of all kinds (König 2013). Regional environmental protection agreements have added another layer to the already complex “legal millefeuille.” Examples of regional conventions that concern well-defined geographical areas are numerous, including the Convention on the Protection of the Marine Environment of the Baltic Sea Area (April 9, 1992), the Declaration on the Protection of the Arctic Environment (June 14, 1991) and the Protocol concerning the Conservation and Management of Marine Protected Areas in the South-East Pacific (September 21, 1989). Sectoral conventions on the conservation of biodiversity also exist, such as the Minamata Convention on Mercury (October 10, 2013), the International Tropical Timber Agreement (2006) and the International Convention on the Protection of Birds (October 18, 1950). They provide a framework for the management and protection of certain animal or plant species, as well as acceptable scientific research methods. The superposition of many environmental protection instruments has widened the gap between the “frenzy” of the normative process and the environmental degradation, which has continued to intensify (Maljean-Dubois 2021).

This multilayered environmental governance structure implies fragmented actions that render the implementation of these actions singularly ineffective. The adoption of multiple binding texts, but also strategies, agendas and policies in the field of biodiversity whose management and monitoring are fragmented, makes it increasingly difficult to read the obligations and action plans (Rogalla von Bieberstein et al. 2019, 822). As a result, we are witnessing the defragmentation of biodiversity action. This defragmentation is part of the will to find coherence in fragmented and sectoral actions.

#### *The United Nations' Sustainable Development Goals 14 and 15*

The beginning of the 21st century was marked by the failure of the Conferences of the Parties on the environment and biodiversity to develop effective and ambitious action agendas (Odendahl 2016). The adoption of the 2015 SDGs complemented the 2000 Millennium Development Goals (MDGs), but in the end, they were limited to refining the goals already established. While the SDGs set out clear environmental objectives and targets on paper, their implementation remains a challenge and the states quickly drew a negative outcome. However, the Strategic Plan for Biological Diversity 2011–2020 and the Aichi Goals “Living in Harmony with Nature” have attempted to provide a more elaborate roadmap for achieving Goals 14 and 15 (CBD COP10 2010). Unlike the SDGs, the Aichi targets are quantified or specified on the issue

of their implementation. For example, Sustainable Development Goal 14, “Conserve and sustainably use the oceans, seas and marine resources for sustainable development,” called for, among other things, the sustainable management and protection of marine and coastal ecosystems, including building resilience, and the prevention and significant reduction of marine pollution of all types, specifically from land-based activities, by 2020. In more precise terms, Aichi Goal 6 states that by 2020,

all stocks of fish and aquatic invertebrates and plants are managed and harvested in a sustainable, legal manner and using ecosystem-based approaches so that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries do not have significant adverse impacts on threatened species and vulnerable ecosystems, and the impact of fisheries on stocks, species and ecosystems remains within safe ecological limits.

CBD COP10 2010

Aichi Goal 11 requires the protection of 10 percent of coastal and marine areas through the establishment of marine protected areas. Yet current results show that the target is far from having been met so far (Rochette et al. 2014, 32). These clearer goals allow states to propose more effective programs and policies and to better assess state progress.

The lack of coordination and the need for cooperation in order to achieve the objectives of conservation of the marine environment were the main reasons for the creation of the “Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond national jurisdiction” (UN General Assembly 2005, para. 73). This working group aims to identify the main scientific, legal and economic issues and aspects concerning the conservation of marine biodiversity and to propose solutions and methods to promote international cooperation and coordination (UN General Assembly 2005, para. 73).

Sustainable Development Goal 15, “Conserve and restore terrestrial ecosystems, ensuring their sustainable use, sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss,” implies taking urgent and strong action to reduce environmental degradation, halt biodiversity loss and, by 2020, protect threatened species and prevent their extinction. It also means taking action to prevent the introduction of invasive alien species, to significantly mitigate their impacts on terrestrial and aquatic ecosystems and to control or eradicate in priority alien species by 2020. Aichi Goal 9 complements this goal by proposing that

by 2020, alien invasive species and pathways are identified and prioritized, priority species are controlled or eradicated, and measures are in place to manage pathways to prevent the introduction and establishment of these species.

CBD COP10 2010

However, there is reason to question the effective implementation of the goals and thus the achievement of the targets identified by the states. The updated scientific assessment on progress toward the Aichi Biodiversity Targets and options for accelerating progress (also referred to as Assessment 14/1), dated November 30, 2018, stated in its preamble that the Conference of the Parties [to the Convention on Biological Diversity] was “deeply concerned that, despite the many positive actions undertaken by Parties and other entities, most of the Aichi Biodiversity Targets are not on track to be achieved by 2020” (CBD COP14 2018).

In response to the failure to meet biodiversity protection targets, states have begun negotiating a draft text with 21 specific targets for biodiversity protection by 2030. The targets aim to reduce threats to biodiversity while meeting the needs of the population with regard to sustainable and equitable management of natural resources. Among the targets identified, the text proposes that “at least 30% of the world’s land and marine areas should be conserved through protected area systems.” The text supports the idea of reducing “environmentally harmful” subsidies by a minimum of 500 billion US dollars per year and, in parallel, to increase funding for biodiversity by at least 200 billion US dollars per year. The text is expected to be adopted in 2022, but the current draft lacks ambition and ignores the urgency of the situation. It will not be sufficient to address the impacts of human activity on marine and terrestrial biodiversity.

### **Finding Effective Solutions to Biodiversity Loss**

Environmental multilateralism faces great challenges in governance and biodiversity conservation. The longer it takes to reach effective action, the greater these challenges become. The urgency of the situation – as with that of the fight against climate change, which is closely linked to the loss of biodiversity – must be the driving force behind coherent, concerted action that truly responds to the issues identified by scientists. Several solutions are being explored by the international community, notably (1) those based on nature, (2) those aiming to massively involve financial markets and, finally, (3) those that allow for both biodiversity conservation and the economic development of all populations.

### *Nature-Based Solutions*

Nature-based solutions are those solutions that benefit both the conservation of nature and the well-being of societies. This concept was proposed by the International Union for Conservation of Nature (IUCN) at the 2009 Conference of the Parties to the United Nations Framework Convention on Climate Change. According to IUCN, these solutions are

actions to protect, sustainably manage and restore natural or modified ecosystems to directly address societal challenges in an effective and adaptive manner, while ensuring human well-being and producing biodiversity benefits.

COHEN-SHACHAM et al. 2016, 2

The UNEP stated in October 2020 that the solution to biodiversity loss lies in nature. The United Nations Development Programme (UNDP) has meanwhile called for “putting nature at the heart of sustainable development” (UNDP 2020). It also states that “we can no longer afford the ‘environment versus economy’ miscalculation” (UNDP 2020). In other words, economic development must not be the excuse for not finding solutions based on what nature can offer. Too often, the economy and biodiversity protection are pitted against each other. Thinking in this way is a major mistake. On the contrary, biodiversity conservation is a prolific sector for the economy. Investing in biodiversity conservation means creating jobs. In doing so, biodiversity conservation creates economic growth.

Market-based protection means using the market to promote the conservation and sustainable use of biodiversity to achieve the economic, financial and environmental objectives of economic actors. The use of the market is possible when the value of biological diversity is recognized, and when this value has a significant impact on the economy (OECD 2003, 20). Ultimately, the market corrects its own failure in the extent it can protect biodiversity. The OECD report “Harnessing Markets for Biodiversity” underlines “the need for substantial investments to preserve biodiversity” and recognizes “the unique role that the private sector can play in promoting and sustaining the use of biological resources” (OECD 2003, 3).

Economic multilateralism has been pushed to the point where a set of entities dedicated to financial stability, trade liberalization and internationalization of production activities have developed in the late 20th and early 21st centuries. Added to this is the fact that countries do not yet count natural resources in their wealth. In doing so, the system widely used in the world favors destruction over conservation. However, all stakeholders agree that

the evolution of economic and financial governance is essential not only for sustainable development but also for the implementation of environmental agendas. The question is how economic governance can be put at the service of biodiversity conservation.

Economic multilateralism can be a weapon in the fight against biodiversity loss. For example, market-based protection means using the market to promote the conservation and sustainable use of biodiversity to achieve the economic, financial and environmental objectives of economic actors. The use of the market is possible when the value of biodiversity is recognized, and when this value has a significant impact on the economy. The OECD report “Harnessing Markets for Biodiversity” makes very clear

the need for substantial investments to preserve biodiversity and recognizes the unique role that the private sector can play in promoting and sustaining the use of biological resources.

2003, 3

#### *Financial Markets Must Take Biodiversity and Nature into Account*

According to the UNDP, to achieve the goals of the 2030 Agenda, it is necessary to “transform our economic systems, including by making the loss of biodiversity a financial risk” (UNDP 2020). The UNDP wants to reject investments that are harmful to biodiversity and to redirect them toward activities that place nature at their center. Investments that would allow for the restoration of forests and mangroves, investments in nature-based businesses or regenerative agriculture should be favored. However, how can we finance the fight against biodiversity loss?

Even before the COVID-19 crisis, many developing countries were struggling to finance the investments needed to achieve the 2030 Agenda for Sustainable Development. These difficulties are the result of decades of unbalanced adjustment programs, premature liberalization in some regions and constraints on long-term development financing. Finance is the set of mechanisms that provides the economy with the capital it needs to function. However, sustainable finance considers extra-financial criteria such as environmental or social impact. Sustainable finance includes different categories, and in particular green finance, which brings together all the financial operations in favor of the energy and ecological transition and the fight against climate change. These operations are often called “green bonds.” Responsible investment integrates ESG (environmental, social and governance) criteria into the investment process and encourages companies and investors to consider environmental, social and good governance criteria in their decision-making.

Since the 1990s, a UN initiative on sustainable finance has emerged. The United Nations Environment Programme Finance Initiative (UNEPFI) was born out of a partnership between the UNEP and the global financial sector, following the adoption of the UNEP Statement of Commitment of Financial Institutions to Sustainable Development after the Rio Summit in 1992. Through the signing of this statement, financial institutions recognized the role of the financial services sector in making the global economy and lifestyles more sustainable. At the same time, they committed to integrating environmental and social considerations into all aspects of their operations.

This idea of financing sustainable development is not new, but it has yet to take hold. This initiative has highlighted the willingness of private investors to act in favor of more sustainable investments. With biodiversity financing estimated at between 78 and 91 billion US dollars per year, it goes without saying that the efforts of private and especially institutional investors must increase to meet the ambitious targets of the SDGs (Parker et al. 2012). Getting the SDGs back on track, especially those requiring significant public investment, will depend on coordinated international support and policy responses to increase reliable sources of public funding, including through debt instruments, and to ensure that such funding is channeled to long-term development projects.

This is precisely what other UN agencies are trying to do, complementing the work undertaken by UNEPFI to finance the fight against biodiversity loss. As a matter of fact, UN agencies have the capacity to stimulate long-term international financing and to devise a restructuring that will go hand in hand with the implementation of biodiversity protection goals. Their work fills the gaps in UNEPFI's limited mandate. Thus, these other actors have initiated programs to incentivize sustainable finance but have applied them in a sectoral manner.

UNCTAD, for example, has redesigned its BioTrade Initiative, which aims to foster the conservation and sustainable use of biodiversity through the promotion of trade and investment in BioTrade products and services. The revision rewrites the program's principles and criteria for policymakers and businesses to guide them in more biodiversity-friendly trade (UNCTAD 2020). The newly updated principles and criteria are intended to encourage investment in activities that are conscious of their impact on biodiversity.

It is known that most sustainable investments are directed toward terrestrial or river and lake biodiversity, but very little is directed toward marine biodiversity conservation (OECD 2019, 9). However, studies show that ocean or marine biodiversity conservation drives economic development. Based on this information, the international community has discussed the importance of financing biodiversity protection, integrating "the multiple values of biodiversity in relevant legislative and policy frameworks, development and finance

plans and policy and decision-making processes at all levels,” and encouraging “businesses to assess their dependencies and impacts on biodiversity to inform decision-making” (Sharm El-Sheikh Declaration, disposition 1(a), 2018). Moreover, according to many experts, making biodiversity loss a financial risk would add value to biodiversity conservation financing and eliminate environmentally harmful financing (OECD 2019, 45).

The next COP 15 on biodiversity is scheduled to meet in Kunming, China, to address these issues. Just as COP 26 on climate change focused on climate finance, this next meeting will be an opportunity to discuss biodiversity finance. Considering the urgency of the situation, it is more than necessary that states and all stakeholders commit to massive and sustainable funding for biodiversity conservation. To date, the COP 15 outcome document calls for reducing environmentally harmful subsidies by at least 500 billion US dollars per year and increasing funding for biodiversity conservation to at least 200 billion US dollars per year. On this point, it remains to be seen whether these ambitions will be effectively implemented or remain mere words.

### *Ensure the Most Ambitious Policies and Targets that Protect Biodiversity and Leave No One Behind*

The international community must find effective solutions to guarantee ever more ambitious policies and objectives for biodiversity conservation, while including all populations. These guarantees must be designed to promote solutions that are beneficial not only to economic development, but also to the development of a healthy planet.

Calling biodiversity “humanity’s safety net,” the UNDP, when drafting the 2030 Agenda, stated that it is essential to “ensure that global environmental agreements are sufficiently ambitious and integrated into each national policy” in order to significantly combat biodiversity loss. The SDGs, even if accompanied by well-defined targets, must be concretely implemented. Seventy-five years after the creation of the United Nations and following decades of fragmented multilateral dialogues on biodiversity protection, there is now a crying need for a biodiversity framework with bold targets and high ambitions for biodiversity conservation. Biodiversity loss is a multifaceted problem. Its impact on human beings is considerable and extends into a variety of areas. Thus, the implementation of the UN’s ambitions must be done in a concerted way with the different actors concerned in order to respond in a coherent and global manner to the challenges posed by the loss of biodiversity.

First, maintaining biological diversity is essential to planetary balance (Guilloux and Zakovska 2004, 3). Biodiversity plays an essential role in the functioning of ecosystems and the services they provide, nutrients and water

cycles, water retention in soils, resilience to invasive species and self-regulation of pollution. The ocean, for example, is the largest supplier of oxygen on the planet, well ahead of forests (UNESCO 2018, 43). The loss of biological diversity leads to a disruption of the oceanic balance, and as a result the ocean can no longer absorb as much pollution and give back as much oxygen.

Second, the erosion of biodiversity also has a major impact on food security. For example, 3 billion people in the world are dependent on marine biological resources. Poorer communities need them both as a source of primary protein and as a commodity, sometimes enabling entire populations to meet their basic needs (FAO 2021). Similarly, the Convention on Biological Diversity states that biodiversity accounts for 50–90 percent of the livelihoods of rural and forest households. Without effective conservation of biological resources, an entire segment of the world's population fears not only impoverishment but also loss of access to adequate food. For this reason, the global action undertaken for the conservation of biodiversity must be done in a concerted and united manner.

## Conclusion

Only multilateral actions can effectively combat the loss of biological diversity. This is why the crisis of multilateralism must be overcome. The lack of solidarity and protectionist tendencies threaten the capacity of the international community to meet its objectives in the fight against biodiversity loss. To do so, international cooperation must be strengthened through concerted actions that are consistent with the policies adopted by states in the field of biodiversity conservation.

There is broad agreement among the international community on the need to strengthen and improve cooperation and solidarity to build a more resilient, inclusive and sustainable future. This need has been emphasized in many areas, such as vaccine production and distribution; cooperation and regulation in science, technology and innovation; reform of the international financial system; and the desire to decouple growth from carbon dioxide emissions. While agreement on the need to cooperate is essential, effective implementation and deepening of cooperation is fundamental.

Thus, while many authors had argued that environmental multilateralism was in crisis (Maljean-Dubois 2021; Arbour et al. 2016), it seems that the success of COP 21 in 2015 in the fight against climate change has imparted new energy and ambition to the field of biodiversity conservation. Since then, there has been a renewed impetus to adopt agendas and increased thinking about

how to proceed in order to achieve meaningful outcomes to mitigate biodiversity loss. This does not mean, however, that the crisis of multilateralism is over and that biodiversity governance is at its best. The fight against biodiversity loss is far from over and the actions of states in the coming years will be crucial.

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