States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Principle 7, Rio Declaration on Environment and Development

A. INTRODUCTION

One of the cardinal principles of international law is sovereign equality of states. It constitutes one of the principles on which the United Nations is established. Sovereign equality is a juridical concept, because the law treats each state as being sovereign and equal, similar to the principle of equality at the national level: the law treats each person similarly, despite various differences that may exist. A corollary of the sovereign equality principle is that international legal obligations are based on the principle of reciprocity, binding each signatory in the same way. However, sovereign equality does not mean that all states are equal in substantive terms. They vary in size, power, level of development population, etc. Thus, to talk in terms of equality can be misleading in some instances. Given the diversity of states with different cultures, languages, level of development and resources at their disposal, it is difficult to speak of equality in substantive terms. Differentiation becomes inevitable in some spheres of inter-

1 Article 2.1 of the UN Charter states that the “Organization is based on the principle of sovereign equality of all its members.”

2 See Article 26 of the ICCPR, available at http://www.unhchr.org, which states that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”

3 See Philippe Cullet, DIFFERENTIAL TREATMENT IN INTERNATIONAL ENVIRONMENTAL LAW 57 (2003).
national law, although juridical equality has been, and should continue to be, the main bedrock of international society.

With the expansion of the international community after decolonization, international law underwent some challenges. The international community itself became much more heterogeneous, and the newly independent states with their developing economies came to test the very legal foundations of international law:\(^4\)

It became, for instance, more and more evident that a strict reliance on the concept of legal equality could not be upheld in all circumstances within a growing community whose members had different economic, political and military capacities. These changes and the ensuing developments reflected to a certain extent the broader forces influencing international law whose function slowly changed from that of ensuring the peaceful coexistence of states to ensuring broad-ranging cooperation on a number of socio-economic issues.\(^5\)

While the first wave of differentiation originated with the call by developing countries for a New International Economic Order (NIEO),\(^6\) the second wave of differential treatment commenced with the emergence of global environmental problems, which is “largely devoid of controversial ideological undertones.”\(^7\) Interdependence of states and the fact that these global environmental problems do not respect national boundaries led to this development. Another issue that has given rise to differential treatment is that the emphasis placed by developing and developed countries on global environmental issues has varied significantly: developing countries have paid more attention to immediate pressing problems such as poverty, the provision of basic needs and economic development while developed countries, with the resources they command, are more concerned with environmental issues. However, without the involvement of developing countries, with their alarmingly expanding populations and fast industrializing economies, it is difficult for developed countries to take measures to address global environmental problems alone: “In practice, differential treatment has thus become the price to be paid to ensure universal participation in environmental agreements concerned with global problems.”\(^8\)

\(^4\) Id. at 59.


\(^6\) See id. at 62.

\(^7\) Id. at 69.

\(^8\) Id.