



**Maastricht University**  
Faculteit der Rechtsgeleerdheid



**Maastricht Centre  
for European Law**

# **Between Leadership and Legal Obligation: The EU Deforestation Regulation and the Principle of Common but Differentiated Responsibilities**

Merle Sandhop

**MCEL Master's Thesis Series  
No 2026/01**

All rights reserved

No part of this paper may be reproduced in any form  
without the permission of the author(s).

The MCEL Master's Thesis Series seeks to give excellent students the  
opportunity to publish their final Master's theses and to make their work  
accessible to a wide audience.

Those wishing to submit papers for consideration are invited to consult our  
website and to send their work to [mcel@maastrichtuniversity.nl](mailto:mcel@maastrichtuniversity.nl).

© Merle Sandhop

Published in Maastricht, March 2026

Faculty of Law  
Maastricht University  
Postbox 616  
6200 MD  
Maastricht  
The Netherlands

This paper is to be cited as MCEL Master's Thesis Series 2026/01

## Abstract

The **EU Deforestation Regulation** (EUDR) is a regulatory framework through which the EU seeks to prevent deforestation by regulating the placing of certain commodities on the Union market. However, its extraterritorial effects and uniform application to both EU and non-EU operators have raised critical legal and normative questions, especially from the Global South. While much criticism has focused on international trade law and customary rules on jurisdiction, less attention has been paid to the environmental **principle of common but differentiated responsibilities** (CBDR). It acknowledges that all states have an obligation to address environmental challenges, but that their obligations should differ based on their historical contributions to environmental degradation and existing capacities and capabilities.

This thesis addresses that gap by examining whether the EU is legally obliged under international law to adhere to the principle of CBDR and how the EUDR aligns with such an obligation. While it is found that the principle formally lacks legal recognition it is argued that its importance cannot be dismissed due to its strong normative implications. To that extent, the principle of CBDR may function as a normative lens, based on its underlying conceptions of distributive and corrective justice, through which the legitimacy and subsequent substantive and legal implications of an environmental measure can be critically evaluated. This line of reasoning is strengthened by the EU's consistent portrayal as a "global leader", especially in the context of the EU's environmental policy.

When applied as an analytical framework, this thesis finds that while the EUDR incorporates a certain level of differentiation, it remains insufficient, as it shifts a significant compliance burden onto third-country producers, and promotes a one-size-fits-all approach that insufficiently accounts for the differing capacities and capabilities of third-country actors. Ultimately, this thesis concludes that without sufficient adjustments to the Regulation, the EUDR risks punishing those least responsible for the current environmental crisis.

## Table of Contents

Abstract .....	i
Table of Abbreviations .....	iii
1 Introduction.....	4
1.1 Research Question(s).....	7
1.2 Methodology.....	7
1.3 Thesis Structure.....	9
2 The Principle of Common but Differentiated Responsibilities in International Law .....	11
2.1 The Role and Significance of General Principles of International (Environmental) Law.....	11
2.2 The Role and Significance of General Principles of International (Environmental) Law.....	14
2.2.1 The Historical Evolution and Normative Foundations of the Principle of CBDR .....	14
2.2.2 The Legal Status and Normative Relevance of the Principle of CBDR .....	17
2.3 Interim Conclusion: The Principle of CBDR as an Analytical Framework .....	19
3 The Role of the Principle of CBDR in EU Environmental Governance: The Case of the EU Deforestation Regulation .....	21
3.1 The European Union and the Principle of CBDR.....	21
3.1.1 The EU and International Environmental Law .....	21
3.1.2 The EU as a Normative Environmental Actor .....	23
3.1.3 EU Environmental Governance and the Principle of CBDR.....	25
3.2 The EU Deforestation Regulation and the Principle of CBDR .....	27
3.2.1 The EU Deforestation: Background and Regulatory Context .....	27
3.2.2 Linking the EU Deforestation Regulation with the Principle of CBDR .....	30
3.2.3 Analysis of the EU Deforestation Regulation in Light of the Principle of CBDR .....	32
4 Conclusion.....	39
5 List of References .....	41
Legal Sources .....	41
Academic Sources .....	43
Non-Academic Sources.....	46

## **Table of Abbreviations**

CBAM	Carbon Border Adjustment Mechanism
CBDR	Common but Differentiated Responsibilities
CJEU	Court of Justice of the European Union
DDS	Due Diligence Statement
EGD	European Green Deal
EUDR	EU Deforestation Regulation
EU	European Union
GHG	Greenhouse Gas
ICJ	International Court of Justice
PA	Paris Agreement
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
WTO	World Trade Organisation

# 1 Introduction

Deforestation remains one of the most pressing sustainability challenges of our time, threatening biodiversity, intensifying climate change, and undermining global efforts to protect and restore ecosystems.<sup>1</sup> Forests cover nearly a third of the Earth's surface, and in addition to harbouring ecosystems where rich biodiversity thrives, they are also powerful carbon sinks crucial for removing greenhouse gases (GHG) from the atmosphere, serving as the Earth's lungs and life support system.<sup>2</sup> Nonetheless, today's world's forests are increasingly under threat from deforestation and forest degradation. Estimates suggest that about 10% of the world's forests, an area larger than the size of the European Union (EU), have been lost worldwide between 1990 and 2020.<sup>3</sup> However, despite multiple international initiatives aimed at restricting deforestation in the past decade,<sup>4</sup> the rate of forest loss remains "stubbornly consistent".<sup>5</sup>

Ever since the announcement of the European Green Deal (EGD) by the European Commission in 2019, environmental sustainability has become a key pillar of the EU's policy agenda.<sup>6</sup> With the introduction of the EGD, the EU has repeatedly vowed to step up its environmental action and portrayed itself as a "Global Leader" on sustainability issues, focused on convincing and supporting others on making the world a more sustainable place.<sup>7</sup> With the EU emerging as a significant contributor to deforestation, given its high demand for commodities typically linked to forest loss,<sup>8</sup> it is not surprising that it announced the replacement of its EU Timber Regulation in 2021, in an effort to regulate the consumption of forest-related products within the Union.<sup>9</sup>

In particular, it adopted a new Regulation to regulate the supply and export of certain commodities and products that are commonly associated with deforestation and

---

<sup>1</sup> European Commission, 'Stepping up EU Action to Protect and Restore the World's Forests' (Communication) COM (2019) 352 final, 1.

<sup>2</sup> United Nations Development Programme, 'Forests can help us limit climate change - here is how' (*climatepromise.undp.org*, 25 October 2023) <<https://climatepromise.undp.org/news-and-stories/forests-can-help-us-limit-climate-change-here-how>> accessed 28 January 2025.

<sup>3</sup> Regulation (EU) 2023/1115 of the European Parliament and of the Council on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 [2023] OJ L150/206, recital 2.

<sup>4</sup> Such as the 2014 New York Declaration on Forests.

<sup>5</sup> World Resources Institute, 'Forest Pulse: The Latest on the World's Forests' (*gfr.wri.org*, 4 April 2024) <<https://gfr.wri.org/latest-analysis-deforestation-trends>> accessed 7 April 2025.

<sup>6</sup> Kalina Arabadjieva and Sanja Bogojević, 'The European Green Deal: climate action, social impacts and just transition safeguards' (2024) Yearbook of European Law 1, 4.

<sup>7</sup> European Commission, 'Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal' (COM(2023) 640 final).

<sup>8</sup> *ibid* 2.

<sup>9</sup> European Commission, 'Regulation on Deforestation-free Products' (*Europa.eu*) <[https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products\\_en](https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en)> accessed 27 January 2025.

forest degradation -- the EU Deforestation Regulation (EUDR).<sup>10</sup> By laying down rules for the selling, offering, and exporting of products that have been made using key commodities such as cattle, cocoa, coffee, oil palm, rubber, soya, and wood on the Union market, the EU seeks to reduce its impact on global deforestation, lower its GHG emissions, and help prevent global biodiversity loss.<sup>11</sup> While the EUDR was officially adopted in 2023, an additional 12-month phasing-in period was granted in December 2024 to facilitate its implementation across the Member States,<sup>12</sup> and with renewed calls to simplify the Regulation, its ultimate status currently remains uncertain.<sup>13</sup>

Although the EUDR represents a significant step by creating a regulatory framework that acknowledges the EU's role in driving demand for agricultural commodities, it also raises critical (legal) questions regarding its extraterritorial reach and its compatibility with traditional environmental law principles. A contentious feature of the EUDR is its unilateral approach, as it applies regulatory standards to producers both in and outside the Union. Such unilateral standards can have far-reaching implications on states with weaker regulatory structures, where the practical burden of fulfilling the Regulation's stringent due diligence obligations is often much greater.<sup>14</sup> Moreover, it raises deeper ethical concerns, as the EU seeks to implicitly control how developing countries use their own natural resources, while it has historically benefited from the exploitation of the very same resources during colonial times and beyond.<sup>15</sup> This practice, often referred to by scholars as "territorial extension" or "unilateral regulatory globalisation", which conditions Union market-access based on the fulfilment

---

<sup>10</sup> Regulation (EU) 2023/1115 of the European Parliament and of the Council on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 [2023] OJ L150/206 (EUDR).

<sup>11</sup> EUDR, article 1.

<sup>12</sup> As a result, the EUDR becomes applicable for large and medium companies in December 2025, and for micro and small enterprises in June 2026; Regulation (EU) 2024/3234 of the European Parliament and of the Council of 19 December 2024 amending Regulation (EU) 2023/1115 as regards provisions relating to the date of application [2024] OJ L2024/3234.

<sup>13</sup> Angelika Pullen, 'WWF urges Law-makers as EUDR Integrity Comes Under Fire' (*wwf.eu*, 23 June 2025) <<https://www.wwf.eu/?18464666/Keep-calm-and-carry-on-WWF-urges-law-makers-as-EUDR-integrity-comes-under-fire>> accessed 17 July 2025.

<sup>14</sup> Raluca Besliu, 'EU Deforestation Regulation: Balancing Climate Action and Global Trade Challenges' (*greeneuropeanjournal.eu*, 19 December 2024) <<https://www.greeneuropeanjournal.eu/eu-deforestation-regulation-balancing-climate-action-and-global-trade-challenges/>> accessed 28 January 2025.

<sup>15</sup> This discussion also touches on broader discussions on colonialism and neo-colonialism in international environmental governance. For example, numerous scholars have highlighted and argued that global environmental governance remains dominated by Western, Eurocentric perspectives with many international environmental law treaties perpetuating colonial and imperial power structures. For further reading on this discussion see for example: Datchoua-Tirvaudey, "Researching Climate Justice: A decolonial approach to global climate governance"; Douglas de Castro, "The Colonial Aspects of International Environmental Law Treaties as Promoters of Continuous Structural Violence"; Julian Dehm, "Carbon Colonialism or Climate Justice? Interrogating the International Climate Regime from a TWAIL Perspective".

of certain EU-defined standards,<sup>16</sup> has been met with increasing criticism by the international community.<sup>17</sup> A joint letter signed by 17 producer states from the Global South in 2023, expressed deep concerns over the Regulation, highlighting its incompatibility with WTO obligations and the environmental principle of common but differentiated responsibilities (CBDR).<sup>18</sup>

While much criticism has focused on international trade law and customary rules on jurisdiction,<sup>19</sup> less attention has been paid to its compatibility with the principle of CBDR, which finds its most authoritative expression<sup>20</sup> in Principle 7 of the 1992 Rio Declaration.<sup>21</sup> At its core, it acknowledges that all States have an obligation to address environmental challenges, but that their obligations should differ based on their historical contributions to environmental degradation and existing capacities and capabilities. While its legal status within the international community remains contested,<sup>22</sup> arguments can be made that it is certainly not legally irrelevant.<sup>23</sup> Several arguments have been brought forward that the principle creates certain normative expectations and obligations, due to it being a “foundational element of the climate regime”.<sup>24</sup> Attempts to apply the principle of CBDR to a piece of EU legislation have also been made in the past, albeit this is limited to laws that fall under the climate change, where the primary objective is the reduction of GHG emissions and not that of deforestation.<sup>25</sup> Therefore, given the EU’s imposition of unilateral standards and the lack

---

<sup>16</sup> Ioanna Hadjiyianni, ‘The Extraterritorial Reach of EU Environmental Law and Access to Justice by Third Country Actors’ (2017) 2(2) *European Papers* 519, 523.

<sup>17</sup> Raluca Besliu, ‘EU Deforestation Regulation: Balancing Climate Action and Global Trade Challenges’ ([greeneuropeanjournal.eu](https://www.greeneuropeanjournal.eu), 19 December 2024) <<https://www.greeneuropeanjournal.eu/eu-deforestation-regulation-balancing-climate-action-and-global-trade-challenges/>> accessed 28 January 2025; Gayatri Suroyo, Stefano Sulaiman and Ananda Teresia, ‘Indonesia accuses EU of ‘regulatory imperialism’ with deforestation law’ ([reuters.com](https://www.reuters.com), 8 June 2023) <<https://www.reuters.com/business/environment/indonesia-accuses-eu-regulatory-imperialism-with-deforestation-law-2023-06-08/>> accessed 23 January 2025.

<sup>18</sup> Joint Letter from 17 Producer Countries on the EU Deforestation Regulation (EUDR)’ (7 September 2023) <[https://www.atibt.org/files/upload/news/RDUE/Trading\\_partners\\_joint\\_letter\\_on\\_EUDR\\_7\\_September\\_2023.pdf](https://www.atibt.org/files/upload/news/RDUE/Trading_partners_joint_letter_on_EUDR_7_September_2023.pdf)> date accessed 15 May 2025.

<sup>19</sup> Such as traditional notions of sovereignty and territoriality.

<sup>20</sup> Philippe Cullet, ‘Principle 7: Common but Differentiated Responsibilities’ in Viñuales JE (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015), 209.

<sup>21</sup> Rio Declaration on Environment and Development (12 August 1992) UN Doc A/CONF.151/26 (Vol I).

<sup>22</sup> Philippe Cullet, ‘Principle 7: Common but Differentiated Responsibilities’ in Viñuales JE (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015), 219.

<sup>23</sup> Virginie Barral, ‘Common but Differentiated Responsibilities and Justice: Broadening the Notion of Responsibility in International Law’ in Hannes Hansen-Magnusson and Antje Vetterlein (eds), *The Rise of Responsibility in World Politics* (Cambridge University Press 2021), 5.

<sup>24</sup> Joanne Scott and Lavanya Rajamani, ‘EU Climate Change Unilateralism’ (2012) 23 *European Journal of International Law* 469, 477.

<sup>25</sup> Scott and Rajamani argued that the principle of CBDR should retain its relevance in the context of the EU’s unilateral actions, specifically the EU’s Aviation Directive. More recently, legal scholars

of differentiation between actors based on their respective capabilities, this raises critical questions as to whether the EUDR sufficiently accounts for the principle in its regulatory framework.<sup>26</sup>

### **1.1 Research Question(s)**

This Master's Thesis aims to address the following research question: "*Is the European Union legally obliged under international law to adhere to the principle of common but differentiated responsibilities and how does the EU Deforestation Regulation align with such an obligation?*" To answer the main research question, the following sub-questions have been formulated:

1. What is the legal status of the principle of common but differentiated responsibilities in international law?
2. To what extent does the European Union have a legal obligation to uphold the principle of common but differentiated responsibilities?
3. To what extent does the EU Deforestation Regulation align with the legal and/or normative implications of the principle of common but differentiated responsibilities?

### **1.2 Methodology**

To comprehensively answer the research question(s), a doctrinal legal methodology is employed. Additionally, this study pursues a transnational objective and acknowledges the interaction between international and European law, as well as the EUDR's extraterritorial reach and its implications for third countries. The principle of CBDR thus functions not only as a subject of legal analysis but also as a normative standard through which the EUDR is examined. From a methodological perspective, this study is divided into two main sections: the first half follows a largely descriptive doctrinal approach, while the second part focuses on prescriptive-normative reasoning.

The first part aims to establish whether a legal obligation can be derived from the principle of CBDR from a primarily internal perspective, focusing on the "official" sources of law. It does not yet aim to make any evaluative conclusions but instead intends to investigate the status of the principle within the system itself and whether the EU has a legal obligation to follow it. To do so, this section adopts a positivist

---

such as Duran and Scott have also examined the EU's Carbon Border Adjustment Mechanism in light of the principle.

<sup>26</sup> By applying the principle of CBDR to the EU Deforestation Regulation, whose primary aim is the protection and restoration of biodiversity, this introduces a novel perspective and seeks to address a gap in legal scholarship that has yet to be explored.

conception of the law,<sup>27</sup> drawing primarily from traditional primary sources of international and European law.<sup>28</sup> Article 38(1) of the Statute of the International Court of Justice (ICJ) is commonly recognised to enumerate the official sources of international law<sup>29</sup> and notably includes international conventions, customary law, general principles, judicial decisions and the teachings of the most highly qualified publicists. Central to this study is also soft law, which, although not formally binding, carries significant influence in international decision-making.<sup>30</sup> In European law, this research is grounded in the EU Deforestation Regulation and in relevant treaty provisions and international agreements. Additionally, the EUDR must also be considered within the EU's broader environmental policy, where initiatives like the EGD play an important role. This descriptive part thereby allows for a systematic exposition of the current state of the law, which provides for the necessary foundation for any subsequent assessments.<sup>31</sup>

The second part of this study aims to bridge the strictly legal analysis with broader normative considerations by introducing an external lens. While the primary objective remains to map out the state of the art to determine the extent to which the EU should account for CBDR, the analysis is complemented by a normative perspective. In particular, the aim is not only to determine what the law *is*, but to assess what it *aspires* to be based on notions of corrective and distributive justice upon which the principle is grounded. Such considerations introduce an evaluative dimension to determine whether the Regulation effectively reflects such notions or whether it is limited to a mere superficial or limited acknowledgement. To successfully carry out the second part of the study, extensive exploration of secondary sources such as academic literature and conclusions made by scholars is necessary. For example, the writings of Cullet, Scott, and others will not only help identify the legal status of CBDR, but also its normative underpinnings. Hence, utilising both primary and secondary sources will offer guidance and clarifications on existing ambiguities, and strengthen any observations and conclusions made. Together, these two methodological approaches intend to provide a comprehensive overview of CBDR and justify its relevance beyond its formal legal obligations.

This evaluative approach aligns with the EU's self-conception as a normative power. Since the 2000s, scholars have attempted to frame the EU as a normative power

---

<sup>27</sup> Eliav Lieblich, 'How to Do Research in International Law? A Basic Guide for Beginner' (2021) 62 *Harvard International Law Journal Online* 44, 44-45.

<sup>28</sup> Primary sources are hereby understood as sources that comprise "raw information" or "first-hand accounts of something", whereas secondary sources are writings about primary sources.

<sup>29</sup> *ibid* 59.

<sup>30</sup> Alan Boyle, 'Soft Law in International Law-Making' in Evans (ed), *International Law* (OUP 2010), 126-127.

<sup>31</sup> Jan M. Smits, 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research' in Rob van Gestel, Hans W. Micklitz and Edward L. Rubin (eds), *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge University Press 2015), 210.

in international politics,<sup>32</sup> conceptualising it not only as a mere economic union grounded in the internal market, but as a community that has the ability to shape global norms and values.<sup>33</sup> The European project is characterised by its commitment to uphold a certain set of values grounded in Article 2 of the Treaty on European Union,<sup>34</sup> which have also emerged as a condition *sine qua non* for states who would like to accede to the EU.<sup>35</sup> In the context of the EU's environmental policy, the EU has increasingly attempted to export its high environmental ambitions beyond its borders, by portraying itself as a "global leader on climate and environmental issues".<sup>36</sup> This is not only highlighted by the announcement of the EGD, but also through its role in several international agreements. Thus, adherence to CBDR further helps to maintain its legitimacy and leadership position in international environmental governance, by aligning EU regulatory frameworks with its normative commitments related to sustainable development and multilateral cooperation.

It must also be acknowledged that this study encounters several limitations. A special emphasis is placed on the EUDR, although it is not the only EU Regulation criticised in light of CBDR. Any conclusions made in this thesis may hence not be transferable to other frameworks, given their different objectives and socio-political contexts. Additionally, this study focuses primarily on legal texts and normative evaluations, putting less emphasis on the complex political and economic contexts that further shape EU environmental action. The importance of these contexts should not be underestimated, however, an extensive exploration of such issues would fall beyond this study's scope. Lastly, it should be noted that the current status of the EUDR remains uncertain and that it may still be subject to change by the EU legislator in the future.

### **1.3 Thesis Structure**

To answer the research question, this thesis will build on the methodological structure and is divided into two main parts. Chapter 2 will provide an overview of the principle of CBDR and aims to build an understanding of the role of general principles in international (environmental) law prior to examining and assessing CBDR's historical evolution, normative underpinnings, and ultimately its legal nature. Chapter 3 explores the principle's role in EU environmental governance with an illustrative example by

---

<sup>32</sup> Daniel Silander, 'The European Commission on Sustainable Development: A New Normative Power in the Making?' (2022) 53 Forum Soc Econ 76, 78.

<sup>33</sup> Ian Manners, 'Normative Power Europe: A Contradiction in Terms' (2002) 40 JCMS 235.

<sup>34</sup> Consolidated version of the Treaty on European Union [2012] OJ C326/13 (TEU).

<sup>35</sup> Daniel Silander, 'The European Commission on Sustainable Development: A New Normative Power in the Making?' (2022) 53 Forum Soc Econ 76, 78.

<sup>36</sup> European Commission, 'Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal' (COM(2023) 640 final).

assessing the EU Deforestation Regulation in light of the CBDR framework. This requires first, a discussion on the role of CBDR in the EU's legal and policy framework and potential arguments in favour of its applicability to the EU. This will lay the groundwork to critically assess the EUDR in view of the principle of CBDR, taking also into account the conclusions made in Chapter 2. This analysis will be followed by a conclusion in Chapter 4, which summarises the findings and provides deeper insights into the broader implications of this study.

## **2 The Principle of Common but Differentiated Responsibilities in International Law**

### **2.1 The Role and Significance of General Principles of International (Environmental) Law**

International environmental law has emerged as a subset of the broader field of public international law, which fundamentally relies on the consent of sovereign states.<sup>37</sup> As per Article 38(1)(c) of the Statute of the ICJ, understood to codify the sources of international law,<sup>38</sup> "General Principles of Law" are among these recognised sources.<sup>39</sup> Although, much scholarly discussion focuses on real-world evidence for the existence of general principles, most scholars agree that they represent the existence of a common set of legal norms universally recognised across different legal systems.<sup>40</sup> However, despite their recognition as sources of international law, they face much uncertainty about their legal status. While the mainstream view asserts that general principles are a separate source of international law, many scholars disagree, with no unanimity on the matter.<sup>41</sup> Nonetheless, it is predominantly held that they primarily serve as a "normative influence on governance", meaning that they may influence and guide individuals and institutions in decision-making processes.<sup>42</sup> Despite their legal ambiguity, general principles are by no means legally irrelevant due to their diverse functions they serve. Not only do they aid in the interpretation and development of customary international law, but they may also serve as a point of reference for the resolution of inter-state disputes.<sup>43</sup> Thus, they provide the flexibility needed to address the complex social and economic challenges that characterise the environmental crisis today.<sup>44</sup>

With growing awareness of the need to protect the environment since the 1960s, numerous soft law instruments and environmental treaties have been adopted,

---

<sup>37</sup> Svitlana Kravchenko and others, 'Principles of International Environmental Law' in Erika Techera (ed), *Routledge Handbook of International Environmental Law* (Routledge 2012), 132.

<sup>38</sup> Thomas Kleinlein, 'Customary International Law and General Principles: Rethinking Their Relationship' in Brian D Lepard (ed), *Reexamining Customary International Law* (Cambridge University Press 2017), 133.

<sup>39</sup> Statute of the International Court of Justice (1945) 33 UNTS 993.

<sup>40</sup> Mahmoud Cherif Bassiouni, 'A Functional Approach to General Principles of International Law' (1990) 11 *Mich J Int'l L* 768, 771.

<sup>41</sup> Vishal Kumar and Sadhana Chaturvedi, 'The evolution of common but differentiated responsibilities (CBDR): From principle to practice' (2025) 7 *IJPSG* 14, 41.

<sup>42</sup> Ben Milligan and Richard Macrory, 'The history and evolution of legal principles concerning the environment' in Michael Faure (ed), *Elgar Encyclopedia of Environmental Law* (Edward Elgar Publishing 2023), 24.

<sup>43</sup> Mahmoud Cherif Bassiouni, 'A Functional Approach to General Principles of International Law' (1990) 11 *Mich J Int'l L* 768, p. 776; Vishal Kumar and Sadhana Chaturvedi, 'The evolution of common but differentiated responsibilities (CBDR): From principle to practice' (2025) 7 *IJPSG* 14, 39.

<sup>44</sup> Lluís Paradell-Trius, 'Principles of International Environmental Law: an Overview' (2000) 9 *Rev Eur Comp & Int'l Env'tl L* 93, 94.

incorporating key principles that form the foundation of most environmental legal frameworks today.<sup>45</sup> The Stockholm Declaration<sup>46</sup> provided for the first-ever agreed global set of principles in the field of the human environment<sup>47</sup> and laid the groundwork for the Rio Declaration,<sup>48</sup> intended to guide states in future sustainable development practices. Although both declarations proved to be highly influential, they do not constitute authoritative codifications of its principles and should thus be approached with caution. As their names suggest, they are “only” declarations and thus not legally binding upon the signatory states.<sup>49</sup> Moreover, the general principles that have emerged as a result of the two declarations are often accompanied by highly contentious political issues and should be applied uniquely to the particular circumstances.<sup>50</sup> Hence, caution is also warranted by the sheer difficulty of imposing general definitions concerning the nature, status, and role of environmental law principles. What further makes it difficult to discern concrete legal obligations is the absence of a judicial authority, as well as conflicting interpretations and practices by states.<sup>51</sup> Therefore, this raises important questions about their precise legal status, which has also led to considerable disagreement among scholars.<sup>52</sup> Whereas some might reflect customary international law, others might only serve as guiding interpretative standards with no binding effects.<sup>53</sup>

However, over time, many of the principles initially laid down in soft law instruments, have begun to take on the characteristics of customary international law. International custom, as evidence of a general practice accepted as law, also forms part of the sources recognised under international law.<sup>54</sup> The conditions to be considered customary international law were first articulated in the landmark judgement of the North Sea Continental Shelf Cases by the ICJ, which found that two conditions must be

---

<sup>45</sup> Dinah Shelton, ‘Stockholm Declaration (1972) and Rio Declaration (1992)’ (*Oxford Public International Law*, July 2008) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1608>> accessed 27 February 2025.

<sup>46</sup> Stockholm Declaration on the Human Environment (16 June 1972) UN Doc.A/CONF.48/14 (Stockholm Declaration).

<sup>47</sup> Pamela Chasek, ‘Stockholm and the Birth of Environmental Diplomacy’ (*International Institute for Sustainable Development*, September 2020) <[https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy\\_0.pdf](https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy_0.pdf)> accessed 26 February 2025, 5.

<sup>48</sup> Rio Declaration on Environment and Development (12 August 1992) UN Doc A/CONF.151/26 (Vol I) (Rio Declaration).

<sup>49</sup> *ibid* paras. 4 and 41.

<sup>50</sup> Lluís Paradell-Trius, ‘Principles of International Environmental Law: an Overview’ (2000) 9 *Rev Eur Comp & Int’l Env’tl L* 93, 93.

<sup>51</sup> Philippe Sands and others, *Principles of International Environmental Law* (1st edn, Cambridge 2018), 198.

<sup>52</sup> Vishal Kumar and Sadhana Chaturvedi, ‘The evolution of common but differentiated responsibilities (CBDR): From principle to practice’ (2025) 7 *IJPSG* 14, 41.

<sup>53</sup> Philippe Sands and others, *Principles of International Environmental Law* (1st edn, Cambridge 2018), 198; Lluís Paradell-Trius, ‘Principles of International Environmental Law: an Overview’ (2000) 9 *Rev Eur Comp & Int’l Env’tl L* 93, 93.

<sup>54</sup> Article 38 of the ICJ Statute.

satisfied: (1) state practice and (2) *opinio juris*.<sup>55</sup> "State practice" stipulates that practices of the state are consistent with the custom, and "*opinio juris*" necessitates that states generally accept the practice as a legal obligation.<sup>56</sup> To determine whether a particular rule or principle has transformed into a source of international law, the ICJ considers the uniformity, consistency, and longevity of the rule or principle in question.<sup>57</sup> Hereby, it is not expected that state practice must be perfect in the sense that it must be applied in absolute rigorous conformity. Instead, it is sufficient that the conduct, in general, be consistent with the custom in question.<sup>58</sup>

Even if their legal status is debated, this does not render them irrelevant or without legal significance, as their distinct functions may justify their importance in legal discussions.<sup>59</sup> Despite its non-binding nature, the notion of "soft law" has played a crucial role in the rapid development of new norms and principles in international environmental law.<sup>60</sup> These principles had a significant impact at the international level on treaty-making, with almost every major international convention including environmental protection as one of the goals of the States Parties.<sup>61</sup> Furthermore, whereas references to principles of general application previously were embedded in the preambles to international treaties, they are increasingly being incorporated into the operative parts of some. For example, Article 3 of the United Nations Framework Convention on Climate Change (UNFCCC),<sup>62</sup> lists "Principles" intended to guide the parties "in their actions to achieve the objective of the Convention and to implement its provisions". The UNFCCC itself is not legally binding, but it currently has almost near-universal membership with 197 Parties to the Convention and it further paved the way for the Kyoto Protocol<sup>63</sup> and the Paris Agreement.<sup>64</sup>

---

<sup>55</sup> North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark/Netherlands) [1969] ICJ Rep. 3, para. 71.

<sup>56</sup> Svitlana Kravchenko and others, 'Principles of International Environmental Law', in Erika Techera (ed), *Routledge Handbook of International Environmental Law* (Routledge 2012), 135.

<sup>57</sup> Rebecca M Bratspies, 'Reasoning up to Human Rights: Environmental Rights as Customary International Law' in John H Knox and Ramin Bejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press 2018), 4.

<sup>58</sup> Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14, para. 186.

<sup>59</sup> Vishal Kumar and Sadhana Chaturvedi, 'The evolution of common but differentiated responsibilities (CBDR): From principle to practice' (2025) 7 IJPSG 14, 42.

<sup>60</sup> Anita M. Halvorssen, 'Common, but Differentiated Commitments in the Future Climate Change Regime - Amending the Kyoto Protocol to Include Annex C and the Annex C Mitigation Fund' (2007) 18 *Colo J Int'l Env'tl L & Pol'y* 247, 9.

<sup>61</sup> Philippe Sands and others, *Principles of International Environmental Law* (1st edn, Cambridge 2018), 199.

<sup>62</sup> United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).

<sup>63</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2302 UNTS 148 (Kyoto Protocol).

<sup>64</sup> Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS No. I-54113 (Paris Agreement).

It is evident that there are considerable difficulties in determining not only the precise content of general principles but also their legal status. Nonetheless, it is important not to be discouraged by the sheer complexity of the matter and to acknowledge their importance within the international community. Instead of trying to devise a general approach to examine general principles, their legal significance must be examined case-by-case, considering its source, textual context, and state practice. In other words, the particular function of a principle may only become clear through its practical application in the real world. Therefore, a closer analysis of the history, development, and legal status of the principle of CBDR is needed prior to examining it in relation to the EU Deforestation Regulation.

## **2.2 The Role and Significance of General Principles of International (Environmental) Law**

### **2.2.1 The Historical Evolution and Normative Foundations of the Principle of CBDR**

The principle of CBDR has emerged from broader notions of equity in international law, alongside the understanding that developing countries' needs and capabilities must be considered in the development and application of environmental laws.<sup>65</sup> Traditionally, international law is grounded in the idea of sovereign equality, which foresees that all states be treated as equal in an effort to achieve formal equality.<sup>66</sup> However, in a world still characterised by stark inequalities, treating all states as formally equal, may not lead to equal outcomes, reinforcing existing inequalities. Having recognised these disparities international environmental law instead emphasises the pursuit of achieving substantive equality,<sup>67</sup> focused on ensuring both equal opportunities and outcomes.<sup>68</sup>

The notion of equity has been a central concern in international environmental law since the 1970s, particularly as environmental degradation and resource exploitation continue to highlight the disparities between the Global North and Global South.<sup>69</sup> Differential treatment has emerged from post-decolonisation initiatives, which sought to take into account the structural inequalities between developed and developing states, which, *inter alia*, emerged due to historical exploitation of natural

---

<sup>65</sup> Philippe Sands and others, *Principles of International Environmental Law* (1st edn, Cambridge 2018), 244.

<sup>66</sup> Bojana Čučković, 'From equality towards equity and differentiated responsibilities: A contemporary international environmental law perspective' (2019) 67 *Anali Pravnog fakulteta u Beogradu* 55, 57.

<sup>67</sup> *ibid* 58.

<sup>68</sup> Consequently, this allows for more context-sensitive solutions, as opposed to a one-size-fits all approach.

<sup>69</sup> Philippe Cullet, 'Principle 7: Common but Differentiated Responsibilities' in Jorge E Viñuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015), 209.

resources by developed countries for their continuous use.<sup>70</sup> As such, the principle of CBDR is closely linked to broader normative ideals of intra- and intergenerational justice, highlighting that while developing states are relatively minor contributors to current environmental problems, they have limited capacities to tackle them.<sup>71</sup> This idea was first raised at the UN Conference on the Human Environment in 1972, after which the Stockholm Declaration framed environmental protection as the “duty of all governments”, emphasising that “developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment”.<sup>72</sup> This was the result of a carefully negotiated compromise between developed states, which were calling for greater environmental action, and developing states, which emphasised their need for economic development.<sup>73</sup> Twenty years later, this notion was formalised in the Rio Declaration where CBDR is explicitly reflected in Principle 7 and reads as follows:

States shall cooperate 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.<sup>74</sup>

By considering the varying historical contributions of states to environmental degradation and by imposing differentiated obligations based on their respective capabilities, CBDR further operationalises its broader normative ideals through two key dimensions, those being corrective and distributive justice.

Corrective justice, in its simplest form, is grounded in the idea that wrongs must be compensated by the wrongdoer.<sup>75</sup> CBDR reflects corrective justice when the rationale for differentiation is grounded in the historic contributions of states to environmental degradation. Differentiation of commitments and obligations is thus based on their differing responsibilities. There are several arguments that can be brought forward as a

---

<sup>70</sup> *ibid* 214.

<sup>71</sup> Pieter Pauw and others, ‘Different Perspectives on Differentiated Responsibilities: A State of the Art Review of the Notion of Common but Differentiated Responsibilities in International Negotiations’ (2014) Paper 6/2014, German Development Institute, 3.

<sup>72</sup> Stockholm Declaration, preamble 4.

<sup>73</sup> Pieter Pauw and others, ‘Different Perspectives on Differentiated Responsibilities: A State of the Art Review of the Notion of Common but Differentiated Responsibilities in International Negotiations’ (2014) Paper 6/2014, German Development Institute, 3.

<sup>74</sup> Thus, the principle of CBDR requires that all states tackle the environmental crisis while also establishing environmental standards that impose differing obligations on developing states through technological and financial contributions.

<sup>75</sup> Philippe Cullet, ‘Principle 7: Common but Differentiated Responsibilities’ in Jorge E Viñuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015), 212.

justification for corrective justice. The first justification can be linked to the exploitation of the Global South countries during colonialism, especially in terms of their environmental resources. Secondly, it can be linked to the fact that only a limited number of states have historically contributed to the majority of environmental degradation and should thus bear a higher burden.<sup>76</sup> Despite this clear corrective element, such responsibility does not, however, translate to legal liability, meaning that states become legally responsible for their past actions, but instead shapes how environmental rules should be designed.<sup>77</sup>

In comparison, when the rationale for differentiation is grounded in the respective capabilities of states, the principle of CBDR reflects distributive justice.<sup>78</sup> Instead of focusing on rectifying harm after it has occurred, distributive justice aims to address whether societal resources are fairly distributed to achieve substantive equality.<sup>79</sup> As a result, the source of responsibility is not causal, but rather grounded on principles of fairness and necessity.<sup>80</sup> Developed nations are expected to take the lead not just due to their historic contributions, but because they have the resources to drive such efforts, which is not just in the interest of developing states but also that of future generations.<sup>81</sup>

These normative underpinnings are most clearly reflected within the UN's climate change regime which offers the most comprehensive application of the principle to date.<sup>82</sup> Notably, this includes the 1992 UNFCCC, 1997 Kyoto Protocol, and 2015 Paris Agreement. The UNFCCC not only makes explicit mention of the principle in its preamble<sup>83</sup> but also calls on "developed country Parties" to take the lead in combating climate change.<sup>84</sup> The Kyoto Protocol explicitly operationalises the principle by

---

<sup>76</sup> *ibid* 212-213.

<sup>77</sup> Virginie Barral, 'Common but Differentiated Responsibilities and Justice: Broadening the Notion of Responsibility in International Law' in Hannes Hansen-Magnusson and Antje Vetterlein (eds), *The Rise of Responsibility in World Politics* (Cambridge University Press 2021).

<sup>78</sup> *ibid*.

<sup>79</sup> Philippe Cullet, 'Principle 7: Common but Differentiated Responsibilities' in Jorge E Viñuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015), 213.

<sup>80</sup> *ibid*.

<sup>81</sup> This also links back to CBDR's broader normative ideals of inter- and intragenerational justice; Virginie Barral, 'Common but Differentiated Responsibilities and Justice: Broadening the Notion of Responsibility in International Law' in Hannes Hansen-Magnusson and Antje Vetterlein (eds), *The Rise of Responsibility in World Politics* (Cambridge University Press 2021).

<sup>82</sup> Lavanya Rajamani, 'Common but Differentiated Responsibilities' in Michael Faure (ed), *Elgar Encyclopaedia of Environmental Law* (Edward Elgar Publishing 2023), 292.

<sup>83</sup> It reads: "Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions."

<sup>84</sup> UNFCCC, article 3(1) .

distinguishing between two categories of states.<sup>85</sup> As per Annex I, industrialised states are assigned binding targets for the reduction of GHG, whereas non-Annex I states must merely report on their emissions and are only encouraged to pursue sustainable development. The Paris Agreement, in turn, makes explicit mention of the principle in its preamble, as well as numerous articles.<sup>86</sup> Not only do the provisions state that the Agreement will be implemented to reflect CBDR,<sup>87</sup> but also that developed states should continue to take the lead in climate action.<sup>88</sup>

### **2.2.2 The Legal Status and Normative Relevance of the Principle of CBDR**

Although the principle of CBDR is well-enshrined in international environmental law, its precise legal status remains debated. Clarifying whether CBDR constitutes a legally binding obligation or merely reflects a political consensus is especially important, as it determines whether states can be held accountable for failing to consider historical responsibilities or capacity differences.

At the core of this debate lies the distinction between soft and hard law.<sup>89</sup> While CBDR appears repeatedly in soft law instruments,<sup>90</sup> its growing incorporation into binding treaties has increasingly blurred the line between non-binding norms and acknowledged principles of environmental law.<sup>91</sup> For example, there are several multilateral environmental agreements with near-universal participation that reflect some configuration of the principle. This includes the Vienna Convention and its Montreal Protocol, the UNFCCC and its Kyoto Protocol, the Paris Agreement, and the Convention to Combat Desertification.<sup>92</sup> Having only named a few, it can be argued that there appears to be a general consensus within the international community accepting the principle.

For CBDR to qualify as a general principle of international law or customary law, it must meet the following criteria: (1) it must possess a fundamentally norm-creating character, such that it could be regarded as forming the basis of a general rule of law, (2) the acts in question must amount to settled practice, and (3) it must be accompanied

---

<sup>85</sup> Vishal Kumar and Sadhana Chaturvedi, 'The evolution of common but differentiated responsibilities (CBDR): From principle to practice' (2025) 7 *IJPSG* 14, 15.

<sup>86</sup> Paris Agreement, articles 2(2), 4(3) and 4(19).

<sup>87</sup> *ibid* article 2(2).

<sup>88</sup> *ibid* articles 4(4) and 9(3).

<sup>89</sup> Soft law commonly refers to norms, declarations, or recommendations, such as the Stockholm or Rio Declarations, where the principle of CBDR is most expressly articulated. Hard law generally refers to legal obligations that are binding and enforceable under international law.

<sup>90</sup> While it can be very influential, it is ultimately non-binding on the parties concerned.

<sup>91</sup> Lavanya Rajamani, 'The Doctrinal Basis for and Boundaries of Differential Treatment in International Environmental Law' in Lavanya Rajamani (ed), *Differential Treatment in International Environmental Law* (OUP 2006), 158.

<sup>92</sup> Rachel Boyte, 'Common but Differentiated Responsibilities: Adjusting the Developing/Developed Dichotomy in International Environmental Law' (2010) 14 *NZ J Env'tl L* 63, 65-66.

by *opinio juris*.<sup>93</sup> However, this does not, by itself, amount to settled practice accepting the principle as law, as state practice on CBDR has been far from uniform. Although, the incorporation of the principle was one of the conditions to ensure the widest possible participation of states in the Rio Declaration, its legal impact was significantly curtailed due to the reluctance of several major world players to accept its applicability.<sup>94</sup> Notably, the United States issued a statement on Principle 7 of the Rio Declaration, emphasising that it does not accept any legal obligations stemming from CBDR.<sup>95</sup>

This dichotomy is further illustrated in academic discourse. Brown Weiss already suggested that differentiation was emerging as a new principle of international environmental law in the 2000s,<sup>96</sup> whereas Stone argued that CBDR has not “been elevated to the status of a customary principle” in 2004.<sup>97</sup> Hey further argued that it most likely qualifies as a principle of international environmental policy or soft law that has a profound impact on the international community.<sup>98</sup> Rajamani takes a more nuanced approach by arguing “that it is of sufficient legal weight to form the legal and philosophical basis for the interpretation of existing obligations and the elaboration of future international legal obligations”.<sup>99</sup> Birnie, Boyle, and Redgwell regard it as a framework principle with significant legal weight, far from “merely” being soft law.<sup>100</sup> Furthermore, Cullet argues that its significance is not determined by its legal status, but rather its impact on legitimising the notion of differentiated responsibilities as a means of achieving fairness in the international environmental regime.<sup>101</sup> Bartenstein notes something similar by describing CBDR with norm-creating potential, capable of requiring states to pursue equitable international relations, but that it remains too vague to

---

<sup>93</sup> Lavanya Rajamani, ‘The Doctrinal Basis for and Boundaries of Differential Treatment in International Environmental Law’ in Lavanya Rajamani (ed), *Differential Treatment in International Environmental Law* (OUP 2006), 159.

<sup>94</sup> Rachel Boyte, ‘Common but Differentiated Responsibilities: Adjusting the Developing/Developed Dichotomy in International Environmental Law’ (2010) 14 NZ J Env’t L 63, 64.

<sup>95</sup> US Department of State, ‘U.S Interpretative Statement on World Summit on Sustainable Development Declaration’ (*US State Department*, 2002) <<https://2009-2017.state.gov/s/l/38717.htm>> accessed 19 April 2025.

<sup>96</sup> Edith Brown Weiss, ‘The Rise or the Fall of International Law?’ (2000) 69 *Fordham L. Rev.* 345, 350.

<sup>97</sup> Christopher D. Stone, ‘Common but Differentiated Responsibilities in International Law’ (2004) 98 *Am J Int’l L* 276, 299-300.

<sup>98</sup> Ellen Hey and Sophia Paulini, ‘Common but Differentiated Responsibilities’ (*Oxford Public International Law*, October 2021) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1568>> accessed 18 April 2025.

<sup>99</sup> Lavanya Rajamani, ‘The Doctrinal Basis for and Boundaries of Differential Treatment in International Environmental Law’ in Lavanya Rajamani (ed), *Differential Treatment in International Environmental Law* (OUP 2006), 174.

<sup>100</sup> Patricia Birnie, Alan Boyle, and Catherine Redgwell, *International Law & The Environment* (4th edn, OUP 2021), 150.

<sup>101</sup> Philippe Cullet, ‘Principle 7: Common but Differentiated Responsibilities’ in Jorge E Viñuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015), 220.

generate sufficient state practice and *opinio juris*.<sup>102</sup> Given the absence of both consistent state practice and *opinio juris*, most scholars tend to agree that it does not constitute a binding principle outside of the treaty instrument in which it finds expression.<sup>103</sup>

While the principle lacks formal legal recognition, its importance cannot be dismissed due to the strong normative implications that it bears.<sup>104</sup> For example, without the recognition of CBDR within international environmental treaties, their adoption would likely not have been possible in the first place. Without it, developing states would have little incentive to subscribe to a regime that could likely hamper their economic growth, especially considering their limited role in contributing to the problem.<sup>105</sup> This is most reflected through differentiated commitments as found in the UN's climate change regime, as well as through the provision of technical or financial assistance. This suggests that the principle of CBDR plays a crucial role in shaping the architecture of international environmental laws by ensuring that global cooperation is not only ambitious but also legitimate and fair for all actors involved.

### **2.3 Interim Conclusion: The Principle of CBDR as an Analytical Framework**

The above considerations suggest that even in the absence of formal legal obligations, the principle's normative underpinnings certainly imply that the principle is not legally irrelevant. Given its importance in shaping the architecture of international environmental laws, the principle should at the very least be reflected in their legal design. CBDR thus provides for a framework through which the legitimacy and subsequent substantive and legal implications of an environmental measure can be critically evaluated, ensuring that it sufficiently displays an awareness of equity and differentiated responsibility. Such an evaluation must consider all of CBDR's dimensions, including historical responsibility, differentiation based upon capacity and capability, and its underlying normative conceptions grounded in corrective and distributive justice. To this end, this study has identified two guiding questions through which such an evaluation can be carried out:

---

<sup>102</sup> Virginie Barral, 'Common but Differentiated Responsibilities and Justice: Broadening the Notion of Responsibility in International Law' in Hannes Hansen-Magnusson and Antje Vetterlein (eds), *The Rise of Responsibility in World Politics* (Cambridge University Press 2021).

<sup>103</sup> Gracia Marin Duran and Joanne Scott, 'Global EU Climate Action and the Principle of Common but Differentiated Responsibilities and Respective Capabilities' (2024) EUI LAW Working Paper 2024/02, 4.

<sup>104</sup> This also aligns with similar conclusions brought forward by Rajamani, Cullet, and Bartenstein who have consistently emphasised its normative importance.

<sup>105</sup> Virginie Barral, 'Common but Differentiated Responsibilities and Justice: Broadening the Notion of Responsibility in International Law' in Hannes Hansen-Magnusson and Antje Vetterlein (eds), *The Rise of Responsibility in World Politics* (Cambridge University Press 2021).

- 1. Corrective Justice:** Does the law acknowledge or compensate for differing historical contributions of states to environmental degradation?
- 2. Distributive Justice:** Does the law consider and differentiate the varying capacities and capabilities of states?

In light of corrective justice, it must be examined whether an environmental measure sufficiently recognises and operationalises a country's historical role in driving environmental degradation, particularly by acknowledging its colonial legacy and potential neo-colonial dynamics, and by providing reparative or compensatory measures. In view of distributive justice, an environmental measure should ensure that less capable states are not disproportionately burdened in comparison to developed states, who should bear a larger share of the burden. This notion can be operationalised, for example, through enhanced frameworks of cooperation, offering technical and financial support, or providing for differentiated obligations. Consequently, these questions offer an analytical framework through which environmental legal instruments, like the EU Deforestation Regulation, can be critically examined and guide relevant conclusions on what the law perhaps *ought to be* instead.

### 3 The Role of the Principle of CBDR in EU Environmental Governance: The Case of the EU Deforestation Regulation

#### 3.1 The European Union and the Principle of CBDR

##### 3.1.1 The EU and International Environmental Law

Before applying CBDR to a specific regulatory context, it is worth delineating the broader legal and institutional framework under which the EU operates. The discussion on the EU's legal nature and its place within the international order is one that has been ongoing for decades.<sup>106</sup> While it is commonly agreed upon that the EU qualifies as a *sui generis* entity,<sup>107</sup> scholars also agree that it remains an international organisation situated within international law.<sup>108</sup> Therefore, it emerges both as an object of international law and a subject entitled to adopt new law.<sup>109</sup> The EU's distinct international legal personality is granted through the treaties that created and govern it,<sup>110</sup> and is derived from the transfer of sovereignty from its Member States.<sup>111</sup> As a result, it can conclude and negotiate international agreements, and join other international organisations.

The EU's general "openness" towards international law is also expressed in its treaty structure<sup>112</sup> and has been emphasised by the CJEU by referring to international law as an "integral part" of EU law.<sup>113</sup> Nonetheless, the exact relationship between the two legal orders is not explicitly laid out in the EU's founding treaties.<sup>114</sup> The most indicative treaty provision remains Article 216(2) TFEU,<sup>115</sup> which provides that "agreements concluded by the Union are binding upon the institutions and on its Member States". Thus, the EU is faced with the same choices as a state when it comes to the

---

<sup>106</sup> Bruno de Witte, 'EU law: is it international law?' in Steve Peers and Catherine Barnard (eds) *European Union Law* (4<sup>th</sup> edn, OUP 2023), 192.

<sup>107</sup> i.e. of its own kind.

<sup>108</sup> Bruno de Witte, 'European International Law' in Robert Schütze (ed), *Globalisation and Governance* (CUP 2018), 228.

<sup>109</sup> *ibid* 209.

<sup>110</sup> Katja Ziegler, 'The Relationship between EU law and International Law' in Dennis Patterson and Anna Södersten (eds), *A Companion to European Union Law and International Law* (Wiley-Blackwell 2016) 3.

<sup>111</sup> TEU, article 47.

<sup>112</sup> Article 3(5) TEU provides that the EU shall contribute 'to the strict observance and the development of international law'.

<sup>113</sup> Katja Ziegler, 'The Relationship between EU law and International Law' in Dennis Patterson and Anna Södersten (eds), *A Companion to European Union Law and International Law* (Wiley-Blackwell 2016) 4-5; Case 181/73 R. & V. *Haegeman v Belgian State* [1974] ECLI:EU:C:1974:41, para 5.

<sup>114</sup> Armin von Bogdandy and Maja Smrkolj, 'European Union Law and International Law' (*opil.ouplaw*, February 2011) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e620>> accessed 15 July 2025, para 4.

<sup>115</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/01 (TFEU).

implementation of such agreements,<sup>116</sup> and consequently constrains EU action.<sup>117</sup> International agreements also form an integral part of the EU legal order, as clarified by the CJEU in 1974, provisions of international agreements do not prevail over primary law but instead rank between primary and secondary law.<sup>118</sup> Further relevant is the notion of consistent interpretation,<sup>119</sup> which mandates that EU secondary legislation, such as the EUDR, must be interpreted as “far as possible” according to the international obligations to which the EU is bound.<sup>120</sup>

In policy areas in which the Union enjoys exclusive competences, the Member States have accepted abandoning their sovereign powers for the EU to be able to conclude treaties in those areas.<sup>121</sup> In policy areas that fall under the EU’s shared competence, such as environmental protection, under which the EUDR falls, Member States remain independent actors of international legal relations.<sup>122</sup> However, within environmental governance, the EU and its Member States commonly conclude so-called “mixed agreements”, which fall partly within the competence of both and are binding on both.<sup>123</sup> While the EUDR exemplifies this division of competences, the EU nonetheless assumes responsibility for ensuring adherence to international norms such as CBD, as it legislates on the Union level, thereby imposing direct obligations upon its Member States.

Historically, the CJEU has taken a rather cautious approach regarding general principles of law in issuing specific rulings concerning their place within the EU legal hierarchy.<sup>124</sup> Previously, they were applied indirectly and served primarily as a tool for interpretation or filling interpretative gaps.<sup>125</sup> In 1992, however, the CJEU clarified that the EU is bound by international law, including general principles of law, when exercising

---

<sup>116</sup> Bruno de Witte, ‘European International Law’ in Robert Schütze (ed), *Globalisation and Governance* (CUP 2018), 233.

<sup>117</sup> The application of international agreements can only be denied if they conflict with the treaties themselves or the with the unwritten principles of primary EU Law (see Kadi case).

<sup>118</sup> Case 181-73 *R & V Haegeman v Belgian State* [1976] ECLI:EU:C:1974:41, para. 5.

<sup>119</sup> Katja Ziegler, ‘The Relationship between EU law and International Law’ in Dennis Patterson and Anna Södersten (eds), *A Companion to European Union Law and International Law* (Wiley-Blackwell 2016) 7-9.

<sup>120</sup> Case C-53/96 *Hermès International v FHT Marketing Choice BV* [1998] ECR I-3603, para. 28; Case C-61/94 *Commission v Germany* [1996] ECR I-3989, para. 52 (“International Dairy Arrangement”).

<sup>121</sup> Bruno de Witte, ‘European International Law’ in Robert Schütze (ed), *Globalisation and Governance* (CUP 2018) 223.

<sup>122</sup> *ibid* 233.

<sup>123</sup> Geert de Baere, ‘EU External Action’ in Steve Peers and Catherine Barnard (eds) *European Union Law* (4<sup>th</sup> edn, OUP 2023).

<sup>124</sup> Armin von Bogdandy and Maja Smrkolj, ‘European Union Law and International Law’ (*opil.ouplaw*, February 2011) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e620>> accessed 15 July 2025, para 40.

<sup>125</sup> *ibid* para 23.

its powers.<sup>126</sup> Therefore, although the EU is not formally a state, it possesses a distinct legal personality and thus needs to act in accordance with its obligations under international law, including CBDR.

### 3.1.2 The EU as a Normative Environmental Actor

Beyond the EU's legal obligations, there are also various normative arguments suggesting that the EU should adhere to CBDR. Next to the emergence of the EU as a *sui generis* entity, scholars have increasingly focused on the question of what kind of power the EU is and its role in world politics.<sup>127</sup> While some maintain that it remains a market-based power<sup>128</sup>--focused on protecting and advancing the EU's market integration--others have increasingly characterised it as a "normative power" or a "union of values". Ian Manners was one of the first to frame the EU as a "normative power",<sup>129</sup> influenced by its unique historical context, hybrid regime, and political-legal constitution.<sup>130</sup> While various understandings of the term exist, it generally characterises the EU as a novel power, due to its pursuit and spread of certain values both in and outside its borders.<sup>131</sup> Not only has the EU been founded on universal norms such as the respect for human dignity, freedom, democracy, and equality,<sup>132</sup> but it also vows to promote peace, its values, and the wellbeing of its people.<sup>133</sup>

The EU as a "normative power" can especially be seen in the context of its environmental policy. Already in the 2000s, Manners argued that the EU's values are comprised of "core norms" and "minor norms", of which sustainable development formed a part of.<sup>134</sup> When concern for the environment began to gain momentum in 1972, the EU lacked an environmental competence with many pressing issues remaining unaddressed. 53 years later, the EU is described as a "leading player in environmental politics" promoting some of the most ambitious policies in the world.<sup>135</sup> These ambitions are also reflected within the treaties themselves, with sustainable development firmly established as a quasi-constitutional norm.<sup>136</sup>

---

<sup>126</sup> Case C-286/90 *Anklagemyndigheden v Peter Michael Poulsen and Diva Navigation Corp* [1992] ECLI:EU:C:1992:453, para 9.

<sup>127</sup> Chad Damro, 'Market Power Europe' (2012) 19 JEPP 682.

<sup>128</sup> *ibid* 684.

<sup>129</sup> Ian Manners, 'Normative Power Europe: A Contradiction in Terms' (2002) 40 JCMS 235, 238.

<sup>130</sup> *ibid* 240.

<sup>131</sup> Helene Sjørnsen, 'The EU as a 'Normative' Power: How can this be?' (2006) 13 JEPP 235.

<sup>132</sup> TEU, article 2.

<sup>133</sup> *ibid*, article 3(1).

<sup>134</sup> Ian Manners, 'Normative Power Europe: A Contradiction in Terms' (2002) 40 JCMS 235.

<sup>135</sup> Robert Falkner, 'The EU as a "Green Normative Power?" EU Leadership in International Biotechnology Regulation' (2006) Center for European Studies Working Paper Series #140 <<https://core.ac.uk/download/pdf/5081593.pdf>> accessed 15 June 2025, 3.

<sup>136</sup> *ibid* 4; TEU, articles 3(5) and 3(3).

Next to the EU's normative self-conception, it has increasingly attempted to export its values beyond its borders,<sup>137</sup> which was consolidated through the introduction of the EGD, in which the Union's commitment as a global "environmental leader" is perhaps most articulated. With the aim of becoming the first climate-neutral continent by 2050, the EGD paved the way for a comprehensive policy package, addressing numerous environmental concerns.<sup>138</sup> The Commission's newest initiative, the Clean Industrial Deal, is riddled with similar semantics, being equally committed to "demonstrating leadership"<sup>139</sup> and positioning itself as a "global leader in the clean transition".<sup>140</sup>

The EU's leadership role in environmental policy has primarily manifested itself in two ways. First, through its active participation in the negotiation of international environmental treaties,<sup>141</sup> and second, through the adoption of unilateral measures with significant extraterritorial effects.<sup>142</sup> Whereas the former is committed to multilateral cooperation, focused on jointly addressing environmental concerns, the latter entails the imposition of EU standards on third countries. This phenomenon has even been formally coined the "Brussels Effect", which describes the EU's ability to increasingly shape global norms and standards outside its borders, *inter alia*, due to its market size.<sup>143</sup> The introduction of such measures, emerged not only as means for the EU to promote its own interests, but also as a response to the failure of other states to adequately respond to the pressing issues of our time, including the protection of the environment.<sup>144</sup>

As the EU continues to export its environmental ambitions abroad, it is essential to examine whether its measures are coherent with foundational principles of international law, including CBDR. Given this conceptualisation of the EU as a "normative

---

<sup>137</sup> European Commission, 'EU as a Global Leader' (*ec.europa.eu*) <[https://ec.europa.eu/commission/presscorner/api/files/attachment/860252/EU\\_as\\_a\\_global\\_leader\\_en.pdf.pdf](https://ec.europa.eu/commission/presscorner/api/files/attachment/860252/EU_as_a_global_leader_en.pdf.pdf)> accessed 17 June 2025; EU External Action Service, European Commission, 'The EU as a Global Actor' (*eeas.europa.eu*) <[https://www.eeas.europa.eu/sites/default/files/documents/2023/inside\\_draft\\_EN-2023\\_web.pdf](https://www.eeas.europa.eu/sites/default/files/documents/2023/inside_draft_EN-2023_web.pdf)> accessed 17 June 2025.

<sup>138</sup> European Commission, 'The European Green Deal' (*commission.europa.eu*) <[https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en)> accessed 17 June 2025.

<sup>139</sup> European Commission, 'The Clean Industrial Deal: A Joint Roadmap for Competitiveness and Decarbonisation' COM(2025) 85 final, 2.

<sup>140</sup> *ibid* 7.

<sup>141</sup> See: [https://environment.ec.europa.eu/international-cooperation/multilateral-environmental-agreements-meas\\_en](https://environment.ec.europa.eu/international-cooperation/multilateral-environmental-agreements-meas_en).

<sup>142</sup> Next to the EUDR, prominent examples include the EU's Carbon Border Adjustment and the Emissions Trading System.

<sup>143</sup> Anu Bradford, *The Brussels Effect: How the European Union Rules the Word* (OUP 2020).

<sup>144</sup> Alan Herve, 'European unilateralism as a tool for regulating international trade: a necessary evil in collapsing multilateral system' (*robert-schuman.eu*, 28 March 2022) <<https://www.robert-schuman.eu/en/european-issues/0626-european-unilateralism-as-a-tool-for-regulating-international-trade-a-necessary-evil-in-a>> accessed 22 July 2025.

power”, alignment with CBDR should also be expected in view of its commitments related to sustainable development and environmental protection. Therefore, the EU’s claim to normative leadership hinges upon whether its unilateral initiatives, like the EUDR, can be reconciled with established international norms, as failure to adhere to the principle not only risks undermining the EU’s credibility but also the very leadership position that it so actively seeks to promote.

### **3.1.3 EU Environmental Governance and the Principle of CBDR**

In light of the considerations outlined above, the EU Deforestation Regulation serves as one of the most recent examples, which explicitly embodies the two-fold relationship of EU and international law. Namely, the EU’s tendency to assert its normative influence beyond its borders and the need for the EU to nonetheless adhere to international law. To that end, it is also important to examine to what extent the principle of CBDR is already reflected within its legal framework or policy agendas.

In short, CBDR is not explicitly incorporated. While Article 192(2) TFEU refers to key environmental principles, no reference is made to CBDR. However, it should be noted that Article 3(5) TEU expressly provides that the Union “in its relations with the wider world (...) shall contribute to peace, security, and sustainable development of the Earth (...), as well as to the strict observance and the development of the international law”. With respect to the Union’s external action, specific reference to fostering the “sustainable economic, social, and environmental development of developing countries” is made in Article 21 TEU.

Additionally, the EU is party to numerous international treaties in which CBDR holds binding force and thus also forms part of EU law.<sup>145</sup> The EU and its Member States have all signed and ratified the UNFCCC,<sup>146</sup> the Kyoto Protocol,<sup>147</sup> and the Paris Agreement,<sup>148</sup> three legally binding treaties with near-universal participation, where CBDR is expressly articulated as an overarching principle.<sup>149</sup> Article 3(1) UNFCCC mandates that the Parties “shall be guided” by CBDR, and Article 2(2) Paris Agreement highlights that the agreement “will be implemented to respect” CBDR. Within the Kyoto

---

<sup>145</sup> TFEU, article 216(2).

<sup>146</sup> European Commission, ‘Global Climate Action’ (*climate.ec.europa.eu*) <[https://climate.ec.europa.eu/eu-action/international-action-climate-change/global-climate-action\\_en](https://climate.ec.europa.eu/eu-action/international-action-climate-change/global-climate-action_en)> accessed 19 June 2025.

<sup>147</sup> European Commission, ‘Kyoto Protocol’ (*ec.europa.eu*) <[https://ec.europa.eu/commission/presscorner/detail/en/memo\\_04\\_43](https://ec.europa.eu/commission/presscorner/detail/en/memo_04_43)> accessed 19 June 2025.

<sup>148</sup> European Council, ‘Paris Agreement on Climate Change’ (*consilium.europa.eu*) <<https://www.consilium.europa.eu/en/policies/paris-agreement-climate/>> accessed 19 June 2025.

<sup>149</sup> Gracia Marin Duran and Joanne Scott, ‘Global EU Climate Action and the Principle of Common but Differentiated Responsibilities and Respective Capabilities’ (2024) EUI LAW Working Paper 2024/02, 4.

Protocol, CBDR is detailed in Article 10 and further operationalised by differentiated obligations between developed and developing states. In addition to international agreements, the EU is party to numerous non-binding decisions such as the Copenhagen Accord, Cancun Agreements, and the Durban Platform, that have all sought to reduce the disparities across developed and developing states through mechanisms of differentiation.<sup>150</sup>

While this primarily concerns the EU's external actions, scholars have attempted to argue that the EU consequently holds a legal obligation to uphold CBDR more broadly, especially when in pursuit of the objectives laid down in international agreements. In 2012, Scott and Rajamani examined the EU's Aviation Directive in light of CBDR. The Aviation Directive forms part of the EU's Emissions Trading Scheme, and its geographical scope extends to flights taking off from or landing at an EU airport.<sup>151</sup> The Commission had previously argued that CBDR was irrelevant on the grounds that the Directive only applies to business activities in the EU market and not specifically to states. Scott and Rajamani disagreed and instead contended that the principle forms a fundamental part of the "conceptual apparatus of the climate change regime", and that the EU thus holds an obligation to account for it.<sup>152</sup>

Duran and Scott examined the EU's Carbon Border Adjustment Mechanism (CBAM)<sup>153</sup> and the EU Directive including maritime emissions within the scope of the Emissions Trading System.<sup>154</sup> CBAM unilaterally imposes a carbon price paid by domestic producers on emissions that are generated outside its borders but that form part of the EU's imports.<sup>155</sup> The EU Directive concerning maritime emissions obliges shipping companies in and outside the Union to buy and surrender allowances to cover their CO<sub>2</sub> emissions.<sup>156</sup> Thus, both legal instruments serve as examples of how the EU imposes unilateral obligations on third countries. Duran and Scott argued that even if no explicit legal obligation to apply CBDR exists, that its logic must still be reflected in

---

<sup>150</sup>Joanne Scott and Lavanja Rajamani, 'EU Climate Change Unilateralism' (2012) 23 *European Journal of International Law* 469, 478.; Gracia Marin Duran and Joanne Scott, 'Global EU Climate Action and the Principle of Common but Differentiated Responsibilities and Respective Capabilities' (2024) EUI LAW Working Paper 2024/02, 4.

<sup>151</sup> Joanne Scott and Lavanja Rajamani, 'EU Climate Change Unilateralism'(2012) 23 *European Journal of International Law* 469, 470.

<sup>152</sup> *ibid* 480.

<sup>153</sup> Regulation (EU) 2023/956 of the European Parliament and the Council of 10 May 2023 establishing a carbon border adjustment mechanism [2023] OJ L130/52.

<sup>154</sup> European Commission, 'Maritime transport in EU Emissions Trading System (ETS)' ([climate.ec.europa.eu](https://climate.ec.europa.eu)) <[https://climate.ec.europa.eu/eu-action/transport-decarbonisation/reducing-emissions-shipping-sector/faq-maritime-transport-eu-emissions-trading-system-ets\\_en](https://climate.ec.europa.eu/eu-action/transport-decarbonisation/reducing-emissions-shipping-sector/faq-maritime-transport-eu-emissions-trading-system-ets_en)> accessed 9 August 2025.

<sup>155</sup> Gracia Marin Duran and Joanne Scott, 'Global EU Climate Action and the Principle of Common but Differentiated Responsibilities and Respective Capabilities' (2024) EUI LAW Working Paper 2024/02, 17.

<sup>156</sup> *ibid* 13.

the design of legislative measures that impose such obligations on third countries.<sup>157</sup> In particular, they elaborated upon Caney's climate justice framework that distinguishes between first-order and second-order climate responsibilities, to determine when the principle of CBDR should be relevant for EU environmental actions.<sup>158</sup> First-order climate responsibilities arise when the EU regulates the emissions of GHG that fall within its own jurisdiction. Second-order climate responsibilities arise when it regulates emissions that fall within the jurisdiction of a different state. It is particularly in those second-order responsibilities (i.e., frameworks that impose unilateral obligations on third states) that CBDR should be accounted for where appropriate, to avoid placing disproportionate burdens on third countries.<sup>159</sup>

Consequently, while CBDR is not expressly articulated within the EU's internal legal framework, its treaty commitments and extraterritorial actions suggest at least a normative relevance to CBDR in particular legislative contexts, such as the EU Deforestation Regulation. To that end, the EUDR will serve as an illustrative example, whereby a legal instrument is assessed in light of the framework developed in Chapter 2.3., which is grounded upon the two justice-based principles of corrective and distributive justice.

## **3.2 The EU Deforestation Regulation and the Principle of CBDR**

### **3.2.1 The EU Deforestation: Background and Regulatory Context**

With the EU emerging as a significant consumer of commodities linked to deforestation, it is unsurprising that it announced the EU Deforestation Regulation, in an effort to regulate the consumption of forest-related products in the EU.<sup>160</sup> This step is consistent with the EU's normative ambitions, emphasising that the Union should be a "strong global actor", leading both by example and by taking the lead in international cooperation.<sup>161</sup>

The EUDR was adopted in 2023 and forms part of the EU's broader action plan to protect and restore the world's forests.<sup>162</sup> Notably, in December 2024, an additional 12-month phasing-in period to facilitate its implementation was granted by the EU

---

<sup>157</sup> *ibid* 4.

<sup>158</sup> Joanne Scott, 'The Geographical Scope of the EU's Climate Responsibilities' (2015) 17 *CYELS* 92.

<sup>159</sup> Gracia Marin Duran and Joanne Scott, 'Global EU Climate Action and the Principle of Common but Differentiated Responsibilities and Respective Capabilities' (2024) *EUI LAW Working Paper* 2024/02, 6.

<sup>160</sup> European Commission, 'Regulation on Deforestation-free Products' (*europa.eu*) <[https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products\\_en](https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en)> accessed 27 January 2025.

<sup>161</sup> EUDR, recital 24.

<sup>162</sup> European Commission, 'Stepping up EU Action to Protect and Restore the World's Forests' COM(2019) 352 final.

legislator. This came as a result of several challenges, including the readiness of the Commission's information system,<sup>163</sup> and tremendous pushback from the Member States,<sup>164</sup> and as of July 2025, there have been renewed calls to delay and simplify the Regulation once again.<sup>165</sup> Next to this internal pushback, third countries have also voiced their concerns, which has led to significant tensions within the international community. Following its announcement, 14 developing states openly criticised the Commission in a public letter, stating that the EU, *inter alia*, failed to meaningfully consult them and disregarded previous efforts they had taken towards combatting deforestation.<sup>166</sup> One year later, a broader coalition voiced similar concerns, calling the Regulation "inherently discriminatory", whilst making explicit reference to CBDR.<sup>167</sup> Nonetheless, despite strong resistance, the EUDR is set to enter into force, and will become applicable for large and medium companies in January 2026, and for micro and small enterprises in June 2026.<sup>168</sup>

At its core, the EUDR pursues two objectives: (1) minimising the EU's contribution to global deforestation and forest degradation, and (2) reducing its contribution to GHG emissions and global biodiversity loss.<sup>169</sup> To ensure deforestation-free supply chains, the Regulation introduces a novel approach by imposing strict due diligence rules on relevant products that have been made or fed using certain commodities. These include commodities that are linked to cattle, cocoa, coffee, oil palm, rubber, soya, and wood.<sup>170</sup> Annex I of the Regulation further provides a list of all relevant product categories, their respective HS code,<sup>171</sup> and to what relevant commodity-type they are linked to. Additionally, according to Article 3 EUDR, relevant commodities and products may only be placed or made available on the Union market<sup>172</sup>

---

<sup>163</sup> Which is essential for processing due diligence statements and verifying compliance; Anna Roberts, 'Seizing the EUDR Delay: How Businesses can Lead in Sustainable Supply Chains' (*earth.org*, 10 March 2025) <<https://earth.org/seizing-the-eudr-delay-how-businesses-can-lead-in-sustainable-supply-chains/>> accessed 17 July 2025.

<sup>164</sup> Jessica Scheimann, 'EUDR Delay: Necessary of a Step Back?' (*euractiv.com*, 24 October 2024) <<https://www.euractiv.com/section/eet/opinion/eudr-delay-necessary-or-a-step-back/>> accessed 17 July 2025.

<sup>165</sup> Angelika Pullen, 'WWF urges Law-makers as EUDR Integrity Comes Under Fire' (*wwf.eu*, 23 June 2025) <<https://www.wwf.eu/?18464666/Keep-calm-and-carry-on-WWF-urges-law-makers-as-EUDR-integrity-comes-under-fire>> accessed 17 July 2025.

<sup>166</sup> First Joint Letter from 17 Producer Countries on the EU Deforestation Regulation (EUDR) (27 July 2022) <<https://drive.google.com/file/d/1u7nObQWhEtPmZaA2fy148iadBgMN5R-E/view>> date accessed 15 May 2025.

<sup>167</sup> Second Joint Letter from 17 Producer Countries on the EU Deforestation Regulation (EUDR) (7 September 2023) <[https://www.atibt.org/files/upload/news/RDUE/Trading\\_partners\\_joint\\_letter\\_on\\_EUDR\\_7\\_September\\_2023.pdf](https://www.atibt.org/files/upload/news/RDUE/Trading_partners_joint_letter_on_EUDR_7_September_2023.pdf)> date accessed 15 May 2025.

<sup>168</sup> Regulation (EU) 2024/3234 of the European Parliament and of the Council of 19 December 2024 amending Regulation (EU) 2023/1115 as regards provisions relating to the date of application [2024] OJ L2024/3234.

<sup>169</sup> EUDR, article 1(1).

<sup>170</sup> *ibid* article 2(1).

<sup>171</sup> Harmonized Systems Code (HS).

<sup>172</sup> EUDR, article 2(18).

if they are (1) deforestation-free,<sup>173</sup> (2) have been produced in accordance with the legislation of the country of origin (legality requirement), and (3) fulfil the due diligence requirements.<sup>174</sup>

To ensure that only deforestation-free products enter the Union market, the EUDR imposes strict due diligence obligations that vary depending on whether the entity is an operator,<sup>175</sup> trader,<sup>176</sup> or small and medium-sized company.<sup>177</sup> In principle, actors should establish and implement a due diligence system composed of the following three elements: information requirements,<sup>178</sup> a risk assessment,<sup>179</sup> and risk mitigation measures.<sup>180</sup> In addition, these should be complemented by reporting obligations. This due diligence system must ultimately provide sufficient information about the sources and suppliers of the relevant commodities, including proof through geolocation coordinates (traceability requirement) and compliance with the legality requirement, to ensure that no deforestation occurred along the supply chain.<sup>181</sup> On the basis of the information provided, actors must carry out a risk assessment and should introduce sufficient mitigation measures in case a risk is identified.<sup>182</sup> Following this, actors must draft and upload a due diligence statement (DDS)<sup>183</sup> detailing the elements listed in Annex II of the EUDR,<sup>184</sup> to the Commission's information system referred to in Article 33,<sup>185</sup> prior to placing their products on the Union market.<sup>186</sup> As a result, the basic idea is to be able to trace the product back along the supply chain to its exact plot of land where it was harvested, and, through spatial data provided under the Union's space programme,<sup>187</sup> determine whether deforestation has occurred.

Important to note is, where producers are established in a third country, the first natural or legal person established in the EU who places the product on the Union market assumes the EUDR responsibilities.<sup>188</sup> Therefore, third country producers are not *per se* involved in the due diligence process, since they are not required to draft and upload a DDS themselves. However, significant burdens are nonetheless imposed upon them, as

---

<sup>173</sup> As defined in article 2(13) EUDR.

<sup>174</sup> EUDR, article 3.

<sup>175</sup> Articles 2(15) and 4 EUDR; typically refers to primary producers, importers, exporters.

<sup>176</sup> Articles 2(17) and 5 EUDR; sell and distribute products further along the supply chain.

<sup>177</sup> See for example article 4(8) EUDR.

<sup>178</sup> EUDR, article 9.

<sup>179</sup> *ibid* article 10.

<sup>180</sup> *ibid* article 11.

<sup>181</sup> *ibid* recital 49.

<sup>182</sup> *ibid* article 11.

<sup>183</sup> *ibid* article 14.

<sup>184</sup> This includes among other things: the operator's name and address; the product's HS code, trade name, scientific name; country of production, geolocation, and reference number.

<sup>185</sup> EUDR, article 33.

<sup>186</sup> *ibid* articles 4 and 5.

<sup>187</sup> For example, Copernicus (<https://www.copernicus.eu/en>).

<sup>188</sup> EUDR, articles 7 and 12.

they ultimately must supply the operator with the relevant information, including the exact geolocation coordinates of the plot of land and sufficient evidence that local laws have been complied with. Should any of the due diligence requirements not be fulfilled, relevant actors may not place their commodities on the Union market<sup>189</sup> and risk incurring high penalties.<sup>190</sup>

Additionally, the Regulation introduces a country benchmarking system that assesses the extent in which a country is actively engaged in combatting deforestation. Through a three-tier system, countries are classified into 'low risk', 'standard risk', and 'high risk' countries.<sup>191</sup> This benchmarking system was conducted by the Commission for the first time in May 2025 and designated Belarus, Myanmar, North Korea, and Russia as 'high risk' countries.<sup>192</sup> Examples of 'standard' risk countries include Brazil, Indonesia, Malaysia, Ecuador, Ivory Coast, and Mexico. Whereas 'high risk' countries are subject to even more stringent due diligence requirements, 'low risk' countries enjoy a simplified due diligence procedure and are thus not obligated to conduct the risk assessment or introduce risk mitigation measures.<sup>193</sup> This three-tiered structure thus introduces a form of differentiation through the means of the regulatory burden imposed on the actors.

### **3.2.2 Linking the EU Deforestation Regulation with the Principle of CBDR**

While the EU is not universally bound to incorporate CBDR across all its environmental measures, scholarly commentary and broader normative expectations suggest that the principle remains a relevant standard. Moreover, as outlined in Chapter 3.1.3, it has even been suggested that the principle may generate (quasi-)binding obligations in specific contexts for the EU. These include situations where there is a: (1) link to (non-)binding treaty commitments, (2) a connection to climate-related objectives, and (3) the imposition of unilateral standards on third countries, without much regard for differentiation between the actors. While the EUDR does not make an explicit reference to CBDR and is formally situated within the EU's trade and biodiversity framework, its objectives, scope, and design certainly suggest that the outlined conditions are met to varying degrees.

---

<sup>189</sup> *ibid* article 24(2)(b).

<sup>190</sup> *ibid* article 25.

<sup>191</sup> *ibid* article 29.

<sup>192</sup> Commission Implementing Regulation (EU) 2024/161 of 15 January 2024 laying down rules for the application of Regulation (EU) 2023/1115 of the European Parliament and of the Council on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation [2025] OJ L8/1.

<sup>193</sup> EUDR, article 13.

First, with regard to treaty commitments outside the bounds of climate policy, it must be highlighted that the Convention on Biological Diversity (CBD),<sup>194</sup> a key international instrument for the conservation of biological diversity, emerges as the main international treaty for forest protection.<sup>195</sup> While CBDR is not expressly articulated within the treaty, it implicitly reflects 'the spirit' of the principle in several treaty provisions. Specifically, it acknowledges the need to consider the different capabilities of states and mandates the transfer of financial and technological resources between developed and developing states.<sup>196</sup> Explicit mention of the Convention is also made in the EUDR's preamble, where the EUDR is presented as an instrument contributing to the Union's commitments under the CBD.<sup>197</sup> This is further strengthened by the Kunming-Montreal Global Biodiversity Framework,<sup>198</sup> which also acknowledges that the goals of the Framework should be strived for by each Party in accordance with "national circumstances, priorities, and capabilities".<sup>199</sup> Next to commitments related to the CBD, explicit reference is also made to key international climate treaties in which CBDR is most expressly articulated. In particular, the EU legislator emphasises that combating deforestation constitutes "an important part of the package (...) to comply with the Union's commitments under the Paris Agreement adopted under the UNFCCC".<sup>200</sup>

Second, while the EUDR is not strictly a climate instrument, its core objectives are closely aligned with the EU's broader environmental goals related to climate change.<sup>201</sup> Specifically, the EU legislator repeatedly frames the problem of deforestation as inextricably linked to the issue of climate change. For example, the Regulation emphasises that reducing deforestation alongside restoring forests and other ecosystems is the "single largest nature-based opportunity for climate change mitigation".<sup>202</sup> Moreover, consistent references are made to the challenges of climate change and biodiversity loss, underscoring their close interrelation.<sup>203</sup> For example, it is highlighted that deforestation alone accounts for 11% of GHG emissions, which thus contributes significantly to the climate crisis.<sup>204</sup>

---

<sup>194</sup> Convention on Biological Diversity, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) (CBD).

<sup>195</sup> Elena Sandulli, 'Forest Conservation as a Common Concern: EU Regulation on Deforestation-Free Products in the Light of Public International Law' (2025) 34 Rev Euro Comp Intl Enviro 89, 96.

<sup>196</sup> CBD, articles 6 and 20(4).

<sup>197</sup> EUDR, recital 14.

<sup>198</sup> International agreement adopted in 2022 committing nations to halt and reverse nature loss by 2030.

<sup>199</sup> Convention on Biological Diversity, *Decision 15/4: Kunming-Montreal Global Biodiversity Framework* (19 December 2022) UN Doc CBD/COP/DEC/15/4, 6.

<sup>200</sup> EUDR, recital 13.

<sup>201</sup> See EUDR article 1(1)(b).

<sup>202</sup> EUDR recital 4.

<sup>203</sup> See for example EUDR recitals 6 and 24.

<sup>204</sup> EUDR, recital 3.

Third, and perhaps most crucial, like the EU legal instruments discussed by Rajamani, Duran, and Scott, the EUDR exhibits similar extraterritorial features. While the EUDR applies uniformly to commodities and products produced both within and outside the Union, by conditioning market access on compliance, it effectively extends EU environmental standards on producers beyond its borders. It should also be noted that the majority of the raw materials covered by the Regulation are produced outside the EU.<sup>205</sup> This extraterritorial effect can not only have significant effects on global supply chains but also threaten national sovereignty and lead to devastating economic consequences, if third country producers are no longer able to enter the Union market. Therefore, sufficient evidence suggests that the principle of CBDR can be linked to the EUDR, maintaining the principle as a highly relevant benchmark for evaluating the EUDR's legitimacy and coherence with international standards, even if not strictly legally required.

### **3.2.3 Analysis of the EU Deforestation Regulation in Light of the Principle of CBDR**

#### **(A) Corrective Justice: Historical Responsibility and CBDR**

As outlined, the principle of CBDR is closely tied to corrective justice by acknowledging the differing historical contributions of states to environmental degradation. Therefore, it is necessary to examine whether the EUDR sufficiently acknowledges its historical responsibility for environmental harm in order to assess its normative legitimacy.

Historically, the United States has been the highest emitter of GHG emissions, accounting for approximately 20% of all historical emissions. However, this is closely followed by the EU, which is collectively responsible for 17% of total emissions.<sup>206</sup> Important to note, is that these estimates do not account for the emissions incurred overseas during colonial rule, which were often driven by the exploitative practices of the colonial powers, among them many European countries.<sup>207</sup> Yet, although just 23 developed countries are responsible for over half of all CO<sub>2</sub> emissions, it is developing states that are primarily left to grapple with the effects of the climate crisis.<sup>208</sup>

---

<sup>205</sup> Christopher Gilbert, 'The Likely Impacts of the EU Deforestation Regulation' (*ageconsearch.umn.edu*, 2024) <<https://ageconsearch.umn.edu/record/355324/?ln=en&v=pdf>> accessed 15 July 2025.

<sup>206</sup> Merle Clara Riebandt, 'Historical Responsibility for the Climate Crisis: The Roots of the Unfair Imbalance' (*ccpi.org*, 30 October 2024) <<https://ccpi.org/historical-responsibility-for-the-climate-crisis-the-roots-of-the-unfair-imbalance/>> accessed 25 June 2025.

<sup>207</sup> *ibid.*

<sup>208</sup> Courtney Lindwall, 'Rich Polluting Nations Still Owe the Developing World' (*nrdc.org*, 22 January 2022) <<https://www.nrdc.org/stories/rich-polluting-nations-still-owe-developing-world>> accessed 25 June 2025.

A different picture emerges when one looks at deforestation. According to the Global Forest Watch, Russia, Brazil, Canada, the United States, and Indonesia had the highest relative tree cover loss from 2001 to 2024.<sup>209</sup> However, important to note is that developed states remain the biggest consumers of deforestation-linked commodities. For example, the EU is the second biggest importer of deforestation-linked goods, being responsible for 16% of deforestation-associated trade in 2017.<sup>210</sup> Therefore, although the EU is not directly responsible for deforestation, it is certainly one of its biggest drivers through its consumption patterns.

This responsibility is also explicitly acknowledged in the EUDR's preamble. It states that the EU's consumption is a significant driver of deforestation and forest degradation on a global scale, and that it should thus take action to minimise it.<sup>211</sup> It is emphasised that without intervention, the Union's consumption and production of the six commodities covered by the EUDR alone would drive approximately 248,000 hectares of deforestation annually by 2030.<sup>212</sup>

While the EUDR's preamble explicitly acknowledges the EU's historical responsibility for environmental harm, this is not reflected in its operative parts. Despite the strong language, the Regulation lacks explicit provisions on financial transfers, preferential treatment for affected countries, and explicit differentiation according to historical inequity. Therefore, this recognition remains merely rhetorical and does not actually address the root cause of the problem. On the contrary, by implicitly imposing strict information requirements on third country producers, the EUDR externalises accountability, at least to some part, onto the very actors least responsible for deforestation.

This is illustrated by the fact that a considerable amount of the materials regulated by the EUDR are produced outside the Union. For some producer countries, the export of such materials constitutes most of their economic revenue. For example, the EU is the world's largest importer of cocoa beans, making up 58% of imports from developing states while not producing any itself.<sup>213</sup> For instance, The Ivory Coast, provided 44% of the EU's cocoa beans between 2015 and 2019, securing income to

---

<sup>209</sup> Global Forest Watch, 'Global: Select Country' ([globalforestwatch.org](https://www.globalforestwatch.org)) <<https://www.globalforestwatch.org/dashboards/global/?category=forest-change&location=WyJnbG9iYWwiXQ%3D%3D>> accessed 25 June 2025.

<sup>210</sup> Angelika Pullen, 'EU Consumption Responsible for 16% of Tropical Deforestation Linked to International Trade – New Report' ([wwf.eu](http://www.wwf.eu), 14 April 2021) <<https://www.wwf.eu/?2831941/EU-consumption-responsible-for-16-of-tropical-deforestation-linked-to-international-trade>> accessed 15 June 2025.

<sup>211</sup> EUDR, recitals 8 and 18.

<sup>212</sup> *ibid.*

<sup>213</sup> Government of the Netherlands, 'What is the Demand for Cocoa on the European Market?' ([cbi.eu](http://www.cbi.eu), 26 March 2022) <<https://www.cbi.eu/market-information/cocoa/what-demand>> accessed 27 June 2025.

nearly a fifth of its population.<sup>214</sup> Moreover, while the EUDR poses a significant regulatory burden on EU producers and non-producers alike, big market players are likely to adapt more easily to the Regulation's stringent conditions and ultimately can also just find new suppliers, in case they are unable to fulfil the due diligence obligations. As a result, this can have devastating consequences on local economies, if producers are faced with exclusion from the EU market.

Furthermore, the Regulation risks perpetuating neo-colonial dynamics, which CBDR aims to remedy in the first place. Through the EUDR, the EU seeks to set global standards to address deforestation, promoting its own vision of what it believes to be "sustainable". While the Commission contends that "there are no legal obligations applicable to non-EU countries" it also highlights that "many countries (...) have taken action to enhance deforestation-free supply chains".<sup>215</sup> Numerous scholars have already suggested that the Regulation is likely to have significant influence on national legislation and enforcement.<sup>216</sup> For example, in Peru producers must navigate many complex forest laws, policies, and plans, many of which hinder the recognition of land tenure rights for thousands of smallholders.<sup>217</sup> Without alignment with the EUDR, producers are unlikely able to the Regulation's legality requirement. This not only threatens their sovereignty and their choices on how to use their own natural resources, but also disregards local realities, traditions, or regional communities.<sup>218</sup> Notwithstanding the immense efforts such alignment will take in a country characterised by rural production sites, high levels of poverty, and the absence of a strong state.<sup>219</sup> Moreover, historically rooted causes of deforestation, commonly linked to colonial practices, violence, or the appropriation of natural resources are not addressed.<sup>220</sup> Instead of addressing the root problem, deforestation driven by EU consumption, it

---

<sup>214</sup> Elena Sandulli, 'Forest Conservation as a Common Concern: EU Regulation on Deforestation-Free Products in the Light of Public International Law' (2025) 34 Rev Euro Comp Intl Enviro 89, 96.

<sup>215</sup> European Commission, 'Frequently Asked Questions: Implementation of the EU Deforestation Regulation' (April 2025) <[https://www.ble.de/SharedDocs/Downloads/DE/Wald-Holz/Entwaldungsfrei/FAQs\\_eng\\_250417.pdf?\\_\\_blob=publicationFile&v=3](https://www.ble.de/SharedDocs/Downloads/DE/Wald-Holz/Entwaldungsfrei/FAQs_eng_250417.pdf?__blob=publicationFile&v=3)>, section 1.30.

<sup>216</sup> Jimena Solar et al, 'Human Rights and Environmental Due Diligence Regulations for Deforestation-Free Value Chains? Exploring the Implementation of the EU Regulation on Deforestation-Free Products in the Cocoa and Coffee Sectors of Peru' (2025) 1 Glob. Policy 1, 4.

<sup>217</sup> *ibid* 6-7.

<sup>218</sup> EPICC, 'Neocolonialism Embedded in the EU Deforestation-Free Products Regulation' ([epiccproject.org](https://epiccproject.org)) <<https://epiccproject.org/blog/2024/09/23/neocolonialism-embedded-in-the-eu-deforestation-free-products-regulation-eudr/>> accessed 19 July 2025.

<sup>219</sup> Jimena Solar et al, 'Human Rights and Environmental Due Diligence Regulations for Deforestation-Free Value Chains? Exploring the Implementation of the EU Regulation on Deforestation-Free Products in the Cocoa and Coffee Sectors of Peru' (2025) 1 Glob. Policy 1, 10.

<sup>220</sup> EPICC, 'Neocolonialism Embedded in the EU Deforestation-Free Products Regulation' ([epiccproject.org](https://epiccproject.org)) <<https://epiccproject.org/blog/2024/09/23/neocolonialism-embedded-in-the-eu-deforestation-free-products-regulation-eudr/>> accessed 19 July 2025.

further solidifies existing dynamics, whereby the Global South continues to serve as the main source of materials for the industrialised nations.

Therefore, the EUDR ultimately fails to adequately operationalise CBDR's corrective justice dimension by shifting a significant burden onto third-country producers, reinforcing colonial power imbalances, and failing to meaningfully acknowledge the EU's historical responsibility in driving deforestation.

#### (B) Distributive Justice: Capacity and Capabilities

A second core element of CBDR is that of distributive justice, which shifts the focus from historical responsibilities to present-day capacities. Regarding the EUDR, this raises the question of whether it sufficiently accounts for the capacities and capabilities of developing states in its framework.

While the EUDR formally applies to both EU and non-EU producers alike, its practical impact is inherently asymmetrical, as many of the commodities covered by the Regulation are produced by developing countries with weaker regulatory structures and strong economic dependence on the export of these forest-linked commodities.<sup>221</sup> As a result, they are often faced with disproportionate implementation costs and numerous challenges. Notably, in July 2025, 18 EU Member States pushed for the exemption of all EUDR due diligence requirements for countries that are deemed to be at 'low risk' (which includes all EU Member States).<sup>222</sup> If realised, such exemption would blatantly contradict CBDR by exempting EU producers while continuing to burden less-capable third country actors. To illustrate, the Southeast Asian region is a significant exporter of palm oil, with Indonesia dominating the market with 59% share of total production and Malaysia with a share of 24%.<sup>223</sup>

Scholars have also highlighted the significant costs that are likely necessary to comply with the Regulation's deforestation-free requirements.<sup>224</sup> For example, Article 9(1)(d) EUDR requires that producers must pinpoint the exact geolocation of the plots of land on which cultivation of their commodities takes place. This can be especially burdensome for small-scale, nationally based producers which do not have the digital

---

<sup>221</sup> Vishakha Srivastava et al, 'Combating Deforestation Through International Trade: Do Smallholders Have a Place in the European Union's Deforestation Regulation' (2025) 20 *Glob Trade Cust J* 415.

<sup>222</sup> Kate Abnett and Julia Payne, 'EU countries seek more cuts to deforestation rules, letter shows' (*reuters.com*, 7 July 2025) < [https://www.reuters.com/sustainability/climate-energy/eu-countries-seek-more-cuts-deforestation-rules-letter-shows-2025-07-07/#:~:text=BRUSSELS%2C%20July%20%20\(Reuters\),letter%20seen%20by%20Reuters%20showed](https://www.reuters.com/sustainability/climate-energy/eu-countries-seek-more-cuts-deforestation-rules-letter-shows-2025-07-07/#:~:text=BRUSSELS%2C%20July%20%20(Reuters),letter%20seen%20by%20Reuters%20showed) > accessed 20 July 2025.

<sup>223</sup> Global Traceability, 'EUDR Global Impacts on Producing Countries' (*global-traceability.com*) <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm)> accessed 20 July 2025.

<sup>224</sup> Elena Sandulli, 'Forest Conservation as a Common Concern: EU Regulation on Deforestation-Free Products in the Light of Public International Law' (2025) 34 *Rev Euro Comp Intl Enviro* 89, 96.

infrastructure needed for identifying the geolocation coordinates and managing highly complex supply chains.<sup>225</sup> Additionally, it fails to consider the structural realities of many developing states, including the informality of rural production, which is often the result of weak administrative enforcement and limited institutional oversight.<sup>226</sup> In total, estimates suggest costs of €5000 to €90,000 per operator depending on their size, number of suppliers, complexity of the supply chain, and country of production.<sup>227</sup> In general, large-scale companies are likely in a better position to provide the financial commitment and manpower needed to implement the Regulation. Furthermore, they also often hold the market power to simply shorten or simplify their supply chains to reduce costs and ensure compliance with smallholders left particularly vulnerable.<sup>228</sup> Current estimates suggest that only 15% to 25% of third-country smallholders meet the Regulation's traceability requirement by providing geolocation data, risking the exclusion of up to 75% of smallholders from the Union market.<sup>229</sup>

This disproportionate impact was also acknowledged by the World Trade Organisation's (WTO) dispute settlement panel.<sup>230</sup> Indonesia, together with Malaysia, filed a complaint in December 2019, raising its concerns over the EUDR, alongside the EU's Renewable Energies Directive. While the panel ultimately ruled in favour of the Union, it found fault with the *design and application* of the EUDR's rules. Particularly, it noted the EU's application of a "rigid and unbending requirement", forcing producer countries to adopt the same regulatory standards, rather than standards which are of "comparable effectiveness".<sup>231</sup>

Furthermore, many developing states rely on commodity exports as an important source of revenue and thus, their disruption threatens reinforcing structural disadvantages in comparison to developed states. Consequently, critics have highlighted that the EUDR risks exacerbating socio-economic vulnerabilities, especially for

---

<sup>225</sup> Vishakha Srivastava et al, 'Combating Deforestation Through International Trade: Do Smallholders Have a Place in the European Union's Deforestation Regulation' (2025) 20 *Glob Trade Cust J* 415, 418.

<sup>226</sup> Samriddhi Guha, 'EU-Deforestation Free Regulations' ([voelkerrechtblog.org](https://voelkerrechtblog.org), 13 March 2023) <<https://voelkerrechtsblog.org/eu-deforestation-free-regulations/>> accessed 20 July 2025.

<sup>227</sup> Jimena Solar et al, 'Human Rights and Environmental Due Diligence Regulations for Deforestation-Free Value Chains? Exploring the Implementation of the EU Regulation on Deforestation-Free Products in the Cocoa and Coffee Sectors of Peru' (2025) 1 *Glob. Policy* 1, 4.; Elena Sandulli, 'Forest Conservation as a Common Concern: EU Regulation on Deforestation-Free Products in the Light of Public International Law' (2025) 34 *Rev Euro Comp Intl Enviro* 89, 96.

<sup>228</sup> Jimena Solar et al, 'Human Rights and Environmental Due Diligence Regulations for Deforestation-Free Value Chains? Exploring the Implementation of the EU Regulation on Deforestation-Free Products in the Cocoa and Coffee Sectors of Peru' (2025) 1 *Glob. Policy* 1, 7.

<sup>229</sup> Loso Juijanto, 'Green Neo-colonialism or Sustainable Trade: EUDR's Equity Implications for Global South Smallholders' (2025) 11 *Int. J. Environ. Sci.* 588, 590.

<sup>230</sup> European Union -- Palm Oil (*Malaysia*), Panel Report (WTS/DS593/R, 24 February 2025) [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm).

<sup>231</sup> Samriddhi Guha, 'EU-Deforestation Free Regulations' ([voelkerrechtblog.org](https://voelkerrechtblog.org), 13 March 2023) <<https://voelkerrechtsblog.org/eu-deforestation-free-regulations/>> accessed 20 July 2025.

smallholders in the Global South whose livelihoods are deeply dependent on these very commodities. Market exclusion can thus further trigger secondary effects, such as rural-urban migration, food insecurities, land abandonment, and increases unemployment.<sup>232</sup>

However, although the Regulation does not explicitly reference CBDR, it does allude to differentiation between states. Its preamble highlights that the Regulation must serve to promote and facilitate cooperation with developing states, specifically through the provision of technical and financial assistance.<sup>233</sup> Additionally, the Commission should continue to cooperate with producer countries to address global challenges while meeting local needs.<sup>234</sup> This is also further operationalised in the operative parts of the Regulation itself. Article 30 EUDR provides for a cooperative framework between the EU and third countries. Specifically, the Commission shall engage in a “coordinated approach” with producer countries through existing and future partnerships that should jointly address the root causes of deforestation and pay particular attention to the needs of indigenous peoples, local communities, and affected smallholders.<sup>235</sup> Though commendable, it must be noted that such coordination efforts were largely absent during the drafting process of the EUDR. For example, Brazil’s ambassador to the EU noted that the Regulation was drafted “without an effective dialogue with producer countries and without being supported by any negotiated agreement on the international level”.<sup>236</sup> Therefore, while the EUDR claims to promote cooperation and dialogue, its drafting process was quite one-sided, lacking the inclusivity needed to ensure meaningful participation by all affected parties.

Building on these partnerships, the EU and several Member States announced a “Team Europe” initiative worth €70 million to support and help smallholders and low-income countries in the implementation of the EUDR.<sup>237</sup> While there are many different projects underway, the extent of their impact ultimately remains to be seen in addition to how the EUDR might impact the supply chains of key commodities. Moreover, despite these efforts, the aforementioned technical and financial assistance is not further detailed and is not embedded in the legal text itself. Additionally, the EUDR introduces

---

<sup>232</sup> Loso Juijanto, ‘Green Neo-colonialism or Sustainable Trade: EUDR’s Equity Implications for Global South Smallholders (2025) 11 Int. J. Environ. Sci. 588.

<sup>233</sup> EUDR, recital 28.

<sup>234</sup> *ibid* recital 29.

<sup>235</sup> *ibid* article 30(1).

<sup>236</sup> Isabel Marques da Silva, ‘Why the Global South is Against the EU’s Anti-Deforestation Law’ (euronews.com, 20 September 2023) <<https://www.euronews.com/my-europe/2023/09/20/why-the-global-south-is-against-the-eus-anti-deforestation-law>> accessed 24 June 2025.

<sup>237</sup> European Commission, ‘Global Gateway: EU and Member States Launch Global Team Europe Initiative on Deforestation-free Value Chains’ (*international-partnerships.ec.europa.eu*, 9 December 2023) <[https://international-partnerships.ec.europa.eu/news-and-events/news/global-gateway-eu-and-member-states-launch-global-team-europe-initiative-deforestation-free-value-2023-12-09\\_en](https://international-partnerships.ec.europa.eu/news-and-events/news/global-gateway-eu-and-member-states-launch-global-team-europe-initiative-deforestation-free-value-2023-12-09_en)> accessed 26 June 2025.

a three-tier benchmarking system allowing for simplified due diligence for “low-risk” countries. While this does provide for a mechanism of differentiation, regard is not taken of the country’s special needs and capabilities but is instead based on compliance probabilities. Specific assistance or institutional support for actors with weaker regulatory structures is thus not given. This one-size-fits-all approach risks undermining the diversity of countries’ cultural and political contexts and their varying socio-economic capacities, which ultimately raises concerns about the legitimacy of the due diligence obligations imposed.

In conclusion, although the EUDR shows nuances of differentiation by acknowledging the need for cooperation with producer states, it remains uncertain whether it adequately accounts for the capabilities of developing states and, therefore, the distributive justice dimension of CBDR.

## 4 Conclusion

The foregoing considerations aimed to address whether the European Union is legally obliged under international law to adhere to the principle of common but differentiated responsibilities and how the EU Deforestation Regulation aligns with such an obligation. Ultimately, this study highlights the dichotomy and inherent tensions that can increasingly be seen within the international community: the EU's ambition to portray itself as a global environmental leader by adopting far-reaching environmental regulatory initiatives, and its obligation to adhere to norms of international law, including the principle of CBDR. While the principle's exact legal status remains contested, its identified normative underpinnings rooted in corrective and distributive justice continue to shape international environmental governance. These dimensions, as well as its subsequent practical consequences through its real-world application in numerous international treaties, maintain CBDR as a highly relevant standard for assessing the legitimacy of environmental action on the global stage.

This also holds true for the EU, characterised by its unique legal nature, it nonetheless must respect international norms within the scope of its actions despite its normative ambitions. Moreover, as thoroughly outlined throughout this study, there are numerous arguments that suggest that the EU ought to abide by CBDR, given its increasing role in promoting itself as a "global leader" which can especially be seen in the context of the Union's environmental policy. The principle's de facto legal and normative relevance is especially prevalent in the context of measures with notable extraterritorial reach, climate-related objectives, and reference to (non)-binding treaty commitments. As a result, it can be argued that, in such cases CBDR must be incorporated into the legal design of an EU legal instrument displaying such characteristics.

The EU Deforestation Regulation is one of the EU's most recent initiatives that seeks to promote the Union's environmental leadership ambitions in combatting global deforestation by indirectly imposing extraterritorial obligations on third-country actors through stringent compliance obligations. Notably, it also highlights a broader tension, which can be observed within the EU since the 2000s, this being the EU's increasing promotion of its own values even beyond its borders, and its characterisation as a market-based power and the protection of its internal market. On the one hand, the EUDR clearly frames environmental protection as part of the EU's global responsibility, while on the other, also protecting its own producers from competition with products made according to weaker environmental standards.

In light of CBDR this study identified several shortcomings, especially in view of its normative underpinnings. While the EU's historic contribution to global deforestation

is explicitly acknowledged in the Regulation's preamble, this has unfortunately not been codified into concrete legal obligations in its operative parts. Instead, actors within and outside the Union are faced with the same compliance obligations, even though the majority of raw materials covered by the Regulation are produced in third countries. Furthermore, it promotes the imposition of European environmental standards without regard to local realities, ultimately risking the continuation of neo-colonial dynamics.

Similar shortcomings have also been made regarding the principle's distributive justice dimension. Next to the practical difficulties of fulfilling the EUDR's stringent obligations, the implementation of the necessary due diligence system is accompanied by a significant financial burden. While this burden is placed equally on EU and non-EU actors alike, such a one-size-fits-all approach risks ignoring practical realities in which many non-EU actors lack the institutional capacity, technological infrastructure, and financial resources to adapt adequately in comparison to larger EU-based corporations. Furthermore, the Commission's benchmarking system also falls short of introducing meaningful differentiation as foreseen by CBDR. Noteworthy, is that the Regulation does allude to differentiation through the provision of financial and technical assistance in its preamble, which is operationalised via a cooperation framework through the provision of partnerships. However, the extent of these partnerships and their scope and adequacy in addressing the needs of smallholders, local communities, and indigenous peoples remains to be seen.

The EUDR undeniably presents an important step towards addressing one of the most pressing issues of our time and the EU's efforts are certainly commendable. Ultimately, the implementation of the Regulation will result in significant compliance burdens for all and whether it will achieve its intended objectives can only be seen with time. Nonetheless, the practical realities and continued criticism voiced by the producer countries should not and cannot be ignored. EU regulatory initiatives should not risk disproportionately burdening developing states, the perpetuation of the continued divide between Global South and Global North countries or disregard its obligations under international law. Whether this be by explicitly acknowledging CBDR in the Regulation's operative parts, the revision of the benchmarking criteria, ensuring meaningful cooperation, or other measures, remains to be assessed. However, what is certain is that adjustments should and even must be made, whether this be particularly to the EUDR or for other future regulatory initiatives with similar impact. Otherwise, the EU not only risks undermining the very legitimacy of its leadership position it seeks to uphold, consequently punishing those least responsible for the current environmental crisis, but also risks weakening the spirit of cooperation within the international community that is so desperately needed to tackle the environmental issues of our time.

## 5 List of References

### Legal Sources

#### **Case law**

Case 181/73 *R. & V. Haegeman v Belgian State* [1974] ECLI:EU:C:1974:41

Case C-286/90 *Anklagemyndigheden v Peter Michael Poulsen and Diva Navigation Corp* [1992] ECLI:EU:C:1992:453

Case C-61/94 *Commission v Germany* [1996] ECLI:EU:C:1996:313

Case C-53/96 *Hermès International v FHT Marketing Choice BV* [1998] ECLI:EU:C:1998:292

*Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14

European Union -- Palm Oil (*Malaysia*), Panel Report (WTS/DS593/R, 24 February 2025) [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm)

*North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark/Netherlands)* [1969] ICJ Rep. 3

#### **Legislation**

Commission Implementing Regulation (EU) 2024/161 of 15 January 2024 laying down rules for the application of Regulation (EU) 2023/1115 of the European Parliament and of the Council on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation [2025] OJ L8/1

Consolidated Version of the Treaty on European Union [2008] OJ C115/13

Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/01

Convention on Biological Diversity, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993)

Convention on Biological Diversity, *Decision 15/4: Kunming-Montreal Global Biodiversity Framework* (19 December 2022) UN Doc CBD/COP/DEC/15/4

Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2302 UNTS 148

Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS No. I-54113

Regulation (EU) 2023/1115 of the European Parliament and of the Council on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 [2023] OJ L150/206

Regulation (EU) 2023/956 of the European Parliament and the Council of 10 May 2023 establishing a carbon border adjustment mechanism [2023] OJ L130/52

Regulation (EU) 2024/3234 of the European Parliament and of the Council of 19 December 2024 amending Regulation (EU) 2023/1115 as regards provisions relating to the date of application [2024] OJ L2024/3234

Rio Declaration on Environment and Development (12 August 1992) UN Doc A/CONF.151/26 (Vol I)

Statute of the International Court of Justice (1945) 33 UNTS 993

Stockholm Declaration on the Human Environment (16 June 1972) UN Doc.A/CONF.48/14 (Stockholm Declaration)

United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC)

### ***EU Secondary Documents***

European Commission, 'Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal' COM(2023) 640 final (11 December 2019) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52019DC0640>> accessed 17 July 2025

European Commission, 'Frequently Asked Questions: Implementation of the EU Deforestation Regulation' (April 2025) <<https://circabc.europa.eu/ui/group/34861680-e799-4d7c-bbad-da83c45da458/library/e126f816-844b-41a9-89ef-cb2a33b6aa56/details>> accessed 17 July 2025

European Commission, 'Stepping up EU Action to Protect and Restore the World's Forests' (Communication) COM (2019) 352 final (23 July 2019) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52019DC0352>> accessed 17 July 2025

European Commission, 'The Clean Industrial Deal: A Joint Roadmap for Competitiveness and Decarbonisation' COM(2025) 85 final (26 February 2025) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025DC0085>> accessed 17 July 2025

## Academic Sources

Arabadjieva K and Bogojević S, 'The European Green Deal: climate action, social impacts and just transition safeguards' (2024) *Yearbook of European Law* 1

Baere G, 'EU External Action' in Steve Peers and Catherine Barnard (eds) *European Union Law* (4<sup>th</sup> edn, OUP 2023)

Bassiouni M, 'A Functional Approach to General Principles of International Law' (1990) 11 *Mich J Int'l L* 768

Barral V, 'Common but Differentiated Responsibilities and Justice: Broadening the Notion of Responsibility in International Law' in Hannes Hansen-Magnusson and Antje Vetterlein (eds), *The Rise of Responsibility in World Politics* (Cambridge University Press 2021)

Birnie P, Boyle A, and Redgwell C, *International Law & The Environment* (4<sup>th</sup> edn, OUP 2021)

Bogdandy A and Smrkolj M, 'European Union Law and International Law' (*opil.ouplaw*, February 2011)  
<<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e620>> accessed 15 July 2025

Boyle A, 'Soft Law in International Law-Making' in Evans (ed), *International Law* (OUP 2010)

Boyte R, 'Common but Differentiated Responsibilities: Adjusting the Developing/Developed Dichotomy in International Environmental Law' (2010) 14 *NZ J Env'tl L* 63

Bradford A, *The Brussels Effect: How the European Union Rules the World* (OUP 2020)

Bratspies R, 'Reasoning up to Human Rights: Environmental Rights as Customary International Law' in John H Knox and Ramin Bejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press 2018),

Chasek P, 'Stockholm and the Birth of Environmental Diplomacy' (*International Institute for Sustainable Development*, September 2020)  
<[https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy\\_0.pdf](https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy_0.pdf)> accessed 26 February 2025

Cullet P, 'Principle 7: Common but Differentiated Responsibilities' in Viñuales JE (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015)

Čučković V, 'From equality towards equity and differentiated responsibilities: A contemporary international environmental law perspective' (2019) 67 *Anali Pravnog fakulteta u Beogradu* 55

Damro C, 'Market Power Europe' (2012) 19 *JEPP* 682

Duran GC and Scott J, 'Global EU Climate Action and the Principle of Common but Differentiated Responsibilities and Respective Capabilities' (2024) *EUI LAW Working Paper* 2024/02

Falkner R, 'The EU as a "Green Normative Power?" EU Leadership in International Biotechnology Regulation' (2006) *Center for European Studies Working Paper Series #140* <<https://core.ac.uk/download/pdf/5081593.pdf>> accessed 15 June 2025

Gilbert G, 'The Likely Impacts of the EU Deforestation Regulation' (*ageconsearch.umn.edu*, 2024) <<https://ageconsearch.umn.edu/record/355324/?ln=en&v=pdf>> accessed 15 July 2025

Guha S, 'EU-Deforestation Free Regulations' (*voelkerrechtblog.org*, 13 March 2023) <<https://voelkerrechtsblog.org/eu-deforestation-free-regulations/>> accessed 20 July 2025

Hadjiyianni I, 'The Extraterritorial Reach of EU Environmental Law and Access to Justice by Third Country Actors' (2017) 2(2) *European Papers* 519

Halvorssen A, 'Common, but Differentiated Commitments in the Future Climate Change Regime - Amending the Kyoto Protocol to Include Annex C and the Annex C Mitigation Fund' (2007) 18 *Colo J Int'l Env'tl L & Pol'y* 247

Herve A, 'European unilateralism as a tool for regulating international trade: a necessary evil in collapsing multilateral system' (*robert-schuman.eu*, 28 March 2022) <<https://www.robert-schuman.eu/en/european-issues/0626-european-unilateralism-as-a-tool-for-regulating-international-trade-a-necessary-evil-in-a>> accessed 22 July 2025

Hey E and Paulini S, 'Common but Differentiated Responsibilities' (*Oxford Public International Law*, October 2021) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1568>> accessed 18 April 2025

Juijanto L, 'Green Neo-colonialism or Sustainable Trade: EUDR's Equity Implications for Global South Smallholders (2025) 11 *Int. J. Environ. Sci.* 588

Kleinlein T, 'Customary International Law and General Principles: Rethinking Their Relationship' in Brian D Lepard (ed), *Reexamining Customary International Law* (Cambridge University Press 2017)

Kravchenko S and others, 'Principles of International Environmental Law' in Erika Techera (ed), *Routledge Handbook of International Environmental Law* (Routledge 2012)

Kumar V and Chaturvedi S, 'The evolution of common but differentiated responsibilities (CBDR): From principle to practice' (2025) 7 IJPSG 14

Lieblich E, 'How to Do Research in International Law? A Basic Guide for Beginners' (2021) 62 Harvard International Law Journal Online 44

Manners I, 'Normative Power Europe: A Contradiction in Terms' (2002) 40 JCMS 235

Milligan B and Macrory R, 'The history and evolution of legal principles concerning the environment' in Michael Faure (ed), *Elgar Encyclopedia of Environmental Law* (Edward Elgar Publishing 2023)

Morin J, 'The Survival of the Weakest: The Echo of the Rio Summit Principles in Environmental Treaties' (2023) 33 Environ. Politics 1

Paradell-Trius L, 'Principles of International Environmental Law: an Overview' (2000) 9 Rev Eur Comp & Int'l Env'tl L 93

Pauw P and others, 'Different Perspectives on Differentiated Responsibilities: A State of the Art Review of the Notion of Common but Differentiated Responsibilities in International Negotiations' (2014) Paper 6/2014, German Development Institute

Rajamani L, 'Common but Differentiated Responsibilities' in Michael Faure (ed), *Elgar Encyclopaedia of Environmental Law* (Edward Elgar Publishing 2023)

Rajamani L, 'The Doctrinal Basis for and Boundaries of Differential Treatment in International Environmental Law' in Lavanya Rajamani (ed), *Differential Treatment in International Environmental Law* (OUP 2006)

Sands P and others, *Principles of International Environmental Law* (1st edn, Cambridge 2018)

Sandulli E, 'Forest Conservation as a Common Concern: EU Regulation on Deforestation-Free Products in the Light of Public International Law' (2025) 34 Rev Euro Comp Intl Enviro 89

Srivastava V et al, 'Combating Deforestation Through International Trade: Do Smallholders Have a Place in the European Union's Deforestation Regulation' (2025) 20 *Glob Trade Cust J* 415

Scott J and Rajamani L, 'EU Climate Change Unilateralism' (2012) 23 *European Journal of International Law* 469

Scott J, 'The Geographical Scope of the EU's Climate Responsibilities' (2015) 17 *CYELS* 92

Shelton D, 'Stockholm Declaration (1972) and Rio Declaration (199)' (*Oxford Public International*, July 2008) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1608>> accessed 27 February 2025

Sjursen H, 'The EU as a 'Normative' Power: How can this be?' (2006) 13 *JEPP* 235

Silander D, 'The European Commission on Sustainable Development: A New Normative Power in the Making?' (2022) 53 *Forum Soc Econ* 76

Smits J, 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research' in Rob van Gestel, Hans W. Micklitz and Edward L. Rubin (eds), *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge University Press 2015)

Solar J et al, 'Human Rights and Environmental Due Diligence Regulations for Deforestation-Free Value Chains? Exploring the Implementation of the EU Regulation on Deforestation-Free Products in the Cocoa and Coffee Sectors of Peru' (2025) 1 *Glob. Policy* 1

Stone C, 'Common but Differentiated Responsibilities in International Law' (2004) 98 *Am J Int'l L* 276

Weiss EB, 'The Rise or the Fall of International Law?' (2000) 69 *Fordham L. Rev.* 345

Witte B, 'EU law: is it international law?' in Steve Peers and Catherine Barnard (eds) *European Union Law* (4<sup>th</sup> edn, OUP 2023)

Ziegler K, 'The Relationship between EU law and International Law' in Patterson D and Södersten A (eds), *A Companion to European Union Law and International Law* (Wiley-Blackwell 2016)

### **Non-Academic Sources**

Abnett K and Payne J, 'EU countries seek more cuts to deforestation rules, letter shows' (*reuters.com*, 7 July 2025) < <https://www.reuters.com/sustainability/climate->

[energy/eu-countries-look-for-more-deforestation-rules-letter-shows-2025-07-07/#:~:text=BRUSSELS%2C%20July%20%20\(Reuters\),letter%20seen%20by%20Reuters%20showed](https://www.reuters.com/energy/eu-countries-look-for-more-deforestation-rules-letter-shows-2025-07-07/#:~:text=BRUSSELS%2C%20July%20%20(Reuters),letter%20seen%20by%20Reuters%20showed)> accessed 20 July 2025

Besliu R, 'EU Deforestation Regulation: Balancing Climate Action and Global Trade Challenges' (*greeneuropeanjournal.eu*, 19 December 2024) <<https://www.greeneuropeanjournal.eu/eu-deforestation-regulation-balancing-climate-action-and-global-trade-challenges/>> accessed 28 January 2025

EPICC, 'Neocolonialism Embedded in the EU Deforestation-Free Products Regulation' (*epiccproject.org*) <<https://epiccproject.org/blog/2024/09/23/neocolonialism-embedded-in-the-eu-deforestation-free-products-regulation-eudr/>> accessed 19 July 2025

European Commission, 'EU as a Global Leader' (*ec.europa.eu*) <[https://ec.europa.eu/commission/presscorner/api/files/attachment/860252/EU\\_as\\_a\\_global\\_leader\\_en.pdf.pdf](https://ec.europa.eu/commission/presscorner/api/files/attachment/860252/EU_as_a_global_leader_en.pdf.pdf)> accessed 17 June 2025

European Commission, 'Global Climate Action' (*climate.ec.europa.eu*) <[https://climate.ec.europa.eu/eu-action/international-action-climate-change/global-climate-action\\_en](https://climate.ec.europa.eu/eu-action/international-action-climate-change/global-climate-action_en)> accessed 19 June 2025

European Commission, 'Global Gateway: EU and Member States Launch Global Team Europe Initiative on Deforestation-free Value Chains' (*international-partnerships.ec.europa.eu*, 9 December 2023) <[https://international-partnerships.ec.europa.eu/news-and-events/news/global-gateway-eu-and-member-states-launch-global-team-europe-initiative-deforestation-free-value-2023-12-09\\_en](https://international-partnerships.ec.europa.eu/news-and-events/news/global-gateway-eu-and-member-states-launch-global-team-europe-initiative-deforestation-free-value-2023-12-09_en)> accessed 26 June 2025

European Commission, 'Kyoto Protocol' (*ec.europa.eu*) <[https://ec.europa.eu/commission/presscorner/detail/en/memo\\_04\\_43](https://ec.europa.eu/commission/presscorner/detail/en/memo_04_43)> accessed 19 June 2025

European Commission, 'Maritime transport in EU Emissions Trading System (ETS)' (*climate.ec.europa.eu*) < [https://climate.ec.europa.eu/eu-action/transport-decarbonisation/reducing-emissions-shipping-sector/faq-maritime-transport-eu-emissions-trading-system-ets\\_en](https://climate.ec.europa.eu/eu-action/transport-decarbonisation/reducing-emissions-shipping-sector/faq-maritime-transport-eu-emissions-trading-system-ets_en)> accessed 9 August 2025

European Commission, 'Regulation on Deforestation-free Products' (*Europa.eu*) <[https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products\\_en](https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en)> accessed 27 January 2025

European Council, 'Paris Agreement on Climate Change' (*consilium.europa.eu*) <<https://www.consilium.europa.eu/en/policies/paris-agreement-climate/>> accessed 19 June 2025

European External Action Service, 'The EU as a Global Actor' (*eeas.europa.eu*) <[https://www.eeas.europa.eu/sites/default/files/documents/2023/inside\\_draft\\_EN-2023\\_web.pdf](https://www.eeas.europa.eu/sites/default/files/documents/2023/inside_draft_EN-2023_web.pdf)> accessed 17 June 2025

First Joint Letter from 17 Producer Countries on the EU Deforestation Regulation (EUDR) (27 July 2022) <<https://drive.google.com/file/d/1u7nObQWhEtPmZaA2fy148iadBgMN5R-E/view>> date accessed 15 May 2025.

Global Forest Watch, 'Global: Select Country' (*globalforestwatch.org*) <<https://www.globalforestwatch.org/dashboards/global/?category=forest-change&location=WyJnbG9iYWwiXQ%3D%3D>> accessed 25 June 2025

Global Traceability, 'EUDR Global Impacts on Producing Countries' (*global-traceability.com*) <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds593\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm)> accessed 20 July 2025

Government of the Netherlands, 'What is the Demand for Cocoa on the European Market?' (*cbi.eu*, 26 March 2022) <<https://www.cbi.eu/market-information/cocoa/what-demand>> accessed 27 June 2025

Lindwall C, 'Rich Polluting Nations Still Owe the Developing World' (*nrdc.org*, 22 January 2022) <<https://www.nrdc.org/stories/rich-polluting-nations-still-owe-developing-world>> accessed 25 June 2025

Pullen A, 'WWF urges Law-makers as EUDR Integrity Comes Under Fire' (*wwf.eu*, 23 June 2025) <<https://www.wwf.eu/?18464666/Keep-calm-and-carry-on-WWF-urges-law-makers-as-EUDR-integrity-comes-under-fire>> accessed 17 July 2025

Roberts A, 'Seizing the EUDR Delay: How Businesses can Lead in Sustainable Supply Chains' (*earth.org*, 10 March 2025) <<https://earth.org/seizing-the-eudr-delay-how-businesses-can-lead-in-sustainable-supply-chains/>> accessed 17 July 2025

Riebandt MC, 'Historical Responsibility for the Climate Crisis: The Roots of the Unfair Imbalance' (*ccpi.org*, 30 October 2024) <<https://ccpi.org/historical-responsibility-for-the-climate-crisis-the-roots-of-the-unfair-imbalance/>> accessed 25 June 2025

Scheimann J, 'EUDR Delay: Necessary of a Step Back?' (*euractiv.com*, 24 October 2024) <<https://www.euractiv.com/section/eet/opinion/eudr-delay-necessary-or-a-step-back/>> accessed 17 July 2025

Second Joint Letter from 17 Producer Countries on the EU Deforestation Regulation (EUDR) (7 September 2023) <[https://www.atibt.org/files/upload/news/RDUE/Trading\\_partners\\_joint\\_letter\\_on\\_EU\\_DR\\_7\\_September\\_2023.pdf](https://www.atibt.org/files/upload/news/RDUE/Trading_partners_joint_letter_on_EU_DR_7_September_2023.pdf)> date accessed 15 May 2025

Silva IM, 'Why the Global South is Against the EU's Anti-Deforestation Law' (*euronews.com*, 20 September 2023) <<https://www.euronews.com/my-europe/2023/09/20/why-the-global-south-is-against-the-eus-anti-deforestation-law>> accessed 24 June 2025

Suroyo G, Sulaiman S and Teresia A, 'Indonesia accuses EU of 'regulatory imperialism' with deforestation law' (*reuters.com*, 8 June 2023) <<https://www.reuters.com/business/environment/indonesia-accuses-eu-regulatory-imperialism-with-deforestation-law-2023-06-08/>> accessed 23 January 2025

United Nations Development Programme, 'Forests can help us limit climate change - here is how' (*climatepromise.undp.org*, 25 October 2023) <<https://climatepromise.undp.org/news-and-stories/forests-can-help-us-limit-climate-change-here-how>> accessed 28 January 2025

US Department of State, 'U.S Interpretative Statement on World Summit on Sustainable Development Declaration' (*US State Department*, 2002) <<https://2009-2017.state.gov/s/l/38717.htm>> accessed 19 April 2025

World Resources Institute, 'Forest Pulse: The Latest on the World's Forests' (*gfr.wri.org*, 4 April 2024) <<https://gfr.wri.org/latest-analysis-deforestation-trends>> accessed 7 April 2025