

Joint work with the Convention on Biological Diversity to operationalise Art. 6.8 of the Paris Agreement

IMPORTANT: The LRI acts as an intermediary in obtaining legal advice from third parties on the query you have raised. That advice is provided to the LRI but we are able to share it with you. The third-party advisers have accepted certain duties to the LRI but have not and do not accept any duty to you. The LRI itself does not and cannot provide legal advice. As a consequence, the LRI takes no responsibility for the content of any advice that it forwards, nor does it accept any responsibility for any delay either in obtaining or sending copies to you of the advice which it receives.

In forwarding the advice to you, the LRI does not intend to create a lawyer-client relationship with you and to the extent permitted by law, any liability of the LRI to you (including in negligence or for any damages of any kind) is excluded. Any dispute between you and the LRI shall be governed by English Law, and the English Courts will have exclusive jurisdiction.

In consideration of the LRI sharing the advice with you, you agree to the terms set out above.

*This advice is provided in response to **Query 51/23***

Queries:

1. Please provide examples, including a legal basis for joint work programmes between conventions, to coordinate across international instruments, in particular the UNFCCC and the CBD?
2. Please consider the operationalisation of the non market-based mechanism under Article 6.8 of the Paris Agreement and how such a Joint Work Programme between conventions, to coordinate across international instruments, could be implemented.

Executive Summary:

The UNFCCC and CBD are separate international treaties. Despite interlinkages, each convention has its own governance arrangements, protocols, body of decisions, Parties and party-driven processes. This presents legal and procedural challenges with respect to establishing formal mechanisms for joint work across conventions. However, there are examples of cooperation and coordination between international conventions, including the UNFCCC and CBD.

Options for cooperation and coordination between Rio Conventions include collaboration between secretariats, establishment of ad-hoc working or expert groups, establishment of

joint work plans, extension of existing work programmes under a convention, and complementary decisions of Parties via party-driven processes under each convention.

The completion of the UNFCCC Paris Agreement ‘rule book’ and negotiation of further guidance and rules and modalities under Article 6 of the Paris Agreement, as well as the recent adoption of the Global Biodiversity Framework (**GBF**) under the CBD, have further highlighted synergies and interlinkages between the UNFCCC and CBD. This includes adaptation measures and finance considerations.

Developments outside multilateral processes, such as the Task Force on Nature related Financial Disclosures (**TFND**) and natural capital initiatives, alongside recent decisions under each of the Rio Conventions, underscore the ongoing need for cooperation across Rio Conventions.

General advice regarding options and potential pathways is set out below. Once an optimum pathway has been identified (or options have been identified to progress concurrently in the short and medium term), further analysis should be undertaken to determine the detailed interactions and substantive content required to advance priority steps. We would be pleased to provide more detailed advice on any aspects of this memorandum that may be of interest.

Advice:

1. Introduction

On 3-14 June 1992 the United Nations (**UN**) Conference on Environment and Development (**UNCED**) was held in Rio de Janeiro, Brazil. The purposes of the UNCED included to elaborate strategies and measures to halt and reverse the effects of environmental degradation in the context of increased national and international efforts to promote sustainable and environmentally sound development in all countries.¹ The UNCED followed the Brundtland Report and significant earlier work by countries and UN bodies on international environmental and development challenges.

The UNCED, also known as the ‘*Earth Summit*’ (or *Rio Earth Summit*), advanced international sustainable development law and resulted in the adoption of non-binding instruments, including the Rio Declaration on Environment and Development (**Rio Declaration**) and Agenda 21. Two treaties were opened for signature, being the Convention on Biological Diversity (**CBD**) and UN Framework Convention on Climate Change (**UNFCCC**). Further, the Rio Earth Summit led to the creation of the Commission on Sustainable Development and helped progress the UN Convention to Combat Desertification (**UNCCD**).

¹ UNGA Res. 44/228, para 3

These three conventions (CBD, UNFCCC and UNCCD) are commonly referred to as the three sister conventions or ‘Rio Conventions’, as they derive from events at the Rio Earth Summit.

The Rio Conventions have synergies and overlap with earlier international environmental agreements or conventions, including the 1971 *Convention in Wetlands of International Importance (Ramsar Convention)*, 1972 *Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London Dumping Convention)*, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention), and 1973 *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*, among others. It is not uncommon for multilateral environmental agreements or conventions to thematically overlap or contain clear and complementary objectives.

There is broad recognition that climate change, desertification and biodiversity loss are heavily interlinked and pose existential challenges to humanity. These interlinkages have been recognised in decisions and instruments under both the UNFCCC and CBD, and through other international fora and bodies (such as the Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services (*IPBES*) and Intergovernmental Panel on Climate Change (*IPCC*)).

2. Examples of coordination across international instruments, in particular the CBD and UNFCCC

There are synergies between the CBD and UNFCCC, however they are separate conventions and operate to address independent issues, with separate Parties, governance bodies and party-driven processes.

The text of the UNFCCC text does not refer explicitly to ‘biological diversity’ or the Convention on Biological Diversity. Similarly, the CBD text does not expressly refer to the Framework Convention on Climate Change or ‘climate change’. However, agreements, protocols and decisions agreed or adopted under the CBD and UNFCCC refer to common themes and overlapping objectives.

For example, the preamble to the Paris Agreement notes “...*the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of “climate justice”, when taking action to address climate change.*”²

By way of further example, goals and targets set out in the Kunming-Montreal Global Biodiversity Framework (*GBF*)³ under the CBD relate to the use of ecosystem

² FCCC/CP/2015/10/Add.1 Decision 1/CP.21 Annex (p21)

³ CBD/COP/DEC/15/4

approaches and nature-based solutions, which have clear linkages to climate change mitigation and adaptation under the UNFCCC and Paris Agreement.

Each of the CBD and UNFCCC texts call for cooperation and coordination across international bodies and conventions generally (without explicit reference to a Rio Convention). For example, Article 8(2)(e) of the UNFCCC confirms the functions of the secretariat under the UNFCCC include “...to ensure the necessary coordination with the secretariats of other relevant international bodies.”⁴ Article 24 of the CBD reflects a similar function of the Secretariat to the CBD.⁵ Further, Article 23 of the CBD provides that the Conference of the Parties to the CBD shall keep under review the implementation of the CBD and, for this purpose, shall “... (h) contact, through the Secretariat, the executive bodies of conventions dealing with matters covered by this Convention with a view to establishing appropriate forms of cooperation with them;...”⁶

Also, the GBF promotes coherence between Rio Conventions and other relevant multilateral agreements.⁷ Further, the GBF is to be understood, acted upon, implemented, reported and evaluated consistently with, among other things, cooperation and synergies with other biodiversity-related conventions.⁸

Cooperation among the conventions can occur at different levels – between the respective convention bodies, between the convention secretariats, and at the national or local levels. Cooperation at the local level is particularly relevant because it supports implementation of the conventions and tangible and demonstrable benefits associated with sustainable development outcomes.

The Rio Conventions ‘Joint Liaison Group’ (**JLG**) is an example of cooperation between conventions via secretariats. The JLG was established as an informal forum for exchanging information, exploring opportunities for synergistic activities and increasing coordination. In 2011, the JLG agreed to mechanisms and procedures to improve their coordination via terms of reference and a *modus operandi*.⁹ The Terms of Reference were formally noted at the 12th meeting of the JLG in 2012, where it was

⁴ Article 8(2)(e), UN Framework Convention on Climate Change (FCC/INFORMAL/84/Rev.1)

⁵ Convention on Biological Diversity, Article 24(1)(d), which provides: “...*(d) To coordinate with other relevant international bodies and, in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions; ...*”

⁶ Convention on Biological Diversity, Article 23

⁷ Kunming-Montreal Global Biodiversity Framework, Section B, paragraph 6 (purpose).

⁸ Kunming-Montreal Global Biodiversity Framework, Section B, paragraph 7(q) (considerations for implementation): “*Enhanced collaboration, cooperation and synergies between the Convention on Biological Diversity and its Protocols, other biodiversity-related conventions, other relevant multilateral agreements and international organizations and processes, in line with their respective mandates, including at the global, regional, subregional and national levels, would contribute to and promote the implementation of the global biodiversity framework in a more efficient and effective manner.*”

⁹ Terms of Reference and Modus Operandi for the Joint Liaison Group between the Three Rio Conventions < <https://www.cbd.int/cooperation/doc/ilg-modus-operandi-en.pdf> > (accessed 27 October 2023). See also the related CBD communique < <https://www.cbd.int/doc/press/2011/pr-2011-09-20-ilg-en.pdf> > (accessed 27 October 2023).

also agreed that the Terms of Reference would be brought to the attention of the respective constituencies of the Rio Conventions.¹⁰

The terms of reference and *modus operandi* for the JLG include a mandate to explore options for further cooperation between the three Rio Conventions, including the possibility of a joint work plan.

With respect to implementing synergies between conventions, the 12th meeting of the JLG noted that similar challenges occur within country parties to the conventions:

“... Parties to each Convention ask for synergies but they do not provide for this in their respective countries. The CBD secretariat has been making progress in this regard with a pilot partnership project for the national implementation of synergies among the Rio Conventions, and it was noted that it would be useful to bringing in other key organizations such as the UNEP and IUCN to get the project extended.”¹¹

Following the adoption of the Paris Agreement, the JLG identified more specific areas of potential cooperation, including in relation to promoting the adoption of common indicators relevant to respective convention reporting processes and in alignment with the global indicators being developed under Sustainable Development Goal processes.¹²

The need for a permanent JLG working group was identified at the 14th meeting of the JLG, however it is unclear whether this initiative was advanced. It appears the JLG has not met formally since 2016 (as there are no further summary records of meetings available). In November 2017, the Executive Secretaries of the Rio Conventions released a joint statement calling for the establishment of a *Project Preparation Facility* to increase financing for large-scale, transformative projects which integrate action on land degradation, biodiversity loss, and global warming. This demonstrates some ongoing informal cooperation; however it is unclear what activities or discussions of the JLG have taken place since the end of 2017.

Other examples of cooperation between conventions include direct arrangements, such as a memorandum of understanding or memorandum of cooperation between secretariats.¹³ A memorandum of understanding between the secretariats of the CBD and UNCCD, signed in September 2011, provided for implementation of a joint work

¹⁰ Twelfth Meeting of the Joint Liaison Group of the Rio Conventions, 23 January 2013 < <https://www.cbd.int/doc/reports/jlg-12-report-en.pdf> > (accessed 27 October 2023).

¹¹ *ibid.* at paragraph 53.

¹² Summary of the Fourteenth meeting of the Joint Liaison Group of the Rio Conventions, 24 August 2016. < <https://www.cbd.int/doc/reports/jlg-14-report-en.pdf> > (accessed 27 October 2023).

¹³ See for example: the memorandum of cooperation between the secretariats to the CBD and CITES < <https://www.cbd.int/doc/agreements/agmt-cites-1996-03-23-moc-web-en.pdf> > (accessed 27 October 2023); and the memorandum of cooperation between the secretariats to the CBD and UNCCD < <https://www.cbd.int/doc/agreements/agmt-unccd-1998-07-31-moc-web-en.pdf> > (accessed 27 October 2023).

plan for 2011-2012 to try and enhance synergies at the national level among other activities.¹⁴

In relation to other initiatives to progress work between Rio Conventions, ad-hoc working groups may be convened to implement decisions of Parties. An *Ad Hoc Technical Expert Group on Biodiversity and Climate Change* was established under the CBD to, among other things: explore and promote synergies at the national level between the UNFCCC and the CBD (including Bali Action Plan and Nairobi work programme); consider the possible negative impacts of climate change related activities on biodiversity; and identify the role of biodiversity in climate change mitigation.¹⁵ The report of the Ad Hoc Technical Expert Group on Biodiversity and Climate Change was published.¹⁶ Further, Parties requested the Executive Secretary convey the deliberations of the Ad Hoc Technical Expert Group on Biodiversity and Climate Change established in 2008¹⁷ to the secretariat of the UNFCCC for appropriate consideration.

Reports or other documents arising from ad hoc working or expert groups established under one international convention can be welcomed and noted by, and recommended to, bodies and Parties under other conventions. Similarly, organisation reports and synthesis materials may be welcomed by subsidiary bodies, Parties and others under convention processes. In this way, technical information and recommendations can be shared and considered by Parties between international conventions.

Formalising pathways for greater coordination of work across conventions is legally and procedurally challenging. In practice Parties to the Rio Conventions may progress cross-cutting thematic work under respective convention processes. For example, the Nairobi Work Programme (**NWP**) was established under the UNFCCC to assist parties to improve their understanding and assessment of impacts, vulnerability and adaptation and assist informed decisions associated with climate change variability. The NWP has evolved since it was established at COP11 in 2005, to become a knowledge hub supporting adaptation policies and practices and enhancing efforts to close adaptation knowledge gaps. Thematic and cross-cutting work areas include ecosystems, human settlements, water resources, oceans, coastal areas & ecosystems, agriculture and food security, slow onset events, indigenous and traditional knowledge and impacts on ecosystems (among other thematic areas).

¹⁴ Memorandum of understanding between the secretariats to the CBD and UNCCD < <https://www.cbd.int/doc/agreements/agmt-unccd-2011-09-03-mou-web-en.pdf> > (accessed 27 October 2023).

¹⁵ UNEP/CBD/COP/DEC/IX/16 at paragraph 12(b) and Annex III

¹⁶ Secretariat of the Convention on Biological Diversity (2009). *Connecting Biodiversity and Climate Change Mitigation and Adaptation: Report of the Second Ad Hoc Technical Expert Group on Biodiversity and Climate Change*. Montreal, Technical Series No. 41 < <https://www.cbd.int/doc/publications/cbd-ts-41-en.pdf> > (accessed 27 October 2023)

¹⁷ *ibid.*

The distinct mandates and independent status of each convention means that Party-driven priorities and processes will influence the timing, nature and scope of collaborative or joint work between conventions. There is momentum for coherent and collaborative measures to complement full operationalisation of commitments and objectives between Rio Conventions, particularly with the recent adoption of the GBF, as well as the rapid evolution of environmental markets and broader finance and investment initiatives.

3. UNFCCC Paris Agreement Article 6.8

Paragraphs 8 and 9 of Article 6 of the Paris Agreement provide (emphasis added):

8. Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their nationally determined contributions, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate. These approaches shall aim to:

- a) Promote mitigation and adaptation ambition;*
- b) Enhance public and private sector participation in the implementation of nationally determined contributions;*
and
- c) **Enable opportunities for coordination across instruments and relevant institutional arrangements.***

9. A framework for non-market approaches to sustainable development is hereby defined to promote the non-market approaches referred to in paragraph 8 of this Article.

In 2021, the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (**CMA**) made significant progress on work under Article 6.8, along with adoption of decisions for the operation of Article 6 of the Paris Agreement more broadly. This included the decision to establish the Glasgow Committee on Non-Market Approaches (**GCNMA**) to implement the framework under Article 6.8 and the work programme adopted by the Parties.¹⁸ Arrangements for the work programme were supplemented and further clarified by Parties in Sharm el-Sheikh.¹⁹

The work programme under the GCNMA, which may be further elaborated at COP28, is currently focused on:

¹⁸ Paragraph 4 of the annex to decision 4/CMA.3

¹⁹ Decision 8/CMA.4

- identifying and framing all relevant elements of the work programme set out in paragraph 8 of decision 4/CMA.3; and
- operationalising a web-based platform for non-market approaches.

The web-based platform will record and allow the exchange of information on non-market approaches for parties participating in non-market approaches and other non-party stakeholders. Following this work, the parties are due to focus on full implementation of activities related to the above items.

In the context of ‘collaboration across relevant institutional arrangements’, discussions between Parties at the 58th SBSTA session in June 2023 canvassed linkages with other Constituted Bodies of the UNFCCC. Several stakeholders and Parties appear interested in continuing this discussion, including with the Local Communities and Indigenous Peoples Platform.

With respect to further evolving the framework for non-market approaches, it is open to Parties and stakeholders to consider ways to enhance subparagraph (c) of Article 6.8 with synergies and linkages (formal or informal) between conventions. This could include adaptation initiatives, land and ecosystem-based approaches or nature-based solutions (not covered by Article 6.2 or 6.4), provided any coordination or interlinkages assist in the implementation of NDCs under the Paris Agreement (consistent with requirements under Article 6.8). Paragraph 8 of the annex to decision 4/CMA.3 is relevant in this regard, noting this element of decision 4/CMA.3 sets out activities *to be included* in the relevant work programme. The intention being to identify a non-exhaustive list of activities for inclusion.

Pursuant to paragraph 4 of Decision 8/CMA.4 there may be opportunity for expanded consideration of these matters during the GCNMA’s assessment of progress scheduled for its 6th meeting in 2024. Further, there may be a similar opportunity when the UNFCCC Subsidiary Body for Scientific and Technological Advice (**SBSTA**) is to review the work programme at its 64th and 65th sessions in 2026.²⁰ In addition, the SBSTA will consider whether institutional arrangements for the Article 6.8 framework that will supersede the GCNMA are needed and make recommendations for consideration and adoption by the CMA at its 9th session (in 2027).²¹

The Rio Conventions arose from global concerns over interlinked environmental and development issues. However, the respective independent legal status and mandates of each convention and the different composition of each convention’s Parties, means that progressing formal joint-work programmes across the Rio Conventions presents challenges. There are examples of mechanisms for cooperation between Rio

²⁰ Paragraph 10 of decision 4/CMA.3

²¹ Paragraph 6 of annex to decision 4/CMA.3

Conventions and for Parties to undertake complementary work via decisions under each convention, or arrangements between conventions. Continuing and building upon these measures will help to ensure the Rio Conventions operate with complementarity and support ambition.

Practical options for coordination in the context of Article 6.8 of the Paris Agreement may include:

- Progressing further policy and technical dialogue via the UN Environment Programme (**UNEP**), which works across conventions in various capacities to support Parties and the administration and operation of conventions. Such dialogue may facilitate new initiatives or pathways for joint work under one or more Rio Conventions.
- Party-driven proposals under one or more Rio Conventions the appointment of ad-hoc working/expert groups to examine and report on particular gaps, issues, measures or synergies. This could include proposals to the Glasgow Committee on Non-Market Approaches, or UNFCCC constituted bodies for decision by relevant Parties.
- Proposing extended work under relevant existing convention bodies or work programmes to consider particular interactions or interlinkages, for example extending work under the NWP or *Sharm el-Sheikh joint work on implementation of climate action on agriculture and food security* (previously the *Koronivia joint work on agriculture*). Work programmes relating to land management and use, nature-based solutions and ecosystem/integrated land management approaches may be useful focal points for cross-cutting work across the CBD and UNFCCC.
- Seeking to reinvigorate the work of the JLG, including with respect to establishing relevant arrangements between secretariats to progress joint work on particular matters.

End