

International environmental law course

Professor Hans Chr. Bugge

Introduction to International Environmental Law: Foundation, sources, and main issues.

1. What is international environmental law?

Part of general international law, aiming at protecting the environment, and thus supporting sustainable development.

International environmental law, international law on natural resources and international law on sustainable development broadly overlaps – not a clear distinction.

A separate field, but at the same time part of other areas of international law, such as the law of the sea, international trade law, human rights law.

2. Why international environmental law?

The starting point: State sovereignty and its implications.

The problem of “externalities”. Environmental problems and economic activities extend beyond state borders. National rules are not sufficient.

- Transfrontier environmental damage (the “Trail Smelter case”)
- Protection of common resources – from wetlands and regional seas to the global biodiversity and the global climate. - The “free rider” problem.
- The need for common rules (“harmonization”) related to economic activities in order to avoid “race to the bottom”.
- A human rights perspective on environmental protection.

The debate on “anthropocentric” versus “biocentric” or “intrinsic values” approaches.

3. Main environmental problems

The “traditional” “sector” description of and approaches to the issues

- air pollution/climate change
- water pollution/marine pollution
- depletion of natural resources/biodiversity, deforestation, desertification ..
- chemicals, hazardous products, hazardous waste
- nuclear radiation....

Increasing understanding of the interrelationships (“holistic approach”).

4. The sources of international environmental law.

Starting point: Statute of the International Court of Justice, art. 38 (1).

- treaties/conventions (and connected protocols, annexes etc.); “parties”, “entry into force”; interpretation
- international customary law; consistent practice and “opinio juris”
- “general principles of law”; based on national (domestic) and/or international law?
- “new sources” of law: recommendations of international organizations, declarations from international conferences (“soft law”), principles
- norms established by non governmental organizations (NGOs), such as the International Standardization Organization (ISO).
- Jurisprudence, court cases (ICJ, ITLS, ECHR, WTO bodies...), doctrine

The various sources may be interrelated, see BBR pp. 15-29.

The development from “soft law” to “hard law” (legally binding treaties, with compliance mechanisms). But much “hard law” is “soft” (“soft hard law”).

5. Some milestones in the development of international environmental law

- 1941 The “Tail Smelter” arbitration
- 1968 Torrey Canyon accident; international rules on oil pollution from ships
- 1972 UN Stockholm Conference on the Human Environment
European Community takes up Environment as a new policy area.
- 1982 UN General Assembly World Charter for Nature
UN Convention on the Law of the Sea
- 1987 Report of the World Commission on Environment and Development (“Brundtland report”)
Montreal protocol to the Vienna Convention on the Protection of the Ozone layer.
- 1992 UN Rio Conference on Environment and Development
the “Rio Declaration”
UN Framework Convention on Climate Change (FCCC)
UN Convention on Biological Diversity (CBD).
Agenda 21.
- 1997 The Kyoto protocol to FCCC
- 1998 The “Århus Convention” on procedural environmental rights
(information, participation, and access to justice)

6. Some general challenges in international environmental law

- the uncertainties/lack of knowledge of causes and effects
- the complexity of the environmental problems
- the interrelationships (and conflict in the short term) between environmental protection and economic development
- the global unbalance and conflicts; the “North vs. South” discourse.

7. Main issues in international environmental treaty law

7.1 A basic problem:

Lack of clear principles and rules in customary international law for state responsibility for environmental protection and solution of common environmental problems.

Therefore a need for treaty law with more precise rules.

7.2 General trends in environmental treaties:

- from local/bilateral (“reciprocity”), to regional and global (“cooperation”)
- from specific topics to broader scope
- the use of “framework conventions”
- development of “principles” of environmental law
- increasing number of treaties; the problems of “fragmentation” and “overlapping” of international environmental (and trade) law
- a multitude of new institutions: “COP”s and “MOP”s with subcommittees, special secretariats etc.

7.3 How international environmental law influence national law.

Types of regulation/obligations.

International environmental law may be *a positive obligation* for the states, or *a restriction*, for the states in the development and application of national policy and law.

Types of regulation and obligations for the states:

- general principles of environmental law to be implemented by member states in national environmental policy and law

- general obligations to reduce emissions, protect nature etc., take active measures, including general prohibitions. They may be more or less precise
- “harmonization of rules and standards”.
 - emission limitations for certain activities
 - product standards
 - environmental quality standards
- duty to adopt “horizontal measures”, procedures: environmental impact assessment, right to environmental information....
- trade rules, trade restrictions (example: trade in endangered species)
- rules on liability for environmental damage.

8. *Some “cross-cutting” issues in international environmental law:*

- degree of states’ freedom; how “hard” or “soft”, wide or precise, rules?
- types of instruments; the need of flexibility (framework conventions)
- principle of “common but differentiated responsibilities”, North/South
- principle of cost-effectiveness, “flexible mechanisms”
- decision-making mechanisms, amendments procedures etc.
- implementation, monitoring, enforcement and dispute settlements mechanisms – “stick or carrot?”

A fundamental dilemma of international environmental law: Global “consensus” or agreement between major actors only?
(As illustrated by the climate negotiations and the Copenhagen conference.)
