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INTERNATIONAL ENVIRONMENTAL LAW

Sarah Valentine
Reed Smith

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Background

The world faces a diverse and growing range of environmental challenges, which have to be addressed through international co-operation. International law is being called upon to address a number of issues including ozone depletion, loss of biodiversity, water and air pollution, depletion of freshwater resources and sustainable development concerns, to name but a few.

Today, there are about 200 international agreements primarily directed to international environmental issues, and many others containing important provisions on them.

Aims and Key Features of International Environmental Law

Aims

The aims and subject matter of international environmental agreements has changed dramatically since such agreements were first introduced. Early agreements focused on issues relating to boundary rivers, fishing rights and the protection of flora and fauna. Today, agreements cover a much wider range of issues, including conservation of habitats and biodiversity, controlling pollution and protection of resources located within countries that are of concern to the international community.

Since the Rio Conference on Environment and Development in 1992 (the "Rio Conference"), we have also seen an increased awareness that environmental issues and economic issues are intrinsically linked; as a result, sustainable development and associated legislation/guidance has also been a key feature.

The international community is aware that it is important not only to monitor and research environmental risks, but also to reduce them. The aims of states have moved from international agreements that mainly address research, information exchange and monitoring to agreements that require reductions in pollutant emissions and changes in control technology.

Key Features

Covering all of the vast number of international legal instruments that deal with international environmental law is impossible within this guide.

However, from the large body of agreements, it is possible to discern general principles which are frequently endorsed in practice:

1. States have sovereignty over their natural resources and the responsibility not to cause environmental damage, a principle originating from the Stockholm Declaration on the Human Environment 1972 (the "Stockholm Declaration") (Principle 21);

2. States must co-operate with each other and be good neighbours (Principle 24 of the Stockholm Declaration, Principle 27 of the Rio Declaration 1992 (a document produced following the Rio Conference));
3. In the absence of scientific consensus that an action is harmful, the burden of proof that it is not harmful falls on the person taking the action (the Precautionary principle). This principle appears in a number of legal instruments including the Rio Declaration (Principle 15) and the Montreal Biosafety Protocol 2000;
4. The party responsible for producing pollution is responsible for paying for the damage done to the environment (the Rio Declaration 1992 states that the "polluter should, in principle, bear the cost of pollution" (Principle 16)); and
5. Sustainable development – this concept can be found expressly and implicitly in many environmental treaties and can broadly be defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own need." For example, the Stockholm Declaration on the Human Environment 1972, although not a binding legal instrument, recognises that most of the environmental problems in developing countries are caused by underdevelopment and poverty and as a result, development should be focused on in such states (Principles 8 and 9 of the Stockholm Declaration).

Due to a lack of judicial authority and often conflicting interpretations under state practice, it is difficult to establish the precise international legal status of each general principle. As a result, the legal consequences in each case depend on the facts and circumstances of that particular case.

The legal meaning and consequences of the above principles remain open. As there is no agreement as yet concerning their legal consequences, it is unlikely that they will be used, at least at the present time, to compel the international community to protect the environment. It remains for international tribunals such as the International Court of Justice to effectively codify these principles to give rise to legal obligations and legal remedies.

Development Implications

There is an increasing concern over the economic implications of signing up to environmental agreements. Developing countries in particular are increasingly concerned about the threat to their economic competitiveness which can arise when other nations fail to adopt similarly stringent standards.

Another major concern is the failure of most environmental treaties to offer financial resources to states as compensation for the additional, and often significant, costs incurred

as a consequence of implementing protective measures. This lack of compensation gives rise to the concern that many developing countries will be unwilling to support similar measures in the future, choosing to sacrifice environmental protection for economic growth.

Some treaties do now provide for compensatory finance to be made available to developing countries so as to enable them to meet the costs of implementing the obligations imposed.

For example, the Montreal Protocol 1987 on Substances that Deplete the Ozone Layer (as subsequently amended) requires its signatories, taking into account the particular need of developing countries, to promote financial and technical assistance which facilitates the compliance of signatories with the Protocol's requirements (Article 10). Principle 12 of the Stockholm Declaration 1972 also makes it clear that the costs incurred by developing countries by incorporating environmental safeguards need to be considered and financial assistance provided where possible.

The Involvement of NGOs and Practical Challenges Faced

The role of NGOs

A distinctive feature of international environmental protection is that it is primarily driven by science. This has provided NGOs with an increasingly important role in the negotiation, ratification, implementation and enforcement of international environmental agreements.

NGOs will typically have the opportunity to be present at official negotiations of international environmental agreements - the ratio of NGO participants to United Nations and government officials at the Rio Conference was approximately 1:1. There is not yet, however, universal acceptance of the role of NGOs or any systematic pattern of representation.

As well as participating in international environmental negotiations, NGOs also lobby state decision makers, in the hope of affecting domestic and foreign policies related to the environment.

Practical challenges in enforcing the legislation

Legal instruments dealing with aspects of international environmental law need to be implemented at the national level through appropriate national legislation in order to ensure adequate application, compliance and enforcement.

A major issue is that a number of states within the international community lack this corresponding environmental legislation at the national level, or take a number of years to implement it, which means that enforcement is extremely difficult.

Conclusion

International environmental law is a vast topic which is receiving increasing legal and political attention.

The global environmental system ignores political boundaries, so it is important that countries with the potential to impact the international environment are within the convention system in order to avoid defeating the purposes of the agreement. Currently, a number of states are not implementing legislation at a national level, and a number of developing states are growing increasingly concerned about the economic consequences and impact on their development. This means that enforcement of the legislation is a major issue.

Further reading

<http://www.asil.org/env1.cfm> (American Society of International Law Guide to Electronic Resources for International Environmental Law)

<http://www.ll.georgetown.edu/guides/internationalenvironmentallaw.cfm> (Georgetown University International Environmental Law Research Guide, which contains a helpful list of the most frequently cited agreements)

<http://www.unep.org/law/> (UN Environmental Law Programme, containing a list of the treaties and non binding legal instruments concerning Environmental Law)