International environmental law (4)

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Atmosphere protection

- Airborne Particles
- Nitrous oxide (Nox)
- Sulfur dioxide (SO2)
- Volatile organic compounds (VOCs)
- Persistent organic pollutants (POPs)
- Carbon dioxide (CO2)
- Chlorofluorocarbon (CFCs)
Atmosphere protection

- Long-range transboundary air pollution and acid rain deposition:
  - UN Convention on long-range transboundary air pollution (1979)
- Ozone depletion:
  - Vienna Convention for the protection of the ozone layer (1985)
  - Montreal Protocol on substances that deplete the ozone layer (1987)
- Climate change:
  - Paris Agreement 2015
UN Convention on long-range transboundary air pollution (1979)

- Framework convention
- Programmatic character
- Protocols:
  - 1984 Protocol addressing financial provisions for the EMEP
  - 1986 Protocol on the control of emissions of Nox
  - 1991 Protocol on emissions of VOCs
  - 1998 Protocol on heavy metals
  - 1998 Protocol on POPs
  - 1999 Protocol to abate acidification, eutrophication and ground level ozone (sulphur, Nox, VOCs and ammonia), etc…
Convention for the protection of the ozone layer (1985)

- Framework convention
- Programmatic character
  - Coverage: CFCs and halons
  - “Basket strategy”
  - Trade measures
  - Technical and financial assistance
  - “Non-compliance” procedure
  - Adjustments
Framework Convention on climate change (1992)

- Framework convention
- **Objective**: “stabilization of GHGs concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (art.2)
- **Principles:**
  - Precautionary principle
  - Common but differentiated responsibilities
  - Sustainable development
- **Commitments:**
  - All parties
  - Annex I Parties
  - Annex II Parties
Kyoto Protocol to FCCC (1997)

- Coverage: CO2, CH4, Nox (1990) / HFCs, PFCs, SF6 (1990-1995)
- Policies and measures (PAMs)
- Flexibility mechanisms:
  - Joint fulfillment of commitments (art. 4)
  - Joint implementation (art. 6)
  - Clean Development Mechanism (art. 12)
  - Emissions trading (art. 16 bis)

- Mitigation goal:
  - Holding the rise in temperature below 2°C (1.5°C) (Art. 2)
  - Global peaking “as soon as possible” (Art. 4.1)
- “Top down” v. “Bottom up”: Nationally Determined Contributions (NDCs) (Art. 4.2), which are to be ratcheted upwards every 5 years (Art. 4.3, 4.9)
- “Stock-taking” & “ratcheting”: 2018, 20123 and then every 5 years (Art. 14)
- Common framework of transparency (Art. 13)
Biodiversity and habitat protection

• Biodiversity:
  ✓ Building blocks of life (genetic diversity)
  ✓ Different life forms (species diversity)
  ✓ Interrelationship of life (ecosystem diversity)

• Causes for biodiversity loss:
  ✓ Habitat loss and fragmentation
  ✓ Alien species
  ✓ Overexploitation of plant/animal species
  ✓ Pollution of soil, water, atmosphere
  ✓ Climate change
  ✓ Industrial agriculture and forestry
Biodiversity and habitat protection

- Biodiversity + biosafety
- Wildlife conservation
- Wetlands
- International trade of endangered species
- International protection of forest
- Desertification
Biodiversity Convention (1992)

- Biological diversity / biological resources
- “Common concern of humankind”
- Encouraging national conservation of biodiversity
- Regulating biotechnology trade
  - Bio-prospecting
  - Benefit-sharing
  - Technology transfer
- Promoting international cooperation
- Cartagena and Nagoya protocols (2000 and 2010)
CITES Convention (1973)

- International trade in threatened species
- Protection based on an appendixes’ system:
  - Appendix I
  - Appendix II
  - Appendix III
- Exceptions and reservations
Ramsar Convention on wetlands (1971)

- Single type of ecosystem
- Improving the conservation and management of internationally significant wetlands
- Creating an international framework for identifying, registering, monitoring and funding wetlands
- Creating Parties’ commitments for national wetlands management
- “Montreux Record”: register of wetland sites currently under threat (e.g. Palo Verde in Costa Rica)
International protection of forest

- **Conventional instruments:**
  - International Tropical Timber Agreement (1985)
  - Convention on Biodiversity (1992)
  - Framework Convention on Climate Change (1992)

- **Soft law:**
  - Tropical Forest Action Plan (1980)
  - UNCED Forest Principles (1992)
  - Agenda 21, Chapter 11 (1992)
  - UN Forum on Forest (2000): ECOSOC’s subsidiary body
Desertification

- Causes of desertification:
  - Over cultivation
  - Over grazing
- 1997 UN Plan of Action to Combat Desertification:
- 1994 UN Convention to Combat Desertification
Oceans protection

• Sources of marine pollution:
  ✓ Land-based marine pollution: 44%
  ✓ Atmospheric emissions: 33%
  ✓ Marine pollution from ships: 12%
  ✓ Dumping of wastes: 10%
  ✓ Exploitation of the deep sea: 1%

• Sources of marine resources’ exhaustion:
  ✓ Over-fishing
Oceans protection

Interior waters | territorial sea | contiguous zone | exclusive economic zone | high sea
---|---|---|---|---
12 ml | 24 ml | 200 ml

continental platform | deep sea bed
200 ml/350 ml
Oceans protection: International legal tools

- Marine pollution from ships:
  - OILPOL convention 1954
  - MARPOL convention 1973/1978
- Oil spills and accidental pollution:
  - Intervention on high seas convention 1969
  - Rescue convention 1989
  - OPRC convention 1990
- Civil liability:
  - CL convention 1969
  - Fund convention 1971
  - HNS convention 1996
  - Nuclear convention 1971
- Dumping of wastes:
Oceans protection: International Legal Tools

- UN Convention on the Law of the Sea (UNCLOS) 1982 and related Agreements
- Convention on the Prevention of Pollution from Ships (MARPOL 73/78)
- Other sectorial/regional conventions
UNCLOS 1982, Part XII (art. 192-237)

• General obligation: protect/preserve the marine environment

• Specific obligations:
  ✓ Prevent, reduce, control pollution
  ✓ Do not cause damage by pollution to other States
  ✓ Other: rare and fragile ecosystems, endangered species, transfer of hazards, alien species
UNCLOS, Part XII (art. 192-237)

- Other general obligations / measures:
  - Cooperation at world/regional level
  - Technical assistance to developing countries
  - Monitoring and environmental assessment
  - Enforcement (flag State-port State)
UNCLOS: Dispute resolution system (art. 279-299)

- **Characters:**
  - Flexible process
  - Comprehensive process
  - Accommodating process

- **Fora:**
  - International Court of Justice
  - UNCLOS:
    - International Court for the Law of the Sea
    - Arbitral Tribunal
    - Special Technical Arbitral Tribunal
UNCLOS: Conservation of marine resources (fisheries)

- UNCLOS: regulation of fisheries at the EEZ
  - Straddling stocks
  - Highly migratory species
  - Anadromus species
  - Catadromus species

- Agreement for the Implementation of the Provisions of the UNCLOS Relating to Conservation and Management of Straddling Fish Stock and Highly Migratory Fish Stocks 1995:
  - Conservation mandate
  - Precautionary principle, consultation, cooperation
MARPOL 73/78 (1973)

- **Objective:**
  - ✓ To create a verifiable and enforceable regime to prevent discharges from ships

- **System of Annexes:**
  - ✓ Mandatory:
    - ✓ Oil pollution (I)
    - ✓ Noxious liquid substances in bulk (II)
  - ✓ Optional:
    - ✓ Harmful substances in packaged forms (III)
    - ✓ Sewage (IV)
    - ✓ Garbage (V)

- **Compliance:**
  - ✓ Record books
  - ✓ Oil discharged data
  - ✓ Certificate to operate: International Oil Pollution Prevention (IOPP) Certificate
London Convention on Dumping (1972)

• **Objective:**
  ✓ To address marine pollution by deliberate disposal from ships, aircraft and man-made structures

• **Scope (1996):**
  ✓ Geographical scope: Extension to all seas (including seabed and sub-soil)
  ✓ Material scope: Extension to incineration of sewage sludge and industrial waste and to disposal of law level radioactive wastes
London Convention on Dumping (1972)

• 1972 system of lists:
  ✓ Black list (annex I): prohibition of dumping
  ✓ Grey list (annex II): special permit for dumping
  ✓ Green list (no annex I-II): general permit for dumping

• 1996 system of “reversed list”:
  ✓ General prohibition of dumping unless wastes or other materials are listed in Annex I (e.g. off-shore industrial dumping)
  ✓ Prohibition of incineration of wastes and other materials
  ✓ Exceptions in art. 1, 8 and 10
Land Based Marine Pollution

- 1982 UNCLOS, art. 207
- 1985 Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-Based Sources
- 1992 Agenda 21, Chapter 17
- 1995 Washington Declaration on protection of Marine Resources from Land-Based Activities + Global Program of Action
- Regional Agreements
Marine Pollution from Deep Seabed Mining

- 1970 UNGA Declaration of Principles Governing the Seabed, the Ocean Floor and Sub-soil Beyond the Limits of National Jurisdiction
- 1982 UNCLOS:
  - Art. 145: protection of marine environment
  - Art. 162: International Seabed Authority + The Enterprise
  - 1994 Agreement on Implementation: impact assessment/financial and technological arrangements/cost-sharing requirements
Freshwaters protection

- Customary law:
  - Obligation to cooperate: notification, consultation and negotiation
  - Equitable utilization of shared resources
  - Obligation not to cause transboundary harm
UN Convention on Non-navigational uses of watercourses (1997)

- ILC 1970
- Definition of water courses
- General principles governing the use of water courses
- System of notification and consultation
- Protection, preservation and management of freshwater ecosystems
- Harmful conditions and emergency situations
- Miscellaneous provisions (e.g. dispute settlement system)
- Entered into force 2014
Chemicals and hazardous materials

- 1976 UNEP International Register of Potentially Toxic Chemicals
- 1987 UNEP London Guidelines for the Exchange of Information on Chemicals in International Trade
- 1998 Rotterdam Convention for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
- 2000 Stockholm Convention on Certain Persistent Organic Pollutants
PIC Convention (1998)

- **Objective:**
  - To facilitate information exchange btw parties on hazardous chemicals and pesticides + establishment of and effective mechanism for parties to refuse the import of banned or severely restricted chemicals

- **Prohibition of export of any chemicals listed in Annex III:**
  - Hazardous chemicals and pesticides that have been banned or severely restricted in at least two countries shall not be exported unless explicitly agreed by the import country.
PIC procedure

• Objective:
  ✓ To promote shared responsibility btw export and import countries in protecting human health and environment

• Implemented jointly by FAO and UNEP

• Chemicals included in the PIC procedure:
  ✓ Pesticides, industrial and consumer chemicals banned or severely restricted by parties + Acute toxic pesticide formulations which presents a hazards in developing countries

• How does PIC operate?
  ✓ Designated National Authority (DNA)
  ✓ Notification of Control Action form
  ✓ Decision Guidance Document
  ✓ Importing Country Response form(accept/refuse/allow under conditions)
Hazardous waste management

- 1989 Basel Convention
- 1995 Protocol to 1976 Barcelona Convention (Mediterranean)
- 1991 Bamako Convention (Africa)
- 1992 Panama Convention (Central America)
- 1995 Waigani Convention (South Pacific)
- 1996 Moscow Convention (ISC)
Basel Convention (1989): Main principles

- Right to ban the entry or disposal of foreign hazardous wastes in the State territory
- Specific prohibitions to export/import hazardous wastes
- Prior Informed Consent (written consent) + tracking requirements
- Environmentally sound and efficient management
- Proximity and self-sufficiency
- Illegal traffic = criminal offense
- Duty to re-import

- Categories of wastes to be controlled (annex I)
- Categories of wastes requiring special consideration (annex II)
- List of hazardous characteristics (annex III)
- Disposal operations (annex IV)
- Information to be provided on notification and on the movement document (annex V)
- Arbitration (annex VI)
- OECD (+ EU) Parties (annex VII)
- Wastes deemed hazardous and covered by 1995 ban (annex VIII): List A
- Wastes not generally considered hazardous and not subject to control under the Convention (annex IX): List B

- To the area south of 60 degrees south latitude
- Between Basel parties and Basel non-parties
  - Unless bilateral, multilateral, regional agreement (art. 11)
- Between OECD Basel parties and non-OECD Basel parties (amendment 1995)
  - Unless bilateral, multilateral, regional agreement (art. 11)