

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:
 - ✓ UN Framework Convention on climate change (1992) / Kyoto Protocol to FCCC (1997)
 - ✓ 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
 - ✓ 1985 Protocol on reduction of SO₂ (1994)
 - ✓ 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
- Montreal Protocol (1987)
 - ✓ 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)
- Targets: Annex I parties' QELROS for 1st period (2008-2012) and 2nd period (2013-2020)
- 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)

Paris Agreement (2015)

- 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, 2023 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 Intergovernmental Panel on Forest (1995/1997-1997-2000): CSD's Subsidiary body of CSD
 - ✓ UN Forum on Forest (2000): ECOSOC's subsidiary body

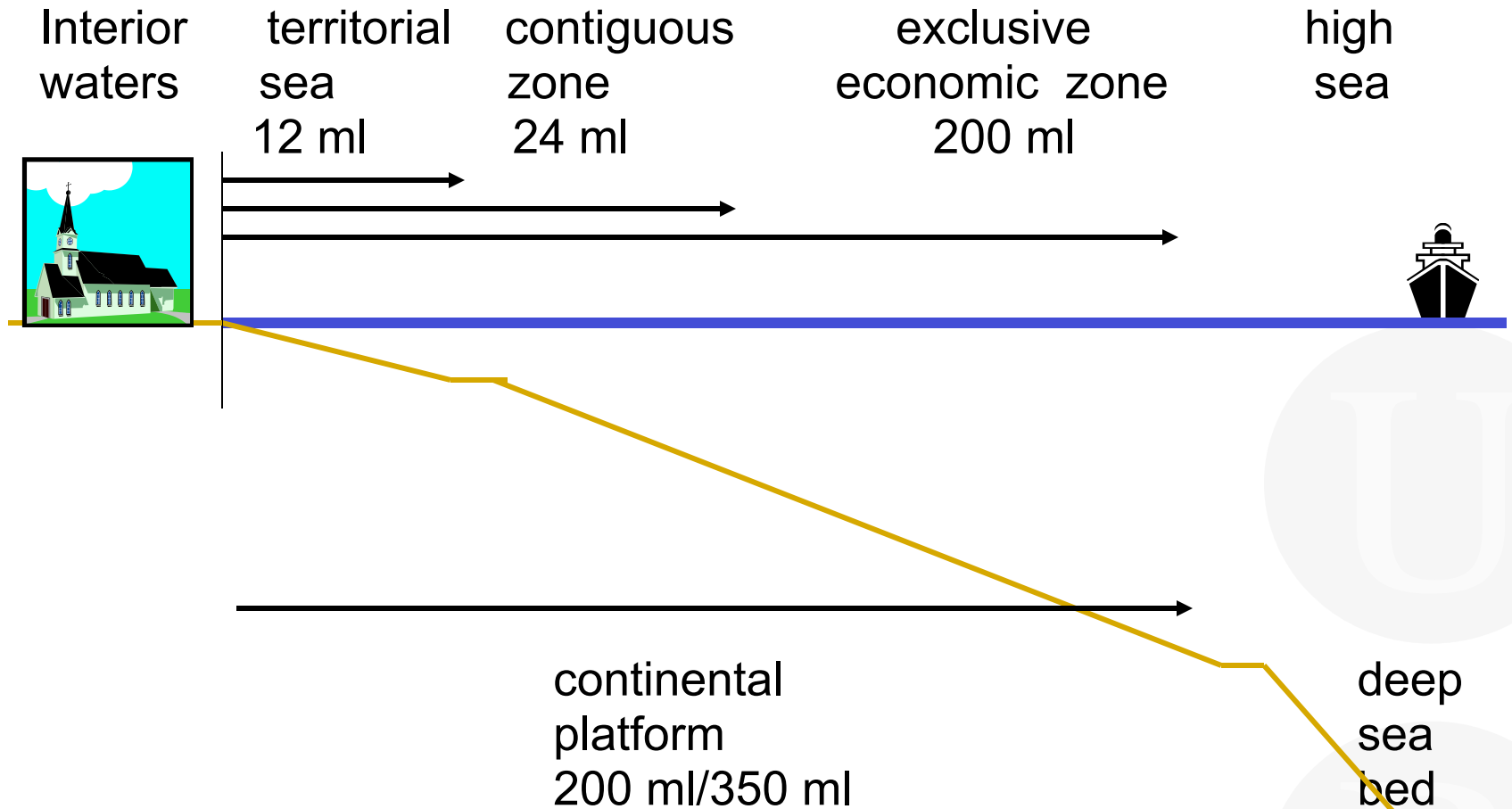
Desertification

- 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



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:
 - ✓ London convention 1972 (1996)

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)
- London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other matters 1972
- 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 low 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

- 1985 FAO International Code of Conduct on the Distribution and Use of Pesticides (1989 amendment: Prior Informed Consent)
- 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 an 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
- 1996 Protocol to 1972 London Convention (universal)
- 1995 Protocol to 1976 Barcelona Convention (Mediterranean)
- 1989 Lome Convention / 2000 Cotonou Convention (ACP / EC)
- 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

Basel Convention (1989): List systems

- 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

Basel Convention (1989): General prohibitions

- 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)