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# International environmental law (1)



International environmental lawmaking: sources of international environmental law



### International environmental law: principles

### Sustainable development

### sic utere tuo ut alienum non laedas:

 Obligation not to cause environmental harm

### Principle of intergenerational equity:

 Preservation of the environmental capital that States hold in trust for future generations and ensure that it is transmitted in conditions equivalent to those in which it was received

### Principle of common but differentiated responsibilities:

 Developed countries have a heavier responsibility in view of their particular contribution to the degradation of the environment.

Precautionary principle (and principle of preventive action)

International environmental law: principles

Public participation, access to information, access to justice Polluter Pays Principle **Prior Informed Consent Environmental Impact Assessment** 

# International environmental law: customary rules

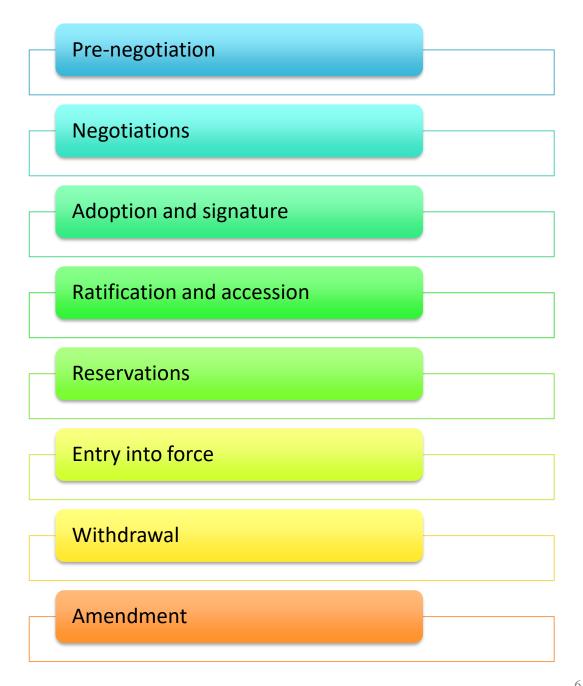
### **Elements:**

- State's practice
- Opinio iuris
- Proving customary law

International customary rules (environment protection:

- sic utere tuo ut alienum non laedas (Obligation not to cause environmental harm)
- Prevention of transboundary pollution
- Co-operation on environmental issues

**International** treaties: steps



### International treaties: features

### Umbrella / framework treaties

### Institutionalization of mechanisms

### Different groups of provisions

- Permanent provisions
- Technical provisions

### Trends towards globalization

**Relative commitments** 

### Conventional asymmetry

- Common but differentiated responsibilities
- Financial and technical asymmetry

### International treaties: administration

Secretariats

Subsidiary bodies and committees

### International treaties: weakness

Gaps in international policy forums

Incoherent decision-making structures

Limitations in access and participation

Weak support for the existing institutions and oversight mechanisms

Lack of meaningful coordination

Unbalanced approaches to the three pillars of sustainable development

# Soft law & international environmental law

### **Consolidate Principles**

- Sustainable development-duties to future generations
- Common but differentiated responsibilities

Move principles towards customary status

Reflect common international political aspirations

# Soft law & international environmental law

### Positive impact of "soft law" instruments

- Policy framework to implement binding instruments
- the development of concepts and principles
   e.g the precautionary approach, CBDR
- testing grounds for new ideas, or adaptations of old ideas to new areas

Negative impact of "soft law" instruments

- Easy to commit in the knowledge that they will not have to be implemented.
- Shifting from the language of 'should' to 'shall' to avoid legal obligation to implement