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International environmental law (1)

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**International
environmental
lawmaking:
sources of
international
environmental
law**

Treaties

Customary law

General principles

Subsidiary role: Judicial decisions &
Doctrine

States unilateral acts

Soft 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

Pre-negotiation

Negotiations

Adoption and signature

Ratification and accession

Reservations

Entry into force

Withdrawal

Amendment

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

Conference of the Parties

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