

International environmental law

International environmental law is a complex body of treaties, conventions, statutes, regulations and common law that works to reduce the impact of human activity on the natural environment. In general, there are two aspects to international environmental law: legal standards intended to govern the behaviour of states and international regulation that creates international bodies and organizations. Since international environmental law is mainly made up of treaties, the laws and principles of those agreements have tended to shape the way states have developed their own domestic environmental laws. One of the main principles of international environmental law comes out of a conference held in Stockholm in the 1970s.⁵⁹ Under this principle, known as Principle 21, states have the right to use their own resources according to their own environmental policies, but with that right comes the responsibility to ensure that what they do in their own country does not negatively impact the environment of other states, or those areas beyond state borders, sometimes known as the “global commons”. The global commons include the high seas or “international waters,” deep-sea beds, certain areas of the Antarctic, the atmosphere, and outer space.

Another important principle is the requirement for states to take care to safeguard natural resources—including the air, water, land, plant life, animals, and natural ecosystems—through careful planning and management and the sustainable use of these resources.

Some of the issues addressed by international environmental law include:

- reducing greenhouse gas emissions that cause climate change.
- protecting endangered species.
- controlling acid rain.
- protecting the ozone layer.

Customary international law and international waters

Throughout the world, there are many bodies of fresh water that border or flow through more than one country. These are known as “international watercourses” or “transboundary waters” and include rivers, lakes, and streams that are shared by two or more countries. For example, the Mekong River in Southeast Asia flows through China’s Yunnan Province, Myanmar, Laos, Thailand, Cambodia, and Vietnam. In North America, the Columbia River flows from the Rocky Mountains in British Columbia into the United States. Both the Mekong River and the Columbia River are governed by treaties that specify how the water can be used; however, there are many other international watercourses for which there are no treaties. These watercourses are governed by customary international law which provides rules about how states are allowed to use the water. For example, a state is required to provide “prior and timely notification” to other states that share the watercourse if they are going to change the way they use the water. This means that if one state wants to build a dam that will affect the amount of water that flows into another state, it must notify and consult with the other state before it starts construction of the dam, and provide

enough time for the other country to make preparations for the change. States must also take measures to make sure that their use of the water does not cause significant harm to other states that share the water. This is important for international environmental law because it means that states must be careful not to pollute a shared river or lake, so as to cause damage to the land or people in another state (for example, the contamination in one country of a river that flows into another country).

Intergovernmental organizations and NGOs

Intergovernmental organizations and NGOs are influential in the development and implementation of international environmental law. These bodies work to foster co-operation between states and facilitate discussions and research on environmental issues. For example, environmental NGOs such as Friends of the Earth, Greenpeace and the World Wildlife Fund participate in research, and initiate public awareness campaigns to draw attention to specific issues. These bodies also sometimes bring or assist in bringing cases to court in order to influence international environmental policies.

In addition, the *Rio Conventions*, consisting of the *Convention on Biological Diversity*, the *United Nations Convention to Combat Desertification* and the *United Nations Framework Convention on Climate Change*, represent a commitment to co-operation and partnership with other conventions, organizations, and initiatives to meet goals for sustainable development.⁶⁰ The three conventions are strongly linked to one another, addressing independent environmental issues—conservation of biological diversity, desertification (the process through which an area becomes a desert, often caused by drought), and climate change—within the same ecosystems.

The Kyoto Protocol

The *Kyoto Protocol*⁶¹ is an international treaty for the reduction of global greenhouse gas emissions. Greenhouse gases include carbon dioxide, methane, and nitrous dioxide which all contribute to global warming and climate change. Greenhouse gases are thought to be responsible for the increased frequency of extreme weather conditions such as flooding and droughts, alpine and polar melting, and shifts in ocean currents.

The *Kyoto Protocol* was adopted in Kyoto, Japan in 1997, and came into force in 2005. The treaty is the first of its kind to set quantifiable and binding targets for the reduction of greenhouse gas emissions. Specifically, states parties have agreed to reduce their overall emissions by 5% below those recorded in 1990. These reductions are to take place between 2008 and 2012.

Because developed countries are primarily responsible for the current levels of greenhouse gas emissions, the *Protocol* puts a heavier burden on developed nations to reduce their emissions. The treaty requires countries to reduce emissions mainly through national measures, such as the creation of laws and policies for emission reduction, but it also contains some additional ways for countries to meet their

targets. For example, emissions trading allows countries that have not used up their allowed emissions units (the amount of greenhouse gases that a given country is permitted to emit) to trade those units to countries that are over their allotted amounts.

Canada ratified the *Kyoto Protocol* in 2002; however, since 2006, it has been widely acknowledged that Canada has failed to achieve its commitments under the Protocol, and that Canada's greenhouse gas emissions have in fact increased, largely due to developments in the Tar Sands in Alberta.⁶² In June 2011, Canada announced that it would not sign onto an extension of the *Kyoto Protocol*.



Quick quiz 15

True or false:

1. International environmental law is a single law.
2. States, or individual countries, can do whatever they want with their natural resources.
3. Canada has agreed to sign on to the extension of the *Kyoto Protocol*.

Case study: The Northwest Passage

The Northwest Passage is a sea route through the Arctic Ocean and along the northern coast of North America that connects the Atlantic and Pacific Oceans. For centuries, explorers sought to find a possible trade route through the Northwest Passage, but the Arctic sea ice prevented regular marine shipping for most of the year. In fact, many explorers lost their lives in an attempt to find a passage through the ice.



The Northwest Passage has been the subject of controversy in international law because of a dispute over who has sovereignty over the waterway. Canada claims that the Northwest Passage is part of its internal waters. Under the United Nations *Convention on the Law of the Sea*, a country is free to set laws and regulate the use of its internal waters. Foreign vessels have no right to pass within the internal waters of another country. The United States and Europe, on the other hand, claim that the waters of the Northwest Passage are international waters, meaning that anyone is free to navigate or pass through those waters.

As a result of climate change, the levels of sea ice have been drastically reduced, and in 2007, it was reported that the Northwest Passage was free of sea ice for the first time in recorded history.⁶³ Although the levels of sea ice fluctuate every year, it is speculated that, by the end of the 21st century, there might be no sea ice at all in the summer, making the Northwest Passage attractive as a major shipping route. As a result, the question of who “owns” the Northwest Passage takes on increasing significance. If the Passage is considered to be international waters, then any country in the world could use it as a shipping route. The benefits to having a

clear path through the Passage include reducing shipping routes between Europe and East Asia by approximately 4,000 km, thereby saving time, fuel, and transit costs. Oil produced in Alaska could be transported more quickly and vast mineral deposits in the Canadian north would become much easier and more economical to develop.

However, there is also the possibility for significant environmental impacts. Beside the fact that the melting polar ice is seriously threatening Arctic animal habitats, such as that of the polar bear, the opening up of the Northwest Passage as an international shipping route would increase the risk of oil spills from ships and Arctic drilling. The environmental impacts of the Exxon Valdez oil spill in 1989 off the coast of Alaska are still being felt today, more than 20 years later⁶⁴ and environmentalists are concerned that the Arctic environment could be put at even further risk should the Northwest Passage become a major shipping route.

Discussion questions:

1. Why is Principle 21 important for countries with transboundary resources such as rivers or lakes that are shared between two countries?
2. Why is it important to establish who has sovereignty over the Northwest Passage?