INTERNATIONAL AGREEMENTS

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Contents

Summary

International environmental agreements (IEAs) are the main vectors of international environmental law. Depending on their structure, content and conditions for participation, IEAs can be clustered by a range of various criteria, i.e. framework or comprehensive, regional or global. Despite their variety, they share many fundamental features as to their structure and normative content. They also partake of the same strengths and weaknesses, most of which relate to the structure of the international system; inadequate finances; unsatisfactory implementation; and lack of coordination among themselves and other international bodies and agencies. These weaknesses influence the state of environmental governance and are the focus of current efforts within the UN system aim at coming up with specific, action-oriented recommendations to address said weaknesses.

1. Introduction: IEAs, International Law and the International System

In the years following the 1972 UN Conference on the Human Environment in Stockholm, the environment emerged as a significant concern of international political discourse and given rise to various mechanisms by which international co-operation can be realised. International Environmental Law (IEL) seeks to develop legal principles concerning the management of environmental problems within the context of Public International Law (ie. the body of rules and other norms, known as soft law, applicable between states and also encompassing international institutions, organisations, and, to a

very limited extent, individuals (see International Binding Mechanisms). The formal treaties which constitute the ultimate expression of concern of the international community in matters relating to environmental protection are known as international environmental agreements (IEAs) and it is these that are the main vectors of international environmental law.

It should be noted that Public International Law is created and implemented in a very different way from national law. International law is the product of a loose and decentralised society, characterised by formal equality (under the Charter of the United Nations) and factual inequalities. As such, it cannot have the same hierarchical and institutional structure, as do national legal systems with their well developed legislative and executive processes.

This said, the international system has a relatively developed structure of institutions. These perform a number of essential functions: (a) they provide *fora* for multilateral negotiations and norm-making; (b) they monitor states' compliance with specific treaty obligations and (c) they can be endowed with dispute-settlement competencies. Institutions are created by states via international agreements. Consequently, their powers and mandate depend on the content of their constitutive agreements. Nevertheless, it is interesting to note that, of late, a number of studies have revealed that, especially in the field of the environment, institutions (or institutional arrangements) can have a life of their own, transcending the limitations imposed by their constitutional texts. This forms a source of international norms, additional to those generated by treaty and custom of states and as such is not recognised as a source of law by article 38 of the Statute of the International Court of Justice (ICJ). It would, though, be totally inaccurate to claim that treaty and custom are irrelevant to IEL. On the contrary, treaties constitute the most widely utilised legal instrument for international environmental norm-making and create the obligations required for implementation of international environmental policy. This corresponds to a fundamental rule of international law, which stipulates that agreements are to be observed (*pacta sunt servanda*). This rule underpins a range of implementatioin and compliance mechanisms which are embodied in environmental agreements.

The importance of international treaties is highlighted by UNEP's Executive Director estimate that "there are more than 500 international treaties and other agreements related to the environment, of which 323 are regional. Nearly 60 per cent, or 302, date from the period between 1972, the year of the Stockholm Conference, and the present". If one considers the long period of negotiations which have habitually preceded the adoption of every environmental agreement, these numbers are indicative of the amount of effort, in terms of both financial and human resources, invested by the international community in the creation of an international legal framework for the protection of the environment.

While IEAs come in different forms and bear on different subject matters, they preserve a number of common features that set them aside from other international law agreements. This commonality of features stems from the commonality of context and discourse relevant to their negotiation, drafting, and implementation, as much as from their commonality of purpose. Their aim is to create a legal matrix regulating certain

aspects of human behaviour that have the potential to adversely affect natural eco-systems. Consequently, they move at the intersection of two "sets of complexity": the complexity of natural processes and the complexity of human societies.

For this reason, two fundamental concepts underlie the existence of IEAs: time and knowledge. Provisions of IEAs, and the subsequent duties these impose on states, are structured and re-assessed over time, and so are the potential consequences of human behaviour. In this process of continuous adaptation and extrapolation, knowledge is important, as it informs decisions.

Knowledge is also important because it can actually trigger and define the content of an international negotiation. Historically, IEAs usually responded to catastrophic triggering events, such as a particularly serious oil spill, the collapse of a fishery, or an industrial accident resulting in severe pollution of an international river.

This explains why earlier environmental conventions concentrated mostly on dealing with very specific sectoral problems and could offer little, if any, contextual thinking. One of the main achievements of the Stockholm Conference in 1972 was the establishment of broader linkages between human development and protection of the environment, an aspect further substantially developed by the Rio Conference in 1992 and the resulting Agenda 21.

Better understanding of natural processes, and their non-linear nature placed knowledge and its limits at the centre of environmental negotiation. Environmental hazard and risk assessments, monitoring and scientific evaluation of the state of the environment, and, most influentially, the precautionary principle, all deal with tensions arising between, on the one hand, the perceived impossibility of knowledge (termed, in this context, scientific un/certainty) and, on the other, the possibility of agreeing on a given interpretation of knowledge.

Accordingly, consensus is needed both for identifying the problem (whether there is one and which one it is) and for agreeing on what would be the best measures and mechanisms for dealing with it.

Consensus is difficult to achieve in environmental negotiations due to the varied interest groups that participate (directly or indirectly) in the process. Environmental negotiations are generally open to a variety of actors, all carrying their own agendas and differing interests: states, the private sector, NGOs, epistemic communities, international organisations (see Non-Governmental Organisations and Informal/New Social Movements). They participate, although in different degrees, in the negotiation process and try to shape its outcome.

This outcome is usually an amalgamation of differing interests. As such, it will inevitably correspond to the minimum level of regulatory interference considered tolerable by those involved and will be formulated in a deliberately ambiguous way, so as to defer interpretation to subsequent momentum (constructive ambiguity). This inevitably impinges on implementation possibilities and the overall effectiveness of the agreement.

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Biographical Sketches

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