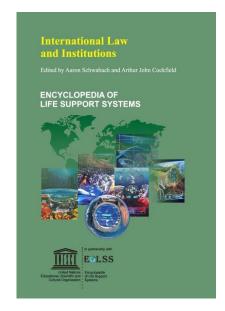
# **CONTENTS**

# INTERNATIONAL LAW AND INSTITUTIONS



**International Law and Institutions** 

- Volume 1

No. of Pages: 434

**ISBN:** 978-1-84826-078-8 (eBook)

**ISBN**: 978-1-84826-528-8 (Print Volume)

For more information of e-book and Print Volume(s) order, please **click here** 

Or contact: eolssunesco@gmail.com

## **CONTENTS**

#### The Role of International Law and Institutions

1

Aaron Schwabach, Thomas Jefferson School of Law, San Diego, California, USA Arthur John Cockfield, Queen's University Faculty of Law, Kingston, Ontario, Canada

- 1. Introduction
- 2. History Toward the Formation of the Nation State
- 3. Functions and Structures of International Law and Institutions
- 4. Growing Political and Economic Interdependency within Institutional Settings
- 5. International Trade, Global Prosperity and Free Trade Hypocrisy
- 6. International Environmental Law and the Need for Multilateral Action
- 7. International High Technology Policy and the Digital Divide
- 8. New Directions in International Law
- 9. Conclusion

## International Legal and Economic Issues: Globalization and the Struggle for Local Control 25

Arthur John Cockfield, Queen's University Faculty of Law, Kingston, Ontario, Canada

- 1. Introduction
- 2. Theoretical Overview: Efficiency and Equity Concerns
- 3. The Drive toward Legal and Economic Integration in Europe
  - 3.1. The Treaty of Rome
  - 3.2. Resolving the Tension Inherent in Integration
  - 3.3. Harmonization of European Laws
  - 3.4. Toward a Common European Political Identity
- 4. The Drive toward Legal and Economic Integration in North America
  - 4.1. The Decision to Enter into NAFTA
    - 4.1.1. Canada
    - 4.1.2. The United States
    - 4.1.3. Mexico
  - 4.2. NAFTA's Institutional Structure
  - 4.3. Toward a Common Political Identity in North America?
- 5. A Contrast in Regional Integration Movements
- 6. Relationship to Articles within this Topic
- 7. Conclusion

### **International Trade Law**

42

Geert Van Calster, Fellow, Collegium Falconis, Katholieke Universiteit Leuven

- 1. The Most-Favored Nation Clause: GATT Article I
  - 1.1. Aim and General Nature of Most-Favored Nation Treatment
  - 1.2. Exceptions to Most-Favored Nation Treatment
  - 1.3. Nature and Application of the Most-Favored Nation Clause: Individuality and Unconditionality
  - 1.4. Origin of Goods
  - 1.5. "Like Products" under Most-Favored Nation
  - 1.6. Discrimination Violating Most-Favored Nation Treatment
- 2. National Treatment with Respect to Internal Taxation and Regulations: GATT Article III
  - 2.1. Aim, Scope, and General Nature of National Treatment
  - 2.2. Article III:1
  - 2.3. Article III:2
  - 2.4. Article III:4
  - 2.5. "Like Products" in Article III
  - 2.6. "Directly Competitive and Substitutable Products"
  - 2.7. The Irrelevance of Trade Effects

- 2.8. Assessment of Inequality
- 2.9. Border Tax Adjustment (Border Adjustment of Taxes and Charges)
- 2.10. The Relationship between Article III and Other GATT Articles
- 3. GATT Article XI: General Elimination of Quantitative Restrictions
  - 3.1. Aim, Scope, and General Nature of Article XI
  - 3.2. Application of Article XI
  - 3.3. Relationship with GATT Article III
- 4. Article XX: General Exceptions to the GATT
  - 4.1. Aim, Scope, and General Nature of Article XX
  - 4.2. The Relationship between Article XX and Other GATT Articles
  - 4.3. Application of Article XX(b), (d), and (g)
    - 4.3.1. Article XX(b)
    - 4.3.2. Article XX(d)
    - 4.3.3. Article XX(g)
  - 4.4. The Headnote Ad Article XX
- 5. Conclusion

#### International Law and the Use of Force

**60** 

Sebastian Heselhaus, Assistant Professor, Justus-Liebig-University, Giessen, Germany

- 1. Introduction
- 2. Historical Development
  - 2.1. The Hague Peace Conferences
  - 2.2. The League of Nations Covenant
  - 2.3. The Briand-Kellogg Pact
  - 2.4. The Charter of the United Nations
  - 2.5. Defining the Prohibition of the Use of Force by the General Assembly
  - 2.6. Development of a Legal Framework
  - 2.7. Enforcing International Law by the Use of Force
- 3. Content of the Prohibition of the Use of Force
  - 3.1. Prohibited Force
  - 3.2. Territorial Integrity and Political Independence
  - 3.3. Threat of Force
  - 3.4. Addressees of the Prohibition
  - 3.5. Force in International Relations
  - 3.6. The Prohibition of the Use of Force in International Customary Law
- 4. Exceptions to the Prohibition
  - 4.1. Former Enemy States Clause
  - 4.2. Enforcement Actions by the Security Council
  - 4.3. Right of Self-Defense
    - 4.3.1. Significance
    - 4.3.2. Definition of an Armed Attack
    - 4.3.3. Limitations to the Right of Self-Defense
    - 4.3.4. Collective Self-Defense
    - 4.3.5. Self-Defense in International Customary Law
  - 4.4. Specific Issues
    - 4.4.1. Preventive Self-Defense
    - 4.4.2. International Terrorism
    - 4.4.3. Use of Force in Spheres of Influence
    - 4.4.4. Protection of Nationals Abroad
    - 4.4.5. National Liberation
    - 4.4.6. Humanitarian Intervention
- 5. Legal Framework
- 6. Future Prospects

### International Law Regarding the Conduct of War

87

Mark A. Drumbl, Assistant Professor, Washington & Lee University, School of Law, Lexington, Virginia, USA

- 1. Introduction
- 2. Principles of the jus in bello
  - 2.1. Customary International Law
  - 2.2. Conventional Law
    - 2.2.1. "Geneva Law": Protection of Persons and Objects
    - 2.2.2. "Hague Law": Weapons and the Nature of Force
- 3. Enforcement
- 4. New Directions and Developments
  - 4.1. Applicability of the *jus in bello* to United Nations Peacekeeping
  - 4.2. Addressing the Environmental Consequences of War
  - 4.3. Jus in bello and Internal Conflicts
- 5. Conclusion

# International Law and Sovereignty in the Age of Globalization

105

Geert Van Calster, Fellow, Collegium Falconis, Katholieke Universiteit Leuven, Belgium.

- 1. Territory and Public International Law
  - 1.1. Territory, Sovereignty, Jurisdiction, and the Global Commons
  - 1.2. Three Elements of Jurisdiction and Traditional Theories
- 2. Challenge to the Jurisdiction Issue by Modern Economic Law—The Effects Doctrine in International Antitrust Law
  - 2.1. The Effects Doctrine in the United States—International Comity
  - 2.2. The Effects Doctrine in the European Community
  - 2.3. Cooperation between the United States and European Community Competition Authorities
  - 2.4. Summary
- 3. Territory, Jurisdiction, and Environmental Policy
  - 3.1. Ecological Interdependency
  - 3.2. Environmental Damage in One State Affecting the Territory of Another State
  - 3.3. Damage to the Global Commons
  - 3.4. Environment and Ethics
  - 3.5. Environmental Damage Purely Situated outside a State's Territory
  - 3.6. Summary
- 4. Multinational Corporations
- 5. Global Institutions
- 6. Conclusion

# **Human Rights Treaties and Agreements**

120

Stefaan Smis, Vrije Universiteit Brussels, Department of International Law, Belgium

- 1. Introduction
- 2. The International System of Human Rights Protection
  - 2.1. Early Developments in Human Rights Law
  - 2.2. The Charter of the United Nations
  - 2.3. The International Bill of Human Rights
  - 2.4. Other Major United Nations Human Rights Treaties
  - 2.5. Human Rights Treaties Adopted under the Auspices of the United Nations Specialized Agencies
    - 2.5.1. International Labour Organization
    - 2.5.2. United Nations Educational, Scientific and Cultural Organization
  - 2.6. The Protection of Human Rights in Armed Conflict
- 3. Regional Protection of Human Rights
  - 3.1. The European Human Rights System

- 3.2. The Inter-American Human Rights System
- 3.3. The African Human Rights System
- 4. Conclusion

### **International Trade Agreements**

139

Geert Van Calster, Fellow, Collegium Falconis, Katholieke Universiteit Leuve, Belgium

- 1. World Trade Organization
  - 1.1. History
  - 1.2. Institutions
  - 1.3. Agreements
  - 1.4. Dispute Settlement
- 2. Regional Trade Agreements
  - 2.1. North American Free Trade Agreement
    - 2.1.1. History
    - 2.1.2. The Agreement
  - 2.2. European Union / European Communities
    - 2.2.1. History
    - 2.2.2. Institutions
    - 2.2.3. Contents
  - 2.3. Southern Common Market
    - 2.3.1. History
    - 2.3.2. Core Aims
    - 2.3.3. Institutions
    - 2.3.4. Contents
  - 2.4. The Andean Community
    - 2.4.1. History
    - 2.4.2. Institutions
    - 2.4.3. Contents
  - 2.5. Association of South East Asian Nations
    - 2.5.1. History
    - 2.5.2. Institutions
    - 2.5.3. Contents
  - 2.6. Asia-Pacific Economic Cooperation Conference
  - 2.7. Other
    - 2.7.1. Common Market for Eastern and Southern Africa
    - 2.7.2. Economic Community of West African States

### **International Environmental Law**

155

Aaron Schwabach, Thomas Jefferson School of Law, San Diego, CA, USA

- 1. Introduction: The Goals of International Environmental Law
- 2. Context: The Development and Limitations of International Environmental Law
- 3. Emerging Concepts: Intergenerational Equity, the "Polluter Pays" Principle, and the Prevention Principle
  - 3.1. The Rights of Future Generations: Intergenerational Equity
  - 3.2. A Helping Hand for the Invisible Hand: the "Polluter Pays" Principle
  - 3.3. An Ounce of Prevention is Better than a Pound of cure: The Prevention Principle
- 4. Transboundary Environmental Harm: Problems Originating in One State and Felt in Another
- 5. A Special Problem: The Protection of Endangered Species
- 6. An Indispensable Resource: The Protection of Fresh Water
- 7. An Old Threat with New Potential to Cause Harm: The Environment and War
- 8. Conclusion

### Oil Supply, Oil Security, and Environmental Objectives in International Law

168

Richard F. Scott, Distinguished Professor of International Law, Thomas Jefferson School of Law, San Diego, California, U.S.A. Former Legal Officer, UNESCO, Paris

- 1. Introduction
- 2. Sovereignty Over Natural Resources: The Legal Dimension
- 3. The Organization of Petroleum Exporting Countries
- 4. The International Energy Agency
  - 4.1. The Oil-Consumer Countries' Responses to OPEC's Actions (1973/74)
  - 4.2. IEA Energy Security: Expansion of the Vital Concept
- 5. The Energy Charter Treaty
- 6. Oil and the Environment, Global Warming
  - 6.1. Oil and the Environment: Liability in International Law
  - 6.2. Oil, Global Warming, and Climate Change
    - 6.2.1. OPEC, IEA, and the Energy Charter Treaty
    - 6.2.2. Treaty Law in this Sector: The FCCC and the Kyoto Protocol

# Transboundary Environmental Harm and State Responsibility: Customary International

200

Aaron Schwabach, Thomas Jefferson School of Law, San Diego, CA, USA

- 1. Customary International Law Approaches to Transboundary Environmental Harm
- 2. Absolute Territorial Sovereignty: The Harmon Doctrine
- 3. Absolute Territorial Integrity
- 4. Limited Territorial Sovereignty
  - 4.1. Decisions of International Tribunals
    - 4.1.1. The Trail Smelter Arbitration
    - 4.1.2. The Corfu Channel Case
    - 4.1.3. The Lac Lanoux Arbitration
  - 4.2. Decisions of Municipal Courts
    - 4.2.1. The Donauversinkung Case (Baden v. Wurttemberg)
    - 4.2.2. SociétéEnergie Electrique
  - 4.3. Aspirational Documents and Pronouncements of International Bodies
    - 4.3.1. The Stockholm Declaration
    - 4.3.2. The Helsinki Rules
    - 4.3.3. The World Charter for Nature
    - 4.3.4. The Rio Declaration
    - 4.3.5. The ILC Draft Articles and the UN Convention
- 5. The Community Theory
  - 5.1. Historical Overview
  - 5.2. Contemporary Approaches
    - 5.2.1. The River Oder Case
    - 5.2.2. The Bellagio Draft Treaty
    - 5.2.3. The United Nations Approach: The Mar del Plata Report
    - 5.2.4. Agenda 21
- 6. Conclusion

### International Law and the Protection of the Marine Environment

213

Howard S. Schiffman, International Programs, New York University School of Continuing and Professional Studies, USA

- 1. Introduction
- 2. Major Developments in the International Law of Marine Environmental Conservation
  - 2.1. The 1972 Stockholm Conference on the Human Environment
  - 2.2. The 1982 United Nations Convention on the Law of the Sea
    - 2.2.1. The Territorial Sea

- 2.2.2. The Exclusive Economic Zone
- 2.2.3. The High Seas
- 2.2.4. Protection and Preservation of the Marine Environment
- 3. Marine Pollution
  - 3.1. Shipping and Marine Accidents
  - 3.2. Dumping
  - 3.3. Pollution from Seabed Activities
  - 3.4. Land-Based Pollution
  - 3.5. Atmospheric Pollution
- 4. Marine Wildlife Conservation in Law and Policy
  - 4.1. Fisheries
    - 4.1.1. Scientific Uncertainty and the Precautionary Approach
    - 4.1.2. Regional Fishery Arrangements
  - 4.2. Climate Change
  - 4.3. Exotic Species
  - 4.4. Major Treaties Addressing Fundamental Issues of Marine Wildlife Conservation
    - 4.4.1. The Convention on International Trade in Endangered Species of Wild Fauna and Flora
    - 4.4.2. The Convention on Biological Diversity
    - 4.4.3. The Convention on Migratory Species
  - 4.5. The Special Problem of Cetaceans
- 5. Conclusion

## Law Regarding Protection of the Environment During Wartime

235

Aaron Schwabach, Thomas Jefferson School of Law, San Diego, CA, USA

- 1. Introduction
- 2. Conventional International Law
  - 2.1. The Hague and Geneva Regimes
  - 2.2. The Vietnam War and Its Aftermath
    - 2.2.1. Protocol I
    - 2.2.2. The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques
  - 2.3. Recent Developments: The Rome Statute and the Statute of the International Criminal Tribunal for the Former Yugoslavia
- 3. Customary International Law
  - 3.1. Customary International Environmental Law
  - 3.2. Customary International Law Regarding "Military Necessity"
- 4. Trends in the Development of International Law Protecting the Environment During Wartime

### **Endangered Species and International Law**

247

Jamie L. Schwartz, Attorney at Law, San Diego, California USA

- 1. Introduction
- 2. Causes of Wildlife Extinction
- 3. The Stockholm and Rio Declarations
  - 3.1. The Stockholm Declaration
  - 3.2. The Rio Declaration
- 4. CITES
  - 4.1. Elephants in Africa and CITES
    - 4.1.1. Elephant Management
  - 4.2. Rhinoceroses, Tigers and CITES
- 5. Solutions
- 6. Conclusion

### **International Trade and the Environment**

260

Geert Van Calster, Fellow, Collegium Falconis, Katholieke Universiteit Leuve, Belgium

- 1. Institutional Framework within the General Agreement on Tariffs and Trade/World Trade Organization
- The Committee on Trade and Environment's Agenda: Flashpoints of the Trade and Environment
- Trade-Related Measures in International Environmental Agreements
  - 3.1. Context
  - 3.2. Multilateral Environmental Agreement Flashpoints under the General Agreement on Tariffs and
    - 3.2.1. Convention on the International Trade in Endangered Species in Wild Fauna and Flora Basel
    - 3.2.2. Vienna and Montreal
  - 3.3. The International Trade Community's Conceptual Approach to the Multilateral Environmental Agreement Issue
  - 3.4. Need for Clarification of General Agreement on Tariffs and Trade/World Trade Organization Concepts and Principles
  - 3.5. The World Trade Organization's Stance vis-à-vis Multilateral Environmental Agreements
    - 3.5.1. An Environmental Window in the General Agreement on Tariffs and Trade
    - 3.5.2. Waiver of General Agreement on Tariffs and Trade Obligations
    - 3.5.3. A Multilateral Environmental Agreement Trumping Clause
    - 3.5.4. An Article XX(h)-Like Exception
    - 3.5.5. Stalled Progress in the Committee on Trade and Environment
  - 3.6. Improving the Design of Multilateral Environmental Agreements?
  - 3.7. Avoiding Tension Through Preliminary Reviews and Through Notification
- Unilateral Trade-Related Environmental Measures
  - 4.1. Introduction
  - 4.2. General Agreement on Tariffs and Trade/World Trade Organization Dispute Settlement of Unilateral Trade-Related Environmental Measures
    - 4.2.1. The Tuna–Dolphin Panels
    - 4.2.2. The United States Gasoline Case
    - 4.2.3. United States Shrimp-Turtle
    - 4.2.4. The French Asbestos Ban
    - 4.2.5. Conclusion with Respect to the General Agreement on Tariffs and Trade and World Trade Organization Jurisprudence on Article XX and Unilateral Trade-Related Environmental Measures
- Perspectives for a Millennium Round
- Conclusion

### Life Support Systems:Law and Policy

290

J. William Futrell, President, Environmental Law Institute, Washington, DC, USA

- 1. A Growing Consensus for Law and Policy to Support Sustainable Development
- The Split Personality of Environmental and Natural Resources Law
- 3. Legal Structures to Incorporate the Findings of Environmental Science
- 4. Legal Structures to Incorporate the Precepts of Environmental Economics
- 5. First Steps to Creating Sustainable Development Law
- Competing Values: Forging the Link Between Environmental Ethics and Legal Ethics

# International Environmental Laws and Standards: Four Ways they can be established

308

Michael Dana Kaplowitz, Department of Resource Development, Michigan State University, USA Daniel A. Bronstein, Department of Resource Development, Michigan State University, USA

H. Suffron, Department of Resource Development, Michigan State University, USA

### 1. Introduction

### 2. Treaties

- 2.1. Convention on International Trade in Endangered Species (CITES)
  - 2.1.1. Structure of Treaty
  - 2.1.2. Meetings and Committees
  - 2.1.3. Modifications
  - 2.1.4. Permits
  - 2.1.5. Experience
- 2.2. Montreal Protocol
  - 2.2.1. Vienna Convention
  - 2.2.2. Montreal Meeting and Protocol
  - 2.2.3. Meetings and Committees
  - 2.2.4. Modifications
  - 2.2.5. Experience
- 3. Professional Organizations and Best Practices
  - 3.1. International Association for Impact Assessment (IAIA)
    - 3.1.1. Meetings
    - 3.1.2. Code of Ethics
    - 3.1.3. Best Practice Guidelines
    - 3.1.4. Operating Principles
    - 3.1.5. Experience
  - 3.2. International Union of Societies of Foresters (IUSF)
    - 3.2.1. Society of American Foresters (SAF)
    - 3.2.2. Code of Ethics
    - 3.2.3. Certification
    - 3.2.4. Experience
- 4. Quasi-Official Organizations and Standards
  - 4.1. Codex Alimentarius Commission (CODEX)
    - 4.1.1. Meetings and Committees
    - 4.1.2. Standards
    - 4.1.3. General Agreement on Tariffs and Trade (GATT)
    - 4.1.4. Experience
    - 4.2. International Standards Organization (ISO)
      - 4.2.1. ISO 9000
      - 4.2.2. Technical Committee 207
      - 4.2.3. ISO 14000
      - 4.2.4. Environmental Management Systems (EMS)
      - 4.2.5. Membership
      - 4.2.6. Certification
      - 4.2.7. Experience
- 5. United Nations Agencies and Guidelines
  - 5.1. International Atomic Energy Agency (IAEA)
    - 5.1.1. Meetings and Committees
    - 5.1.2. Standard Preparation
    - 5.1.3. Experience
  - 5.2. World Health Organization (WHO)
    - 5.2.1. World Health Assembly
    - 5.2.2. Activities
    - 5.2.3. Guidelines
    - 5.2.4. Revisions
    - 5.2.5. Experience
- 6. Conclusion

# Treaties as a Source of International Environmental Law

Winfried Lang, Oostenrijkse Ambassade, Belgium

- 1. Introduction
- 2. International Law

334

- 2.1. Hard Law vs. Soft Law
- 2.2. Treaty Law vs. Customary law
- 2.3. Principles vs. Jurisprudence
- 3. International Treaties
- 4. Practicalities of Treaty-Making
- 5. Contents of Treaties
- 6. Special Features of Environmental Treaty-Making
  - 6.1. Science
  - 6.2. Public Opinion
  - 6.3. Non-governmental Organizations
- 7. Advantages and Disadvantages of Treaty-Making
- 8. Optimal Treaty-Making
- 9. Compliance Control
- 10. Conclusion

### Strengthening the Global Treaty-Making System

343

Lawrence E. Susskind, Department of Urban Studies and Planning, Massachusetts Institute of Technology, USA

D.D. Patel, Department of Urban Studies and Planning, Massachusetts Institute of Technology, USA

- 1. Global Sustainable Development Responsibilities
- 2. Transnational Concerns About Global Sustainable Development
- 3. Global Treaty-Making as a Method of Addressing Global-Sustainable Development
- 4. Weaknesses of the Current Global Treaty-making System
  - 4.1. North-South Conflict
  - 4.2. Sovereignty
  - 4.3. Disincentives to Negotiate
  - 4.4. An Inadequate Legal Structure
  - 4.5. The Convention-Protocol Framework
- 5. Strengthening the Global Treaty-making System
  - 5.1. Build Decentralized Alliances
  - 5.2. Provide Prenegotiation Assistance to Individual Countries
  - 5.3. Adopt New Approaches to Treaty Drafting
  - 5.4. Expand the Roles for Non-governmental Interests
  - 5.5. Recategorize Countries for the Purpose of Prescribing Action
  - 5.6. Reinforce a Better Balance Between Science and Politics
  - 5.7. Encourage Issue Linkage
  - 5.8. Remove Penalties for Constructive Unilateral Action
  - 5.9. Encourage the Media to Play a More Educative Role
  - 5.10. Maintain the Structure of the United Nations
  - 5.11. Modifying the Convention–Protocol Framework

Index 367

About EOLSS 377