

INTERNATIONAL ENVIRONMENTAL LAW

Primary Materials

Edited by
Michael R. Molitor

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Foreword

Growing public concern over the environment has been accompanied by an enormous growth in environmental law, at first at the national level and then, beginning with the Stockholm Conference on the Environment in 1972, on the international level. The international law of the environment is primarily conventional law—treaty law. Treaties and agreements dealing with regional and global environmental problems have proliferated in recent decades.

The approach of the United Nations Conference on Environment and Development in 1992 provides an appropriate occasion to collect and publish the most important of these international environmental agreements and other primary materials in accessible form for the use of practitioners, teachers and students. The present collection supplies that need.

Since most of the world's threatening environmental problems cross national boundaries, the role of international law and international institutions in meeting those problems is bound to increase still further. As our understanding of environmental problems has grown, it has become increasingly clear that they cannot be solved by any one state acting on its own. This is most evident in relation to global climate change, where it is already agreed that the emerging threats cannot be dealt with except by the cooperation on a global scale. The actions of any single nation, no matter how powerful, can be overwhelmed by the inaction of the others. But we are also beginning to see that even what seem to be lesser, or local problems—of ground water, air pollution or waste disposal—are also ultimately the consequences of world wide demographic trends and the practices of modern industrial economies.

Thus, for the first time, the international legal system has faced an indisputably global challenge. For all the talk about collective security, each state has remained in the last analysis the ultimate guarantor of its own military defense. The threats to the earth's environment, however, must be met by nations and individuals in concert. In the process they may be able to fashion a world order that until now has eluded the international community.

The contents of this book will provide models and starting points—and perhaps a few cautionary examples as well—for this future international environmental law-making

Harvard Law School
Cambridge, Massachusetts
December 1990

Abram Chayes
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Professor of Law

Preface

Attempts to assemble collections of “primary materials” in any specific field will naturally encounter subjective selection biases. The selection criteria employed for this grouping are relatively straightforward. First, and most importantly, the materials must be current. The year 1970 was used as a cut-off date simply because at about that time the field of international environmental law had achieved sufficient critical mass and had clearly broken away from the other classic sub-disciplines of public international law where it had taken root; e.g., state responsibility and territorial jurisdiction. Therefore, no materials adopted before 1970 appear in this collection. Earlier materials can be found in, for example, Simma et al., *International Protection of the Environment: Treaties and Related Documents* (1975–).

Secondly, to achieve primary status the collection had to be fairly representative of the broad spectrum of sources which now form the field of international environmental law. In this connection, the present grouping includes binding and non-binding decisions adopted by international organizations (Chapter One), intergovernmental declarations (Chapter Two), and international agreements divided into three categories, bilateral (Chapter Three), regional (Chapter Four), and global (Chapter Five). A different approach might have been to separate the materials by subject area or according to binding and non-binding status. The nature of the single global environment is such that it is difficult to find individual subject categories in which to put these materials. In many cases the documentation addresses numerous environmental issues which are increasingly inter-related.

Another important selection criterion is size. The principal aim of this collection is to provide students, teachers, government officials and other practitioners with a single volume of basic and essential sources of international environmental law. The materials were originally brought together for use as a document supplement for a course entitled “International Environmental Law and Institutions” offered for the first time in the spring, 1991 at the Harvard Law School. The fifty-six individual entries and supplementary materials cover the bulk of the leading international agreements and the other sources from which materials are continually and increasingly being promulgated (e.g., the Governing Council of UNEP). Future editions will likely contain the proceedings of the 1992 United Nations Conference on Environment and Development, a framework convention and protocols concerning the reduction of greenhouse gas emissions, and a convention on the identification, conservation and sustainable use of biological diversity.

It is important to note that this is a reference collection and is not intended to be a free-standing teaching text. In this regard, the brief introductions which precede each chapter are meant only to provide the very minimum overview of the relationship between the many individual chapter entries both within chapters and between chapters. Definitive up-to-date information concerning the current parties, amendments and modifications to the original treaty text is left to the reader. For many of the entries, however, protocols and other supplementary materials have been provided (e.g., the Montreal Protocol [Chapter Five] includes the 1990 London Amendments).

Finally, I would like to thank a few individuals who were instrumental in the preparation of this collection. Professor Abram Chayes not only wrote

the Foreward but was the original impetus behind this project by asking me to prepare documentary materials for the course mentioned above. Mr. Jim O'Brien of the Office of the Legal Advisor, Department of State, was kind enough to forward materials that were not yet in general circulation and also provided insight into the selection criteria. Stefanie Roth and Amy Rosenberg, both first year Harvard Law School students, supplied the energy and effort necessary to complete the final reading and preparation of the collection. To all of them I extend my appreciation.

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CHAPTER ONE: INTERNATIONAL ORGANIZATIONS

Introduction

The principal objective of this select group of 15 resolutions and decisions of public international organizations is to provide legal materials that represent the breadth of leading environmental issues as well as the range of different organizations currently considering them. Although this collection is limited to documents from the United Nations General Assembly, the United Nations Environment Programme (UNEP), the European Economic Community, the Organization for Economic Co-operation and Development, and the Organization of African Unity, one could find similar materials being promulgated by the Organization of American States, the Association of South East Asian Nations, the United Nations Economic Commission for Europe, the Food and Agriculture Organization, the World Meteorological Organization, the International Maritime Organization, etc.

Another important factor in the selection of these materials involves the character of the international organizations from which the collection was chosen. All of the organizations are public, that is, their principal members are sovereign states. Secondly, they are all permanent institutions with secretariats and regular meetings. This would exclude special institutions created by the United Nations including the World Commission on Environment and Development; which was responsible for the landmark study *Our Common Future* published in 1987. The International Union for the Conservation of Nature and Natural Resources, although producing first-rate contributions to the field, also fails to meet the basic criteria for public international organizations adopted by this collection.

This entire collection is, after all, a sampling of international legal materials that either reflect, or are capable of reflecting, rights and duties that are intended to be binding

upon sovereign states. In this connection, the five United Nations General Assembly resolutions reproduced *infra* illustrate the procedural and substantive environmental issues that have attracted the recent attention of that body. *Resolution 2997* (1972) should be viewed in connection with the *Stockholm Declaration* (the *Declaration* is reproduced in Chapter Two *infra*, and is noted in the Introduction). *Resolution 228* (1989) calls for a "Conference on Environment and Development" to be held in Brazil in 1992 and which will follow the earlier Stockholm (1972) and Nairobi (1982) conferences (see Introduction, Chapter Two, *infra*).

The UNEP materials include the non-binding *Montreal Guidelines*, a resolution calling for the negotiation and adoption of a global convention on biological diversity, and a declaratory statement on the general issue of global climate change. The EEC, which has been prolific in the adoption of regional environmental measures, is represented by a *Council Resolution* of declaratory significance on the "greenhouse effect". The OECD has been responsible for a great deal of pioneering work on many of the controversial international environmental problems since at least 1970. It is important to note that the OECD utilizes the terms "decision" and "recommendation" to refer to those collective actions which the members consider to be binding and non-binding, respectively.

Finally, in order to illustrate the role of regional international organizations, a resolution of the Council of Ministers, Organization of African Unity, has also been provided.

1.1 United Nations General Assembly: Resolution 2997 (XXVII) Institutional and Financial Arrangements for International Environmental Cooperation (1972)

The General Assembly,

Convinced of the need for prompt and effective implementation by Governments and the international community of measures designed to safeguard and enhance the environment for the benefit of present and future generations of man,

Recognizing that responsibility for action to protect and enhance the environment rests primarily with Governments and, in the first instance, can be exercised more effectively at the national and regional levels,

Recognizing further that environmental problems of broad international significance fall within the competence of the United Nations system,

Bearing in mind that international co-operative programmes in the field of the environment must be undertaken with due respect for the sovereign rights of States and in conformity with the Charter of the United Nations and principles of international law,

Mindful of the sectoral responsibilities of the organizations in the United Nations system,

Conscious of the significance of regional and subregional co-operation in the field of the environment and of the important role of the regional economic commissions and other regional intergovernmental organizations,

Emphasizing that problems of the environment constitute a new and important area for international co-operation and that the complexity and interdependence of such problems require new approaches,

Recognizing that the relevant international scientific and other professional communities can make an important contribution to international co-operation in the field of the environment,

Conscious of the need for processes within the United Nations system which would effectively assist developing countries to implement environmental policies and programmes that are compatible with their development plans and to participate meaningfully in international environmental programmes,

Convinced that, in order to be effective, international co-operation in the field of the environment requires additional financial and technical resources,

Aware of the urgent need for a permanent institutional arrangement within the United Nations system for the protection and improvement of the environment,

Taking note of the report of the Secretary-General on the United Nations Conference on the Human Environment,¹

I

Governing Council of the United Nations Environment Programme

1. *Decides* to establish a Governing-Council of the United Nations Environment Programme, composed of fifty-eight members elected by the General Assembly for three-year terms on the following basis:

(a) Sixteen seats for African States;

¹ A/8783 and Add.1, Add.1/Corr.1 and Add.2.

- (b) Thirteen seats for Asian States;
- (c) Six seats for Eastern European States;
- (d) Ten seats for Latin American States;
- (e) Thirteen seats for Western European and other States;

2. *Decides* that the Governing Council shall have the following main functions and responsibilities:

(a) To promote international co-operation in the field of the environment and to recommend, as appropriate, policies to this end;

(b) To provide general policy guidance for the direction and co-ordination of environmental programmes within the United Nations system;

(c) To receive and review the periodic reports of the Executive Director, referred to in section II, paragraph 2, below, on the implementation of environmental programmes within the United Nations system;

(d) To keep under review the world environmental situation in order to ensure that emerging environmental problems of wide international significance receive appropriate and adequate consideration by Governments;

(e) To promote the contribution of the relevant international scientific and other professional communities to the acquisition, assessment and exchange of environmental knowledge and information and, as appropriate, to the technical aspects of the formulation and implementation of environmental programmes within the United Nations system;

(f) To maintain under continuing review the impact of national and international environmental policies and measures on developing countries, as well as the problem of additional costs that may be incurred by developing countries in the implementation of environmental programmes and projects, and to ensure that such programmes and projects shall be compatible with the development plans and priorities of those countries;

(g) To review and approve annually the programme of utilization of resources of the Environment Fund referred to in section III below;

3. *Decides* that the Governing Council shall report annually to the General Assembly through the Economic and Social Council, which will transmit to the Assembly such comments on the report as it may deem necessary, particularly with regard to questions of co-ordination and to the relationship of environmental policies and programmes within the United Nations system to over-all economic and social policies and priorities;

II

Environment secretariat

1. *Decides* that a small secretariat shall be established in the United Nations to serve as a focal point for environmental action and co-ordination within the United Nations system in such a way as to ensure a high degree of effective management;

2. *Decides* that the environment secretariat shall be headed by the Executive Director of the United Nations Environment Programme, who shall be elected by the General Assembly on the nomination of the Secretary-General for a term of four years and who shall be entrusted, *inter alia*, with the following responsibilities:

(a) To provide substantive support to the Governing Council of the United Nations Environment Programme;

(b) To co-ordinate, under the guidance of the Governing Council, en-

vironmental programmes within the United Nations system, to keep their implementation under review and to assess their effectiveness;

(c) To advise, as appropriate and under the guidance of the Governing Council, intergovernmental bodies of the United Nations system on the formulation and implementation of environmental programmes;

(d) To secure the effective co-operation of, and contribution from, the relevant scientific and other professional communities in all parts of the world;

(e) To provide, at the request of all parties concerned, advisory services for the promotion of international co-operation in the field of the environment;

(f) To submit to the Governing Council, on his own initiative or upon request, proposals embodying medium-range and long-range planning for United Nations programmes in the field of the environment;

(g) To bring to the attention of the Governing Council any matter which he deems to require consideration by it;

(h) To administer, under the authority and policy guidance of the Governing Council, the Environment Fund referred to in section III below;

(i) To report on environmental matters to the Governing Council;

(j) To perform such other functions as may be entrusted to him by the Governing Council;

3. *Decides* that the costs of servicing the Governing Council and providing the small secretariat referred to in paragraph 1 above shall be borne by the regular budget of the United Nations and that operational programme costs, programme support and administrative costs of the Environment Fund established under section III below shall be borne by the Fund;

III

Environment Fund

1. *Decides* that, in order to provide for additional financing for environmental programmes, a voluntary fund shall be established, with effect from 1 January 1973, in accordance with existing United Nations financial procedures;

2. *Decides* that, in order to enable the Governing Council of the United Nations Environment Programme to fulfil its policy-guidance role for the direction and co-ordination of environmental activities, the Environment Fund shall finance wholly or partly the costs of the new environmental initiatives undertaken within the United Nations system – which will include the initiatives envisaged in the Action Plan for the Human Environment² adopted by the United Nations Conference on the Human Environment, with particular attention to integrated projects, and such other environmental activities as may be decided upon by the Governing Council – and that the Governing Council shall review these initiatives with a view to taking appropriate decisions as to their continued financing;

3. *Decides* that the Environment Fund shall be used for financing such programmes of general interest as regional and global monitoring, assessment and data-collecting systems, including, as appropriate, costs for national counterparts; the improvement of environmental quality manage-

2 A/CONF.48/14 and Corr.1, chap. II.

ment; environmental research; information exchange and dissemination; public education and training; assistance for national, regional and global environmental institutions; the promotion of environmental research and studies for the development of industrial and other technologies best suited to a policy of economic growth compatible with adequate environmental safeguards; and such other programmes as the Governing Council may decide upon, and that in the implementation of such programmes due account should be taken of the special needs of the developing countries;

4. *Decides* that, in order to ensure that the development priorities of developing countries shall not be adversely affected, adequate measures shall be taken to provide additional financial resources on terms compatible with the economic situation of the recipient developing country, and that, to this end, the Executive Director, in co-operation with competent organizations, shall keep this problem under continuing review;

5. *Decides* that the Environment Fund, in pursuance of the objectives stated in paragraphs 2 and 3 above, shall be directed to the need for effective co-ordination in the implementation of international environmental programmes of the organizations in the United Nations system and other international organizations;

6. *Decides* that, in the implementation of programmes to be financed by the Environment Fund, organizations outside the United Nations system, particularly those in the countries and regions concerned, shall also be utilized as appropriate, in accordance with the procedures established by the Governing Council, and that such organizations are invited to support the United Nations environmental programmes by complementary initiatives and contributions;

7. *Decides* that the Governing Council shall formulate such general procedures as are necessary to govern the operations of the Environment Fund;

IV

Environment Co-ordination Board

1. *Decides* that, in order to provide for the most efficient co-ordination of United Nations environmental programmes, an Environment Co-ordination Board, under the chairmanship of the Executive Director, shall be established under the auspices and within the framework of the Administrative Committee on Co-ordination;

2. *Further decides* that the Environment Co-ordination Board shall meet periodically for the purpose of ensuring co-operation and co-ordination among all bodies concerned in the implementation of environmental programmes and that it shall report annually to the Governing Council of the United Nations Environment Programme;

3. *Invites* the organizations of the United Nations system to adopt the measures that may be required to undertake concerted and co-ordinated programmes with regard to international environmental problems, taking into account existing procedures for prior consultation, particularly on programme and budgetary matters;

4. *Invites* the regional economic commissions and the United Nations Economic and Social Office at Beirut, in co-operation where necessary with other appropriate regional bodies, to intensify further their efforts directed towards contributing to the implementation of environmental programmes

in view of the particular need for the rapid development of regional co-operation in this field;

5. *Also invites* other intergovernmental and those non-governmental organizations that have an interest in the field of the environment to lend their full support and collaboration to the United Nations with a view to achieving the largest possible degree of co-operation and co-ordination;

6. *Calls upon* Governments to ensure that appropriate national institutions shall be entrusted with the task of the co-ordination of environmental action, both national and international;

7. *Decides* to review as appropriate, at its thirty-first session, the above institutional arrangements, bearing in mind, *inter alia*, the responsibilities of the Economic and Social Council under the Charter of the United Nations.

*2112th plenary meeting
15 December 1972*