

# **GUIDE TO International Environmental Law**

**Alexandra Kis:  
Dinah Shelton**

Nijhoff Publishers  
Leiden / Boston

<i>Foreword.</i> . . . . .	<i>ix</i>
<i>About the Authors.</i> . . . . .	<i>xi</i>
<i>List of Abbreviations.</i> . . . . .	<i>xiii</i>

Chapter I. Introduction to International Law. . . . .	1
A. The Foundations of International Law. . . . .	1
B. Sources: What Is International Law? . . . . .	3
1. Treaties. . . . .	3
2. Customary International Law. . . . .	8
3. General Principles of Law. . . . .	8
4. "Soft Law". . . . .	8
C. Some Basic Principles of International Law. . . . .	11
1. Sovereignty. . . . .	11
2. Cooperation. . . . .	12
3. Common Concern of Humanity. . . . .	13
4. Common Heritage of Mankind. . . . .	15
D. The Relationship Between International Law and Domestic Law. . . . .	16
E. Making International Law Work: Compliance and Enforcement. . . . .	18
1. State Responsibility. . . . .	19
2. Strict Liability. . . . .	23

Chapter II. The Development of International Environmental Law. . . . .	31
A. The Beginnings to the Stockholm Conference. . . . .	32
B. From Stockholm to Rio. . . . .	37
C. The Impact of the Rio Conference. . . . .	42
D. The World Conference on Sustainable Development (WSSD)....	44

Chapter III. International Actors and Stakeholders . . . . .	47
A. States and State Authorities . . . . .	47
B. International Organizations . . . . .	48
1. Global Institutions . . . . .	50
2. Regional Organizations . . . . .	55
3. Subregional and Bilateral Organizations . . . . .	62
4. International Financial Institutions . . . . .	63
C. The Private Sector . . . . .	65
D. Public Interest Organizations . . . . .	69
Chapter IV. Multilateral Environmental Agreements . . . . .	73
A. Negotiations . . . . .	74
B. Structure . . . . .	75
C. Common Provisions and Characteristics of MEAs . . . . .	77
D. Treaty Bodies and Their Functions . . . . .	79
E. Compliance Procedures . . . . .	81
F. Dispute Settlement . . . . .	84
1. Forum Selection . . . . .	84
2. Choice of Law . . . . .	86
Chapter V. Common (Customary?) Legal Principles . . . . .	89
A. Substantive Principles . . . . .	90
1. Prevention of Harm . . . . .	90
2. Precaution . . . . .	94
3. The "Polluter Pays" Principle . . . . .	95
4. Sustainable Development . . . . .	97
B. Principles of Process . . . . .	98
1. Duty to Know . . . . .	98
2. Duty to Inform and Consult . . . . .	100
3. Public Participation . . . . .	102
C. Equitable Principles . . . . .	104
1. Intergenerational Equity . . . . .	106
2. Common but Differentiated Responsibilities . . . . .	107
3. Equitable Utilization of Shared Resources . . . . .	108
D. Conclusions . . . . .	109
Chapter VI. Common Legal Requirements and Implementing Measures . . . . .	111
A. Internationally Mandated Domestic Laws and Policies . . . . .	112
1. Prior Assessment of Activities . . . . .	112
a. EIA . . . . .	113
b. Risk Assessment . . . . .	117
c. Strategic Environmental Evaluation . . . . .	119

2.	Regulatory Measures	120
a.	Standard-Setting	121
b.	Restrictions and Prohibitions	123
c.	Land Use Regulation	125
d.	Licensing	126
3.	Economic Measures	127
4.	National Enforcement	135
a.	Civil Liability	136
b.	Penal Law	148
B.	Interstate Measures	149
1.	Trade Restrictions	149
2.	Prior Informed Consent Procedures	150
3.	Aid and Financial Conditionally	152
Chapter VII. The Substance of International Environmental Law		155
A.	Freshwaters	155
1.	Overview	157
2.	General Rules	157
B.	Atmosphere, Stratosphere, and Climate	160
1.	Overview	161
2.	International Efforts to Control Air Pollution	162
3.	Stratospheric Ozone Depletion and Global Climate Change	167
a.	Ozone Depletion	167
b.	Climate Change	170
C.	Biological Diversity	176
1.	The Convention on Biological Diversity	178
2.	Other Biodiversity Treaties	182
3.	Treaties Addressing Specific Threats to Biodiversity	186
4.	Agreements Concerning Specific Species	187
D.	Marine Environment	190
1.	Historical Evolution	192
2.	UNCLOS: Rights and Duties of States in Maritime Areas	194
a.	Flag State Jurisdiction	195
b.	Port State Jurisdiction	196
c.	Coastal State Jurisdiction	196
3.	Comprehensive Regional Treaties	197
4.	Regulating Sources of Pollution	199
a.	Vessel Source Pollution	199
b.	Exploration and Exploitation of the Seabed	201
c.	Land-Based Pollution	202
d.	Emergencies	203
E.	Hazardous Substances and Wastes	206
1.	Chemicals	207

2. Wastes . . . . .	210
3. Nuclear Materials . . . . .	215
4. Biotechnology . . . . .	220

## Chapter VIII. Environmental Protection in Other Subject

Areas of International Law . . . . .	225
A. Regional Economic Integration . . . . .	225
1. The European Union . . . . .	225
a. The Treaty Framework . . . . .	225
b. Institutions . . . . .	227
c. Environmental Laws in the EU . . . . .	229
i. Air Pollution . . . . .	229
ii. Freshwaters . . . . .	231
iii. Hazardous Substances and Activities . . . . .	233
iv. Noise Pollution . . . . .	235
2. Other Regional Economic Integration Efforts . . . . .	236
B. Human Rights . . . . .	237
C. Trade and Investment . . . . .	241
1. GATT/WTO . . . . .	242
2. NAFTA . . . . .	250
D. Military Materials and Activities . . . . .	253
1. Customary and Treaty Law of Armed Conflict . . . . .	254
2. Claims for Environmental Damages in Armed Conflict . . . . .	260
3. Advisory Opinions and Judgments of the International Court of Justice . . . . .	266
4. Environmental Security and Conflict Prevention . . . . .	267

Conclusions . . . . .	271
-----------------------	-----

<i>Appendix A: Select Bibliography and Internet Sites . . . . .</i>	<i>275</i>
---	------------

<i>Appendix B: Multilateral Environmental Agreements . . . . .</i>	<i>279</i>
--	------------

<i>Appendix C: Glossary . . . . .</i>	<i>291</i>
---------------------------------------	------------

<i>Index . . . . .</i>	<i>303</i>
------------------------	------------