

International Environmental Law and Policy Series

Sustainable Development and International Law

Edited by

Winfried Lang

Graham & Trotman / Martinus Nijhoff

Members of the Kluwer Academic Publishers Group

LONDON/DORDRECHT/BOSTON

Contents

<i>Editor's Note</i>	xi
<i>Foreword</i>	xiii
<i>Contributors</i>	xv
<i>List of Abbreviations</i>	xix

Part One: Sustainable Development: Objective and Consequences

1. Sustainable Development: The Contribution of International Law <i>Elizabeth Dowdeswell</i>	3
1. Characteristics of the Evolution of International Law towards Sustainable Development	3
2. Issues to be Discussed	5
3. Challenges and Approaches	6
2. The Rio Process: Marriage of Environment and Development <i>Mary Pat Williams Silveira</i>	9

Part Two: Priorities for the Development of International Law

3. Environmental Equity: The Imperative for the Twenty-First Century <i>Edith Brown Weiss</i>	17
1. Environmental Equity among Countries	18
2. Environmental Equity within Countries	22
3. Efficiency in the International System and Environmental Equity	23
4. A General Agreement on the Environment (GATE)?	26
Comment on the Paper by Edith Brown Weiss <i>Konrad Ginther</i>	29

4. Sustainable Development: General Rules versus Specific Obligations	35
<i>Günther Handl</i>	
1. Introduction	35
2. The Core Issue of "Sustainable Development" Revisited	37
3. Some Specific Legal Implications of Sustainable Development	40
4. Conclusions	43
Comment on the Paper by Günther Handl: The FCCC Experience	45
<i>Michael Zammit Cutajar</i>	
1. Generality and Specificity	45
2. Priorities	46
3. Sustainable Development and Treaty Congestion	47
Comment on the Paper by Günther Handl: The INCD Experience	49
<i>Hama Arba Diallo</i>	
5. International Law in the Field of Sustainable Development: Emerging Legal Principles	53
<i>Philippe Sands</i>	
1. Introduction	53
2. What are Principles?	54
3. The Legal Nature of Principles	56
4. Sustainable Development as a Legal Principle	57
5. Principles of International Law relating to Sustainable Development	62
6. Conclusion	66
Comment on the Paper by Philippe Sands	67
<i>Howard Mann</i>	
1. The Nature of Principles	67
2. The Status of Principles	66
3. The Roles of Principles	70
4. International Law and Sustainable Development: Which Principles?	71
5. Conclusions: An Alternative View	71

Part Three: Implementation of and Compliance with International Environmental Commitments

6. Active Compliance Management in Environmental Treaties	75
<i>Antonia Handler Chayes, Abram Chayes and Ronald B. Mitchell</i>	
1. The New Sovereignty	75
2. Sanctions: Ineffective and Rare	77
3. Reasons for Compliance and Non-compliance	78
4. Transparency	81

5. Active Treaty Management	83
6. An Integrated Management Strategy	88
7. Conclusions	88
Comment on the Paper by Antonia Handler Chayes, Abram Chayes and Ronald Mitchell <i>Martti Koskenniemi</i>	91
1. Sanctions	91
2. Interest-rationality	93
3. "Soft Responsibility"	94
4. Effectiveness	95
7. The Development of Multilateral Mechanisms for Monitoring Compliance <i>Patrick Széll</i>	97
1. The First Sulphur Emissions Protocol	97
2. The Montreal Protocol	99
3. The VOC Protocol	103
4. The Second Sulphur Emissions Protocol	104
5. Trends and Conclusions	106
Comment on the Paper by Patrick Széll <i>Ronald B. Mitchell</i>	111
8. Management of Environmental Disputes: Avoidance versus Settlement <i>Andronico Adede</i>	115
1. The Concept of Dispute Avoidance in Perspective	115
2. The Question of Compliance with and Implementation of Environmental Treaties	117
3. Focus on Dispute Avoidance as Distinct from Dispute Settlement in the Environmental Field	118
4. Basic Elements of a Dispute Avoidance Mechanism	121
5. Conclusions	122
Comment on the Paper by Andronico Adede <i>Gerhard Loibl</i>	125
1. Possible Conflicts in the Environmental Area	125
2. Dispute Settlement	126
3. Dispute Prevention	126
4. Conclusions	129
9. Capacity-building in Environmental Law and Sustainable Development <i>Diana Ponce-Nava</i>	131
1. What is Capacity-building?	131
2. International Law and Capacity-building	132
3. The Participation of Major Stakeholders	136

Comment on the Paper by Diana Ponce-Nava	137
<i>Alan Boyle</i>	
1. Prospects for Capacity-building through Technology Transfer and Technical Assistance	137
2. Linkage and the Nature of Binding Obligations	139

Part Four: Participation of all Stakeholders in the Development and Implementation of International Law related to Sustainable Development

10. From Stockholm to Rio: the Institutionalization of Sustainable Development	143
<i>Alexandre S. Timoshenko</i>	
1. The Stockholm Conference on the Human Environment: The Integration of Environment and Development	143
2. UNCED: the Legitimization of Sustainable Development	150
3. Conclusions	159
Comment on the Paper by Alexandre Timoshenko	161
<i>Mohammed Abdelwahab Bekhechi</i>	
1. New Imperatives for Cooperation among Nations and International Law	161
2. Strengthening International Institutions devoted to Sustainable Development	163
3. NGOs and Private Corporations: New International Actors for Sustainable Development	165
11. Trusts for the Earth: New International Financial Mechanisms for Sustainable Development	167
<i>Peter H. Sand</i>	
1. Rediscovering the Trust in International Law	168
2. A Spectrum of Innovative Funds: Case Histories	169
3. Trusts for Treaties?	182
Comment on the Paper by Peter Sand	185
<i>George H. de Berdt Romilly</i>	
12. Corporate Strategies toward Sustainability	189
<i>Nazli Choucri</i>	
1. Introduction: Corporate Actors in a Global System	189
2. Environment and Sustainability: Dual Challenges for Corporate Strategy	190
3. Emergent Pressures on Corporate Performance: Constraints and Opportunities	194

4.	Corporate Strategy for the Twenty-first Century: Imperatives and Options	196
5.	Corporate Contributions to Sustainable Development	198
	Comment on the Paper by Nazli Choucri <i>Norio Yamamoto</i>	203
1.	Mismanagement	203
2.	Sustainable Development	203
3.	Global Infrastructure for Sustainable Development	204
4.	Corporate Strategies for Sustainable Development	204
5.	"Leapfrogging" Technology	205
13	The Role of NGOs <i>Wolfgang E. Burhenne</i>	207
	Comment on the Paper by Wolfgang Burhenne <i>Owen J. Lynch</i>	213
1.	Justice and Nation States	213
2.	Prevailing Contemporary Perceptions	214
3.	International Law and Community-based rights	216
4.	The Environmental Focus	217
5.	Conclusions	219

Part Five: Environmental Policies Their Compatibility with International Trade

14.	Trade and Environment: The Case for and against Unilateral Actions <i>Robert A. Reinstein</i>	223
1.	Introduction and Overview	223
2.	Background	224
3.	The Environmental Context	227
4.	The Trade Context	229
5.	Other Considerations	230
6.	Conclusions	231
	Comment on the Paper by Robert Reinstein <i>Laura B. Campbell</i>	233
1.	Introduction	233
2.	Overview of the Montreal Protocol	234
3.	Relationship between GATT Principles and the Montreal Protocol	237
4.	Conclusions	237

15. Trade and Environment: The PPMs Debate	239
<i>Candice Stevens</i>	
1. Introduction	239
2. Protecting Domestic Environments	240
3. Protecting Foreign Environments	241
4. Protecting Shared Environments	243
5. Devising the Rules	246
6. Conclusions	247
Comment on the Paper by Candice Stevens	249
<i>Thomas J. Schoenbaum</i>	
1. The Domestic Environment	249
2. The Environment of the Exporting State	251
3. Shared Environments and Areas beyond National Jurisdictions	251
4. Border Pollution	252
5. Conclusions	252
16. Regional Perspectives on Trade and Environment: The European Union	253
<i>Joachim Scherer</i>	
1. Introduction	253
2. EU Environmental Policy and Legal Framework	254
3. Environmental Protection and Free Trade: Conflict or Compatibility?	257
4. Conclusions	266
Comment on the Paper by Joachim Scherer	267
<i>Martina Schuster</i>	
1. Development of European Community Law with Respect to the Environment	267
2. Comparison of Regional and Global Approaches	269
3. Options for Action by the GATT/WTO	270
 Part Six: Summary and Conclusions	
17. From Environmental Protection to Sustainable Development: Challenges for International Law	275
<i>Winfried Lang</i>	
1. Summary	275
2. Conclusions	288
Appendix: Report of the International Symposium on "Sustainable Development and International Law", Baden bei Wien, 14–16 April 1994	291
Index	307