

**AN INQUIRY INTO THE SCOPE AND EFFICACY OF  
INTERNATIONAL ENVIRONMENTAL LAW**

ENEBELI, Victor Nonso<sup>1</sup>

&

Njoku, David Chibuiké<sup>2</sup>

**ABSTRACT**

The environment is increasingly featuring as a factor in disagreements between countries in various international forums – and, indeed, the number of available forums in which these disputes can be heard is itself increasing. This is a reflection partly of the steady expansion of international environmental regulations, and obligations, partly of the growing reach and complexity of other international regimes (e.g. the multilateral trading system) and partly of the growing understanding of the environmental implications of almost any economic act or policy. This work has analysed the regulations, enforcement challenges and disputes settlement mechanisms in International Environmental law. It has shown that a major challenge in enforcing the myriads of treaties and protocols is the principle of state sovereignty. It has further proposed recommendations that will help ensure the enforcement of these environmental laws.

*Keywords:* Compliance, Disputes, Enforcement, Environmental Law, Regulations, Settlement

**1. INTRODUCTION**

International environmental law is a branch of public international law – a body of law created by States to govern problems that arise between States. It is concerned with the attempt to control pollution and the depletion of natural resources within a framework of sustainable development.<sup>3</sup> The environmental issues that people, communities, businesses, and governments face around the world are vast and complicated. They include invasive species, land and soil degradation, loss of biodiversity and habitat fragmentation and degradation, air pollution, water pollution, climate change, global warming, non-sustainable depletion of natural resources, nuclear risks and waste management, ocean and freshwater de-oxygenation, ozone

<sup>1</sup> LLB (Hons) (London Met), LLM (Coventry), BL (Abuja), PhD (Coventry). Director of Studies, Justice Mary Odili Judicial Institute, Port Harcourt, Rivers State of Nigeria. Also, Lecturer, Faculty of Law, Rivers State University, Port Harcourt, Rivers State of Nigeria.

<sup>2</sup> LL.M (RSU), ACI Arb (UK), BL (Abuja), LL.B (UK), Diploma-in-Law (UK). Managing Partner/Head of Chambers, Ebuaga Legal Consult. PhD Candidate, Faculty of Law, Rivers State University, Port Harcourt, Nigeria

<sup>3</sup> Hanoi, 'International Environmental Law: Multilateral Environmental Agreements' (2017) *International Publishing House* <https://wedocs.unep.org> accessed 14 November, 2022

depletion, persistent toxins or persistent organic pollutants (pop).<sup>4</sup> Environmental issues are not getting better but rather getting worse.<sup>5</sup>

Apart from a few rare success stories, habitats are disappearing, biodiversity is less resilient, the climate is changing, there is more strain on natural resources than ever before, and foreign invading species are multiplying.<sup>6</sup> Furthermore, the connection between these environmental difficulties and social, cultural, and economic issues is now abundantly obvious.<sup>7</sup> It should come as no surprise that the majority of countries worldwide are now favouring economic expansion while putting cultural, environmental, and human health protections in place.

There are numerous international efforts to enact environmental laws, according to Andrew W. Samman.<sup>8</sup> More than two decades after this statement, one may still claim that international environmental law has over the years continued to be distinguished by two antagonistic and opposing developments. If these regulations are to be successful, however, enforcement mechanisms must be implemented. States and the international community have become more and more aware of the urgent need to safeguard the environment<sup>9</sup> even as the United Nations General Assembly has declared access to clean and healthy environment is a universal right,<sup>10</sup> but they have also been hesitant to sign international agreements defining the scope and nature of those commitments. Where they do manage to get into those agreements, upholding them becomes a titanic challenge that is difficult to overcome.<sup>11</sup> This research aims to examine the rules governing international environmental law, the degree of observance, the attempts and scope of enforcement, and the procedures for resolving disputes.

## **2. DEFINITION OF CONCEPTS**

### **2.1. *International Law***

International law is the area of the law that governs interstate relations and the activities of the various international organizations.<sup>12</sup> It is concerned with the treaties and agreements that exist between nations and that control how those nations relate to one another, their inhabitants, and their enterprises. It creates normative standards and a shared conceptual framework to direct governments in a wide range of areas,

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<sup>4</sup> Conserve Energy Future, <https://www.conserve-energy-future.com>, accessed 14 November, 2022

<sup>5</sup> E Hale, 'Earth's Environment Getting Worse, Not Better, Says WWF Ahead Of Rio + 20' *TheGuardian* (15 May, 2012)

<sup>6</sup> J Aldred, 'More than 1,000 Species Have Been Moved Due To Human Impact.' *TheGuardian* (20 April, 2016)

<sup>7</sup> Ibid

<sup>8</sup> Enforcement of International Environmental Treaties: An Analysis, (1993) 5 *Fordham Environmental Law Journal*. 261 (1993).

<sup>9</sup> Philippsaal, 'Global Actions On World Environment Day Underscore Urgent Need To Protect The Planet' <https://www.unep.org> accessed 15 November, 2022

<sup>10</sup> UN News, 'UN General Assembly Declares Access To Clean And Healthy Environment A Universal Right' <https://www.un.org> accessed 15 November, 2022

<sup>11</sup> Hanoi, 'International Environmental Law: Multilateral Environmental Agreements' (2017) *International Publishing House* <https://wedocs.unep.org> accessed 14 November, 2022

<sup>12</sup> Malcolm N. Shaw, *International Law* (6<sup>th</sup> ed. Cambridge University Press 2008) p. 2

like as conflict, diplomacy, trade, and human rights. It attempts to promote the conduct of orderly, stable, and consistent international relations.<sup>13</sup>

## **2.2. *International Environmental Law***

The goal of controlling pollution and the depletion of natural resources is the focus of the area of public international law known as international environmental law. Pollution, biodiversity, climate change, ozone depletion, toxic and dangerous compounds, air, land, sea, and trans-boundary water pollution, preservation of marine resources, desertification, and nuclear damage are some of the subjects covered in the research.<sup>14</sup> Through bilateral and multilateral international accords, it is largely concerned with environmental protection. Three historical sources are used to create it: international treaties, customary international law, and rulings of international courts.<sup>15</sup>

## **2.3. *Compliance and Enforcement***

Conformity to responsibilities imposed on the regulated community by a State institution, its competent authorities, and agencies, either directly or through conditions and requirements in permits, licences, and authorisations, is known as compliance. The act of conforming to legal or official State requirements and policies.<sup>16</sup> On the other hand, enforcement refers to the action or process of requiring adherence to a rule, directive, or demand.<sup>17</sup> Mechanisms for enforcing compliance are those that negotiators or parties can use to promote it.<sup>18</sup>

## **3. THE SOURCES OF INTERNATIONAL ENVIRONMENTAL LAW**

International Treaty law, customary international law, and rulings of international tribunals serve as the major foundations for international environmental law. International Treaty law has emerged as the primary and preeminent source of international environmental law, despite the significant contribution that customary international law has made to its development.<sup>19</sup> Customary international law contains the fundamental concepts of international environmental law, but Treaty law has expanded these concepts into more specific rights and obligations. The fact that Treaty law has dominated international environmental law may be due in part to how quickly this field of international law has developed.<sup>20</sup> This could be because environmental issues have only lately come to light and there wasn't enough no time for the creation of customary international law.

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<sup>13</sup> S William, *Fundamental Perspectives on International Law*, p. 4

<sup>14</sup> T, Gillian, *International Law: Contemporary Principles and Practices.*

<https://unimelb.libguides.com/internationallaw/environmental>, last accessed 20 June, 2022

<sup>15</sup> C. Greenwood, 'Sources of International Law: An Introduction.' <https://legal.un.org> accessed 20 June, 2022

<sup>16</sup> <https://www.mangolive.com> accessed 14 November, 2022

<sup>17</sup> Bryan A Garner, *Black's Law Dictionary*, 9<sup>th</sup> ed. P. 549

<sup>18</sup> J Ouellet, 'The Hyper-Polarization Challenge to the Conflict Resolution Field: A Joint BI/CRQ Discussion, Enforcement Mechanisms.'

<https://www.beyondintractability.org> accessed 15 November, 2022

<sup>19</sup> UNEP, *Register of International Treaties and other Agreements in the Field of Environment* (1993)

<sup>20</sup> A. Kiss, D. Shelton *International Environmental Law* (1991) p.96

When examining the development of international law, it is important to keep in mind that more laws that include the interests of all people as a whole have been added to the traditional reciprocal system.<sup>21</sup> Thus, growing multilateralism enriches traditional bilateralism in ever-greater measure. The classical relationship between States in international law was characterised by the reciprocity principle, which is a trend in international relations that is reflected in this tendency. As additional fields of international law have been added, such as human rights and environmental concerns, there is now a greater emphasis on issues that affect the global community. Thus, the entire community as a whole is becoming increasingly concerned with the application and observance of international laws rather than just two (or a small number of) States.<sup>22</sup>

The Rio Declaration on Environment and Development's Principle 7 states that States shall cooperate in a spirit of global partnership to conserve, protect, and restore the health and integrity of the Earth's ecosystem.<sup>23</sup> This is an expression of the evolution towards the recognition of community responsibility. States have similar but distinct obligations in light of the various environmental degradation contributions made by different countries.<sup>24</sup>

### ***3.1. International Environmental Law Regulations***

Many nations throughout the world have ratified a number of international environmental law legislation, treaties, and protocols. These regulations are concerned with the attempt to control pollution and depletion of natural resources within a framework of sustainable development.<sup>25</sup> These agreements cover topics including waste management, land management, climate change adaptation, and management of international watercourses, marine environment protection, ozone layer protection, chemical management, and others. They also address biodiversity conservation and sustainable usage. These regulations are:<sup>26</sup> Convention on Biological Diversity 1992; Cartagena Protocol on Biosafety 2000; Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits 2010; Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973; Ramsar Convention on Wetlands of International Importance 1971; Convention concerning the Protection of the World Cultural and Natural Heritage 1972; United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa 1994; Convention on the Law of the Non-navigational Uses of International Watercourses 1997; United Nations Convention on the Law of the Sea 1982; International

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<sup>21</sup> A Watts, 'The Importance of International Law,' <https://academic.oup.com> accessed 22 November, 2022

<sup>22</sup> Bruno Simma, *From Bilateralism to Community Interest in International Law*, RdC 250 (1994-VI), pp. 218.

<sup>23</sup> Rio Declaration on Environment and Development: The United Nations Conference on Environment and Development (1992). <https://www.cbd.int> accessed 15 November, 2022

<sup>24</sup> UNFCCC, (1992)

<sup>25</sup> Introduction – International Environmental Law – Library Guides <https://www.unimelb.libguides.com> accessed 15 November, 2022

<sup>26</sup> ABA Groups, 'International Environmental Law', <https://www.americanbar.org> accessed 15 November, 2022

Convention for the Prevention of Pollution from Ships 1978; Vienna Convention for the Protection of the Ozone Layer 1985; Montreal Protocol on Substances that Deplete the Ozone Layer 1987; United Nations Framework Convention on Climate Change 1992; Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal 1989; Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998; Stockholm Convention on Persistent Organic Pollutants 2001; Minamata Convention on Mercury 2013; The Declaration of the United Nations Conference on the Human Environment (the 1972 Stockholm Declaration); The Rio Declaration on Environment and Development 1992; The Montreal Protocol 1988; and the UN Framework Convention on Climate Change 1994.

### ***3.1.1. Convention on Biological Diversity 1992***

To counter the threat to species and ecosystems, the Rio Conference in 1992 enacted the Convention on Biological Diversity (CBD). This is a positive development for the preservation of biological variety, the sustainable use of its constituent parts, and the just and equitable distribution of the advantages associated with the utilization of genetic resources.<sup>27</sup>

The preservation of biological variety, the sustainable use of its elements, and the just and equal distribution of the benefits resulting from the utilization of genetic resources are the goals. This entails taking into account all rights to those resources, technologies, and acceptable access to genetic resources as well as the appropriate transfer of pertinent technology and adequate funding.<sup>28</sup>

According to the convention, each Party must offer financial support and incentives for national initiatives that carry out the Convention's goals. Developed country Parties are also required to give developing country Parties more cash so that they can execute the Convention. Funding may be provided by developed country parties through regional, bilateral, and multilateral means.<sup>29</sup> Article 21 establishes a framework for the provision of financial resources on a grant or discounted basis to help developing country parties.<sup>30</sup> The requirements for encouraging and cooperating with regard to research and training,<sup>31</sup> public education and awareness, information interchange,<sup>32</sup> and access to technical and scientific cooperation<sup>33</sup> are found in Articles 13, 14, 17, and 18 of the CBD.

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<sup>27</sup> United Nations, 'Convention on Biological Diversity, Key International Instrument for Sustainable Development'. <https://www.un.org> accessed 15 November, 2022

<sup>28</sup> Article 1, Convention on Biological Diversity 1992

<sup>29</sup> Ibid, Article 20, (n26)

<sup>30</sup> Ibid, Article 21, (n26)

<sup>31</sup> Ibid, Article 13, (n26)

<sup>32</sup> Ibid, Article 14, (n26)

<sup>33</sup> Ibid, Article 17, (n26)

### ***3.1.2. The Cartagena Protocol on Biosafety 2000***

The Cartagena Agreement, the first protocol under Article 19 of the Convention on Biological Diversity, was enacted in 2000 to safeguard biological diversity from possible threats posed by living modified organisms (LMOs) originating from contemporary biotechnology.<sup>34</sup> It strives to ensure the secure handling, transportation, and use of LMOs and is founded on the precautionary principle. Agricultural crops that have been genetically altered for increased productivity or for resistance to pests or diseases are examples of common LMOs.<sup>35</sup> Crops that have been changed include tomatoes, cassava, corn, cotton, and soybeans, as examples. The Cartagena Protocol's goal is to help ensure a sufficient level of protection for live modified organisms that originate from contemporary biotechnology and that can have negative consequences on the preservation and sustainable use of biological diversity.<sup>36</sup> This considers the threats to human health and focuses particularly on trans-boundary migrations.<sup>37</sup>

### ***3.1.3. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits 2010***

All plants and animals contain genetic resources that may one day be used to benefit people, such as for cosmetic or medicinal purposes. In light of this, using and having access to genetic resources has huge potential advantages.<sup>38</sup> The Nagoya Protocol, the second protocol under Article 19 of the Convention on Biological Diversity, was adopted in 2010 to outline processes for access to genetic resources and the fair and equitable distribution of benefits.<sup>39</sup> The goal is the fair and equal distribution of the advantages brought about by the use of genetic resources. Access to genetic resources, the transfer of pertinent technology, and finance all need to be done in an appropriate manner.<sup>40</sup>

### ***3.1.4. Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973***

In 1973 the CITES, or Convention on International Trade in Endangered Species of Wild Fauna and Flora was ratified.<sup>41</sup> It provides varied levels of protection to more than 35,000 species of animals and plants, with the goal of ensuring that international trade in specimens of wild animals and plants does not endanger the survival of the species in the wild. Neither the domestic nor international trade of non-threatened species is governed by CITES.<sup>42</sup>

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<sup>34</sup> Article 19, CBD

<sup>35</sup> UNEP, The Cartagena Protocol 2000, <https://www.bch.cbd.int> accessed 15 November, 2022

<sup>36</sup> Cartagena Protocol (UOSC Environment and Ecology Notes, <https://www.byjus.com> accessed 15 November, 2022

<sup>37</sup> Article 1, Cartagena Protocol 2000

<sup>38</sup> Convention on Biological Diversity, 'The Nagoya Protocol on Access and Benefit Sharing, <https://www.cbd.int> accessed 15 November, 2022

<sup>39</sup> Article 19, CBD

<sup>40</sup> Article 1, Nagoya Protocol 2010

<sup>41</sup> NOAA FISHERIES, <https://www.fisheries.noaa.gov> accessed 15 November, 2022

<sup>42</sup> Implementing CITES through National Fisheries Legal Study and a Guide.' <https://www.fao.org> accessed 15 November, 2022

The preamble of CITES states that its purpose is to safeguard wild animals and flora from overexploitation by means of international trade.<sup>43</sup>

### **3.1.5. Ramsar Convention on Wetlands of International Importance 1971**

The *Ramsar Convention*, which was established in 1971, was the first agreement on global habitats and the first to acknowledge that wetlands are among the planet's most fruitful ecosystem support systems.<sup>44</sup> The Convention works towards the wise use of all wetlands and brings cooperation internationally over the trans-boundary wetlands, shared wetland systems and shared species.<sup>45</sup> It offers a framework for both domestic and international action aimed at protecting wetlands and their resources.<sup>46</sup> As of October 2019, there are 171 Parties to the *Ramsar Convention*, with around 2260 designated sites totalling about 215,276,293 hectares.<sup>47</sup> The *Ramsar Convention* can be amended thanks to new provisions provided by the Paris Protocol of 1982, which went into effect in 1986.

The *Ramsar Convention* strives to stop the progressive encroachment and loss of wetlands both now and in the future by taking into account their ecological functions (see Preamble).<sup>48</sup> The goal of the Convention is to contribute to global sustainable development by conserving and wisely using all wetlands through local, national, and international collaboration.

### **3.1.6. Convention Concerning the Protection of the World Cultural and Natural Heritage 1972**

In 1972, the UN Educational, Scientific, and Cultural Organization (UNESCO) adopted the *World Heritage Convention*, which is ratified by almost all countries today (194 ratifications as of 23rd October 2020)<sup>49</sup>. The Convention's main goal is to identify the cultural and natural sites around the world that are important to our shared heritage and whose loss would be irreplaceable if they disappeared. In order to achieve this, it allows for the listing of outstanding universally valuable natural and cultural heritage sites. Heritage is "our legacy from the past, what we live with now, and what we leave onto future generations," according to UNESCO.

The Preamble states that the purpose of the *World Resources Convention* is to create a system of effective, ongoing, and modern scientific techniques of collective conservation of cultural and natural heritage of great universal importance.

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<sup>43</sup> Preamble CITES

<sup>44</sup> R T Kingsford and Others, 'Ramsar Wetlands of International Importance – Improving Conservation Outcomes,' <https://www.frontiersin.org> accessed 15 November, 2022

<sup>45</sup> Ramsar Convention, <https://www.byjus.com> accessed 14 November, 2022

<sup>46</sup> D O Suman, 'Mangrove Management in Coastal Wetlands,' <https://www.sciencedirect.com> accessed 13 November, 2022

<sup>47</sup> T Rizvi, 'Ramsar List: What it means for JK and Country's Water Bodies,' <https://www.greaterkashmir.com> accessed 13 November, 2022

<sup>48</sup> Ibid, (n45)

<sup>49</sup> UNESCO, 'The World Heritage Organisation.' <https://whc.unesco.org/en/statesparties/> accessed 20 January, 2022

### ***3.1.7. United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa 1994***

The only legally binding multilateral agreement connecting development and the environment with sustainable land management is the UN Convention to Combat Desertification (UNCCD) of 1994. There are 197 Parties,<sup>50</sup> making it nearly universal in reach. The 1992 Rio Conference identified desertification as one of the biggest obstacles to sustainable development, along with climate change and biodiversity loss.<sup>51</sup> Through national action plans that include long-term policies backed by international collaboration and partnership agreements, the Convention seeks to stop desertification and lessen the effects of drought.<sup>52</sup> With the aid of international collaboration and partnership agreements, the Convention seeks to advance an integrated strategy for combatting desertification and to lessen the effects of severe drought and/or desertification.<sup>53</sup>

### ***3.1.8. Convention on the Law of the Non-Navigational Uses of International Watercourses 1997***

The most authoritative and frequently cited collection of guidelines for governing the use and conservation of international watercourses is the *UN Watercourses Convention*.<sup>54</sup> It has five key principles that are also thought to be a part of international customary law:

- a) Equitable and reasonable utilisation of watercourses
- b) Prevention of significant harm to other riparian States
- c) Prior notification of planned measures that might affect other sharing States
- d) Protection of ecosystems
- e) Cooperation

### ***3.1.9. United Nations Convention on the Law of the Sea 1982***

The *United Nations Convention on the Law of the Sea* (UNCLOS), which addresses delimitation as well as the conservation and preservation of the marine environment, is regarded as the founding document for the world's oceans and their resources.<sup>55</sup> With the guiding idea that "land dominates the sea," it defines maritime zones such as Internal Waters, Territorial Sea, Contiguous Zones, Exclusive Economic Zones, Continental Shelf, High Seas, and the "Area" and establishes standards for delimitation.<sup>56</sup>

UNCLOS is made up of 17 Parts, 320 Articles, and 9 Annexes altogether. All areas of ocean space are governed by the Articles, including delimitation, environmental

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<sup>50</sup> Ibid

<sup>51</sup> United Nations, 'The UNCCD Process.' <https://www.unccd.int> accessed 14 November, 2022

<sup>52</sup> United Nations, 'Intergovernmental Working Group on Drought.' <https://www.treaties.un.org> accessed 12 November, 2022

<sup>53</sup> Article 2 UNCCD

<sup>54</sup> Encyclopedia of Inland Waters, 2009, 'International Watercourse: An Overview.' <https://www.unece.org> accessed 12 November, 2022

<sup>55</sup> IMO, 'Implications of UNCLOS for IMO.' <https://www.imo.org> accessed 14 November, 2022

<sup>56</sup> United Nations Environmental Programme, 'Maritime Zone'. <https://www.unep.org> accessed 14 November, 2022



regulation, marine scientific research, economic and commercial activity, technology transfer, and the resolution of disputes involving ocean issues.<sup>57</sup> The Preamble states that UNCLOS seeks to promote equitable and efficient resource use, the conservation of living resources, the peaceful usage of the seas and oceans, the facilitation of international communication, and the protection and preservation of the maritime environment.<sup>58</sup>

#### ***3.1.10. International Convention for the Prevention of Pollution from Ships 1973/78***

The Preamble states that the goal of the Convention is to completely eradicate intentional dumping of oil and other dangerous substances into the ocean as well as to reduce unintentional dumping of such substances.<sup>59</sup>

#### ***3.1.11. Vienna Convention for the Protection of the Ozone Layer 1985***

The Convention aimed to promote cooperation among nations by exchanging information on the effects of human activities on the ozone layer.<sup>60</sup> International efforts to phase out ozone depleting compounds are guided by the Vienna Convention for the Protection of the Ozone Layer. Chlorofluorocarbons, which have been utilized in air conditioning, refrigeration, and packaging materials, are one example of them.<sup>61</sup> The *Vienna Convention* aims to safeguard the environment and human health from harmful effects brought on by human activities that alter the ozone layer.<sup>62</sup>

#### ***3.1.12. Montreal Protocol on Substances that deplete the Ozone Layer 1987***

The *Montreal Protocol* expands on the *Vienna Convention* by establishing a necessary schedule for the phase-out of ozone depleting chemicals. This schedule has been constantly reviewed, and the phase-out dates have been moved up to reflect improvements in science and technology.<sup>63</sup> New ozone depleting compounds may be added through routine revisions, the most recent of which was the Kigali Amendment of 2016. Most people agree that the Protocol is the most effective multinational environmental accord.<sup>64</sup>

The Montreal Protocol and the Vienna Convention both aim to safeguard public health and the environment from harmful impacts brought on by human activities that alter the ozone layer.

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<sup>57</sup> Admiralty and Maritime Law Guide, International Conventions, <https://admiraltylawguide.com> accessed 14 November, 2022

<sup>58</sup> O. K. Kamara, 'An Analysis of the Adequacy of the Disputes Settlement Mechanism Under UNCLOS: Maritime Boundary Delimitation Disputes.' <https://www.brill.com> accessed 12 November, 2022

<sup>59</sup> Raunek, 'MARPOL (The International Convention for Prevention of Marine Pollution For Ships): The Ultimate Guide.' <https://www.marineinsight.com> accessed 10 November, 2022

<sup>60</sup> <https://ozone.unep.org> accessed 9 November, 2022

<sup>61</sup> United States Environmental Protection Agency, 'International Treaties and Cooperation about the Protection of the Stratospheric Ozone Layer.' <https://www.epa.gov> accessed 9 October, 2022

<sup>62</sup> Ecolex, 'Vienna Convention for the Protection of the Ozone Layer.' <https://www.ecolex.org> accessed 12 October, 2022

<sup>63</sup> G. Whitesides, 'Learning from Success: Lessons in Science and Diplomacy from the Montreal Protocol.' <https://www.sciencediplomacy.org> accessed 10 October, 2022

<sup>64</sup> UNEP, 'Thirty Years on, what is the Montreal Protocol doing to Protect the Ozone?' <https://www.unep.org> accessed 6 November, 2021

### ***3.1.13. United Nations Framework Convention on Climate Change 1992***

The global response to climate change is governed by the United Nations Framework Convention on Climate Change (UNFCCC, Convention), which has been defined by a number of decisions made by the Conference of the Parties.<sup>65</sup> As stated in Article 2 of the UNFCCC, the goal of the global response to climate change is determined by specifying a broad goal and the criteria for determining the time frame to achieve its specific goal by maintaining the concentration of greenhouse gases at a level that prevents potentially harmful interference.<sup>66</sup> The criteria are:

- Allow ecosystems to adapt naturally to climate change
- Ensure that food production is not threatened
- Enable economic development to proceed in a sustainable manner

### ***3.1.14. Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal 1989***

The *Basel Convention* of 1989 is the most important legally binding international agreement related to hazardous and other wastes. During its first decade, the Convention's principal focus was the elaboration of controls on the trans-boundary movement of hazardous wastes that is the movement of such wastes across international frontiers and the development of criteria for environmentally sound management of the wastes.<sup>67</sup> More recently the work of the Convention has emphasised full implementation of Treaty commitments, promotion of the environmentally sound management of hazardous wastes, a lifecycle approach, and minimisation of hazardous waste generation.<sup>68</sup>

According to the Preamble, the *Basel Convention* aims at the minimisation of waste generation, the strict control of trans-boundary movement of hazardous waste, and the environmentally sound management of hazardous waste and other wastes.<sup>69</sup>

### ***3.1.15. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998***

As growth in chemical production and trade raised concerns about the potential risks to human health and the environment, delegates to the 1992 *Rio Conference* called for a legally binding instrument to ensure governments can take informed decisions on their future import. Therefore, under the auspices of the United Nations Environment Programme (UNEP), the *Rotterdam Convention* was developed and adopted in 1998. It details procedures for the import and export of certain hazardous

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<sup>65</sup> United Nations Climate Change, 'What is the United Nations Framework Convention on Climate Change?' <https://www.unfccc.int> accessed 10 August 2022

<sup>66</sup> UN Framework Convention on Climate Change – UNFCCC, <https://www.enb.iisd.org> accessed 13 October, 2022

<sup>67</sup> UNEP, 'Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes'. <https://www.unep.org> accessed 17 August, 2022

<sup>68</sup> Ibid

<sup>69</sup> L. Acosta, 'The Basel Convention: From Hazardous Waste to Plastic Pollution.' <https://www.csis.org> accessed 20 August, 2022

industrial chemicals and pesticides. To assist developing country Parties, the Convention also sets up a financial mechanism.<sup>70</sup>

The aim of the Convention on the Prior Informed Consent Procedure (PIC) for certain hazardous chemicals and pesticides in international trade is to promote shared responsibility and co-operative efforts among the Parties in the international trade of dangerous chemicals in order to protect human health<sup>71</sup> and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.<sup>72</sup>

These objectives are particularly important for developing countries that may lack capacity in chemicals management. According to Article 1 the *Rotterdam Convention* aims to promote shared responsibilities and cooperative efforts among the Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use.<sup>73</sup>

### **3.1.16. Minamata Convention on Mercury 2013**

Mercury is a heavy metal that is highly toxic and persistent in the environment. It can be released into air, water and soil through human activities such as mining, cement production, and combustion of fossil fuels.<sup>74</sup> It is a chemical of global concern due to its long-range atmospheric transport, persistence in the environment, ability to bio-accumulate in ecosystems and significant negative effects on human health and the environment.

The World Health Organisation lists mercury in the top 10 chemicals of major public health concern. Acute or chronic exposure to mercury can be fatal. Mercury is used in electronic and measuring devices, cosmetics, lamps, batteries, and in several industrial processes. The *Minamata Convention on Mercury* is a multilateral environmental agreement that was adopted in 2013 and addresses the adverse effects of mercury through practical actions.<sup>75</sup> It requires Parties to address mercury throughout its lifecycle through to end-of-life aspects including waste, contaminated sites and long-term storage. This agreement addresses specific human activities which are contributing to widespread mercury pollution. Implementation of this

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<sup>70</sup> Rotterdam Convention – DCCEEW. <https://www.dcceew.gov.au> accessed 12 November, 2022

<sup>71</sup> A. Mihajlovski, ‘How does the Rotterdam Convention work to Protect Human Health and Environment?’ <https://www.brsmeas.org> accessed 15 November, 2022

<sup>72</sup> European Union, ‘The Objectives of the Rotterdam Convention.’ <https://www.ec.europa.eu> accessed 16 November, 2022

<sup>73</sup> Article 1, Rotterdam Convention

<sup>74</sup> UN Environmental Programme, Report on Minamata Convention on Mercury (2018), <https://www.unep.org/resources/report/minamata-convention-mercury> accessed 17 November, 2022

<sup>75</sup> Minamata Convention on Mercury – Queensland (Department of Environment) <https://www.environment.desqld.gov.au> accessed 18 November, 2022

agreement will help reduce global mercury pollution over the coming decades.<sup>76</sup> This includes its production, its intentional use in products and processes and its unintentional release from industrial activity.

According to Article 1 the *Minamata Convention* aims to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.<sup>77</sup> Implementation of the Convention requires multi-sectoral action, including the health sector.<sup>78</sup>

#### **4. THE COMPLIANCE AND ENFORCEMENT MECHANISM OF INTERNATIONAL ENVIRONMENTAL LAWS**

In January, 2019, the UN released a global assessment on the environmental rule of law. What they found was that despite a substantial increase in the amount of environmental protection agencies and laws, widespread failure to adequately enforce regulations has impeded the international effort to combat numerous environmental threats.<sup>79</sup>

There exists an avalanche of international environmental organizations which attempt to analyze and resolve environmental issues. However, none of these organizations have enforcement power. The international environmental infrastructure began to manifest itself in the form of the United Nations Environment Programme (UNEP), established by the United Nations General Assembly in 1972.<sup>80</sup> UNEP's purpose is to promote cooperation and coordination among nations, to recommend environmental policies and to provide general policy guidelines in the international environmental arena for all nations.

UNEP is actively involved in the assessment and monitoring of the global environment. Through a program called “Earth watch”, information exchange, research activities, monitoring of environmental issues and a continual review and evaluation of the environment on a global scale take place periodically in order to identify new problems. UNEP's involvement has been critical in the arrangement of various protocols, conventions and other agreements. It is a relatively small UN body and is limited by personnel and financial constraints. UNEP does not have the power that one of the more specialized agencies of the United Nations has, such as the Food and Agriculture Organization (FAO), and therefore it has little influence on the environmental policies pursued by other United Nations agencies. In addition, UNEP, financed solely by voluntary contributions to the Environmental Fund, is inadequately funded. UNEP's major limitation is its lack of implementation and

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<sup>76</sup>United States Environmental Protection Agency, *Minamata Convention on Mercury*. <https://www.epa.gov> accessed 17 November, 2022

<sup>77</sup> Article 1, *Minamata Convention*

<sup>78</sup> World Health Organisation, ‘Review of Minamata Convention Initial Assessment Reports: Key Findings for Health’. <https://www.who.int> accessed 16 November, 2022

<sup>79</sup> United Nations Environment Programme (UNEP), *Environmental Rule of Law First Global Report (2019)*, <https://wedocs.unep.org/bitstream/handle/20.5sequence> accessed 17 November, 2022

<sup>80</sup> Harold K. Jacobson & David A. Kay, *A Framework For Analysis In Environmental Protection: The International Dimension*, (Alanheld, Osmun & Co. 1983).

enforcement powers at the national level. Unfortunately, it must rely on the member states to implement and comply with its endeavours. As you are no doubt aware, a shortcoming of international agreements is that only signatories are legally bound. Even so, in many countries, even after signing to a Treaty, local legislations are necessary to give effect to them. Consequent on the principle of state sovereignty, it becomes arduous, if not near impossible to enforce the treaties except the parties voluntarily decide to do so.

## **5. DISPUTESS SETTLEMENT**

Provisions concerning disputes settlement are found in nearly all international environmental law treaties which have been negotiated and concluded in the last years. They follow the traditional pattern - known from other areas of international law - and contain the means and methods of disputes settlement listed in Art. 33 UN-Charter.<sup>81</sup> The most common means and methods of disputes settlement found in international environmental agreements are as follows:

### ***5.1. Negotiations and Consultations***

These methods of disputes resolutions are mentioned explicitly in nearly all international agreements as a means of disputes settlement. Example, Art. 11 para. 1 of the Vienna Convention for the Protection of the Ozone Layer 1985 states: “In the event of a disputes between the Parties concerning the interpretation or application of this Convention, the parties should seek solution by negotiation”.<sup>82</sup> Similar provisions are found in other international agreements such as Art. 14 para. 1 of the UN-Framework Convention on Climate Change, Art. 20 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989 or Art. 13 of the ECE-Convention on Long-Range Transboundary Air Pollution 1979. In a number of treaties - those which have been concluded earlier - these are the only obligatory means of disputes settlement. As regards the practical application of these methods very little can be said as in regard to the conventions recently concluded hardly any disputes is known.

### ***5.2. Conciliation***

Some environmental agreements provide for conciliation in case no agreement is reached by the parties to a disputes by means of negotiation or consultation. Examples are found in Art. 11 para. 5 of the Vienna Convention for the Protection of the Ozone Layer 1985,<sup>83</sup> Art. 27 para. 4 of the Convention on Biological Diversity<sup>84</sup> and Art. 9 paras. 5 and 6 of the Second Sulphur Protocol 1994 to the ECE-Convention 1979.<sup>85</sup> Example, Art. 11 para. 5 of the Vienna Convention for the Protection of the Ozone Layer 1985 reads: “A conciliation commission shall be created upon request of one of the parties to the disputes. The commission shall be composed of an equal number

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<sup>81</sup> Tomuschat in Simma (ed.), *The Charter of the United Nations - A Commentary* (1994), Art. 33, pp. 505; J. G. Merrills, *International Disputes Settlement*, 2nd. ed. (1991).

<sup>82</sup> Article 11, Para 1, Vienna Convention

<sup>83</sup> VCPOL (1985)

<sup>84</sup> Ibid

<sup>85</sup> Ibid

of members appointed by each party. The commission shall render a final and recommendatory award, which the parties shall consider in good faith.” More detailed rules on the establishment and the working procedure of the conciliation commission are contained in Annex 2 Part 2 of the Convention on Biological Diversity and Art. 9 of the Second Sulphur Protocol.<sup>86</sup> So far - to our knowledge - no disputes concerning these conventions has been referred to conciliation.

### **5.3. Arbitration and Judicial Settlement**

Most of the international environmental agreements which have been concluded in recent years contain opting-in provisions in regard to international arbitration and judicial settlement. Such clauses are found for instance in Art. 20 para. 3 of the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal 1989<sup>87</sup> or Art. 9 para. 2 of the of the Second Sulphur Protocol 1994 to the ECE-Convention 1979.

Although during the negotiations very little opposition has been found to such provisions, only very few States have made declarations as to the effect of accepting arbitration as a means of disputes settlement in regard to disputes concerning application or interpretation of the said agreement. Examples in the context of Art. 20 para. 3 of the Basel Convention only Norway has so far made a declaration accepting both arbitration and judicial settlement as means of disputes settlement and Poland has accepted arbitration. All other States parties to the convention - as of 31 December 1996 108 States - have not made any declarations in regard to Art. 20 para. 3.<sup>88</sup> Thus, it is not surprising that so far no disputes concerning the interpretation or application of the Basel Convention have been submitted to arbitration or judicial settlement.

Taking into account the various provisions on disputes settlement which have been included in international treaties dealing with environmental issues a rather sophisticated system of disputes settlement has been elaborated in recent years. This might be exemplified by Art. 27 of the Convention on Biological Diversity 1992.

Article 27 of the Bio-Diversity Convention obliges the parties to seek a solution to a disputes by negotiation.<sup>89</sup> If the parties are unable to reach an agreement by negotiation they may jointly seek the good offices of or mediation by a third party.<sup>90</sup> The parties may - at any time - accept arbitration or the jurisdiction of the ICJ as compulsory (Art. 27 para. 3). Annex II Part 1 to the Bio-Diversity Convention regulates the arbitration procedure in more detail: grosso modo it can be noted that each of the parties to a disputes appoints one arbitrator who then, by common agreement, shall designate the president of the tribunal (Art. 2 of Annex II/1). If during a period of two months the president has not been designated, the Secretary General of the UN shall, at the request of a party, designate the president; the same

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<sup>86</sup> Article 9, Second Sulphur Protocol

<sup>87</sup> BCCTMHWD (1989)

<sup>88</sup> Multilateral Treaties Deposited with the Secretary-General (1996)

<sup>89</sup> Article 27, BDC

<sup>90</sup> BDC (1992)

shall happen, if one of the parties does not appoint an arbitrator (Art. 3 of Annex II/1). The award is binding upon the parties and - unless the parties to the disputes otherwise agree - shall be without appeal.<sup>91</sup>

If the parties to a disputes should not have accepted arbitration or the jurisdiction of the ICJ as compulsory, the disputes is subject to conciliation pursuant to Annex II Part 2. Thus, a conciliation commission shall be created upon request of one party. This commission is comprised of 5 members, two appointed by each party and a president chosen jointly by those members. Unless the parties to the disputes otherwise agree the commission shall adopt its own rules of procedure. The commission shall render a” proposal for resolution of the disputes, which the parties shall consider in good faith.” (Art. 5 of Annex II/2).

Similar disputes settlement systems have been elaborated in Art. 20 of the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal 1989,<sup>92</sup> Art. 28 of the U.N. Convention to Combat Desertification in Countries Experiencing Serious Draught and/or Desertification,<sup>93</sup> Particularly in Africa 1994, Art. 14 of the U.N. Framework Convention on Climate Change 1992<sup>94</sup> and Art. XIII of the Bonn Convention on the Conservation of Migratory Species of Wild Animals 1979.

In conclusion it has to be noted that - although sophisticated systems of disputes settlement have been elaborated - the provisions found in international environmental treaties follow traditional patterns. Emphasis is put on negotiations as a means of disputes settlement. Only recently States have tended to accept conciliation commissions as a mandatory means of disputes settlement. Arbitration or recourse to the ICJ only play a very limited role in the settlement of disputess concerning international environmental law. Various reasons have been put forward for this: the uncertainty of the legal commitments undertaken by States, the relatively new field of regulation, etc. However, it should not be overlooked that these methods also serve another function: to avoid disputess. States deciding whether to implement or comply with an international obligation will take into account the risks which they are taking when not applying the rules agreed on the international level.

The ICJ's reach is far from universal, a state is only subject to its jurisdiction if it is subject to a multilateral agreement which stipulates it; if it appears before the Court without objecting to it exercising jurisdiction in the case in question; or if it makes a unilateral declaration recognising its jurisdiction (to date about fifty states have done so, though several with reservations). The ICJ clearly has full competence over all aspects of international environmental law.

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<sup>91</sup> M. Ostrove and Others, 'Awards: Challenges.' (DLA Piper) 2021

<sup>92</sup> Article 20, Basel Convention

<sup>93</sup> Article 28, UNCCDCESDD

<sup>94</sup> Article 14, UNFCCC

In the context of disputes settlement by the ICJ it should be briefly mentioned that the ICJ has in the past dealt with cases that had an environmental dimension. They did not concern questions of interpretation or application of specific treaties but raised environmental issues of a general nature in the context of a more complex factual and legal situation, e.g. the Nauru Case<sup>95</sup> or the case between Slovakia and Hungary concerning the Gabčíkovo-Nagymaros Project<sup>96</sup>, involving the construction of a barrage on the Danube. Commissioned in 1977, by the late 1980s public opinion in Hungary – linked with the fall of the communist regime – led to the suspension of work and eventual Hungarian withdrawal from the 1977 Treaty.

Czechoslovakia (later Slovakia), proceeded unilaterally with a more limited scheme involving the diversion of 80% of the waters of the Danube into a bypass canal (with, in due course, significant damage to local biodiversity). Under pressure from the European Commission, the two countries referred the disputes to the ICJ in 1993. Its judgment, in 1997, while finding that Hungary was not entitled unilaterally to suspend the joint project solely on environmental grounds, nevertheless accepted the principle of ‘ecological necessity’ whereby a state may seek to preclude responsibility for otherwise wrongful acts by invoking the law of state responsibility. The Court also accepted that concerns for the natural environment represented an ‘essential interest’ of a state, that norms of environmental law had to be taken into consideration in implementing the Treaty, and – most importantly – that later developments in environmental law and standards should be taken into account when addressing activities begun in the past. The Court also invoked the ‘concept of sustainable development’, while declining to explain what it thought its implications might be. None of the decisions of the ICJ really develop the relevant concepts of International environmental law in any great detail. They do, however, underline, albeit in a rather hesitant manner, that the ICJ is available to handle environmental disputes and that there are no impediments to bringing environmental considerations into the mainstream of international law.

In July, 1993, there was established an environmental chamber of the ICJ,<sup>97</sup> consisting of seven members. They have however, not heard a case yet. It remains to be seen whether in the future the attitude by States not to accept the jurisdiction of the ICJ for possible disputes arising out of international environmental treaties will change.

#### ***5.4. European Court of Justice***

The European Court of Justice is also called Court of Justice of the European Union (CJEU). Its basic mission is to ensure the observance and uniform application and interpretation of EU law within EU Member States and institutions.<sup>98</sup> In contrast to the ICJ, the European Court of Justice (ECJ) has already had a clear and direct impact

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<sup>95</sup> *Nauru v. Australia*, (1993) ICJ-Reports, p. 322.

<sup>96</sup> *Hungary V. Slovakia* (1993) ICJ-Reports p.1293

<sup>97</sup> ICJ Press Communiqué No. 93/20 of 19 July 1993; R Jennings, *The Role of the International Court of Justice in the Development of International Environmental Protection Law*, RECIEL 1 (1992), pp. 240.

<sup>98</sup> The Editors of Encyclopaedia Britannica, ‘Court of Justice of the European Union’. <https://www.britannica.com> accessed 17 October, 2022



on the development of the environmental law of the European Community. The ECJ resolves disputes over interpretations of the EU treaties and obligations flowing from them. As far back as 1985, it recognised that environmental protection was an ‘essential objective’ of the ECJ and in the following ten years over 150 environmental cases came before it.<sup>99</sup> It has, on occasion, given environmental protection objectives equal or greater weight over economic and trade objectives, and has demonstrated a willingness to recognise and act upon some of the special characteristics of environmental issues.

The ECJ has been able to act so effectively, of course, because of the regional and closely knit structure of the EU, in which a reasonably homogeneous group of states have ceded some legal and political power to the central institutions. No other regional or global institution of a comparable nature yet exists.<sup>100</sup>

### ***5.5. International Tribunal for the Law of the Sea (ITLOS)***

The International Tribunal, established in 1996, comprises twenty-one independent individuals elected by parties to the Convention; a subsidiary Seabed Disputes Chamber includes eleven of the twenty-one.<sup>101</sup> The Tribunal is an independent judicial body established by the Third United Nations Convention on the Law of the Sea to adjudicate disputes arising out of the interpretation and application of the Convention,<sup>102</sup> including provisions concerning the exercise of the powers of States over shipping and the discharge by States of their responsibilities and obligations in relation to ships.<sup>103</sup> In the tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution shall be assured.<sup>104</sup> The Tribunal has dealt many cases, a number of the disputes involved environmental issues. In 1999, in the face of the declining profitability of its domestic tuna industry due to economic recession and rising labour costs, coupled with loss of market share, Japan unilaterally implemented an ‘experimental’ fishery of about 1500 tonnes in the area covered by the Convention for the Conservation of Southern Bluefin Tuna. After protests, Australia and New Zealand requested ‘provisional measures’ – an interim injunction – to prevent the fishery. They also excluded Japanese fleets from their exclusive economic zones (EEZ), which led Japan to file a counter-request for interim measures. The Tribunal found it had jurisdiction over the disputes and ruled against Japan in August 1999.<sup>105</sup>

Two of the Tribunal’s cases dealt with allegations of illegal fishing. In September 1999, when the French authorities arrested the Spanish-owned but Panama-flagged

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<sup>99</sup> D. Brack, ‘International Forums for Non-compliance and Disputes Settlement in Environment-Related Cases.’ <https://www.ipcc.int> accessed 10 October, 2022

<sup>100</sup> F. Jacobs, ‘The Role of the European Court of Justice in the Protection of the Environment.’ (JIL Volume 18, Issue 2) 2006

<sup>101</sup> Article 2(1), ITLOS

<sup>102</sup> Article 1, ITLOS

<sup>103</sup> T. A. Mensah, ‘The Significance of the International Tribunal for the Law of the Sea for the Shipping Industry’. (WMU Journal of Maritime Affairs 3, 111 – 121) 2004

<sup>104</sup> Article 2(2), ITLOS

<sup>105</sup> ICSID News and Events, ‘Arbitral Award in the Southern Bluefin Tuna Case’. <https://www.icsid.worldbank.org> accessed 19 November, 2022

*Camouco* for poaching toothfish nearly 160 nautical miles inside the French EEZ of Crozet, the Tribunal – after a complaint by Panama – judged that they had failed to set a reasonable bond (as required by the Convention) and that notification of arrest to the flag state was ‘tardy and incomplete’. The Tribunal did not uphold Panama’s claim that France had engaged in ‘unlawful detention’, as France had not applied criminal measures to the captain but had merely confiscated his passport. In December 2000 the Tribunal reached a similar decision in the case of the Seychelles-flagged *Monte Confurco*, which was arrested by the French authorities for fishing in the EEZ of the Kerguelen Islands without prior notification, as required under the Convention.<sup>106</sup>

## 6. CONCLUSION

This work has attempted to provide an overview of essential international environmental law regulations, treaties and protocols that have been ratified by many parties. It has however found out that the enforcement of the provisions of these regulations rely solely on the willingness of the state parties to be guided by them. It has also discussed the disputes settlement mechanism and has shown that parties must first submit to the jurisdiction of most of the courts first, before its decisions will be binding on them. This position will only continue to make environmental laws generally unenforceable, but for the will of the parties.

It is recommended that states should be made to obey the treaties that they have signed by serious sanctions being put in place, sanctions that will affect the economies of those member states. The UNEP should be adequately funded. Member states to particular environmental law treaties should be mandated to pay a particular sum to the UNEP to enable it carry out its activities. Preventing environmental crimes should become one of the priorities of INTERPOL. Compliance could be guaranteed through forceful measures.

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<sup>106</sup> B. h. Oxman and V. P. Bantz, ‘The *Camouco* (Panama v. France) Judgment. ITLOS Case No. 5.’ (Cambridge University Press 27) 2017