

International Law and Climate Change

Number 8/14

Fact Sheet

Customary law affirms the sovereign right of states to manage their own natural resources, and prohibits activities in a state that damages the environment of others.

Climate Change

International treaties

International environmental laws have a key source: the international treaties among states. These include:

- **conventions:** These set binding obligations on the Party states.
- **framework treaties:** These regulate very general principals.
- **protocols:** These deal with technical details.

If an unwritten international legal rule is followed and accepted by a number of party states over a period of time as their moral and legal obligation, this legal rule becomes **customary law**. For example, in the case where a particular commitment to act is repeatedly expressed in international conferences, and if participating countries decide to act on it, the commitment then becomes an obligation under customary law.

Customary law **affirms** the sovereign right of states to manage their own natural resources, and **prohibits** activities within a state that seriously damages the environment of other states. However, it also allows "**reasonable use**" of common resources such as the atmosphere. The problem arises in implementation. What is "reasonable"? How much CO₂ is a state allowed to emit? How much forest is allowed to be turned into agricultural and industrial land? Customary law has no answer to these questions.

Inconsistent law

International law is inconsistent in its approach to climate change. The Geneva Convention on Long Range Transboundary Air Pollution and the Montreal Protocol on Substances that Deplete the Ozone Layer both deal with **discharge amounts**, and **not on the direct causes and effects** of climate change.

Existing legal principles

Future climate treaties will be shaped largely on the important new legal principles now emerging. Political statements, declarations and resolutions are now becoming **customary law**, where international climate conferences affirm fundamental principles, where they recommend policies consistently and where these policies are followed long enough by member states.

The **Non-Binding Conference Statements**, such as those guiding the work of the Intergovernmental Negotiating Committee (INC) for the FCCC, have no "legal status". However, the concept of these is becoming more recognized by international law. These considerably alter traditional legal concepts that focus on sovereign states and their defined rights and duties toward each other.

Another important legal principle that is emerging - that Climate Change is a "**common concern of humankind**" - assigns the atmosphere with some legal status. It attempts to ensure all states have a legal interest and duty to protect the atmosphere. This concept is not clearly defined or universally recognised.

"**Common But differentiated responsibility**" is another emerging principle which proposes that, while all states are responsible for preventing further damage to the atmosphere, this responsibility is directly proportionate to their contribution to the cause and the means at their disposal to deal with it. This principle is widely recognized and incorporated in the Montreal Protocol.

The "**Precautionary Principle**" states that potentially dangerous activities should be restricted or prohibited before they can be proven to cause serious damage. This principle improves laws from "**react and correct**" to "**forecast and prevent**". Traditional concepts where activities are not restricted or prohibited until proven, will be too late and so will not prevent climate change.

□

