Preface

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The last few decades in human history have been characterised by unprecedented activity in scientific and technological research with breakthroughs seeming to occur at an ever increasing rate; industry and agriculture, as well as human consumption, have taken full advantage of these developments, with resulting unparalleled exploitation of every form of natural resource. Humanity seems to be moving in leaps and bounds, but it is not always clear in which direction. Henry David Thoreau, in the late 19th century, commenting on the harmful effects of human activity on the environment, said: ‘Thank God men cannot fly, and lay waste the sky as well as the earth’. At the beginning of the 21st century, not only have we already long taken to the skies, but we have also proved Thoreau correct. The gradual erosion of the ozone layer, for instance, is but one of the latest additions to an already long list of intrusions, which among others includes the pollution of seas, rivers and lakes, the extinction of fauna and flora (according to UN estimates, every day up to 150 species become extinct (Reuters, 2007)), desertification, rainforest clearance and overfishing.

It is only natural that such a dire situation would cause a reaction, which in turn would be reflected in the field of international law. Thus, alongside more traditional areas of international law, international environmental law has developed greatly both in scope and importance. This is evidenced by the conclusion over recent years of many multilateral environmental agreements (MEAs) which address a wide range of these environmental problems, including, to mention but a few, the 1998 Kyoto Protocol to the Framework Convention on Climate Change, the 1992 Convention on Biological Diversity (CBD) and the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context.1

The growing importance of international environmental law was one of the reasons for the publication of this book, which contains a remarkable collection of in-depth analyses of international environmental law, its history, its current status and its future. Taking its cue from the recent debate stirred by the Report of the ILC Study Group on the Fragmentation (Diversification) of International Law, this Handbook departs from the traditional treatments of the subject of international environmental law. Instead of examining environmental law solely as a ‘self-contained regime’, it adopts a more holistic approach. In more detail, this book offers, on the one hand, an examination of principles characteristic of international environmental law (such as the precautionary and the polluter-pays principles) and of specific environmental protection regimes. On the other hand, however, this Handbook recognises the fact that international environmental law does not exist in ‘clinical isolation’ from other areas of international law (US – Gasoline 1996, Appellate Body report: 17). Consequently, several of the chapters offer insights into the place of international environmental law within the general system of international law and, most importantly, how it interrelates with other fields of international law (such as international trade, human rights and law of the sea).

Although the chapters address diverse topics and issues, an underlying common theme is evident. The various fields addressed by international law are no longer seen as giving rise to
isolated sets of norms, but rather to interrelated norms, together forming part of a whole ‘system’ of international law. In this endeavour, the authors have had to confront the difficult task of striking a balance between, on the one hand, analysing problems specific to international environmental law and, on the other hand, harmonising their conclusions/solutions so as to fit within the construct of international law in its entirety.

In their analyses, the authors have also adopted a pragmatic viewpoint, covering issues relating to the efficacy of international environmental law. The ‘enforcement’ element has always constituted an area of weakness, not only of environmental law, but also of international law in general. By examining responsibility and liability for environmental harm alongside dispute settlement and non-compliance procedures, the authors have shed light on this highly sensitive area and have enriched this Handbook by offering insights and information which are important not only from an academic’s, but also from a practitioner’s, point of view.

It is to the credit of the authors that they have not shied away from tackling such diverse and intricate issues, while at the same time casting a critical eye on the solutions already adopted and offering suggestions to untangle the existing problems. Thus, not only is an important agenda for legal research and reform provided by this book, but also the cause of promoting international environmental law and its understanding is well served by it.

Notes
1. This, of course, in no way implies that prior to the 1990s there was no activity in the field of international environmental law, merely that the relevant activity has been more prominent in the last few years. With respect to pre-1990s conventions, one need only recall, for instance, the landmark 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1972 Convention for the Protection of the World Cultural and Natural Heritage, the 1959 Antarctic Treaty, and the 1946 International Convention for the Regulation of Whaling.

2. This analogy is based on Xue Hanqin’s simile of Article 31(3)(c) of the Vienna Convention on the Law of Treaties as the ‘master-key to the house of international law’ (emphasis added) (ILC Study Group, 2007: para. 420).

References


Cases