Index

80/20 principle, fine collection 465

Aarhus Compliance Mechanism 84–6
creation of 89
as interpretive process 101–103
Task Force 89

Aarhus compliance process
collaboration, recommendations and responses 95–9
improvements in compliance 99–100

Aarhus Convention 537–8

Aarhus Convention Compliance Committee
communications from the public 84–9
filters for control of public communications 93–4
Guidelines for Handling Public Requests for Environmental Information 99
procedures, workload and budget of 90–91
quality of communications to 91–2
use of domestic remedies 92–3
Working Group 86

Aarhus Public Participation Convention 83–4, 101–102
Meeting of the Public 85, 89, 90, 95, 96–7, 100, 102

Accounting Act (1977), Norway 643, 648–51, 652, 653, 655–8

Accredited assessment process, Australia 41

Active Federal Debts, Brazil 452
administrative courts, China 442
administrative enforcement
Australia 43
US 198–9

Administrative Litigation Law (ALL), China 373, 442
administrative orders, US 198–9
Administrative Procedure Act (APA), US 115, 116, 131–4, 137, 138, 140, 141
administrative procedures, Brazil 452
effectiveness factors 454, 457–61
monitoring compliance 469
situation and duration of cases 453–4, 455–7
suggestions for successful enforcement 464–8
administrative resources, Africa 621–2
Administrative Review Law (ARL), China 442–3
adverse public orders, Australia 51–2
advisory committees, participation in 115, 116, 119–20, 135–7
Advisory Opinion on the Use of Nuclear Weapons, ICJ 66–7
advisory opinions 114, 142
Advocates General 297, 305
Africa
legal pluralism 620–22
see also Cameroon; Central Africa; Kenya; Nigeria; South Africa; Uganda
African Commission on Human and Peoples’ Rights 630
African Court of Justice 114
Agenda 21 379–80, 382–3, 391, 395–6, 435, 503, 538, 608
Straddling Fish Stocks and Highly Migratory Fish Stocks (1995) (Fish Stocks Agreement) 5, 527
compliance interlinkages 19, 20–25
Aguinda v. Texaco Inc. 139
Alaska Department of Environmental Conservation v. EPA 214
Albania, NGOs involvement in compliance 92–3
Alien Tort Claims Act (1789) (ACTA), US 115, 116–17, 123–30
Alpine Convention 84
alternative dispute resolution (ADR) techniques 210
alternative sentencing orders 51–3, 339–44
Alvarez-Machain v. Sosa and United States of America 116–17
Amazon Alliance 121–2
American Civil Liberties Union (ACLU) 120
American Electric Power Company 217–18
Amos & Others v. Shell BP Petroleum Development Company of Nigeria Ltd & Another 628–9
Amos & Others v. The Attorney General & Others 628
ancillary orders, Australia 51–2
Anmatyere Community Government Council (ACGC) 556
Anmatyerr Kwaty (Water) Project background 554–5
objectives 555
skills development 555–6, 557–8
anthropocentrism 293
ANZ, corporate reporting 647
appropriate sentences, reviewing 334–5
appropriations, imposing environmental standards on 121–2
approval process, Australia 40–42
arbitration, MEAs 9–10
Argentina, greenhouse gas emissions 142
armed conflict principles 64–5
Armenia, NGOs involvement in compliance 92, 101
assessment process, Australia 40–42
atmospheric emissions MEAs 4–5
compliance interlinkages 18–19, 20–25
Atmospheric Pollution Prevention Act (1965), South Africa 266
Atomic Energy Control Board, Canada 298–9
Attorney General v. Rwanyarare 585–6
audit orders 343
Auditing and Accountants Act (1999), Norway 652–3
auditing programs 181
Auditor General, South Africa 387, 397
audits 224–6
self-audits 224–5, 226, 227–8
South Africa 272
US 211
Australia
custodial sentences 336–7
federal barriers to compliance and enforcement 35–9
mandatory corporate reporting 641–2, 645–7, 651–2
recognition of indigenous customary law 538–41
recognition of native title 541–3
water resources management 547–67
Australia & New Zealand v. Japan Bluefin Tuna (1999) 68
Australian Conservation Foundation v. Commonwealth (1980) 46
Australian Law Reform Commission (ALRC) 43, 539–40, 542–3
Australian Securities and Investment Commission (ASIC) 642–3, 645, 651, 652
Baker Lake v. Min 302
balancing and weighting approach 78
banks
corporate reporting 647
monitoring role 467–8
Barac v. Farnell (1994) 51
compliance interlinkages 17, 20–25
public reporting involvement 86
baseline information 6
Beanal v. Freeport-McMoran 115, 127–9, 138
Belém State, Brazil, Federal Courts 453–69
Belgium, non-compliance 96, 98–100
Belize, Barrier Reef 142
best available control technology (BACT) 214
best practicable means (BPM) 266–7
best practice, resource management 561–5
BHP 592, 594–6, 597, 598–9
“bifurcation” 208–209
Billabong, corporate reporting 647
biodiversity potentials, Congo Basin 501–502
Bladet Tromsø & Stensaas v. Norway (1999) 74
Bluefin Tuna Australia & New Zealand v. Japan (1999) 68
Boards of Directors as drivers of corporate reporting
compliance 657–8, 660
monitoring role 647
Bolton et al. v. Forest Pest Management Institute, et al. 302
Bonn Convention (1979) 507
Boral, corporate reporting 647
Bosnian-Serb Republic, human rights abuses 124–5
Boyce v. Paddington Borough Council (1903) 46
Brazil, corporate law 182
Brazilian Amazon discussion and recommendations of
logging study 464–9
enforcement liability and institutions responsible for enforcement 451–3
logging study methodology 453–5
logging study results 455–64
overview of illegal logging 450–51
Brazilian Federation of Banks 468
Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) 449–70
Brazilian Treaty barriers to implementation 511–12
implementation indicators 509–12
Memoranda of Understandings (MOUs) 510
provisions 509
British American Tobacco (BAT) v. Environmental Action Network (TEAN) 581
British Columbia v. Canadian Forest Products Ltd. 137
Brønnøysund Register Centre, Norway 643, 650
“bundle of rights” formulation 542–3, 548
burden of proof 68–9, 70, 295, 302
Byabazaire Grace v. Mukwano Industries 583
California, environmental policies 144–5
Cameroon and Brazzaville Treaty 510–11
protected areas 507
Camilleri's Stock Feeds Pty Limited v. Environment Protection Authority 323
Campbell v. Southland District Council (1994) 76
Canada class action certification 302–304
corporate law 173, 175
environmental policies 144
implementation of judicial environmental framework 304–305
pre-trial injunctions 300–302
standing rules 297–300
Canada–Chile Commission on Environmental Cooperation 112
“Canada–Soviet Union Cosmos 954” case (1979) 248–9, 253–4
Canadian Parks and Wilderness Society v. Superintendent of Banff National Park and Sunshine Village Corp. 302
cardinal proportionality 315
“carrot and stick” approaches 381
Cartagena Protocol on Biosafety to the Convention on Biological Diversity (2000) (Biosafety Protocol) 4
compliance interlinkages 18, 20–25
public reporting involvement 85, 86
Catchment Management Act (CMA), Australia 552
Compliance and Enforcement in Environmental Law

Cemiride (on behalf of the Endorois Community) v. Republic of Kenya (2003) 627
Center for International Environmental Law (CIEL), US 121
Central (Aboriginal) Land Council (CLC), Australia 555
Central African Dense and Humid Forest Ecosystems (CEFDHAC) 504, 506
Central African Forest Commission (COMIFAC) 506–7, 508, 509, 510, 512
Central African forest management barriers to implementation of legislation 511–12
Brazzaville Treaty 508–12
historical conspectus and biodiversity potentials 501–502
implementation of Yaoundé Declaration 505–508
institutional frameworks 506–507
legal status of Yaoundé Declaration in international law 504–505
problem of conservation and sustainable management 502
recommendations 512
subsidiary legal arrangements 507
Yaoundé Declaration 503–508
Central Bank of Brazil 467
Chevron Corporation of California 139–40
China
citizen access to information and participation 439–41
citizen access to justice 442–3
citizen rights related to prosecution and litigation 609–10
as driver of ecological change 431–3
environmental ethics 434–6
environmental impact assessment since 1995 611–13
environmental public participation rights and procedures 614–16
evolution of environmentalism in 433–6
evolution of public participation 608–609
Green GDP 374–7
judicial problems 374
local government’s environmental conduct and limits of law 370–72
ratification of MEAs 250
revenue problems 373
Songhua River pollution accident 245–55
structural problems 372–3
towards an era of ecological civilization 436–8
towards broader public involvement 614
weakness of law 373–4
China Agenda 21 608
China National Petroleum Corporation 245
Cities for Climate Protection (CCP) Campaign, US 143
citizen access to information
Brazil 454, 466–8
China 439–41, 615, 616
US 120–21, 135–6, 461
citizen access to justice, China 442–3
citizen empowerment 295
citizen enforcement action
Australia 46–8
US 197–8
citizen involvement in MEA compliance mechanisms
Aarhus Convention Committee and public communications 89–94
collaboration, improvement and interpretation in Aarhus Compliance Process 95–103
communications from the public 84–9
overview 83–4
citizen participation, China 373–4, 376, 439–41
citizen rights related to prosecution and litigation 609–10
and environment impact assessments 611–13
evolution of 608–609
rights and procedures 614–16
towards broader public involvement 614
citizen participation, South Africa 386–7, 391, 396
citizen rights, Papua New Guinea 596–8
citizen suit provisions, US 134–5
Citizen Works 118–19
civil enforcement, Australia 43–5
civil judicial enforcement, US 199
complaints 206–208
litigation considerations 208–10
pre-filing process 204–206
referral process 202–204
settlements 210–13
Civil Law Code, Russia 252
civil law systems
experiments with corporate liability 181–4
traditional doctrine on corporate liability 171–3
Civil litigation process (Walker et al.) 290–91
civil penalty demands 207–208, 211
civil procedure
and environmental ethics 294
importance of 290–91
procedural barriers in Canada 297–304
Civil Procedure Act, Kenya 628
Civil Procedure Act, Uganda 586
Civil Procedure Code, Russia 251
Civil Procedure Law, China 251
Civil Procedure Rules, Uganda 583
civil society initiatives, US
litigation strategies 123–40
litigation strategies to address global warming 141–2
non-litigation strategies 118–23
non-litigation strategies to address global warming 142–5
overview of international and regional strategies 112–18
civil society, empowerment of 270–72
class action certification 291, 302–304
Clean Air Act (CAA), US
Amendments (1997) 214
civil enforcement 135, 141, 198, 202, 207, 208, 210, 213, 217
enforcement provisions 409, 420
mobile source docket 216
stationary source docket 216
Clean Water Act (CWA), US
civil enforcement 207, 210, 213, 216
current priorities 218–19
don’t 216–17
Section 404 198, 201
client agencies, representation of interests 205
clusters, MEAs 3–5
co-management of natural resources 630–31
challenges of institutionalizing 632–3
co-offenders, parity principle 335
coal-fired electric power generating plants 217–18
Coastal Fisheries Protection Act (1985), Canada 65
Code of Corporate Citizenship, US 115, 118–19
codes of practice (COPs), South Africa 268
Coke Oven Environmental Task Force v. EPA 141
collaboration, Aarhus compliance Process 95–9
colonial regimes
Africa 620, 623–4
Australia 543–4
Columbia, herbicide spraying 121–2
command and control systems
South Africa 262, 263, 271, 272–3, 393
US 274
Commission for Environmental Cooperation (CEC) 11
Committee for Environmental Co­ordination, South Africa 390–91
common law systems
abandonment of traditional doctrine 173–5
adaptations to ensure effective corporate liability 181–4
traditional doctrine on corporate liability 172–3
Commonwealth Criminal Code Act (1995), Australia 49
communication issues, judicial enforcement 468
communities
as entity for environmental and natural resource management 628–9
and legal pluralism 620–22
ownership and rights over natural resources 623–8
reintegrating into natural resources management 629–34
Community Mine Continuation Agreements (CMCA), Papua New Guinea 594–7, 598, 600
community organizations, forms of 633–4
community owned natural resources, expropriation of 623–5
community protection 318–19
community service orders 52–3, 339
community role, marine environmental compliance 520–24
community-based legal system, Kenya 620–22
community-based monitoring committees, South Africa 271–2
company credit rating and self-reporting 231, 235–6
Company Law Review Act (1998), Australia 642
Section 299(1)(f) 642, 645–6
company ownership and self-reporting 231, 235–6
company size, effect on violations 230–31, 235–6
compensation 180, 341
compensation, transboundary pollution damage
international civil compensation 251–3
negotiation and consultation 253–4
state compensation 247–50
complaints, US civil enforcement 206–208
Compliance Committees 6
compliance linkages
and compliance mechanism components 5–10
international institutional efforts towards 11–25
and MEA clusters 3–5
compliance and ethics programs 180–81
compliance mechanism components, MEAs 5–10
compliance mechanisms as interpretative process 101–103
public involvement in 83–103
compliance procedure, triggers of 86, 88–9
compliance schedules 207
compliance strategy, priority setting 159–67
comprehensive corporate criminal liability 183–4

Section 106 orders 199
conciliation, MEAs 9
conditional discharge 339
Confederation for Norwegian Business and Industry (NHO) 643, 648, 661
conflict of laws approach
limitations on recognition under 545
proof of foreign law 544–5
value of using 546–7
Conflicts over Natural Resources Solidarity Network 591
Congo Basin Forest 501–12
consent decrees 210, 212–13
conservation, policy and legislative frameworks in Central Africa 503–12
conservation problems, Central African forests 502
conservation, linking penalties to 468–9
Constitution
Australia 35–6, 38
Palau 520–21
Papua New Guinea 591, 595
South Africa 259, 266, 267, 272, 379, 384–5, 389–90, 391, 394, 630
Uganda 580–82, 586, 587, 589
US 138, 174
Constitutional Court, Uganda 581, 582, 585–6, 587, 589
consultation
and priority setting 161
use in transboundary disputes 253–4
consumption, China 431–3
contractual relationships, emissions trading verifiers 418
contrition, offenders 332
Convention for the Protection of Natural Resources and Environment of the South Pacific Region (1986) (Noumea Convention) 527
Protocol on Co-operation in Combating Pollution Emergencies 527
Index

Protocol on the Prevention of Pollution of the South Pacific Region by Dumping 527

Convention for the Protection of World Cultural and Natural Heritage (1972) (World Heritage Convention) 4

Australian commitments under 37–8, 47–8, 53
compliance interlinkages 15, 20–25

Convention on Biological Diversity (1992) (CBD) 4, 113, 247, 503, 536, 538
compliance interlinkages 16, 20–25


Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (1978) 65

Convention on International Liability for Damage Caused by Space Objects (1972) 249–50, 254

Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973) (CITES) 4, 113
compliance interlinkages 15, 20–25

Convention on Jurisdiction and Foreign Judgements in Civil and Commercial Matters (Draft) 129–30

Convention on Long-Range Transboundary Air Pollution 249

Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere 113

Fisheries Commission 527–8, 529

Convention on the Conservation of Migratory Species of Wild Animals (1979) (CMS) 4, 113
compliance interlinkages 15–16, 20–25


compliance interlinkages 19, 20–25

Convention on the Protection and Use of the Transboundary Watercourses and International Lakes, Protocol on Water and Health 84, 86, 88


Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971) (Ramsar Convention) 4

Australian commitments under 40, 45
compliance interlinkages 14–15, 20–25

Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (1995) (Waigani Convention) 527

Cook Islands, marine environmental compliance 523

cooperation agreements, South Africa 270
cooporative federalism, US enforcement context 213–14

Cooperative Societies Act, Kenya 633

Coors Brewing Company 225

“Corfu Channel” case 247
corporate activity, extraterritorial application of US environmental laws 130–40

Corporate Average Fuel Economy (CAFE) standards 141–2
corporate citizenship 115, 118–19
corporate dissolution/disqualification 318–19
corporate executives
liability 50–51
personal appearance in court 332

Corporate Law Economic Reform Program (CLERP), Australia 641–2
corporate liability
Australia 49–50
civil law experiments with 181–4
common law abandonment of traditional doctrine 173–5
common law adaptations to ensure effectiveness of 178–81
exemptions 595–6
support for and criticism of traditional doctrine 175–8
traditional doctrine 172–3
corporate offenders, ability to pay 334
corporate rehabilitation 319–20
corporate responsibility, effects of mandatory reporting 653–61
corporation laws 641–61
corporations as artificial people 172–3
as economic and social actors 177
orders to establish training courses 344
see also mandatory corporate reporting
“corrective” models of litigation 292–3, 297–8
Council of Elders, Tuvalu 521, 530
Council of Europe, anti-competitive conduct sanctions 184
court action
to assure environmental representation on Federal Advisory Committee Act 136–7
on domestic actions affecting environment abroad 135–6
court jurisdiction, transboundary civil litigation 251
Court of Cassation, France 183–4
“covenant not to sue” 212
credit rating, effect on violations 231, 235–6
crime, victims of 320–21
criminal enforcement
Australia 48–53
US 199–200
criminal intent 174, 175
criminal justice system, sentencing 313–45
criminal law and corporate liability 171–86
criminal liability, corporations 171–86
criminal offence types, Australia 49–51
criminal prosecutions in practice, Australia 53
criminal sanctions, US 178–81
culling activity 47–8
“culpability scores” 180
Cultural Health Index (CHI) 541
Cultural Properties Protection Law, Japan 133–4
Cultural Revolution, China 435
cultural values, indigenous peoples 621–2
custodial sentences 336–8
customary international law 128–9, 505, 508
customary law
conflict of rights issues 543–7
and human rights 536–8
legal recognition of 520–24
recognition in Australian legal system 538–41
see also indigenous customary law
customer service orientation to compliance 394
Customs Recognition Act (2000), Solomon Islands 523
Danish Commerce and Commercial Agency 644
Danube–Black Sea Deep-Water Navigation Canal 96, 100
data analysis, priority-setting 161–2
Declaration on the Human Environment 247
Declaration on the Right to Development 537
Declarations, legal status in international law 504–505
Defenders of Wildlife v. Massey 132
Dempsey v. R. 337
Denmark
corporate law 183
mandatory corporate reporting 644
denunciation 314–16
Department of Environment, Water, Heritage and the Arts, Australia 41–2, 44, 45–6
Department of Environment Affairs and Tourism (DEAT), South Africa 387, 390, 391, 392, 397
approval for civil enforcement 205
civil enforcement reviews 204–205
Environment and Natural Resources Division (ENRD) 200–201, 204, 206, 207, 210, 211, 214, 218
Environmental Defense (EDS) Section 200–201
Environmental Enforcement (EES)
Section 200–201, 209–10
role in civil enforcement 199
Department of Provincial and Local
Government (DPLG), South Africa
387–8
Department of Water Affairs and Forestry
(DWAF), South Africa 265, 272
deterrence 316–18
goals of 178–9
deterrence-based approach, use in African
countries 622
developing countries, right to self-
determination 598–9
Development Facilitation Act (DFA)
(1995), South Africa 264
dicta decidenti 67–9
digital technologies, impact of 209
diplomatic solution, dispute settlement
246–7
Director General (DG), South Africa 390,
392
Director of Public Prosecutions, Australia
49
Directors' Reports 641, 642, 643, 645, 650,
652, 656–7
disincentives 7–9
dispute resolution mechanisms,
international trade and investment 113
dispute resolution procedures 7
dispute resolution techniques 210
dispute resolution, MEAs 9–10
Division of Marine Law Enforcement,
Palau 525
Dja-Odzala-Minkebe, trans-border
conservation zone 507
Doe v. Unocal Corporation 116, 117,
125–6
domestic actions affecting environment
abroad, transparency on 135–6
domestic governments
common law tort actions against 131
demanding transparency from 120–21
domestic law mechanisms
China 370–74
South Africa 259–75
domestic law
extraterritorial application of 130–40
transposition of Aarhus Convention
provisions into 102
domestic MEA enforcement strategies, US
litigation strategies 123–40
litigation strategies to address global
warming 141–2
non-litigation strategies 118–23
non-litigation strategies to address
global warming 142–5
overview of international and regional
strategies 112–18
domestic remedies, role under Aarhus
Convention compliance 92–3
"dualist" approach, incorporation of
international instruments 510–11
dugong 133–4
Earth Charter 62, 293
Earthjustice 83, 121–2, 133
ecological change, drivers of 431–3
ecological civilization, towards as era of
436–8
ecological justice 295, 296
economic benefit disgorgement 208
economic development versus
environmental responsibility 591–2,
594–5, 596–8, 600–601
economic growth, China 371–2, 375,
376–7, 431–3, 607
economic impacts of crime 325–6
economic reform, China 608–609
economic theory of criminal behaviour
317–18
ecosystem approach 547–57
ecosystem services, China 432
Ecuador, human rights violations 117–18
Edwards v. Canada (Minister of
Agriculture) 302
effective compliance and enforcement in
environmental law 380–82
Emergency Planning and Community
Right-to-Know Act (EPCRA), US
198, 217
emissions penalties, EU permit trading
412, 413, 419–20, 421–2
emissions permits
China 376
EU 410
Compliance and Enforcement in Environmental Law

emissions trading
additional provisions by member states 420
control of member states 422–4
current enforcement provisions 409–12
financial penalty 421–2
harmonized approach towards
prescribed penalties 419–20
monitoring provisions 414–16
"naming and shaming" procedure
420–21
verification 416–19
emissions reports, EU emissions trading
411–12, 414–16
emissions, legal instruments to determine
410–12
employee behavior, effects of sanctions
177–8
employer orders, complying with 328
Endangered Species Act (ESA), US 71, 132
energy use, corporations 656
enforceable undertakings, Australia 45–6
England
corporate law 175, 176
custodial sentences 338
ENI Norge, corporate reporting 650
Enlightenment worldviews 433–4
Environment Act (2003), Cook Islands 523
Environment Conservation Act (1989), South Africa 269
Environment Protection Act (1994), Queensland 336
Environment Protection and Biodiversity Conservation Act (1999) (EPBC), Australia
criminal action 48–53
enforcement strategies 43–8
federal compliance and enforcement policy 42–3
referral, assessment and approval process 40–42
Environmental Action Programmes, EU 11
Environmental Action Programmes, EU 11
Environmental Assessment Act, Canada 299
environmental bottom line approach 76–7
environmental compliance and enforcement (ECE) programs
analysis of data sources 161–2
choosing priorities 164–5
consultation 161
definition of priorities 159–61
definition of problems 162
development of intervention strategies 163
establishing performance indicators 162–3
implementation and management of program priorities 165–6
soliciting reaction to candidate problems 164
Environmental Contaminants Act (1978), Papua New Guinea 595
Environmental Courts, proposal for 75–8
environmental crimes and corporate liability
abandonment of traditional doctrine by common law jurisdictions 173–5
adaptations by common law systems for effective organizational criminal liability 178–81
experiments by civil law jurisdictions with organizational criminal liability 181–4
theoretical and empirical support for and criticism of traditional doctrine 175–8
traditional doctrine 172–3
Environmental Crimes Law (1998), Brazil 449, 455
environmental damage, Papua New Guinea 592–3
Environmental Defense Fund v. Massey 132
environmental duties, Uganda
constraints on public interest litigation 585–9
enforcing through public interest litigation 579–84
recommendations 588–90
remedies for enforcing 584–5
environmental education, judiciary 305
environmental ethics 293, 294–5
China 434–6
and civil procedure 294
environmental governance instruments
business case for multiple management
instruments 262–3
South Africa 263–73
US and Germany 273–5
environmental health standards
trade and finance institutions adherence
to 112
undermining by trade and investment
dispute resolution 113
environmental human rights, exercising
112
environmental impact assessment (EIA)
102, 260, 264–6, 271, 272, 322–3,
611–13, 614–15
Environmental Impact Assessment (EIA)
Law (2002), China 441, 611–12,
614–15
environmental impact statements (EISs)
141–2
environmental impacts of crime 325–6
environmental implementation plans
(IMPs), South Africa 391
environmental jurisprudence
Environment Courts and the experience
of New Zealand 75–8
International Tribunal for the Law of the
Sea 67–9
sustainability and the International
Court of Justice 62–7
UN Human Rights Committee and the
European Court of Human Justice
72–5
World Trade Organization 69–72
environmental justice, US civil
enforcement 204
Environmental Law Alliance Worldwide
(F-LAW) 120
environmental law framework, South
Africa 389–93
environmental law, meaning of effective
compliance and enforcement in
380–82
environmental lawyers, China 374
environmental liability, Brazil 451–3
environmental management co-operation
agreements (EMCAs), South Africa
392, 397
environmental management
implementation plans (EMPs), South
Africa 267–71
environmental management inspectors
(EMIs), South Africa 393, 394, 397
environmental management plans (EMPs),
South Africa 391, 397
environmental management systems
(EMS), South Africa 270
environmental non-governmental
organizations (ENGOs), China
440–41
Environmental Offences and Penalties Act
(1989), New South Wales 336
Environmental Planning Act (1978), Papua
New Guinea 595
Environmental Planning and Assessment
Act (1979), New South Wales 323
Environmental Protection Agency (EPA),
US actions against 141
compliance auditing programs 181
Comprehensive Environmental
Response, Compensation, and
Liability Information System 199
enforcement responsibility 198, 213
Headquarters’ Office of Enforcement
and Compliance Assurance
(OECA) 202
Incentives for Self-Policing policy 223
Integrated Data for Enforcement
Analysis (IDEA) system 227–8
National Enforcement Investigations
Center (NEIC) 203, 211
Office of Regulatory Enforcement 202
Office of Site Remediation Enforcement
202
penalty policies 208, 209, 211
priority setting 160, 164–6
referral process 202–204
regional effects on self-reporting 232
Regional Offices 202, 203
sector-based initiatives 217–18
self-reporting 223, 225–6, 227–8, 232
Environmental Protection Bureaus (EPBs),
China 372–3, 439, 440
Compliance and Enforcement in Environmental Law

Environmental Protection Law (1989),
China 252, 369, 435, 438–9, 609, 610, 611
Environmental Protection Law (2000),
Russia 252
environmental qualifications, South Africa 389
Environmental Quality Act, Quebec 304
“environmental responsibility system”,
China 438–9
environmental reviews, US 121
environmental rights, China 438–43
environmental rights, Uganda constraints on public interest litigation 585–9
enforcing through public interest litigation 579–84
recommendations 588–90
remedies for enforcing 584–5
environmental risk assessments, Papua New Guinea 595
environmental service orders 342–3
environmental standards South Africa 268
urging institutions to adhere to 112
environmental trusts, offender payments to 343
environmentalism, co-evolution in China and the world 433–6
EPA v. Coggins (2003) 53
Equator Principles 267
Equatorial Guinea, protected areas 507
erga omnes 67
Espoo Convention on Environmental Impact Assessment in Transboundary Context (Espoo EIA Convention) 84, 87–8
Europe compliance interlinkage 11
corporate liability 181–4
European Commission guidelines on monitoring and reporting of emissions 410–12, 413, 414–16, 417
supervision of member states implementation of directives 422–4
European Convention on Human Rights 74, 75
European Court of Human Rights (ECHR) 422
and sustainable development 61–2, 74–5
European Court of Justice (ECJ) 114, 422–3
European ECO Forum, NGO training role 91–2
European Network for the Implementation and Enforcement of Environmental Law (IMPEL) 11
European Union (EU)
corporate law standards 184
Directive 2003/51/EC 652
directive on emissions trading 408–409, 410–12, 413, 416, 417–19, 420, 421–4
emissions trading 407–26
Environmental Commissioner 143
European Union (EU) member states enforcement tasks 409
permit trading monitoring obligations 420
supervision of implementation of directives 422–4
Exclusive Economic Zones 529
Palau 521
Solomon Islands 524
external costs of crime 324–6
extra curial punishments 333
extraterritorial application, US environmental laws 130–40
fairness, community concept of 315–16
Falekaupule Act (1997), Tuvalu 521, 530
Fauna Conservation Act (1974), Queensland 546
federal administrative enforcement, US 198–9
Federal Advisory Committee Act (FACA), US, environmental representation on 136–7
federal agencies, US 201–202
compliance with Executive Order 12114 121
Federal Audit Court (TCU), Brazil 449–50
federal barriers to compliance, Australia 35–9
federal civil enforcement, US
  civil judicial enforcement process 202–13
  pyramidal structure of 197–202
  state–federal relationship 213–14
  trends and developments in federal enforcement pockets 215–18
Federal Court Act, Canada 299
Federal Court
  Australia 46, 52
  Brazil 452–5, 467, 468
federal criminal enforcement, US 199–200
federal enforcement actors, US 200–202
current priorities and development 218–19
overarching trends 215–18
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), US 198
Federal Public Sector Unpaid Credits (CADIN), Brazil 452, 466
Federal Tort Claims Act, US 131
Fiji, marine environmental compliance 522–3

Filartiga v. Pena-Irala 124, 138
final agency action 140
finance institutions, adherence to environmental and public health standards 112
financial assistance 8
financial assistance orders 344
financial impact, fines 179
financial resources
  Africa 621–2
  environmental control 464–6
  marine resource protection 526
  offenders 333–4
financing mechanisms, forestry
  conservation 507–508, 510, 511
fines 339
  ability to pay 333–4
  effects of 178–81
  EU emissions trading scheme 421–2
  payment by instalments 459, 466
  sufficiency of means of collection 454, 459–61
  totality principle 335
finishes collection, Brazil 449–50
discussions and recommendations 464–9
study methodology 453–5
study results 455–64
Finland, corporate law 184
Finnish Central Forestry Board 73–4
fiscal instruments, South Africa 269, 388–9
Fisheries (Beach Management Unit) Regulations (2005), Kenya 632
Fisheries Act (1988), Samoa 523
Fisheries Act, Fiji 522–3
Fisheries Act, Kenya 631–2
Fishermen’s Protection Act (1967) US, Pelly Amendment 122–3
Five-Year Plans, China 432, 443
Flores v. Southern Peru Copper Corporation 115, 128–9, 138
Fly River Provincial Government, Papua New Guinea 597
Foley/Aramco doctrine 132
follow-up investigation, US referrals 203
Fonds Français pour l’Environnement Mondial (FFEM) 506
Food and Agriculture Organization (FAO) 113
foreign direct investment (FDI), China 431
foreign law, proof of 544
Foreign Sovereign Immunities Act (FSIA), US 137–8
Forest Act (2005), Kenya 624–5, 626, 631
Forest Ecosystems of Central Africa (ECOFAC) 506
forest management, Central Africa
  barriers to implementation of legislation 511–12
  Brazzaville Treaty 508–12
  historical conspectus and biodiversity potentials 501–502
  implementation of Yaoundé Declaration 505–508
  institutional frameworks 506–507
  legal status of Yaoundé Declaration in international law 504–505
  problem of conservation and sustainable management 502
  recommendations 512
  subsidiary legal frameworks 507
Compliance and Enforcement in Environmental Law

Yaoundé Declaration 503–508
Forest Principles 503
forestry legislation, barriers to implementation 511–12
forests see logging; illegal logging
formal enforcement actions, effect on violations 227–8, 232, 234, 235–6
forum non conveniens 129, 139–40
Foxley Engineering Ltd. v. Wellington City Council (1994) 76–7
France
corporate law 183–4
mandatory corporate reporting 644
Fredrick Ssempebwa v. Attorney General 587
Free Trade Agreement of the Americas 120–21
Freedom of Information Act (FOIA), US 116, 120, 135–6
Friends of the Island (1993) 299
Gabon, protected areas 507
Game Reserves, Kenya 627
General Administrative Law Act, Netherlands 416
General Agreement on Trade and Tariffs (GATT) 69–72
general damages claims 628–9
general deterrence 316, 317–18
General Principles of the Civil Law, China 252, 253
genetically modified (GM) products 303–304
Geneva Convention on the Continental Shelf (1958) 63
“genuine interest” requirements 298–9
German Technical Cooperation (GTZ) 506
Germany
corporate law 182
environmental policies 142, 143–4
governance tools 262, 274–5
global environment, birth of 433–4
Global Warming Solutions Act (2006), California 145
global warming, use of litigation and non-litigation methods to address 141–5
globalization, as driver of ecological change 431–3
good behaviour bonds 339
government decision-making, challenges to 131–4
government expenses recovery 208
government mechanisms, marine environmental compliance 524–6
governments
extraterritorial application of US environmental laws 130–40
influence on judiciary 374
Great Barrier Reef, Australia 142
Green Customs Project 14
Green GDP, China 374–7
Green Protocol, Brazil 467
Green Salvation 91
Greenwatch & Advocates Coalition for Development and Environment (ACODE) v. Golf Course Holdings Ltd 584, 587
Guantanamo Bay Naval Base 140
Guanting Reservoir, China 607
guilty pleas 331–2
Gwydir Wetlands 44–5
HAG, corporate reporting 653–5, 658–60, 661
Haitian Centers Council, Inc. v. Sale 140
“hard law” 504–505, 508–509, 526–9
harmonized approach, EU emissions trading scheme 419–20
hazardous materials MEAs 4
compliance interlinkages 17–18, 20–25
hazardous waste compliance, effects of self-reporting 226
Helsinki Rules on the Uses of the Waters of International Rivers (1966) 247–8, 253
heritage impact assessments, South Africa 264–5
High Seas Driftnet Enforcement Act (1997) 70
Hilao v. Estate of Marcos 124, 138, 139
Hirt v. Richardson 140
historic ownership/use rights, Africa 621, 622, 623–8
restitution of 629–30
**Index**

_Hoffman v. Monsanto_ 303–304
holistic approach to ethics 293

_Hollick v. Metropolitan Toronto_ 303–304
homocentric approaches to litigation 292

Hu Jintao 444
Huarcán National Park, Peru 142
human resources, environmental control 454, 457–8, 464–6
human rights
and customary law 536–8
disputes 72–5, 117–18, 123–8
international and regional enforcement strategies 112
linkage with environmental harm 127–9

_Human Rights and Equal Opportunity Commission (HREOC)_ 543
hydroelectric dam projects 37–8, 66–7

illegal logging, Brazil
discussions and recommendations 464–9
environmental liability and institutions responsible for enforcement 451–3
overview of 450–51
study methodology 453–5
study results 344–64
Implementation Committees 6
incapacitation orders 318–19
incentive systems, US 223–4
incentives 7–9
independent verifiers, EU emissions trading 416–19

indigenous action plans (IAPs) 550–54
Indigenous Basin Wide Gathering (2004), Canberra 552–4
indigenous customary law
Australian recognition of native title 541–3
and human rights 536–8
recognition in Australian legal system 538–41
recognition in natural resource management 543–7
water resources and natural resources management 547–67
indigenous peoples
best practice in engagement in resource management 561–5
engaging effectively with 559–60
improving information and awareness 567
reducing socio-economic disadvantage 565–7
respecting and recognising 560–61
individual deterrence 316–17
Indonesia, human rights abuses 127–9
Industry Sector Advisory Committee for Chemical and Allied Products, US 120, 137
Industry Sector Advisory Committee for Lumber and Wood, US 119, 137
Industry Sector Advisory Committee for Paper and Paper Products, US 119, 137
informal enforcement actions, effect on violations 227–8, 232–3, 234, 235–6
information access
Brazil 454, 466–8
China 439–41, 615, 616
US 120–21, 135–6, 461
information cycle, MEAs 7
information-gathering
civil society 120–21, 135–6
US referrals 203
injunctive relief 207, 209–11, 218
inspections
China 616
effect on violations 229, 230, 234, 235–6, 237
EU emissions trading 408, 411, 417–19, 423–4
South Africa 266–7, 272, 393, 394, 397
US 217
institutional frameworks, Yaoundé Declaration 506–507
institutionalisation, co-management 632–3
integrated development plans (IDPs) 385–6, 387, 395–6
_inter partes_ legal principle 67
Inter-American Association for Environmental Defense (AIDA) 120
Inter-American Commission on Human Rights 142
inter-generational equity 294, 321
Intergovernmental Agreement on the Environment (1992), Australia 35–6, 39
intergovernmental co-operative arrangements, Australia 38

interim measures, public interest litigation 584–5

Interim Provisions for Public Participation in Environmental Impact Assessment (2006), China 614

interlocutory injunction test 300–302

internal compliance auditing programs 181

International Association for Tropical Wood (AMBT) 506

international civil law, use in transboundary disputes 246, 251–3

International Conference on Synergies and Coordination (1999) 13


International Court of Environmental Arbitration and Conciliation 114–15

International Court of Justice (ICJ) 114, 142, 146, 246, 504

Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1966) 64–5, 248 and sustainable development 61–7

International Covenant on Civil and Political Rights (1966) (ICCPR) 72–4, 112, 543

International Covenant on Economic, Social and Cultural Rights (ICESCR) 543

International Criminal Court 114, 130

International Dolphin Conservation Act (IDCA) (1997) 70, 131–2, 140

international enforcement strategies, civil society 112–18

International Environmental Court, proposal for 61–2, 78–9

international environmental law enforcement in international tribunals 114–15

enforcement through domestic law mechanisms 115–18

international environmental standards, MEA Secretariat enforcement 113–14

international finance institutions, adherence to environmental and public health standards 112

international forums and sustainable development policy 593–4, 599

international institutional efforts, compliance interlinkages 11–25

International Law Association 253

international law, legal status of Declarations 504–505

International Network for Environmental Compliance and Enforcement (INECE) 381

international trade institutions, adherence to environmental and public health standards 112


International Tribunal for the Law of the Sea (ITLOS) 114 and sustainable development 61–2, 67–9

international tribunals enforcement of MEAs through 114–15

Environment Courts and the experience of New Zealand 75–8

Law of the Sea 67–9 sustainability and the International Court of Justice 62–7

UN Human Rights Committee and the European Court of Human Rights 72–5

World Trade Organization 69–72 intervention strategies, development of 163 investigation costs orders 341 investment dispute resolution mechanisms, undermining of regulations 113

Ireland v. United Kingdom MOX Plant (2001) 68–9

Ireland, environmental policies 144

irremedial harm 326 "irreparable harm" requirement 301–302

Ismail Serugo v. Kampala City Council & AG 581–2

ISO 14001 260, 267, 270, 274, 395, 656, 659

Italy, corporate law 182

Index

Japan, environmental policies 133–4, 144
Jilin Chemical Industrial Company 245
Johannesburg Principles 305
joint civil enforcement, US 213–14
judgment recognition/enforcement, transboundary civil litigation 251–3
judicial access, Australia 46–8
judicial activism, Uganda 586–7
judicial education 305
judicial enforcement barriers, Canada examples of procedural barriers and effects of judicial environmental framework 297–304
importance of environmental ethics and competing frameworks 291–7
importance of procedure 290–91
possible avenues for change 304–305
judicial enforcement mechanisms, Brazzaville Treaty 511–12
judicial environmental framework effects of 297–304
environmental principles 294–5
implementation of 304–305
outline of 295–7
judicial expansion of legislative power, Australia 37–8
judicial interpretation, liability of mines court order 488
evaluation 488–90
facts of the case 484–5
nature of the order 486
resignation of directors 487–8
respondent’s financial status 486–7
unintelligible Directives 485–6
urgency of order 485
judicial problems, China 374
judicial proceedings, Brazil 452–3
criminal settlement proposals 455, 462–4
monitoring compliance 469
procedural route, phases and duration 454–5, 461–2
suggestions for successful enforcement 468–9
jurisdictional limits on sentences 324
justice, citizen access in China 442–3

Kadic v. Karadzic 124–5

Kazakhstan, NGO involvement in compliance 91, 96, 98–9, 102
Kemai & Others v. The Attorney General & Others 626–7
Kemira Chemicals, corporate reporting 653–5, 658–61
Kenya community as an entity for environmental and natural resource management 628–9
community ownership and rights over natural resources 623–8
legal pluralism 620–22
reintegrating communities into natural resource management 629–34
key performance indicators (KPIs) 386–7, 388
King 2 Report, South Africa 272
compliance interlinkages 18–19, 20–25
public reporting involvement 86
ratification of 142, 144

Lacey Act, US 525–6, 528, 530
Lake Bogoria Game Reserve, Kenya 627
“Lake Lanoux” case (1957) 248, 249
Land Act (2000), Uganda 584–5
land-use issues, Australia 37–8, 40, 41, 44–5, 53
Lansman (Jouni) et al v. Finland (1995) 73–4
large companies corporate reporting role of Boards 657–8
role of regulator and other drivers 656–7
value of mandatory reporting requirement 655–6
Law on New Economic Regulations (2003), France 644
Law Reform Commission of Western Australia (LRCWA) 539, 540
laws, conflict of 543–7
Lee v. Fundy 302
legal frameworks, African local governments 383–93
legal instruments, determination of emissions 410–12
legal pluralism 620–22
legal recognition, customary law 520–24
legal solutions, transnational boundary disputes 246, 247–53
legal status
community organizations 633–4
Yaoundé Declaration 504–505
legislation, Papua New Guinea 595–6
legislative frameworks, Central Africa 503–12
legislative implementation power, Australia 36–7
legislative problems, China 373–4, 376
legislative reform, Kenya 631–2
Leighton Holdings, corporate reporting 647
Lend Lease, corporate reporting 647
liability claims, emissions trading verifiers 418
liability exceptions, Papua New Guinea 595–6
Lian Chi Sheng case 526
life cycle assessment (LCA) 260, 265
Limitations Act, Ontario 304
limited corporate criminal liability 182
Lithuania, NGO involvement in compliance 94
litigation considerations, US civil enforcement 208–10
litigation costs, Uganda 587–8
litigation obstacles, US 137–40
litigation reports, US 203–204
litigation strategies, US 123–40
to address global warming 141–2
litigation, Chinese citizens’ rights 609–10
lobbying activities 114, 116, 121–2
Local Agenda 21 380, 382–3, 391, 395–6
local community resource management challenges of institutionalising co-management 632–3
co-management 630–31
community as entity for 628–9
expropriation of community-owned resources 623–5
forms of community organizations 633–4
and legal pluralism 620–22
marginalization of local communities 625–8
Local Environment Committees, Uganda 582–3, 587
local government
environmental conduct in addressing China’s environmental problems 370–72
framework of law in South Africa 384–9
role in implementation of China’s environmental law 372–4
South Africa 379–88
strategies and options in South Africa 393–7
Local Government: Municipal Finance Management Act (2003), South Africa 388–9
logging 73–4, 300–301, 397
see also illegal logging
Mabo v. Queensland (No 2) 541, 545
McArthur Foundation 506
MacMillan Bloedel v. Mullin 300–301, 302
Major Hazardous Installations Regulations, South Africa 265
management performance tools, South Africa 273
management plans, South Africa 267–8
mandatory corporate reporting requirements aims of 644–5
compliance with 645–51
drivers of compliance 656–7
effect on environmental performance 653–61
enforcement of 651–3
regulators as drivers of 656–7, 659–60
role of Boards of Directors 657–8
value of 655–6, 658–9
“manifestly unreasonable” public communications 94
Marabá State, Brazil, Federal Court 453–69
marine environment compliance and enforcement government mechanisms 524–6
Pacific regime 529–31
regional initiatives 526–9
role of Pacific communities 520–24
marine environment MEAs 5
compliance interlinkages 19, 20–25
Marine Environmental Enforcement
Response Team (MEERT), Palau 525, 530–31
Marine Environmental Protection Law (EPL) (1989), China 609
Marine Mammal Protection Act (MMPA) (1972), US 70
maritime boundaries delimitation 63–4
market-based instruments 263, 269, 389, 408, 410
Marx, Karl 433
Massachusetts v. EPA 141
maximum statutory penalties 323–4
mens rea doctrine 175, 327
Mexico v. U.S. Tuna-Dolphin (1991) 70
Millennium Development Goals 548
Millirrpum v. Nabalco 540, 542
Mine Health and Safety Act (1996), South Africa 265–6, 268
Minerals and Petroleum Resources Development Act (MPDRA) (2002), South Africa 264, 267–9, 272
minimum terms and conditions (MTCs) for foreign fishing vessel access, Pacific Islands 525
Mining (Ok Tedi Agreement) Act (1976), Papua New Guinea 595, 598, 599
Mining (Ok Tedi Mine Continuation 9th Supplemental Agreement) Act (2001), Papua New Guinea 599, 600
mining pollution, Papua New Guinea complex citizens’ rights and interests 596–8
economic development versus environmental responsibility 594–5
environmental damage from 592–3
legislation, enforcement and liability exemptions 595–6
right to self-determination 598–9
role of international forums 593–4
mining pollution, South Africa judicial interpretation 484–90
legacy of mining 476
legislative framework 477–84
Ministry of Finance, Norway 652–61
mitigating factors, sentencing 322–35
evaluation 488–90
facts of the case 484–5
nature of the order 486
resignation of directors 487–8
respondent’s financial status 486–7
unintelligible directives 485–6
urgency of order 485
model environmental bylaws, South Africa 392, 397
Model Penal Code, US 175
modernist paradigm 433–4
monetary benefits penalty orders 341
“Monist” approach, incorporation of international legal instruments 510–11
monitoring Brazzaville Treaty 510
EU emissions trading scheme 410–11, 414–16, 418, 423–4
South Africa 271–2
Montreal Protocol on Substances that Deplete the Ozone Layer (1987) (Montreal Protocol) 4
compliance interlinkages 18, 20–25
public reporting involvement 86
morality of retributive responses 314–16
Morauta, Mekere 597, 598
MOX Plant Ireland v. United Kingdom (2001) 68–9
Multi-lateral Environmental Agreement (MEA) Secretariats compliance interlinkages 14–19, 20–25
enforcement of international environmental standards 113–14
Multi-lateral Environmental Agreements (MEAs) Aarhus Convention compliance Committee and public communications 89–94
Australian compliance with 35–55
clusters of 3–5
collaboration, improvement and interpretation in Aarhus compliance process 95–103
communications from the public 84–9
components of compliance mechanisms 5–10
electronic communications
encouraging Secretariats to enforce 113–14
enforcing in tribunals of general jurisdiction 114–15
enforcing through domestic law mechanisms 115–18
exclusion of public from compliance mechanisms 86–9
global warming 142–3
international institutional efforts towards interlinkages in compliance 11–26
and international tribunals 61–79
non-litigation strategies 118–23
overview of public involvement in compliance and enforcement 83–4
US domestic strategies 118–45
multi-media civil enforcement cases 216, 217–18
multinational corporations, extraterritorial application of environmental laws 130–40
multiple policy instruments, South Africa 263–73
municipal taxes, South Africa 388–9
*Mureithi & Others v. The Attorney General and Others* 628
Murray Darling Basin Commission (MDBC) 550–51
Living Murray Initiative 551
Murray Darling Basin Indigenous Action Plan (IAP): action plan 551–2
background 550–52
goals of 559–67
indigenous controlled institutions and research 552–4
Myanmar, human rights abuses 125–6
“naming and shaming”, EU emissions trading scheme 408, 412, 420–21
Nanjing Planning Bureau (NJPB), China 610

**National Association of Professional Environmentalists v. AES Nile Power (Ltd)** 583–4
National Emission Standards for Hazardous Air Pollutants (NESHAP), US 216
National Energy Board, Canada 298–9
National Environment (Wetlands, River Banks and Lake Shores Management) Regulations (2000), Uganda 583
National Environment Act (NEA), Uganda 580, 582–4, 587
National Environment Management Authority (NEMA), Uganda 581, 582–4, 587
“national environment significance” areas, Australia 39
National Environmental Advisory Forum, South Africa 390–91
Protected Areas Act (NEMPAA) (2003) 267, 268, 393
National Environmental Policy Act (NEPA), China 373
National Environmental Policy Act (NEPA), US 115, 132, 141–2
National Forests Act (1998), South Africa 267, 268
National Heritage Resources Act (1999), South Africa 264
National Historic Preservation Act (NHPA), US 133–4
National Interest Analysis, Australia 36
national law, transposition of Aarhus Convention provisions into 102
National Marine Sanctuaries Act, US 210
National Nuclear Regulator Act (1999), South Africa 265
National Oceanic and Atmosphere Administration, US 131–2
National People’s Congress (NPC), China 436–7
Index

Rules for Social Organization (1994) 440–41
National Pollutant Discharge Elimination System (NPDES), US 134–5
National Register of Historic Places, US 133
National Road Traffic Act (1996), South Africa 265
National Veld and Forest Fire Act (1998), South Africa 268
National Water Act (NWA) (1998), South Africa 264, 265, 268, 269
National Water Initiative (NWI), Australia 548–9
Intergovernmental Agreement 552
Native Title Act (1993), Australia 542, 546
native title, Australian recognition of 541–3
natural resource management (NRM)
case studies 550–57, 559–67
community as entity for 628–9
expropriation of community-owned resources 623–5
and legal pluralism 620–22
marginalization of local communities 625–8
recognising indigenous customary law 543–7
reintegrating communities into 629–34
skills development 556, 557–8
and water resources 547–50
natural resources, China 372, 432
nature conservation MEAs 4
compliance interlinkages 14–17, 20–25
nature reserves, Kenya 625, 626–7
NCC Construction Norway AS, corporate reporting 653–5, 656–7, 658, 660, 661
negotiation
MEAs 9
use in transboundary disputes 253–4
US civil judicial enforcement process 205–206
negotiated settlements
compliance with terms of 464
monitoring compliance 469
Netherlands
corporate law 183

and EU emissions trading 413, 415, 416, 418, 419, 420
“new” environmental policy instruments (NEPIs)
acting tools 273
appointment and registration of staff 268–9
business case for multiple management tools 262–3
codes of practice 268
environmental monitoring 271–2
fiscal instruments 269
in Germany and USA 273–5
inspections and auditing 272
management plans 267–8
norms and standards 266–7, 268
planning tools 264–6
relationship tools 270–71
reporting 272–3
in South African legislation 263–75
New South Wales, sentencing regime 313–45
New York Central & Hudson River Railroad v. United States 174–7
New Zealand
custodial sentences 337–8
Environmental Court 75–8
New Zealand Rail Ltd. v. Marlborough District Council 77
Nicaragua, community land restitution 630
Nigeria
greenhouse gas emissions 142
human rights abuses 126–7
Nigeria v. Cameroon (2002) 64
Nieuw Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region (1992) 525, 528
Noise Pollution Control Law (1996), China 611
non-binding legal instruments 504–505, 508–509
non-compliance
communications from public on 83–103
and self-reporting 228, 233–4
non-compliance procedures (NCPs), MEAs 6–7
non-compliance response measures, MEAs 7–9
non-custodial sentences 339
non-financial corporate reporting Norway 652–3
non-governmental organizations (NGOs)
  China 374, 440–41, 608–609
  international and regional enforcement strategies 112–18
  involvement in MEA compliance mechanisms 83–103
  Kenya 633–4
  Papua New Guinea 593
  training 91–2
  US 111–46
Non-Governmental Organizations Registration Act (1990) Kenya 634
non-litigation enforcement strategies, US 118–23
to address global warming 142–5
non-state actors, human rights claims against 124–5, 127
Nordic Convention 134
norms, South Africa 266–7
North America
  compliance interlinkage 11
  customary law 543–4
  see also Canada; United States (US)
North American Agreement on Environmental Cooperation 11
North American Commission on Environmental Cooperation 112
North Shore City v. Auckland Regional Council (Okura) 77–8
Northern Territory Law Reform Committee (NTLRC) 539, 540–41
Northwest Atlantic Fisheries Organization (NAFTO) Regulatory Area 65
Norway, mandatory corporate reporting 643
corporate compliance 648–51
effect on corporate responsibility 653–61
enforcement 652–3
Norwegian Accounting Foundation 643
Norwegian Accounting Standards Board 648
Norwegian Pollution Control Authority 643
nuclear reprocessing plants 68–9
Nuclear Weapons Advisory Opinion (1966) 64–5, 248
observer status 84, 92, 113
offences
control over causes of 328
nature of 322–3
objective gravity of 322, 323
objective harmfulness of 324–6
plea of guilty 331–2
prevalence of 324
reasons for committing 327
surrounding circumstances of 328
timely action to address and rectify 332
voluntary reporting of 332
offenders
assistance to authorities 332–3
financial means 333–4
lack of prior criminality 329
prior good character of 330
state of mind of 327
subjective circumstances of 328–9
Office of the United States Trade Representative 136
Oil Pollution Act (OPA), US 198, 210, 218
Ok Tedi Gold and Copper Mine, Papua New Guinea 591–601
Ominayak v. Canada (1984) 73
Oneryildiz v. Turkey (2004) 74
Open Environmental Information Measures (2008) China 440
Operation Curupira, Brazil 466
Operation Ouro Verde, Brazil 466
operational information 5–6
ordinal proportionality 315
organizational ethos 178
Our Common Future (Bruntland Report) 535, 594
outsourcing management 647
overall judgement approach 76–8
ownership structure, effect on violations 231
Pacific Island Forum Fisheries Agency (FFA) 525–6
Pacific Islands, marine resources
compliance and enforcement
community role 520–24
government mechanisms 524–6
Pacific regime 529–31
regional initiatives 526–9
Palau, marine environmental compliance
520–21, 525, 530–31
Palmer v. Stora Kopparbergs Bergslags
301–302
Papua New Guinea
complex citizens’ rights and interests
596–8
environmental damage 692–3
environmental development versus
environmental responsibility
591–2, 594–5
legislation, enforcement and exemptions
595–6
right to self-determination 598–9
Pará State, Brazil, Federal Courts 450,
453–69
parity principle, sentencing 335
payment of costs, expenses and
compensation orders 341
Pearson v. Inco 303–304
Penal Code, France 183, 184
penalties 8
corporate offenders 178–81
effects of self-reporting 225, 235–6
EU emissions trading scheme 412,
419–22
linking to conservation and reparation
468–9
maximum statutory 323–4
South Africa 396–7
performance indicators 162–3
performance management systems (PMSs)
385–7, 395–6, 397
performance review information, MEAs
5–6
performance standards, South Africa
266–7
Permanent Court of Arbitration 114–15
Permanent Court of International Justice
(PCII) 63
permit numbers, effect on violations 231,
234, 235–6
permit system
resource access 624, 628
see also emissions trading
Peru, environmental pollution 128
petitioning activities 114, 122–3, 142–3
petroleum refining industry 218
Philippines, human rights abuses 124
plan, do, check, act (PDCA) management
cycle 260–73
planning tools, South Africa 264–6
plea negotiation, Brazil 451–2, 461
PNG Sustainable Development Program
Ltd 596
poaching 502, 504
policy frameworks, Central Africa 503–12
“polluter pays principle” 251
Pollution Control Act, Norway 643
pollution prevention, mining industry
judicial interpretation of liability of
mines 484–90
legacy of mining in South Africa 476
legislative framework 477–84
prayer for relief, US 206–207
pre-filing notice and negotiations, US civil
enforcement 205–206
pre-filing process, US civil enforcement
204–206
pre-trial injunctions 291, 295, 300–302
precautionary principle 68–9, 293, 294–5,
296, 300, 548, 657
preliminary injunctions 207
President’s Advisory Committee for Trade
Policy and Negotiations (ACTPN),
US 119
Prevention of Pollution of the South
Pacific Region by Dumping 527
prevention orders 340
primary penalties 339
prior criminality in sentencing 329
prior good character in sentencing 330
priority setting
definition of priority 159–61
evaluating candidate problems and
selecting priorities 162–5
identifying potential priorities 161–2
implementing and managing program
priorities 165–6
private actors, influence of legislative
mandates 177
Compliance and Enforcement in Environmental Law

problem-solving approach 160–67
procedural technicalities, public interest litigation 586–7
procedure, definitions of 290–91
production management, companies 648–9
Promotion of Access to Information Act (2000), South Africa 266
property trusts, corporate reporting 647
proportionality principle 314
prosecution cases, strength of 331
Prosecution Service, Brazil 451, 452–3
prosecution, Chinese citizens’ rights 609–10
Prosecutor v. Furundzija 125
Protected Areas of the Amazon Program (ARPA), Brazil 469
Protected Disclosures Act (2000), South Africa 270
Protection of the Environment Operations Act (1997), New South Wales 323, 327, 328
Protocol on Pollutant Release and Transfer Registers (PRTR) 88–9
Provincial Government, Solomon Islands 524
provincial supervision, local government 384–5
Public Associations Act, Turkmenistan 93, 97–8, 100
public communications and Aarhus Convention Compliance Committee 89–94
advantages 84–5
concerns 85–6
filters for control of 93–4
quality of 91–2
public exclusion from MEA compliance mechanisms 86–9
public health human rights 112
public health regulations, undermining by trade and investment dispute resolution mechanisms 113
public health standards, finance and trade institutions adherence to 112
public interest legal organizations 120–21
public interest litigation (PIL), China 609–10
public interest litigation (PIL), Uganda constraints on 585–8
enforcing environmental rights and duties through 579–84
recommendations 588–90
remedies for enforcing environmental rights and duties 584–5
public international law, use in transboundary disputes 246, 247–50
Public Law 101–102, US 71–2
public notice and comment, civil enforcement 212
public nuisance rule 298–9
Public Participation in Environmental Appraisals Law (2006), China 439–40
Public Participation in Environmental Protection Law (2006), China 439–40
Public Prosecution Service, Brazil 450, 454–5, 461, 462–4, 465–6, 468–9
public verifiers, EU emissions trading 416, 417–18
"public-law" models of litigation 292–3, 300
publication of offences, EU emissions trading scheme 408, 412, 420–21
publication of sentences 318
publication orders 342, 343
punishment process, illegal logging 451–3
pyramidal structure, US civil enforcement key federal actors 200–202
major components of pyramid 197–200
Queensland National Park 53
R v. Barrett 337–8
R v. Conway 338
R v. Doan 324
R v. Houlton 331
R v. Moore 336
R v. Sissen 338
R v. Thomson 331
Rainforest Foundation 660
ratification process, Australia 35–6
ratio decidendi 67–9, 75, 76
referral process
Australia 40–42
US 202–204
regime reviews 6
regional agreements, global warming 143
regional cooperation, marine environmental compliance 525–6
regional enforcement strategies, civil society 112–18
Regional Forest Agreement, Australia 41
Regional Greenhouse Gas Initiative (RGGI), US 143
regional initiatives, marine environmental compliance 526–9
Registration of Titles Act (2000), Uganda 584–5
Regulation Impact Statements, Australia 36
regulators, as drivers of corporate reporting compliance 656–7, 659–60
Regulatory craft: controlling risks, solving problems, and managing compliance (Sparrow) 160–61, 162
regulatory system, integrity of 323
rehabilitation 317, 319–20 goals of 178–81
relationship tools, South Africa 270–71
remediation orders, Australia 52
remediation, mining industry judicial interpretation of liability of mines 484–90
legacy of mining in South Africa 476 legislative framework 477–84
remedies Uganda 584–5 under Aarhus convention compliance 92–3
remorse value of plea of guilty 331
remorse, offenders 332
reoffences likelihood of 319 and past enforcement actions 229–30
reparations 320–21, 326
Brazil 462–4 linking penalties to 468–9
reporting requirements EU emissions trading scheme 411
South Africa 272–3
see also mandatory corporate reporting representative suits 628–9
Republic of Congo, protected areas 507
reputational damage 179, 318
“resolution of claim” provisions 212
Resource Management Act (1991) (RMA), New Zealand 76–8
resource management, corporations 648
respondeat superior doctrine 174–7, 183, 184
Responsible Care® 267
“responsive regulation” 42–3
restoration 320–21, 326
restoration orders, Australia 52
retribution 314–16
revenue problem, China 372–3
rights-based approach, China 439
Rio Declaration on Environment and Development 128, 247, 250, 503, 536, 538
risk assessment (RI) 260, 328
risk of harm forseeability of 327 practical measures to prevent 327–8
River and Harbor Act (1899), US 201
Rosner v. United States 131, 138
Russia ratification of MEAs 250
Songhua River pollution accident 245
Sabella v United States 140
Safe Drinking Water Act (SDWA), US 198
Sagarmatha National Park, Nepal 142
Samoa, marine environmental compliance 523
sanctions EU emissions trading scheme 412, 419–22
Norway 652
US 178–81
Sangha Tri-National (TNS) 507
Compliance and Enforcement in Environmental Law

Santarém State, Brazil, Federal Court 463–69
Savo, corporate reporting 653–5, 658–60, 661
Scandinavia, citizen suit provisions 134
"scientific development doctrine", China 375
Sea Bed Authority 528–9
seal hunts 74
sector-based initiatives, US 217–18
self-auditing 224–5, 226, 227–8
self-determination, developing countries 598–9
self-policing
analysis 232–7
background 223–6
control variables 229–32
dependent variables 227–8
discussion 237–8
measurement of 228–9
sample and study design 227
self-policing violations 226, 232–3
self-regulation 262–3, 270
self-reporting 180, 222, 225–6, 227–8, 232
as mitigating factor 333
Senate, US, Foreign Operations Subcommittee 121–2
sentencing
consistency in 334–5
corporate offenders 178–81
purposes of 314–21
statistics of 335
sentencing considerations 322–35
Sentencing Guidelines for Organizations, US 179–81
sentencing options 51–2, 336–44
settlements
Alien Tort Claims Act 125–6
Brazilian criminal enforcement 462–4
US civil enforcement 210–13
Shen-yang Decree No. 42 614
acquiring environmental information 616
institutional arrangements for public participation 616
obligations concerning release of environmental information 616
terminology 615–16
Shiell v. AECB 299
Shiell v. Amok 298–9
“Significant Impact Guidelines”, Australia 40–41
Singapore, environmental policies 144
skills development, water resource management 555–6
summary of major outcomes 557–67
small companies, corporate reporting role of Boards 660
role of regulators and other drivers 659–60
value of mandatory reporting requirement 658–9
“smart enforcement” 395
social assistance settlements 462–4
social impact assessment (SIA) 260, 264
social impacts of crime 325–6
Societies Act, Kenya 633
socio-economic disadvantage, indigenous peoples 565–7
“soft law” 504–505, 508–509
Solomon Islands, marine environmental compliance 523–4
Sosa v. Alvarez-Machain 125
South Africa
appointment and registration of staff 268–9
codes of practice 268
community land restitution 630
compliance and enforcement and Agenda 21 382–3
environmental framework legislation 479–81
environmental law framework 389–93
environmental monitoring 271–2
fiscal instruments 269
framework of local government law 384–9
inspections and auditing 272
judgment on liability of mines 484–90
legacy of mining 476
legislative framework 477–84
legislative management tools 263–73
management plans 267–8
norms and standards 266–7, 268
novel strategies and options 393–7
planning tools 264–6
relationship tools 270–71
reporting requirements 272–3
South Africa National Standards (SANS) 268
South African Local Government Association (SALGA) 390
sovereign equality principle 63–7
sovereign immunity 137–8
spatial development framework (SDF) 386, 387
“Speaking for Country” concept 547–57
special damages claims 628–9
special economic zones, China 371
special environmental rules 304–305
specific deterrence 316–17
staff appointment/registration, South Africa 268–9
Standard Industrial Classification (SIC) Code 28 223, 227
standard of proof 295
standing 138, 291
Standing Committee on Treaties, Australia 36
standing rules
Canada 297–300
China 373
South Africa 391
standing to sue test 46
state compensation, transboundary disputes 247–50
State Council, China, *Decision Concerning Environmental Protection* (1996) 441
state enforcement, US 197–8
State Environmental Protection Administration (SEPA), China 440, 613, 614–15
*Measures for Environmental Protection Administration Permission* (2004) 441

**Measures for Public Participation in Environmental Impact Assessment** (2006) 441
state ownership of resources, Kenya 623–5
state-based legal system, Kenya 620–22
state–federal relationship, US 213–14
Statoil, corporate reporting 653–5, 656–8, 659
Stilfontein Gold Mining Company 484–90
compliance interlinkages 18, 20–25
Stockholm Declaration (1972) 249, 250, 536
Storebrand, corporate reporting 653–5, 656, 657, 658, 660
strategic impact assessment (SEA) 260, 265
subsidiarity approach, EU 409
subsidiary legal arrangements, Yaoundé Declaration 507
substance, definitions of 290–91
Superfund see Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
supplemental environmental projects (SEPs) 211–12
supply chain management 389, 397, 647, 651, 660–61
Sustainability Self Diagnostic Tools 647
sustainable development
Environmental Courts and experience of New Zealand 75–8
and European Court of Human Rights 74–5
and indigenous peoples 536–8
and International Court of Justice 62–7
and International Tribunal for the Law of the Sea 67–9
and UN Human Rights Committee 72–4
and World Trade Organization 69–72
sustainable environmental flows, essential factors 549–50
sustainable forest management
introduction and background 501–502
policy and legislative frameworks in Central Africa 503–12
problem of 502
recommendations 512
sustainable management, definition of 76
Switzerland, corporate law 182

Taskin and Others v. Turkey (2004) 75
technical assistance 8
technical issues, Brazzaville Treaty 510
technological resources, Africa 621-2
tel-Oren v. Libyan Arab Republic 116
temporary restraining orders 207
Tesco Supermarkets Ltd. v. Nattrass (1972) 50
Texaco 117-18
textual ambiguity, corporate reporting 651-2
time limitations, public interest litigation 585-6
Tinet Forest, Kenya 626-7
Toll Holdings, corporate reporting 651
top-down approach, China 608
tort law 175-7
Torture Victim Prevention Act (TVPA), US 120, 126-7
Total E&P Norge, corporate reporting 650
totality principle, sentencing 335
Toxic Substances Control Act (TSCA), US 198
trade advisory committees 115, 116, 119-20, 135-7
trade agreements 113, 120-21, 136
Trade and Environment Policy Advisory Committee (TEPAC), US 119
trade dispute resolution mechanisms, undermining of regulations 113
trade disputes 69-72
trade embargos 70-72
trade institutions, adherence to environmental and public health standards 112
trade sanctions 122-3
traditional Chinese worldviews 435-6
traditional ecological knowledge 547-57
traditional legal doctrine, corporate liability 171-86
"Trail Smelter" case (1935-1943) 247, 249
training orders 343
Trajano v. Marcos 138

transboundary pollution damage
international civil compensation 251-3
negotiation and consultation 253-4
state compensation 247-50
transboundary resources, Central Africa 501-12

transparency
domestic actions affecting environment abroad 135-6
domestic governments 120-21
environmental agencies 461
Treaties Council, Australia 36
tribal enforcement, US 197-8
"trifurcation" 208-209
triggering event, US referral process 202-203
Trio Holdings v. Marlborough District Council 77
Tuna-Dolphin I Mexico v. U.S. (1991) 70
Tuna-Dolphin II European Community & Netherlands v. U.S. (1994) 70-71
Turkmenistan, non-compliance 93, 96, 97-100
turtle exclusion devices (TEDs) 71-2
Tuvalu, marine environmental compliance 521-2, 530

Uganda
constraints on public interest litigation 585-8
ignorance and poverty 588
lack of interest in litigation 588
recommendations 588-90
remedies for enforcing environmental rights and duties 584-5
Ukraine, NGO involvement in compliance 87-8, 96-7, 98-9, 100, 101-2
ultra vires 173, 174, 177
United Kingdom, (UK), environmental policies 144
United Nations (UN) Organisations, compliance interlinkages 11-14
United Nations Charter 246
United Nations Conference on Environment and Development (UNCED) 608
Forest Principles 536
Index

arbitration procedure 9
compliance interlinkages 19, 20–25
Preamble 67
see also Fish Stocks Agreement; International Tribunal for the Law of the Sea (ITLOS)
United Nations Convention to Combat Desertification, particularly in Africa (1994) (UNCCD) 4, 503
compliance interlinkages 16, 20–25
United Nations Development Programme (UNDP) 12, 506
compliance interlinkages 12
Expert Meeting on Synergies in National Implementation between the Rio Agreements 12
United Nations Environment Program (UNEP) 249, 593
compliance interlinkages 12, 13, 14
United Nations Framework Convention on Climate Change (1992) (UNFCC) 4
compliance interlinkages 18, 20–25
see also Kyoto Protocol
United Nations Human Rights Committee (UNHRC) 112
and sustainable development 61–2, 72–4
United Nations International Law Commission
Millennium Development Goals 548
United Nations Rapporteur on Health 112
United Nations University (UNU), compliance interlinkages 12, 13–14
United States (US)
civil judicial enforcement process 202–13
climate change agreements 143–5
corporate law 173–81
custodial sentences 338
emissions trading system 407, 408–409, 416, 421
Executive Order 12114 115, 121
Executive Order 12988 205–206, 210
extraterritorial application of environmental laws 130–40
federal administrative enforcement 198–9
federal civil judicial enforcement 199
federal criminal enforcement 199–200
governance tools 273–4
key federal actors 200–202
litigation strategies 123–40, 141–2
non-litigation strategies 118–23, 142–3
overview of international and regional enforcement strategies 112–18
pyramidal structure of enforcement 197–202
recent trends in federal enforcement docket 215–19
self-policing 223–38
strategies to address global warming 141–5
United States v. Alisal Water Co. 207
United States v. Massey Energy Co. 219
United States v. Olympic Pipeline Co. 217
United States v. W.W. Grace & Co. 217
Universal Declaration of Human Rights 128
Upper Middle Fly Villages, Papua New Guinea 597, 599, 601
urbanization, China 371–2
US Army Corp of Engineers 198
US Attorney General, role in enforcement 200, 206
US Attorney’s Offices 201, 204
Law Enforcement Coordinating Committees (LECCs) 203

Lee Paddock, Du Qun, Louis J. Kotzé, David L. Markell, Kenneth J. Markowitz and Durwood Zaelke - 9781781000946
Downloaded from Elgar Online at 09/05/2019 04:19:23PM via free access
Compliance and Enforcement in Environmental Law

US Coast Guard 198
US Congress, imposition of environmental standard on appropriations 121–2
US Department of Defense, airbase building project in Okinawa 133–4
US Department of Justice (DoJ) case reviews 204–205
involvement in settlements 210–11, 213–14
litigation considerations 208–209
preparation of briefing packages 205
preparation of referrals 203
US House of Representatives, Foreign Operations Subcommittee 121–2
US Secretary of Commerce 122–3
US Secretary of the Interior 122–3
US Supreme Court, on corporate criminal liability 178
US–Chile Free Trade Agreement 136
utilitarianism 293, 331
value judgements/preferences 294, 303
verification 8
EU emissions trading scheme 411, 412, 416–19, 423–4
victim impact statements 320
victims, restorative justice/reparation 320–21
Vienna Convention for the Protection of the Ozone Layer (1985) (Vienna Convention) 4
compliance interlinkages 18, 20–25

war against terrorism, effects of 116–17
wastewater treatment and collection systems 218–19
Water Act (2002), Kenya 624, 625, 631
Water Pollution Control Law (1984) (WCPL), China 609, 611
Water Pollution Law (2007), China 440
Water Resources Act (1982), Papua New Guinea 595
water resources management 547–50
case studies 550–67
Water Services Act (1997), South Africa 267, 269, 271
water standards, China/Russia 252–3
Waterwatch Kits 555
Wen Jiabao 370
Western Australia v. Ward (2002) 542
Western cultural values 620–21
Wet Tropics World Heritage Area 47–8
Wet Tropics World Heritage Protection and Management Act (1993), Queensland 337
White Paper on Democratic Governance (2005), China 439
White Paper on Renewable Energy, South Africa 269
white-collar crime 317
Wik People v. The State of Queensland & Ors (1996) 535
Wildlife (Conservation and Management) Act, Kenya 625
Wildlife Conservation Society (WCS) 506
Wisconsin Act 276 (2003) 274
Wiwa v. Royal Dutch Shell Petroleum Co. 126–7
World Bank 112, 593
World Commission on Sustainable Development 537
World Conservation Monitoring Centre (WCMC)
compliance interlinkages 12, 13
Feasibility Study for the Information Management Infrastructure (1997) 13
World Customs Organisation (WCO),
compliance interlinkages 12, 14
World Heritage List 133, 142–3
World Heritage Properties Conservation Act (1983), Australia 37–8, 40
World Trade Organization (WTO)
Appellate Body 72
Dispute Settlement Body 71–2
rulings by 142
and sustainable development 61–2, 69–72
Uruguay Round Agreements 123
World Wide Fund for Nature (WWF) 506
Yanner v. Eaton 546
Yaoundé Declaration (1999)  
12 point commitment 503–504
implementation of 505–508
legal status in international law 504–505
Yaoundé Ministerial Declaration on
African Forest Law Enforcement and
Governance (AFLEG) 504
Yaoundé Summit (1999) 503

Yorta Aboriginal Community v. Victoria (2002) 542
Yuan-ming-yuan Park, Beijing 612–13, 614
Zi-jing-shan Mount Scenery Administration Authority (ZIMSAA), China 610