



Essential Readings in Environmental Law
IUCN Academy of Environmental Law (www.iucnael.org)

GLOBAL ENVIRONMENTAL GOVERNANCE
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OVERVIEW OF KEY SCHOLARSHIPS

General introduction to International Environmental Governance

1. Kjellén, B., *A New Diplomacy for Sustainable Development. The Challenge of Global Change*, (New York and London: Routledge, 2008)
2. McDonald, J. W., *The Shifting Grounds of Conflict and Peace Building: Stories and Lessons*, (Lanham: Lexington Books, 2008)

International Institutions for the Environment

3. Lodefalk, M., and L. Whalley, “Reviewing proposals for a World Environmental Organisation”, (2002) 25:5 *The World Economy*, 601-617
4. Biermann, F., and S. Bauer, (eds.), *A World Environment Organization. Solution or Threat to Effective International Environmental Governance?*, (London and Burlington: Ashgate, 2005)
5. Andresen, S., “The effectiveness of UN environmental institutions”, (2007) 7 *International Environmental Agreements: Politics, Law and Economics*, 317-336
6. Ivanova, M., “UNEP in Global Environmental Governance: Design, Leadership, Location”, (2010) 10:1 *Global Environmental Politics*, 30-59
7. Churchill, R. R., and G. Ulfstein, “Autonomous institutional arrangements in multilateral environmental agreements: a little-noticed phenomenon in international law”, (2000) 94 *American Journal of International Law*, 623-659
8. Brunnée, J., “COPing with consent: law-making under multilateral environmental agreements”, (2002) 15 *Leiden Journal of International Law*, 1-52
9. Fitzmaurice, M., “Consent to Be Bound - Anything New under the Sun?”, (2005) *Nordic Journal of International Law*, 483-508
10. von Moltke, K., *On Clustering International Environmental Agreements*, (Winnipeg: International Institute for Sustainable Development, 2001)
11. Treves, T., L. Pineschi, A. Tanzi, C. Pitea, C. Ragni, and F. R. Jacur, (eds.), *Non-compliance Procedures and Mechanisms of International Environmental Agreements*, (The Hague: TMC Asser Press, 2009)

General introduction to International Environmental Governance

The basic works by **P. Sands** and **J. Peel** (*Principles of International Environmental Law*, 3rd ed., Cambridge, Cambridge University Press, 2012) and **D. Bodansky, J. Brunneé and E. Hey** (*The Oxford Handbook of International Environmental Law*, Oxford, Oxford University Press, 2007) provide brilliant and thorough introductions to international environmental law, with a clear view on the evolution of the field over the last 50 years and the emerging of current environmental governance issues. These works provide the reader with a deeper understanding of the legal developments and elements in the debate. Nevertheless, understanding international environmental governance (IEG) requires insight not only in the legal set-up of the governance system, but also in the political quagmires behind the decisions that are eventually adopted. These remain, in many cases, invisible to the outsider. The two selected works below are especially illuminating in this regard. They give the reader a sneak-peek into the inner workings of international conferences and show how certain core decisions in the IEG field have come into being.

The two authors selected for this section, **B. Kjellén's** *A New Diplomacy for Sustainable Development: the Challenge of Global Change* and **W. McDonald's** *The Shifting Grounds of Conflict and Peace Building: Stories and Lessons* have extensive personal experience with international negotiations, and they clearly know the field through and through. These works convincingly show that the personalities of diplomats, internal political strife and (in some cases) pure historical coincidences all have a profound impact on the outcome of international conferences, IEG and the development of environmental law itself.

1. **W. McDonald's** book provides interesting literature in this regard, as it lays bare (amongst others) the real reasons why UNEP's headquarters were eventually awarded to Nairobi (Kenya) by the General Assembly in 1972. This has been the subject of much debate ever since **W. McDonald** explained why the question of its reform keeps coming back in the negotiations today – and keeps failing.
2. Similarly, **B. Kjellén's** book provides a deeper understanding of the inner workings of environmental negotiations, with a deep-felt motivation and passion for governance and sustainable development issues. This book, as well as the one by McDonald, are essential additions to the standard legal works in the environmental field to help legal practitioners look beyond the purely legal processes.

International Institutions for the Environment

Many observers of the IEG system question the effectiveness of the existing institutional arrangements for the environment. Both at the level of international institutional law and international treaty law calls have been made for a profound overhaul of the system as it stands today. At the institutional level, UNEP especially has been challenged: many authors have dismissed the organization as chronically underperforming and have call for

the creation of a World Environment Organization (WEO) or a United Nations Environment Organization (UNEO). Other authors have argued vehemently against what they consider to be institutional tinkering over addressing the real issues of environmental degradation. The debate is arguably as old as UNEP itself. At the Rio+20 Conference the issue came again to the fore—but yet again without demonstrable or tangible results.

3. In their article titled *Reviewing proposals for a World Environmental Organization*, **M. Lodefalck** and **L. Whalley** have bundled and assessed no less than 17 distinct proposals for some form of a World Environment Organization. It makes for sobering reading, as their analysis makes abundantly clear that: a huge number of proposals exist (the article does not describe all existing proposals – that would have been a sheer impossible task); many of these proposals lack detail and essential information needed for policy makers; and none of these proposals has made much headway in terms of being acceptable as an alternative to the present system in the political forum.

4. **F. Biermann** and **S. Bauer**'s book *A World Environment Organization: Solution or Threat to Effective International Environmental Governance* is a must read for anyone wishing to grasp this essential and divisive debate. The book is set up as a debate pro and contra the creation of a WEO, and each side is represented by three authors respectively. While I personally found the contra-side to provide the more robust argumentation, it is an effortless read that will bring the reader up to par with the most commonly heard arguments pro and contra the creation of a World Environment Organization.

5. In further efforts to defog the debate on UNEP, **S. Andresen**, in his research paper *The Effectiveness of UN Environmental Institutions*, analyzes in detail what UNEP has done well (and not so well) in the 40 years since its creation. While the report turns out to be a mixed one, it is also clear that many authors may have been a bit rash in discarding UNEP altogether, and that adding a WEO to the fray may not have the expected results.

6. In a similar vein, **M. Ivanova**'s *UNEP in Global Environmental Governance: Design, Leadership, Location* also calls for a more realistic approach in dealing with UNEP. **Ivanova** investigates the original reasons behind UNEP's creation. It is clear that the debate of today and that of 1972 are very similar in terms of arguments used. If the arguments are the same, why then do we expect a different outcome today?

7. Since the debate for institutional reform has failed so far, some authors have turned to advocating reform from the bottom up - at the treaty level. Also the system of the Conference of the Parties (COPs) of the more than 500 multilateral environmental agreements (MEAs) in force is subject to much debate, albeit one of a more legal nature: what exactly are the competences of the COPs, what is the legal status of their decisions, and how could the COPs

and their decisions contribute to a more effective IEG system? **R. Churchill** and **G. Ulfstein's** *Autonomous institutional arrangements in multilateral environmental agreements: a little-noticed phenomenon in international law* provides an insightful overview of the competences of the COPs, the evolution COPs have been going through, and their growing impact on environmental law-making processes. Their normative powers are thoroughly researched.

8. -9. J. Brunnée's *COPing with Consent: Law-making under Multilateral Environmental Agreements* and **M. Fitzmaurice's** *Consent to Be Bound: Anything New under the Sun* both apply the principles established by **R. Churchill** and **G. Ulfstein** and put the practice of the COPs to the test. Both authors deal in detail with the issue of legally essential elements of the political process of adopting decisions at COP level. One of the cases that are researched in depth concerns the legal consequences of the adoption of the *Cancun Adaptive Framework* under the UNFCCC. This Framework was adopted without consensus (Bolivia vehemently opposed its adoption) and the adoption can therefore, in strict legal terms, be challenged. This is one of the examples where political realities trump legal realities, and both authors provide essential insights into the consequences of these evolutions.

10. The article *On Clustering International Environmental Agreements* by **K. von Moltke** provides essential reading for those readers wanting to grasp the political concept of clustering. Scholarly attention to this topic has been scarce, but, as the experience with the ongoing clustering process between the chemicals treaties shows, the political implications may be huge. Clustering may have a profound impact on future negotiations of new MEAs, collaborative and cooperative efforts between existing conventions, and thus on the overall body of environmental law and policy constituted by these MEAs.

11. Lastly, **Treves et al.'s** book *Non-Compliance Procedures and Mechanisms of International Environmental Agreements* provides an impressive overview of the multitude of compliance procedures to be found in the MEAs. The book is an essential reading for those readers looking for a contemporary expert view on the most prominent forms of normative activity by the COPs.