

Principles of International Environmental Law: an Overview

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INTRODUCTION: A WORD OF CAUTION

A general overview of the principles of international environmental law is best approached with a certain degree of caution. First, international environmental law principles can hardly be dissociated from the politically sensitive and complex issues surrounding the notion of sustainable development. Second, a general approach is at odds with the sheer heterogeneity of the phenomenon of principles.

The current interest in the principles of international environmental law stems to a large extent from a need to define and give content to the notion of sustainable development. Philippe Sands, for example, argues that 'in the absence of clear, substantive obligations such principles can play an important secondary role in the emerging international law of sustainable development'.¹ Thus, a discussion of the status of international environmental law principles entails, directly or indirectly, entering a notoriously controversial and contentious matter: the heart of the North–South divide in the field of international environmental law.²

Caution is also warranted by the difficulty, if not impossibility, of a general definition of the nature, status and role of international environmental law principles. This notion embraces a variety of legal tenets and norms of a differing nature and normative authority. Some are established rules of customary international law, while others are emerging rules. Yet other principles have a lesser normative status. They may be guiding interpretative standards or merely aspirational norms.

It is in this context, and with the benefit of these introductory cautionary remarks, that this article will nevertheless attempt a general discussion of the principles of international environmental law. The following top-

ics will be examined briefly and successively: the 'social' reasons for the profusion of principles in international environmental law; their uncertain legal status; their functions; and the creation and identification of principles.

SOCIAL REASONS FOR PRINCIPLES

The proliferation of principles in the field of international environmental law requires that one first considers the social reasons for this phenomenon; there seem to be three.

The first relates to the need for international environmental regulation to address the social, economic and environmental matters, which are at the root of the global environmental crisis, in an interdependent manner. The complexities of this task suggest that it cannot be achieved by clear and precise legal rules applicable in all circumstances. Rather, it requires general norms, i.e. principles, that may serve as the basis for more specific and differentiated rules in particular legal areas, cases and situations. This is even more so if one considers the potential for environmental regulation to affect economic and social development profoundly, and the correlative difficulty in reaching an agreement on environmental rules between States at widely disparate stages of development and with widely different economic interests. By allowing for a wide range of meanings, principles are more suitable to meet the task than specific and detailed rules.

Thus, it is not surprising that the international law of sustainable development, i.e. the normative body developed for the purpose of integrating environmental protection and socio-economic development, is to a very large extent said to be formed by principles.³ They are, for instance, the principles reflected in the two treaties adopted at the 1992 United Nations Conference on Environment and Development (UNCED), the United Nations Framework Convention on Climate

¹P. Sands, 'International Law in the Field of Sustainable Development: Emerging Legal Principles', in W. Lang, *Sustainable Development in International Law* (Graham Trotman, 1995), 53, at 66.

²Expressing this concern, e.g., H. Mann, 'Comment on the Paper by Philippe Sands', in *ibid.*, 67.

³P. Sands, *n. 1 above*, at 53.

Change (Climate Change Convention) and the Convention on Biological Diversity (Biodiversity Convention).⁴

The speed with which the world's perception of the environmental crisis has developed, and the urgency of the need to find solutions, is the second reason for the profusion of principles. There is an exigency to, as it were, circumvent some of the difficulties involved in treaty negotiation and ratification by encouraging States to agree more speedily on general standards, objectives and principles, while leaving more detailed rules for future development. The flexibility and adaptability of principles inherent in their open-textured nature may make environmental regulation more readily acceptable by States. At the same time, and in spite of leaving considerable room for interpretation and elaboration, principles do prescribe standards or objectives which are expected to be taken into account as international canons of environmental conduct. Principles therefore contribute to facilitating international environmental decision making of a less cumbersome and time-consuming nature without, at the same time, sacrificing the objective of broad State adherence to adequate environmental standards.

This explains why principles are often enshrined in environmental framework conventions. In these instruments, States set up the legal and institutional framework for future action. The only substantive commitments are usually expressed in the form of general obligations concerning such matters as scientific research and exchange of information as well as standards to guide the conduct of the parties to achieve the objectives of the convention. Within the framework thus created, States later develop specific measures and more detailed implementation mechanisms in protocols.⁵

⁴ Article 3 of the Climate Change Convention enshrines the protection of climate for the benefit of present and future generations, the principle of common but differentiated responsibilities and respective capabilities, the related principle of equity, the principle of full consideration to the specific needs and special circumstances of developing country parties, the precautionary principle, the principle of sustainable development and the principle for a supportive and open international economic system. The preamble of this Convention refers to Principle 21 of the Stockholm Declaration (sovereign right of States to exploit natural resources and the responsibility to ensure that the activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction) and the principle of intergenerational equity. Article 3 of the Biodiversity Convention includes the text of Principle 21 of the Declaration as the sole 'Principle'. Other instruments adopted at UNCED are also considered as setting out principles in the field of sustainable development: the Rio Declaration on Environment and Development (Rio Declaration), the Agenda 21 and the Forest Principles.

⁵ Such a Framework Convention/Protocol approach has been used to deal with the problems of depletion of the ozone layer and climate change. The 1985 Vienna Convention for the Protection of the Ozone Layer (the Ozone Layer Framework Convention) establishes a list of general obligations (Article 2). The Climate Change Convention in turn enshrines a number of principles in Article 3. See n. 4 above. Article

The third reason for the proliferation of principles is that they are particularly well suited to face the scientific uncertainty surrounding some environmental problems, as well as the speedy scientific change in which the environmental crisis unfolds. In this context, governments may be reluctant to act while the specific environmental effects of some types of pollution and of the measures adopted to mitigate them are not easy to predict. However, as scientific data are produced or become stronger, enormous strain is placed on the international legal system in order to keep up with new environmental priorities.

Principles adequately operate in the dynamic and evolutionary regulatory regime required to meet these challenges. Existing principles provide a minimum environmental regulation while scientific uncertainty puts off more specific measures. At the same time, the indeterminacy and abstraction of principles makes them particularly responsive to new environmental concerns unearthed by scientific advances. In short, in the absence of more rigidly defined obligations, principles provide a degree of predictability regarding the parameters within which States should address environmental demands.

There are therefore specific features of the international environmental law field that make it a particularly fertile ground for principles. They all suggest that the flexibility and adaptability of principles suit the complexities of international environmental standard setting. It follows that principles serve important functions, and thus have considerable legal significance in the field of international environmental law. This issue, which will be dealt with later in this article, requires a brief preliminary examination of the connected question of the uncertain legal status of principles.

THE UNCERTAIN LEGAL STATUS OF PRINCIPLES

As stated in the introductory section, it is difficult to give a general definition of the legal status of the principles of international environmental law. In addition, the precise legal status of specific principles is also the object of considerable uncertainty and disagreement.

This uncertainty is mostly due to the fact that principles may be drawn from any source of international law, and in particular from soft law documents, the most traditional source of principles. Soft law is itself a multi-faceted and ambiguous phenomenon. It comprises a number of standards adopted by international

2 of the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) also enunciates some principles.

organizations or States that often do not fit neatly into any of the traditional categories of international legal sources.⁶

The reality designated as soft law, its manifestations and legal effects are often difficult to identify with clarity. Prominent examples of reliance on soft law as part of the international environmental law-making process, including the formulation of principles, are the declarations of intergovernmental conferences, such as the 1972 Stockholm Declaration of Principles for the Preservation and Enhancement of the Human Environment (Stockholm Declaration) and the already mentioned Rio Declaration.

Furthermore, uncertainty and disagreement on the legal status of principles is very much part and parcel of their open-textured and general character. The vagueness, indeterminacy and generality of principles may raise doubts around the extent to which they create real obligations. This is another sense in which principles may be regarded as soft law: as a result of vagueness of the language in which the legal demands are couched rather than the non-legal nature of the instrument or form in which they are expressed.⁷ Even when embodied in treaties, some may argue that that they are 'soft' undertakings and thus they cannot be described as creating 'rules' in any meaningful sense. As stated by Alan Boyle:

This view focuses on the contrast between 'rules', involving clear and reasonably specific commitments which are in this sense hard law, and 'principles', which, being more open-textured or general in their content and wording can thus be seen as soft.⁸

Yet, this does not mean that principles have no legal effect. Again, in the words of Alan Boyle principles

... may lack the supposedly harder edge of a 'rule' or an 'obligation', but they are certainly not legally irrelevant. As such they constitute a very important form of law, which may be 'soft', but which should not be confused with 'non-binding' law.⁹

A good example of such principles is those contained in Article 3 of the Climate Change Convention already referred to. Although explicitly included in a major treaty, these principles are not expressed in obligatory terms and their content is considerably unclear and

⁶ P. Birnie and A. Boyle, *International Law and the Environment*, (Clarendon Press, 1992), at 165.

⁷ See on this distinction, e.g., A. Boyle, 'Some Reflections on the Relationship of Treaties and Soft Law', 48 *ICLQ* (1999), 901; O. Elias and C. Lim, "General Principles of Law", "Soft Law" and the Identification of International Law', 28 *Netherlands Yearbook of International Law* (1997), 3, at 45.

⁸ A. Boyle, n. 7 above, at 901–2.

⁹ *Ibid.*, at 907.

imprecise.¹⁰ Thus, they may lack the requisite characteristics of international legal rules proper, but are certainly not devoid of legal significance.¹¹

A further difficulty is the increasing heterogeneity of the concept of customary international law itself. There is growing uncertainty on whether customary international law making is still, if it has ever been, a process characterized by the explicit recognition of 'general practice accepted as law'. In this respect, whether a particular principle of international environmental law is 'hard' enough to be considered a customary norm, even if not necessarily consistently confirmed by actual and unanimous State practice, may be a highly debatable issue.

Thus, a discussion of the legal status of principles is a delicate matter. It entails a consideration of the subtlety of the processes by which contemporary international law may be created. In particular it leads to the thorny issue of whether, in the present times, the phenomenon of international law may be adequately captured by reference only to the orthodox categories of treaty and custom, as well as the nebulous nature of the latter.

FUNCTION, EFFECT AND ROLE OF PRINCIPLES

The difficulties in determining the legal status of principles are not obstacles to attempting to define their legal significance, i.e. their functions, effect or role in international environmental law. Generally speaking, the legal significance of a principle must be considered in the light of the particular activity at issue, the facts and the circumstances of each particular case, the source of the principle and its textual context. In other words, the function of a principle may only become clear in its practical application.

On a more abstract level, however, some scholars have attempted to define the 'consequences [that] flow from the characterisation of a legal obligation as a legal prin-

¹⁰ Article 3 reads, in part, as follows:

Article 3: Principles

In their actions to achieve the objective of the Convention and to implement its provisions, the parties shall be guided, *inter alia*, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations ...
2. The parties should take the precautionary measures ...
3. The parties have a right to, and should, promote sustainable development ...

As is apparent, the use of 'should' and the expression 'shall be guided' and '*inter alia*' qualify the application of the principles.

¹¹ See n. 12–22 below and accompanying text. See also L. Rajamani, 'The Principle of Common but Differentiated Responsibility and the Balance of Commitments under the Climate Regime' in this issue of RECIEL.

ciple'.¹² Philippe Sands, for example, refers to the *Gentini Case* (1903) which provides some guidance. In this case the umpire stated that a 'rule ... is essentially practical and, moreover, binding ... ; there are rules of art as there are rules of government', while a principle 'expresses a general truth, which guides our action, serves as a theoretical basis for the various acts of our life, and the application of which to reality produces a given consequence'.¹³

Similarly, Bin Cheng argues that rules are the 'practical formulation of principles' and the 'application of the principle to the infinitively varying circumstances of practical life aims at bringing about substantive justice in every case'.¹⁴ Along the same lines, Daniel Bodansky sought to rebut the argument put forward by developed countries in the negotiations on the Climate Change Convention to oppose the inclusion of principles in the operational part of the Convention. The US, in particular, maintained that if principles were merely a statement of intentions, they should be included in the Preamble. If they were commitments then they should be designated as such. According to Bodansky, however, the US failed to recognize that principles may:

... serve a third function different from those of either preambles or commitments: unlike preambular paragraphs, principles embody legal standards, but the standards they contain are more general than commitments and do not specify particular actions.¹⁵

He supported this approach, quoting Ronald Dworkin, for whom rules and principles

... point to particular decisions about legal obligation in particular circumstances, but they differ in the character of the direction they give. Rules are applicable in an all-or-nothing fashion ... [A principle] states a reason that argues in one direction, but does not necessitate a particular decision ... All that is meant, when we say that a particular principle is a principle of our law, is that the principle is one which officials must take into account, if it is relevant, as a consideration inclining in one way or another.¹⁶

Therefore principles, like rules, may have international legal significance and normative authority. Unlike rules, however, principles do not directly prescribe conduct, but act as 'reasons' or 'considerations' inclining

¹² P. Sands, n. 1 above, at 54.

¹³ Ibid.

¹⁴ B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Grotius, 1953), at 376, cited in P. Sands, n. 1 above, at 55.

¹⁵ D. Bodansky, 'The United Nations Framework Convention on Climate Change: A Commentary', 18 *Yale J. Int'l L.* (1993), at 501.

¹⁶ R. Dworkin, *Taking Rights Seriously* (Oxford University Press, 1977), at 24 and 26, cited in D. Bodansky, n. 17 above, at 501, and in P. Sands, n. 1 above, at 55.

decision-makers to choose a particular course of action. In the words of Alan Boyle:

Principles do have legal significance in much the same way that Dworkin uses the idea of constitutional principles. They may lay down parameters which affect the way courts decide cases or the way an international institution exercises discretionary powers. They can set limits, or provide guidance, or determine how conflicts between other rules or principles will be resolved.¹⁷

This discussion illustrates the potential role for principles in international environmental law. Whether principles actually fulfil this potential ultimately depends on a combination of factors already referred to at the outset of this section, including the source of principles, their drafting and the factual circumstances of the case.

Principles contained in framework conventions, for example, serve primarily to define parameters for new obligations and to facilitate further negotiations by the parties on more detailed commitments. In so doing, principles facilitate the international law-making process: they allow it to proceed in an incremental manner and amidst disagreement and uncertainty. This is not necessarily restricted to treaty law making. By articulating and giving expression to emerging norms of international environmental law, principles may also play a catalytic role in the customary international law-making process: they may act as magnetic poles attracting and channelling State practice.

Another and very important role of principles is their role in providing guidance for courts and tribunals in the process of interpreting international rules and obligations, environmental or other, and in filling legal gaps. A particular cogent example is the judgment of the International Court of Justice (ICJ) in the 1997 *Gabcíkovo-Nagymaros Case*.¹⁸ There the ICJ relied upon the principle of 'ecological necessity' as a criterion for interpreting and applying the law of State responsibility.¹⁹ The Court also recognized that new environmental norms had developed that were to be given consideration in a State's ongoing or new activities. In this connection the Court invoked the principle, or in the words of the Court 'concept', of sustainable development. Although it did not elaborate on this point, the Court indicated that this principle could have legal significance for the interpretation of existing environmental obligations.²⁰

¹⁷ A. Boyle, n. 7 above, at 907.

¹⁸ ICJ 25 September 1997, *Hungary/Slovakia (Gabcíkovo-Nagymaros Case)*, [1997] ICJ Rep. 3; 37 ILM 162.

¹⁹ The Court ultimately held that the principle did not apply to the instant case. Ibid., at 33–37.

²⁰ Ibid., at 66–67. The Court also referred, directly or indirectly, to the principle of prevention, Principle 21 and the principle of equitable use of natural resources. Ibid., at paras 53, 87 and 140.

This section will not elaborate further on the other possible roles for principles, which surely exist. It is worth mentioning, however, that principles provide 'useful advocacy tools for lawyers and non-lawyer alike'.²¹ Lawyers, politicians, diplomats and the like may resort to principles with a view to supporting their interests or the interests of their clients. In so doing some may try and profit from the nebulous nature and content of principles. Misrepresenting the scope of principles renders disservice to the very cause principles purport to serve and undermines their credibility in carrying out their proper functions. This section thus concludes with an admonition regarding the overstretching of the role of principles:

It is ... important to reiterate the limitations of principles. Properly constructed, they can assist in interpreting obligations, defining parameters for new obligations, and filling legal gaps. They cannot, however, replace or override the critical mass of substantive rights and obligations necessary to give any principles precision and effect, even when the latter fall short of what the principles might appear to require.²²

CREATION AND IDENTIFICATION OF PRINCIPLES

As argued earlier in this article, existing international environmental law principles have been enshrined in a number of international law instruments such as the Stockholm Declaration, the Rio Declaration and various framework conventions. A number of international institutions have also spelled out principles in resolutions or declarations such as the 1978 UNEP Draft Principles of Conduct on Natural Resources Shared by Two or More States (UNEP Draft Principles).²³ Non-governmental organizations have further contributed by adopting influential documents enunciating international environmental law principles.²⁴

The importance of these instruments for the establishment of principles should not be overestimated. They enunciate principles rather than actually create them. What then creates principles? This question does not have an easy answer. It can be observed, however, that repetition is an important factor in this process. The

²¹ H. Mann, n. 2 above, at 70.

²² Ibid., at 71

²³ The full title of this instrument is the 1978 UNEP Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States.

²⁴ See, e.g., the following International Law Association's resolutions: the 1996 Helsinki Rules on the Use of Waters of International Rivers and the 1982 Montreal Rules of International Law Applicable to Trans-frontier Pollution.

international bodies and instruments referred to above should be viewed in this light. Cross-references between documents and institutions, the recalling of principles enshrined in different instruments, the persistent and recurrent invocation of the same standards, the convergence, reiteration and concurrence of resolutions and declarations, all gradually contribute to develop and establish principles.

Whether a particular norm is supported by sufficient consistent reference and practice to be considered a principle may in many cases be debatable. The same applies to the question of whether a given principle reflects a rule of customary international law or only an emerging legal obligation. Therefore further general considerations would not add much to the discussion here. Accordingly, the following paragraphs will refer to the process of creation of specific international environmental law principles; those more frequently endorsed in practice.²⁵

The most important international environmental law principle, commonly endorsed as the basic obligation of traditional international environmental law, is that known as Principle 21 of the Stockholm Declaration. This establishes the sovereign right of States to exploit natural resources, and their correlative responsibility to ensure that the activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond national jurisdiction. The development of this principle, at least in its second element (i.e. the responsibility not to cause harm), can be traced to earlier environmental treaties and to the well-known *Trail Smelter Case*.²⁶ After its enunciation in the 1972 Stockholm Declaration, the principle has been incorporated in other international instruments and has enjoyed wide support in the practice of States and other members of the international community.²⁷ In particular it was enshrined, with slight modifications, in Principle 2 of the Rio Declaration. It is universally agreed that it now reflects a general rule of customary international law.²⁸

In addition to Principle 21, other principles also form the core of the traditional international environmental law and are widely accepted. For example, the principle of preventive action which requires international actors to prioritize action taken at an early stage, preferably before the damage occurs, was endorsed by the Stockholm Declaration, the UNEP Draft Principles, the 1982

²⁵ A good examination of the evolution of international environmental law with a view to identifying the principles emerging at every stage of development is P.-M. Dupuy, 'Où en est le droit international de l'environnement à la fin du siècle?', *RGDIP* (1997), 873.

²⁶ *United States v. Canada*, 3 RIAA (1941), at 1907.

²⁷ See, e.g., P. Sands, *Principles of International Environmental Law*, (Manchester University Press, 1995), at 190–194.

²⁸ See, e.g., ICJ 8 July 1996, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, [1996] ICJ Rep. 226, at 241–242.

World Charter for Nature, and indirectly by the Rio Declaration. It has also been referred to by the ICJ in the *Gabcíkovo-Nagymaros Case*.²⁹

It is worth mentioning also the principle of co-operation, which includes the principle of regular exchange of information and is also referred to as the principle of 'good neighbourliness'. This principle has been reiterated for almost 30 years in many recommendations or resolutions of international organizations, such as the UNEP Draft Principles, UN General Assembly Resolutions and OECD Council Recommendations.³⁰ It is also affirmed in Principle 24 of the Stockholm Declaration and in Principle 27 of the Rio Declaration, and in virtually all bilateral or multi-lateral agreements.³¹

Another principle is the principle of non-discrimination, according to which, States should not substantially differentiate between their own environment and those of other States as regards the elaboration and application of laws. This principle has been introduced quite systematically in OECD Council Recommendations. It can be found also in the 1978 Draft Principles and, most importantly, in Articles 194(4) and 227 of the 1982 United Nations Convention on the Law of the Sea.

The principle of equitable use and concerted management of natural shared resources is also part of the core of accepted environmental principles. The Permanent Court of International Justice formulated this principle in 1929 in relation to the Navigation of the River Oder.³² In respect to watercourses, the principle has been codified in Articles 5 and 6 of the Convention on the Non-navigational Uses of International Watercourses adopted by the General Assembly of the United Nations on 21 May 1997. In the *Gabcíkovo-Nagymaros Case*, the ICJ restated the jurisprudence of its predecessor in the *Oder Case*.³³ The Court mentioned the codification of the principle of equitable use and concerted management to find that the unilateral diversion of the Danube by Slovakia was illegal.³⁴

In addition to these established and accepted first-generation principles, other principles have later emerged in the context of the notion of sustainable development. In many respects the notion of sustainable development can itself be defined as a novel principle of international environmental law in itself. This principle refers to an approach to environmental

²⁹ See n. 18 above.

³⁰ See P.-M. Dupuy, 'Soft Law and the International Law of the Environment', 12 *Mich. J. Int'l L.* (1991), 420, at 425–426.

³¹ P. Sands, n. 27 above, at 197.

³² PCIJ, Decision No. 16, 1929, Series A No. 23, at 27.

³³ See n. 18 above.

³⁴ Ibid.

protection that integrates environmental concerns with socio-economic demands. Sustainable development has been expressly or implicitly referred to in a number of international legal instruments such as the 1987 report of the World Commission for Environment and Development (WCED) entitled 'Our Common Future',³⁵ Article 33 of the 1990 Fourth Lomé Convention and Principle 4 of the Rio Declaration.

Whether or not sustainable development is defined as a principle, its content is to a very large extent described as an aggregation of other principles of international environmental law. These principles are, partly, the same principles already referred to as integrating the core of traditional international environmental law. However, in the global perspective of sustainable development these principles acquire new dimensions and contents. The principle of equitable use of natural resources, for example, is recast as requiring an equitable allocation of responsibilities for environmental protection among States that are at different levels of economic development, have contributed in different degrees to particular problems, and have different environmental and development needs.³⁶

Thus, the content of well-established principles of international environmental law mutates when combined with the emerging principles of the international law of sustainable development. These new principles are the principle of intergenerational equity, the principle of sustainable use, the principle of integration of environmental considerations into economic and development projects,³⁷ the principle of common but differentiated responsibilities³⁸ and the precautionary principle.³⁹

The limited scope of this overview precludes a wider discussion of these issues. Suffice it to say that these principles are at a much earlier stage of development than the first-generation principles referred to above. However, their progress is swift. For example, the precautionary principle, according to which scientific

³⁵ WCED, *Our Common Future* (Oxford University Press, 1987), at 43.

³⁶ See P. Sands, n. 1 above, at 60. Sands argues that this principle 'also plays a role in ensuring that all relevant interests are represented in the participation of States in environmental organisations, that financial and other contributions to activities are made on a "just and equitable" basis, and that the benefits of development are adequately distributed'. *Ibid.*, at 60–61.

³⁷ See F. Mucklow, 'The Integration of Environmental Principles into the World Bank', and M. Unfried, 'The Cardiff Process: the Institutional and Political Challenges of Environmental Integration in the EU' in this issue of *RECIEL*.

³⁸ See L. Rajamani, n. 11 above.

³⁹ See W. Th. Douma, 'The Precautionary Principle in the European Union', and N. de Sadeleer, 'The Enforcement of the Precautionary Principle by German, French and Belgian courts' in this issue of *RECIEL*. Generally on these new principles, P. Sands, n. 1 above, at 58–66.

uncertainty should not put off environmental protection measures, only emerged in the mid-1980s. Since then it has appeared in a considerable number of international instruments: Principle 15 of the Rio Declaration; Article 130(2) (now: 174(2)) of the EC Treaty, introduced by the 1992 Maastricht Treaty; and Article 2(2) of the 1992 OSPAR Convention. Some argue that, in spite of this, its establishment as a true principle of international environmental law is hindered by the fact that it has no univocal meaning. If the observations contained in this article are right, however, this may well play in its favour.

CONCLUSION

Principles carry out an important role in the field of international environmental law. With regard to difficult and complex areas of concern, such as the protection of climate and the ozone layer, international actors are conscious that easy solutions do not exist, and that too rigidly defined obligations would only lead to inefficiency by deterring a significant number of States from undertaking any commitment. Principles do in these cases provide a good compromise between no law and the backlashes of too much law.

The difficulty with principles, and with other recent phenomena developing in international law such as 'soft law', is that they compel a re-evaluation of the international law-making process. In so doing they illustrate the difficulties in explaining international law by referring solely to the classical theory of formal

sources of public international law. They also bring into light the uncertain nature of the customary international law-making process, i.e. the question of how rules of customary international law are formed. It is increasingly argued, for example, that the formation of international custom, or the 'hardening' of 'soft law', may be occurring increasingly rapidly, notably in relation to particularly significant values or 'community interests'.

All this is, of course, intrinsically related with the growing institutionalization of international relations. The development of a ramified network of permanent institutions, both at the universal and regional level, provides ongoing political negotiations and normative processes. To complement this, international non-governmental organizations carry out an increasingly important function by articulating international public opinion often in legal terms. In this context, the amount of international activity potentially setting out patterns of conduct and standards is vast. The formation of norms of international law is no longer only the realm of inter-State diplomacy and State practice. Altogether these developments constitute a particularly fertile ground for principles.

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