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International environmental law has grown from a few bilateral treaties on transboundary water bodies and precious species into a vibrant and dynamic strand of public international law with almost 1,000 instruments. This article reviews its evolution during four phases: a pre-1950 period of sovereignty-based resource agreements and the Trail Smelter Arbitration; a 1950-1972 period of concern with nuclear and marine pollution; a modern period from the 1972 Stockholm Conference reinforced by the 1992 Rio Conference; and a post-Rio period of concern with climate change, biodiversity loss and pollution. It looks at the UN climate regime (Kyoto Protocol and Paris Agreement), the Kunming-Montreal Global Biodiversity Framework, the 2023 BBNJ agreement, current plastics negotiations and the ICJ advisory opinion on states' climate obligations, to update previous accounts through 2025–2026.

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From Trail Smelter to The Hague: The Evolution of International Environmental Law and Its Modern Trajectory



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Abstract

International environmental law has grown from a few bilateral treaties on transboundary water bodies and precious species into a vibrant and dynamic strand of public international law with almost 1,000 instruments. This article reviews its evolution during four phases: a pre-1950 period of sovereignty-based resource agreements and the Trail Smelter Arbitration; a 1950-1972 period of concern with nuclear and marine pollution; a modern period from the 1972 Stockholm Conference reinforced by the 1992 Rio Conference; and a post-Rio period of concern with climate change, biodiversity loss and pollution. It looks at the UN climate regime (Kyoto Protocol and Paris Agreement), the Kunming-Montreal Global Biodiversity Framework, the 2023 BBNJ agreement, current plastics negotiations and the ICJ advisory opinion on states' climate obligations, to update previous accounts through 2025–2026.

Keywords: *International Environmental Law, ICJ, Environment*

Introduction

About 50 years back, international environmental law was an unexperienced field. In 1970, more than three dozen multilateral agreements were written by different international states. Now, the whole international community has moved on toward the development of international law more generally. Almost nine hundred international legal documents addressed the environmental problems or comprise important provisions dealing with them. After 1992, the Rio Conference on Environment and Development, was organized for the addition of environmental and economic concerns and, presently, the interlocking international disasters of environmental change, biodiversity loss, and pollution.

Sovereignty, Boundary Waters, and Shared Resources

In 1900, some multilateral and bilateral agreements were made. These international agreements restored on the principle of uncontrolled national authority on natural resources, And they focused mainly on the use of boundary waters, navigation and fishing rights on common waters - especially on the Rhine and other rivers in Europe. These documents did not reference the pollution or, more broadly, environmental concerns, their purpose was to assign a joint store among the states, not to defend the resource for its own or for the benefit of the community (Weiss, 1992). From this practice, it appears that genuine efforts were made to control the pollution and implement pollution control agreements (Weiss, 1992). This provision, modest as it appears, was a genuine anticipation of the pollution-control agreements that would come to dominate the field decades later, and it introduced into treaty law the notion that a state's use of shared waters could be constrained by its effects on others.

The Protection of Species

States began entering into agreements to protect species of commercial value in the early years of the 20th century. They comprised the Convention for the Protection of Birds Useful to Agriculture, 1902; the Convention for the Protection of Migratory Birds in the United States and Canada, 1916; and the Treaty for the Preservation and Protection of Fur Seals, 1911. The 1900 London Convention for the Protection of Wild Animals, Birds and Fish in Africa was the only convention of the period to deal with wildlife in general (Weiss, 1992). The concept of preservation was almost exclusively economic; of species useful to agriculture or commerce; not of the general ecology or intrinsic nature of nature. By the 1930s and 1940s, however, states had started to appreciate the need for conservation of natural resources more generally. They had entered into several agreements to conserve fauna and flora. These included the Convention on Preservation of Fauna and Flora in their Natural State of 1933 (mainly for African countries) and the Convention on Nature Protection and Wild Life Preservation of 1940 (mainly for the Western hemisphere countries). At the same time, the well-known International Convention for the Regulation of Whaling was concluded by States, as well as other conventions relating to ocean fisheries and birds (Weiss, 1992). The shift from protecting individual valued species to conserving fauna and flora generally marked an early broadening of the field's subject matter that would accelerate dramatically in later decades.

The Trail Smelter Arbitration and the Birth of a Principle

During the first half of the century, there was almost no development or application of customary international rules to environmental concerns. The “classic exception”, and single most important jurisprudential contribution of the era, was the Trail Smelter Arbitration between Canada and the United States. The controversy stemmed from the importation of sulphur dioxide fumes from a copper and zinc smelter in Trail, British Columbia, to the state of Washington, where the fumes caused damage to crops, forests, and property (Weiss, 1992). The Trail Smelter Arbitration is a peculiar case of international environmental adjudication in this early period; it has gained an exceptionally prominent role in the jurisprudence of this field, and its basic principle that 'a state ought not to let its territory be used in such a manner as to cause serious injury to another state' became a cornerstone of customary international environmental law.

60 of 65

The Post-War Period: 1950 to 1972

The time period between 2nd World War and Stockholm Conference of 1972 was formed by the specific threats of the age, the pacific practice of nuclear energy and the increasing danger of marine pollution and by a solid growth of mutual agreements which set the foundation for the current time.

Before 1960s, the international states were worried because of two developing programs of destruction. The 1st was nuclear harm rising from the use of atomic energy by civilians. The 2nd was marine pollution from oil, it encouraged agreements demanding processes to stop oil pollution at sea (Weiss, 1992). These concerns imitated the typical design of the time.

The Modern Era: Stockholm 1972 to Rio 1992

The beginning of modern international environmental law is around 1972, when the international community met for the United Nations Conference on the Human Environment in Stockholm and, as a result, created the United Nations Environment Programme (UNEP). The Conference marked the transition from the reactive, piecemeal agreements of the earlier periods to a self-conscious field with its own institutions, principles, and momentum.

Stockholm and the Founding of UNEP

The legal developments were put on the agenda at the time of the Stockholm Conference. These were also incorporated in the London Ocean Dumping Convention, the World Heritage Convention and the first of UNEP's regional seas conventions (Weiss, 1992) the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Stockholm Declaration also set out the key principles. These principles were also to reaffirm the right of independent states "to attain their own capitals through their environmental

policies and the responsibility to certify that deeds in their power and control do not affect the environment of other states or of areas beyond national areas.

The creation of UNEP gave the field an institutional home. Though modest in resources and lacking the status of a specialised agency, UNEP became a catalyst for treaty-making, a coordinator of the regional seas programme, and a focal point for the emerging environmental agenda within the United Nations system. From this point onward, the pace of instrument-creation accelerated markedly, to the point that the field's principal concern shifted from the negotiation of individual agreements to the coordination of their negotiation and implementation their administrative, monitoring, and financial provisions (Weiss, [1992](#)).

The Changing Themes and Focus of Agreements

By the end of this period, the topics of international environmental agreements were quite different from those of the first half of this century, which mostly involved the protection of particularly valued animal species, fishing rights, and boundary rivers. The new accords aimed to regulate pollution in all environmental media, preserve habitats, protect the global commons (such as the high-level ozone layer), and protect resources within state boundaries but of interest to the international community as a whole (Weiss, [1992](#)). This growth was rapid between 1985 and 1992, on the pretext of certain justifications. During these years, several international agreements were entered into, including the Vienna Convention for the Protection of the Ozone Layer, 1985; the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987; and the London Adjustments, which tightened the controls of the Montreal Protocol, 1987 (Weiss, [1992](#)). Other instruments of the time opened the playing field to other areas.

Regarding nature conservation, “agreements” facilitated the protection of ecosystems and the regulation of traffic in endangered species. In 1991, the Bamako Convention, which was a result of a process that began in 1986, prohibited the import of hazardous wastes into Africa, and created a strict regime for transshipments of such wastes between different countries in Africa. And in Europe, the Single European Act provided clear mandate for the European Community to take action on environmental and natural resource matters; the Community adopted many directives and regulations to control pollution and protect the environment; the European Court of Justice took an important role on ensuring consistency of the national measures with the Community directives; and a new European Environment Agency was created in the institutional framework of the European Community (Weiss, [1992](#)). Regionalisation of environmental legislation, exemplified by the European experience, would become a defining feature of the field.

The ozone regime warrants particular emphasis, for it supplied the template that the climate and biodiversity regimes would later adopt, its framework and protocol structure divided the common assurance embodied in the Vienna Convention from the specific, calculated controls established in the Montreal Protocol, letting the functional and practical responsibilities. This procedure allowed the parties to speed up the plans by competent majority, evading the paralysis of unanimity.

Rio and the Turn to Sustainable Development

The Rio Declaration reformulated the Stockholm principles for an era increasingly conscious of the development concerns of the global South, And it set the idea of 'sustainable development' (famously defined by the World Commission on Environment and Development (WCED) as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’) at the centre of the field. The precautionary principle, the polluter-pays principle, the principle of common but differentiated responsibilities and the requirement of environmental impact assessment were also introduced or consolidated in Rio, and would shape the future of law.

Rio was as significant for the instruments it launched as for the principles it articulated. The Conference opened for signature the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, adopted the non-binding but influential Forest Principles and Agenda 21, and set in train the negotiation of what would become the Convention to Combat Desertification (Weiss, [1992](#)).

The Climate Regime: From Framework Convention to Paris

After Rio conference, all the developments and progress raised as more significant than the global climate change time period. The evolution from a framework convention and common principles to the obligatory, collective, and progressively justiciable design is the central story of international environmental law in the post Rio period.

The Framework Convention and the Kyoto Protocol

The Convention of UN Framework on Climate Change (UNFCCC), unlocked for signature at Rio in 1992, recognized the purpose of calming greenhouse gas attentions at a level which would stop the dangerous anthropogenic intervention with environment. On the model of the ozone era, the UNFCCC established a framework of rules and organizations with the annual Conference of the Parties, though separating the requirement of required assurances to the following protocols. This principle separated parties into Annex I countries, normally the advanced and developed states, and non-Annex I countries, generally the developing states, embedding the principle of common but differentiated responsibilities into the regime's architecture (DLA Piper, [2025](#)).

The architecture proved fragile of protocol and its bifurcation between developed and developing countries grew increasingly contentious as the emissions of large developing economies rose, its most significant emitter among developed states declined to ratify, and its coverage of global emissions steadily shrank. By the early 2010s it was clear that the Kyoto model of top-down, differentiated, binding targets could not command the universal participation that effective climate action required.

The lesson drawn from Kyoto's difficulties was that the pursuit of binding, internationally negotiated targets had come at the price of participation, and that a regime covering only a diminishing fraction of global emissions could not achieve the Framework Convention's objective however stringent its commitments. The abortive attempt at Copenhagen in 2009 to negotiate a successor on the Kyoto model confirmed the impasse. The path out of it, developed over the following years, was to invert the logic of the regime: to secure participation first, by allowing each state to determine its own contribution, and to build ambition afterward, through procedural obligations of transparency, review, and progression.

62 of 65

The Paris Agreement

The Paris Agreement, approved in 2015, addressed the twin concerns of finance and of loss and damage. On finance, developed countries undertook to provide resources to assist developing countries with mitigation and adaptation. On loss and damage the harm that adaptation cannot prevent the regime moved slowly but significantly: the establishment of a dedicated fund was agreed at COP27 in Sharm el-Sheikh in 2022 and formally operationalised the following year (Bodansky, [2025](#)). These developments reflected the regime's gradual accommodation of the demands of climate-vulnerable states, for whom mitigation alone offered no answer to harms already unfolding.

Recent Conferences and the Question of Ambition

The years since Paris have been dominated by the struggle to raise ambition to the level that the temperature goals require. Parties acknowledged that the impacts of climate change will be significantly lower at 1.5°C than at 2°C, and committed to work towards limiting warming to 1.5°C at COP26 in Glasgow in 2021 and took an unprecedented (albeit qualified) step towards decarbonisation at COP28 in Dubai in 2023, when parties committed to providing economy-wide emissions reduction targets aligned with the 1.5°C limit (DLA Piper, [2025](#)). The COP29 in Baku, Azerbaijan, in 2024 focused on finance, with a new collective quantified goal for climate finance being agreed: USD 300 billion annually by 2035 for developing countries; USD 1.3 trillion annually from public and private sources (Bodansky, [2025](#)).

The BBNJ Agreement and the Protection of the High Seas

The Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, also known as the 'BBNJ Agreement' or 'High Seas Treaty', is the latest international climate change agreement, adopted by United Nations member states in June 2023 as an implementing

agreement under the United Nations Convention on the Law of the Sea (Freestone & Barnes, [2024](#)). The Agreement addresses four key issues: marine genetic resources and benefit-sharing; area-based management tools (such as MPAs); environmental impact assessment; and capacity building and transfer of marine technology. Its provision for the establishment of marine protected areas in areas beyond national jurisdiction is crucial to achieving the KM-GBF's 30x30 objective, which cannot be met without protecting large expanses of the high seas (Freestone & Barnes, [2024](#)).

The Agreement's progress toward entry into force has been notably swift. Opened for signature in September 2023, it was first ratified by Palau in January 2024, and it reached the sixty ratifications required for entry into force in September 2025, with entry into force following in early 2026 and the first Conference of the Parties expected toward the end of that year (High Seas Alliance, [2026](#)). The comparison of twelve years highlighted that the earlier Convention on the Law of Sea entered into force after its acceptance.

Pollution, Chemicals, and the Unfinished Plastics Treaty

The linked crises around which current environmental law is scheduled is pollution, and the control of chemicals and waste. The distinguished achievements and a visible failure were resulted from this practice, the achievements are significant. These tools have developed more rigorous with the time by controlling the new materials and consolidating the instruments for financial and technical support. A full life-cycle approach covering chemicals of concern, how binding its rules should be, and how developing countries would be supported to implement them (IISD, [2026](#)).

Environment and Trade: The Enduring Linkage

As has been shown in recent years, there is a combination between environmental protection and financial development that may affect the states' economies, as stated by the Rio Conference. International environmental law is fragmented and lacks a unified, broad framework like the General Agreement on Tariffs and Trade (GATT) or, since 1995, the World Trade Organisation (WTO). In the early years, it was natural that environment and trade issues were only marginalised in function of the trade context (Weiss, [1992](#)). In this situation, it runs in two ways and both effect to each other i.e., trade affects environment and environment affects to trade (Weiss, [1992](#)). Environmental policies and movements can confine trade through adoption of different steps which can be helpful for hazardous wastes it must be necessary that both are treated as important and essential components of sustainable development (Weiss, [1992](#)).

The Judicialisation of Environmental Obligations

This is a fact that since Paris Agreement, the progress of international environmental law has been its judicialisation, the increasing alternative to international courts and tribunals for clarifying and enforcement for the states' environmental responsibilities. This system also reports the weakness of the field, the gap between the propagation of commitments and the efficacy of implementation, which was concluded in 2025 in a revolutionary opinion of the International Court of Justice.

The Road to The Hague

The movement gained momentum internationally, with a succession of requests for advisory opinions. In May 2024, the International Tribunal for the Law of the Sea (ITLOS) issued an advisory opinion on the responsibilities of States regarding greenhouse-gas emissions. This was followed by an advisory opinion by the Inter-American Court of Human Rights (IACHR) on the human rights aspects of the climate crisis in July 2025 (House of Commons Library, [2026](#)). The initiative to seek an opinion from the ICJ actually had its roots in the Pacific in a group of law students, and was later promoted by a coalition of climate-vulnerable states, who in March 2023 had the United Nations General Assembly adopt a resolution requesting the ICJ's opinion on the obligations of States concerning climate change (Bodansky, [2025](#)).

The 2025 Advisory Opinion

On 23 July 2025, the International Court of Justice (ICJ) gave its advisory opinion at the Peace Palace in The Hague, which has been considered the most important step in international climate law since the Paris

Agreement (Sands, [2025](#)). The Court labelled climate change as an "urgent and existential threat" and referenced the reports of the Intergovernmental Panel on Climate Change as the best available science (House of Commons Library, [2026](#)). The opinion's holdings were wide-ranging. The Court determined that states have binding obligations to take steps to prevent climate damage, not just under the climate treaties but also under customary international law and other existing rules, such as the law of the sea and international human-rights law. It also believed that the Paris Agreement establishes legally binding and enforceable obligations, and that COP decisions can be legally binding (House of Commons Library, [2026](#)). It concluded that the 1.5°C target serves as a guiding standard of the Paris Agreement and that all countries, especially the major emitters, need to do more in mitigation under the best available science. The Court determined that countries that have fallen short of their obligations under the Paris Agreement continue to have an ongoing obligation to meet the Paris Agreement, including by making increasingly ambitious nationally determined contributions (IISD, [2025](#)). The Court also determined that the negative impacts of climate change could heavily restrict the enjoyment of human rights, such as rights to life, health, adequate standard of living, and healthy environment, as well as rights of women, children, and Indigenous peoples and that, because of this, the absence of adequate adaptation measures could breach States' human rights obligations (IISD, [2025](#)). And it recognised that those harmed by climate change may in principle be entitled to reparation, opening the prospect of accountability for breach (Carbon Brief, [2025](#)). Although advisory opinions are formally non-binding, the opinion's authoritative statement of existing law is expected to shape national climate policies, to inform the interpretation of the climate treaties, and to open new pathways for litigation before international and domestic courts alike (House of Commons Library, [2026](#)).

The Significance of the Turn

The judicialisation of environmental obligations addresses the structural deficiency that has limited the field throughout its history.

This article recognized and highlighted the gap which is the main hurdle in implementation of these laws and State make commitments of binding international law and affirming the availability of remedies for their breach, the 2025 opinion supplies a source of legal pressure independent of the negotiated regimes themselves.

64 of 65

Analysis and Conclusion

This article concludes with two point of views and concerns. The 1st concerns is the trajectory of the field and 2nd one is continuing challenges of field. The first one is responsible for the agreements, especially successful agreements and second one is responsible for International environmental laws implementation and the problems suffered by the states at different forums. International Court of Justice have introduced strict policies for the member states as well as for non- member states to take steps from causing any harm and to take protective measures for future. This task that remains is the oldest one, to ensure that the law, having been made, is kept.

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