This book, the first in a new series that focuses on treaty implementation for sustainable development, examines key legal aspects of implementing the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (CBD) at national and international levels. The book provides a serious contribution to the current legal and political academic debates on biosafety by discussing key issues under the Cartagena Protocol on Biosafety that affect the further design of national and international law on biosafety and analysing recent progress in development of domestic regulatory regimes for biosafety. This text also examines the legal, political, economic, and practical challenges and solutions encountered in recent efforts to develop and implement domestic biosafety regulations, with a focus on developing countries.

Coming after the fifth Conference of the Parties serving as the meeting of the Parties (COP-MOP) to the Cartagena Protocol on Biosafety (COP-MOP 5), where the Parties adopted a new Nagoya – Kuala Lumpur Protocol on Liability and Redress, this timely book examines recent developments in biosafety law and policy.

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TREATY IMPLEMENTATION FOR SUSTAINABLE DEVELOPMENT

Over the past three decades, a series of international treaties have entered into force to address pressing global concerns – social and economic development and environmental protection. On climate change, biodiversity and biosafety, desertification, agriculture and seeds, and trade and investment liberalisation, new regimes have been established to implement global commitments related to sustainable development, many with nearly universal membership.

Successful domestic implementation of these international treaty regimes is one of the most significant challenges facing international law today. Although much has been written on the content and form of treaty law, there is relatively little that examines the transition from international legal theory and treaty texts to domestic regulation and practice.

This series of books addresses this need and provides a serious contribution to ongoing global debates by conducting a detailed analysis of how myriad new treaty regimes that cover the future’s most pressing concerns can be made to work in practice. It is dedicated to our mentor and first Chairman of the Board of Governors of the Centre for International Sustainable Development Law (CISDL), The Honourable Mr. Justice Charles Doherty, Puisne judge on the Supreme Court of Canada from February 1, 1989, to August 1, 2003.

Series Editors:
Marie-Claire Cordonier Segger
Markus Wilheim Gehring
Legal Aspects of Implementing the Cartagena Protocol on Biosafety

Edited by

MARIE-CLAIRE CORDONIER SEGGER
FREDERIC PERRON-WELCH
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Centre for International Sustainable Development Law
International Development Law Organisation
Lauterpacht Centre for International Law
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Prior to joining the Secretariat in February 2001, he worked for 12 years on environment and development issues at different government positions in his native country, Ethiopia. He was the head of Policy and Legislation Department at the Environmental Protection Agency of Ethiopia. He was once the Director of Ethiopian Conservation Strategy Initiative, which resulted in the development and adoption of the Environmental Policy of Ethiopia. He coordinated the drafting of the basic environmental laws of Ethiopia, which were passed by the government in 2002. He was a member and a legal advisor of the Ethiopian delegation in a number of international environmental negotiations, including the negotiations for the Cartagena Protocol on Biosafety and the International Treaty on Plant Genetic Resources for Food and Agriculture. Mr. Yifru holds a master’s degree (LL.M.) in Environmental Law from the London School of Economics and Political Science (1995) and a bachelor’s degree in law (LL.B.) from the Law Faculty of Addis Ababa University (1988).

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With regard to genetic resource issues, she has participated in negotiation of international and regional agreements and prepared advisory white papers on all sides of the issues, including the application of biodiversity, sustainable development, environmental protection, commercial, resource development and conservation, and coastal zone management law in the context of LMOs and genetic resources for the United Nations. She has been named by the Global Environment Facility as the legal expert on the international expert team tapped to perform the external evaluation of UNEP-GEF’s implementation of the Cartagena Protocol and has led an international expert team tasked by the UN Food and Agriculture Organisation to undertake the external evaluation of international instruments and processes within FAO's mandate. Ms. Young also serves as Editor of Environmental Policy and Law (IOS Press) and has served as an adjunct professor in several contexts, including at the University of San Francisco School of Law. She is a graduate of Hastings College of the Law (1981) and the University of Southern California (1978). At Hastings, she served as an editor of the Hastings International and Comparative Law Review.
Foreword

Emerging from the outcomes of the 1992 United Nations Conference on Environment and Development, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity and its Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress respond to the realities of biotechnology development across the world. Advancements in biotechnology continue to push the boundaries of science in search of solutions to global problems and there is no question that the application of biotechnology continues to gain ground worldwide. Nonetheless, this field is relatively new, and questions remain about the short- and long-term biological and social effects of living modified organisms. Countries, concerned about their ability to manage these risks in a world of increasingly liberalized trade, negotiated the Cartagena Protocol and the Nagoya – Kuala Lumpur Supplementary Protocol to enable more sovereign control over the use of biotechnology.

The Cartagena Protocol and the Nagoya – Kuala Lumpur Supplementary Protocol are important instruments for implementing the Convention. They establish how Parties can regulate, manage, and control risks associated with the transfer, handling, and use of living modified organisms that may have adverse effects on the conservation and sustainable use of biodiversity, thus contributing to the first two objectives of the Convention.

Sound implementation of the Protocols encourages both sustainable development and the careful use of biotechnology. It does this by not only empowering Parties to exercise precaution in the regulation of living modified organisms, but also by requiring a higher level of transparency in the production and movement of such organisms.

Implementation of the Protocols is a continuing process and, in many cases, a challenge. The development of appropriate laws and administrative measures is ongoing for many countries. For implementation to be successful, stakeholders and participants at all levels need to share their knowledge and experiences in a spirit of co-operation, engagement, and innovation. This book makes an important
contribution to such a dialogue. By bringing together authors with a variety of views, this book explores the range of issues and perspectives that need to be considered in the implementation of the Cartagena Protocol.

The insights of experts who contributed to this book will serve as valuable tools for governments, researchers, and lawmakers everywhere, all of whom play important roles in building the capacity of Parties to implement the sustainable development commitments imbedded in the Cartagena Protocol and the Nagoya – Kuala Lumpur Supplementary Protocol.

This book is a valuable contribution to the body of shared knowledge, and crucial debates, on biosafety.

Braulio Ferreira de Souza Dias
UN Executive Secretary of the Secretariat of the Convention on Biological Diversity
September 2012
Emerging from the outcomes of the 1992 United Nations Conference on Environment and Development, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity was adopted by the Conference of the Parties to the Convention on 29 January 2000. The Protocol has its roots in Article 19.3 of the Convention, which obliged Parties to consider the need for and modalities of a protocol setting out appropriate procedures for the safe handling and use of living modified organisms (LMOs) that may have an adverse effect on biodiversity. It entered into force on 11 September 2003 and currently has 163 Parties. On 15 October 2010 at the Fifth Conference of the Parties serving as the meeting of the Parties to the Protocol in 2010, the Parties adopted the Nagoya – Kuala Lumpur Supplementary Protocol to the Cartagena Protocol on Biosafety. The Supplementary Protocol was opened for signature on 7 March 2011 and will enter into force ninety days after the deposit of the 40th instrument of ratification, acceptance, approval, or accession.

These Protocols respond to the reality of biotechnology development across the world. Some of these technologies promise to address malnutrition or other medical problems, or to overcome the challenges of conventional agriculture. There is no question that they are gaining ground worldwide. Nonetheless, these technologies are relatively new, and questions remain about their short- and long-term biological and social effects. Parties to the Convention, concerned about their ability to manage these risks in a world of increasingly liberalized trade, negotiated the Cartagena Protocol and Nagoya – Kuala Lumpur Supplementary Protocol to enable more sovereign control over the sustainable use of biotechnology. The Cartagena Protocol and Nagoya – Kuala Lumpur Supplementary Protocol are important tools for implementing the Convention. They establish how Parties can regulate, manage, and control risks associated with the transfer, handling, and use of LMOs that may have adverse effects on the conservation and sustainable use of biodiversity – the first two objectives of the Convention.
Sound implementation of the Protocols encourages both sustainable development and the careful use of biotechnology. It does this by not only by empowering Parties to exercise precaution in the regulation of such technologies within their borders, but also, as a consequence, by requiring a higher level of transparency in the production and movement of the products of biotechnology.

Implementation will be an on-going process that requires the development of appropriate laws and administrative measures. Many Parties, especially developing countries, have faced challenges in implementing the full scope of their commitments. The UNEP-GEF Biosafety Project has helped countries develop national biosafety frameworks (NBFs). Many of the authors in this book participated in the project in various capacities and have used this opportunity to share their experiences in the national implementation of the Protocol.

These legal expert authors’ insights will serve as valuable tools for government departments, experts, researchers, and lawmakers everywhere, all of whom play important roles in building the capacity of all Parties to implement the sustainable development commitments in this important Convention and its Protocols effectively. For this process to be successful, stakeholders and participants at all levels need to share their knowledge and experiences in a spirit of co-operation, engagement, and innovation. This book is a valuable contribution to that body of shared knowledge, and these crucial debates.
Dedication and Acknowledgements

This is the first book in a new series of volumes that focuses on the implementation of international treaty commitments on sustainable development, edited by Marie-Claire Cordonier Segger and Markus Wilhelm Gehring, and published by Cambridge University Press. The editors respectfully dedicate this series to the memory of the Honourable Justice Charles Doherty Gonthier, who served for many years on the Supreme Court of Canada and was the founding Chairman of the Board of Governors of the Centre for International Sustainable Development Law (CISDL).

We would like to express our gratitude to those who contributed in the legal experiences and practice, collaborative research, drafting, and editing that were essential tasks to the preparation of this volume. First, we are deeply indebted to every contributor for taking the time to share their expertise and knowledge. We also sincerely thank the dedicated and experienced senior government officials from more than 80 countries, the United Nations Environment Programme (UNEP), and the Global Environment Fund (GEF) for their collaboration on the National Biosafety Framework Development Project for the reviews of National Biosafety Frameworks between 2002 and 2008.

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Dedication and Acknowledgements

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