

## Index

*Note*: This index concentrates on legal issues as decided by the relevant judicial or quasi-judicial body. Facts, summaries (except where they are the only record) and parties' arguments are very lightly indexed, concentrating on points necessary to an understanding of the legal argument. Material relating to treaties and treaty interpretation is usually indexed by concept. For entries by article, readers should consult the Table of Treaties.

```
Acheloos River, diversion of waters 233-5
                                                         Antarctica as sovereignless continent 522-4
  environmental impact assessment, need for
                                                         domestic law, conflict 517-18, 524
         comprehensive 231, 234-5
                                                         entry into force (as of May 2000 not in force),
  risks to natural environment in affected area
                                                                relevance 517-18, 524
         230-1, 233-4
                                                         environmental impact assessment
     multiplier effect 234
                                                           activities having minor or transitory impact
  Wetlands of International Importance
         Especially as Waterfowl Habitat, Ramsar
                                                           compatibility with domestic requirements
         Convention for the Protection of (1971)
                                                                517-18, 524
         and 230-1, 233
                                                           cooperation with other States in Antarctica,
acquired rights
                                                                risk to 518, 524-5
                                                         US environmental legislation, application to
  licence as possession under European
         Convention on Human Rights (1950)
                                                                Antarctica 514-27
         477, 480, 489-91
                                                         waste disposal 514-27
  repeal of legislation, effect 315
                                                      applicable law
Agenda 21 (1993) 272, 275-6
                                                         Atuel River (Argentina) 2, 11
                                                         federal States 2, 11
Ainu people
  as indigenous people 297-8, 301-2
                                                         international watercourses 11, 211, 212-13, 214,
  irreversibility of damage 298
  Japanese policy towards 302-3, 305-6
                                                           choice of law by parties 342-3
  as minority people 296–7, 299
                                                           customary international law 341, 342-3
  right to enjoy culture 297, 299-302, 304-6
                                                           domestic law of forum 341, 342-3
  See also Japan; Saru River, impact of dam
                                                         municipal authorities 118
         projects on indigenous people
                                                      arbitrary act 134, 138
aliens
                                                      Argentina
  right to seek remedy/participate in consultative
                                                         applicable law, inter-provincial disputes 2, 11
         process 211, 212, 214, 221
                                                         Atuel River. See Atuel River (Argentina)
     territorial sovereignty and 224
                                                         Constitution 1860
Alma-Ata Conference on Primary Health Care
                                                           Art. 67 (creation of territory) 4
         (1978) 400, 401
                                                           Art. 109 (inter-provincial disputes:
Antarctic Treaty, Protocol on Environmental
                                                                jurisdiction) 2, 12
         Protection (1991)
                                                         equitable utilisation principle 4-5
```



Argentina (cont.)	extent of international interest, relevance 28,
inland waterways, bed as public resource to be	37–8
held in trust for future States 3–4	legislative powers
Law 12.650 (Agreement between Mendoza and	extraterritorial effect of legislation,
National Government (1941)) 2, 4	relevance 52
applicability to La Pampa 2-3, 12	limitation to 'appropriate'
public land, whether constituting disposal of	implementation of obligation 21–2,
2–3, 4	28–9, 48–51, 53
Arun III hydro-electric project (Nepal) 330	proportionality and 52
Atuel River (Argentina)	purpose of legislation as test 49–50
agreement between Nation and Mendoza	subsidiarity principle 39
(1941). See Argentina, Law 12.650	non-treaty obligations 20-2, 27-8, 41-2,
(Agreement between Mendoza and	52–3
National Government (1941))	relations with entities other than States 28
applicable law 2, 11	treaties (federal power/obligations)
continuity of flow, disruption attributable to	federal clause, relevance 25, 32, 38-9, 46,
acts of party 2, 3	55–6
equitable utilisation principle	Koowarta 17
existing use, relevance 12	national constitution as determining
efficient and present uses 12	factor 32, 38–9
future use, right to 3, 12	treaty of international concern 17-22,
proportionality 3	40–1
relevant factors 3, 12	treaty signature/accession as 'external
inter-provincial character 2, 3	affair' 20, 37, 40–1, 54
as public property 4	UNESCO Protection of the World
Australia	Cultural and Natural Heritage
Constitution. See external affairs power	Convention (1972), federal power to
(Constitution, s 51(xxix)) below	legislate 22-6, 32, 33-7, 41-6, 53-6
endangered species, licence to take or kill	See also treaties, 'of international concern'
limitation	below
time 65	fauna impact statement
to specific species 65	additional information, public advertisement
need for 57	59
See also fauna impact statement below	adequacy 59
environment as matter of international concern	need for 58
29–31, 41	law of
environment/development, balance	Endangered Species Protection Act 1992
alternative possibilities and 60, 65-6	precautionary principle and 60, 62
balance of probabilities test 66	precautionary principle, consistency with
changing nature of 66	62
cost benefit analysis, requirements 60	s 5 ('take') 64
endangered species, protection of 60,	s 92B(5) (appeal [by way of rehearing])
65–6	58–9
public interest and 58-9, 65	s 92B(6) (application for licence; required
subsidiarity and 39	information) 57
environmental impact assessment. See fauna	s 92C (appeal under: relevant factors) 62
impact statement below	s 92D (fauna impact statement) 58, 62
external affairs power (Constitution, s 51(xxix))	s 120 (licence to take) 64–6
constitutional constraints on 51-2	scheduled treaties 61
environment as matter of international	Environmental Planning and Assessment Act
concern 29–31	1979 (NSW), environmental impact
evolutionary nature 20, 27, 42	statement, adequacy test 59



Index 543

Land and Environment Court Act 1979 conformity with terms of treaty, need for (NSW), appeals 58-9, 62 21-2, 28-9 National Parks and Wildlife Conservation customary international law as declared Act 1975 (Cth) by treaty as basis 21 as implementation of UNESCO obligations Protection of the World Cultural and effect of non-compliance on relations with Natural Heritage Convention (1972) other States as test 45-6 means of fulfilling, choice 23, 26, 44-5, s 69, validity 25-6 'of international concern' 40-1 World Heritage (Western Tasmania Wilderness) Regulations (1983) compliance obligation, relevance 41 as partial fulfilment of Convention multilateral treaties 19, 41 obligations, relevance 50-1 mutuality of benefit or interest 19, 25, 37 text (Regulation 5(1) and (2)) 48 number of signatories as indicator 38 validity 26-7, 32-3, 48-51 responsibility for determining 20 See also endangered species, licence to take or UNESCO Protection of the World kill above Cultural and Natural Heritage legislative powers. See external affairs power Convention (1972) 25 (Constitution, s 51(xxix)) above See also external affairs power (Constitution, precautionary principle s 51(xxix)) above applicability in case of uncertainty or treaty interpretation, imprecision of treaty texts ignorance concerning nature or scope of and 54 environmental harm 60 UNESCO Protection of the World Cultural and scarcity of knowledge, relevance 60, Natural Heritage Convention (1972) 63-4 implementation, World Heritage (Western applicability in domestic law 60-2 Tasmania Wilderness) Regulations 26-7, incorporation of international law, 32 - 3relevance 60, 61-2 World Heritage List as 'common sense' 60, 61-2 entry on, criteria 46-7 Commonwealth Strategies on Endangered entry on, effect 24-5, 46 Species and Biological Diversity 61 World Heritage List, obligation to protect definition listed area Biological Diversity Convention (1992) 61 'appropriate legal . . . measures' 22, 23, Intergovernmental Agreement on the 26-7, 32-3, 35, 48-51 Environment (1992) 61 best efforts obligation compared 32 Protection of the Environment 'endeavour, in so far as possible' 34-5 Administration Act 1991 (NSW) 61 federal obligations 25 Endangered Species Protection Act obligation, whether 22-5, 32, 33-7, 41-6, 1992, consistency with 60, 62 54-5 'so far as possible' 35 extinction of species for reasons unrelated See also UNESCO Protection of the World to proposed activity, relevance 60, 64 separation of powers, treaties and 20, 26, Cultural and Natural Heritage 49-50 Convention (1972) subsidiarity principle 39 bad faith 479 territorial sovereignty, inter-State relations and See also good faith treaties badgers, protection of 359 breach, failure to pass implementing Basel Convention on the Control of legislation 21 Transboundary Movements of compliance, obligation of 41, 54 Hazardous Wastes and Their Disposal implementing legislation (1989), precautionary principle 154, in absence of obligation 20-2 160



544 Index 4 IELR

Beas River (Himachal Pradesh), pollution from Canada motel complex flood works 282 aboriginal Indians in (Lubicon Cree Nation), government's grant of lease as breach of public boycott of goods/picketing of customers in attempt to prevent logging on trust 286 remedial measures 286-7 claimed land 96-106 Bergen Declaration on Sustainable Development applicable law, municipal authorities 118 (1990) 109 boycott of goods/picketing of customers 96-106 Berne Convention on the Conservation of freedom of expression and 99, 103 European Wildlife and Natural Habitats limitations on 99, 106 (1979), badger, protection of 361, 364 'secondary picketing', applicability of biodiversity, protection of concept 99, 101-6 Biodiversity and Protection of Wilderness Areas Constitution Act 1867 in Central America, Convention (1992), environment, non-assignment of provisions 193-4 responsibility 90 Biological Diversity Convention (1992) s 91 (federal Parliament's powers). See federal applicability legislative powers (Constitution Act activities under jurisdiction or control 1867: s 91) below within or beyond national jurisdiction s 92 (provincial legislative powers). See provincial legislative powers 464, 469 within limits of national jurisdiction 464, (Constitution Act 1867: s 92) below 469 Crown immunity, Navigable Waters Protection Habitats Directive (EC Directive 92/43) and Act 1985 and 83, 89 464, 469 customary international law, precautionary precautionary principle 61, 479 principle 114-15 Cartagena Protocol on Biosafety (2000) environment 487 definition, socio-economic considerations 82. endangered species 238, 239-40, 362-4 Habitats Directive (EC Directive 92/43) 463 as facet of other issues 83, 90, 92, 110 See also wetlands, protection of federal/provincial responsibility biosphere reserve. See world biosphere reserves mixed 89-92 bird eggs, smuggling and export non-assignment in Constitution Act 1867 species not protected by CITES 206 species protected by CITES 206 Environmental Assessment and Review Process birds. See bird eggs, smuggling and export; Guidelines Order 1984 migratory birds; wetlands, broad interpretation 88 Department of the Environment Act 1985, protection of boycott of goods/picketing of customers 96-106 validity under 85-7 freedom of expression and 99, 103 encroachment on provincial powers, limitations on 99, 106 whether 83, 89-92 environmental impact assessment, need for 'secondary picketing', applicability of concept 99. 101-6 85 Brundtland Report (Our Common Future) Fisheries Act 1985 and (1987)consistency 87 environment/development, balance 272, priority 88-9 as law 85-6 275 - 6Navigable Waters Protection Act 1985. intergenerational responsibility 424, 428, 434 subsidiarity principle 109, 112 consistency 87-8 burden of proof provisions 85 environment/development, balance 272-3, environmental impact assessment 2.76 as auxiliary/essential planning tool 83, 91-2 belated implementation, value 84, 94-5 standing 532



Environmental Assessment and Review	Navigable Waters Protection Act 1985
Process Guidelines Order 1984 85	Crown immunity 83, 89
Fisheries Act 1985 85	Environmental Assessment and Review
Navigable Waters Protection Act 1985 85, 87–8	Process Guidelines Order 1984, consistency 87–8
timeliness in seeking, relevance 84, 92-4	environmental impact assessment, need
federal legislative powers (Constitution Act	for 85, 87–8
1867: s 91) 68	Ocean Dumping Control Act 1974-75-76. See
criminal law power 77	Ocean Dumping Control Act 1974-75-76
extracts 68 n. 1, 80 n. 3	below
federal/non-federal, balance, importance	Pest Control Products Act 115, 116-17
77–8, 109, 112	permissive nature 115
federal/non-federal, conflict	Pest Control Products Regulations 115
dual compliance and 110, 115-17	legislation, interpretation
express contradiction requirement 110,	guidelines
115	environmental legislation 88
marine pollution 74-5, 76-8	statute as a whole 86
proportionality and 77-8	words and phrases, 'environmental quality'
treaty implementing legislation 76	86–7
See also national concern doctrine of the	marine pollution
federal peace, order and the good	federal criminal law power 77
government power below; provincial	as matter of national concern 74-5
legislative powers (Constitution Act	as single, indivisible matter 74–5, 76–7
1867: s 92) below	See also Ocean Dumping Control Act
freedom of expression	1974-75-76 below
boycott of goods/picketing of customers 99,	municipal authorities
103	applicable law 118
public interest, as matter of 103-6	international law, relevance 118
public interest and 99, 103-6	environmental powers 107
law of	legal basis, need for 118–19
Cities and Towns Act	Town of Hudson By-law 270 (1991)
s 410(1) (by-laws for peace, order, good	(pesticides) 108
government, health and general welfare)	authority to enact 112–15, 118–19
108, 112–14	conflict with federal legislation, whether
s 412(32) (regulation of storage and use of	115–17
harmful materials) 108	discriminatory, whether 110, 113-14, 119
Department of the Environment Act 1985	essential/non-essential uses of pesticides
s 4(1) (jurisdiction) 88–9	distinguished 109, 110, 112–13, 119
s 6 (establishment of guidelines for federal	as health measure 110, 112–13
departments, agencies and regulatory	international law, compatibility with
bodies) 85	114–15
See also Environmental Assessment and Review Process Guidelines Order 1984	non-prohibitory nature 109, 110, 112–13, 119
above	precautionary principle and 110, 114-15
Fisheries Act 1985	national concern doctrine of the federal peace,
Environmental Assessment and Review	order and the good government power
Process Guidelines Order 1984 and 87,	73–4
88–9	ascertainable and reasonable limits, need for
environmental impact assessment, need	75
for 85	evolutionary nature 74
guidelines as 85–6	marine pollution and 74-5, 76-7



Canada (cont.)	Chile
singleness, distinctiveness and indivisibility,	arbitrary act 134, 138
need for 74	Chanaral Bay, copper tailings, discharge as
effect on non-provincial interests of	breach of right to pollution-free
provincial failure to act as test 74,	environment 131–8
76–7	Civil Code, Art. 20 135
See also federal legislative powers	Constitution 1980
(Constitution Act 1987: s 91) above	Art. 19.8 (right to live in a pollution-free
Ocean Dumping Control Act 1974-75-76	environment) 121–2, 123, 125–6,
adverse effect of dumping, relevance 72-3	129
as implementation of Convention on the	absence of definition 135
Prevention of Marine Pollution by	as continuing wrong/right 133
Dumping of Wastes and other Matter	intergenerational responsibility 133, 135
(1972) 72	text 122 n. 8, 132 n. 1
incorporation of amendments to	timeliness in seeking protection, relevance
Convention 76	133, 135–6
non-correlation with Convention,	Art. 19.24 (right to own, use and dispose of
relevance 76	property)
internal marine waters, application to 74-5,	conservation of the environmental
76	heritage, right to legislative restriction
Marine Pollution Convention	and 126
distinguished 74-5, 76	loss of irrigation waters resulting from
s 2(1) ('dumping') 68	hydro-electricity works and 123-5
s 3(2)–(3) ('sea') 68	text 123, 133 n. 3
s 4(1) (prohibition of dumping without	Art. 20 (protection of rights including a
permit), validity 73–5	pollution-free environment) 120 n. 1,
ss 9–10 (dumping permits) 68	123, 135
salt/fresh water distinguished 74, 75	text 122 n. 9, 133 n. 2
subject-matter, whether limited to	environment
subject-matter of Marine Pollution	definition, natural surrounds including
Convention 72–3	everything that allows development of
Oldman River (Alberta). See Oldman River	life 123, 126, 133–4, 135
(Alberta)	evolving understanding 129
precautionary principle	environment/development, balance
customary international law 110, 114-15	commercial exploitation as subsidiary
pesticide, limitation on use of 114-15	purpose 127
provincial legislative powers (Constitution Act	competing interests of
1867: s 92)	upstream/downstream owners 125
extracts 82 n. 8	irrigation as presently practised/diversion of
See also federal legislative powers	waters for electrical power 120-30
(Constitution Act 1867: s 91)	as legal decision based on contemporary
public interest, freedom of expression and 99,	information 123, 129
103–6	private interests/environment 125
subsidiarity principle 109, 111-12	suspension of activity pending enquiry as
defined limits 118-19	legal obligation 123, 128-9
territorial sea/internal waters, difficulty of	Lake Chungará
distinguishing 75	description of water diversion scheme 125
cetaceans, protection 463, 466, 468,	commercial exploitation as subsidiary
472–3	purpose 127
Chanaral Bay. See Chile, Chanaral Bay	diversion of waters 120-30
children's rights. See minor/child rights	harmful saltiness 120-30



as national park 128	legal predictability, difficulty of 150
as world biosphere reserve 127, 128	as political process/political overlap 143, 147–8,
law of	389–90, 394
Decree with Force of Law [DFL No. 208]	economic dispute 335-7
(Consultative Council of Fishing and	See also political question doctrine
Hunting) 137	subjective/individual rights distinguished 143,
Decree with Force of Law [DFL No. 5 of	153, 154, 156–7, 158–9, 247, 333
1983] 137–8	duty of care as basis of action 343
Decree Law 2222 of 1978 137	as third-generation right 244, 246
Law 18.362 of 1984 (National System of	See also remedies; standing
Wilderness Areas) 128	Colombia
Sanitation Code 137	Basel Convention on the Control of
national parks	Transboundary Movements of
definition 128	Hazardous Wastes and Their Disposal
designation and control 128	(1989), applicability 154, 160
Lake Chungará 128	collective rights, protection
See also law of, Law 18.362 of 1984 (National	'diffuse' interest 143, 147-8, 150
System of Wilderness Areas) above	entitlement 145, 155, 161-2
pollution	as political process/political overlap 143,
act/omission 134, 136	147–8
as arbitrary act 134, 138	subjective/individual rights distinguished 143,
evidence of 126-7, 136-7	153, 154, 156–7, 158–9
illegality	Constitution 1991
for exceeding authority 134, 137	Art. 1 (public interest) 143, 151
prohibition by law 134, 137-8	Art. 7 (ethnic diversity) 174
imputability 134, 137, 138	Art. 11 (right to life) 143, 151, 154, 155, 156
authorisation, relevance 138	Art. 25 (right to work) 151
treaties, obligations, good faith implementation	Art. 40 (compliance with the law including
128	right of public action) 141 n. 5, 150, 175
UNESCO Protection of the World Cultural and	Art. 40 (2) (democratic participation) 165,
Natural Heritage Convention (1972), as	167–8, 172
part of law of 127–8	Art. 44 (rights of children) 156
Washington Convention on Nature Protection	Art. 49 (right to health) 143, 151
and Wildlife Preservation in the Western	Art. 49(2) (State responsibility for health
Hemisphere (1940)	services and environmental protection)
commercial exploitation of national parks,	153, 158–9
prohibition 127	Art. 78 (State's duty to guarantee enjoyment
as part of the law of 127	of healthy environment) 159-60
Chungará. See Chile, Lake Chungará	Art. 79 (right to healthy environment) 140-1,
CITES (1973)	145, 149, 153, 158, 159
birds, protection of 206	See also healthy environment, right to
turtles, protection of 190–1	below 165, 167
civil society. See democratic participation	Art. 80 (sustainable development) 165, 167
coastal states. See marine pollution	Art. 81 (prohibition on import of nuclear and
collective rights, protection	toxic waste) 159–60
'diffuse' interest 143, 147–8, 150, 178, 184,	Art. 86 (acción de tutela) 139, 155–6, 160, 163
188–9, 198, 201, 392–5, 432	n. 1
entitlement 145, 155, 161–2, 178, 183–4	Art. 88 (class actions (acciones populares)) 143,
flexibility of constitutional jurisdiction, need	155, 158–9
for 178, 183–4	Art. 93 168
minor/child rights 156, 185	Art. 94 (rights not expressly provided for) 168



Colombia (cont.)	indigenous peoples
text 143 n. 11	consultation, right of 164, 165, 167–70
Art. 330 (exploitation of resources in	administrative/political distinguished 175
indigenous territory) 164, 165, 167,	breach 171–2
174–6	notification distinguished 166, 169–70
Art. 333 161	See also democratic participation, right of
Art. 334 161	below
See also human rights below	democratic participation, right of 165,
democratic participation, right of, variety of	167–70
forms 167	active and effective 169
due process 172	as fundamental right 165, 167
duty-free zones, protection of fundamental	See also consultation, right of above
rights and 155, 160–1, 162	environment/development, balance 165,
environment/development, balance 151	166–70, 174–6
indigenous peoples, protection/development	mechanisms to ensure, need for 166,
of natural resources. See indigenous	169
-	
peoples, environment/development,	objectivity 166, 169
balance below	proportionality 166, 169
safety rules and 151	reasonableness 166, 169
trade in toxic substances 161	good faith and 169
environmental heritage, right to 144	ILO Convention 169 165
foreign relations, order to remove toxic waste,	protection as fundamental right 166–7
relevance 161	interim measures
healthy environment, right to	suspension of activity 145
damage to in case of action for protection,	irreversible damage and 151, 172–3
relevance 141–2, 144, 145, 154,	suspension of administrative act 166, 172–3,
159–60	174–6
as free-standing right 143	law of
as fundamental right 144, 148–9, 150,	CCA
156–62	Art. 14 167
dependence of other rights on 144	Art. 15 167
life, right to and 144, 146, 151, 155, 158	Art. 84 172
State practice 149	Decree 996 (acción de tutela) 156
survival of the species and 144, 147	Decree 2591 (1991), Art. 6 (acción de tutela)
work, right to and 151	141 n. 4, 151, 156
health, right to and 151, 154, 155, 162	Law 21, 1991 (ILO Convention 191) 165,
officials' failure to observe legal obligations	167–8
145–6	Law 99 (precautionary principle) 154, 160,
physical integrity/personal safety, as	167, 172, 174
extension of 144, 149	precautionary principle, applicability in case of
private property, right to protection from	uncertainty or ignorance concerning
potential damage 145	nature or scope of environmental harm
treaties providing for 149	154, 160
human rights	proportionality, environment/development,
environmental rights and 148-50	balance 166, 169
association with fundamental right giving	public interest, environment/development,
rise to environmental right 143, 148	balance 151
collection of rights giving rise to free-	reasonableness, environment/development,
standing environmental right 143, 148	balance 166, 169
human rights treaties ratified by Colombia as	remedies
basis for interpretation 144	action for protection of constitutional rights
UN bodies 149–50	(acción de tutela)



administrative appeal, availability and 166, 172–3, 174–6	as individual and collective responsibility 179, 181
right of judge to create rules and	international cooperation, as duty 183
procedures 160	developed countries 183
suspension of administrative act and 166,	multilateral treaties 183
172–3, 174–6	natural beauty, need to protect 179, 183
res judicata erga omnes 172	environment/development, balance 178, 180–1,
standing 141 n. 5, 150, 151	191–2
toxic waste, known dangers 154	growing imbalance 181–2
common law	environmental impact assessment, democratic
fair hearing/due process 412–13	participation, public consultation and
healthy environment, right to 273, 277–8, 379	198
public trust 285	healthy environment, right to
consultation, right of. See democratic	as fundamental right 178, 193, 201
participation	life, right to and 179, 183
	health, right to and 179 health, right to and 179
contract	e e e e e e e e e e e e e e e e e e e
constitutional protection 384, 386, 390–2	indigenous peoples
licence distinguished 386, 390–1	consultation, right of 199
termination in public interest, government's	democratic participation, right of
discretionary power 328, 384, 386, 390–2	active and effective 204
undertaking to comply with law, relevance	ILO Convention 169 199, 202–5
440–2	publication in official gazette/national
Costa Rica	media, whether appropriate means 199,
collective rights, protection	204
'diffuse' interest 178, 184, 188–9, 198, 201	intergenerational responsibility 178, 189, 190,
entitlement 178, 183–4	192
minor/child rights 185	law of
Constitution 1949	Executive Decree 14524 of 4 May 1983 (green
Art. 7 (treaties: primacy) 189, 195–6	turtles) 190–6
Art. 11 203	Art. 2 (conditions for taking) 192–3
Art. 21 (inviolability of life) 179, 183	Art. 3 (conditions for taking) 190
text 178 n. 1	Art. 6 (licences) 190
Art. 41 203	CITES, breach 189
Art. 48 203	constitutional validity 189, 193-6
Art. 50 (healthy environment, right	provisions 187
to/remedies) 187 n. 1, 189, 192, 193-6,	treaties, breach 189, 193-6
201–2, 203	Executive Decree 22545 of 30 August 1933
Art. 89 (protection of natural, historical and	(green turtle as endangered species)
artistic heritage) 179, 183, 188, 189, 192,	194
195–6	Executive Decree 25705-MINAE (SETENA
Art. 129 203	Procedures) 200, 201-5
democratic participation	Executive Decree 26435 of 1 October 1997
access to information, right of 199, 201–2	(Law on Wildlife Conservation) 187-8
consultation, right of, discretionary 198, 200,	bylaw classifying species in danger of
202–5	extinction 194
due process, public consultation requirement	Law No 3763 of 19 October 1976
199, 203	(Washington Convention on Nature
environment	Protection and Wildlife Preservation in
definition, natural surrounds including	the Western Hemisphere (1940)) 193
everything that allows development of	Law No 5251 (Law creating the National
life 179, 181	Commission of Indigenous Affairs
financial restraints, relevance 179, 185	(CONAI)) 204
inimiciai restrantes, refevallee 1/2, 102	(001111)) 207



Costa Rica (cont.)	negotiations, duty 11
Law No 7153 of 11 October 1989 (Law on	as part of domestic law 273
Constitutional Jurisdiction)	polluter pays principle 273, 277
Art. 44 (evidence under oath) 202	precautionary principle 110, 114–15, 277
Art. 75 (diffuse interests) 188–9	sources 11
Law No 7399 (Law on Hydrocarbons),	sustainable development principle 272
public consultation, lack of provision for	treaties and other international instruments
198	reflecting
Law No 7412 of 3 June 1994 (amendment to	customary law as basis for implementing
Art. 50 of the Constitution) 201	legislation 21
Law No 7433 of 11 October 1994	Rio Declaration on Environment and
(Convention on the Conservation of the	Development (1992) 373
Biodiversity and Wilderness Areas in	Vienna Convention on the Law of Treaties
Central America (1992)) 193–4	(1969) 42–3
Law No 7788 (Biodiversity Law) 188	
Organic Law on the Environment 201–2	damages/compensation 259-60, 265, 273, 276-7,
Resolution 140-99-SETENA (SETENA	278, 286–7
procedures) 198	damage to environmental values 290, 291-3
pollution	damage to goods on territory/territorial sea and
act/omission 183–4	damage to territory/territorial sea
as element, component or substance	distinguished 289, 290, 292
negatively affecting life, health or	determination
well-being 181	appropriate point in proceedings for 346–7
precautionary principle	experts 290, 292–3, 351–2
applicability in case of uncertainty or	government 273, 279
ignorance concerning nature or scope of	deterrent effect 259
environmental harm 188, 189, 194, 195	for
lack of scientific evidence as independent	consequences of failure to suspend work as
ground for unlawfulness 189	interim measure 414
scarcity of knowledge, relevance 189	continuing damage 344, 345, 346, 349–50
remedies, action for protection of constitutional	injunction distinguished 350
rights (recurso de amparo), flexibility of	past damage 273, 279
constitutional jurisdiction, need for 178,	forma pauperis suits 267
183–4	funding from pollution fines 274, 279–80
Rio Declaration on Environment and	measure
Development (1992), applicability	equitable principles 290, 292
200–1	impossibility of quantification 292–3
territorial sovereignty, natural resources,	lost environmental benefits 290, 291–2
exploitation 179, 183, 190	remedial measures by injured party,
treaties, domestic law and, primacy 189	relevance 345, 350–1
turtles, protection of 186–96	See also Oil Pollution Damage, Convention on
waste disposal, negligent failure to solve	Civil Liability (1969); remedial
problem 185	measures; remedies
Crown immunity, environmental legislation and	democratic participation
83, 89	access to information, right of 199, 201–2, 226,
cultural heritage. See environment; UNESCO	405, 406, 408–9, 429, 441–2,
Protection of the World Cultural and	483
Natural Heritage Convention (1972)	procedures 338–9
customary international law	reasonableness of request, relevance 409
as applicable law 11, 341, 342–3	Rio Declaration on Environment and
equitable utilisation principle 4–5	Development (1992) 429



consultation, right of 320, 374, 381, 440-2	bad faith and 479
administrative/political distinguished 175	common law 412-13
attempt to contract out of 440–2	environment/development, balance 385, 386
discretionary 198, 200, 202-5	improper haste 479, 484–5, 491
due process 199, 203	interim measures and 414
enforcement of public law by private individual	legitimate expectation and 405, 412
and 532	natural justice and 412–13, 422
foreigners, right of 223-4	public consultation requirement 199, 203
reciprocity, relevance 224, 225–6	public hearing 478–9
territorial sovereignty and 224	European Convention on Human Rights
unilateral grant in case of transboundary	(1950) 478–9
risks 224–5	private hearing, grounds 478–9, 481–3
as fundamental right 165, 167–70	initiation of action, relevance 478–9
ILO Convention 169 (indigenous peoples)	public interest and 393–4, 400–2
168–70, 199	See also democratic participation
information on matter of public interest, right to 331, 332, 336–9	duty-free zones, protection of fundamental rights and 155, 160–1, 162
direction to government to enact appropriate	
laws 332	EC Directives
legal person 332	84/360 (environmental impact assessment) 232,
procedure for, State practice as source 332	470–1
Inter-American Convention against Corruption	85/337 (environmental impact assessment) 232,
(1996) 203–4	470–1
international obligations, as means of fulfilling 223	Habitats Directive (EC Directive 92/43). See Habitats Directive (EC Directive 92/43)
Managua Political Declaration on the	endangered species
Promotion of Democracy and	biodiversity, protection of 238, 239-40,
Development (1993) 203	362-4
publication in official gazette/national media,	definition 499
whether appropriate means 199	designation as, responsibility for 502-3
Rio Declaration on Environment and	federal State, powers/obligation 492
Development (1992) 199, 200-1	growing threat 504–6
transparency and 332, 338-9, 441	licence to take or kill
variety of forms 167	fauna impact statement, need for 58, 59, 62
See also environmental impact assessment,	limitation
democratic participation	time 65
leveloping countries, environment/development,	to specific species 65
balance 251, 254, 255	need for 57
levelopment. See environment/development,	relevant factors 368
balance	suspension, right to compensation for 365–81
lichlorvos, use in pesticides. See pesticides,	snail darter 498–513
dichlorvos, use in pesticides (UK)	'threatened species' 506 n. 25
liffuse rights. See collective rights,	turtles 194
protection	See also biodiversity, protection of; bird eggs,
lispute resolution procedures, as evidence of	smuggling and export; endangered
obligation 37	species, protection, strict/absolute
lue process 172, 411–13	liability; environment/development,
abuse of process/second application	balance; Habitats Directive (EC
distinguished 473	Directive 92/43); migratory birds
adversarial process and 407, 413–14 audi alteram vartem 419–20	endangered species, protection, strict/absolute liability 501, 503–4
auai aiittam patitm 419–20	Hadhity 201, 203–4



552 Index 4 IELR

environment Natural Habitats (1979); biodiversity, cultural and natural heritage, treaties for the protection of, Biodiversity and protection of 29-30 Protection of Wilderness Areas in damage to in case of action for protection, Central America, Convention (1992); relevance 141-2, 144, 145, 154, 159-60 biodiversity, protection of, Biological See also precautionary principle Diversity Convention (1992); CITES definition (1973); Marine Pollution by Dumping natural surrounds including everything that from Ships and Aircraft, Convention for allows development of life 123, 126, the Prevention of (1972); Marine 133-4, 135, 179, 181 Pollution by Dumping of Wastes and socio-economic considerations 82, 86-7 Other Matter, Convention for the water, air and land and the interrelationship Prevention of (1972); migratory birds, between and with living Migratory Bird Treaty (Great Britain (Canada)-United States); Rio creatures . . . and property 262 wetlands 238, 239 Declaration on Environment and Development (1992); Stockholm See also wetlands, protection of European Community policy 468 Convention on the Human See also Habitats Directive (EC Directive Environment (1972); UNESCO 92/43) Protection of the World Cultural and evolving understanding 129, 319 Natural Heritage Convention (1972); as facet of other issues 83, 90, 92, 110 Washington Convention on Nature federal State, responsibility for. See federal Protection and Wildlife Preservation in States, environment, responsibility for the Western Hemisphere (1940); financial restraints, relevance 179, 185, 255 wetlands, Wetlands of International Importance Especially as Waterfowl human rights and. See human rights, environmental rights and Habitat, Ramsar Convention for the international concern, as matter of 29-31, 41 Protection of (1971) international cooperation, as duty 183, 254, See also marine pollution; turtles, protection of 518, 524-6 environment/development, balance 35-7, 151, developed countries 183 178, 180-1, 191-2, 230, 231-2 Agenda 21 (1993) 272, 275-6 multilateral treaties 183 natural beauty, need to protect 179, 183 agricultural cultivation/protection of prevention of damage/sanctions, choice 247-8 environment 245 protective legislation/remedy alternative possibilities and 60, 65-6 absence 324, 327, 328-9 balance of probabilities test 66 direction to enact appropriate laws 325, Brundtland Report (Our Common Future) (1987) 329 272, 275-6 need for 324 burden of proof 272-3, 276 publication of decisions relating to 229, 238 Caring for the Earth: A Strategy for Sustainable responsibility for Living (1991) 272, 275-6 individual and collective 179, 181, 254, changing nature of 66 431 commercial exploitation as subsidiary purpose local authority 107 outside territorial sea 465 competing interests of upstream/downstream treaty provisions 465 owners 125 State agency 400-2 coordination of decisions relating to potentially treaties and other international instruments damaging activities, need for 216 cost benefit analysis, requirements 60 concerning. See Antarctic Treaty, Protocol on Environmental Protection derogation/restriction of fundamental rights as (1991): Berne Convention on the prescribed by law . . . meeting just

Conservation of European Wildlife and

requirements of democratic society 443



Index 553

developing countries 251, 254, 255 trade in toxic substances 161 due process 385, 386 See also precautionary principle; sustainable economically unsound project 460-1 development principle environmental court ('Green Bench') 268, 274, endangered species, protection of 60, 65-6, 362-4, 502 281 cost to public purse 501, 503-4 environmental heritage, right to 144 economic and social consequences of environmental impact assessment suspension of work 368 Antarctica. See Antarctic Treaty, Protocol on Environmental Protection (1991) environmental audit and 268-9 foreign policy interests and 518, 524-5 as auxiliary/essential planning tool 83, 91-2, Forest Principles (1992) 272, 275-6 428, 433, 437-8, 441 forestry policy 382 belated implementation, value 84, 94-5 Gabcikovo-Nagymaros Project 430-1 comprehensive assessment, need for 231, gold mining/risk to life 450 growing imbalance 181-2 identification issues needing specialisation hardship exemptions, State agency and 236 separate studies on complex project, whether hazard to health/energy production 373-4 amounting to 231, 234-5 indigenous peoples, protection/development of dam 85, 87-8 natural resources. See indigenous democratic participation peoples, environment/development, public consultation and 198, 420 balance timing 420-1, 422-4 irrigation as presently practised/diversion of public right of comment to independent waters for electrical power 120-30 review panel 312, 315, 319-20 irrigation/preservation of existing ecosystem publication of decisions relating to 229 236 See also democratic participation discharges into international watercourses 211, justiciability 335-7 as legal decision based on contemporary 212-13 information 123, 129 extension of existing authorisation and legislative responsibility 286 214-15 phosphate mining/sustainability of resources EC Directive 84/360 232 and ecology 424 EC Directives. See EC Directives pollution/economic and social consequences of fauna impact statement 58, 59, 62 suspension of work 214-15, 252 indigenous people and 296-7, 298-9, pollution/export and employment 306-8 as legal requirement 438, 440-2 opportunities 275 private interests/environment 125 legislation public interest and 58-9, 65, 151, 236, 284, 286, Australia 58, 62 452, 517, 521-2 Canada 85 Costa Rica 198, 200, 202-5 Rio Declaration on Environment and Development (1992) 179, 182-3, 272, France 216-17 428 Greece 232-3 Malaysia 312-13, 314-20 safety rules and 151 Stockholm Conference on the Human Nepal 326, 329 Philippines 397-8 Environment (1972) 37, 272, 324-5, practice in absence of 326-8 327-8, 428, 435 subsidiarity and 39 South Africa 418, 420-1, 423 suspension of activity pending enquiry as legal Sri Lanka 438-42 obligation 123, 128-9 US 514-27 tourist development in breach of environmental as procedural rule 440 policy 362-4 public consultation and, procedure 423-4



554 Index 4 IELR

exhaustion of administrative remedies, relevance environmental impact assessment (cont.) requirements 216-17, 232-3 392\_3 approval by 'national authority' (Rio expropriation as means of protecting environment Declaration) 442 245-6, 248 measures to prevent, reduce or control fairness. See due process adverse effect 315, 440 Rio Declaration on Environment and fauna impact statement 58, 59, 62 Development (1992) 428 federal legislative powers (Canadian Constitution timeliness in seeking, relevance 84, 92-4 Act 1867: s 91), federal/non-federal, environmental legislation conflict, dual compliance and 110, Crown immunity 83, 89 115-17 interpretation 88, 224 federal States territorial limitation and 52, 224-6, 514-27 applicable law 2, 11 See also legislation, extraterritorial effect distribution of powers, evolutionary nature 20, See also individual countries for specific 27, 42, 74 environment, responsibility for 29-31, 41, 84-5, legislation equality before the law 428, 431, 438-42 89-92 equitable utilisation principle 4-12 marine pollution 74-5, 76-8 Case concerning the River Oder 5 foreign relations with entities other than States 28 as customary international law 4-5 definition 5 6 non-treaty obligations 20-2, 27-8, 41-2, 52-3 diversion with restitution 6 See also treaties (federal power/obligations) diversity of application 6-7 below; Australia, external affairs power equality of riparian States and 5 (Constitution, s 51(xxix)) existing use, relevance 8, 12 inrisdiction efficient and present uses 12 inter-State claims 2 future use, right to 3, 8, 12 public property 3-4 subsidiarity 39, 109, 111-12, 118-19 relevant factors 3, 7-8 Atuel River (Argentina) 12 territorial sovereignty principle and 39 land under federal authority, as holding in trust Helsinki Rules (1966) 7 ILA Dubrovnik meeting (1956) 7 for future States 3-4 ILC Report on the Non-Navigational Uses of legislative powers (federal) International Watercourses (1987) 7-8 criminal law power 77 proportionality 3, 12, 169 endangered species, protection 492 treaties incorporating 6-7 extraterritorial effect of legislation, relevance US jurisprudence 5 uses other than navigation, applicability to 5 federal/non-federal, balance, importance European Community 77-8, 109, 112 environmental policy (Art. 174 (formerly 130r) federal/non-federal, conflict of EC Treaty) 468, 486 express contradiction requirement 110, Commission Communication (February 115 2000) 487 failure of federal/non-federal authorities to Council of Ministers resolution (December resolve conflict 314, 317-19 2000) 479, 488 limitation to 'appropriate' implementation of precautionary principle 472-3, 479, 486 obligation 21-2, 28-9, 48-51, 53 See also Habitats Directive (EC Directive national concern doctrine 73-4 proportionality and 53, 77-8 Law of the Sea Convention (1982) and 470-1 treaty powers distinguished 493-4 European Convention on Human Rights (1950) See also treaties (federal power/obligations) property, peaceful enjoyment of 245 licence 411, 477, 480, 489-91 legislative powers (non-federal) (including local public hearing 478-9, 481-3 government) 89-92



legal basis, need for 118-19	as general remedy against administrative
non-discriminatory requirement 110, 113-14,	illegality 212
119	sufficiency of interest 212
non-prohibitory requirement 109, 110,	timeliness 212
112–13, 119	applicable law, international watercourses 211,
rivers. See rivers (federal State)	212–13, 214, 215
sovereignty of constituent State, pecuniary	environment/development, balance
interest, relevance in challenge to	coordination of decisions relating to
exercise of federal authority 493	potentially damaging activities, need for
treaties (federal power/obligations)	216
effective place of implementation, relevance	pollution/economic and social consequences
496–7	of suspension of work 214–15
endangered species, protection of 492	environmental impact assessment
federal clause, effect 25, 32, 38-9, 46,	discharges into international watercourses
55–6	211, 212–13, 216
implementing legislation 17-20, 28-9, 33-9,	extension of existing authorisation and
76	214–15
legislative powers distinguished 493-4	failure to undertake (Rhine) 211, 212-13,
national constitution as determining factor	217
32, 38–9	feasibility of investigation in third country,
treaty of international concern 17-22, 40-1	relevance 216–17
treaty signature/accession as 'external affair'	international law, relevance 211, 212-13,
20, 37, 40–1, 54	214, 215
See also Australia, external affairs power	requirements 216–17
(Constitution, s 51(xxix)); Canada,	interim measures, extension of existing
national concern doctrine of the federal	authorisation to avoid interruption to
peace, order and the good government	work 214–15
power; Malaysia	law of, Law No 76-629 of 10 July 1976
financial restraints, relevance 179, 185, 255	(environmental impact assessment)
Finland	216–17
bird eggs, smuggling and export	liability, standard of, fault 219
species not protected by CITES 206	State responsibility
species protected by CITES 206	pollution, failure to exercise powers to
law of	control 218–19
Criminal Code (19.12.1889/39), Hunting	continuing failure 219
Regulations and 206	treaties, delay in ratification 218
Decree on the Protection of Birds	treaties
(26.4.1983/405) 206	ratification
Nature Conservation Act (23.2.1923/71)	applicability prior to 218
206	State responsibility for delay 218
foreign relations	See also Rhine, pollution
federal states. See federal states, foreign	freedom of expression
relations	boycott of goods/picketing of customers 99, 103
order to remove toxic waste, relevance 161	public interest, as matter of 103-6
foreigners. See aliens	public interest and 99, 103-6
Forest Principles (1992) 272, 275-6	See also democratic participation
forestry policy 382	freedom from discrimination
France	federal by-laws 110, 113-14, 119
action for excess of power (recours pour excès	pollution, exemption licences 355, 358
de pouvoir)	freedom of information. See democratic
foreign public entity, right to bring 211, 212,	participation
214	freedom of trade, pollution, licensing and 355



Ganga River (India), pollution from tannery waste 249–55	Inter-American Economic and Social Council (1966) 10
environment/development, balance,	Lake Lanoux 9
pollution/economic and social	negotiations, duty 10–11, 12
consequences of suspension of work	See also negotiations, duty
252	Non-Navigational Uses of International
failure of authorities to take adequate steps	Watercourses, ILC Reports 9
252	North Sea Continental Shelf cases 9
financial restraints, relevance 255	River Plate Basin agreements (1961/1971)
general principles of international law,	10
environmental impact assessment in	UN Conference on Water (1967) 10
case of discharges into international	Greece
watercourses 211, 212–13	biodiversity, protection of 238
Germany, Federal Republic of	Constitution 1975/1986
administrative decisions, territorial limitation	Art. 24 (protection of the environment) 230,
223	231–2, 238, 239–40
democratic participation	compliance 234
access to information, right of 226	text 230 n. 10
foreigners, right of 223–4	endangered species, biodiversity, protection of
reciprocity, relevance 224, 225–6	238, 239–40
territorial sovereignty and 224–6	environment, publication of decisions relating
unilateral grant in case of transboundary	to 229, 238
risks 224–5	environment/development, balance 230,
international obligations, as means of	231–2
fulfilling 223	irrigation/preservation of existing ecosystem
law of	236
Administrative Court Procedure Code	environmental impact assessment
(VGO), s 42(2) (admissibility: violation of	comprehensive assessment, need for 231,
individual rights) 222, 223, 226	234–5
Law on the Peaceful Use of Nuclear Energy	identification issues needing specialisation
and Protection against its Dangers	and 236
(Atomgesetz) 1959, s 7(2) (public	separate studies on complex project,
consultation) 221–2	whether amounting to 231, 234-5
foreigners, applicability to 223-6	democratic participation, publication of
Nuclear Law Regulations on Procedure 226	decisions relating to 229
legislation, interpretation, consistency with	requirements (Law 1650/1986) 232-3
international law 223, 225	judicial review
legislation, territorial limitation, environmental	procedural requirements 228, 229
legislation 224–6	public interest and 229 n. 9
remedies, right of foreigner to seek 221	sufficiency of interest requirement 228
territorial sovereignty, agreement providing for	environmental/welfare organisations 229,
derogation 224	238
good faith	timeliness 228, 229, 238, 239 n. 11
indigenous peoples, communication with 169	law of
obligation in international law 128	Law 301/1976 (publication of administrative
See also bad faith	acts) 238
good faith cooperation 9-11	Law 1650/1986 (environmental protection)
Charter of Economic Rights and Obligations of	232–3
States (UNGA Resolution 3281 (XXIX)) 9	compliance 234, 235
European Water Charter (1967) 10	Presidential Decree 18/1989 (judicial review)
Fisheries Jurisdiction case (IJK v. Iceland) 9	228 238



Index 557

Presidential Decree of 24 April 1985 as as common law right 273, 277-8, 379 amended 14 February 1987 (delimitation as constitutional right 135, 179, 183, 424 of residential developments), wetlands self-executing, whether 393 and 238, 239-40 See also the constitutions of individual public interest, environment/development, countries balance, standing and 229 n. 9, 236 as continuing wrong/right 133, 135-6 wetlands, protection of 238, 239-41 damage to in case of action for protection, biodiversity and 238 relevance 141-2, 144, 145, 159-60 residential development, exclusion 238 See also precautionary principle See also Acheloos River, diversion of waters as free-standing right 143, 385, 388-9, 393-4 as fundamental right 144, 148-9, 150, 156-62, Habitats Directive (EC Directive 92/43) 178, 193, 201, 246, 388-9 application beyond 12 nautical mile territorial dependence of other rights on 144 limit 464, 465 life, right to and 144, 146, 151, 155, 158, 179, continental shelf and superjacent waters to 183, 244, 247, 258, 323, 325-6, 372, 374, limit of 200 nautical miles from 379-80, 385, 448, 451-2, 453-5 territorial sea baseline 466, 471, 475 State practice 149 application 'in the European territory of the State protection, dependence on 246 Member States to which the Treaty survival of the species and 144, 147 applies' 468 third-generation right distinguished 244, 246 biodiversity, protection of 463 work, right to and 151 Biological Diversity Convention (1992) and 464 health, right to and 151, 154, 155, 162, 179, 244, ecological network 463 implementation in UK. See United Kingdom, officials' failure to observe legal obligations law of, Conservation (National Habitats) 145-6 Regulations 1994 physical integrity/personal safety, as extension interpretation of 144, 149 consistency with international commitments private property, right to protection from 465, 469-72 potential damage 145 literal 472-3 as procedural right 247 object and purpose as guide 472-3 responsibility of State to provide 244, 246, liability, standard of, 'strict protection' 472-3 250-1, 253, 262, 263-4, 265-6, 267-8, marine pollution and 470 precautionary principle 463, 472-3 social rights distinguished 246-7 protection measures for listed species including standard of protection 245, 246, 247-8 timeliness in seeking protection, relevance 133, cetaceans 463, 468 cetaceans 466, 472-3 135-6 lophelia pertusa 466, 474 treaties and other international instruments protection of wetlands 238-9, 240 incorporating right 142 special conservation areas (Natura 2000) 468 treaties providing for 149 health, right to 151, 154, 155, 162, 179, 244, See also marine pollution; pollution 2.46 Helsinki Rules on the Uses of International Alma-Ata Conference on Primary Health Care Watercourses (1966) (1978) 400, 401 Art. II (hydrographic basin) 6 precautionary principle and 488 Art. IV (reasonable and equitable share: State's obligation to provide 453-5 entitlement) 7 waste disposal and 177-85, 445-9 Art. V (reasonable and equitable share: relevant risk to few/risk to many equation 448

See also waste disposal

healthy environment, right to 121-2, 123, 125-6,

Art. VII (non-denial of present use to preserve a

future use for co-State) 8 Art. VIII (continuation of present use) 8



558 Index 4 IELR

human rights	property, right to own, use and dispose of
derogation in public interest 297, 300, 304	constitutional right, whether 248
environmental rights and 148–50	restrictions on as means of protecting
association with fundamental right giving	environment 245, 248
rise to environmental right 143, 148	European Convention on Human Rights
collection of rights giving rise to	(1950) and 245
free-standing environmental right 143, 148	social rights, environmental rights distinguished 246–7
individual/collective rights distinguished. See	hydrographic basin
collective rights, protection	definition 6
UN bodies 149–50	Lake Lanoux 6
Hungary	See also Atuel River (Argentina)
collective rights, protection, subjective/	
individual rights distinguished 247	ILO Convention 169 (indigenous peoples) 165,
Constitution	167–8
Art. 18 (right to healthy environment) 244,	democratic participation, right of 168-70, 199,
246	202–5
Art. 54 (right to life) 244 n. 7	India
Art. 70D (right to health) 244 n. 4	burden of proof, environment/development,
environment, prevention of damage/sanctions,	balance 272–3, 276
choice 247–8	common law
environment/development, balance,	healthy environment, right to 273, 277-8
agricultural cultivation/protection of	public trust 285
environment 245	Constitution
expropriation as means of protecting	Art. 12 (State: definition) 259, 263
environment 245–6, 248	Art. 21 (right to life/liberty) 258, 271, 273,
healthy environment, right to	277, 379–80
as fundamental right 246	Art. 32 (enforcement of rights) 256, 259, 263,
life, right to and 244, 247	270, 274, 282
State protection, dependence on 246	Art. 47 273, 277
third-generation right distinguished 244,	Art. 48A (protection of the environment:
246	State responsibility) 250, 253, 271, 273,
health, right to and 244, 246	277
as procedural right 247	Art. 51A(g) (protection of the environment:
responsibility of State to provide 244,	citizens' responsibility) 250, 253, 271,
246	273, 277
social rights distinguished 246-7	customary international law, as part of
standard of protection 245, 246, 247–8	domestic law 273
intergenerational responsibility 247	damages/compensation 259-60, 265, 273,
law of	276–7, 278, 286–7
Agricultural Cooperatives Act 1992	assessment by government 273, 279
environment/development, balance and	deterrent effect 259
245	funding from pollution fines 274, 279-80
s 15 (privatisation of protected areas and	for past damage 273, 279
nature reserves) 242–3, 243 n. 2	environment
s 19 (expropriation and management of	definition, water, air and land and the
protected areas) 243 n. 3	interrelationship between and with
Arable Land Privatisation Act 1991 242	living creatures and property 262
Land Privatisation Committees Act 1993	financial restraints, relevance 255
s 13(7) (annulment of s 19 of Agricultural	environment/development, balance
Cooperatives Act) 243–4	burden of proof 272–3, 276

Nature Conservation Act 1982 242-3

environmental audit and 268-9



Index 559

hotel development/environmental damage liability, standard of 282, 359 Rylands v. Fletcher rule, applicability 264 legislative responsibility 286 strict/absolute 259, 263, 264-5, 273, 276-7, pollution/economic and social consequences 284, 286-7 of suspension of work 252 natural beauty, need to protect, government's pollution/export and employment obligation 284 opportunities 275 natural resources, exploitation, public trust and public interest and 284, 286 284, 285 environmental court ('Green Bench') 268, 274, polluter pays principle 252, 258, 259-60, 265-6, 273, 276-7, 284, 286-7 healthy environment, right to as customary international law 273, 277 as common law right 273, 277-8 obligation of government to apply 273 as fundamental right, life, right to and 258, pollution, as common law nuisance 273, 277-8 law of precautionary principle 272, 276, 286 Air (Prevention and Control of Pollution) Act applicability in case of uncertainty or 1974 257, 271, 277 ignorance concerning nature or scope of Code of Civil Procedure environmental harm 272-3, 276, O.1, r. 8 (representative action) 249 O.33, r. 1 (suits by indigenous persons) 260 applicability in domestic law 272-3, 276, 277, Contempt of Courts Act 1971 280 286 - 7Environment (Protection) Act 1986 277 incorporation of [customary] object and purpose 273 international law, relevance 273, 277 s 2(a) (environment: definition) 263-4 obligation of government to apply 273, 276, s 3 (authority of central government to 279, 284 take environmental measures) 250-1, public interest, environment/development, 262, 263-4, 265-6, 267-8, 271-2 balance 284 s 3(2) (measures to be taken by public trust 283-4, 285 environmental authority) 279 common law 285 s 3(3) (environmental authority) 271-2, ecologically important lands 283-4, 285 273, 278, 279 government's grant of lease as breach 286 s 4 (authority of central government to natural resources 284 take environmental measures) 265-6, private use/commercial exploitation, 271-2 exclusion 285, 286 s 5 (authority of central government to remedial measures issue instructions in writing) 250-1, 262, determination by government 266-7, 273, 263-4, 267-8, 271-2, 279 280 s 6 (central government's rule-making direction to authorities for 263-4, 265 power) 262 funding from government sources 280 s 7 (obligation of individual to avoid illegal funding from pollution fines 274, 279-80 discharges) 262, 271-2 measure of cost 266 s 8 (handling of hazardous substances) recovery of costs 258, 259-60, 263-4, 265-6, 271-2 273, 276-7, 278, 279, s 9 (citizens' duty to prevent/mitigate 286-7 pollution) 250-1 sustainable development principle and 273, Stockholm Convention and 262 276-7, 286-7 Evidence Act, freedom of information and remedies 332, 338 direction to government to carry out Forest (Conservation) Act 1980 282 statutory obligations 273, 278, 279 Water (Prevention and Control of Pollution) entitlement, forma pauperis suits 260, 267 Act 1974 257, 271, 277 fine for past pollution 274, 278 s 6 (pollution of water) 250 public interest action 252, 274



India (cont.)	objectivity 166, 169
recommendations for changes in the law 260	proportionality 166, 169
social litigation action 258	reasonableness 166, 169
termination of harmful activity 252, 255, 267,	good faith and 169
279, 280, 284	ILO Convention 169 165, 167-8, 199
standing 252, 255	irreversibility of damage 298
proper respondent, polluter 259	minority rights 301–2
sufficiency of interest requirement,	protection as fundamental right 166–7
environmental/welfare organisations	right to enjoy culture 301–2, 304–6
261, 274	See also minorities; Saru River, impact of dam
State, chemical company, whether 259, 263	projects on indigenous people
sustainable development principle 276, 286	inland waterways, bed as public resource to be
remedial measures and 273, 276-7, 286-7	held in trust for future States 3–4
waste disposal	Institute of International Law, Madrid Resolution
failure of authorities to exercise powers to	1911 on international rivers 5
control 252	intergenerational responsibility 133, 135, 147, 178,
failure of polluter to take appropriate	179, 183, 189, 190, 192, 247, 254, 384,
measures 252, 259, 262–3, 270	388–9, 434–5
obligation to establish treatment plants	Brundtland Report (Our Common Future) (1987)
252	424, 428, 434
See also Beas River (Himachal Pradesh),	class/representative action and 385, 387
pollution from motel complex flood	Gabcikovo–Nagymaros Project 434–5
works; Ganga River (India), pollution	Rio Declaration on Environment and
from tannery waste	Development (1992) 179, 183, 434
indigenous peoples	Stockholm Convention on the Human
Ainu people as 297–8, 301–2	Environment (1972) 127, 189, 192, 254,
boycott of goods/picketing of customers in	434
attempt to prevent logging on claimed	See also minor/child rights
land 96–106	interim measures
classification as 301–2	direction to government to conduct public
consultation, right of 164, 165, 167–70, 199	consultation 374, 381, 425–9,
administrative/political distinguished 175	444
breach 171–2	extension of existing authorisation to avoid
notification distinguished 166, 169–70	interruption to work 214–15
See also democratic participation, right of	information, interim procedures for securing
below	access to 332
democratic participation, right of 165,	standing, trustees of protected wetlands 406,
167–70	409–11
active and effective 169, 204	suspension of activity 123, 128–9, 145, 405
as fundamental right 165, 167	absence of alternative 408, 415
ILO Convention 169 168–70, 199	balance of convenience/fairness 408,
publication in official gazette/national	415–16
media, whether appropriate means 199,	compensation claim in absence of 414
204	due process considerations 414
See also consultation, right of above	irreversible damage and 151, 172–3, 407–8,
environment/development, balance 165,	414
166–70, 174–6	sufficiency of environmental analysis,
environmental impact assessment, need for	determination of 518, 526–7
296–7, 298–9	suspension of administrative act 166,
indigenous rights/irrigation and flood control	174–6
303–10	International Covenant on Civil and Political
mechanisms to ensure, need for 166, 169	Rights (1966)
	- 45110 (1200)



minorities	pollution/economic and social consequences
Ainu people 296–7, 299	of suspension, balance 214-15
right to enjoy culture 297, 299-301	River Oder 341
International Covenant on Economic, Social and	sic utere tuo ut alienum non laedas 341, 342,
Cultural Rights (1966) 157	343–5
international law	Trail Smelter 341
as applicable law, discharges into international watercourses 211, 212–13, 214, 215, 341,	See also equitable utilisation principle; good faith cooperation; Helsinki Rules on the Uses
342–3	of International Watercourses (1966);
domestic law and	hydrographic basin; Rhine, pollution
implementation 289 n. 3	Italy
legislation, interpretation in conformity with	damages/compensation
223	damage to environmental values 290, 291–3
obligations	damage to goods on territory/territorial sea
definition 22, 31, 44–5	and damage to territory/territorial sea
good faith and 128	distinguished 289, 290, 292
See also customary international law; treaties	determination, experts 290, 292-3
International Law Association (ILA)	measure
'equitable and reasonable' use of international	equitable principles 290, 292
rivers (Dubrovnik, 1956) 7	impossibility of quantification 292–3
See also Helsinki Rules on the Uses of	lost environmental benefits 290, 291–2
International Watercourses (1966)	international law, domestic law and,
International Law Commission (ILC)	implementation 289 n. 3 law of
Non-Navigational Uses of International	
Watercourses, Reports 1979 (Schwebel) 10	Law 185/1977 (1969/1971 Oil Pollution Conventions) 289 n. 3
1980 (Schwebel) 11	Law 349/1986 (compensation for
1987 (McCaffrey) 6, 7–8, 9	environmental damage) 292–3
international watercourses	Law 979/1982 (Marine Defence Law), Art. 21
applicable law. See applicable law, international	(marine pollution: liability) 286–7,
watercourses	290–1
competing economic interests of	liability, standard of, strict/absolute 290–1
upstream/downstream owners	marine pollution, damages/compensation,
duty of care 342, 343–5	damage to coasts and interests of coastal
availability of alternatives, relevance 345	States 290, 291
continuity of flow, need for 2, 3	pollution, as element completely or partially
riparian States, equality. See equitable utilisation	destroying the environment 290, 291
principle	remedial measures, recovery of costs 286–7
territorial integrity and 5	standing, State as representative of national
transboundary pollution	community/public interest 289, 292
action in courts of another riparian State,	territorial sovereignty, State's right to
right to bring 211, 212, 214	compensation for damage to
environmental impact assessment, need for 211, 212–13, 214–15, 216	territory/territorial sea 289, 290, 292
impact assessment, need for	Japan
extension of existing authorisations	Constitution
214–15	Art. 12 (freedoms and rights: guarantee
feasibility of investigation in third country,	subject to public welfare) 297, 300,
relevance 216–17	304
general principle of international law 211,	Art. 13 (life, liberty and happiness subject to
212–13	public welfare) 297, 300–1
Lake Lanoux 341	Art. 98(2) (international law) 297, 299–300



Japan (cont.)	clear intent of legislature and 516–17, 520–1,
environmental impact assessment, failure of	525-6
authorities 298, 306–8	conduct occurring in legislating State and
human rights, derogation in public interest 297,	516–17, 520
300, 304	regulation of decision-making processes 517,
indigenous peoples	521
classification as 301–2	environmental legislation 52, 224-6, 514-27
environment/development, balance	interference with law of foreign State and,
environmental impact assessment, need	Antarctica, applicability of rule to 516,
for 296–7, 298–9, 306–8	517
indigenous rights/irrigation and flood	interference/conflict with law of foreign State
control 303–10	and 516, 517, 519–21
policy towards 302-3, 305-6	enforcement provisions, relevance 522
right to enjoy culture 301-2, 304-6	legislative control, relevance 517, 522-4
law of	presumption against 516, 519-21
Law 139/1962 (Administrative Litigation	sovereignless areas 517, 522-4
Law)	legislation, interpretation
Art. 7 (costs) 310	aids
Art. 31(1) (declaration of illegality) 298,	appropriations committee decisions 510–12
309–10	executive memorandum 523–4
Law 219/1951 (Land Expropriation Law)	implementation committee interpretation
Art. 20(3) 296–7, 298–9	518, 526
Art. 20(4) 296	legislative history 504–9, 535
Art. 51 295	guidelines
minorities	consistency with international law 223, 225
primacy of rights 299–301	environmental legislation 88, 224
right to enjoy culture 297, 299–301	expressio unius est exclusio alterius 501
remedial measures	legislature's intention 503–4
insufficiency 298, 308	plain language 525–6
irreversibility of damage 298	statute as a whole 86, 526
remedies, declaration of illegality 298	responsibility of courts 460–1
See also Ainu people; Saru River, impact of dam	words and phrases, 'environmental quality' 86–7
projects on indigenous people	
Laguna Laka dayalanmant (Dhilinninas) Saa	legislation, repeal, continuing commitment of
Laguna Lake development (Philippines). See Philippines, Laguna Lake Development	public funds as implied 501–2, 509–12 legitimate expectation
Authority (LLDA)	due process and 405, 412
law, guidelines as 85–6	issue of licence 355
Law of the Sea Convention (1982)	liability, standard of
Community competence 470–1	causality requirement 342, 344–5, 349–51
jurisdiction 465	conformity with terms of licence issued by
continental shelf 467	another riparian State, relevance 346,
EEZ 467	350
territorial sea 467	discretionary authority, obligation to avoid
legislation, compliance	criminal offence 447, 448–9
State agency obligation 518, 525–7	tort 448
See also remedies, direction to government, to	duty of care 342, 343-5
carry out statutory obligations	availability of alternatives, relevance 345
legislation, extraterritorial effect	fault 219
adverse effects in legislating State in absence of	foreseeable, constant and substantial damage
516–17, 520	without compensation 344, 346, 348-9



Index 563

'foreseeable and constant' 344 s 30(1) (repeal of legislation: effect on 'substantial' 344-5 acquired rights) 315 'strict protection' (Habitats Directive) 472-3 Natural Resources and Environment strict/absolute 259, 263, 264-5, 273, 276-7, 284, (Prescribed Activities) Order 1994 286-7 (Sarawak), Item 4(ii) (dams, artificial endangered species, protection 501, 503-4 lakes, reservoirs) 312-13 'institutionalised caution' 512 public's right to copy of EIA, absence Oil Pollution Damage, Convention on Civil 319-20 Liability (1969) 290-1 s 2(2) (measurement of area) 312-13 life, right to 143, 144, 146, 151, 155, 156, 158, 179, Natural Resources Ordinance (Sarawak), 183, 247, 258, 323, 325-6, 372, 374, s 11A(1) (State Natural Resource Board) 379-80, 385, 448, 451-2, 453-5 lophelia pertusa, protection 466, 472, 474 See also environmental impact assessment above Malaysia legislative powers, federal/non-federal, conflict, failure of federal/non-federal authorities acquired rights, repeal of legislation, effect 315 to resolve conflict 314, 317-19 democratic participation remedies, choice determined by likelihood of consultation, right of 320 resolving dispute 315-16 See also environmental impact assessment, standing democratic participation below individual's right to a declaration of need to environment, evolving understanding 319 comply in case of penal provisions environmental impact assessment particular and substantial damage in democratic participation, public right of respect of public right 314, 317 comment to independent review panel statutory provision for particular class of 312, 315, 319-20 individuals 314 requirements, measures to prevent, reduce motivation, relevance 315, 320 or control adverse effect 315 representative action 316-17 law of sufficiency of interest requirement 313 Environment Quality (Prescribed Activities) threat to social, cultural and spiritual (Environmental Impact Assessment) survival 313-14, 316-17 Order 1987, Item 13(b) 312 marine pollution **Environmental Impact Assessment** damages/compensation, damage to coasts and Guidelines interests of coastal States, Convention para. 3.4.7 (public availability) 312, 315 on Civil Liability for Oil Pollution para. 4.5 (public right of comment to Damage (1969) 290, 291 independent review panel) 312, 315 EC Directive 85/337 470-1 Environmental Quality Act 1974 federal State, responsibility for 74-5, 76-8 general benefit of public as objective 314 Habitats Directive (EC Directive 92/43) 470 retrospective amendment, Ministerial incineration of wastes at sea 353 internal/non-internal waters, whether divisible power 314-15, 319 s 34A (environmental impact assessment) 74-5, 76-7 312-13 licences Environmental Quality (Prescribed discriminatory, whether 355, 358 Activities) (Environmental Impact land disposal as alternative, need to consider Assessment) (Amendment) Order 1995 312 case-by-case assessment of preferability, as subsidiary legislation 314-15 Interpretation Acts 1948/1967 North Sea, Ministerial Declaration at s 3 (subsidiary legislation) 314-15 Second International Conference on

s 20 (retrospective orders) 314-15

(1987) 354-5, 356



marine pollution (cont.)	primacy of rights 299-301
legitimate expectation 355	right to enjoy culture 297, 299–301
requests by foreigners, national authorities,	See also indigenous peoples
failure to respond on land disposal	
alternatives 355–7	national parks
treaties and other international instruments	definition
as basis of national policy 356	Chile 128
proportionality and 77–8	Washington Convention on Nature
salt/fresh water distinguished 74, 75	Protection and Wildlife Preservation in
territorial sea/internal waters, difficulty of	the Western Hemisphere (1940) 127
distinguishing 75	designation and control 128
See also damages/compensation; healthy	Lake Chungará 128
environment, right to; Marine Pollution	natural beauty, need to protect 179, 183
by Dumping from Ships and Aircraft,	government's obligation 284
Convention for the Prevention of;	natural justice, due process 412–13, 422
Marine Pollution by Dumping of Wastes	natural resources, exploitation
and Other Matter, Convention for the	public trust and 284, 285, 429–32
Prevention of (1972); Oil Pollution	territorial sovereignty 179, 183, 190
Damage, Convention on Civil Liability	See also environment/development, balance
(1969)	negotiations, duty 10–11
Marine Pollution by Dumping from Ships and	customary international law 11
Aircraft, Convention for the Prevention	good faith and 10–11, 12
of (1972)	Lake Lanoux 11
exemptions, examination of alternatives for	Non-Navigational Uses of International
land disposal and 354–5, 356	Watercourses, ILC Reports 11
implementing legislation (Netherlands) 353	Railway Traffic between Lithuania and Poland 10
Marine Pollution by Dumping of Wastes and	Nepal
Other Matter, Convention for the	Arun III hydro-electric project 330
Prevention of (1972)	collective rights, protection
exemptions, examination of alternatives for	as political process/political overlap,
land disposal and 354-5, 356	economic dispute 335–7
implementing legislation	subjective/individual rights distinguished
Canada 67	333
Netherlands 353	Constitution 2019 [1963]
internal waters, exclusion from obligation to	Art. 9(b) (regard for others in exercising
regulate 74–5, 76	rights) 322
words and phrases	Art. 71 (fundamental rights: Supreme Court
'internal marine waters' 74	jurisdiction) 322, 325
'sea' 74, 76	Constitution 2047 [1990]
migratory birds	Art. 11(1) (right to life and liberty) 323,
Migratory Bird Treaty (Great Britain	325–6
(Canada)-United States), federal	Art. 16 (right to information on any matter
authority to conclude/implement 492	of public importance) 331, 332, 336–9
title to 494	'every citizen' 335
minor/child rights 156, 185	legal person, entitlement 332
standing 382 n. 1, 387	transparency and 332, 338-9
See also intergenerational responsibility	Art. 26(4) (environment: priority) 323–4,
minorities	326
International Covenant on Civil and Political	Art. 88(2) (fundamental rights: Supreme
Rights (1966), Ainu people 296-7,	Court jurisdiction) 322, 323, 326, 331–2,
299	333–4



jurisdiction, limitation to issues requiring	Minerals Act 2042 [1985]
interpretation of law or Constitution	direction to bring into force 325
335–7	failure to bring into force 324, 327
as new provision 326	Secret Documents Act 1983 338
contract, termination in public interest,	public interest
government's discretionary power 328	environment/development, balance, standing
democratic participation	and 325-6, 333
access to information, right of, procedures	information on matters of, right to 331, 332
338–9	termination of contract and 328
information on matter of public interest,	remedial measures, sustainable development
right to 331, 332, 336-9	principle and 328
direction to government to enact	remedies
appropriate laws 332	absence of legislative provision 324, 327
legal person 332	direction to government
procedure for, State practice as source 332	to carry out public duty, clearly defined
transparency and 332, 338-9	duty, need for 325, 328-9, 332
environment	to enact appropriate laws 325, 329, 332
protective legislation/remedy	public interest action 325-6
absence 324, 327, 328–9	recommendations for procedures for making
direction to enact appropriate laws 325,	information available 338–9
329	standing
need for 324	applicable law 323
environment/development, balance	sufficiency of interest requirement
justiciability 335–7	environmental/welfare organisations
Stockholm Conference on the Human	323–4, 325–6, 334–5
Environment (1972) 324–5, 327–8	public interest and 325–6, 333
environmental impact assessment	sustainable development principle, remedial
Eighth Five-Year Plan (1992) 324	measures and 328
legislation 326, 329	Netherlands
practice in absence of legislation 326–8	applicable law
healthy environment, right to, as fundamental	international watercourses
right, life, right to and 323, 325-6	choice of law by parties 342–3
interim measures, information, interim	customary international law 341, 342–3
procedures for securing access to 332	domestic law of forum 341, 342–3
law of	badgers, protection of 359
Civil Code, Chapter on Court Proceedings	collective rights, protection, subjective/
access to information 332	individual rights distinguished, duty of
s 10 (public interest cases: standing) 322	care as basis of action 343
s 211 (copies of documents) 337–8	damages/compensation
Civil and Criminal Procedure Code 338	for continuing damage 344, 345, 346,
Contract Consolidation Regulations,	349–50
Regulation 25(1) (government's	injunction distinguished 350 determination
discretionary power to terminate	
contract in public interest) 328 Environment Protection Act 2054 [1997]	appropriate point in proceedings for 346–7
329	experts 351–2
Environmental Protection Regulations 2054 [1997] 329	measure, remedial measures by injured party, relevance 345
	Environmental Policy Protection Plans,
Industrial Enterprises Act 2049 [1992], environmental impact assessment	approval of tourist development in
requirement 326	breach of 362–4
requirement 320	DICACII 01 302-4



566 Index 4 IELR

Netherlands (cont.) standing, foreign entity 340-1 freedom from discrimination, pollution, treaties exemption licences 355, 358 individuals, rights under 342, 345-6, 347-8 ratification, applicability prior to 342, Chemical Waste Act, Art. 16 347-8 (implementation of EC Directives on treaty interpretation, aids, parliamentary hazardous waste) 357 proceedings relating to 348 Marine Pollution Act 1972 (implementation See also Rhine, pollution of Treaties of Oslo (1972) and London non-governmental organisations, standing 229, 238, 261, 274, 323-4, 325-6, 334-5, Art. 3(1) (prohibition of discharges) 356 382 n 1 Art. 4 (prohibition of discharges: incorporation, relevance 419, 420, 421-2 exemptions) 353-4 Norway Art. 6B (movement of hazardous waste environment/development, balance, into Dutch territory) 357 endangered species, protection of, exemptions, requests by foreigners 353 economic and social consequences of extracts 355 n. 4, 356 n. 5, 357 n. 7 suspension of work 368 See also marine pollution, licences below law of Temporary Law on Crown Disputes (TKW), Whaling Act 1939, Art. 2 (licence to take Art. 2(1) (appeal on grounds of whales) 366 unreasonableness of decision) 361-2, discretionary powers, absence of guidance 364 367-8 liability, standard of sustainable whaling through international causality requirement 342, 344-5, 349-51 cooperation as object 368-9 precautionary principle, applicability in case of conformity with terms of licence issued by another riparian State, relevance 346, 350 uncertainty or ignorance concerning foreseeable, constant and substantial damage nature or scope of environmental harm without compensation 344, 348-9 368, 369 'foreseeable and constant' 344 remedies, action for abuse of discretion 'substantial' 344-5 (détournement de pouvoir) 365-81 marine pollution, licences whales discriminatory, whether 355, 358 International Whaling Commission, 'in transit', ship as 'installation' 358 moratorium, Norway's voluntary land disposal as alternative, need to consider compliance 366-7 354-8 licence to take or kill case-by-case assessment of preferability, international pressure 369 rejection 356 relevant factors 368 legitimate expectation 355 suspension, right to compensation for requests by foreigners, national authorities, 365-81 failure to respond on land disposal nuclear power, transboundary pollution alternatives 355-7 foreigners' rights treaties and other international instruments democratic participation in consultative as basis of national policy 356 process 223-5 remedial measures to bring action 221 obligation of party suffering damage 345, Oil Pollution Damage, Convention on Civil recovery of costs, effect on compensation 351 Liability (1969) compensation for damage to coasts and remedies, compensation for continuing damage 344, 345, 346, 349-50 interests of coastal States 290, 291 rivers, competing economic interests of damage to goods on territory/territorial sea and damage to territory/territorial sea upstream/downstream owners, duty of

care 342, 343-5

distinguished 289, 290, 292



Index 567

liability, standard of 290-1 See also damages/compensation; marine pollution; Marine Pollution by Dumping of Wastes and Other Matter, Convention for the Prevention of (1972) Oldman River (Alberta) Crown immunity and 89 Friends of the Oldman River Society, action taken in opposition to proposed dam, responsibility for environmental issues, 89-92 common law, healthy environment, right to 379 Constitution 1973 Art. 9 (right to life/liberty) 372, 374, 379-80 Art. 14 (inviolability of dignity/privacy) 374, Art. 184(3) (enforcement of rights) 372, 373, 374, 379, 380 democratic participation, consultation, right of 374, 381 environment/development, balance, hazard to health/energy production 373-4 healthy environment, right to common law 379 as fundamental right, life, right to and 372, 374, 379-80 precautionary principle, applicability in case of uncertainty or ignorance concerning nature or scope of environmental harm 373-4, 376-8 public interest, environment/development, balance, standing and 373, 379, 380 remedies appointment of commissioner to examine challenged plans 374, 378 direction to government to conduct public consultation as interim measure 374, recommendations for independent planning commission to consider environmental implications 374, 378-9 Rio Declaration on Environment and Development (1992) and 373, 377-8 standing, sufficiency of interest requirement, public interest and 373, 379, 380 Pergau Dam project 456 economic viability 457

review leading to suspension of approval 477, improper haste 479, 484-5, 491 risk assessment mechanism, absence 480, 489 Philippines collective rights, protection 'diffuse' interest 392-5 as political process/political overlap 394 Constitution 1987 Art. II(15) (right to health) 388-9, 393, 398, 400, 401 Art. II(16) (right to balanced and healthy ecology) 383, 388-9, 393, 398, 400, 401 Art. III(10) (non-impairment of contracts) 384 n. 6, 386, 390-2 Art. VIII(1) (powers of courts to resolve actual legal rights including abuse of discretion) 389-90, 394 Art. XII(1) (equitable distribution and full and efficient use of natural resources) Art. XII(2) (protection of nation's marine wealth) 383 Art. XIV(14) (conservation and promotion of nation's cultural heritage) 383 self-executing, whether 393 contract constitutional protection 384, 386, 390-2 licence distinguished 386, 390-1 termination in public interest, government's discretionary power 384, 386, 390-2 due process, public interest and 393-4, 400-2 environment, responsibility for, State agency 400-2 environment/development, balance due process 385, 386 forestry policy 382 exhaustion of administrative remedies, relevance 392-3 healthy environment, right to as free-standing right 385, 388-9, 393-4 as fundamental right 388-9 life, right to and 385 responsibility of State to provide 385 intergenerational responsibility 384, 388-9 class/representative action and 385, 387 judicial review, procedural requirements 389 Laguna Lake Development Authority (LLDA) 396-402 Charter 1966/1983 397, 398 n. 10 s 4(d) (approval of plans for development of region) 399, 401

dichlorvos, use in pesticides (UK)

provisional approval 477

pesticides



Philippines (cont.)	r 16.1(g) (failure to state cause of action)
responsibilities/powers 398–9	389
cease and desist orders 399, 400–2	r 65 (action to set aside order of Regional
concurrent responsibilities of Department	Court) 383
of Environment and Natural Resources	minor/child rights, standing 382 n. 1, 387
399	political question doctrine
as State agency 398–9	385-6, 389-90, 394
law of	property, right to own, use and dispose of,
Administrative Code 1987 (Book IV,	licences distinguished 386
Title XIV, Art. 15(1) (utilisation of	public interest
natural resources for the benefit of the	due process and 393-4, 400-2
people)) 384 n. 5, 389, 393	environment/development, balance
Batas Pambansa Blg. 129, s 9(3) 398 n. 9	cease and desist orders 400
Civil Code	standing and 387
Art. 19 383–4	termination of contract and 384
Art. 20 383–4	remedies, failure to identify right allegedly
Art. 21 383–4	affected and 388-9, 393-4
Environment Code (Presidential Decree	standing
1152) 388–9	class/representative action 385, 387
as code of management policies and	intergenerational responsibility and 385
quality standards 393	individual, enforcement of environment
individual, right of enforcement 393	code 393
Environmental Impact Assessment	proper respondent, licence holder 385,
(Presidential Decree 1586 of 11 June	394–5
1978) 397	sufficiency of interest requirement
Environmental Policy (Presidential Decree	environmental/welfare organisations
1151 of 6 June 1977) 383	382 n. 1
as policy statement 393	legal interest, need for 392-3
s 1 (policy of State to create, develop,	minor/child 382 n. 1
maintain and improve environmental/	public interest and 387
development balance) 388-9	police power. See public interest
s 2 (intergenerational responsibility)	political question doctrine 385-6, 389-90, 394
388–9	polluter pays principle 252, 258, 259–60, 265–6,
s 3 (sustainable development)	272, 273, 276–7, 284, 286–7
383–4	as customary international law 273, 277
Executive Order No 192 of 10 June 1987	obligation of government to apply 273
(Department of Environment and	Rio Declaration on Environment and
Natural Resources)	Development (1992) 439
s 4 (responsibilities) 383–4, 389, 393	pollution
s 16 399	act/omission 134, 136, 183–4
s 19 399	as arbitrary act 134, 138
Forestry Reform Code (Presidential Decree	as common law nuisance 273, 277–8
705) 390–1	as element completely or partially destroying
Laguna Lake Development Law (Republic	the environment 290, 291
Act 4850 of 18 July 1966) as amended	as element, component or substance negatively
1983. See Laguna Lake Development	affecting life, health or well-being 181
Authority, Charter 1966/1983 above	evidence of 126–7, 136–7
Pollution Control Law (Republic Act 3931)	illegality
397	for exceeding authority 134, 137
Rules of Court (Revised)	prohibition by law 134, 137–8
r 3.12 (class action) 385, 387	imputability 134, 137



Index 569

Council of Ministers resolution authorisation relevance 138 See also liability, standard of (December 2000) 479, 488 See also Antarctic Treaty, Protocol on extinction of species for reasons unrelated to Environmental Protection (1991); Ganga proposed activity, relevance 60, 64 River (India), pollution from tannery Habitats Directive (EC Directive 92/43) 463, waste; marine pollution; Rhine, 472-3 pollution 'institutionalised caution' 512 pollution-free environment, right to live in. See obligation of government to apply 273, 276, healthy environment, right to; marine pesticide, limitation on use of 114-15 precautionary principle 272, 276, 286, 479-80, preventive principle distinguished 428, 436-7, 485-9 applicability in case of uncertainty or ignorance requirements for effective implementation concerning nature or scope of environmental harm 60, 154, 160, 188, appropriate mechanisms for risk assessment 189, 194, 272-3, 276, 284, 368, 369, 479-80, 486, 489 373-4, 376-8, 436-7, 479 failure to follow mechanisms 479-80, 486 adversarial process as means of arriving at purported adherence to principle 479-80, scientific answer 407, 413-14 486, 489 lack of scientific evidence as independent treaties and other international instruments ground for unlawfulness 189 incorporating 59, 154, 160, 194, 275-6 See also environment, damage to in case of scarcity of knowledge, relevance 60, 63-4, action for protection, relevance applicability in domestic law 60-2, 272-3, 276, property, right to own, use and dispose of 277, 286-7 constitutional right, whether 248 incorporation of (customary) international European Convention on Human Rights (1950) law, relevance 60, 61-2, 273, 277 411.477 local government and 110, 114-15 'possession' 480, 489-91 Biological Diversity Convention (1992) 61, 479 licences distinguished 386, 390-1, 477, 480, Cartagena Protocol on Biosafety (2000) 489-91 pollution and 123-5 as 'common sense' 60, 61-2 restrictions on as means of protecting customary international law 110, 114-15, 277 environment 245, 248 definition European Convention on Human Rights A Better Quality of Life (Strategy on (1950) and 245 Sustainable Development (UK)) 487 structure plan, relevance 411 proportionality Bergen Declaration on Sustainable Development (1990) 109, 110, 114-15 appropriateness of law and 53 domestic legislation (Australia) 61 environment/development, balance 166, 169 Intergovernmental Agreement on the equitable utilisation principle and 3, 12 marine pollution 77-8 Environment (1992) (Australia) 61 Rio Declaration on Environment and remedies, suspension of licence 480, 491 Development (1992) 194, 372, 373, provisional measures. See interim measures 377-8, 428, 436-7, 479, 485-6 public hearing. See due process environmental degradation, limitation to public interest due process and 393-4, 400-2 'serious risk' 485 environment/development, balance 58-9, 65, 151, 284, 452, 517, 521-2 variation in 485–9 European Community Treaty 479, 486 cease and desist orders 400 standing and 229 n. 9, 236, 252, 274, 325-6, Commission Communication (February 2000) 487 333, 373, 379, 380, 387, 428, 432, 532



570 Index 4 IELR

public interest (cont.) freedom of expression and 99, 103-6 human rights, derogation 297, 300, 304 information on matters of, right to 331, 332 legal person 332 State as representative of 289, 292 termination of contract and 328, 384 timeliness of challenge and 465, 473-5 public trust 285 common law 285 ecologically important lands 283-4, 285 government's grant of lease as breach 286 historical development 283-4, 431 inland waterways, bed 3-4 natural resources 284 private use/commercial exploitation, exclusion 285, 286 public land in federal State 3-4 resources of common importance 283-4, 285 Roman law 285 shared responsibility concept as alternative 431 reasonableness, environment/development, balance 166, 169 remedial measures contractual undertaking, sufficiency 438-9 determination by government 266-7, 273, direction to authorities for 263-4, 265. 266-9 environmental impact assessment as means of identifying 315, 440 funding from government sources 280 funding from pollution fines 274, 279-80 insufficiency 298, 308 irreversibility of damage 298 measure of cost 266 monitoring, sufficiency 452, 455 obligation of party suffering damage 345, 350 - 1recovery of costs 258, 259-60, 263-4, 265-6, 273, 276-7, 278, 279, 286-7 effect on compensation 351 sustainable development principle and 273, 276-7, 286-7, 328 See also polluter pays principle

action for excess of power (recours pour excès de pouvoir) 365-81 foreign public entity, right to bring 211, 212, as general remedy against administrative illegality 212 sufficiency of interest requirement 211, 212 timeliness 212 action for protection of constitutional rights (acción de tutela/recurso de amparo) 139, 141 n. 4, 141 n. 5, 155-6, 163 n. 1 administrative appeal, availability and 166, 172-3, 174-6 flexibility of constitutional jurisdiction, need for 178, 183-4 right of judge to create rules and procedures suspension of administrative act and 166, 172-3, 174-6 See also collective rights, protection action for unreasonableness of decision 361-2, appointment of commissioner to examine challenged plans 374, 378 arbitration as alternative to judicial/ administrative proceedings 442 boycott of goods/picketing of customers 96-106 limitations on 99, 106 choice determined by likelihood of resolving dispute 315-16 class action (acciones populares) 143, 155, 158-9 See also standing, class/representative action declaration of illegality 298, 461 direction to government to carry out public duty, clearly defined duty, need for 325, 328-9, 332 to carry out statutory obligations 273, 278, 279, 332, 429, 502 See also legislation, compliance to conduct environmental impact assessment 425-9, 444 to conduct public consultation as interim measure 374, 381, 425-9, 444 to enact appropriate laws 325, 329, 500 to reconsider decision in light of new information 491 entitlement, forma pauperis suits 260, 267 failure to identify right allegedly affected and 388-9, 393-4 See also collective rights, protection, 'diffuse'

absence of legislative provision 324, 327

pouvoir) 365

action for abuse of discretion (détournement de



fine/civil penalty	termination of harmful activity/cancellation
for continuing pollution, deterrent effect 531,	of licence 252, 255, 267, 279, 280, 284,
535–6	455
for past pollution 274, 278, 279-80	See also injunction above
payment to State, relevance 531	timeliness in seeking, relevance 84, 92-5, 133,
injunction	135–6
compliance with law, relevance 529-30, 531,	See also judicial review, timeliness above
537–40	See also damages/compensation; interim
court's power to suspend (functus officio) 446,	measures; remedial measures; standing
447–8	res judicata erga omnes 172
damages/compensation for continuing	Rhine, pollution
damage distinguished 350	acceptable limits other than as established by
discretionary nature 512–13, 531–2	Bonn Convention 349
incompatibility of environmental/non-	action in courts of another riparian State, right
environmental obligations including	to bring
foreign policy interests and 518, 524–5	foreign entity 211, 212, 340–1
legislation post-dating commencement of	public authorities concerned with drinking
work 500, 502, 503–4	water 212, 214
legislature's continuing commitment of	competing economic interests of
public funds, relevance 500, 501–2,	upstream/downstream owners
503–4	
See also termination of harmful	compensation for continuing damage 344, 345
activity/cancellation of licence below	
judicial review	duty of care 342, 343–5
	availability of alternatives, relevance 345 foreseeable, constant and substantial
excess of authority, in absence of 500–1 procedural requirements 228, 229, 389	
-	damage without compensation 344, 348–9
timeliness 228, 229, 238, 239 n. 11, 465,	
473–5	'foreseeable and constant' 344
in case of clear breach of statutory	'substantial' 344–5
provision 501	discharges in conformity with licence issued by
developing knowledge, relevance 474	another riparian State, relevance 346,
knowledge of likely challenge, relevance	350
474	impact assessment, failure of French authorities
prejudice to operators, relevance 474, 500,	to undertake 211, 212–13, 217
501	extension of existing authorisations and
public interest, relevance 465, 473–5	214–15
proportionality, suspension of licence 480,	International Commission of the Rhine against Pollution 210
491	
provision as responsibility of political	pollution/economic and social consequences
authorities 512–13	of suspension of work, balance 214–15,
public interest action 252, 274, 325–6	216
quashing of decision 491	Protection of the Rhine against Pollution by
recommendations for	Chlorides, Bonn Convention (1976)
changes in the law 260	210
independent planning commission to	discharges, consistency with 216, 217, 346
consider environmental implications	individuals, rights under 342, 345–6, 347–8
374, 378–9	purpose of water usage, relevance 345–6
procedures for making information available	ratification/entry into force, applicability
338–9	prior to 218, 342, 347–8
right to. See standing	remedies, compensation for continuing damage
social litigation action 258	344 345 346 349-51



Rio Declaration on Environment and	environmental impact assessment, failure of
Development (1992)	authorities 298, 306–8
as customary international law 373	illegality of projects 303-10
democratic participation 199, 200-1, 429, 441-2	remedial measures, insufficiency 298
environment/development, balance 179, 182–3,	See also Ainu people; Japan
272	separation of powers
environmental impact assessment 428, 440	executive as trustee concept 429–30, 431–2
intergenerational responsibility 179, 183, 434	political question doctrine 385–6, 389–90,
international cooperation, as duty 183	394
developed countries 183	provision of remedy as responsibility of political
legal effect 433	authorities 512–13
'national authority' 428–9, 438, 442	treaties and 20, 26, 49-50
polluter pays principle 439	snail darter as endangered species 498–513
precautionary principle 194, 372, 373, 377–8,	classification as 499, 502–3
436–7, 479, 485–6	social rights, environmental rights distinguished
environmental degradation, limitation to 488	246–7
remedies, judicial/administrative proceedings,	South Africa
arbitration as alternative 442	Constitution
sustainable development principle 179, 182–3,	s 7(4)(b)(i) (locus standi: 'own interest') 410
275–6, 428	s 23 (access to information) 405, 406, 408–9
territorial sovereignty 179, 183	reasonableness of request, relevance
risk. See precautionary principle	409
rivers. See Atuel River (Argentina); Acheloos River,	s 24 (environment, right to) 419, 421
diversion of waters; Beas River	s 24(b) (procedurally fair administrative
(Himachal Pradesh), pollution from	action) 405, 407, 411–13
motel complex flood works; Ganga	adversarial process and 407, 413–14
River (India), pollution from tannery	audi alteram partem 419, 422
waste; international watercourses;	broad interpretation 413
Oldman River (Alberta); Rhine,	codification of common law, whether
	412–13
pollution; rivers (federal State); Saru River, impact of dam projects on	s 33(1) 408
indigenous people	
rivers (federal State)	damages/compensation, for consequences of failure to suspend work as interim
applicable law 11	measure 414
continuity of flow, need for 2, 3	due process
disruption attributable to acts of party 2, 3	-
equitable utilisation principle, US jurisprudence	audi alteram partem 419–20, 422 common law 412–13
equitable utilisation principle, 03 jurisprudence	interim measures and 414
hydrographic basin. See hydrographic basin	
hydrographic basin. See hydrographic basin, inter-provincial character	legitimate expectation and 405, 412 natural justice 412–13, 422
responsibility for environmental issues, 89–92	-
rivers, international. See international	environmental impact assessment
watercourses	public consultation and 420
	procedure 423–4
Roman law, public trust 285	timing 420–1, 422–4
Camaryale Can Malaysia	healthy environment, right to, as constitutional
Sarawak. See Malaysia	right 424
Saru River, impact of dam projects on indigenous	intergenerational responsibility 424
people 294–310	interim measures
environment/development, balance, indigenous	due process considerations 414
rights/irrigation and flood control	standing, trustees of protected wetlands 406,
303-10	409–11



suspension of activity 405	Art. 14 428, 443
absence of alternative 408, 415	Art. 17 428
balance of convenience/fairness 408,	Art. 27(14) (protection of the environment:
415–16	State responsibility) 427, 431
compensation claim in absence of 414	Art. 126(1) (fundamental right: Supreme
irreversible damage and 151, 172-3, 407-8,	Court jurisdiction) 427, 428, 431-2
414	Art. 126(4) 443-4
law of	contract, undertaking to comply with law,
Companies Act 61 of 1973, s 30(1)	relevance 440–2
(registration requirement) 419, 420,	democratic participation
421–2	access to information, right of 429, 441-2
Environmental Conservation Act 73 of 1989	consultation, right of, attempt to contract
discretionary nature 405, 406, 409	out of 440–2
s 2(1) (government responsibility for	transparency and 441
measures based on sound scientific	environment, responsibility for, individual and
knowledge) 407 n. 6, 413–14	collective 431
s 15(1) (board of investigation) 404, 405	environment/development, balance, phosphate
s 21(1) (activity having substantial	mining/sustainability of resources and
detrimental effect) 414	ecology 425–4
Land Use Planning Ordinance 1985 404	environmental impact assessment
s 5 (structure plans) 404	approval by 'national authority' (Rio
Minerals Act 50 of 1991 418	Declaration), need for 442
audi alteram partem rule and 420, 422	as auxiliary/essential planning tool 428, 433,
grant of s 9 licence, effect 422-3	437–8, 441
s 9(3) (Director of Mineral Development:	as legal requirement 438, 440–2
mining authorisation) 418, 419-20, 422	measures to prevent, reduce or control
s 39 (environmental impact assessment)	adverse effect and 315, 440
418, 420–1, 423	as procedural rule 440
natural justice, due process 412–13, 422	Eppawela phosphate mining project 425–44
precautionary principle, applicability in case of	intergenerational responsibility 428, 434–5
uncertainty or ignorance concerning	law of
nature or scope of environmental harm,	Guide for Implementing the EIA Process,
adversarial process as means of arriving	No 1 of 1998 (P20) 441
at scientific answer 407, 413–14	National Environment Act
property, right to own, use and dispose of,	environmental impact assessment
structure plan, relevance 411	provisions 438–42
standing	s 17 (intergenerational responsibility)
incorporation, relevance 419, 420, 421–2	435
sufficiency of interest requirement, trustees	'national authority' (Rio Declaration) 428–9,
of protected wetlands 406, 409–11	438, 442
Sri Lanka	natural resources, exploitation, public trust and
collective rights, protection, 'diffuse' interest	429–32
432	polluter pays principle 439
Constitution 1972	precautionary principle
Art. 3 (sovereignty of the people) 427, 429	applicability in case of uncertainty or
Art. 4 (courts) 429–30	ignorance concerning nature or scope of
Art. 5(7) (derogation/restriction as prescribed	environmental harm 436–7
by law just requirements of	preventive principle distinguished 428, 436–7,
democratic society) 443	440
Art. 12(1) (equality before the law) 428, 431,	public interest, environment/development, balance, standing and 428, 432
438–42	Daiance, Standing and 428, 432



proper respondent, polluter/licence holder 259,
385, 394–5
State as representative of national
community/public interest 289, 292
sufficiency of interest requirement 211, 212,
223, 226, 228, 242 n. 1, 313
environmental/welfare organisations 229,
238, 261, 274, 323–4, 325–6, 334–5, 382 n.
1, 533
direct detrimental effect to members'
interests 531, 533-4
incorporation, relevance 420
injury in fact 531, 532, 533-4
legal interest, need for 392-3
public interest and 229 n. 9, 236, 325-6, 333,
373, 379, 380, 387, 428, 432, 532
relevant factors 459-60, 530, 533
sufficiency of harm to environment as test of
harm to individual 532, 533-4
threat to social, cultural and spiritual survival
313–14, 316–17
trustees of protected wetlands, interim
measures 406, 409-11
See also collective rights, protection; remedies
State
chemical company, whether 259, 263
as representative of national community/public
interest 289, 292
State agency
accountability 526–7
compliance with law 518, 525-7
environment, responsibility 400-2
hardship exemptions 501
State practice
freedom of information 332, 337, 338
healthy environment, right to 149
State responsibility
pollution, failure to exercise powers to control
218–19, 252
continuing failure 219
treaties, delay in ratification 218
States, entities other than as subjects of
international law 28
Stockholm Convention on the Human
Environment (1972) 127, 143, 157, 253-5
development of developing countries 251, 254,
255
domestic law and 262
environment/development, balance 37, 272,
324–5, 327–8, 428
intergenerational responsibility 127, 189, 192,
254, 434



Index 575

international cooperation, duty 254 Penal Code legal effect 433 s 185 (voluntary pollution of environment pollution of the seas 251 noxious to health) 447 science and technology, application to solve s 239 (obstruction of public way) 447 environmental problems 251, 254 waste disposal toxic waste, avoidance 251, 254-5 health, right to and 445-9 strict liability. See liability, standard of risk to few/risk to many equation 448 subsidiarity principle 39, 109, 111-12 Tellico dam project. See United States of America, balancing of powers, importance Tellico Project federal/non-federal 77-8, 109 territorial integrity national/local 109 exploitation of international rivers and 5 Brundtland Report (Our Common Future) (1987) See also equitable utilisation principle 109, 112 territorial sea/internal waters, difficulty of defined limits 118-19 distinguishing 75 sustainable development principle 433-8 territorial sovereignty as customary international law 272 administrative decisions, territorial limitation elements/principles of 272, 276, 286, 428, 435 remedial measures and 273, 276-7, 286-7, agreement providing for derogation 224 328 democratic participation, right of foreigners to See also remedial measures participate 224-6 environmental impact assessment, need for in See also environment/development, balance; polluter pays principle; precautionary case of discharges into international principle watercourses 211, 212-13, 214-15, 216 Tamil Nadu, pollution from tannery waste 270-81 environmental legislation 52, 224-6, 514-27 environment/development, balance, environmental responsibilities extending pollution/export and employment beyond 465 opportunities 275 Habitats Directive (EC Directive 92/43). See environmental authority, direction to establish Habitats Directive (EC Directive 92/43), application beyond 12 nautical mile failure of polluter to take appropriate measures territorial limit to control 270-81 federal State relationships and 39 measures ordered by court 279-81 natural resources, exploitation 179, 183, 190 tannery waste. See Ganga River (India), pollution Rio Declaration on Environment and from tannery waste; India; Tamil Nadu, Development (1992) 179, 183 pollution from tannery waste State's right to compensation for damage to Tanzania territory/territorial sea 289, 290, 292 Constitution 1964, Art. 14 (right to life) 447, UNESCO Protection of the World Cultural and Natural Heritage Convention (1972) and discretionary authority, obligation to avoid 22-4 34 35-7 criminal offence 447, 448-9 See also international watercourses tort 448 third-generation rights. See collective rights, health, right to, waste disposal and, risk to few/risk to many equation 448 timeliness. See remedies, timeliness in seeking, relevance healthy environment, right to, as fundamental tort. See liability, standard of right, life, right to and 448 transboundary pollution injunction, court's power to suspend (functus officio) 446, 447-8 place of damage 340-1 law of See also international watercourses, Civil Procedure Code transboundary pollution; nuclear power, s 93 (extensions of time) 446 transboundary pollution; standing,

foreigner

s 95 (inherent jurisdiction) 446



travaux préparatoires	treaty interpretation
limited use of 43	aids
UNESCO Protection of the World Cultural	Conference Declarations 37
and Natural Heritage Convention (1972)	parliamentary proceedings relating to 348
24	resolution passed at time of conclusion of
as evidence of parties' wish to avoid	treaty 24, 36–7, 46
international commitment 36	applicable law, Vienna Convention on the Law
'presentation' 43–4	of Treaties (1969) 42–3
treaties	guidelines
breach, failure to pass implementing legislation	object and purpose 31
21	ordinary meaning 31
compliance	treaty as a whole 38
effect of non-compliance on relations with	imprecision of treaty texts and 54
other States as test 45–6	travaux préparatoires. See travaux préparatoires
obligation of 41, 54	words and phrases
domestic law and	'appropriate measures' 22, 23, 26–7, 32
conflict 517-18, 524	'duty to ensure' 22
primacy 189, 493–4	'endeavour, in so far as possible' 34–5
federal States. See federal States, treaties (federal	'presentation' 43–4
power/obligations)	'sea' 74, 76
implementing legislation	'undertakes' 22, 33, 34, 36
in absence of obligation 20–2	See also individual treaties
conformity with terms of treaty, need for	Turkey
21–2, 28–9	Constitution 1982
customary international law as declared by	Art. 17 (right to life) 451, 453-5
treaty as basis 21	Art. 56 (right to healthy environment;
subsidiarity principle 39	responsibility of State and citizen to
individuals, rights under 342, 345–6, 347–8	protect environment) 451, 453–5
interpretation. See treaty interpretation	environment/development, balance
obligations	gold mining/risk to life 450
contractual analogies 32, 54	public interest and 452
dispute resolution procedures as evidence of	health, right to, State's obligation to provide
37	453–5
good faith implementation 128	healthy environment, right to as fundamental
language giving rise to 22–5, 32, 33–7	right, life, right to and 451-2, 453-5
means of fulfilling, choice 23, 26	law of
effect on nature of obligation 44-5, 48	Art. 29 (operations) 450-1
See also compliance above	Environment Law No 2872, Art. 1 (object
'of international concern' 40-1	and purpose) 451, 453
compliance obligation, relevance 41	Environmental Impact Assessment
multilateral treaties 19, 41	Regulations of 23 June 1997 450–1
mutuality of benefit or interest 19, 25, 37	Mining Law No 3213 of 5 June 1985, Art. 26
number of signatories as indicator 38	(operation licences) 450–1
responsibility for determining 20	Mining Law, Regulation regarding
UNESCO Protection of the World Cultural	Implementation of 22 August 1995 450-1
and Natural Heritage Convention (1972)	Mining, Stone Quarries and Tunnel
25	Construction, Regulation Regarding the
ratification/entry into force	Battle against Dust of 14 September
applicability prior to 218, 342, 347–8, 517–18,	1990 450–1
524	Unhygienic Establishments Regulation of 26
State responsibility for delay 218	September 1995 450–1



Index 577

life, right to 451-2, 453-5 best efforts obligation compared 32 'duty to ensure' 22, 54-5 public interest, environment/development, balance 452 'effective and active measures' 23, 32 remedial measures, monitoring, sufficiency 452, 'endeavour, in so far as possible' 34-5, 455 54-5 remedies, termination of harmful obligation, whether 22-5, 32, 33-7, 41-6, activity/cancellation of licence 455 54-5 turtles, protection of 186-96 'presentation' 43-4 as endangered species 194 'property rights provided by national legislation' and 22-4 Inter-American Convention for the Protection and Conservation of (1996) 195 'so far as possible' 35 'to utmost of its own resources' 22-3, 32, UNESCO Constitution (1945) 31 UNESCO Protection of the World Cultural and 'undertakes', relevance 22, 33, 34, 36 Natural Heritage Convention (1972) as universal obligation 23 federal clause 25, 32, 38-9, 46, 55-6 obligation to submit inventory of relevant implementing regulations (Australia) 26-7, property 24 United Kingdom 32-3, 48-51 'appropriate', whether 26-7, 32-3, access to information, right of 483 48-51 acquired rights, licence as possession under as partial fulfilment of Convention European Convention on Human Rights obligations, relevance 50-1 (1950) 477, 480, 489-91 international assistance, provision for 24, 33, bad faith 479 55 Committee on Carcinogenicity (COC) 476-7, matters outside Convention, UNESCO resolution relating to (16 November Committee on Mutagenicity of Chemicals in 1972) 24, 36-7, 46 Food, Consumer Products and the object and purpose Environment (COM) 476-7, 483 effective system of collective protection 31, dichlorvos, use in pesticides. See pesticides, dichlorvos, use in pesticides (UK) encouragement to Parties to protect own due process abuse of process/second application heritage 33 international character of 25 distinguished 473 protection and conservation of cultural and bad faith and 479 natural heritage 43-4 improper haste 479, 484-5, 491 environment, responsibility outside territorial territorial sovereignty and 22-4, 34, 35-7 travaux préparatoires 24 as evidence of parties' wish to avoid treaty provisions 465 international commitment 36 See also law of, Conservation (National 'world heritage' 127-8 Habitats) Regulations 1994 below World Heritage Committee, role 24, 55 environment/development, balance, World Heritage Fund 24 economically unsound project 460-1 World Heritage List exclusive fishery zone (EFZ) 467-8 consent of State concerned, need for 24, 54 Habitats Directive (EC Directive 92/43) continental shelf and superjacent waters to disputed sovereignty/jurisdiction and 24 limit of 200 nautical miles from entry on criteria 46-7 territorial sea baseline, declaration of applicability to 466, 471, 475 effect 24-5, 46 obligation to protect listed area 22-5, 127-8 effectiveness of implementation cetaceans 466, 472-3 'appropriate legal . . . measures' 22, 23, 26-7, 32, 35, 54-5 limitation of geographical scope 465-6



578 Index 4 IELR

United Kingdom (cont.)	legislation, interpretation, responsibility of
failure to consider in connection with	courts 460–1
Nineteenth Round licences 474-5	liability, standard of, 'strict protection' (Habitats
limitation of geographical scope 465-6	Directive) 472–3
lophelia pertusa 466, 472, 474	licences for oil and gas exploration in the North
interpretation	Sea (Nineteenth Round), failure to
consistency with international	consider Habitats Directive 465–6
commitments 465, 469-72	pesticides, risk assessment mechanism, absence
literal 472–3	480, 489
object and purpose as guide 472-3	Pesticides Safety Directorate 476-7, 483
See also law of, Conservation (National	precautionary principle 479-80, 485-9
Habitats) Regulations 1994 below	definition
judicial review	A Better Quality of Life (Strategy on
sufficiency of interest requirement. See	Sustainable Development) 487
standing below	health, right to and 488
timeliness 465, 473–5	'serious risk' 485
developing knowledge, relevance 474	variation in 485–9
knowledge of likely challenge, relevance	Government response to Sixth Annual
474	Report of Government Panel on
prejudice to operators, relevance 474	Sustainable Development (August 2000)
public interest, relevance 465, 473–5	487–8
law of	jurisprudence 488–9
Conservation (National Habitats)	requirements for effective implementation
Regulations 1994	487–8
application, limitation to 12 nautical mile	appropriate mechanisms for risk
territorial limit 464, 465, 466–7, 468	assessment 479–80, 486, 489
r 39(1) (European protected species:	failure to follow mechanisms 479–80,
prohibited acts) 464	486
r 40(3)(c) (incidental result of lawful action	purported adherence to principle 479–80,
not easily avoided) 464, 466	486, 489
Control of Pesticides Regulations 1986	property, right to own, use and dispose of,
476–7 Fishery Limits Act 1976	licences distinguished 477, 480, 489–91 proportionality, remedies, suspension of licence
s 1(1) (EFZ) 467–8	480, 491
s 1(7) (prescription of continental shelf for	public hearing 478–9
exploitation) 467–8	private hearing, grounds (CPR 39.2) 478–9,
Food and Environment Protection Act 1985	481–3
s 16 483	initiation of action, relevance 478–9
s 16(1) (purposes) 483	public interest, timeliness of challenge and 465,
s 16(2) (prohibition of pesticides without	473–5
approval) 476–7, 483	remedies
s 16(7) (Advisory Committee on	declaration of illegality 461
Pesticides) 476–7, 483	See also judicial review above
s 16(9) (Advisory Committee on	direction to government to reconsider
Pesticides: consultation) 483	decision in light of new information
s 16(11) (disclosure of information) 483	491
Overseas Development and Cooperation Act	proportionality, suspension of licence 480,
1980	491
interpretation, as courts' responsibility	quashing of decision 491
460-1	standing
s 1(1) (Secretary of State's power to	liberalisation of rules 459

provide assistance) 456–7, 460–1

merits, relevance 459, 461, 474



Index 579

motivation relevance 459-60 environmental impact assessment. See Antarctic sufficiency of interest requirement, relevant Treaty, Protocol on Environmental factors 459-60 Protection (1991) above; law of, territorial sovereignty, environmental Environment Act (42 USC 4321) and responsibilities extending beyond 465 Executive Order 12114 (3 CFR 356 See also Pergau Dam project (1980)) below United States of America iniunction Antarctic Treaty, Protocol on Environmental compliance with law, relevance 529-30, 531, Protection (1991) 537-40 domestic law, conflict 517-18, 524 discretionary nature 512-13, 531-2 entry into force (as of May 2000 not in force), incompatibility of environmental/ relevance 517-18, 524 non-environmental obligations environmental impact assessment including foreign policy interests and activities having minor or transitory 518, 524-5 impact 516 legislation post-dating commencement of compatibility with domestic requirements work 500, 502, 503-4 517-18, 524 legislature's continuing commitment of cooperation with other States in public funds, relevance 500, 501-2, Antarctica, risk to 518, 524-5 503-4 Constitution inter-State rivers, equitable utilisation principle Art 1(8) 493 Art. 2(2) (treaty-making power) 493 interim measures, suspension of activity. Art. 3(2) (jurisdiction: case/controversy) sufficiency of environmental 530-1, 533-6 analysis, determination of 518, burden of proof 532 526-7 continuing violation attracting civil indicial review penalties 531 excess of authority, in absence of 500-1 deterrence resulting from public penalty and 532 in case of clear breach of statutory Art. 6 (treaties: supremacy) 493-4 provision 501 Tenth Amendment (reservation of powers to prejudice to operators, relevance 500, States) 492, 493 democratic participation, enforcement of law of public law by private individual and 532 Clean Water Act endangered species 33 USC 1342(a)(1) (permits for discharge definition 499 of pollutants) 529 designation as, responsibility for 502-3 33 USC 1342(h) (non-compliance with environmental impact assessment, need for permit as violation of Act) 529 in major federal action significantly 33 USC 1365(a) (s 505(a)) (citizen suit) affecting human environment 517 528-9, 530, 531-2 growing threat 504-6 33 USC 1365(g) (citizen as person having legislative powers (federal) 492 interest which is or may be adversely strict/absolute liability 501, 503-4 affected) 529 n. 1 'threatened species' 506 n. 25 Endangered Species Act 1973 (16 USC 1531) environment, international cooperation, as 498 duty 525-6 16 USC 1531(b) (purposes) 506 environment/development, balance 16 USC 1531(c) (obligation of Federal endangered species, protection of 502 departments and agencies to seek to cost to public purse 501, 503-4 conserve) 506 16 USC 1532(2) ('conserve') 506 foreign policy interests and 518, 524-5 hardship exemptions, State agency 501 16 USC 1532(4) (designation as public interest and 517, 521-2 endangered species) 499



> 580 Index 4 IELR

> United States of America (cont.) legislation, compliance, State agency obligation 16 USC 1533(a)(1) (determination of 518, 525-7 species as 'endangered' or 'threatened') legislation, extraterritorial effect adverse effects in legislating State in absence 16 USC 1533(c)(2) (right of petition for of 516-17, 520 listing) 506 Antarctica, applicability of rule to 516, 517 clear intent of legislature and 516-17, 520-1, 16 USC 1533(d) (s 4(d) (issue of necessary and advisable regulations)) 502-3, 506 16 USC 1536 (s 7 (authorised/funded conduct occurring in legislating State and actions: avoidance of destruction or 516-17 modification of critical habitat area)) regulation of decision-making processes 499, 503-4 517, 518, 521 16 USC 1538 (prohibition of dealings with interference/conflict with law of foreign State and 516, 517, 519-21 endangered species) 506 16 USC 1539(b) (exceptions) 506 enforcement provisions, relevance 522 16 USC 1539 (hardship exemptions) 501, legislative control, relevance 517, 522-4 508-9 presumption against 516, 519-21 16 USC 1540(c) (civil suits to force sovereignless areas 517, 522-4 compliance) 506 legislation, interpretation 16 USC 1540(d) (civil suits to force aids compliance) 506 appropriations committee decisions 'actions' 500, 502 510-12 congressional proceedings 504-9 executive memorandum 523-4 retroactive effect 502 implementation committee interpretation strict/absolute liability 501 518, 526 'threatened species' 506 n. 25 legislative history 504-9, 535 Environment Act (42 USC 4321) 88, 514-15 guidelines 42 USC 4332(2)(C) (s 102(2)(C)) environmental legislation 88 (environmental impact statement) 515, expressio unius est exclusio alterius 501 517, 518 legislature's intention 503-4 42 USC 4332(F) (s 102(2)(F)) (international plain language 525-6 cooperation) 518, 524-6 statute as a whole 526 Antarctica, applicability to 514-27 legislation, repeal, continuing commitment of control of decision-making process/ public funds as implied 501-2, substance distinguished 517, 518, 521 509-12 enforcement provisions 522 legislative powers (federal), endangered species, protection 492 extraterritorial effect 517, 518, 521-2, liability, standard of Executive Order 12114 (3 CFR 356 (1980)) strict/absolute interpretation of Environment Act (42 endangered species, protection 501, 503-4 USC 4321) and 526 'institutionalized caution' 512 s 2-3(a) (environmental impact statements Migratory Bird Treaty (Great Britain for federal actions affecting environment (Canada)-United States), federal outside jurisdiction of any nation) 515 authority to conclude/implement s 3-1 (purpose: internal procedures) 492 migratory birds, title to 494 515-16 public interest, environment/development, Migratory Bird Treaty Act 1918 (16 USCA 703-711), constitutionality 492 balance 517, 521-2 National Environmental Policy Act (NEPA). public land See Environment Act (42 USC 4321) cession to private individuals, continuing role above

of federal government 3-4



creation of new States and 3-4	ratification/entry into force, applicability
ecologically important lands 285	prior to 517-18, 524
as holding in trust for future States 3–4, 283–4	treaties (federal power/obligations)
inland waterways as 3-4	effective place of implementation, relevance
remedies	496–7
direction to government	endangered species, protection of 492
to carry out statutory obligations 502	legislative powers distinguished 493–4
to enact appropriate laws 500	Universal Declaration of Human Rights (1948),
fine/civil penalty	health, right to 400
for continuing pollution, deterrent effect	
531, 535–6	Vienna Convention on the Law of Treaties (1969)
payment to State, relevance 531	as applicable law 42–3
provision as responsibility of political	as customary international law 42–3
authorities 512–13	
See also injunction and judicial review above	Washington Convention on Nature Protection
separation of powers, provision of remedy as	and Wildlife Preservation in the Western
responsibility of political authorities	Hemisphere (1940)
512–13	commercial exploitation of national parks,
snail darter as endangered species 498–513	prohibition 127
classification as 499, 502–3	national parks
sovereignty of constituent State, pecuniary	definition 127
interest, relevance in challenge to	protected species 193
exercise of federal authority 493	protection of flora and fauna outside 193
standing	waste disposal
continuing violation attracting civil penalties	Antarctica 514–27
531, 535–6	See also Antarctic Treaty, Protocol on
individual, enforcement of public law 532	Environmental Protection (1991)
mootness in case of certainty of	cease and desist order, stay of execution 445–9
non-recurrence distinguished 531, 533,	failure of authorities to exercise powers to
537–40	control 218–19
need to establish for each remedy sought	failure of authorities to solve problem 185,
530–1, 534–5	270–81
sufficiency of interest requirement	failure of polluter to take appropriate measures
direct detrimental effect to	252, 259, 262–3, 270–81
environmental/welfare organisations'	health, right to and 177–85, 445–9
members' interests 531, 533–4	'in transit', ship as 'installation' 358
injury in fact 531, 532, 533–4 public interest and 532	obligation to establish treatment plants 252
1	risk to few/risk to many equation 448
relevant factors 530, 533	toxic waste, known dangers 154
sufficiency of harm to environment as test	See also Ganga River (India), pollution from
of harm to individual 532, 533–4	tannery waste; India; marine pollution;
State agency	pollution; Tamil Nadu, pollution from
accountability 526, 527	tannery waste
compliance with law 518, 525–7	wetlands, protection of 238, 239–41
Tellico Project, snail darter, risk to 498–513	biodiversity and 238, 239–40
territorial integrity, exploitation of international	residential development, exclusion 238
rivers and 5 treaties	Tinos island (Greece) 237
domestic law and	Wetlands of International Importance
conflict 517–18, 524	Especially as Waterfowl Habitat, Ramsar Convention for the Protection of (1971)
primacy 493–4	230–1, 233, 238–9, 240



> 582 Index 4 IELR

whales

International Whaling Commission, moratorium, Norway's voluntary compliance 366-7

licence to take or kill

relevant factors 368

international pressure 369 suspension, right to compensation for

365-81 uncertainty or ignorance concerning

precautionary principle, applicability in case of nature or scope of environmental harm 368, 369

sustainable whaling as legislative objective 368-9

work, right to 151

world biosphere reserves

definition 121 n. 7

Lake Chungará 127, 128

See also Chile, Lake Chungará Seville Strategy for Biosphere Reserves, Goal 1

(conservation of natural and cultural

diversity) 121 n. 7

World Heritage Convention (1972). See UNESCO Protection of the World Cultural and Natural Heritage Convention (1972)