

-MODULE 7-

INTERNATIONAL AND REGIONAL LAW

CONTEXT OF MODULE WITHIN BROADER COURSE

- This is the seventh Module in the Course.
- Domestic legal frameworks governing protected areas are frequently a response to and informed by international and regional commitments voluntarily undertaken by governments.
- A thorough understanding of international and regional laws of relevance to biodiversity conservation generally and protected areas in particular, is essential to anyone tasked with understanding, implementing, reviewing or drafting protected areas law.
- This Module provides the Learners with a broad introduction to, and overview of, international and regional laws of relevance to protected areas.

OVERVIEW OF KEY CONTENT

In this Module the Educator will introduce the Learners to:

- **Sources and Nature of International Law and Terminology**
 - Soft Law vs Hard Law
 - Conventions vs Protocols
 - Role of International and Regional Institutions
 - Relationship Between International, Regional and Domestic Law
 - Enforcement of International Law
- **Relevant International Conventions**
 - Convention on Biological Diversity
 - Convention Concerning the Protection of the World Cultural and Natural Heritage
 - Convention on Wetlands of International Importance especially as Waterfowl Habitats
 - Convention of the Conservation of Migratory Species of Wild Animals
 - United Nations Convention on Law of the Sea [Note also Modules 10, 11]
 - United Nations Watercourses Convention
 - UNECE Water Convention
- **Relevant Regional Instruments**
 - Africa - Revised African Convention on the Conservation of Nature and Natural Resources

- Europe - Convention on the Conservation of European Wildlife and Natural Habitats
- European Habitats and Birds Directives
- The America's - Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere

MODULE OBJECTIVES & OUTCOMES

• Objectives

- Introduce the sources and nature of International Law.
- Illustrate the relevance of International Conventions and Regional Instruments to domestic protected areas law.
- Provide an overview of key international and regional instruments.
- Review leading international and regional examples

• Desired Outcomes

- Understanding of the sources and nature of International Law.
- Awareness of the relevance of International Conventions and Regional Instruments to domestic protected areas law.
- Familiarity with key international and regional institutions of relevance to protected areas.
- Knowledge of leading international and regional examples

READINGS & RESOURCES

- *PA Law Guidelines* (pgs 47-73) contain discussion of the conventions referred to in the module, including reference to more detailed provisions that may be relevant to particular learner audiences. pages 53-56, for example, refer in detail to the Ramsar convention. Educators will wish to tailor the overall presentation to their understanding of the learners' requirements, bearing in mind that time allocations are indicative and an increased attention to one particular subject is likely to reduce the time available to devote to other topics.
- Philippe Sands, *Principles of International Environmental Law*, 2d ed.
- David Hunter, James Salzman, Durwood Zaelke, *International Environmental Law and Policy*, 3d ed.
- Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law and The Environment*, 3d ed.
- John Currie, *Public International Law* (Irwin Law, 2008)
- Thomas Greiber Et Al, *An Explanatory Guide To The Nagoya Protocol On Access And Benefit-Sharing* (IUCN, Gland, Switzerland, 2012)
- Nagoya Protocol website at: <https://www.cbd.int/abs/>
- World Heritage Convention [Operational Guidelines](#) (UNESCO, 2008)
- Patry, M. "World Heritage and IUCN Categories" In N. Dudley and S. Stolton (Eds.) *Defining Protected Areas: An International Conference In Almeria, Spain* (Gland: IUCN, 2008). Available at http://cmsdata.iucn.org/downloads/almeria_proceedings_final.pdf
- Ramsar Vision Statement

- “Criteria For Identifying Wetlands Of International Importance”
http://www.ramsar.org/sites/default/files/documents/library/ramsarsites_criteria_eng.pdf
- *The Ramsar Convention Manual: A Guide To The Convention On Wetlands (Ramsar, Iran, 1971)*, 3rd ed. (Gland, Cwitzerland: Ramsar Convention secretariat, 2004)
<http://www.ramsar.org/sites/default/files/documents/library/manual6-2013-e.pdf> (6th ed.)
- UN Watercourses Convention
https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xxvii-12&chapter=27&lang=en
- Michael Bowman, Peter Davies And Catherine Redgwell, *Lyster’s International Wildlife Law*, 2d ed, (Cambridge UP, 2010)

STRUCTURE & DURATION OF MODULE

- This Module is structured into **two main components**. These may be adapted to the domestic or national context and may be supplemented with local case-studies. Some educators may wish to reverse or blend the presentation of the two main components:
 - **Seminar Presentation**, consisting of slides and explanatory notes for the Educator
 - **Exercises** contain detailed instructions respecting their use and may be adapted to specific circumstances
- The approximate **duration** of the Module, offered only for indicative purposes, is 4 hours comprising of:
 - Seminar Presentation (2 hours)
 - Exercises (2 hours)

REFLECTIVE EXERCISES

In this Module the Educator has the choice of **two exercises**:

- **Exercise 1 - *Domestic Implementation of International Law***

- **Nature of the Exercise**

- This exercise is based on active student participation in the analysis of an international convention and corresponding domestic legislation applicable to protected areas
- Students are encouraged to analyse, reflect upon and assess the nature of international legal obligations respecting protected areas and domestic legislative provisions as well as implementation measures
- Participants are expected to assume the position or role of legal advisors charged with analysis of international and domestic legal instruments in the context of a Case Study.

- **Purpose of the Exercise**

- To enhance understanding of selected international agreements relevant to protected areas.
- To promote awareness of the relationship between international law and domestic protected areas law.
- To develop critical legal analytical skills for evaluating the translation of international law into domestic legislation.
- To encourage understanding of implementation arrangements in creating an effective protected areas regime
- To familiarize Learners with on-line resources relating to international conventions

- **Methodology/ Procedure**

Although this exercise is generic in nature it lends itself to considerable variation depending upon the composition of the Learner group. For example, if the entire class comes from the same jurisdiction, that country's experience could be selected as the relevant national example. Instructors might also choose to direct Learners through a comprehensive examination of one country by reviewing its performance systematically in relation to a series of international law obligations, OR to proceed on a comparative basis by focussing on only a small number of commitments and directing Learner groups to compare the performance of several different jurisdictions.

- Participants should be divided into working groups, each of which will have access to relevant documentation
- Each group will be provided with copies or electronic access to
 - Convention on Biological Diversity, and
 - Information concerning the Aichi Targets
- Secondly, participants will be provided with sample legislation from the applicant country which is presumed to be a signatory to the Convention.

- As an alternative:
 - The Educator can select the country or countries within which the training is occurring as a case study; or
 - The Educator can encourage individual Learners to use the legal frameworks of their countries of origin as a case study.
- Third, each group will also be directed to national reports concerning administration and operations for protected area(s) or concerning national biodiversity strategies in the applicant jurisdiction(s). National reports for protected areas under the CBD may be found at: <https://www.cbd.int/protected/> . National Biodiversity Strategies and Action Plans may be found at: <https://www.cbd.int/nbsap/>
- Each group is expected to assess domestic compliance with international obligations relating to protected areas under the convention.
- In respect to the CBD and selected country, each group will be requested to:
 - Identify the provisions of the Convention that deal with protected areas and ascertain the obligations arising in respect to those provisions.
 - Identify commitments emerging from the Aichi Targets, notably Nos. 11 and 17
 - Assess the extent to which the domestic legal framework of the country gives effect to these provisions and commitments.
 - Reflect upon the effectiveness of implementation based on administrative and operational information respecting the designated protected area.
- The Instructor, who will have scrutinised the Convention and relevant legal frameworks in advance, will rotate between the groups facilitating the internal group discussion where necessary.

At the close of the Exercise the groups might de-brief each other in relation to the analysis, depending on whether the exercise has proceeded on a comprehensive or comparative basis.

As a final observation, it will be noted that the materials and assignment are quite extensive in length. There are various ways to address this consideration. For example, the Educator could make a point of distributing materials well in advance to extend preparation time. Or, depending on course delivery arrangements, groups could be encouraged to meet on their own at some point outside the classroom setting. Alternatively, instead of asking each group to undertake the full range of assigned tasks, individual groups could be instructed to focus on one or two from the overall list.

- **Exercise 2 - *Domestic Compliance with International Law***
 - **Nature of the Exercise**
 - This exercise is based upon contested interpretation of concepts and principles derived from international legal instruments
 - It is organized as an exercise for multiple groups to examine and analyse specific issues in a hypothetical context, and then come together to discuss their respective interpretations
 - A discussion exercise will allow students to sharpen their skills at building arguments based on treaties
 - **Purpose of the Exercise**
 - To enhance understanding of selected international agreements relevant to protected areas.
 - To promote awareness of the relationship between international law and domestic protected areas law.
 - To develop critical legal analytical skills for evaluating the translation of international law into domestic legislation.
 - To encourage understanding of implementation arrangements in creating an effective protected areas regime
 - To familiarize Learners with on-line resources relating to international conventions
 - **Methodology/ Procedure**
 - Divide participants into five groups corresponding to:
 - The Parks Management Branch of the Ministry of Lands (twice as many as other groups)
 - The Ministry of municipal governments
 - The Transport Ministry
 - The Association of Community Fishers
 - Parents Against Alligator Attacks
 - The Instructor will introduce a fictional case study of a country that is facing significant resistance to its efforts to comply with principles and obligations derived from the following Conventions to which it is a signatory. For convenience excerpts from these Conventions are included in Annex 2:
 - Convention on Wetlands of International Importance especially as Waterfowl Habitats (Ramsar).
 - UN Convention on the Non-navigational Uses of Watercourses (UN Watercourses Convention).
 - Convention on Migratory Species
 - With reference to the specific challenge(s) it has been asked to address, each group will prepare an analysis, commentary and response. Participants should:
 - identify relevant obligations contained in the Conventions;
 - explore alternative approaches to interpreting the contested principles or terminology;

- potential compliance mechanisms contained in the Conventions or within a domestic legal regime,

The Learners will then come back together as a group and the Educator will facilitate a discussion about the above issues, drawing from the Learners' contributions.

NOTES FOR THE EDUCATOR

- **General Preparations for the Module**

- Read the main texts and the additional readings and resources.
- Work through the relevant Seminar Presentation and supporting Notes for the Educator.
- Tailor the Presentations to suit your purpose and audience.
- Read through the relevant Exercises.
- Tailor the Exercises to suit your purpose and audience.
- The Educator may wish to consult the additional sources in preparing for the Module

- **Facilitation of the Module**

- The most suitable approach to the international and regional law materials will depend very much on the nature of the audience, particularly the level of prior knowledge of learners concerning international law
- If a fair background knowledge of international law is assumed, slides on terminology and concepts at the start of the module may be presented as review.
- Where learners have limited familiarity with international law, terminology and concepts will require more extended discussion, with correspondingly less time to consider the actual substance of the conventions
- It may be appropriate to adjust emphasis according to the needs of the learners. For example, if the Module is being presented in Africa, regional agreements from the Western Hemisphere might be given less attention or even omitted

ASSESSMENT EXERCISES

- **Nature and Guidance on use of Exercises**

- The Educator is provided with a series of essay-style assessment questions that are designed so as to broadly cover the content the Module.
- The questions may be utilised for assessment purposes or as an opportunity for Learners to consolidate their knowledge.
- The questions cover both theoretical and practical issues. No mark allocation for the questions has been provided.
- All of the questions are of equal weighting.
- It is recommended that in an exam-type setting, Learners should have 1 hour to answer each question.
- The answers for the questions can be drawn directly from the Seminar Presentation and the accompanying Seminar Notes.

- **Assessment Questions**

- *Question 1*

Your country is proposing to introduce a new PA law. On the assumption that you are a party to all of the international conventions mentioned in Module 7, prepare a memorandum outlining the international obligations you believe should be considered in the drafting process.

- *Question 2*

The objectives of the Convention on Biological Diversity include conservation, sustainable use and benefit sharing. Discuss in general terms how you imagine these objectives might influence the design of protected areas legislation in your country.

- *Question 3*

A community organization in your country wishes to nominate a cultural site for designation under the World Heritage Convention and has asked you for advice. Write a paper outlining criteria and procedure applicable to the nomination process and possible designation.

- *Question 4*

The delta shared between your country and the neighbouring state is widely regarded as an important home for ecological resources and migratory species. With reference to the Ramsar Convention and to the UN Convention on the Non-Navigable Use of Shared Watercourses outline principles of environmental protection that might be available to safeguard the delta.

- *Question 5*

Select one of the regional conventions most applicable to your country's situation and describe its potential influence on the development of the domestic protected areas regime.