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## Basic Documents of International Environmental Law

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# BASIC DOCUMENTS OF INTERNATIONAL ENVIRONMENTAL LAW

Edited by Harald Hohmann. London/Dordrecht/Boston: Graham & Trotman/Martinus Nijhoff, 1992. xxxii + 1850 pp.

*Reviewed by Ludwik A. Teclaff\**

Until recently researchers in international environmental law had to be self-appointed acquisitions librarians: collecting dusty piles of obscurely numbered papers, rummaging through microfilm cabinets, and anxiously awaiting the publication of new individual documents by *International Legal Materials* and journals such as *Environmental Policy & Law*. Not any more. Now we may rely on several comprehensive sources: the thirty-three volume *International Protection of the Environment: Treaties and Related Documents*;<sup>1</sup> the six-volume *International Environmental Law: Multilateral Treaties*;<sup>2</sup> the two-volume UNEP collection, *Selected Multilateral Treaties in the Field of the Environment*;<sup>3</sup> and two single volume compilations, Molitor's *International Environmental Law: Primary Materials*,<sup>4</sup> and Brown Weiss, Szasz and Magraw's *International Environmental Law: Basic Instruments and References*.<sup>5</sup> Do researchers in international environmental law need yet another hefty collection?

Surprisingly, the answer is yes. Like Lao Tze's wheel, made functional by the absence of material between the spokes, the value of Dr. Hohmann's *Basic Documents of International Environmental Law*

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1. INTERNATIONAL PROTECTION OF THE ENVIRONMENT: TREATIES AND RELATED DOCUMENTS (Bernd Ruster et al. eds., 1983); see also INTERNATIONAL PROTECTION OF THE ENVIRONMENT: TREATIES AND RELATED DOCUMENTS, SECOND SERIES (Bernd Ruster & Bruno Simma eds., 1992)(three volumes to date).

2. INTERNATIONALES UMWELTRECHT: MULTILATERALE VERTRÄGE [INTERNATIONAL ENVIRONMENTAL LAW: MULTILATERAL TREATIES] (Wolfgang E. Burhenne ed., 1974).

3. UNITED NATIONS ENVIRONMENT PROGRAMME, UNEP REFERENCE SERIES NO. 3: SELECTED MULTILATERAL TREATIES IN THE FIELD OF THE ENVIRONMENT (Alexandre Charles Kiss ed., 1983); UNITED NATIONS ENVIRONMENT PROGRAMME, SELECTED MULTILATERAL TREATIES IN THE FIELD OF THE ENVIRONMENT: VOLUME 2 (Iwona Rummel-Bulska & Seth Osafo eds., 1991).

4. INTERNATIONAL ENVIRONMENTAL LAW: PRIMARY MATERIALS (Michael R. Molitor ed., 1991).

5. INTERNATIONAL ENVIRONMENTAL LAW: BASIC INSTRUMENTS AND REFERENCES (Edith Brown Weiss et al. eds., 1992).

(hereinafter *Basic Documents*) lies in the selectivity of his compilation. Hohmann is eminently qualified to do the selecting. He has been a lecturer on environmental and European law at two major German universities, the Johann W. Goethe University of Frankfurt/Main and the University of Kassel. He is a member of the International Law Association's Committee on International Water Resources Systems, and is special rapporteur to that Committee on cross-media pollution. Hohmann's work is characterized by formidable depth of research and meticulous attention to detail, and *Basic Documents* reflects those virtues.

The Introduction to Part 1 of *Basic Documents* contains sixty-nine footnotes. The Introduction to Part 2, fifty. Even the Preface has thirteen footnotes. Hohmann has clearly scoured the libraries and document centers of parliaments, research institutes, and international organizations to compile documents for his work. Some of the documents are barely known outside the circle of international experts. Others, such as documents 17a, 25d, 30e and f, 31g, 34a, 38a and b, and 40a have reportedly not been published elsewhere.<sup>6</sup>

Hohmann skillfully avoids several traps that ensnare editors in a rapidly expanding field like environmental law. He does not succumb to the seduction of a clumsy and inelegant loose-leaf format, which some authors prefer because it is easily updated. Hohmann did, however, update his work until the last possible moment; the latest versions of some documents were inserted in 1992 during final production of the book.

Hohmann also did not confine himself to publishing only treaties or excerpts of documents. The documents he selected are printed in full (except for some annexes of treaties) and are organized in three different ways. In Volume 1, documents are categorized by issuing organization. In Volume 2, documents are categorized by the environmental media to which they pertain. In Volume 3, the documents are organized by the geographical regions to which they apply.

Together, Hohmann's choicely culled documents form a well-rounded collection of declarations of all principal international organizations and recording bodies, international environmental agreements, and draft conventions promulgated in the last three decades. *Basic Documents* is a practical desk set, which will save users from having to spend many mind-numbing hours in libraries or before computer screens.

Dr. Hohmann selected materials for *Basic Documents* with an eye

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6. See I BASIC DOCUMENTS OF INTERNATIONAL ENVIRONMENTAL LAW 15-18 (Harald Hohmann ed., 1992) [hereinafter BASIC DOCUMENTS]

towards compiling an informative survey of international environmental materials. He decided not to include any of the European Economic Communities' voluminous documents.<sup>7</sup> Nor did he include elaborate regulations pertaining to the safety of ships or nuclear and chemical materials. Whenever several virtually identical instruments exist, such as the fisheries agreements under FAO or the UNEP regional seas agreements, Hohmann economized by selecting a few representative examples of each type of document. To help the reader develop a fuller understanding of these materials, Hohmann supplemented his collection of documents with two long introductions; these form an editorial commentary on the development of environmental law and the principal international organizations which contributed to that development.

Hohmann defends his inclusion of what some jurists disparage as "soft law" or purely political norms, arguing that such norms gradually ripen into customary duties.<sup>8</sup> Hohmann's editorial commentaries are a highlight of Volume 1.

Volume 1 of *Basic Documents* includes a variety of materials, ranging from broadly sweeping documents like the famous Stockholm Declaration of 1972,<sup>9</sup> which proclaimed that "Man is both creature and moulder of his environment,"<sup>10</sup> to technical documents like the FAO's International Code of Conduct on the Distribution and Use of Pesticides,<sup>11</sup> and the OECD Guidelines for Action to Reduce Emissions of Sulphur Oxides.<sup>12</sup> As noted earlier, the documents in Volume 1 are grouped according to the international organizations that issued them.

Section I of Volume 1 contains documents issued by the United Nations and its specialized agencies. Section II comprises rules and resolutions of the recording bodies: the International Law Association (ILA), the Institut de Droit International (IDI), and the International Law

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7. For EEC documents, Hohmann refers readers to *UMWELTRECHT DER EUROPÄISCHEN GEMEINSCHAFTEN [ENVIRONMENTAL LAW OF THE EUROPEAN COMMUNITIES]* (Wolfgang E. Burhenne ed., 1976).

8. I BASIC DOCUMENTS, *supra* note 6, at 1-2.

9. Report of the United Nations Conference on the Human Environment, June 16, 1972, U.N. Doc. A/Conf.48/14/Rev. 1 and Corr. 1 (1972), *reprinted in* I BASIC DOCUMENTS, *supra* note 6, at 21-26.

10. *Id.* at pmbl., para. 1, *reprinted in* I BASIC DOCUMENTS, *supra* note 6, at 21.

11. Food and Agriculture Organization (FAO), *International Code of Conduct on the Distribution and Use of Pesticides*, FAO Res. 10/85 (Nov. 28, 1985) (as amended Nov. 1989), *reprinted in* I BASIC DOCUMENTS, *supra* note 6, at 173.

12. Organization for Economic Cooperation and Development (OECD), *Guidelines for Action to Reduce Emissions of Sulfur Oxides and Particulate Matter From Fuel Combustion in Stationary Sources*, OECD Recomm. C(74)16 (June 18, 1974), *reprinted in* I BASIC DOCUMENTS, *supra* note 6, at 433.

Commission (ILC).<sup>13</sup> Sections III, IV, and V of Volume 1 comprise declarations, principles and guidelines of the Economic Commission for Europe (ECE), the Organization for Economic Co-Operation and Development (OECD), and the Council of Europe. These documents include some of the earliest environmental declarations, such as the Council of Europe's European Water Charter and its Declaration of Principles on Air Pollution Control both dating from 1968.<sup>14</sup> These sections contain the core of European pronouncements concerning waste management and transportation, recycling, transfrontier air pollution, groundwater protection, rational use of water, and environmental impact assessment. These documents vividly convey the collective wisdom of environmental experts living in Europe: a densely populated, highly industrialized region with many frontiers and, consequently, with many international environmental concerns.

Section VI of Volume 1 moves to a more ethereal plane with major declarations on the atmosphere and climatic change. The section then returns to earth with a selection of materials on sustainable development, including the Tlatelolco Platform of 1991.<sup>15</sup> These documents may ultimately prove to be more utopian than the scientific.

Section VII is entitled "Important Drafts and US-Restatement." This section serves as a catchall, containing some of the most profound thinking about possible future conventions. Section VII begins with the Law of the Environment, of the Restatement (3rd) of the Law of the Foreign Relations of the United States.<sup>16</sup> The section next includes a draft of a proposed convention on legal principles for environmental protection and sustainable development.<sup>17</sup> Drafts of other proposed conventions

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13. This reviewer disagrees with Hohmann's assertion that the importance of the ILC is diminishing. See I BASIC DOCUMENTS, *supra* note 6, at 5. The ILC's work on the law of the non-navigational uses of international watercourses is the subject of a lively ongoing controversy among water law experts, as evidenced by the *Colorado Journal of Environmental Law and Policy's* decision to commit their entire Winter 1992 issue to the subject.

14. European Water Charter, May 6, 1968, *reprinted in* I BASIC DOCUMENTS, *supra* note 6, at 499; *Declaration of Principles on Air Pollution Control*, Res. CM(68)4 (March 8, 1968), *Communication of the Activities of the Committee of Ministers*, in Eur. Consult. Ass., 20th sess., Doc. No. 2385 at 23 (1968), *reprinted in* I BASIC DOCUMENTS, *supra* note 6, at 502.

15. Economic Commission for Latin America and the Caribbean, *Platform on Environment and Development*, Mar. 7, 1991, U.N. Doc. A/Conf.151/PC/L.30 (1991), *reprinted in* I BASIC DOCUMENTS, *supra* note 6, at 570.

16. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 601-04 (1986), *reprinted in* I BASIC DOCUMENTS, *supra* note 6, at 581.

17. EXPERTS GROUP ON ENVIRONMENTAL LAW, WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, LEGAL PRINCIPLES FOR ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT (1986), *reprinted in* I BASIC DOCUMENTS, *supra* note 6, at 583.

found in section VII include: a proposed convention on the protection and use of transboundary watercourses and international lakes,<sup>18</sup> a proposed agreement on the use of transboundary groundwaters,<sup>19</sup> and a draft document on environmental awareness raising.<sup>20</sup>

Part 2 of *Basic Documents* is entitled "The Important Agreements." Part 2 comprises Volumes 2 and 3, and begins with Hohmann's concise summary and analysis of selected agreements.<sup>21</sup> Hohmann's analysis is one of the best features of the book, amounting to an introduction to international environmental treaty-making in a nutshell. This handy nutshell is followed by a section entitled "Basic Data of the Treaties."<sup>22</sup> Basic data for each agreement include the date and place of signature, the international source, the date of entry into force, a listing of signatories or member states, and any applicable protocols, amendments, and annexes.<sup>23</sup> The only drawback to the basic data section is that signatories statistics are not current the latest information generally dates from January 1991.

The agreements of Part 2 are divided into three chapters, according to the three environmental media: water, soil, and air. Water, in the form of seas, rivers and lakes, receives the greatest attention, taking up the whole of Volume 2. One sub-chapter is devoted to global agreements for the protection of seas, including major instruments on marine oil pollution, the Law of the Sea Convention of 1982, and the London Dumping Convention of 1972.<sup>24</sup> Readers should be aware, however, that some documents are not printed in full, but Hohmann is careful to flag

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18. U.N. Economic Commission for Europe, *Draft Convention on the Protection and the Use of Transboundary Watercourses and International Lakes*, Nov. 28, 1991, U.N. Doc. ENVWA/R.53 (1991), reprinted in I BASIC DOCUMENTS, *supra* note 6, at 615.

19. Robert D. Hayton et al., *Agreement Concerning the Use of Transboundary Groundwater*, in Robert D. Hayton & Albert E. Utton, *Transboundary Groundwaters: The Bellagio Draft Treaty*, 29 NAT. RESOURCES J. 663, 676-722, reprinted in I BASIC DOCUMENTS, *supra* note 6, at 643.

20. U.N. Economic Commission for Europe, *Draft Charter on Environmental Rights and Obligations*, Dec. 14, 1990, U.N. Doc. ENVWA/R.38 (1990), reprinted in I BASIC DOCUMENTS, *supra* note 6, at 593-95; U.N. Economic Commission for Europe, *Draft Document on Principles and Guidelines Related to the Environment: Awareness Raising and Public Participation*, July 10, 1991, U.N. Doc. ENVWA/AC.7/2 (1991), reprinted in I BASIC DOCUMENTS, *supra* note 6, at 595-97.

21. 2 BASIC DOCUMENTS, *supra* note 6, at 655-69.

22. *Id.* at 674-89.

23. *Id.*

24. *Id.* at 691-876.

those documents.<sup>25</sup>

Another sub-chapter of Volume 2 comprises regional agreements for marine environmental protection. It is a long section containing forty instruments, mostly drawn from the United Nations Environment Programme's regional seas conventions. One may quibble about the inclusion of the 1977 Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources in this group;<sup>26</sup> as it merely has a few signatories, all of whom are European, it hardly qualifies as global.

The remainder of Volume 2 is dedicated to agreements on the regimes of European rivers and lakes (eight examples), American rivers and lakes (five examples), and African rivers (four instruments pertaining to a single river). Hohmann's choice of river agreements was necessarily highly selective, but these instruments are good examples of such regimes. Because the whole of eastern Europe is in a state of flux, and because most bilateral water agreements established in the last fifty years are probably now in abeyance, the European section refers only to the Rhine and Danube rivers, and to Lake Constance. The North American section contains instruments on the Great Lakes and the Colorado River. There are no entries for South American or Asian rivers, and no explanation for Dr. Hohmann's decision to include only one African river regime, namely the Niger.<sup>27</sup>

Volume 3 is a compendium of conventions and protocols relating to the protection of nature generally. It includes documents pertaining to soils, wetlands, and forests; fish and wildlife; and the air and atmosphere. Volume 3 begins with a unique, regional convention: the 1974 Nordic

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25. Missing, for example, are Regulations 22-25 of Annex I to the MARPOL Convention (1973) and Protocol (1978) and Articles 146-191 of the 1982 Law of the Sea Convention. International Convention for the Prevention of Pollution From Ships (MARPOL), *opened for signature* Nov. 2, 1973, 94 Stat. 2297, 12 I.L.M. 1319, *reprinted in* 2 BASIC DOCUMENTS, *supra* note 6, at 762; Protocol Relating to the MARPOL Convention, *opened for signature* Feb. 17, 1978, S. EXEC. DOC. C, 96th Cong., 1st Sess. 1 (1979), 17 I.L.M. 546, *reprinted in* 2 BASIC DOCUMENTS, *supra* note 6, at 773; United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, U.N. Doc. A/Conf.62/122 and Corr. 1-11 (1982), *reprinted in* 2 BASIC DOCUMENTS, *supra* note 6, at 850.

26. Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources, *opened for signature* May 1, 1977, 16 I.L.M. 1450, *reprinted in* 2 BASIC DOCUMENTS, *supra* note 6, at 916.

27. For example, Hohmann could have included an excerpt from the 1987 Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System. Agreement on the Action Plan for the Environmental Sound Management of the Common Zambezi River System, May 28, 1987, 27 I.L.M. 1109.

Convention on the Protection of the Environment.<sup>28</sup> This Nordic Convention, which has only four member states, is unique in its proclamation of far-reaching general environmental principles.

Agreements on species and nature are broadly grouped into global and regional documents. Among the global instruments are the CITES Convention on trade in endangered species, the 1990 Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, the International Tropical Timber Agreement of 1983—which many consider anti-environmental—and the 1991 Protocol to the Antarctic Treaty on Environmental Protection, with annexes.<sup>29</sup> The regional section includes documents from Europe, Africa, Asia, and South America.

Volume 3 also includes two agreements on transboundary movement of hazardous wastes: the Basel Convention of 1989, and the Bamako Convention of 1991.<sup>30</sup> A section on the air and atmospheric pollution follows. This section includes documents pertaining to nuclear accidents, transboundary air pollution, and protection of the ozone layer. Volume 3 concludes with documents prepared for the Earth Summit, the U.N. Conference on Environment and Development held at Rio de Janeiro in June 1992. Because *Basic Documents* was already in production at the time of the Rio Conference, these materials are presented in draft form, and are of interest to people studying the modifications that occurred at the Conference.

*Basic Documents* has a few defects, some of which were perhaps unavoidable. Although each volume contains a table of contents, the three volume set lacks an index, which would have been desirable even

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28. Nordic Convention on the Protection of the Environment, Feb. 19, 1974, 13 I.L.M. 591, *reprinted in* 3 BASIC DOCUMENTS, *supra* note 6, at 1285.

29. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), *opened for signature* Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243, *reprinted in* 3 BASIC DOCUMENTS, *supra* note 6, at 1346; Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, *opened for signature* Nov. 24, 1989, SEN. TREATY DOC. No. 7, 102d Cong., 1st Sess. 1 (1991), 29 I.L.M. 1453, *reprinted in* 3 BASIC DOCUMENTS, *supra* note 6, at 1310; International Tropical Timber Agreement, Nov. 18, 1983, U.N. Doc. TD/TIMBER/11, *reprinted in* 3 BASIC DOCUMENTS, *supra* note 6, at 1388; Protocol to the Antarctic Treaty on Environmental Protection, *opened for signature* Oct. 4, 1991, S. TREATY DOC. No. 22, 102d Cong., 2d Sess. 18 (1992), 30 I.L.M. 1455, *reprinted in* 3 BASIC DOCUMENTS, *supra* note 6, at 1472.

30. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, *opened for signature* March 22, 1989, S. TREATY DOC. No. 5, 102d Cong., 1st Sess. 1 (1991), U.N. Doc. UNEP/WG. 190/4, *reprinted in* 3 BASIC DOCUMENTS *supra* note 6, at 1585; Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa, Jan. 29, 1991, 30 I.L.M. 773, *reprinted in* 3 BASIC DOCUMENTS, *supra* note 6, at 1615.



if it lengthened the book beyond its present compass. A somewhat cumbersome feature requires users to refer to a separate section near the front of Volumes 1 and 2 for source references. This can be awkward if one is, say, holding Volume 3 open at the Amazonian Cooperation Treaty on p. 1564 and searching for the source of it on p. 672 of Volume 2.

English-language readers might be bothered by the fact that the Lake Constance guidelines for pollution protection are in German.<sup>31</sup> The author claims that an authoritative English translation does not exist, but he could have simply made one.<sup>32</sup> These are all but minor quibbles.

A more serious problem is that the price of the three-volume set is beyond the reach of many individual users and small libraries; it is definitely too high for students. Fortunately, the publishers are currently considering the possibility of producing a student edition in paperback. This is good, for Dr. Hohmann's *Basic Documents of International Environmental Law* combines profound scholarly merit with great practical utility. It would be a great pity if Hohmann's book failed to attract the readership it deserves.

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31. Internationale Gewässerschutzkommission für den Bodensee, Richtlinien für die Reinhaltung des Bodensees [Guidelines for the Preservation of Lake Constance's Purity], May 27, 1987, reprinted in 2 BASIC DOCUMENTS *supra* note 6, at 1141.

32. See BASIC DOCUMENTS *supra* note 6, at 671.