Increasingly, every environmental lawyer is becoming an international environmental lawyer.

Until recently, international environmental law was largely the focus of diplomatic discussions, treaty negotiations, and academic debates of interest to a particular group of passionate and patient attorneys working for governments and international non-governmental organizations. Unlike the rapid and real time implementation of federal and state environmental laws and regulations, the success of international environmental laws was frequently measured in decades or generations, not years. And the topics at issue largely concerned obligations and commitments of sovereign nations, with only indirect interest or impact on specific companies responsible for much of the environmental issues being addressed.

Recent developments, however, have thrust international environmental law issues from strictly a foreign arena onto the front doorstep of attorneys practicing environmental law from regional cities to small manufacturing towns. The rapid globalization of developing world economies, the increasingly international nature of energy markets, and growing concern over global environmental challenges such as climate change are driving fundamental changes to the practice of environmental law. Companies—and, in turn, the clients we represent—are almost necessarily multinational by nature and are confronting a rapidly emerging and confusing regime of international environmental laws here, there, and everywhere in between. Meanwhile, nations who have prioritized growing their economies without protecting their environment along the way are waking up to dangerous skies, polluted water, rapid resource depletion, and the struggles of climate change adaptation. While some nations have been lax in developing and enforcing environmental law regimes so far, the trends are all toward more rigorous requirements being implemented.

Thus, every environmental lawyer increasingly must become an international environmental lawyer, regardless of where they practice and who they represent, to be positioned to fully represent their clients on matters that are as fundamental, if not more so, to their interests as any domestic environmental law. In upcoming years, multinational companies are likely to face more rapidly developing, rigid, complex, and confusing environmental requirements
abroad than they do in the United States and the European Union. It will be critical for attorneys to understand not only the substance of the laws, but also the context in which international environmental law problems uniquely must be addressed.

Recognizing the need to present a pragmatic “what you need to know” approach to what until now has largely been an academic endeavor, the American Bar Association’s Section of Environment, Energy, and Resources is proud to present this practitioner-oriented toolkit for understanding comparative and international environmental law issues. The overarching goal of this book is to be a one-stop reference for an attorney anywhere in the United States or in the world to understand not only the substance of environmental laws in nations where our clients are most likely to operate, but also, importantly, the unique process and framework for addressing international environmental law issues more generally.

The four parts of this volume provide practitioners with a comprehensive analytical framework for meeting this demand.

Part I provides insight into several key overarching issues to orient attorneys to the current state of play of international environmental law generally and the framework for approaching an international environmental law issue. Chapter 1, “Globalization of Environmental Law,” explains how countries are increasingly borrowing standards from international treaties and other nations’ environmental regimes. The author notes that some of the most important innovations in United States environmental law, including environmental impact assessment and the establishment of national parks, have now been widely adopted globally. But in other areas, such as chemical regulation, the rest of the world is now following the lead of the European Union (EU) in requiring extensive pre-market testing of chemicals. The result is the emergence of a kind of “global environmental law” hybrid blending elements from traditional international and domestic environmental law.

Chapter 2, “The Relationship between Domestic and International Environmental Law,” describes how different governments translate international environmental treaties into domestic law. It helpfully distinguishes, for example, between dualist and monist systems. In the former, international treaties must be incorporated into the domestic system according to the constitutional rules of that system. In contrast, when a purely monist state ratifies an international treaty, it automatically incorporates the treaty into national law, rendering it immediately operative.

Chapter 3 provides useful guidance on how to research an international or comparative environmental law question in “How to Approach an International Environmental Law Question.” The author notes the necessity of determining at the outset the relevant jurisdictions in which legal obligations might arise. The author goes on to describe the importance of delving into the character of any international law obligations at issue and how the previously identified jurisdictions view those obligations. The chapter also describes how practitioners should consider requirements flowing from other sources, such as soft law obligations. Chapter 4
then describes the top ten trends in international environmental law. These include a focus on oceans and fisheries, climate change and energy policy, biodiversity, the rise of the developing world, the role of the environment in the development of international economic law, and chemicals and substance management.

Part II provides a template for considering comparative and international environmental law questions. These chapters cover 11 subtopics: (1) air and climate change; (2) water; (3) the handling, treatment, transportation, and disposal of hazardous materials; (4) waste and site remediation; (5) response to emergencies; (6) natural resource management and protection; (7) the management and recovery of natural resource damages; (8) the protection of particular species of flora and fauna; (9) environmental review and decision making; (10) transboundary pollution; and (11) civil and criminal enforcement and penalties. Together, the Part II chapters help lawyers categorize the subparts of an issue for ease of analysis.

Part III then uses this eleven-subtopic template to digest the environmental and natural resource legal regimes in 26 key markets. These chapters cover the top fifteen nations in terms of gross domestic product, including Brazil, Russia, India, and China. They also include key developing and developed nations such as Turkey, Ukraine, Argentina, Israel, and the Netherlands. Part III also describes the trends and legal systems in place in four crucial regions: North America (especially NAFTA-inspired institutions); South and Central America; the EU (two separate chapters on institutions and trends, respectively); and the Arctic. The EU has become a key driving force in the development of environmental law globally through its Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) directives governing chemical and electronic waste management, respectively. The Arctic has, for its part, become increasingly important as the reduction in sea ice extent due to climate change has led to greater interest in the region for shipping, conservation, and resource extraction purposes.

Finally, Part IV addresses global and cross-border issues. First, Chapter 48, “Mechanisms for Global Agreements,” explains the primary instruments and vehicles through which international environmental law is developed, memorialized, and implemented. The chapter usefully differentiates between hard and soft law regimes and bilateral, regional, and global agreements. It also highlights the importance of Conferences of the Parties and protocols to refining legal obligations that governments may originally undertake. Chapter 49 identifies the most important environmental law treaties that practitioners should be aware of, from the Stockholm Declaration to the recently concluded Minamata Convention on Mercury, which bans the trade of certain mercury-containing products. Finally, Chapter 50 sensitizes practitioners to the existence of international standards such as those promulgated by the International Organization for Standardization (ISO), and the role that they play in international environmental law development, respectively.
Finally, we would like to recognize the extraordinary effort of the authors who contributed to this unprecedented effort. Some 58 authors located in 26 nations, each well-known leaders in their established areas and countries, collaborated on this project over an 18-month period, volunteering to write on cutting-edge developments internationally and domestically. This project could not have even started without the enthusiastic commitment of this diverse group of authors from the outset, and we were humbled by the opportunity to get to work with them directly on completing this first of its kind project.

In addition to the many leading authors and experts who contributed to this book both domestically and around the world, we would like to specifically express our appreciation to Peter Wright, who embraced this project from the earliest moment and whose constant support and leadership was critical to this daunting idea becoming reality. We also would like to thank the 22 section and chapter editors. Without their tireless effort, this book would not have been possible.

Together, the collective effort of these authors and editors provide environmental attorneys with the means to assess environmental and resource law questions in many of the places of the globe where they might arise. We hope that this becomes a useful resource not only in assisting attorneys and their clients in complying with emerging environmental laws around the world, but along the way, that it also furthers opportunities for nations to promote a stronger and healthier environment both domestically and globally.

Dedication

The editors, who are fathers of young children, dedicate this book to the children of the developing world with the hope that the contributions of the authors here will assist attorneys around the world in promoting the healthiest possible environment for youth as these nations grow their economies.

Notes

1. For example, the value of world merchandise exports alone has increased nearly fivefold since 1993. See http://www.wto.org/english/res_e/statis_e/its2013_e/its13_world_trade_dev_e.pdf at tbl.1.5 (last visited February 15, 2014).