Chapter III
International Actors and Stakeholders

The expansion of international law that began in the 20th century continues unabated as new topics become matters of international concern. The density of norms and need for monitoring compliance with them has led to a proliferation of permanent global and regional international organizations. In addition, the spread of international law into regulatory areas that impact directly on business organizations and individuals, together with the emergence of national and international non-governmental organizations, have brought numerous actors and stakeholders into the international legal process. This chapter examines briefly the major players in the development and enforcement of international environmental law.

A. STATES AND STATE AUTHORITIES

In most states, the conduct of foreign relations is the exclusive responsibility of the national authorities and usually is the province of the executive branch. The VCLT reflects this practice by providing that heads of state and foreign ministers have inherent power to conclude treaties by virtue of the official positions they hold. VCLT, Art. 7(2). Throughout U.S. history, presidents have concluded both formal treaties, with the advice and consent of the Senate, and less formal agreements that do not pass through the Senate, except for informational purposes. See the Case Act, 1 U.S.C. § 112b (1994).

Given the wide range of international concerns in modern relations, federal authorities from numerous different agencies may be involved in making international agreements, especially touching on environmental matters. The Department of Justice concludes agreements on cooperation in criminal matters, for example, while NOAA has been active in negotiations over Antarctica and climate change.
Although the component states in federal unions generally lack treaty-making power, they are not absent from international relations and agreements with foreign authorities. The U.S. Constitution prohibits states within the United States from entering into treaties or alliances with other nations, U.S. Constitution, Art. I § 10(1), and federal preemption may preclude states from regulating a matter on which Congress has legislated or a treaty is in force. See Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000); Zschernig v. Miller, 389 U.S. 429 (1968). Yet, port authorities of different countries have concluded Memoranda of Understanding (MOUs) to improve and harmonize port state inspections of ships for compliance with international environmental and safety standards. MOUs generally require each maritime authority, which is a signatory to the agreement, to establish and maintain an effective system of port state control and set an annual required total of inspections of at least 10 percent of the estimated total number of foreign merchant ships entering the ports during the year. MOUs encourage exchange of information so that ships that have been inspected by one port state and found to be in compliance with all safety and marine pollution prevention rules are not subject to too frequent inspections, while ships presenting a hazard and those ships that have been reported by another port state as having deficiencies that need to be rectified will be targeted.

Implementation and enforcement of international agreements often requires action by local authorities, who generally regulate such matters as municipal waste disposal and zoning and enforce the state’s criminal laws. International agreements do not dictate the division of authority over implementation and enforcement, seeking only compliance by the state as a whole. Nonetheless, many MEAs recognize the importance of action at the local level with public involvement. The UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (June 17, 1994), particularly emphasizes the need for effective measures at all levels of government, with national authorities facilitating action at the local level. Arts. 2.1, 3(a). One of the main elements of the Convention is the call for participation of local communities in decisions concerning the design and implementation of programs to combat desertification, with national action programs prepared and updated through a continuing participatory process. Arts. 3(a), 9.1, 10.2(f).

B. INTERNATIONAL ORGANIZATIONS

States usually create international institutions through adopting treaties, which serve as the organizations’ constitutions, in order to ensure permanent cooperation in addressing matters of international concern. Nearly all such organizations are composed of states only, although some organizations call for the delegations to include representatives of non-gov-