

# ENVIRONMENT AND DEVELOPMENT

## Typology of instruments of public environmental international law

Marcos A. Orellana



UNITED NATIONS

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This document was prepared by Marcos A. Orellana for the Sustainable Development and Human Settlements Division of the Economic Commission for Latin America and the Caribbean (ECLAC). The work was reviewed and supervised by Valeria Torres, Economic Affairs Officer, and Carlos de Miguel, Chief of the Policies for Sustainable Development Unit of the Sustainable Development and Human Settlements Division. The comments received from David Barrio, Associate Political Affairs Officer of the Sustainable Development and Human Settlement Division, are much appreciated.

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## Summary

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At the second meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, which was held in Guadalajara, Mexico, on 16 and 17 April 2013, a decision was made to form working groups to advance towards the creation of a regional instrument. Thus, a working group on access rights and the regional instrument was formed for the purpose of gaining more in-depth knowledge on access rights in order to make a proposal on the nature and scope of the application of a regional instrument. At its first meeting, the working group determined that a study describing the different types of international instruments would be useful in helping it achieve its objective.

This report explores the different types of instruments that are used in public international law, with an emphasis on the instruments that are relevant to Principle 10. The report has three chapters, which are as follows. The first chapter analyses the term “international instrument” and discusses the distinction between binding and non-binding legal instruments, illustrated with examples. The second chapter describes the function of implementation and compliance mechanisms in an international instrument, providing examples of these mechanisms. The third chapter presents the multilateral and regional instruments relevant to access rights.

The terms of reference for this study emphasize that it is intended as a descriptive, not an evaluative, tool. Accordingly, the report does not assess the value of the various types of instruments or the various types of compliance and implementation mechanisms.



## I. Typology of instruments of public international law

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### A. Definition of the term “International Instrument”

The term “international instrument” is not defined in international law. The Oxford English Dictionary defines “instrument” as “a thing used in pursuing an aim or policy; a means”. International law uses the term “instrument” generically, as a broad category that includes binding international agreements as well as non-binding documents, also known as “soft law”.

The generic nature of the concept does not mean that the term is open-ended. In practice, an “international instrument” refers to a document produced by an international body concerning international law. Based on this understanding, four different sources of international instruments can be identified:

- A multilateral conference of States: This usually concludes with one or more international instruments, e.g. a declaration. In this first case, the emphasis is on the States that meet to prepare the instrument.

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