Description

What is the current and future role of international environmental law in directing and controlling the conduct of business enterprises, particularly multinational corporations? This book responds to this topical question by identifying corporate accountability standards and discussing their implementation by international organizations.

This is the first book to examine systematically all international sources of corporate accountability standards with specific reference to environmental protection and to elaborate on their theoretical and practical implications for international environmental law. The book argues that although international environmental law does not bind multinational corporations and other business entities, growing international practice points to the emergence of legal standards. These standards allow adapting and translating inter-State obligations embodied in international environmental law into specific normative benchmarks to determine the legitimacy of the conduct of the private sector against internationally recognized values and rules.

The role of international organizations that, in the absence of State intervention, identify and promote the application of selected international environmental standards is analyzed in depth. This analysis demonstrates how these international organizations are a driving force in establishing and operating international standards for corporate environmental accountability.
Contents

List of Acronyms xxiv
Table of Treaties and International Materials xxviii
Table of Cases xxxi

PART I: PRELIMINARY QUESTIONS

1. The Need for Corporate Environmental Accountability 3
   1.1 The private sector's share of negative environmental impacts 5
   1.2 Business opportunities to contribute to the global protection of the environment 7

2. History and Definitions 11
   2.1 From Stockholm to Johannesburg 11
   2.2 The concept of corporate responsibility 18
   2.3 The concept of corporate accountability 19
   2.4 From corporate responsibility to corporate accountability 22

3. The Shortcomings of Traditional Legal Solutions 25
   3.1 The shortcomings of national control 25
      3.1.1 Host State control 25
      3.1.2 Home State control 30
   3.2 The limits of international law on State responsibility 34
   3.3 IEL and the private sector 38
      3.3.1 International regimes on civil liability for environmental damage: en impasse? 39
      3.3.2 International environmental crimes? 42
      3.3.3 International environmental law: implications, expectations and legal standards of conduct for private companies 44
      3.3.4 The role of soft law 47
   3.4 Links with other areas of international law 48
      3.4.1 Synergies with international human rights law 49
      3.4.2 Balancing the international protection of foreign investment 51
   3.5 The status of MNCs in international law and the need for a broader approach to the private sector 56
   3.6 Preliminary remarks 61
PART II: EMERGING INTERNATIONAL STANDARDS OF CORPORATE ENVIRONMENTAL ACCOUNTABILITY

4. Primary Rules?
   4.1 A theory of legal standards
   4.2 The international character of legal standards for corporate environmental accountability
   4.3 Standards and sources of IEL
   4.4 The role of international organizations

5. The UN and the OECD: Parallel or Convergent Paths?
   5.1 International regulation of MNCs: the UN draft Code of Conduct on Transnational Corporations
   5.2 Subsequent practice of the UN in the 1990s: the partnership approach
      5.2.1 The UN Global Compact
   5.3 The human rights-based approach
      5.3.1 The ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights’
      5.3.2 The UN Special Representative on Corporate Responsibility
   5.4 The parallel story of the OECD Guidelines for MNEs
   5.5 The convergence of environmental standards
      5.5.1 Emerging international standards
   5.6 Concluding remarks

6. A Contribution of Human Rights Monitoring Bodies?
   6.1 Limited results before national courts
      6.1.1 Earlier cases piercing the corporate veil
      6.1.2 Applying IEL to MNCs
         6.1.2.1 Transboundary pollution
         6.1.2.2 International environmental principles
         6.1.2.3 Intra-pollution and the right to a healthy environment
   6.2 Applying human rights law to MNCs for the protection of the environment
      6.2.1 The contribution of human rights monitoring bodies
         6.2.1.1 The right to life and health
         6.2.1.2 Right to property
         6.2.1.3 Right to culture
   6.3 Limited results and some potential
## Contents

### 7. Standard-setting by International Financial Institutions

7.1 The International Finance Corporation  
7.2 The IFC Policy and Performance Standards for Environmental Protection  
7.2.1 General requirements  
7.2.1.1 Environmental impact assessment  
7.2.1.2 Environmental management system  
7.2.2 Pollution prevention and climate change  
7.2.3 Biodiversity conservation  
7.2.3.1 Sustainable use of natural resources  
7.2.4 Cultural heritage  
7.3 The IFC contribution to corporate environmental accountability  
7.3.1 Trend-setting for corporate environmental accountability?  
7.3.2 Concluding Remarks

### 8. Emerging Standards on Corporate Accountability in IEL

8.1 The Convention on Biodiversity and the private sector  
8.2 Emerging international standards on corporate environmental accountability  
8.2.1 Integration  
8.2.1.1 Self-assessment of environmental impacts  
8.2.1.2 Environmental management systems  
8.2.2 Prevention/due diligence  
8.2.3 Precaution  
8.2.4 Disclosure of environmental information  
8.2.5 Public consultations  
8.2.6 Sustainable use of natural resources  
8.2.6.1 Respect for internationally protected sites  
8.3 Conclusions

### PART III: TOOLS FOR COMPLIANCE WITH STANDARDS OF CORPORATE ENVIRONMENTAL ACCOUNTABILITY

### 9. Tools for Compliance

9.1 Secondary rules?  
9.2 International organizations’ tools for compliance

### 10. The Tools of International Financial Institutions: Conditions in Loan Agreements and Complaints Mechanisms

10.1 Environmental responsibility of the IFC  
10.1.1 Lessons learnt from past implementation  
10.1.2 Ways to enhance the IFC’s monitoring role
10.2 The contribution of complaint mechanisms 216
  10.2.1 Ways to enhance the IFC's complaint mechanism 222
  10.3 Concluding remarks 222

11. Sharpening the Monitoring Role of Other
International Organizations 224
  11.1 Indirect monitoring 225
    11.1.1 Human Rights Monitoring Bodies 225
    11.1.2 Monitoring by the World Heritage Committee 228
  11.2 Direct monitoring 229
    11.2.1 OECD Guidelines implementation 230
      11.2.1.1 The unrealized potential 231
      11.2.1.2 Ways to enhance the OECD Guidelines implementation 238
    11.2.2 The UN Security Council's monitoring through
        experts groups 240
      11.2.2.1 The OECD Guidelines and the UN
        Security Council 241
    11.2.3 Complaints before the UN Global Compact 243
  11.3 Conclusions 245

12. Integrating International Standards in UN-Business
Partnerships 247
  12.1 The proliferation of UN-business partnerships 247
    12.1.1 Partnerships between MEAs and the private sector 251
  12.2 Partnerships' persistent limits 254
  12.3 Recommendations on UN-business partnerships based
      on international environmental standards 259
    12.3.1 Recommendations for CBD-business partnerships 262
  12.4 Conclusions: binding standards for voluntary partnerships 265

13. Conclusions 266

Bibliography 276
Index 295