

# INTERNATIONAL PRINCIPLES OF ENVIRONMENTAL LAW

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## ABSTRACT

*Sustainable development was recognized as the overarching paradigm for improving the quality of life during the United Nations Conference on Environment and Development (UNCED) in 1992. Agenda 21 and the Rio Declaration, both adopted at UNCED and subsequent national and international instruments, clarify the parameters of sustainable development. The principles of integration and interdependence have been made fundamental for realizing sustainable development. The paper summarizes the major principles of international environmental law and analyzes the applications in select cases.*

**Keywords :** Biological diversity, Rio Declaration, Stockholm Declaration, Sustainable development, Transboundary Air Pollution.

## INTRODUCTION

Conservationists and environmentalists argue that humans have a deep and undeniable link with the natural environment. Despite being able to build factories, automobiles and infrastructure, exploring and learning the nuances of various disciplines of knowledge; to sustain human activities, a net inflow of energy is required. This net inflow of energy into the sphere of human society occurs through the natural environment. Additionally, we need an abundance of environmental resources to be able to live a healthy life, study and improve our biological knowledge base while at the same time providing a safety net of pre-developed (evolved) solutions to problems that confront us continually, like antibiotic resistance, vaccination to mutant virus threats and so on. The combination of these factors makes human society irredeemably dependent upon sustainable environmental practices.

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The Stockholm Declaration, 1972 encapsulates this human predicament in following words:

*The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.*

– **PRINCIPLE 2, The Stockholm declaration, 1972**

## **PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW**

Principles and concepts of international environment law reflect upon the history of development of such laws and affect its future evolution. Initially, environmental law mainly developed in a piecemeal fashion and not in a structured manner, as *ad hoc* responses to the challenges and issues faced. Some of these principles reflect customary law, others may be legally binding under different obligations while yet others may be having less developed legal status comparatively.<sup>1</sup> Therefore unsurprisingly, international environmental principles and concepts have continually played a noteworthy role in highlighting indispensable characteristics of environmental law and its institutions, provide relevant guidance in interpretation of legal norms and fill in the gaps in positive law.<sup>2</sup> In the modern world, multifarious major binding and non-legally binding environment instruments either contain or refer to such principles as well as concepts. The incessant inclusion and attribution of these principles in international legal instruments reinforces them and along with state practice, they shall unceasingly contribute to the creation of global frameworks for better development of environmental law at national and international levels.

Some of the major international environmental principles that have been discussed below are:

- I. Sustainable Development, Integration and Interdependence
- II. Equity (Intergenerational and Intra-generational)
- III. Transboundary Harm Responsibility
- IV. Precautionary principle
- V. Prevention
- VI. Polluters pay principle

## **SUSTAINABLE DEVELOPMENT, INTEGRATION AND INTERDEPENDENCE**

At the United Nations Conference on Environment and Development (UNCED) in 1992, sustainable development was recognized as the overarching paradigm for improving the quality of life.<sup>3</sup> Although the concept of sustainable development is susceptible to slightly varied definitions, the one provided by Brundtland Commission on Environment and Development, which had stated in “*Our Common Future*”, the Report that it brought out in 1987, that sustainable development refers to “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*” Agenda 21 and the Rio Declaration, both adopted at UNCED and subsequent national and international instruments, clarify the parameters of sustainable development. Principle 4 of the Rio Declaration states

that “*In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.*”<sup>4</sup> Principle 25 of the same provides “*States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.*”<sup>5</sup> Collaboratively, the principles clearly specify that activities and policies in multifarious spheres must be coherent for obtaining sustainable development. Also, efforts to protect the environment and to achieve peace ought to be undertaken.

The principles of integration and interdependence are fundamental for sustainable development and have been clearly stated in paragraph 6 of Copenhagen Declaration on Social Development, which provides that: “*economic development, social development and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people.*” The same has also been mentioned in Johannesburg Declaration of Sustainable Development, paragraph 5 of which states “we assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development (economic development, social development and environmental protection) at the local, national, regional and global levels.” It is also one of the commitments of Millennium Development Declaration. These concepts are in consistency with the nature of biosphere including layers of water, land and air on which earthly life depends. Integration principles are committed to moving the environmental objectives and considerations in consonance with other international relations and matters as they are increasingly becoming a part of international economic policies and laws such as Preamble to 1994 World Trade Organization Agreement, 1994 United Nations Convention to combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa and the 1997 Kyoto Protocol on Climate Change<sup>6</sup>. It also forms a crucial postulate of national legislations for attaining sustainable development which tend to implement it using the tool of Environmental Impact Assessment (EIA).

## **EQUITY**

Equity includes both Intergenerational and Intra-generational equity. It refers to the idea that we, who currently live on the earth, have the right to access Earth’s natural resources. However, we also owe a duty to the future generations, to provide them with an environment that is no worse than currently existing and better if possible.<sup>7</sup> We have a responsibility to not deplete resources to the extent that they would not be available for them. The concept is essential for sustainable development.<sup>8</sup> It has been mentioned in 1992 United Nations Framework Convention on Climate Change under Article 3(1) and 1992 United Nations Economic Commission for Europe Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 2001 Stockholm Convention on Persistent Organic Pollutants<sup>9</sup> and others.

## **TRANSBOUNDARY HARM RESPONSIBILITY**

As provided under Principle 21 of the Stockholm Declaration, the sovereign right of each state to exploit its natural resources is limited by the responsibility to ensure that transboundary harm is not caused.<sup>10</sup> The same is in accordance with the Charter of United Nations. Principle

21 has also been reiterated in Principle 2 of Rio Declaration.<sup>11</sup> These principles form an integral part of customary international law and have been reaffirmed in Charter of Economic Rights and Duties of States, the World Charter for Nature, and the Declaration of the 2002 World Summit on Sustainable Development. This obligation exists regarding not only the activities of the state but includes all public and private activities conducted within its jurisdiction as well. The States aren't responsible only with respect to environment of other states but also include areas lying beyond the limits of their national limits, such as airspace, high seas, deep seabed and Antarctica.<sup>12</sup>

The contents of this principle are included in the United Nations Convention on the Law of the Sea, Article 20 of ASEAN Agreement on the Conservation of Nature and Natural Resources, 1979 Convention on Long- Range Transboundary Air Pollution and 1992 Convention on Biological Diversity.

### **PRECAUTIONARY PRINCIPLE**

Precautionary principle is primarily a rule of evidence. It deals with the burden of proof in environmental cases. It shifts the burden on the polluter- individual/ industrialist/ entrepreneur- to prove that his activity/ industrialist/ operation are not a health hazard, damaging the environment and his action is 'environmentally benign'.<sup>13</sup>

Earlier the principle of "assimilative capacity" was prevalent as provided by Principle 6 of Stockholm Declaration of 1972. Later on the "precautionary principle" gained relevance and the 11th Principle of the UN General Assembly Resolution on World Charter of Nature, 1982 emphasized for the use of "precautionary principle" in place of assimilative capacity principle.<sup>14</sup> Ultimately, the Earth Summit - Rio de Janeiro Conference of 1992 declared Principle 15 of the Rio Declaration on Environment and Development, 1992 which has been mentioned as under:

*"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."*<sup>15</sup>

This principle had emerged on the basis of non-availability of complete information regarding widespread ramifications and irreversible harm caused, based on scientific experiments and is also known as "inadequacies of science".

The principle also appears in the Preamble of the 1992 Convention on Biological Diversity and in Article 3(3) of the 1992 Climate Change Convention.

### **PREVENTION**

The prevention of environmental damage must ideally be the "Golden Rule" for the protection of environment- for ecological and economic reasons as it is often impossible to rectify certain deep environmental injuries like the distinction of certain species of flora and fauna. At times, remedy becomes difficult due to the significantly high costs involved. The idea behind having this principle is that when the consequent risks of certain products or process are unknown, it is better to be on the preventive side as an ounce of prevention is better

than a pound of cure.

Industries in under-developed and developing countries consider this principle to be devoid of any economic basis. However, environmentalists point out that such prevention is far cheaper than remedies. Asbestos, leaded gasoline, mercury and thalidomide are just a few such substances that cause excessive damage to the environment.<sup>16</sup> Adopted preventive measures include measures like multitudinous legal mechanisms, prior assessment, authorization, standard setting and emission limits. Monitoring, exchange of information also form a part of preventive mechanisms.

### **POLLUTERS PAY PRINCIPLE**

The 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation specifies in the seventh paragraph of its preamble that Polluters Pay Principle is “a general principle of international environmental law.”

Principle 16 of the 1992 Rio Declaration states “National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”<sup>17</sup> International conventions like 2003 Protocol on Civil Liability and Compensation for Damage caused by the Tran-Boundary Effects of Industrial Accidents on Tran-Boundary Waters, 1992 Convention on the Protection and Use of Tran-Boundary Watercourses and International Lakes and to the 1992 Convention on the Tran boundary Effects of Industrial Accidents, Preamble-paragraphs two and three, 1996 Protocol to the London Convention mention that the polluter should, in principle, bear the cost of pollution.

Prior to UNCED, it was also an appealing concept of 1992 Maastricht Treaty and Single European Acts, 1986 amongst other documents as well. *Polluters pay principle* forms an integral aspect of environmental laws especially in developing countries like South Asia and Africa.<sup>18</sup> This principle has been applied in many cases by the Supreme Court of India.

These principles state that though all States are responsible for the protection of the world yet they are not equally responsible for the same. The principle provides for a balance between the responsibilities that all States have for addressing global environmental destruction and the need to recognize the wide differences that exist in the levels of economic development between different States. These differences are directly linked to the ability and the State's contribution to global environmental problems.

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International Environmental Law Introduction International environmental law is a body of international law concerned with protecting the environment, primarily through bilateral and multilateral international agreements. Source for information on International Environmental Law: Environmental Science: In Context dictionary. The sovereignty of nations persists as the primary obstacle to all forms of international law. The principle of sovereignty holds that every nation has complete control over the activities within its borders unless that nation agrees to relinquish some control. Nations typically abrogate (eliminate) part of their sovereignty through bilateral or multilateral international treaties. International Environmental Law (IEL) is in relation of attempt to control pollution and depletion of natural resources within the frameworks of sustainable development. It is a branch of public international law which is a body of law created by states for states to govern problem arises between states. IEL covers topic such as population, biodiversity, climate change, ozone depletion. The principle of international environmental law consist of precautionary principle, prevention principle, sustainable development, the polluter pay principle, integration principle and public participation principle.<sup>2</sup> This paper will elaborate and explain three of the principles and elaborates further under which relevant treaties or conventions that adopted these principles. The International environmental law is a relatively young branch of international law. Since the 1970s, in particular, it has developed in response to a mounting concern for the state of the environment. However, this is not to say that before the 1970s environmentally-relevant law did not exist. In addition to treaty law, several general principles of classical international law are relevant for States' rights and obligations with respect to nature conservation and environmental protection. First and foremost, the principle of territorial sovereignty.