



# Book – Principles and concepts of international environmental law (Part 1)

Book – Principles and concepts of international environmental law

Site: UNITED NATIONS INFORMATION PORTAL ON MULTILATERAL ENVIRONMENTAL AGREEMENTS

Course: Introductory course to International Environmental Law

Book: Book – Principles and concepts of international environmental law (Part 1)

# Table of contents

1. Introduction
  - Declarations
  - Legal Status
  - Public International Law
2. Sustainable Development
  - Integration and interdependence
3. Inter-Generational and Intra-Generational Equity
  - Needs
  - Equity
  - Minors Oposa Case
4. Responsibility for Transboundary Harm
  - Examples
  - Sovereignty
5. Transparency, Public Participation and Access to Information and Remedies
  - Public participation
  - Access to information
  - Remedies
  - Examples
  - Environmental Impact Assessment

# 1. Introduction

This unit provides an overview of the main principles (i.e. fundamental doctrines on which others are based, or rules of conduct) and concepts (i.e. central unifying ideas or themes) in international environmental law. It identifies important emerging principles and concepts, describes the roles they play, and provides examples to illustrate some of the ways in which they have been applied.

Principles and concepts embody a common ground in international environmental law; and they both reflect the past growth of international environmental law and affect its future evolution. Principles and concepts play important roles in international environmental law, which itself is one of the most rapidly evolving areas of public international law. They can indicate the essential characteristics of international environmental law and its institutions, provide guidance in interpreting legal norms, constitute fundamental norms, and fill in gaps in positive law. Principles and concepts also appear in national constitutions and laws; and they are referred to in, and influence, international and national jurisprudence.

Today, almost all major binding and non-legally binding international environmental instruments contain or refer to principles or concepts and are engines in the evolving environmental law

## Declarations

Of particular importance are the principles established at two important United Nations conferences, the 1972 Conference on the Human Environment (“Stockholm Conference”) and the 1992 United Nations Conference on Environment and Development (“UNCED”) in Rio de Janeiro. Both of these conferences produced declarations of principles (the “1972 Stockholm Declaration” and the “1992 Rio Declaration”, respectively), which were adopted by the United Nations General Assembly. Together with the hundreds of international agreements that exist relating to protecting the environment (including human health), the principles in the 1972 Stockholm Declaration and 1992 Rio Declaration are widely- regarded as the underpinnings of international environmental law.

The Rio Declaration contains a preamble and twenty-seven international environmental law principles that guide the international community in its efforts to achieve sustainable development. Since the adoption of the Rio Declaration, major developments in international environmental law have taken place that affect the definition, status and impact of principles and concepts in international environmental law. These developments include the negotiation and entry into force of several major multilateral agreements.

## Legal Status

The legal status of international environmental law principles and concepts is varied and may be subject to disagreement among states. Some principles are firmly established in international law, while others are emerging and only in the process of gaining acceptance, representing more recent concepts. Some principles are more in the nature of guidelines or policy directives which do not necessarily give rise to specific legal rights and obligations.

Principles have acquired recognition, among other means, through state practice, their incorporation in international legal instruments, their incorporation in national laws and regulations, and through judgements of courts of law and tribunals. Some principles are embodied or specifically expressed in global or regionally binding instruments, while others are predominantly based in customary law. In many cases it is difficult to establish the precise parameters or legal status of a particular principle.

The manner in which each principle applies to a particular activity or incident typically must be considered in relation to the facts and circumstances of each case, taking into account of various factors including its sources and textual context, its language, the particular activity at issue, and the particular circumstances in which it occurs, including the actors and the geographical region, since the juridical effect of principles and concepts may change from one legal system to another.

## Public International Law

Finally, it is important to recognize that international environmental law is an inseparable part of public international law. Public international law principles such as the duty to negotiate in good faith, the principle of good neighbourliness and notification, and the duty to settle disputes peacefully, thus may pertain to a situation regardless of its designation as “environmental” and may affect the evolution of international environmental law principles more generally.

At the same time, the development of international environmental law principles and concepts may affect the development of principles in other areas of international law. The application and, where relevant, consolidation and further development of the principles and concepts of international environmental law listed in this unit, as well as of other principles of international law, will be instrumental in pursuing the objective of sustainable development.

## 2. Sustainable Development

The international community recognized sustainable development as the overarching paradigm for improving quality of life in 1992, at UNCED.

Although sustainable development is susceptible to somewhat different definitions, the most commonly accepted and cited definition is that of the Brundtland Commission on Environment and Development, which stated in its 1987 Report, *Our Common Future*, that sustainable development is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

## Integration and interdependence

Principle 4 of the Rio Declaration provides: “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.” Principle 25 states that “Peace, development and environmental protection are interdependent and indivisible.” Principles 4 and 25 make clear that policies and activities in various spheres, including environmental protection, must be integrated in order to achieve sustainable development. They also make clear that the efforts to improve society, including those to protect the environment, achieve peace, and accomplish economic development, are interdependent. Principles 4 and 25 thus embody the concepts of integration and interdependence.

The concepts of integration and interdependence are stated even more clearly in paragraph 6 of the 1995 Copenhagen Declaration on Social Development, which introduction states that “economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people...”.

Paragraph 5 of the 2002 Johannesburg Declaration on Sustainable Development confirms this, by stating that “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.”

Integration was one of the main themes discussed at the 2002 Johannesburg World Summit on Sustainable Development, with particular emphasis on eradicating poverty.

### 3. Inter-Generational and Intra-Generational Equity

Equity is central to the attainment of sustainable development.

This is evident from many international instruments. For example, the 1992 United Nations Framework Convention on Climate Change (“UNFCCC”) refers in article 3.(1) to intergenerational equity, as do the last preambular paragraph of the 1992 CBD, the 1992 United Nations Economic Commission for Europe Convention on the Protection and Use of Transboundary Watercourses and International Lakes, the 1994 Desertification Convention and the 2001 Stockholm Convention on Persistent Organic Pollutants (“POPs”), among others.

## Needs

As noted above, the Brundtland Commission's Report defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"; and it goes on to identify two "key concepts" of sustainable development.

The first of which is "the concept of 'needs,' in particular the essential needs of the world's poor, to which overriding priority should be given."

Similarly, Principle 3 of the 1992 Rio Declaration states that "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations"; and Rio Principle 5 provides that "All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world."

Paragraph 6 of the Copenhagen Declaration, the first sentence of which is reproduced above, refers in subsequent sentences to "Equitable social development" and "social justice".

## Equity

The concept of equity is also embodied in the United Nations Millennium Goals (e.g. the Eradication of Poverty) and Millennium Declaration (e.g. paragraphs 6, 11 and 21).

Equity thus includes both “inter-generational equity” (i.e. the right of future generations to enjoy a fair level of the common patrimony) and “intra- generational equity” (i.e. the right of all people within the current generation to fair access to the current generation’s entitlement to the Earth’s natural resources).

The present generation has a right to use and enjoy the resources of the Earth but is under an obligation to take into account the long-term impact of its activities and to sustain the resource base and the global environment for the benefit of future generations of humankind. In this context, “benefit” is given its broadest meaning as including, *inter alia*, economic, environmental, social, and intrinsic gain.

## Minors Oposa Case

Some national courts have referred to the right of future generations in cases before them. For example, the Supreme Court of the Republic of the Philippines decided, in the *Minors Oposa* case (Philippines - Oposa et. al. v. Fulgencio S. Factoran, Jr. et al. G.R. No. 101083), that the petitioners could file a class suit, for others of their generation and for the succeeding generations.

The Court, considering the concept of inter-generational responsibility, further stated that every generation has a responsibility to the next to preserve that rhythm and harmony necessary for the full enjoyment of a balanced and healthful ecology.

## 4. Responsibility for Transboundary Harm

Principle 21 of the Stockholm Declaration recognizes the sovereign right of each state upon its natural resources, emphasizing that it is limited by the responsibility for transboundary harm.

### **1972 Stockholm Declaration Principle 21**

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

Twenty years later, Principle 21 was reiterated in Principle 2 of the Rio Declaration, with the sole change of adding the adjective “developmental” between the words “environmental” and “policies”:

### **1992 Rio Declaration Principle 2**

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

## Examples

Stockholm Principle 21/ Rio Principle 2, although part of non-binding texts, are nonetheless well- established, and are regarded by some as a rule of customary international law.

Either or both of them have been reaffirmed in declarations adopted by the United Nations, including the Charter of Economic Rights and Duties of States, the World Charter for Nature, and the Declaration of the 2002 World Summit on Sustainable Development.

Their contents are included in the United Nations Convention on the Law of the Sea (“UNCLOS”) as well as in article 20 of the Association of South East Asian Nations (“ASEAN”) Agreement on the Conservation of Nature and Natural Resources.

The 1979 Convention on Long- Range Transboundary Air Pollution reproduces Principle 21 stating that it "expresses the common conviction that States have" on this matter. Principle 21 also appears in article 3 of the 1992 Convention on Biological Diversity, to which virtually all the states of the world are parties, and, as restated in the 1992 Rio Declaration, in the preamble of the 1992 UNFCCC, the 1999 Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and the 2001 Stockholm Convention on Persistent Organic Pollutants (“POPs”).

Also, the International Court of Justice (“ICJ”) recognized in an advisory opinion that “The existence of the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to the environment.” (See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports, pp. 241-42, 1996).

## Sovereignty

Stockholm Principle 21/Rio Principle 2 contain two elements which cannot be separated without fundamentally changing their sense and effect: (1) the sovereign right of states to exploit their own natural resources, and (2) the responsibility, or obligation, not to cause damage to the environment of other states or areas beyond the limits of national jurisdiction. It is a well-established practice that, within the limits stipulated by international law, every state has the right to manage and utilize natural resources within its jurisdiction and to formulate and pursue its own environmental and developmental policies. However, one of the limits imposed by international law on that right is that states have an obligation to protect their environment and prevent damage to neighbouring environments.

Stockholm Principle 21/Rio Principle 2 affirm the duty of states 'to ensure' that activities within their jurisdiction or control do not cause damage to the environment of other states. This means that states are responsible not only for their own activities, but also with respect to all public and private activities within their jurisdiction or control that could harm the environment of other states or areas outside the limits of their jurisdiction. The responsibility for damage to the environment exists not only with respect to the environment of other states, but also of areas beyond the limits of national jurisdiction, such as the high seas and the airspace above them, the deep seabed, outer space, the Moon and other celestial bodies, and Antarctica.

The exact scope and implications of Stockholm Principle 21/Rio Principle 2 are not clearly determined. It seems clear that not all instances of transboundary damage resulting from activities within a state's territory or control can be prevented or are unlawful, though compensation may nevertheless be called for; but the circumstances in which those outcomes arise are not entirely clear.

## 5. Transparency, Public Participation and Access to Information and Remedies

Public participation and access to information are recognized in Principle 10 of the Rio Declaration.

### **1992 Rio Declaration Principle 10**

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

## Public participation

Transparency and access to information are essential to public participation and sustainable development, for example, in order to allow the public to know what the decision making processes are, what decisions are being contemplated, the alleged factual bases for proposed and accomplished governmental actions, and other aspects of governmental processes.

Public participation is essential to sustainable development and good governance in that it is a condition for responsive, transparent and accountable governments. It is also a condition for the active engagement of equally responsive, transparent and accountable Civil Society organizations, including industrial concerns, trade unions, and Non Governmental Organizations (“NGOs”). Public participation in the context of sustainable development requires effective protection of the human right to hold and express opinions and to seek, receive and impart ideas

## Access to information

It also requires a right of access to appropriate, comprehensible and timely information held by governments and industrial concerns on economic and social policies regarding the sustainable use of natural resources and the protection of the environment, without imposing undue financial burdens upon the applicants and with adequate protection of privacy and business confidentiality.

## Remedies

The empowerment of people in the context of sustainable development also requires access to effective judicial and administrative proceedings. For example, states should ensure that where transboundary harm has been or is likely to be caused, affected individuals and communities have non-discriminatory access to effective judicial and administrative processes.

## Examples

The 1992 United Nations Framework Convention on Climate Change, in article 4.(1)(i), obliges Parties to promote public awareness and participation in the process, including that of NGOs, though it does not create a public right of access to information. The 1994 Desertification Convention recognizes, in article 3(a)(c), the need to associate Civil Society with the action of the State.

The 1993 North American Agreement on Environmental Cooperation requires parties to publish their environmental laws, regulations, procedures and administrative rulings (article 4), to ensure that interested persons have access to judicial, quasi-judicial or administrative proceedings to force the government to enforce environmental law (article 6), and to ensure that their judicial, quasi-judicial and administrative proceedings are fair, open and equitable (article 7). More commonly, international legal instruments addressing access to information and public participation are confined to distinct contexts, such as Environmental Impact Assessment. For example, the 1992 CBD requires appropriate public participation in EIA procedures in article 14.(1)(a); article 13 addresses the need for public education and awareness.

These concepts mean that international institutions, such as international financial institutions, should also implement open and transparent decision-making procedures that are fully available to public participation. Examples of this include the World Bank Inspection Panel, which provides groups affected by World Bank projects the opportunity to request an independent inspection into alleged violations of Bank policies and procedures. The petitioning process included in articles 14 and 15 of the 1993 North American Agreement on Environmental Cooperation also provides significant new rights for citizens to participate in monitoring domestic enforcement of environmental laws. These concepts also imply that NGOs should be provided at least observer status in international institutions and with respect to treaties, and should be appropriately relied upon for expertise, information and other purposes.

## Environmental Impact Assessment

In many countries, public participation rights are granted through Environmental Impact Assessment procedures with broad public participation or in various sectoral laws adapted to the special circumstances of each sector. Consultation with, and dissemination of information to the public are important objectives of EIAs. For example, article 16(3) of the 1986 Convention for the Protection of the Natural Resources and Environment of the South Pacific Region requires that the information gathered in the assessment be shared with the public and affected parties.

In Africa, the Memorandum of Understanding (“MOU”) of October 22, 1998, between Kenya, Tanzania and Uganda contains the agreement of the three states to develop technical guides and regulations on EIA procedures, including enabling public participation at all stages of the process and to enact corresponding legislation (article 14). This provision was subsequently embodied in the Treaty for East African Community by the three states Kenya, Tanzania and Uganda. As noted above, the 1992 CBD also requires appropriate public participation in environmental assessment in article 14(1)(a); and it includes a notification and consultation requirement in article 14(1)(c).