



**INTERNATIONAL ENVIRONMENTAL  
LAW**

**UNIT 1.- THE PROTECTION OF THE  
ENVIRONMENT IN ITS INTERNATIONAL  
DIMENSION. GENERAL ASPECTS**

- 1. Basic concepts**
- 2. Historical evolution**
- 3. The new paradigm: sustainable development.**

# 1. Environmental protection: basic concepts

- ❖ **What is IEL?**: International Environmental Law is that sector of the international law that has as its objective t (**protection and improvement of the environment**).
  - ❑ Why international?
  - ❑ Environment: Antropocentrist /Cosmocentric definitions. For us: *the environment is understood as the natural environment, excluding the artificial or cultural environment, in the following sense: "The environment includes the earth and its natural processes, including its biosphere, lithosphere, hydrosphere, atmosphere, outer space and in particular those aspects of its processes that preserve its biodiversity, such as its ecosystems and habitats"*.
- ❖ Functions of IEL:
  - The only way to guarantee their protection since it represents the path that allows international cooperation.
  - Complementary way of dealing with problems of common interest.
  - Initiating or stimulating national legislation.
- ❖ The global concern: relative recent phenomenon.

# 1.1. The international dimension of environmental protection: factors and interests at work.

- ❖ Mainly as a consequence of the accelerated industrial development: significant and serious deterioration of environment. Again, Why international?
  - In recent decades, it has become clear that environmental problems are acquiring a new degree in their international dimension. This internationalisation of environmental issues is manifesting itself at different levels:
    - existence of certain spaces located beyond the sovereignty or jurisdiction of States and whose preservation is a common interest of humanity, for example, the high seas, outer space or Antarctica. Common interest for its protection and conservation.
    - transboundary pollution, i.e. pollution originating in the territory of one state and whose effects are manifested in the natural environment of the territory of another state.

- certain environmental problems are inherently global in nature, as they affect the global ecosystem. In these cases, solutions must necessarily be adopted at a global level. This is the case with the fight against climate change, the conservation of biological diversity or the protection of the ozone layer.
  - certain elements of the biosphere are natural resources shared by several States and their conservation and sustainable use require bilateral or multilateral cooperation mechanisms.
- The main manifestation of the damage caused by man to the environment has taken the form of "**pollution**", (introduction by man of substances or energy into any sector of the environment likely to generate harmful effects). Many other phenomena affect the environment and contribute to its deterioration:
- progressive depletion of natural resources.
  - impoverishment of nature and the irreversible loss of biological diversity.
  - the increase in drought and desertification.
  - air quality problems and, in particular, climate change (global warming) due to greenhouse gas emissions.
  - Other induced effects or "collateral damage": lack of vital resources, famines, impoverishment and mass displacement of people, health problems..

# *A. A single but compartmentalized World*

- ❖ First law of ecology "everything is interrelated": what impacts on the environment can manifest their effects over great distances and are communicated from one sector to another (land, water, sea, atmosphere, biological resources).
- ❖ From a legal perspective, this ecologically unique world is compartmentalized into numerous state spaces subject to the independent action of each of their political holders. In principle, have the capacity for autonomous decision-making capacity over the activities carried out in their territory or under their jurisdiction or control.
- ❖ However: permanent sovereignty of each state over its natural wealth and resources **must be compatible** with the necessary protection of its natural resources and **be made compatible** with the necessary protection of the common environment.

## ***B. Cross-border and global issues***

- ❖ In this compartmentalized world: States have long perceived the need to cooperate in solving the increasingly serious problems affecting the common environment.
  - ❑ Protect collective ecological heritage
  - ❑ Transboundary pollution/environmental problems---international disputes.
    - *no State has the right to use its territory or to permit the use of its territory, in such a way that the fumes would cause damage to the territory of another State or to the property of persons in the territory of another State.*
    - Not only bilateral relationships, but also beyond national jurisdiction (oil slicks) *"pollution knows no frontiers"*
  - ❑ "export of (the risks of) pollution": export to another country, or to areas beyond national jurisdiction, of the pollution sources or risks themselves (nature of the activities involved - ships, aircraft and other means of transport carrying dangerous goods on board- and other times more subtle and insidious practice, ex: waste immersion operations in marine areas beyond national; Bophal accident).
  - ❑ Growing globalization of the economic system. Unequal regulation at the national level.

# C. *International cooperation and conditioning factors*

- ❖ Factors that inevitably affect the cooperation process:
  - ❑ Need to take into account the data provided by science and technology, as well as the use of the most appropriate technology for each situation.
    - Lack of absolute scientific certainty: excuse for environmental inaction.
    - Science and technology are unequally distributed: de facto monopoly on knowledge and mastery of the most advanced technologies.
  - ❑ The economic factor (the presumed cost of the measures to be taken)
  - ❑ The political factor:
    - Policy of "double standards", States rejected at the international level the formulation of principles and rules which, however, have long been established and applied in their own domestic environmental legislation.
    - Coordination relations, based on the idea of common interest.
    - Difficult process of harmonization of interests must be carried out, which will take time and effort to achieve, but which undoubtedly responds to a common purpose.

## 2. Historical evolution

- ❖ IEL has developed extremely rapidly. Several periods can be distinguished:
  - ❑ “Prehistory” of international environmental action (beginning of the 20<sup>th</sup> century): marked by utilitarianism and oriented essentially towards the protection of those elements of the ecosystem that were useful for production or had an economic value because they were subject to commercial use.
  - ❑ Era of virgin nature (1930s), aimed at protecting the impressive natural spaces and biological riches of virgin territories subjected to colonization, especially in Africa.
  - ❑ Start of ecological era (end of the 1970s), international regulations, in parallel with national legislation, were aimed at protecting the major sectors of the environment: seas, inland waters, air and wildlife. Sectoral period.
  - ❑ Period focus on regulating substances that can have a negative impact on the environment: chemical products, waste and radioactive materials.
  - ❑ 1990s: comprehensive protection of the environment, considering development and the global economic context.

# A. Stockholm Conference on the Human Environment-1972

- ❖ At the end of the 1970s: warnings raised by scientists and the concerns of international actors. UN took the initiative of promoting a **major international conference on environmental problems** (United Nations Conference on the Human Environment, Stockholm from June 5 to 16, 1972): foundations for all subsequent action.
- ❖ The main outcome : [the 1972 Stockholm Declaration](#) (main issues affecting the global environment and criteria for their treatment at international and national levels):
  - ❑ A preamble and 26 principles.
    - Right to a quality environment and the duty to protect it (Principle 1)
    - The preservation of natural resources (Principles 2 to 4)
    - Pollution prevention (Principles 5 to 7)
    - Interconnection of environmental problems with the needs of developing countries (Principles 8 to 11);
    - Instruments of environmental policy and, in particular, to planning and management at the national level (Principles 12 to 18);

- The obligation to prevent transboundary pollution and to develop international law on liability and compensation for victims of environmental damage (Principles 21 to 23);
- International cooperation to protect and improve the environment (Principle 24), with the coordinated contribution of international organizations (Principle 25) and striving to avoid the effects of nuclear weapons and all other means of mass destruction (Principle 26).
- ❖ To try to ensure the implementation: [Action Plan for the Environment](#) (109 declarations) with three main thrusts:
  - Global Environmental Assessment Program (watch plan);
  - Environmental management activities;
  - International measures to support assessment and management activities carried out at the national and international levels
- ❖ Environment Fund (voluntary contributions).
- ❖ Institutional level: establishment of the [United Nations Environment Program](#) (UNEP), GA Resolution 2997 (XXVII) 15/12/1972 to provide policy guidance and act as a catalytic instrument for the development of international environmental cooperation programs.

## ***B. The Rio de Janeiro Conference on Environment and Development-Earth Summit 1992***

- ❖ As the process set in motion by the 1972 Stockholm Conference was not achieving the expected results + new concerns from developing countries: United Nations Commission on Environment and Development (WCED)--- Brundtland Report ([Our Common Future](#)-1987) "eco-development" (idea of reconciling the economic development of peoples with the safeguarding of environmental values).
- ❖ GA Resolution 44/228 of 22/12/1989: United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro from 1 to 15 June 1992. Three groups of States:
  - ❑ The developed countries (DCs): main concern was to preserve the environment without neglecting its economic and commercial dimensions;
  - ❑ The developing countries (dCs): main concern was to ensure that environmental protection did not hinder their future development possibilities and a better distribution of the planet's wealth;
  - ❑ countries in transition to a market economy (CITES): main objective was to obtain special and more favorable treatment.

- ❖ Central instrument: [the 1992 Rio Declaration on Environment and Development](#): 27 (criteria for reconciling the requirements of development with those of environmental protection, in the context of the new concept of "sustainable development“):
  - ❑ "sustainable development" is oriented toward guaranteeing human beings the right to a healthy and productive life in harmony with nature (Principle 1).
  - ❑ environmental protection should be an integral part of the development process and cannot be considered in isolation (Principle 4).
  - ❑ DCs recognize their (primary) responsibility in the international pursuit of sustainable development (Principle 7).
  - ❑ States should reduce and eliminate unsustainable production and consumption systems and promote appropriate population policies (Principle 8)
  - ❑ States should cooperate by increasing scientific knowledge through the exchange of scientific and technological know-how, and by intensifying the development, adaptation, diffusion and transfer of technologies, including new or innovative technologies (Principle 9).
  - ❑ Promotion of an open international economic and trading system as one of the elements for achieving sustainable development (Principle 12).

- ❑ Guiding principles for international environmental action:
  - development of legislation on liability and compensation for victims of environmental damage (Principle 13)
  - precautionary principle (Principle 15)
  - polluter pays principle (Principle 16)
  - principle of environmental impact assessment (principle 17)
  - duty of notification and information on natural disasters, emergency situations and transboundary environmental risks (principles 18 and 19),
  - fundamental role of women, youth, indigenous peoples and local communities in environmental management and development (principles 20 to 23).
- ❑ Duty of States to settle environmental disputes by peaceful means, to provide environmental protection in times of armed conflict (principles 24 to 26) and to cooperate in the development of international law in the field of sustainable development (principle 27).
- ❖ [Declaration of "non-legally binding" principles on forests](#) (S<sup>a</sup> of states over forests resources).
- ❖ Two international treaties: the [United Nations Framework Convention on Climate Change](#) and the [Convention on Biological Diversity](#), both of 1992.

- ❖ To try to ensure the implementation: [Agenda 21](#)
- ❖ At the institutional level: Commission on Sustainable Development (CSD) composed of 53 States elected on the basis of geographic and equitable representation. Main tasks:
  - ❑ to monitor progress in the implementation of Agenda 21 and the integration of sustainable development into the various United Nations agencies;
  - ❑ to examine the national information submitted by Member States to the Organization on the state of the environment;
  - ❑ to submit, through ECOSOC, to the General Assembly appropriate recommendations on the implementation of Agenda 21.
- ❖ Fundamental merits of the Earth Summit:
  - ❑ international recognition that environmental conservation is the responsibility of all humankind.
  - ❑ consecration of the indissoluble link between the environment and development
  - ❑ instruments adopted have inspired the further development of IEL.
  - ❑ it inaugurated a process that has been developing since then and which involves the whole of world civil society, in the global task of preserving the environment.

# C. *World Summit on Sustainable Development-Johannesburg* 2002

❖ Its overall objectives were:

- To eradicate poverty
- Achieving sustainable patterns of production and consumption
- Protect the natural resources on which the economic and social development of future generations is based.

❖ The [main outcomes](#):

- The Johannesburg Declaration on Sustainable Development: political declaration that reaffirms the commitment to sustainable development in order to build a caring, equitable and generous global society, mindful of the need to respect the dignity of all human beings.
- The Johannesburg Plan of Implementation: programme of action setting out time-bound targets to implement Agenda 21.

❖ General disappointment.

## D. United Nations Conference on Sustainable Development-2012, Rio de Janeiro (Rio+20)

- ❖ The delegations renewed past commitments and agreed to face new challenges, but did not give final shape to the instruments that should help overcome them:
  - ❑ Green economy
  - ❑ Changes in the institutional framework
  - ❑ Climate change
- ❖ The main outcomes:
  - ❑ political outcome document (*The Future that we want*) which contains clear and practical measures for implementing sustainable development.
  - ❑ process to develop a set of Sustainable Development Goals (SDGs), which will build upon the Millennium Development Goals and converge with the post 2015 development agenda.
- ❖ General disappointment.

# 3. The new environmental paradigm: sustainable development

- ❖ **The notion of sustainable development** is an idea that advocates the reconciliation of environment and development, aspiring to preside over the economic, social and environmental activities of states and the international community.
- ❖ Origins in the field of economic science, is considered to pursue three essential objectives:
  - ❑ a purely economic objective, efficiency in the use of resources and quantitative growth;
  - ❑ a social and cultural objective, the limitation of poverty, the maintenance of diverse social and cultural systems and social equity;
  - ❑ and an ecological objective, the preservation of the physical and biological systems (natural resources) that support human life.
- ❖ The essence of this philosophy can be found in different international texts from the early 1970s. Historical and juridical development through the development of IEL.

# *A. The consecration of the sustainable development paradigm*

- ❖ Immediate origin of the concept: Brundtland Report. The report gives a central role to the concept of sustainable development, which it defines in these terms: *"Lasting development is development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs"*. It encompasses two fundamental concepts:
  - ❑ the concept of "needs", in particular the essential needs of the poor, which must be given overriding priority
  - ❑ the idea of constraints imposed by the capacity of the environment to meet present and future needs".
- ❖ It must be a:
  - ❑ process of solidarity.
  - ❑ enlightened process
  - ❑ equitable process
- ❖ Today: [2030 Agenda for Sustainable Development](#)

# ***B. The environmental dimension of sustainable development***

- ❖ Since its proclamation in the 1992 Rio Declaration, the paradigm of sustainable development has become the guiding thread of international action and has led to particularly significant changes in the environmental behavior of States. Doubts remain as to the extent to which it constitutes a binding norm, but..
  - ❑ It has put an end to several myths:
    - the inexhaustibility of natural resources, both non-renewable (mineral) and renewable (biological)
    - unlimited resilience or carrying capacity of the environment to the impacts produced by human activities
    - the regenerative capacity of the environment itself
  - ❑ It has introduced innovative corollaries:
    - the need to contemplate limits to growth, eradicating unsustainable patterns of production and consumption.

- the requirement to promote human development, public participation and consideration of the needs of future generations, and the concept of common but differentiated responsibilities of States.

# *C. Sustainable development in the Anthropocene*

- ❖ In recent years, leading scientists: new geological epoch called the **Anthropocene**, characterized by the fact that human activities have become the determining force in the evolution of the Earth system. Complex interconnections underlying the Earth system and the relationships between the various ecological subsystems and human activities.
- ❖ And IEL? No major changes regarding this new epoch...

# Sources

- Juste Ruiz, J.
- UNEP training manual
- PEREZ SALOM, R. Notes for classes