

Environmental laws and natural resource law ppt.

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- Introduction

Meaning of “Environment”

- The word *environment* is derived from an ancient French word ***environner***, meaning to encircle.
- **Geographically**, *environment* can refer to a limited area or encompass the entire planet, including the atmosphere and stratosphere

- Defining an Environment is not an easy task. Most treaties, declarations, codes of conduct, guidelines, etc. don't attempt to define it directly.
- **The world commission on environment and development (WCED)** relied on an even more concise approach; it remarks that '*the environment is where we live*'.

- For example, **the Declaration of the 1972 Stockholm Conference on the Human Environment (UNCHE)** merely referred obliquely to man's environment adding that *'both aspects of man's environment, the natural and man-made, are essential for his well-being and enjoyment of basic human rights.'*

- The Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment defines the environment as including;
- *Natural resources both **abiotic** and **biotic**, such as air, water, soil, fauna and flora and the interaction between the same factors; property which forms part of the cultural heritage; and the characteristic aspects of the landscape.*

- The Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment which was done at Lugano, 21 June 1998, Art.2.10

- When we come back to our legal system, the Environmental Protection Organs Establishment Proclamation NO. 295/2002 defines the environment as:
- *The totality of all materials whether in their natural state or modified or changed by human, their external spaces and interactions which affected their quality or quantity and the welfare of human or other living beings, including but not restricted to, land, atmosphere, weather and climate, water, living things, sound, odor, taste, social factors, and aesthetics.*

- Proclamation No. 1090/2018 A
Proclamation To Provide For
Hazardous Waste Management And
Disposal Control Add The Same
Language

- Environmental law
- Nature and scope of environmental law
- "International environmental law is the set of agreements and principles that reflect the world's collective effort to manage our transition to the Anthropocene by resolving our most serious environmental problems, including climate change, ozone depletion and mass extinction of wildlife.

More generally, international environmental law aims to achieve sustainable development—i.e., development that allows people to have a high quality of life today ***without*** sacrificing the quality of life of future generations. International environmental law is thus critical both for addressing specific environmental threats and for integrating long-term environmental protection into the global economy."

- ***Thus*** international environmental law is nothing more, or less, than the application of international law to environmental problems

- *International Environmental law is thus used simply as a convenient way to encompass the entire corpus of international law, public and private, relevant to environmental issues or problems, in the same way as the use of the terms law of the sea, Human Right law, and International Economic Law is widely accepted.*

- International environmental law covers topics such as biodiversity, climate change, ozone depletion, toxic and hazardous substances, desertification, marine resources, and the quality of air, land and water. It also has synergies with related areas of international law like international trade, human rights, international finance, and so on.

- **What is National Environmental Law?**

- In the context of the Ethiopian legal system, National environmental law includes the provisions concerning the environment in the 1995 FDRE constitution; different environmental treaties ratified by the House of Representatives according to Art. 9 (4) of our constitution and all laws (federal and regional) concerned with the environment (Forestry, Land, Water use and other sectoral laws).

- Factors that gave rise to environmental laws: national and international perspective
- **First is the** existence of an extensive range of environmental ***problems.***
- These include atmospheric pollution, marine pollution, global warming and ozone depletion, the danger of nuclear and other extra-hazardous substances and threatened wildlife species.
- Such problems have an international dimension in **two** obvious respects.

- i. Pollution generated from within a particular state often has a serious impact upon other countries.
- ii. The fact that these environmental problems cannot be resolved by states acting ***individually***.

Accordingly, co-operation between the polluting and polluted state is necessitated.

- **Second**, the question of the relationship between the protection of the **environment** and the need for economic **development**.
- It also raises the issue as to how far one takes into account the legacy for future generations of activities conducted at the present time or currently planned.

- **Historical Development of International Environment Law**

- development of international environmental laws began way back in **80 AD** with national level implementation of environmental laws.
- some of the early pioneers of environmental laws include the **Roman** legislation that began with implementing policies protecting their water resources.

- Around 14th century **England** passed legislation banning coal fires and hazardous waste disposal.
- In late 16th century Pennsylvania administration passed legislation that at least one fifth of land being cleared for settlement should be preserved.
- In 1900 Britain was concerned about the environmental impact of industrialization and passed policies regulating coal burning and disposal of industrial waste.

- Much of development of environmental laws was achieved in **19th** century with the first convention protecting important species being made in **1902** and was an agreement among the European countries.
- This was followed by another convention in **1911** that brought together U.S, U.K, Japan and the Russian community.

- Convention protecting migratory birds was passed in 1916 with U.S, U.K and Mexico being partners to the convention.
- As time progressed more and more countries joined up to sign conventions to address the environmental concerns that were affecting them as a community.

- **1930** saw the signing of flora and fauna convention by countries such as Belgium, Portugal, Sudan, Egypt, U. K, and Italy.
- The countries agreed to preserve their natural habitats by establishing **game parks** and **reserves**.
- As global environmental concerns increased with time **U.S** was particularly aggressive in enacting natural environmental protection legislations especially laws addressing pollution of air and water bodies and this led to creation of environmental protection **agency**.

- The **history** of **IEL** can be divided into **three** stages, separated by two of the most relevant international conferences held so far: the ***Stockholm Conference (1972)*** and the ***Rio de Janeiro Earth Summit (1992)***.
- And in 2016, with the signing of the Paris Agreement, a new stage began to confront humanity's most important natural challenge: **the current climate emergency**.

1. THE BEGINNINGS: BEFORE STOCKHOLM

- Before the 1960s, there was little environmental awareness and only a few isolated international environmental regulatory initiatives. One of these was the failed London Convention of 1900, which sought to protect *African wildlife*.

- It **never** came into force because it was not signed by the minimum number of parties. It was replaced **33** years later by the 1933 London Convention, which was implemented in much of colonized Africa through the creation of nature parks and species protection.

- During those years, other initiatives were carried out in isolation. But things really started to change in the **1960s**, when public opinion became aware of the dangers threatening the planet.

- Some of the events that marked this era were the publication in 1962 of the book *Silent Spring* by Rachel Carson, which documented the negative effects of pesticides on birds and the environment; and the release of the image known as *Earthrise*, taken by astronaut William Anders in 1968 during the Apollo 8 mission.

2. THE STOCKHOLM DECLARATION

- A product of the first UN Conference on the Human Environment, the Stockholm Declaration (1972) was the first international document to recognize the right to a healthy environment through 26 principles, many of which have played an important role in the subsequent development of IEL.

- Principle 21, for example, confirmed one of the cornerstones of IEL: the responsibility of States to ensure that activities under their jurisdiction do not cause damage to the environment of other States.
- The Declaration also established the Principle of Cooperation, which is crucial in the further development of IEL, by recognizing that countries should unite their efforts to meet the global challenges of our shared environment.

- Also in Stockholm, the UN General Assembly created the [United Nations Environment Programme \(UNEP\)](#), the central body in charge of environmental affairs today

3. BETWEEN STOCKHOLM AND RIO

- ***After*** Stockholm, changes began to be seen in national governments: the first green political parties were formed, some Ministries of Environment were created, and a significant amount of local environmental legislation began to be developed.

- In **1983**, the UN created the World Commission on Environment and Development, known as the Brundtland Commission. Its work, which focused on the difficult relationship between environment and development, resulted in the report *Our Common Future* (1987).

- That document coined the concept of ***sustainable development*** - defined as "meeting the needs of the present generation without ***compromising*** the ability of future generations to meet their own needs" - which is the basis for the evolution of IEL.

- At this time, some of the global environmental problems that still afflict us today began to manifest themselves--including the depletion of the ozone layer, risks to biological diversity, and the threat of climate change. International **cooperation** was absolutely necessary and developed countries would have to help poorer countries if humanity was to be able to meet such

- In **1987**, the Montreal Protocol was signed to combat the depletion of the ozone layer. This international agreement has been an example of successful international cooperation. Because of it, it's believed that the ozone layer could recover by **2050**.

4. THE EARTH SUMMIT IN RIO DE JANEIRO

- In 1992, during this Conference, two conventions were presented to be signed by national governments: the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change (UNFCCC)

- The Rio Declaration was also established, which reaffirmed the Stockholm Declaration and the Agenda 21 action program, which continues to guide governments and non-state actors in environmental protection activities.

- In Rio, in the face of growing evidence that human activities in pursuit of economic growth were responsible for major environmental threats, the **central** concept continued to be sustainable development.

- **Two** principles of the Rio Declaration deserve special consideration: the Precautionary Principle, the most advanced form of prevention and important to the formation of modern IEL; and Principle 10, which recognizes the right to information, participation, and justice in environmental matters.

- In 1998 Principle 10 gave rise to the Aarhus Convention, binding in Europe and Central Asia. The Aarhus Convention is the predecessor of the Escazú Agreement, which seeks recognition of these rights in Latin America.
- This recognition is also considered an important milestone in the creation of IEL because it shows the emergence of civil society as an increasingly important and active player in global environmental protection.

5. AFTER RIO AND INTO THE FUTURE

- After Rio, all major economic treaties began to include environmental protection. A case in point is the Marrakech Agreement, which created the **World Trade Organization** in 1994 and was the first economic treaty to recognize the goals of sustainable development and environmental protection.

- The Convention on Climate Change of 1995 deserves special mention, since its signatories have met every year at the so-called Conference of the Parties (COP). Within this framework, in 1997, the Kyoto Protocol was presented. Despite not having been successful in mitigating greenhouse gas emissions, it was the first international agreement to establish legally binding obligations for developed countries

- In 2000, 189 countries adopted the Millennium Declaration in New York, which strengthened the importance of sustainable development by recognizing the need for sustainable economic growth with a focus on the poor and respect for human rights.

- Two years later, in 2002, representatives from 190 countries attended the UN World Summit on Sustainable Development in Johannesburg to follow up on the commitments of the Rio Summit. On that occasion, they adopted the Declaration on Sustainable Development, which focused on development and poverty eradication with a legal-

- And in 2012, the UN organized the third Conference on Sustainable Development, known as Rio + 20, which brought together 192 Member States, private sector companies, NGOs, and other organizations. The result was a non-binding document called The Future We Want. In the document, States renewed their commitment to sustainable development and the promotion of a

6. MODERN TIMES

- The Kyoto Protocol to address climate change gave way to the Paris Agreement (2016). In this agreement, the signatory countries committed themselves to doing everything possible to prevent the average temperature of the planet from rising by **2°C**, compared to pre-industrial levels, and hopefully staying below a **1.5°C** rise.

- The **relationship** between human rights and climate change was recognized in its preamble. Having been ratified by almost all countries in the world, it has immense potential as an instrument of international law. In fact, recently the first ruling that prevented a project (the expansion of an airport) was made in England, on the grounds that by proceeding the country would not be complying with the Paris Agreement.

- A contemporary landmark of great relevance, especially for Latin America, is Advisory Opinion 23 (2017) on the environment and human rights of the Inter-American Court of Human Rights. In it, the Court recognized for the first time the right to a healthy **environment** as fundamental to human existence, as well as the impacts of environmental degradation and climate change on human rights

- **Finally**, it is worth mentioning the current construction of an international legally binding instrument for the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. In recognition of the crucial role that the ocean plays in the health of the planet and especially in the stability of the climate, safeguarding the vast and mysterious areas in the high seas seems to be **absolutely** necessary.

- Historical development of environmental law in Ethiopia.
- Environmental issues came to the forefront in Ethiopia at the wake of 1974 and 1984 draught because it was believed that the draught was the result of agricultural degradation or environmental mismanagement.

- this doesn't mean that there was no environmental management before the above mentioned draught.
- Rather, there were **fragmented** environmental management activities in Ethiopia like the establishment of **Semen National Park, Awash National Park** and other wildlife protections though these were **individual** cases and not a holistic approach to the problem.

- Environmental management was also practiced before the above-mentioned draughts at the **community** level though it was not reflected in the drafting of the law. It is just like soil preservation methods and others. Usually the practice was Top down Approach rather than bottom up approach.

- The other reason for the coming to the forefront of environmental issues (other than the draught)was international pressure from the international community, like the Rio Conference in 1992(since Ethiopia was one of the participants of the conference). Currently, we find a legal basis for national environmental law in our FDRE Constitution

- For example, the FDRE Constitution reads as:
- *1). All persons have the right to clean and healthy environment. Art. 44.* and **Art.92** oblige the state and citizen to protect the environment.
- Additionally, there are **policies**

Levels of Environmental Law

- Environmental law exists at many levels and is only partly constituted by international declarations, conventions, and treaties.
- The bulk of environmental law is **statutory**—**i.e.**, encompassed in the enactments of legislative bodies—and **regulatory**—**i.e.**, generated by agencies charged by governments with the protection of the environment.

- In addition, many countries have included some right to environmental quality in their **national constitutions**.
- Much environmental law also is embodied in the decisions of international, national, and local **courts**.

• The Role of International and National Laws in the Protection of the Environment

- The role of the law in protecting the environment is not fundamentally different in both international and national law. **Accordingly,**
- **First,** it provides mechanisms and procedures for negotiating the necessary rules and standards, settling disputes, and supervising implementation and compliance with treaties and customary rules

- ***Second***, it is concerned with regulating environmental **problems**, setting common standards and objectives for prevention or mitigation of harm, and providing a flexible rule-making process that allows for easy and regular amendment in the light of technological development and advances in scientific and other knowledge

- **Third**, reinstatement of or compensation for environmental damage is a more limited but still important function.
- It is more limited because only those who suffer damage can secure such redress and also because not all-environmental damage is necessarily capable of reinstatement or has an economically assessable value.
- **Finally**, it benefits or keeps accountable individuals.

- **Does the Existing Environmental Law Adequately Protect the Environment?**
- As far as measuring the effectiveness of the law in protecting the environment is concerned, much depends on the criteria used.
- Effectiveness has multiple meanings:
- **First**, it may mean solving the problem for which the regime was established (for example, avoiding further depletion of the ozone layer);

- **Second**, achievement of goals set out in the constitutive instrument (for example, attaining a set percentage of sculpture emission);
- **Third**, altering behavior pattern (for example, moving from use of fossil fuels to solar or wind energy production);
- **Finally**, enhancing national and international compliance with rules and international agreements.

CHAPTER 2

The Sources and the Law Making Process of Environmental Law

– The Sources of Environmental Law

- Environmental law, being a relatively new field, is largely contained in **written** texts, although some common law **principles** and relevant and **customary** international law is emerging.

Sources of National Law

- **Constitutional Law**
- **Environmental Legislation**
- **Administrative Regulations**
- **Industry Standards and Codes of Conduct**

- **International Law**

- The relationship between national law and international law **varies** considerably from one legal system to another.
- Legal doctrine has developed two theories known as *monism* and *dualism* in an attempt to explain and classify national practice, but the reality is more complex than the theory.

- **Monism** posits a unified body of rules, and since international law is the most complete expression of unified law, it automatically forms **part** of this body of rules and is hierarchically **superior** to other law.
- **Dualism** sees separate legal orders and looks to each jurisdiction to determine the sources of law and their hierarchy.

- In general, the theory of monism and dualism is most relevant to customary (or law not created through written international agreement) international law and even then in limited fashion. Some legal systems require that customary international law be transposed into national law **through** legislation or executive order before it becomes the law of the land. Other legal systems view international law as **automatically** part of the legal order and enforceable by judges without legislative action.

- **The Law Making Process: National and International Perspective**

- The constitution under Art. 51(5) stipulates that:
- *It shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects.*
- Art. 52 of the same constitution that talks about the Powers and Functions of States in Sub-Article 2(d) also prescribes as follows:
- *To administer Land and other natural resources in accordance with Federal laws*

- The Law Making Process of International Environmental Law

- Concerning International Environmental Law there is no international legislature, comparable to the national parliament, but there are generally accepted sources from which international law derives, and a variety of international processes through which new international law is made or existing law changed

- **First**, international institutions, including the UN and its specialized and regional agencies and programmes, have played a leading role in setting law-making agendas and providing negotiating forums and expertise.
- **Secondly**, following the model of the 3rd UN conference on the law of the sea, the use of consensus negotiating procedures and package deal diplomacy has created a real potential for securing universality and general acceptance of negotiated texts

- **Thirdly**, the use of frame work treaties, with regular meetings of the parties, has given the process, at least in its treaty form, a dynamic character, allowing successive protocols, annexes, and related agreements to be negotiated, adding to or revising the initial treaty. These treaties, together with the institutions they create, have become in effect regulatory regimes

- **Nature of Environmental Problems, and Damages**

- within the environment there is dynamic interrelationship between the ***living form and physical environment***. Human beings should therefore maintain this balance with nature and act according to the law of nature. Otherwise, man will suffer from the results of his interference.

- . Many of the damages done to the environment may have long term effects or they may involve important synergism in the environment or may not be effectively reversible. such that, the greatest danger is that human kind may set off unchecked degradation that will pass a point of **no return**, making it impossible to restore a healthy environment

- When we bring it under one umbrella, the whole purpose of environmental protection boils down to mean suppressing the ***unwanted behavior and action of man***, and fostering those that would contribute to the maintenance and enhancement of ecological balance to the benefit of the general public, and the continuity and profitability of development activities

- Of environmental problems which reveal the diffused right of human beings to live in a clean and healthy environment, and the pressing need of public participation to save the environment before it reaches no turning point, calls for the reorientation of the law to accommodate public interest litigation.

- The need for the reorientation of the law emanates from the fact that traditional litigation is designed in a way to enforce the rights of an **individual** against another, and not to enforce the diffused basic human rights of the public. In other words, the narrow ambit of locus standi permitted entry only to an aggrieved person and not to any member of public at large acting bonafidely

- To have a full fledged justice, therefore, the procedural law should be designed with a scope to accommodate public interest litigation to enable alert citizens and public interest groups redress public wrongs which remained unremedial under the traditional rules of **locus standi**.

- **Pollution to Environment as International, Regional and National Concern**
- Some environmental problems, for example climate change or depletion of the stratospheric ozone layer, are inherently global in character, and affect all states, not necessarily equally, but at least to the extent that impacts are global and global solutions are required.

- There are also regional environmental problems like air or water pollution and conservation of migratory animals.
- Equally there could be also domestic or national problems as well.

- the problem was not felt for **three** main reasons
- **First**, industrial developments had not produced pollution and damage to the environment on a very large scale. **Second**, States still took a traditional approach to their international dealings: they looked upon them as relations between sovereign entities, ...

- each pursuing its self-interest, each eager to take care of its economic, political, and ideological concerns, each reluctant to interfere with other states' management of their space and resources, and unmindful of general or community amenities. **Third,** public opinion was not yet sensitive to the potential dangers of industrial and military developments to a healthy environment

- Accordingly, there could be *ethical*, *aesthetic*, or *symbolic* reasons for protecting the environment as opposed to *economic* and *health* reasons. However, almost all justifications for environmental protection are predominantly and in some sense *anthropocentric*.

- This is true especially of **the 1972 Stockholm Conference**, which focused explicitly on protecting 'the human environment' and proclaimed:
- *Man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, Spiritual, moral and social growth...*

- Likewise, **the 1992 Rio Declaration on Environment and Development** asserts that *'Human beings are at the center of concerns for sustainable development'*.
- The preamble to **the 1992 Convention on Biological Diversity** evinces the complex mixture of objectives for the protection of the environment, which characterizes much of contemporary international environmental law:

- Conscious of the intrinsic value of biodiversity and of the ecological, social, economic, scientific, educational, cultural, recreational and aesthetic value of biological diversity and its components, conscious also of the importance of biological diversity for evolution and for maintaining life-sustaining systems of the biosphere (holistic approach to environment protection)

- The emergence of individual environmental rights has the strongest anthropocentric motivation, most notable in attempts to develop a new human right to a decent environment. Some advocates assert that such a right is indispensable for the enjoyment of human rights freedoms, but they usually fail to explain how competing environmental, economic, and social priorities can be accommodated in what necessarily becomes a value judgment about what we value most.

- **Nature of Environmental Damages**
- **Problems in Defining Environmental Damages**
- In the case of the Ethiopian legal system, environment is defined to mean:
 - *the totality of all materials whether in their natural state or modified or changed by humans, their external spaces and the interactions which affect their quality or quantity and the welfare of human or other living beings, including but not restricted to, land, atmosphere, weather and climate, water, living things, and aesthetics.*
- **Environmental Pollution Control Proclamation No. 300/2002, Art. 2 (6).**

- Furthermore, **damage** to the environment is understood to mean:
- *any condition which is hazardous or potentially hazardous to human health, safety or welfare or to living things created by altering any physical, radioactive, thermal, chemical, biological or other property of any part of the environment in contravention of any condition, limitation or restriction under any relevant law.*
- **Art. 2 (12).**

- From the above legal provision, we can infer the fact that damage to the environment does not only cover damage to the environment per se, but it also covers damage to private property and consequential losses that arise there from or in connection with. ***In other words, damage to the environment has two facets, that is, private nuisance and public nuisance.***

- **Private nuisance** is defined as unlawful and continuing interference with a person's use or enjoyment of land and possibly, physical damage to that property. whereas, **public nuisance** is a crime as well as a tort, and for any action to lie it must interfere with the use and enjoyment of property by the public in general or by a sufficiently large number of public

- Accordingly, a proper classification of damage to the environment is imperative because there is a fundamental difference between the environment-related type of damages [private nuisance], on the one hand, and damage to the environment per se [public nuisance] on the other hand in relation to the scope of the traditional tort law.

- In the traditional tort law, it is generally held that, an individual acting privately can not initiate a legal action for a purely public nuisance, unless the damage he incurred is in some way distinguished from that sustained by other members of the general public.

- In other words, a private individual can have standing only when he has **suffered** damage over and above that suffered by the public at large, so much so that the scope of the traditional tort law covers only the environment related type of damages which could result in personal injury or pure economic loss.

- For the above reason, when damage is done to the environment per se, it does not fit properly in the traditional legal concept of tort law due to the following reasons

- **First**, by the fact that damage to the environment per se affects collective interests rather than individual interests, and incidents that affect such collective interests do not generally speaking, give rise to legal right of standing. That is, the traditional liability rules mainly concern in the protection of individual interests and, in cases of damage to the environment per se, these interests are often only indirectly affected [if at all].

- The **second** reason is the very nature of damage to the environment per se. That is, since damage to the environment per se is a separate category of damage, it is not entirely clear if damage to the environment per se should be classified as material or non-material damage [pecuniary or non-pecuniary loss]. And, because under the traditional tort law only certain types of damages are compensable, it becomes questionable whether all aspects of damage to the environment per se fit in the tort law system.

- To supplement the gap in the law, which emanate from the limited scope of application of the traditional tort law, it is, therefore, a pressing need to incorporate a liberalized standing and a modern concept of tort law.
- **Damages Forming New and Additional Category of Damage to the Environment**

- Extending the scope of the liability regime to include both the publicly owned and publicly possessed natural resources, and the publicly owned but privately possessed natural resources that have a particular value to the public has the advantage that the environment is valued as a unity party that is independent from property interests.

- In the case of publicly owned but privately possessed natural resources that have a particular value to the public, standing is proposed to be liberalized for the fact that they may support threatened and endangered species, and provide other services to man and nature.

- Other specific reasons for the liberalization of standing to include certain publicly owned but privately possessed natural resources are the following:
- The **first** reason is the plaintiffs' reluctance to take care about the pollution. In some instances they themselves may also be polluting, and not wish to initiate legal action.

- They may be economically dependent on their polluting neighbor. And, of course, when they discount the value of winning by the costs of bringing suit and the chances of success, the action may not seem worth **undertaking**.

- **Second**, the merit of the case is decided only to the interest of some one who is competent and willing to establish legal standing. In this case, the system protects only the rights of the property owning human without giving due consideration to public interest, and intrinsic natural values.

- So, strict adherence to the traditional tort law and traditional standing denies cognizance to the intrinsic value of the environment, and the public interest aspiration this may be far less than the damage to the environment, so that it may not have enough reparation to force the polluter to cease

- Forth, the measure of damage is another reason for including certain publicly owned but privately possessed natural resources that have ecological value, and publicly owned natural resources. Application of the traditional measure of damages rule may prevent full restoration of the damaged natural resources. As a general rule, under the traditional tort law the costs of such measures are not to **exceed** the lost market value of the property.

- This may have the effect that the natural resources which lack a **direct market value** are not fully restored. For the above reasons, the benefit of the modern approach of tort law and liberalized standing is that the environment is valued as a unity and that the protection and conservation of natural resources does not stop at the border of private property.

- In general, damage to the publicly owned and publicly possessed natural resources, and to publicly owned but privately possessed natural resources that have a particular value to the public, is damage of a collective nature and because no concrete individual interests are harmed, damages for this type of injury are in principle **not** recoverable under the traditional tort law.

- For this reason, to address the gap, the introduction of public interest litigation which can be initiated by public spirited persons or social service minded members of the public acting bonafidely, not for personal gain or out of political motivation or other oblique consideration, is a pressing need.

- Furthermore, the law becomes full-fledged where special laws not only specifically provide standing to alert citizens and public interest groups, but also when they bestow them a cause of action to claim compensation for such damage. ***That is, forming a new and additional category of damage to the environment per se in the tort law is a corollary to the***

- **CHAPTER 3 BASIC PRINCIPLES OF ENVIRONMENTAL LAW**

- **Introduction to the Basic Principles of Environmental Law**

- No legal order can regulate with specific rules any possible conduct of legal subjects. **Gaps** are bound to exist in the normative network of any community. Hence, the need to resort to general principles, that is, sweeping and rather loose standards of conduct that can be **deduced** from the various rules by extracting and generalizing some of the most significant common points

- Normally principles are spelled out by courts, when adjudicating cases that are not entirely regulated by treaty or customary rules. It cannot be denied that by so acting courts fulfill a meritorious function very close to, and almost verging on, the creation of law.

- At present, in the world community, **two** distinct classes of general principles may be relied upon. **First**, there are general principles of international law, namely those principles which can be inferred or extracted by way of induction and generalization from conventional and customary rule of international law. **Second**, there are principles that are peculiar to particular branch of international law (the law of the sea, humanitarian law, the law of state responsibility, etc.).

i. Prevention

- Experience and scientific expertise demonstrate that prevention must be **the Golden Rule** for the environment, for both *ecological* and *economic* reasons. In some instances, it can be impossible to remedy environmental injury once it has occurred: the extinction of a species of fauna or flora, erosion, and the dumping of persistent pollutants into the sea create intractable, even **irreversible** situations

- Even when harm is remediable, the cost of rehabilitation is often very high. In many instances it is impossible to prevent ***all*** risk of harm. In such instances, it may be judged that measures should be taken to make the **risk** “*as small as practically possible*” in order to allow the necessary activities to proceed while protecting the environment and the rights of others

- It can perhaps better be considered an overarching aim that gives rise to a multitude of legal mechanisms, including *prior assessment of environmental harm*, and *licensing or authorizations* that set out the conditions for operation and the remedial consequences for violation of the conditions. *Emission limits* and *other product or process standards*, *the use of best available techniques (BAT)*, and *other similar techniques* can all be seen as applications of *prevention*.

- Prevention is also linked to the notion of *deterrence* and the idea that disincentives *such as penalties and civil liability* will cause actors to take greater care in their behavior to avoid the increased costs, thus preventing pollution from occurring.

- In addition to prevention as a generalized goal of domestic environmental laws, the notion of “*pollution prevention*” includes the concept that pollution may be reduced, or prevented, at its source, by changing raw materials or production techniques or technologies

Often “*pollution prevention*” and “*source reduction*” are conceived as a goal of voluntary efforts that complement “*command and control*” or “*end-of-pipe*” environmental regulations that limit the amount of pollution that may be emitted.

- ***Pollution** prevention sometimes produces economic benefits for industry in terms of increasing efficiency, reducing waste, and reducing liability. Governments may engage in strategies or programs to educate the regulated community and encourage it to implement pollution prevention techniques, in addition to their efforts to promote and enforce compliance with mandatory regulations*

2. Precaution

Precaution has variously been associated with the ideas that: 1) scientific uncertainty should not be used as a reason not to take action with respect to a particular environmental concern; 2) action should affirmatively be taken with respect to a particular environmental concern;

- 3) those engaging in a potentially damaging activity should have the burden of establishing the absence of environmental harm; and 4) a State may restrict imports based on a standard involving less than full scientific certainty of environmental harm. Properly viewed, the concept of precaution operates as part of a science-based approach to regulation, not a substitute for such an approach, and, in practice, the concept is multi-faceted.

- The so-called “precautionary approach” is relatively recent, dating from the late 1980s. The Rio Declaration stipulates that:
- *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.*
- The 1992 Rio Declaration, Principle 15

3. Polluter Pays

The “polluter pays” principle was originally enunciated by the Organization for Economic Cooperation and Development (OECD) to restrain national public authorities from subsidizing/Supporting financially the pollution control costs of private firms. Instead, enterprises should **internalize** the environmental **externalities** by bearing the costs of controlling their pollution to the extent required by law.

- The polluter pays principle is therefore a method for internalizing externalities
- The principle can be applied most easily in a geographic region subject to uniform environmental law, such as a state or a regional economic integration organization. The **polluter** can be defined as one who directly or indirectly damages the environment or who creates conditions leading to such damage.

- *Other means of ensuring the polluter pays principle are through taxes and charges. Application of the principle may be difficult in practice where identifying the polluter proves impracticable because the pollution arises from several simultaneous causes or from several consecutive causes, or where the polluter has become financially insolvent. In such instances, there may be no alternative to community assumption of the costs of remediation.*

4. Environmental Justice and Equity

In general, environmental justice seeks to ensure that authorities fairly allocate and regulate scarce resources to ensure that the benefits of environmental resources, the costs associated with protecting them, and any degradation that occurs (i.e. all the benefits and burdens) are equitably shared by **all** members of society

5. Public Trust

- The concept of public trust expresses the idea that the present generation holds the natural resources of the earth in trust for future generations. When applicable as a legal principle, public trust contemplates that certain things, such as *natural resources* and *the exercise of public power*, are held by governments in trust for the citizenry and must be used for the public benefit.

6. The Integration Principle

- Environmental protection requires that due consideration be given to the potential consequences of environmentally fateful decisions. The integration of environmental, economic, cultural, and social considerations into a decision making process in a manner that promotes sustainable development is a pressing need

7. The Public-Participation Principle

- Decisions about environmental protection often formally integrate the views of the public. Generally, government decisions to set environmental standards for specific types of pollution, to permit significant environmentally damaging activities, or to preserve significant resources are made only after the impending decision has been formally and publicly announced and the public has been given the opportunity to influence the decision through written comments or hearings.

8. The Principle of Sustainable Development.

sustainable development is a means to an end for the realization of friendly environment. sustainable development implies **not** merely limits on economic activity in the interests of preserving or protecting the environment, but an approach to development which emphasizes the fundamental importance of **equity** within the economic system.

- This **equity** is both ***intra-generational***, in that it seeks to redress the imbalance in wealth and economic development between the developed and developing worlds by giving priority to the needs of the poor, and ***inter-generational***, in seeking a fair allocation of costs and benefits across succeeding generations. Put simply, development will only be 'sustainable' if it benefits the disadvantaged, without disadvantaging the needs of the future.

- Individual assignment (20)
- Submission date 24/9/2016
- Summaraze on 2 pages

Analyze the above environmental principles under international and national laws

- **FEDERAL** **LEGISLATIONS**
Proclamation
- [Proclamation No.1223/2020 Development, Management and Utilization of Community Watersheds Proclamation](#)
- [Proclamation No.1090/2018 Hazardous Waste Management and Disposal Control](#)
- [Proclamation No. 1079/2018 Ethiopian Geospatial Information Agency Re-Establish the Proclamation](#)
- [Biosafety Proclamation no. 655/2009](#)
- [River Basin Councils and Authorities Proclamation No. 534/2007](#)
- [Solid Waste Management Proclamation no. 513/2007](#)
- [Environmental Pollution Control Proclamation No.300/2002](#)
- [Environmental Impact Assessment Proclamation No. 299/2002](#)
- [Environmental Protection organs Establishment proclamation No. 295/2002](#)
- [Ethiopian Water Resources Management Proclamation No. 197/2000](#)
- [Environmental Protection Authority Establishment Proclamation No.9/1995](#)
Repealed by Proclamation no. 295/2002
- Regulation
- [Council of Ministers Ethiopian Water Resources Management Regulations No. 115/2005](#)

- Chapter 4

Environmental rights

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.***(Principle 10 of the Rio Declaration on Environment and Development reflects this notion)**

- **International Law**

- Human rights texts generally contain a right to *freedom of information* or a corresponding state duty to inform. The right to information is included in the Universal Declaration of Human Rights (Art. 19), the International Covenant on Civil and Political Rights (Art. 19(2)), the Inter-American Declaration of the Rights and Duties of Man (Art. 10), the American Convention on Human Rights (Art. 13), and the African Charter on the Rights and Duties of Peoples (Art. 9).

- Furthermore, informational rights are widely found in environmental **treaties**. Broad guarantees of public information are found in **regional agreements**, including the 1992 Helsinki Convention on the Protection and Use of Trans-boundary Watercourses and International Lakes (Art. 16), the 1992 Espoo Convention on Environmental Impact Assessment in a Trans-boundary Context (Art. 3[8]), and the 1992 Paris Convention on the North-East Atlantic (Art. 9).

- Other treaties require states parties to inform the public of **specific** environmental hazards. The IAEA *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management* recognizes the importance of informing the public on issues regarding the safety of spent fuel and radioactive waste management.

- Article 6 and 13, on siting of proposed facilities, require each state party to take the appropriate steps to ensure that procedures are established and implemented to make information available to members of the public on the safety of any proposed spent fuel management facility or radioactive waste management facility

Access to Justice

- The right to an effective remedy, meaning access to justice and redress, can be found in both human rights law and in environmental law. The United Nations Covenant on Civil and Political Rights calls for states to provide a remedy whenever rights protected under national or international law have been **violated.**

- In the European Convention on Human Rights, Article 13 guarantees a remedy whenever there is a violation of the rights and freedoms contained in the Convention, thus encompassing violations of the right to information.

- The Inter-American and African regional human rights systems contain a similar guarantee. Environmental instruments frequently proclaim the need for **effective remedies**. Principle 10 of the Rio Declaration provides that “effective access to judicial and administrative proceedings, including redress and remedy, **shall** be provided ”

- Agenda 21 calls on governments and legislators to establish judicial and administrative procedures for legal redress and remedy of actions affecting the environment that may be unlawful or infringe on rights under the law, and to provide access to individuals, groups and organizations with a recognized legal interest.

- Agenda 21 is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which human impacts on the environment.

- **Agenda 21** is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which human impacts on the environment.

- **UNCLOS** also provides that states shall ensure that recourse is available for prompt and adequate compensation or other relief for damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction (**Art. 235(2)**).

- The right to a remedy is not necessarily limited to nationals of a state. Some international agreements contain obligations to grant any injured person a right of access to any administrative or judicial procedures equal to that of nationals or residents. Equal access to national remedies has been considered one way of implementing the polluter pays principle because it tends to expand the scope of polluter **accountability**.

Environmental Quality

National Law

- Almost every constitution adopted or revised since 1970, either states the principle that an environment of a specified quality constitutes a human right or imposes environmental duties upon the state. The Constitution of Ukraine states that:
- *[E]very person has the right to a safe and healthy environment and to compensation for damages resulting from the violation of this right.*

- State practice is divided over the issue of the justifiability of the right to a safe and healthy environment. **Some** courts have allowed lawsuits to enforce the right, while others have not. Courts are also divided over whether environmental rights may be **implied** in constitutional protections when there is no explicit mention of the environment.

- **International Law**

- At present, no global human rights treaty proclaims a right to environmental quality, although the *Universal Declaration of Human Rights* and other human rights instruments contain a right to an adequate quality of **life** and a **right** to health. It is **unclear** the extent to which these generally stated rights will ultimately be viewed as including an enforceable right to clean and healthy environment.

- On the regional level, the 1981 *African Charter on Human and Peoples Rights* was the first international human rights instrument to contain an explicit guarantee of **environmental quality**. Subsequently, the *Protocol on Economic, Social and Cultural Rights to the American Convention on Human Rights* included the right of everyone to live in a healthy

- **Chapter 5 COMMON LEGAL MECHANISMS OF ENVIRONMENTAL PROTECTION**

The role of the courts in upholding the rule of law in the environmental arena is very much informed by the regulatory mechanisms that deliver environmental protection. **Two** primary, common regulatory systems aim to prevent environmental harm by anticipatory action.

- The **first** is a system that attempts to establish individualized pollution controls and mitigation measures through environmental impact assessment based on the character of the activity and environment surrounding the facility.

- The **second** system relies on a permit or licensing regime that requires adherence to pre-established norms (quotas, bans on the use of certain substances). Sometimes a facility or activity must comply with both types of regulatory regime and will have to apply technology-based controls (which tend to require the optimal level of control achieved at comparable facilities)

- and/or performance-based measures (which tend to focus on ensuring that pollution **emissions** will not exceed established limits or result in pollution in excess of an ambient environmental standard).

- **Prohibiting and Restricting Activities and Substances**

- a. **Polluting Activities**

If an activity, product or process presents a substantial risk of environmental harm, strict measures can be imposed in an effort to reduce or eliminate the harm. When the likelihood of risk is too great, a complete prohibition can be enacted. **Environmental laws often call for restricting or banning hazardous products, processes or activities.**

- Criteria such as toxicity, persistence, and bioaccumulation may serve to determine which substances should be banned or severely restricted.

b. Use of Biological Resources

- Hunting and collecting restrictions are used to prohibit non-selective means of killing or capturing specimens of wildlife. More generally, protective measures may restrict injury to and destruction or taking of some or all wild plants and animals. The revised African Convention on the Conservation of Nature and Natural Resources, for example, requires adoption of adequate legislation to regulate hunting, capture and fishing, and to prohibit certain means of hunting and fishing.

- Finally, temporary suspensions and permanent bans on imports and exports are commonly utilized for the protection of wild flora and fauna. The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora(CITES), for example, uses trade restriction and trade bans as a means of protecting threatened and endangered species. The Convention lists in a first appendix all species threatened with **extinction** that are or may be affected by trade.

- Trade in these species is virtually prohibited, requiring prior grant and presentation of export and import permits issued under stringent conditions. Two additional appendices list those species that may become threatened with extinction unless trade is regulated. States have widely implemented these bans and restrictions in practice. Trade regulations also are sued to prohibit or regulate transport and dumping of toxic and dangerous wastes.

c. **Product and Process Standards**

- National and international laws sometimes establish standards for products and processes that impact the environment. **Standards** are prescriptive norms that govern products or processes or set limits on the amount of pollutants or emissions produced. Standards may be set for production processes, emission levels, product characteristics and ambient quality standards for a given environmental milieu.

- **Process Standards**

- Process standards specify design requirements or operating procedures applicable to fixed installations such as factories or may designate permissible means and methods of activities like hunting or fishing. Sometimes, a particular production process or techniques is imposed on operations, such as the installation of purification or filtration systems in production facilities. Process standards often are used to regulate the operations of hazardous activities posing a risk of accidents or other dangers.

- Process standards that apply to imported products sometimes pose particular problems as potential barriers to trade under the international trading regime set up by GATT and the WTO. This is true because the very principles of **GATT** and **WTO** calls for free trade and free service.

- In other words, in the international trading regime tariff and non-tariff barriers are considered as impediment to the realization of free trade and service, so much so that we can safely say that it is inevitable that any deviation in whatever form would be subject to a close and suspicious scrutiny by those who principally arrange the international trading regime

d. Product Standards

- Product standards are used for items that are created or manufactured for sale or distribution. Such standards may regulate:
- The **physical** or **chemical** composition of items such as pharmaceuticals or detergents. Examples include regulations that control the sulphur content of fuels or list substances whose presence is forbidden in certain products, for instance, mercury in pesticides.

- The **technical** performance of products, such as maximum levels of pollutant or noise emissions from motor vehicles or specifications of required product components such as catalytic converters.
- The handling, presentation and packaging of products, particularly those that are **toxic**. Packaging regulations may focus on waste minimization and safety.
- Labeling requirements are used to ensure that consumers are aware of the contents and the permissible uses of products.

- Labeling requirements often aim to avoid accidental environmental harm through misuse, spills or improper disposal of the product. The “green” or “ecolabel” is a recent, increasingly popular incentive to environmental protection. It is part of a gradual trend away from “end of the pipe” reactive solutions, which can be extremely costly, toward identifying and avoiding environmental problems before they occur. ***The new approach requires manufacturers to examine the entire life cycle of products-production, distribution, use and disposal.***

e. Emission Standards

Emission standards specify the quantity or concentration of pollutants that can be emitted in discharges from a specific source. As a general rule, emission standards apply to fixed installations, such as factories or homes; mobile sources of pollution are more often regulated by product standards. Emission standards establish obligations of result, typically leaving the polluter the free choice of means to conform to the norm.

- Emission standards are the type of standards most commonly required by international agreements and are mandated by several important agreements
- Emission standards are based on the assumption that:
- Certain levels of some contaminants will not produce any undesirable effect:
- There is a finite capacity of each environment to accommodate substances without unacceptable consequences (the assimilative capacity) and ;
- The assimilative capacity can be quantified, apportioned to each actor and utilized.

f. Ambient Quality Standards

- Ambient quality standards fix the maximum allowable level of pollution in an environmental sector during normal periods. A quality standard may set the level of mercury permissible in rivers, the level of sulfur dioxide in the air or noise level of airplanes in the proximity of residential areas. Quality standards often vary according to the particular use made of the environmental resource.

- For example, different water quality standards may be set for drinking water and waters used for bathing and fishing. Quality standard also can vary in geographic scope, covering national or regional zones, or a particular resource, such as a river or lake, but each quality standard establishes base norms against which compliance or deviance are measured

g. Prior Licensing and Permits

- Environmental laws frequently mandate government officials to authorize, certify or issue permits or licenses to activities or establishments or that poses threats to the environment or that use natural resources. “Taking permits,” for example, regulate the numbers of wild plants or animals that may be appropriated for private use. Norms that regulate environmental milieu, such as air pollution, drinking water, noise, chemicals, and taking of wildlife often call for licensing as part of their regulatory framework

- As a **result**, hazardous installations such as nuclear plants, mines, natural gas or petroleum works are likely to have more stringent licensing requirements than other operations. Where environmentally hazardous products are present, such as industrial chemicals, pesticides or pharmaceuticals, authorizations may be required for the manufacture, marketing importation, exportation or use of the product.

- **National Law**

- Most licensing systems operate on the basis of a list, or an inventory of activities necessitating a license because of their foreseeable potential harm to the environment. The decision- making process for granting a license may be exercised by central authorities, regional or local bodies.

- The decision is typically based on information supplied by the applicant, including a description of the planned activities, sometimes accompanied by maps and plans of the installation and its surroundings, a study of accident risks, and a disproportion of possible anti-pollution or anti-nuisance measures.

- **International Law**

- Numerous international treaties oblige their states parties to license potentially harmful activities, e.g. Oslo Convention for the Prevention of Marine Pollution by dumping from Ships and Aircraft; Paris Convention for the Prevention of Marine Pollution from Land- Based Sources; CITES; Basel Convention on Hazardous Waste;

- Bamako Convention on Hazardous Waste in Africa; London Dumping Convention; MARPOL; UNCLOS and the various regional seas agreements; Whaling Convention; African Convention on the Conservation of Nature and Natural Resources; and the ASEAN on the Conservation of Nature and Natural Resources.

- Prior Informed Consent

- Prior informed consent (PIC) is a procedural mechanism utilized in advance of activities in order to avoid potential conflict and reduce the risks of environmental or social harm. Internationally, prior informed consent requires obtaining and disseminating the decisions of importing countries on whether they wish to receive shipments of restricted or banned products after they have been fully informed about the hazards posed by the products.

Environmental Impact Assessment and Monitoring

- Environmental impact assessment (EIA) is 'a procedure for evaluating the likely impact of a proposed activity on the environment.' The object of an EIA is to provide decision-makers with information about possible environmental effects when deciding whether to authorize the activity to proceed.

- Since its adoption in the **US** National Environmental policy Act of 1969, EIA has become an important tool of environmental management in national law. The value of an effective EIA is that it provides an opportunity for public scrutiny and participation in decision-making, it may introduce elements of independence and impartiality, and, ideally, it will facilitate better informed judgments when balancing environmental and development needs. At an international level it alerts governments and international organizations to the likelihood of trans-boundary harm.

- Environmental impact assessment is so well established in national practice that it might be regarded as a general principle of law or even a requirement of customary law for states to conduct an EIA in accordance with the consensus expressed in the 1992 Rio Declaration on Environment and Development. It is formulated in the broadest of terms:
- *Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant impact on the environment and are subject to a decision of a competent national authority.(principle 17.)*

- In Ethiopia

- *Environmental Impact Assessment means the methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument (Environmental Impact Assessment Proclamation No. 299/2002, Art. 2(3))*

- Not every proposed activity is subject to assessment, only those that may be or are likely to cause a stated level of harm to the environment. The threshold differs in the many treaty references to EIA, with some referring to “measurable” effects, others “appreciable” or “significant” harm. The most frequently stated formulation requires a comprehensive EIA where the extent, nature, or location of a proposed activity is such that it is likely to significantly affect the environment.

- The requirement to conduct EIA may be based upon:
- Lists of categories of activities that by their nature are likely to have significant effects
- Lists of areas that are of special importance or sensitivity (such as national parks) where the impact of any activity within or affecting such areas must be assessed

- Lists of categories of resources or environmental problems which are of special concern
- An initial environmental evaluation of all activities, with a quick and informal assessment to determine whether the effects are likely to be significant
- Defined and listed criteria, which make an impact “significant”.

- **CHAPTER 6. THE LEGAL
FRAMEWORK OF
ENVIRONMENTAL PROCEEDING**