

ENVIRONMENTAL LAW

Morillo Notes

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INTRODUCTION:

I. LAW AS A TOOL FOR ENVIRONMENTAL ADVOCACY:

- The role of the Legislative Branch
- The role of the Executive Branch
- The role of the Judicial Branch
- The role of the Civic Organizations
- Pressing Environmental Concerns and the Need to Address Environmental Issues

II. GENERAL PRINCIPLES AND RULES ON THE PROTECTION OF NATURAL RESOURCES IN INTERNATIONAL LAW:

A. Sovereign Rights over Natural Resources and Responsibility not to cause environmental damage:

- Right of the state to be free from external interference.
- Responsibility of the State not to cause harm beyond the limits of its national jurisdiction. (Principle 21, 1972 Stockholm Declaration)

B. Principle of Preventive Action:

- Stop environmental damage before it occurs or when it is critical and potential damage may already be irreversible. (Nicholas De Sadeleer, *Environmental Principles*, 2002)
- For instance, the discharge of toxic substances in amounts which exceed the capacity that the environment can handle must be halted in order to prevent irreversible harm rather than commence efforts to clean the contaminated areas later. This can be carried out by issuance of permits or authorizations that sets out the conditions of administrative controls and criminal penalties. (Nicholas De Sadeleer, *Supra*)

Difference: Obligation not to cause harm and Principle of Preventive Action:

Obligation Not to Cause Harm:	Preventive Action Principles:
Deals with the effects of a state's activities outside its own territory without regard to activities that cause environmental harm within the state.	Encompasses environmental harm within a state's own territory.

C. Principle of Co-operation:

- States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. (Principle 7, Rio Declaration)

D. Principle of Sustainable Development:

- The process of developing land, cities, business, communities, and so forth that "meets the needs of

the present without compromising the ability of future generations to meet their own needs." (UN Report of the World Commission on Environment and Development, Dec. 11, 1987)

- Seeks to achieve exploitation of resources while leaving the environment intact for the use of future generations. There must be optimal management of natural resources. (H. Hohmann, *Precautionary Legal Duties and Principles of Modern International Environmental Law* 2, 1994)

E. Precautionary Principle:

- 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. (Principle 15, Rio Declaration)
- The principle advocates that the potential harm should be addressed even with minimal predictability at hand. (Nicholas De Sadeleer, *Supra*)
- It is designed to provide the basis for early international legal action to address serious environmental threats in cases where there is ongoing scientific uncertainty with regard to the causes of these threats. (Ulrich Beyerlin, *Different Types of Norms in International Environmental Law*, 2007)
- Adopted as a rule of evidence in order to afford the plaintiffs a better chance of proving their cases where the risks of environmental harm are not easy to price. (Rule 20, AM no. 09-6-8-SC)

F. Polluter-Pays Principle

- National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment. (Principle 16, Rio Declaration)

G. Principle of Common but Differentiated Responsibility:

- In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command. (Principle 7, Rio Declaration)
- Developed countries bear a special burden of responsibility in reducing and eliminating unsustainable patterns of production and consumption and in contributing to capacity-building in developing countries, inter alia by providing financial assistance and access to environmentally sound technology. In particular, developed countries should play a leading role and assume primary responsibility in matters of relevance to sustainable development.

Essentials Of Environmental Law

JG Myers



Essentials Of Environmental Law:

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