

Session 3
ENVIRONMENTAL LAW IN THE GLOBAL CONTEXT

CONTENTS

1. From Stockholm to Rio
 - 1.1. Introduction
 - 1.2. The United Nations and the protection the environment
- I). Stockholm Conference
 - A. The Stockholm Declaration on Human Environment
 - B. The Action Plan
 - C. Resolutions
- II) Rio Conference
 - A. The Convention on Biological Diversity
 - B. The Framework Convention on Climate change
 - C. Principles of Forest Management
 - D. The Rio Declaration on Environment and Development
 - E. Agenda 21
- III) The Brundtland Commission (World Commission on Environment and Development)
 - A. The Brundtland Report
- IV) Johannesburg Earth Summit on Sustainable Development
 - A. Johannesburg Declaration on Sustainable Development
 - B. Plan of Implementation of the World Summit on Sustainable Development

1. From Stockholm to Rio

1.1. Introduction

The concern over the condition of environment has grown the world over, more so since the end of the 1960s. A series of national and international legal texts indicate the increasing alarm in the world community to take up urgent action for the protection and conservation of the environment. The depleting quality of environment can has been evidenced by the depletion of quality of air, water, green cover and biological diversity.

For the purpose of taking an effective stand to protect the environment it is very essential to put legal instruments to use. In international law there are two kinds of laws, namely:

- **Hard Law** – Legal Instruments which are directly enforceable. They are in form of legally binding agreements or principles which are directly enforceable by national and international bodies.
- **Soft Law** - Legal Instruments in form of agreements or principles that are meant to provide a basic guideline for nations to respect certain norms or incorporate them into national law. Although these agreements sometimes oblige countries to adopt implementing legislation, they are not usually enforceable on their own in a court.

1.2. The United Nations and the protection the environment

Industrialization, urbanization, population explosion, poverty, over exploitation of resources, depletion of traditional resources of energy and raw materials and so on are some of the factors that have contributed to environmental degradation. In response to the global environmental concerns, various environmental efforts have taken place, most of which have been convened by the United Nations.

Although environmental protection is not specifically mentioned in the Charter of the United Nations, the organization has perforce become the leading catalyst for and coordinator of activities in this field. One can trace the history and evolution of the global environmental conferences from 1972 onwards as the first significant effort in this front was taken in this particular year when the first global environmental summit, ‘the United Nations Conference on Human Environment was convened. The summit marked the beginning of an era where the fledgling environmental movement was firmly established by placing it in an economic and social context.

The United Nations Conference on the Environment held at Stockholm, the UN Conference on the Environment and Development held at Rio de Janeiro in 1992 and the Johannesburg Earth Summit on Sustainable Development held at Johannesburg have led to the adoption of certain principles and recommendations that have guided the environmental protection activities of the UN and individual states. Two significant environmental bodies, namely the United Nations Environment Programme and the United Nations Commission on Sustainable Development were established as an outcome of the United Nations Conference on the Environment (Stockholm Conference) and the United Nations Conference on Environment and Development (Rio Conference) respectively.

Fundamentally, all the major global environmental conferences seek to perform six core functions. These are:

- a) setting global agendas
- b) facilitating 'joined-up thinking
- c) endorsing common principles
- d) providing global leadership
- e) building institutional capacity
- f) legitimizing global governance through inclusivity

The Chronological listing of the chief global environmental conferences is as follows:

I) The Stockholm Conference (1972)-

The **United Nations Conference on Human Environment** also known as the Stockholm Conference was held in Stockholm, Sweden, on 5-16 June 1972. The Conference was convened by the UN General Assembly and was the first major Conference on international environmental issues. It has been generally considered as the starting point for the rapid development of international environmental law as one of the newest branches of public international law. The conference was attended by the representatives of 114 countries, 19 inter-governmental agencies, and more than 400 inter-governmental and non-governmental organizations.

The initial stages of the Conference saw emergence of two conflicting approaches. The first approach insisted that the primary concern of the Conference should be regarding the human impact on environment with the emphasis on the control of pollution and conservation of natural resources. Whereas, the second approach laid emphasis on social and economic development as the real issue. These two seemingly opposite were bridged by the evolution of the concept that both

Environment Protection and Socio-economic Development are two sides of a same coin.

Apart from increasing awareness of environmental issues among public and governments the Stockholm Conference led to the creation of global and regional environmental monitoring networks and the creation of the United Nations Environment Programme(UNEP). The UNEP was established in Nairobi, Kenya, with Mr. Strong as appointed as its executive director. It has been coordinating the United Nations' global environmental initiatives since. It Stockholm Conference also led to the establishment of the Environment Fund and the Environment Coordination Board. The important outcomes of the Conference are:

A. The Stockholm Declaration on Human Environment – The Conference adopted a Declaration known as Stockholm Declaration containing a set of 26 principles “to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.

Though the Declaration is not a legally binding instrument, it is a very vital tool in development of international environmental law as it has considerably influenced the law relating to international protection of the environment.

B. The Action Plan - The Conference adopted an Action Plan with 109 recommendations that included:

- a. Framework for Environmental Actions.
- b. Recommendations for Action at International level
- c. Action Plan containing three components namely, the Global Environmental Assessment Programme (Earthwatch), Environmental Management Activities and Supporting Measures

C. Resolutions - The participating Nations also passed Resolutions for various purposes such as Institutional and Financial Agreements, establishment of Governing Council for Environmental Programmes, Environment Secretariat, the Environment Fund and so on.

II) Rio Conference

The **United Nations Conference on Environment and Development**, also known as the Rio Summit, Earth Summit was a major conference held in Rio de Janeiro from June 3 to June 14, 1992. 178 Nations participated in the Conference and around 2,400 representatives of Non-governmental Organisations attended, with 17,000 people at the parallel NGO Forum having Consultative Status.

The Earth Summit was one of the largest environmental conference ever held. The objectives of the Conference was to build up on the hopes and achievements of The Brundtland Report and to address to the pressing global environmental problems. The world community in the Conference showed unanimity on two aspects, namely, to address the rapid Climate Change problem and secondly, to curb the extinction of biologically diverse species. Five separate agreements were made at the Summit. These included:

A. The Convention on Biological Diversity- Initially, 157 countries were signatories to the Convention on Biological Diversity (CBD) at the time of the Rio Conference. The Convention is dedicated to promoting sustainable development. Conceived as a practical tool for translating the principles of Agenda 21 into reality, the Convention recognizes that biological diversity is about more than plants, animals and micro organisms and their ecosystems – it is about people and our need for food security, medicines, fresh air and water, shelter, and a clean and healthy environment in which to live. The three main goals of the Convention are:

- a) The conservation of biodiversity
- b) The sustainable use of its components
- c) The fair and equitable sharing of the benefits derived from the use of genetic resources.

The basic objective of the Convention on Biological Diversity is the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from commercial and other utilization of genetic resources. The agreement covers all ecosystems, species, and genetic resources. The institutional structure of the CBD consists of a number of bodies including the Secretariat (situated at Montreal), the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) and the Conference of Parties (COP).

What is COP? - Conference of Parties (COP) reflects the political will of the States who are contracting parties to a Multilateral Environmental Agreement (MEA). The COP is the supreme decision making body which provides an

overreaching umbrella to the objectives of the MEA with due changes that ought to be incorporated in it with changing times. It acts through an Executive Secretary to liaison and coordinate work with other MEAs concerning overlapping and related matters.

The list of COP meetings for the convention are as follows:

1. **COP 1** – held in Nassau, Bahamas from November 28 to December 9, 1994
2. **COP 2** – held in Jakarta, Indonesia from November 6 to 17, 1995
3. **COP 3** – held in Buenos Aires, Argentina from November 4 to 15, 1996
4. **COP 4** – held in Bratislava, Slovakia from May 4 to 15, 1998
5. **ExCOP 1** - First Extraordinary Meeting of the Conference of the Parties to the Convention on Biological Diversity held in Cartagena, Colombia from February 22 to 23, 1999 and in Montreal, Canada from January 24 to 28, 2000. The Cartagena meeting led to the adoption of a supplementary agreement to the Convention known as The Cartagena Protocol on Biosafety or the **Biosafety Protocol**.
6. **COP 5** – held in Nairobi, Kenya from May 15 to 26, 2000
7. **COP 6** – held in The Hague, Netherlands from April 7 to 19, 2002
8. **COP 7** – held in Kuala Lumpur, Malaysia from February 9 to 20, 2004
9. **COP 8** – held in Curitiba, Brazil from March 20 to 31, 2006
10. **COP 9** – held in Bonn, Germany from May 19 to 30, 2008

B. The Framework Convention on Climate change – The objective of the Framework Convention on Climate Change was "to achieve stabilization of greenhouse gas concentrations in the atmosphere at a low enough level to prevent dangerous anthropogenic interference with the climate system". The Convention was entered into force on 21 March, 1994. The Convention was aimed at coping with the problem of global warming. Under the Convention, governments:

- a) gather and share information on greenhouse gas emissions, national policies and best practices
- b) launch national strategies for addressing greenhouse gas emissions and adapting to expected impacts, including the provision of financial and technological support to developing countries
- c) cooperate in preparing for adaptation to the impacts of climate change

The Framework Convention on Climate Change had the goal of preventing "dangerous" human interference with the climate system. It also laid the ground for the Kyoto Protocol which is an international agreement setting legally binding

targets and timetables for cutting the greenhouse-gas emissions of industrialized countries.

The functioning of the Convention depends on a series of groups (also known as the bodies of the Framework Convention) and partner agencies. These are:

a) The **Conference of the Parties (COP)** – The United Nations Framework Convention on Climate Change (UNFCCC) came into existence to consider the impact of global warming and to reduce as well as cope with whatever temperature increases are inevitable. It aimed at reducing greenhouse gases to reduce global warming. The COP is the prime authority of the Convention. It is an association of all member countries (or "Parties") and usually meets annually for a period of two weeks. These sessions are attended by several thousand government delegates, observer organizations, and journalists. The COP evaluates the status of climate change and the effectiveness of the treaty. It examines the activities of member countries, particularly by reviewing national communications and emissions inventories; it considers new scientific findings; and it tries to capitalize on experience as efforts to address climate change proceed. The list of the COP meetings of the Convention is as follows:

- **COP 1** - held at Berlin, Germany in 1995. Also known as the Berlin Mandate.
- **COP 2** - held in Geneva, Switzerland on July 18, 1996
- **COP 3** - held in Kyoto, Japan on December 11, 1997. Led to The **Kyoto Protocol** on Climate Change.
- **COP 4** - held in Buenos Aires, Argentina in November 1998.
- **COP 5** – held in Bonn, Germany from October 25 to November 5, 1999.
- **COP 6** - held in The Hague, Netherlands from November 13 to November 25, 2000.
- **COP 6** – COP 6 resumed at Bonn, Germany from July 16 to 27, 2001
- **COP 7** – held in Marrakech, Morocco from October 29 to November 10, 2001
- **COP 8** – held in New Delhi, India from October 23 to November 1, 2002
- **COP 9** – held in Milan, Italy from December 1 to 12, 2003
- **COP 10** – held in Buenos Aires, Argentina, from December 6 to 17, 2004
- **COP 11** – held in Montreal, Canada from November 28 to December 29, 2005
- **COP 12** – held in Nairobi, Kenya from November 6 to 17, 2006
- **COP 13** – held in Bali, Indonesia from December 3 to 15, 2007
- **COP 14** – held in Poznań, Poland from December 1 to 12, 2008
- **COP 15** – to be held Copenhagen in 2009

b) **Subsidiary Body for Scientific and Technological Advice** – A Subsidiary Body for Scientific and Technological Advice (SBSTA) counsels the Conference of the Parties on matters of climate, the environment, technology, and method. It meets twice a year.

c) **Subsidiary Body for Implementation** - A Subsidiary Body for Implementation (SBI) helps review how the Convention is being applied, for example by analyzing the national communications submitted by member countries. It also deals with financial and administrative matters. The SBI meets twice each year.

d) **Expert groups** - Several expert groups exist under the Convention. For instance, the Consultative Group of Experts (CGE) on National Communications from "non-Annex 1 Parties" helps developing countries prepare national reports on climate change issues. A Least Developed Country Expert Group (LEG) advises such nations on establishing programmes for adapting to climate change. An Expert Group on Technology Transfer (EGTT) seeks to spur the sharing of technology with less-advanced nations.

e) **Partner agencies** include the Global Environment Facility (GEF), which has existed since 1991 to fund projects in developing countries that will have global environmental benefits. The job of channeling grants and loans to poor countries to help them address climate change, as called for by the Convention, has been delegated to the GEF because of its established expertise. And the Intergovernmental Panel on Climate Change (IPCC) provides services to the Convention, although it is not part of it, through publishing comprehensive reviews every five years of the status of climate change and climate-change science, along with special reports and technical papers on request (see the section on the IPCC under "Climate Change Science.")

C. Principles of Forest Management – Also known as the Statement of Forest Principles, they are non-legally binding authoritative statement of Principles to support the sustainable management of forests worldwide. These Principles constitute a global consensus on the management, conservation and sustainable development of all types of forests. Sustainable management of forests is covered not only under these Principles of Forest Management, but Section II of the Agenda 21 also contains specific recommendations for combating deforestation.

D. The Rio Declaration on Environment and Development - The Rio Declaration consists of 27 Principles intended to guide future Sustainable Development around the world. They are non-legally binding Principles defining the rights of people to development and their responsibilities towards safeguarding the common environment.

The Rio Declaration states that the only way to have long term economic progress is to link it with environmental protection that can be achieved only if nations establish a new and equitable global partnership involving governments, their people and key sectors of societies. It states that they must build international agreements that protect the integrity of the global environmental and the developmental system.

The twelve core principles of the Declaration are:

- a) State Sovereignty
- b) Right to development
- c) Sustainable development
- d) Right to life and a healthy environment
- e) Duty not to cause environmental harm
- f) Intergenerational equity
- g) Precautionary principle
- h) Common but differentiated responsibilities (meaning developed countries and underdeveloped countries share common, but unequal burdens)
- i) Duty to assess environmental impacts
- j) Right of public participation/ Environmental democracy (Obligates governments to establish a process for citizens and NGOs to obtain environmental information)
- k) Common heritage in mankind
- l) Common concern of mankind

E. Agenda 21 – Agenda 21 is voluntary action plan. It is a comprehensive blueprint for local, regional, national as well as global action plan towards achieving sustainable development in the twenty-first century.

Agenda 21 laid emphasis on the international co-operation for achieving the goal of sustainable development. It addressed the existing pressing problems as well as aims at preparing the world for the environmental challenges of the twenty-first century. The Agenda 21 was divided into four Sections:

SECTION I – Social and Economic dimensions

SECTION II – Conservation and Management of Resources for Development

SECTION III – Strengthening the Role of Major Groups

SECTION IV – Means of Implementation

Both Convention on Biological Diversity and Framework Convention on Climate Change were set as legally binding agreements. Together, all these agreements covered every aspect of sustainable development deemed to be relevant. The Conference led to the establishment of Commission on Sustainable Development. Inter-agency Committee on Sustainable Development and High-level Advisory Board on Sustainable Development were also established subsequent to the Conference in order to follow up on the decisions of the Conference.

In the **United Nations Conference on Environment and Development** out of the five major agreements signed on global environmental issues, **The Framework Convention on Climate Change** and **The Convention on Biological Diversity** were formal treaties whose provisions are binding on the parties. The other three UNCED agreements were non-binding statements on the relationship between sustainable environmental practices and the pursuit of social and socioeconomic development.

III) The Brundtland Commission

The **World Commission on Environment and Development**, also known as the Brundtland Commission was convened by the United Nations in 1983. The Commission was created to address growing concern "about the accelerating deterioration of the human environment and natural resources and the consequences of that deterioration for economic and social development."

UN General Assembly passed a Resolution, "Process of preparation of the Environmental Perspective to the Year 2000 and Beyond" in 1983 establishing the Commission. While establishing the Commission, the UN General Assembly recognized that environmental problems were global in nature and determined that it was in the common interest of all nations to establish policies for sustainable development.

Point 8 of the Resolution of the General Assembly suggests that the Special Commission, when established, should focus mainly on the following terms of reference for its work:

- (a) To propose long-term environmental strategies for achieving sustainable development to the year 2000 and beyond;
- (b) To recommend ways in which concern for the environment may be translated into greater co-operation among developing countries and between countries at different stages of economic and social development and lead to the achievement of common and mutually supportive objectives which take account of the interrelationships between people, resources, environment and development;

(c) To consider ways and means by which the international community can deal more effectively with environmental concerns, in the light of the other recommendations in its report;

(d) To help to define shared perceptions of long-term environmental issues and of the appropriate efforts needed to deal successfully with the problems of protecting and enhancing the environment, a long-term agenda for action during the coming decades, and aspirational goals for the world community, taking into account the relevant resolutions of the session of a special character of the Governing Council in 1982.

A. The Brundtland Report

The Report of World Commission on Environment and Development or The Brundtland Report was published in 1987. The Report was called “Our Common Future”. It provided a key statement for Sustainable Development defining it as, "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

According to the Report the concept of Sustainable Development contains within it **two** key concepts:

- a) the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and
- b) the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

The Brundtland Report highlighted three fundamental components to sustainable development: **environmental protection, economic growth and social equity.**

The Report was primarily concerned with securing global equity, redistributing resources towards poorer nations and encouraging their economic growth. The report also suggested that equity, growth and environmental maintenance are simultaneously possible and that each country is capable of achieving its full economic potential whilst enhancing its resource base. The Report also recognized that achieving this equity and sustainable growth would require technological and social change.

It was proposed that developing nations must be allowed to meet their basic needs of employment, food, energy, water and sanitation as well as sustainable population level must be achieved. Furthermore, Economic growth should be revived and developing nations should be allowed a growth of equal quality to the developed nations.

The Report was a remarkable document which laid the groundwork for the convening of the United Nations Conference on Environment and Development.

IV) Johannesburg Earth Summit

The Johannesburg Earth Summit on Sustainable Development, also known as Earth Summit Plus Ten was held in Johannesburg, South Africa from August 26 to September 4, 2002. The Summit was opened with a call for coordinated international action to fight poverty. Its aim was to discuss how much progress has been made since the Earth Summit in Rio in 1992 and plan further action for the future. It was meant to reaffirm Agenda 21 as well as broaden the sustainable development debate to encourage partnerships between government, business, and civil society.

The major outcomes of the Summit are:

A. Johannesburg Declaration on Sustainable Development - The Johannesburg Declaration builds on earlier declarations made at the United Nations Conference on the Human Environment at Stockholm in 1972, and the Earth Summit in Rio de Janeiro in 1992.

While committing the nations of the world to sustainable development, it also includes substantial mention of multilateralism as the path forward. It reaffirms a commitment made at the prior Conferences.

The Declaration is a more general statement than the Rio Declaration. The Declaration also states that sustainable development is built on three "interdependent and mutually reinforcing pillars" - economic development, social development, and environmental protection - which must be established "at local, national, regional and global levels." International cooperation, decreasing world poverty, special attention for developing nations, empowering women, and maintaining biodiversity, among other things, are outlined as key points to building a sustainable future.

The Declaration attempted to address some of the most pressing concerns of poverty and the environment. Commitments were made to increase access to clean water and proper sanitation, to increase access to energy services, to improve health conditions and agriculture and to protect world's biodiversity and ecosystems.

B. Plan of Implementation of the World Summit on Sustainable Development

The Plan of Implementation was adopted in the Johannesburg Summit “to further build on the achievements made since the United Nations Conference on Environment and Development and expedite the realization of the remaining goals”.

The Plan of Implementation contains targets and timetables to spur action on a wide range of issues including a commitment to reverse the trend of losses of biodiversity by 2010. It lays down specific goals some of them on environment include:

- a) The establishment of a solidarity fund to wipe out poverty. This fund would be sustained by voluntary contributions; however, developed nations are urged to dedicate 0.7% of their national income to this cause.
- b) Cutting in half by 2015 the proportion of the world’s population living on less than a dollar a day.
- c) Cutting in half by 2015 the number of people who lack clean drinking water and basic sanitation
- d) Substantially increase the global share of renewable energy
- e) Cut significantly by 2010 the rate at which rare plants and animals are becoming extinct
- f) Restore (where possible) depleted fish stocks by 2015, and
- g) Halving the number of people suffering from hunger.

The review session for the Plan of Implementation is scheduled in New York, U.S.A. in May, 2010.