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Dr. Tajmul Karim
Guest Faculty,
Vidyasagar University, West Bengal

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The Genesis & Basic Features of International Environmental Law: A Critical Study

Dr. Tajmul Karim
Guest Faculty,
Vidyasagar University, West Bengal

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ABSTRACT

International Environmental Law (IEL) has emerged as a significant and dynamic branch of public international law in response to growing global environmental challenges. This article critically examines the genesis, conceptual framework, historical evolution, and fundamental principles of International Environmental Law. It traces the development of IEL from early customary practices and landmark judicial decisions such as the Trail Smelter Arbitration to contemporary multilateral environmental treaties and declarations. Special emphasis is placed on the role of major international instruments, notably the 1972 Stockholm Declaration and the 1992 Rio Declaration, in shaping modern environmental governance and embedding principles of sustainable development. The study analyses the core objectives and basic features of IEL, including state sovereignty over natural resources, intergenerational equity, common but differentiated responsibilities, the precautionary principle, the polluter pays principle, and transboundary harm prevention. It further explores the contribution of international judicial bodies, particularly the International Court of Justice, in clarifying and reinforcing environmental norms. Despite its progressive evolution, the article identifies significant challenges confronting IEL, especially weak enforcement mechanisms, treaty-based limitations, and issues of national implementation. The paper concludes by suggesting strengthened international cooperation, enhanced compliance mechanisms, greater public participation, and corporate accountability as essential measures to improve the effectiveness of International Environmental Law in addressing global environmental concerns.

KEYWORDS

Sustainability, Sovereignty, Precaution, Accountability, Enforcement

INTRODUCTION

The study of international environmental law is a fascinating, dynamic, and ever-expanding area of international law. When countries make decisions and work together across international borders, and treaties or agreements are made to work together on environmental issues, disputes will inevitably arise because of the trade implications for the individual countries, safety and cleanliness issues with environmental resources across shared borders, or issues with the mechanisms for enforcing liability under environmental agreements or treaty provisions. The environmental sub-issues of population, biodiversity, global climate change, ozone depletion, protecting Antarctic regions, transportation of toxic and hazardous materials, pollution on land or in vessels, dumping, conservation of marine living resources, transboundary air and water pollution, desertification, and nuclear damage are all included in the broad scope of this field of international law.

INTERNATIONAL ENVIRONMENTAL LAW: THE CONCEPT

A subset of public international law is international environmental law. It is a corpus of legislation designed by states for states to regulate disputes that emerge between them. Within the context of sustainable development, it focuses on efforts to reduce pollution and the depletion of natural resources. According to Article 38 (1) of the Statute of the International Court of Justice, multilateral environmental accords are a subset of the international conventions recognized as a source of international law with a particular emphasis on environmental issues. International environmental law addresses issues like desertification, marine resources, ozone depletion, climate change, biodiversity, toxic and hazardous compounds, and air, land, and water quality. Additionally, it has connections with other fields of international law, such as international finance, international trade, and human rights.[1]

HISTORICAL BACKGROUND & SCIENTIFIC FOUNDATION

The three main sources of international environmental law are

[1] "International Environmental Law", *Available at* https://wedocs.unep.org/bitstream/handle/20.500.11822/ 21491/MEA-handbook-Vietnam.pdf?sequence=1&isAllowed=y (Last visited on 17.08.2019).

international treaties, customary international law, and court rulings. A body of unwritten regulations that have developed from extensive national usage and custom is known as customary international law. Notifying a neighbor about a significant accident that may have an impact on its environment is an example of environmental international customary law. International environmental law is also influenced by rulings from international tribunals or courts, such as the International Court of Justice or the International Tribunal for the Law of the Sea. One of the first instances involving international environmental law was the Trail Smelter Arbitration case of 1938 and 1941, which concerned air pollution from a Canadian smelting industry and entailed a dispute between the United States and Canada. Crops in the State of Washington were devastated by the pollution that blew across the American-Canadian border. After fifteen years, the "polluter pays principle," a fundamental tenet of international environmental law, was established by an international arbitration tribunal.[2] According to the polluter pays concept, if pollution from one country damages another, the polluter country is responsible for paying to repair the harm.

The most modern and efficient source of international environmental law is international treaties. The main barrier to all types of international law continues to be national sovereignty. According to the idea of sovereignty, unless a country consents to give up some degree of control, it maintains total authority over all actions occurring within its borders. Usually, bilateral or multilateral international treaties are used by nations to abrogate (destroy) a portion of their sovereignty.[3]

TWO MAJOR DECLARATIONS ON INTERNATIONAL ENVIRONMENTAL LAW

The First major declaration is 'The Declaration of the United Nations Conference on the Human Environment'[4] also known as the 1972 Stockholm Declaration (UN Doc. A/CONF/48/14/REV.1 (1972), marked an international effort to address the problem of protecting and improving the human environment, as well as the first significant attempt to take into account the worldwide influence of humans on the environment.

[2] "International Environmental Law", *Available at* https://www.encyclopedia.com/environment/energy-government-and-defense-magazines/international-environmental-law (Last visited on 17.08.2019).
[3] *Ibid.*
[4] The Declaration of the United Nations Conference on the Human Environment, 5-16 June, 1972, Stockholm, *Available at* https://www.un.org/en/conferences/environment/stockholm1972 (Last visited on 19.04.2025).

Rather than outlining specific normative stances, the Stockholm Declaration primarily promotes general environmental policy goals and objectives.

The second important and significant declaration is the 'Rio Declaration' adopted by 'United Nations Conference on Environment and Development' (UNCED)[5], which took place in Rio de Janeiro from June 3–14, 1992. More than 175 nations came together for this historic gathering, also known as the Earth Summit, to debate and pledge to sustainable development strategies that strike a balance between economic expansion and environmental preservation. The Rio Declaration is a set of 27 principles designed to direct sustainable development globally in the future. The Rio Declaration has had a significant impact on international environmental policy and has shaped later international accords such as Agenda 21 and the Sustainable Development Goals (SDGs). It has increased understanding of how human well-being and environmental health are interdependent, encouraging cooperation in tackling global issues.

AIMS OF INTERNATIONAL ENVIRONMENTAL LAW

Since their inception, the objectives and topics covered by international environmental agreements have undergone significant development. The protection of plants and animals, fishing rights, and river boundaries were the main topics of early agreements. These days, accords address a far broader variety of topics that are important to the international community, such as protecting domestic resources, reducing pollution, and conserving habitats and biodiversity. Since the 1992 Rio Conference on Environment and Development (also known as the "Rio Conference"), there has also been a greater understanding of the close connection between environmental and economic issues; consequently, sustainable development and related laws and guidelines have also been important. The global community understands the importance of reducing environmental threats in addition to monitoring and researching them. International agreements that primarily deal with research, information sharing, and monitoring have given way to accords that mandate modifications in control technology and pollutant emission

[5] United Nations Conference on Environment and Development, 3–14 June, 1992, Rio de Janeiro, *Available at* https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (Last visited on 28.08.2025).

reductions.[6]

BASIC FEATURES OF INTERNATIONAL ENVIRONMENTAL LAW

The majority of multilateral environmental agreements make reference to and are founded on specific international environmental law concepts. The Rio Declaration on Environment and Development, which was approved during the Rio Conference in 1992, enshrines many of those principles, including the state's sovereignty over its own resources and the idea of common but differentiated duties. International environmental law principles can serve a variety of purposes. It is not possible to make generalizations about their legal standing. Certain concepts are emergent rules of customary international law, while others are established laws. Other principles, on the other hand, are less normative and could just be aspirational norms or guiding criteria for interpretation. However, the principles of International Environmental Law are as follows:

1. State sovereignty over natural resources

A fundamental tenet of international law is state sovereignty, which encompasses the idea of sovereign equality, according to which every State is regarded as an equal legal entity. Exploration, exploitation, and disposal of natural resources, including biological resources, are within the jurisdiction of states. The Rotterdam Convention's Prior Informed Consent (PIC) process for the transboundary flow of hazardous chemicals acknowledges the right of states to make decisions about potentially dangerous activities on their soil.[7]

2. Right to development

Every human being has the right to participate in, contribute to, and enjoy economic, social, cultural, and political growth, which allows for the full realization of all fundamental freedoms and human rights. This is known as the right to development. The Rio Declaration's Principle 3 states that the right to development must be realized in order to fairly address the environmental and developmental demands of both the current and future generations.[8]

[6] Sarah Valentine, Reed Smith, "International Environmental Law", *Available at* http://www.a4id.org/publications/international-environmental-law/ (Last visited on 17.08.2019).
[7] *Supra* Note 1.
[8] *Supra* Note 1.

3. Intergenerational equity

Understanding and addressing intergenerational equity is essential in the field of diversity, equity, and inclusion (DEI). A key component of this discussion is intergenerational equity, but what does that actually mean? The concept of justice and fairness between generations is known as intergenerational equity. It guarantees that the world that is left to future generations is not worse than the one that is currently enjoyed, and ideally, it is better. Within the larger context of Diversity, Equity, and Inclusion (DEI), this concept is essential when talking about social justice, economic policy, sustainability, and environmental conservation. The idea of intergenerational equity is crucial because it recognizes that today's choices and deeds have long-term effects. Future generations might have to deal with the consequences of past generations' resource mismanagement, unstable economies, or environmental damage if deliberate measures are not made to advance equity across generations.[9]

The Paris Climate Agreement is a prime illustration of intergenerational equity. The goal of this worldwide effort to cut carbon emissions is to shield coming generations from the worst consequences of climate change. Ratifying nations promise to cut emissions, switch to renewable energy, and adopt sustainable policies that benefit both the current and future generations. This principle emphasizes the necessity of taking into account and minimizing the effects of actions on future generations. Therefore, it is necessary to use resources sustainably and prevent irreparable environmental harm. Additionally, it might be required to expand ideas of judicial standing to include future generations and make changes to EIA procedures.

4. Common heritage of humankind

The notion states that portions of specified territory and natural or culturally significant features should be preserved for future generations and shielded from exploitation by private individuals, governments, and businesses. For instance, under the UN Convention on the Law of the Sea, regions outside of sovereign borders are regarded as part of humanity's common inheritance.[10]

5. Common concern of humankind

This principle addresses areas that fall under national

[9] Intergenerational Equity-Definition and Explanation, *Available at* https://oxford-review.com/the-oxford-review-dei-diversity-equity-and-inclusion-dictionary/intergenerational-equity-definition-and-explanation/# (Last visited on 30.08.2025).
[10] *Supra* Note 1.

sovereignty, acknowledging the interdependence of all ecosystems and making comparisons with other areas of shared concern such international labor relations, human rights, and humanitarian relief. It was initially used in the UN Framework Convention on Climate Change and the Convention on Biological Diversity in 1992. Since then, it has been used in numerous environmental agreements.[11]

6. Sustainable development

The term 'sustainable development' describes a development strategy that satisfies current demands without jeopardizing the capacity of future generations to satisfy their own. It is important because it promotes sustained economic growth while guaranteeing social welfare and environmental preservation.[12] This principle is concerned with the interdependence of all human activities. It requires that the environment is considered as part of all policies and activities, including those intended to promote economic and social development.

7. Prohibition to cause trans boundary harm

States have a general duty to refrain from using or permitting others to utilize their territory in a way that could jeopardize another State's interests. This covers regions outside of national borders as well as the surroundings of other states. States may be held responsible if they violate their duties under international law. But the scope of this obligation is unclear, especially in terms of culpability for damages.[13]

8. Common but differentiated responsibilities

According to this principle, every state has a shared responsibility to safeguard the environment and advance sustainable development; nevertheless, the actions that each state must take varies depending on its unique social, economic, and ecological circumstances. The conditions for developing country parties are weakened. Despite being included in many multinational environmental agreements, the concept is still debatable. For instance, it serves as the basis for several obligations under the Paris Agreement and the UN Framework Convention on Climate Change.

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[11] *Supra* Note 1.

[12] "Sustainable Development: Meaning, Features, Objectives & More", *Available at* https://www.nextias.com/blog/sustainable-development/ (Last visited on 26.12.2025).

[13] *Supra* Note 1.

9. Precautionary principle

The Precautionary Principle has been included into numerous environmental instruments worldwide. According to the idea, inaction should not be justified by the lack of scientific or clear evidence if there is a risk of serious environmental harm. The Precautionary Principle places the burden of proof on the individual claiming that the action they are engaging in is safe. The idea is that it's better to be safe than to apologize. This idea contrasts with the wait-and-watch strategy that is typically used to environmental problems. The Precautionary Principle promotes "action taking" in order to anticipate and stop environmental harm. One of the most widely used legal theories in environmental law today is the precautionary principle. This strategy promotes "action taking" to anticipate and stop environmental harm, whereas conventional methods are reactive.[14]

10. Polluter pays principle

A key idea in environmental law and policy is the Polluter Pays Principle (PPP), which states that those who produce pollution should pay for its management in order to protect the environment and public health. Internalizing the environmental consequences of economic activity is just as important as making up for harm previously done. In the past, society as a whole or the victims of pollution were frequently responsible for covering the costs of pollution, including healthcare costs associated with contaminated air or water, biodiversity loss, and the cost of cleaning up contaminated places. By shifting this burden, the PPP holds the polluter directly accountable for these expenses. By making environmentally harmful activities more expensive, this idea discourages pollution and provides funding for environmental protection and rehabilitation initiatives. The fact that natural resources are finite and that their degradation has actual consequences that should be taken into consideration when making economic decisions is reflected in its widespread adoption.[15]

11. Notification, consultation, cooperation and environmental impact assessment

International environmental law has created specific procedural requirements to guarantee the peaceful coexistence of adjacent

[14] "Analysis of the Precautionary principle", *Available at* https://blog.ipleaders.in/analysis-precautionary-principle-environmental-law-instrument/ (Last visited on 26.12.2025).
[15] "The Polluter Pays Principle: Concept, Evolution, Legal Framework", *Available at* https://lawctopus.com/clatalogue/clat-pg/polluter-pays-principle-india-laws-judgments/ (Last visited on 26.12.2025).

states. These include the obligation to obtain the prior informed consent of host States regarding activities planned in their territory, the obligation to conduct environmental impact assessments (EIAs) in a transboundary context, the obligation to notify all potentially affected States in advance of planned potentially damaging activities, and the duty to consult in good faith, including the opportunity to review and discuss proposed harmful activities.[16]

12. Right to transparency and public participation

People can have a voice in decisions that impact their living conditions through access to justice, transparency, and decision-making involvement. When combined, these rights promote environmental democracy and offer the people a voice. As a result, people and communities are involved in environmental choices in addition to those made at the governmental level. Principle 10 of the Rio Declaration upholds the right to openness and involvement in decision-making.[17]

INTERNATIONAL ENVIRONMENTAL LAW: A CRITICAL ANALYSIS

Judicial rulings are acknowledged as one of the sources of international environmental law under Article 38(I)(d) of the International Court of Justice's (ICJ) statute. The ICJ has established a solid foundation for the environment by ruling in numerous significant cases regarding environmental issues. Among them are the cases of Australia v. France, Belgium v. Spain, the United Kingdom v. Albania, the Lake Lanoux case, the Pulp Mills case, and the Aerial Herbicide case. Numerous sources and environmental law tenets have been acknowledged and clarified by these court rulings. The ICJ established the Chamber for Environmental Matters in July 1993 as a result of numerous environmental cases. Considering the quantity of cases decided and the more general principles of environmental law established, the ICJ has made a significant contribution. The main problem of international environmental law is its enforceability. This law like any other part of international law is unenforceable. It is mainly treaty based, which is not applicable on every country of the world. It can only be enforced after incorporation of it either in the national constitution or in any national legislation of the member states. Due to this non-binding character of international environmental law, in spite of adoption of a number of conventions and declarations it assumes advisory character till

[16] *Supra* Note 1.
[17] *Supra* Note 1.

now.

SUGGESTION

Here are some suggestions to deal with the problems of International Environmental Law (IEL):

1. Increase international cooperation: Since environmental issues like pollution and climate change are worldwide, nations must cooperate. Increased collaboration via the UN, international organizations, and treaties is crucial.
2. Strengthen enforcement mechanisms: Strict enforcement is lacking in many international environmental agreements. Compliance can be increased by establishing monitoring organizations, sanctions, and dispute resolution procedures.
3. Expand financial and technical assistance: Developing nations frequently lack the means to adhere to environmental regulations. Funding, technological transfer, and capacity building should be provided by wealthier countries.
4. Strengthen national implementation: Only when international laws are applied at the national level do they become effective. Domestic legislation should be in line with international environmental agreements.
5. Encourage public engagement and awareness: Knowledgeable citizens ensure that governments uphold their environmental promises. Accountability and transparency are enhanced by public involvement.
6. Apply environmental law concepts: International accords should closely adhere to fundamental principles like the precautionary principle, the polluter pays principle, and sustainable development.
7. Promote corporate responsibility: International firms ought to be held responsible for any harm they cause to the environment.

CONCLUSION

International environmental law is a broad subject that is gaining more and more political and legal attention. In order to prevent undermining the goals of the agreement, it is crucial that nations with the capacity to affect the global environment remain part of the convention system because the global environmental system disregards political boundaries. At the moment, several states are not putting national legislation into effect, and several developing nations are becoming more worried about the effects on their economic growth. This indicates that the enforcement of law is a significant problem. From dispersed customary regulations to a sophisticated framework of treaties and principles, international environmental law has undergone substantial change. Although it shows that environmental protection is becoming more widely recognized, it is nevertheless limited by lax enforcement, an over-reliance on soft legislation, and political compromise. Stronger

compliance procedures, sincere international collaboration, and the incorporation of environmental justice are all necessary for IEL to be successful.

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