

## INTERNATIONAL ENVIRONMENTAL LAW: AN INTRODUCTORY OVERVIEW

Baridoo, Bariledum Bright

Faculty of Law, University of Port Harcourt.

[baridoobb@gmail.com](mailto:baridoobb@gmail.com) or [bbbaridoo@gmail.com](mailto:bbbaridoo@gmail.com)

### ABSTRACT

*International environmental law can generally be described as a subset of public international law. It provides obligations for states including regulating their behaviour in international relations in environmental-related matters. The subject covers concerns affecting the environment generally and globally. These environmental problems may be global, regional, transboundary, national and even local. Problems entail topics such as biodiversity loss, climate change, ozone depletion, toxic and hazardous substances, desertification and deforestation, marine resources pollution, migratory species and air, land and water pollution and issues of natural heritage sites. The goal of this paper is to provide an introductory overview to the study of international environmental law. Its emphasis is on state responsibility and the protection and conservation of the international environment.*

Keywords: Environment; International Environment; International Environmental Law; Conservation; Development; Traditions; Principles and Standards.

## 1.0 INTRODUCTION

International environmental law can generally be described as "a subset of public International law"<sup>1</sup> a branch of the broad International law developed by States for States to address issues that ensue between and among them. It is a law created among sovereign states to develop standards at the international level and provide obligations for states, including regulating their behaviour in international relations in environmental-related matters.<sup>2</sup>

Developed and popularized in the 1960s,<sup>3</sup> International environmental law is concerned with the attempt to control pollution and the depletion of natural resources within a framework of sustainable development.<sup>4</sup> The subject covers concerns affecting the environment generally and globally. These environmental problems may be global, regional, transboundary, national and even local. These problems entail topics such as biodiversity loss, climate change, ozone depletion, toxic and hazardous substances, desertification and

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<sup>1</sup> Vietnam Ministry of Natural Resources and Environment: Department of Legal Affairs, International Environmental Law: Multilateral Environmental Agreements (2017)

<<https://www.google.com/url?sa=t&source=web&rct=j&url=https://wedocs.unep.org/bitstream/handle/20.500.11822/21491/MEA-handbook-Vietnam.pdf%3Fsequence%3D1%26isAllowed%3Dy&ved=2ahUKEwjXitO9v7j8AhVbTaQEHRJrBXIQFnoECAkQAQ&usg=AOvVaw3QtAK8Az6m3nYTv8l8Ywdm>> accessed 11 November, 2022.

<sup>2</sup> Nicholas A. Robinson & Lal Kurukulasuriya, Training Manual on International Environmental Law (2006), <http://digitalcommons.pace.edu/lawfaculty/791/>.

<sup>3</sup> Ugbeta, E., Tackling the Environmental issues in Nigeria's Niger Delta Region through hHuman Rights Approaches: Lessons from Abroad  
<[https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.academia.edu/21067959/TACKLING\\_THE\\_ENVIRONMENTAL\\_ISSUES\\_IN\\_NIGERIAS\\_NIGER\\_DELTA\\_REGION\\_THROUGH\\_HUMAN\\_RIGHTS\\_APPROACHES\\_LESSONS\\_FROM\\_ABROAD&ved=2ahUKEwjXitO9v7j8AhVbTaQEHRJrBXIQFnoECAkQAQ&usg=AOvVaw3UuR5T9kBKyaLP9NjebnBxa](https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.academia.edu/21067959/TACKLING_THE_ENVIRONMENTAL_ISSUES_IN_NIGERIAS_NIGER_DELTA_REGION_THROUGH_HUMAN_RIGHTS_APPROACHES_LESSONS_FROM_ABROAD&ved=2ahUKEwjXitO9v7j8AhVbTaQEHRJrBXIQFnoECAkQAQ&usg=AOvVaw3UuR5T9kBKyaLP9NjebnBxa)> accessed 11 November, 2022.

<sup>4</sup> Supra note 1.

deforestation, marine resources pollution, migratory species and air, land and water pollution<sup>5</sup> and issues of natural heritage sites.

The province of international environmental law strives to provide objectives and guidelines generally to States, international, regional, national and local policymakers including governmental, intergovernmental and non-governmental organizations on how a clean, quality and sustainable environment should be pursued for present and future generations. In formulating its mechanisms, principles and standards, the subject interacts with other areas of law namely, human rights, international economic and trade law, torts law, medical law, international criminal law, treaty law and so on to achieve its basic goals. This paper provides an introductory background to the province of international environmental law. Part one makes a presentation on the nature of the subject. Part two gives a brief foundational account on the subject matter. Part three attempts a description of the development of environmental law particularly International and African dimensions. Part four examines environmental problems—global, regional, transboundary, national and local. And Part five concludes the paper.

## **2.0 FOUNDATIONAL CONCEPTION OF ENVIRONMENTAL LAW**

Laws are a reflection of cultural traditions, morals and religious conceptions and values of each society. These traditions and values continue to impact the development of legal norms.<sup>6</sup> These traditions shape the law because within them are elements which subsist as the

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<sup>5</sup> Ibid ; Uzuazor Etemire, LLB 3 Environmental Law Lecture slides dated 31st October 2023, unpublished.

<sup>6</sup> D. Shelton and A. Kiss, Judicial Handbook on Environmental Law, United Nations Environment Programme 2005, p.4.

bases of life thus stirring concepts and innovations seeking to support environmental protection and conservation. Details in this context will suffice under the following sub-heads:

## 2.1 CULTURAL TRADITIONS

Prior to the development of Environmental Law, indigenous ethos and cultural practices helped to protect the environment; for example, several cultures revered mother earth as the core of culture. In other instances, certain areas of resources were designated as sacred. Thus, it was a taboo to misuse or deal with the resources in a way that is inconsistent with cultural norms. In this context, these traditions are considered as the foundation to International Environmental Law. In the Yoruba indigenous culture in Nigeria, land was conceptualised from the perspective of intergenerational equity thus, "...it belongs to a vast family of which many are dead, few are living and countless are still unborn".<sup>7</sup>

In Kenya, indigenous communities also considered it a duty to protect endangered species in their habitat. Thus, in *Abdikadir Sheika Hassan and Others v. Kenya Wildlife Service*,<sup>8</sup> The court allowed the plaintiff to maintain an action on his own behalf and on behalf of his community to bar an agency from removing or dislocating a rare and endangered species from its natural habitat. The Court considered that according to customary law, those entitled to use the land are also entitled to the fruits thereof, including the fauna and flora. Other sustainable traditional practices that developed unique knowledge

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<sup>7</sup> This was declared by chief Elesi of Odogbolu speaking before the West African Lands Commission in 1908. Cited in Uzuazor Supra note 5.

<sup>8</sup> See High Court of Kenya, Case 2059/1996

include the irrigation practices of the Inca, the forest gardens of the hill country of Sri Lanka.

## 2.2 RELIGIOUS TRADITIONS

Religious precepts also contain important ideals that seek to protect the environment. Ancient Buddhist chronicles, dating to the third century B.C. record a sermon on Buddhism in which the son of the Emperor Asoka of India stated that, “the birds of the air and the beasts have as equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou art only the guardian of it.”<sup>9</sup> In the Christian/Jewish context, man is instructed to protect and conserve birds,<sup>10</sup> not to destroy trees in war times,<sup>11</sup> and to properly dispose of human waste.<sup>12</sup>

Under Islamic religion, man is merely a manager of the earth and not a proprietor, a beneficent and not an ordainer. In this light, it is a mandatory religious duty of every Muslim to conserve and protect natural resources.<sup>13</sup> Thus, in *M.D.Tahir v. Provincial Government & Others*,<sup>14</sup> Although the Pakistani court, while analysing Islamic law vis-a-vis articles 18 and 199 of the Pakistani Constitution, found that a blanket prohibition for hunting or killing of all animals and birds

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<sup>9</sup> The Mahavamsa, or the Great Chronicle of Ceylon, Chap. 14, quoted in I.C.J., Case Concerning the Gabčíkovo-Nagymaros Project on the Danube, Sept. 25, 1997, Sep. Op. of Judge C.

Weeramantry, n. 44. See supra note 6.

<sup>10</sup> Deuteronomy 22: 6 - 7.

<sup>11</sup> Deuteronomy 20: 19.

<sup>12</sup> Deuteronomy 23: 13.

<sup>13</sup> See supra note 6.

<sup>14</sup> 1995 CLC 1730

could not be granted, it admitted that unnecessary hunting and killing is against the injunctions of Islam and the Constitution.

### **3.0 THE DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW**

This will be discussed under two sub headings namely: International dimension to the development of international environmental law and the African dimension to the development of international environmental law.

#### **3.1. INTERNATIONAL DIMENSION**

Although there are divergent views on the exact point in time International environmental law emerged, <sup>15</sup> International rules on the environment are traced to the early 19th century.<sup>16</sup> At that time, attention centred on the exploitation of natural resources as a result of growing industrialisation.<sup>17</sup> From this standpoint, there is evidence to suggest that the first attempt to develop international environmental law occurred in 1893 in the Pacific Fur Seals Arbitration case,<sup>18</sup> a dispute between the United States and Great Britain over the exploitation of seals for fur. The findings in that case established the principle that " states did not have the right to assert

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<sup>15</sup> Ibibia L. Worika, 'Environmental Law and Policy of Petroleum Development: Strategies and Mechanism for Sustainable Management in Africa', (Port Harcourt: Anpez Centre for Environment and Development, 2002) pp. 62 - 63.

<sup>16</sup> Osahon L. Omoregie, An Examination of the Sources of Nigerian Environmental Law, in Ambrose Alli University Law Journal <[https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.academia.edu/43312639/An\\_Examination\\_of\\_the\\_Sources\\_of\\_Nigerian\\_Environmental\\_Law&ved=2ahUKEwiDruC4x7j8AhWDXqQEHX1oCeQQFnoECBAQAQ&usg=AOvVaw32rfgLmNH5ArCChFF3NoKt](https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.academia.edu/43312639/An_Examination_of_the_Sources_of_Nigerian_Environmental_Law&ved=2ahUKEwiDruC4x7j8AhWDXqQEHX1oCeQQFnoECBAQAQ&usg=AOvVaw32rfgLmNH5ArCChFF3NoKt)> accessed 11 November, 2023.

<sup>17</sup> Thornton, J and Beckwith, S., in Osahon *ibid*.

<sup>18</sup> (1893) 1 Moore's International Arbitration Awards 755.

jurisdiction over natural resources which are outside their territory". It has also been advanced, that the first formal international environmental agreement on environmental issues is traceable to the Convention for the Preservation of Animals, Birds and Fish in Africa, signed in London on the 19th of May, 1900.<sup>19</sup> Specific recognition of environmental protection was however made in 1909 in the United States - United Kingdom Boundary Waters Treaty.<sup>20</sup>

In light of the above, a scholar<sup>21</sup> have argued that international environmental law evolved over three distinct periods: Post industrial revolution up to 1945, Post United Nations' era and From Stockholm to Rio era.<sup>22</sup>

### **3.1.1 POST INDUSTRIAL REVOLUTION UP TO 1945**

The industrial revolution actually fixed the stage for man's consciousness about the negative consequences of environmental devastation. By the advent of the 20th century, potentially hazardous activities particularly relating to the seas, started attracting global attention.<sup>23</sup> It was also about this time that the celebrated Trail Smelter Arbitration case<sup>24</sup> emerged. It arose from the dispute between the United States and Canada over the emission of sulfur fumes from a smelter situated in Canada, which caused damage in

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<sup>19</sup> Damilola S. Olawuyi, *The Principles of Nigerian Environmental Law*, (Ado Ekiti: Afe Babalola University Press, 2015) p. 58 cited in Osahon supra note 16.

<sup>20</sup> See *ibid.*

<sup>21</sup> Worika supra note 15.

<sup>22</sup> *Ibid.*

<sup>23</sup> See A. Kiss and D Shelton, *International Environmental Law*, cited in Worika, *ibid.*

<sup>24</sup> 35 AJIL 716 (1941), ILR 317 (1941).

the state of Washington, United States of America. The Arbitration Panel held thus:

No state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.

This decision is the most symbolic in the evolution of international environmental law and state responsibility.

### **3.1.2 POST UNITED NATIONS' ERA (1945 - 1971)**

This was the period between the formation of the United Nations and its specialised agencies. The United Nations was established with the aim of securing international cooperation in solving global economic, cultural, social and humanitarian problems. This further led to the creation of other international bodies with a mandate to address specific international environmental issues. Some of these bodies are the International Maritime Organisation (IMO), and The International Union for the Protection of Nature,<sup>25</sup> and so on.

The International Maritime Organisation is said to have steered the adoption of the first International Convention for the Prevention of Oil Pollution on 12 May 1954 and came into force in July 1958.<sup>26</sup>

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<sup>25</sup> This body was formed in October, 1948 and later renamed International Union for the Conservation of Nature and Natural Resources (IUCN). See P. W. Birnie and A. E. Boyle, *International Law and Environment*, cited in Worika *supra* note 15.

<sup>26</sup> See Worika *supra* note 15.



Perhaps, another significant point of note during this period, were two notable decisions: the Cofu Channel case<sup>27</sup> and the Lac Lanoux Arbitration case<sup>28</sup> which hitherto sealed the decision in Trail Smelter Arbitration. In the Cofu Channel case, the ICJ reiterated the obligation that no state has the right to allow knowingly its territory to be used for acts contrary to the rights of other states. In the Lac Lanoux case, it was echoed that the rights of foreign states may be adversely affected when a riparian state engages in activities potentially harmful to shared river resources.

### **3.1.3 FROM STOCKHOLM TO RIO ERA**

The Stockholm Conference, tagged the United Nations Conference on the Human Environment, resulted in the creation of three important documents: A resolution on institutional financial arrangement, A declaration containing 26 Principles and An action plan containing 109 recommendations.<sup>29</sup> The success of the Conference led to the creation of the United Nations Environmental Programme (UNEP). Again, Principle 21 of the Stockholm Conference reiterated the obligation of States in seeing to the fact that activities within their jurisdiction or control did not cause damage in other states or in areas beyond national jurisdiction.

Following the Stockholm Conference was the World Commission on Environment and Development's publication titled "Our Common Future" also called The Brundtland Report. This report rekindled the need for sustainable development. The pressure of the Report led to

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<sup>27</sup> ICJR 4 (1949).

<sup>28</sup> 24 ILR 101 (1957).

<sup>29</sup> Osahon *supra* note 17.

further international action on the environment and eventually led to the Rio Conference.<sup>30</sup>

The Rio Conference also known as the United Nations Conference on Environment and Development was held in Rio de Janeiro, Brazil at the 20th anniversary of the Stockholm Conference.<sup>31</sup> This Conference produced a number of documents namely: the United Nations Convention on Climate Change (UNFCCC), Agenda 21 an 800 page document which sets out a global action plan for States on development and the environment, and the Rio Declaration containing 27 Principles.<sup>32</sup>

### **3.2 AFRICAN DIMENSION**

The development of international environmental law in Africa has been stated in two significant respects.<sup>33</sup> The first was being part of the international system. The second as a facilitator in the evolution of international environmental law.<sup>34</sup> Under the first category, Africa is considered to have benefited from the UN Declaration on the Granting of Independence to Colonial rule. Though it was not all countries that had independent status, it enabled African participation and contribution to the growth of international environmental law.

Although, Africa was behind in terms of development, it is celebrated that Africa's initiative led to the signing of the African Convention on the Conservation of Nature and Natural Resources by regional heads

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Worika *supra* note 15.

<sup>34</sup> Ibid.

of states and government in 1968.<sup>35</sup> The Convention recognised species and made special responsibility for the state in whose territory the species are situated.<sup>36</sup> In this connection, the Convention was rated a model comprehensive document. It addressed concerns on virtually the totality of the environment.

Another significant point of note is the view that, at Africa's instance, the World Charter for Nature was proclaimed and approved by the United Nations General Assembly.<sup>37</sup> The preliminaries to its adoption began with a speech delivered by President Mobutu of Zaire in September 1975 at the 12th General Assembly of the IUCN held in Kinshasa.<sup>38</sup> In his speech, Mobutu opined that global principles should be ingrained in a world charter.

Like other developing countries, Africa was at first suspicious about the sudden emphasis on environmental protection by industrialized countries who were responsible for world energy consumption. But the experiences of the continent particularly as it relates to dumping of hazardous and toxic wastes from developed nations to Africa,<sup>39</sup> Africans are now more aware of the consequences of environmental harm and the benefits of protection and conservation.

#### **4.0 LEVELS OF ENVIRONMENTAL PROBLEMS**

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<sup>35</sup> Ibid.

<sup>36</sup> Kiss and Shelton, cited in Worika, *ibid*.

<sup>37</sup> Worika, *ibid*.

<sup>38</sup> Ibid

<sup>39</sup> Like the dumping of toxic waste at Koko port in Delta State of Nigeria in May 1988. See Edward T. Bristol-Alagbariya, *Participation in Petroleum Development: Towards Sustainable Community Development in the Niger Delta*, (Dundee: Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee, 2010) p. 148.

## **4.1 What is it?**

Environmental Problems evince a state in which the order and law of the ecosystem are collapsed as the ecological function it originally had is destroyed due to the influence of human activities.<sup>40</sup> They are issues that defy the natural state of the environment. These environmental issues are not without consequences. They negatively impact human health. They occur in the form of climate change, biodiversity loss, pollution of water, air and land and so on. These concerns can cause food scarcity and can cause death.

Environmental Problems occur at various levels. The levels suggest the degree to which environmental issues can cause harm. The level to which it emerges also pinpoints the degree of attention, effort and collaboration towards mitigating its effects.

## **4.2 THE LEVELS OF THE PROBLEMS**

### **4.2.1 Global Level**

Global environmental problems are environmental crises affecting the world. They are threats that diffuse all countries, regions and continents of the world. Examples are climate change, ozone layer depletion, biodiversity loss, and so on. Global environmental problems require increased stewardship, innovative solutions and global action to mitigate their consequences on the environment and humanity.

### **4.2.2 REGIONAL LEVEL**

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<sup>40</sup> Chi Hong Lim and Chang SeokLee, Climate change adaptation through ecological restoration in Natural Resources Conservation and Advances for Sustainability, 2022 <<https://www.sciencedirect.com/topics/earth-and-planetary-sciences/environmental-problem>> accessed 3rd January 2023.

Regional environmental problems simply put, are shared environmental problems within a region or continent. They are environmental concerns common to a particular region or continent and affect more or less all countries within that region. A good example of regional environmental problems is the diminishing forests, altered habitats and decreasing biodiversity, land degradation, polluted waters and declining availability of potable water, and the degradation of marine and coastal resources in the Southeast Asian subregion.<sup>41</sup> The Southeast Asian sub region comprises the countries of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam.<sup>42</sup> In Africa, the major environmental issue according to Uzuazor Etemire is dumping of toxic waste and dumping of electronic waste also called end of life gadgets.<sup>43</sup> These kinds of environmental problems can be tackled through regional cooperation, sharing of knowledge and pooling of resources.<sup>44</sup>

#### 4.2.3 TRANSBOUNDARY LEVELS

A trans-boundary environmental problem is an environmental problem that is trans-boundary in scale.<sup>45</sup> It occurs when pollution or

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<sup>41</sup> See Shared Environmental Problems in Southeast Asia available at <[https://www.google.com/url?q=https://www.unescap.org/sites/default/files/CH17.PDF&sa=U&ved=2ahUKEwiWidvi36v8AhXoi\\_0HHS0dDM4QFnoECAIQAg&usg=AOvVaw2z8iOxXaQqzJ948HEwCk0C](https://www.google.com/url?q=https://www.unescap.org/sites/default/files/CH17.PDF&sa=U&ved=2ahUKEwiWidvi36v8AhXoi_0HHS0dDM4QFnoECAIQAg&usg=AOvVaw2z8iOxXaQqzJ948HEwCk0C)> accessed 3rd January 2023.

<sup>42</sup> Ibid.

<sup>43</sup> Personal note taken from Uzuazor Etemire's LLB 3 Environmental Law Lecture held on the 31st day of October 2022.

<sup>44</sup> See Southeast's approach to their sub regional environmental problems in supra note 41.

<sup>45</sup> Nitish Kumar Arya, Transboundary Environmental Problems <<https://mgcub.ac.in/pdf/material/2020042711574477e3f04460.pdf>> accessed 3rd January 2023.

environmental issues created in one country moves into the territory of another state. That way, it is an environmental problem originating in, or contributed by, one country and affecting or impacting another.<sup>46</sup> Some components or examples of transboundary environmental problems are migratory birds, air and water pollution. The issue of flooding in Nigeria which usually originates from the Cameroonian dam is one outstanding instance of transboundary environmental problems.

#### **4.2.3 NATIONAL OR DOMESTIC LEVELS**

Environmental problems at this level are problems that are widespread or common within a particular country. The concerns originate in that country and spread or move all over the country. National environmental problems take the form of human rights violations, deforestation, loss of heritage sites, and issues of improper management of waste. This can be tackled by strengthening institutional framework, public education, public involvement, access to environmental information and access to justice.

#### **4.2.4 LOCAL LEVELS**

Local environmental problems are environmental crises within a section or segment of a sovereign state or country. It takes the form of human rights abuse, health related issues, infrastructural decay, lack of portable drinking water and shared diseases. This kind of environmental problem requires enlightenment programmes, political will, government funding, and collaboration with local inhabitants to mitigate its effects. Providing sustainable means of

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<sup>46</sup> Ibid.

livelihood and some basic social amenities are some of the effective ways the problems at this level can be minimized.

## **5. CONCLUSION**

The subject of international environmental law is one which seeks to remedy or address potentially harmful activities which can affect the environment at the international level or environmentally hazardous activities within the jurisdiction of one state which have the potential of causing damage in the territory or jurisdiction of other states. It seeks to provide rules, common standards and an action plan for the protection and conservation of the global environment and the mitigation of environmental problems. In achieving this, it obligates states not to allow its territory to be used to cause environmental harm.