Overview of International Environmental Law

Gregorio Rafael P. Bueta
Consultant (Legal and Policy Specialist)
Asian Development Bank

20 March 2016
Workshop for Sri Lanka High Court Judges on Environmental and Writ Laws
Colombo, Sri Lanka
Outline of the Presentation

• International Environmental Law (IEL): Concepts and definitions

• General principles and coverage

• Conclusion and Relevance to Sri Lankan Judiciary
International Environmental Law – Concepts and Definitions

• Difference between national and international law
  • National – adopted by governments of individual country; for relations between citizens and citizens with the State
  • International – between and among States and other recognized international actors

• Sources of international law (Statute of the ICJ)
  • Treaties
  • International custom
  • General principles of law
  • Judicial decisions and teachings of highly qualified publicists
International Environmental Law – Concepts and Definitions

• IEL is a sub-set of international law
  • Of fairly recent development – 1972 UN Conference on Human Development
  • “piecemeal” development – response and reaction
  • Bilateral fishing treaties of 19th century to creation of the UN paved the way for IEL
  • From local to global – environment not just domestic

• “Environmental issues are accompanied by a recognition that ecological interdependence does not respect national boundaries and that issues previously considered to be matters of domestic concern have international implications.” (Sands, 2003)
International Environmental Law – Concepts and Definitions

• Definitions:
  • International environmental law comprises those substantive procedural and institutional rules of international law which have as their primary objective the protection of the environment (Sands, 2003)

  • A convenient way to encompass the entire corpus of international law, public and private, relevant to environmental issues and problems...and in some instances has borrowed heavily from national law (Birnie and Boyle, 2002).
General Principles

• Reflected in treaties, custom, acts of international organizations, State practice, soft law commitments, and judicial decisions

• Principles v. rules: “[Principles] embody legal standards, but the standards they contain are more general than commitments and do not specify particular actions, [unlike rules].” (Bodansky, 1993)

• Principles are important because of the piecemeal development of IEL – provides cohesion, order, and continuity
General Principles

• Some accepted and emerging principles:
  • Sovereignty over natural resources and responsibility not cause transboundary environmental damage
  • Principle of preventive action
  • Principle of co-operation
  • Sustainable development
  • Precautionary principle
  • Polluter pays principle
  • Common but differentiated responsibility
  • Inter-generational and intra-generational equity
  • Transparency, participation, and access to information and remedies
General Principles

• Some accepted and emerging principles (cont’d):
  • Access and benefit sharing regarding natural resources
  • Good governance
  • Common heritage and common concern of human kind
Coverage of IEL

- Atmosphere
  - Ozone depletion, climate change, outer space

- Ocean and seas
  - UNCLOS, pollution and dumping, oil spills, seabed activities, underwater mining

- Freshwater resources
  - Wetlands, use of rivers

- Biological diversity
  - CITES, CBD; mountain, forest and polar ecosystems
Coverage of IEL

- Hazardous substances and activities
  - Accident prevention, controlling chemicals and dangerous substances
- Waste
  - Prevention and treatment, disposal, recycling
- Information, public participation, and access to justice
- Biosafety
- Trade and the environment
- Energy and renewable resources
Some Treaties ratified by Sri Lanka

- Convention on Wetlands of International Importance Especially as Waterfowl habitats (Ramsar) - 1990
- Convention on the prohibition of the Development, Production Stockpiling of bacteriological toxic weapons and their destruction (Rotterdam Convention) - 2006
- Convention on International Trade in Endangered Species of Wild Fauna & Flora (CITES) - 1979
- Vienna Convention for the Protection of the Ozone Layer – 1989
- Basal Convention of the Control of the Trans-boundary movements of Hazardous Wastes and their Disposal – 1992
- Stockholm Convention on Persistent Organic Pollutants (POPs) -2005
- Kyoto Protocol – 2002
- Cartagena Protocol on Biosafety - 2004
Conclusion and Relevance to Sri Lankan Judiciary

• IEL is on a continuous state of development – responding to new challenges brought by environmental degradation, unsustainable development patterns, and climate change

• Despite Sri Lanka’s monist approach, judges can take note of international developments in deciding environmental cases
  • Protection of fundamental and natural rights of the people

• International developments shape local politics and government policies – leading to possible disputes and cases before the courts

• Period of the post-2015 agenda and SDGs – greater emphasis on sustainable development and climate change
Next Presentations

- Regional and International Developments in International Law
- Comparative Analysis of South Asian Constitutions
- Environmental Rights and Principles
- Regional Perspectives
Bohoma Istiti; Nandri!

Tel: (632) 632-4444 ext. 70188
E-mail: gbueta.consultant@adb.org
www.adb.org