NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF POSTGRADUATE STUDIES

FACULTY OF LAW

COURSE CODE: PUL813

COURSE TITLE: **INTERNATIONAL ENVIRONMENTAL LAW I**

NATIONAL OPEN UNIVERSITY OF NIGERIA

Headquarters
Plot 91, Cadastral Zone,
University Village,
Nnamdi Azikiwe Expressway,
JABI - ABUJA
URL: www.nou.edu.ng

Lagos Office
14/16 Ahmadu Bello Way
Victoria Island, Lagos

Published by
National Open University of Nigeria

Printed
ISBN:

COURSE INFORMATION

Course Code:	PUL 813
Course Title:	ENVIRONMENTAL LAW I
Credit Unit:	3
Course Status:	C
Semester:	FIRST
Edition:	2022

COURSE TEAM

Course Developer/Writer: Dr. Erimma Gloria Orie
Faculty of Law
National Open University of Nigeria

Course Editor: **Prof. Emmanuel Okon, PhD, FCIA**
Nigerian Institute of Advanced Legal Studies
Akoka, Lagos

Dean: Dr. Ernest O Ugbejeh
Dean, Faculty of Law
National Open University of Nigeria

CONTENTS **PAGES**

Introduction

International Environmental Law is a two-semester course. You will take the first part in the first semester. The code is PUL 813. It is a foundation level course and is available to all students towards fulfilling core requirements for the LL.M degree in Law.

The course will discuss basic law principles. The material has been developed to suit students in Nigeria and beyond.
This course guide tells you briefly what the course is about, what course materials you will be using and how you can work your way through these materials. It suggests some general guidelines for the amount of time you are likely to spend on each unit of the course in order to complete it successfully. It also gives you some guidance on your seminar papers. There are regular tutorial and seminar classes that are linked to the course. You are advised to attend these sessions.

What you will learn in this Course

The overall aim of PUL 813 is to introduce the fundamental principles and applications of International Environmental Law. During this course, you will learn about the nature: conceptual definition and historical development of international environmental law (IEL); sources of IEL, principles of IEL; concepts of pollution, treaty law, customary international

law, et; current concerns about environmental degradation and global warming, climate change and ozone depletion.

Course Aims

The aim of the course is to ensure that students have an understanding of nature and general principles of IEL from a global and national perspective.

This will be achieved by introducing the students to:

1.0 The History, Nature and Concept of IEL: conceptual clarification and historical development.
2.0 Basic principles of environmental law
3.0 The Challenges of integrated environmental protection
4.0 The notion of International Environmental Protection; the concept of Pollution; European Union and Pollution; Treaty Law and Protection of the marine environment; Customary International Law; Activities of International Organizations
5.0 Current concerns about environmental degradation and Environmental dispute Resolution ; Current Concerns About Environmental Degradation , Desertification; Deforestation and flooding ; Environmental Dispute Resolution

Course Objectives

To achieve the aims set out above, the course sets overall objectives. In addition, each unit also has specific objectives. The objectives are always included at the beginning of a unit; you should read them before you start working through the unit. You may want to refer to them during your study of the unit to check on your progress. You should always ensure that you have done what was required of you by the unit.

Set out below is the wider objectives of the course as a whole. By meeting these objectives you should have achieved the aims of the course as a whole.

On successful completion of this course, you should be able to:

(a) Discuss basic concepts and principles of IEL
(b) Differentiate between key environmental principles
(c) Understand the challenge of integrated environmental protection; treaty law and CIL
(d) Understand treaty law and national efforts towards prevention of desertification, deforestation and flooding
(e) Discuss the key issues surrounding global warming, ozone depletion and climate change

Working Through this Course

To complete this course you are required to read the study units, read set books and other materials. Each unit contains self-assessment exercises, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course is a final examination. The course should take you about 12 weeks or more in total to complete. Below you will find listed all the components of the course, what you have to do and how you should allocate your time to each unit in order to complete the course successfully on time.

Course Materials

Major components of the course are:

(a) Course guide;
(b) Study units;
(c) Textbooks;
(d) Assignment file and
(e) Presentation schedule.

In addition, you will be given a list of textbooks. The textbooks are not provided by NOUN; obtaining them is you own responsibility. You may contact your tutor if you have problems in obtaining these textbooks.

Study Units

These are five (5) modules and thirteen (13) study units in this first semester course. Each Module contains a number of self-tests. In general, these self-tests question you on the materials you have just covered or required you to apply it in some way and, thereby, help you to gauge your progress and to reinforce your understanding of material. Together with these exercises will assist you in achieving the stated learning objectives of the individual units of the course.

References

There are some books you should purchase for yourself for example:

Damilola S. Olawuyi *The Principles of Nigerian Environmental Law* (Revised Edition, Afe Babalola University Press: Ekiti, 2015)

Phillippe Sands, *Principles of International Environmental Law* (2ed, Cambridge University Press: New York, 2003

Assignment File

In this file you will find all the details of the work you must submit to your tutor for marking. The marks you obtain for these assignments will count towards the final mark you obtain for this course. Further information on assignments will be found in the assignment file itself and later in this course guide in the section on assignment.

Presentation Schedule

There are two aspects to the assessments of the course. First is the Seminar paper, second, is a written examination.

In tackling the assignments, you are expected to apply information, knowledge and techniques gathered during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the assignment file. The work that you submit to your Facilitator for assessment will count for 30% of your total course mark.

At the end of the course, you will need to sit for a final written examination of a three hour duration. This examination will account for 70% of your total course mark.

Assignment questions for the units in this course are contained in the assignment file. You will be able to complete your assignments from the information and materials contained in your set books, reading, and study units. However, it is desirable in all postgraduate degree level education to demonstrate that you have read and researched more than the required minimum. Expanding your reading scope to other references materials will give you a broader viewpoint and may provide a deeper understanding of the subject. Make sure that each assignment reaches your tutor on or before the deadline given in the presentation schedule and Assignment file. If, for any reason, you cannot complete your work on time, contact your tutor before submission of the assignment is due to discuss the possibility of an extension. Extensions will not be granted after the due date unless there are exceptional circumstances.

Final examination and grading

The final exams for PUL 813 will be of three hours duration and have a value of 70% of the total course grade. The examination will consist of questions that reflect the types of self- testing problems that you have previously encountered. All areas of the course will be assessed.

Use the time between finishing the last unit and sitting the examination to revise the entire course. You might find it useful to review your self-assessment exercises and comments by your facilitator before the examination.

At the end of the semester students are expected to either submit or present a seminar paper on a topic to be given by the Facilitator.

Course marking schedule

The following table lays out how the actual course mark allocation is broken down:

Assessment	**Marks**
Seminar paper/term	Accounts for 30% of course marks.
Final examination	70% of overall course marks
Total	100% of course marks

Table 1 course-marking schedule

Course overview

This table shows the units, the number of weeks you should take to complete them and the assignments that follow them.

Unit	Title of work	Weekly activity	Assessment (end of unit)
	Course Guide	Week 1	
1	History, Nature and Concept of IEL	Week 1	
2	Sources of IEL	Week 2	
3	Basic Principles of Environmental Law	Week 2	
	Basic Principles of Environmental Law	Week 3	
4	**The Challenge of Integrated Environmental**	Week 3	

5	**The Notion of International Environmental**	Week 4	
	The concept of environmental pollution	Week 4	
6	Treaty Law and Protection of the Marine Environment		
	European Union and	Week 4	
7	Treaty Law and Protection of the Marine Environment	Week 5	
8	Treaty Law and Protection of the Marine Environment	Week 5	
9	Customary international law	Week 6	
	Customary international law	Week 7	
10	Activities of International Organizations	Week 8	
	Activities of International Organizations	Week 8	
11	**Current Concerns about Environmental Degradation and Environmental Dispute**	Week 9	
	Current Concerns about Environmental Degradation and Environmental Dispute	Week 10	
12	Deforestation and flooding	Week 10	
13	Environmental Dispute Resolution	Week 10	

Table 2 Course Organizer

How to get the Most from this Course

In distance learning the study units replaces the university lecturer. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at you own pace, and at a time and place that suite you best. Think of it as reading the lecture instead of listing to a lecturer. In the same way that a lecturer might recommend some reading, the study units tell you when to read recommended books or other materials, and when to undertake practical work. Just as a lecturer might give you an in-class exercise, your study units provides exercises for you to do at appropriate time.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with the other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit you must go back and check whether you have achieved the objectives. If you make a habit of doing this you will significantly improve your chances of passing the course.

The main body of the unit guides you through the required reading from other sources. This will usually be either from your recommended books or from a reading section. Self-assessment exercises are interspersed throughout the unit, and answers are given at the end of units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each

self-assessment exercise as you come to it in the study unit. There will also be numerous examples given in the study units; work through them when you come to them, too.

The following is a practical strategy for working through the course. If you run into any trouble, telephone you tutorial facilitator or visit you study centre. Remember that your tutor' s job is to help you. When you need help, do not hesitate to call and ask you Facilitator .

1.0 Read this course guide thoroughly
2.0 Organize a study schedule. Refer to the 'Course overview' for more details. Note the time you are expected to spend on each unit and how the assignments relate to the units. Important information, e.g. details of your tutorials, and the date of the first day of the semester is available. You need to gather together all this information in one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates for working on each unit.
3.0 Once you have created your own study schedule, do everything you can to stick to it. The major reason that students do not perform well is that they get behind with their course work. If you get into difficulties with your schedule, please let your tutor know before it is too late for help.

Tutors and Tutorials

There are 10 hours of facilitation provided in support of this course. You will be notified of the dates, times and location of these tutorial together with the name and phone numbers of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and assistance will be available at the study centre. You must submit your seminar paper to your tutor well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact you tutor by telephone, e-mail, or during tutorial sessions if you need to. The following might be circumstances in which you would find help necessary. Contact your Facilitator if:

a. You do not understand any part of the study units or the assigned readings
b. You have difficulty with the self-assessment exercises
c. You have a question or problem with an assignment or with your tutor' s comments on an assignment or with the grading of an assignment.

You should try your best to attend the Facilitations. This is the only chance to have face to face contact with your tutor and to ask question which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit

from course tutorials, prepare a question list before attending them. You will learn a lot from participating in discussions actively.

Some of the questions you may need to answer are not limited to the following:

1. Distinguish between the various key principles of IEL
2. Identify the sources of IEL
3. How do you understand the notion of international environmental protection?
4. What are the various treaties that have been adopted to facilitate marine environmental protection?
5. What constitutes customary international law?
6. What are the three key concerns about environmental degradation that affects developed and developing countries?

Summary

Of course, the list of questions that you can answer is not limited to the above list. To gain the most from this course you should try to apply the principles that you encounter in everyday life. You are also equipped to take part in the ongoing debates on various environmental challenges and what you should do to facilitate environmental protection as a citizen of Nigeria.

We wish you success with the course and hope that you will find it both interesting and useful.

TABLE OF CONTENTS

MODULE ONE – HISTORY, NATURE AND CONCEPT OF INTERNATIONAL ENVIRONMENTAL LAW (IEL)

Unit One: HISTORY, NATURE AND CONCEPT OF IEL

Contents

1.1 INTRODUCTION

Everything that surrounds us constitute the environment - the water, air, soil and even living and non- living things. The traditional perception that natural resources are abundant for man to use or abuse has partly been held responsible for the global degeneration of nature, natural systems, environment and wildlife. This traditional approach however has given way to a more realistic view that man is merely a specie among the several million of species and the realization that his well-being is linked to the well-being of all other species. In the circumstance there is the need to maintain the natural system in which man and other species exist in a healthy and functional state. Thus Environmental law is the collection of laws, regulations, agreements and common law that governs how humans interact with their environment. On the other hand, International environmental law encompasses the legal norms and processes that address transboundary, regional, or global environmental issues.

The widespread concern about the need for global action for the protection of the natural environment gained traction in 1972 during the United Nations Conference on the Human Environment, which held at Stockholm, Sweden. This conference brought attention to the broader issues affecting the environment and the need for a holistic approach to addressing

global environmental issues such as pollution of the air, water, land, etc. With the wider dissemination of information relating to the ever-increasing environmental challenges, international concern has grown steadily over the past 4 decades. Thus, in order for one to understand the history and nature of environmental law, it is necessary to have a basic grasp of public international law from which international environmental law (IEL) is derived.

1.2 Learning Outcomes At the end of this unit, you should be able to provide an overview of the history, nature and concept of IEL .

1.3 History, Nature and Concepts of IEL

It is now widely recognised that the planet faces a diverse and growing range of environmental challenges which can only be addressed through international co-operation. Acid rain, ozone depletion, climate change, loss of biodiversity, toxic and hazardous products and wastes, pollution of rivers and depletion of freshwater resources are some of the issues which IEL is being called upon to address. Since the mid-1980s, the early international legal developments which addressed aspects of the conservation of natural resources have crystallised into an important and growing part of public international law. The conditions which have contributed to the emergence of IEL are easily identified: 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. The implications, which may be sub regional, regional or global can frequently only be addressed by international law.. The growth of international environmental issues is reflected in the large body of principles and rules of international environmental law which apply bilaterally, regionally and globally, and reflects international interdependence in globalizing world.

Self-Assessment Exercises

Attempt this exercise to measure what you have learnt so far. This should not take you more than 5 minutes.

Discuss the nature of environmental law

By the 1970s, the regional consequences of pollution and the destruction of flora and fauna were obvious, and by the late 1980s global environmental threats had become an integral aspect of the international community' s agenda as scientific evidence identified the potential consequences of ozone depletion, climate change and loss of biodiversity. Similarly, local issues were recognised to have transboundary, then regional, and ultimately global impacts. In 1996, at the occasion of the fiftieth anniversary of the International Court of Justice (the " ICJ" or the " Court"), Professor Malgosia Fitzmaurice recognized, perhaps for the first time, that there existed rules of general international environmental law, and that a ' general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment' . Since then, specific treaty rules have become more complex and technical, environmental issues have been increasingly integrated into other subject areas (including trade, investment, intellectual property, human rights, and armed conflict), and international environmental jurisprudence has become less exceptional as the case law of international courts and tribunals expands.

In an attempt to provide solutions to these environmental issues highlighted above, environmental law has become a handy-tool for governments and policy makers at national and international levels. Environmental law is that branch of law that provides the general framework for the protection of elements of the environment such as air, land, water, sea amongst others. It includes the body of laws, rules, regulations and statutes concerned with the protection and preservation of the natural environment. It provides appropriate standards for measuring and apportioning liability in case of pollution or default.

Alexandre Kiss notes that environmental law is now recognized as ' that branch of law which purpose is to protect the environment from major deterioration, which could endanger its present or future functioning.' Its rapid ascendance over the last decade is closely intertwined with global recognition that without a clean and healthy environment, humankind may not survive long enough to enjoy other political freedoms and rights. As such, the need to balance economic growth and prosperity with environmental protection has become more pertinent now, more than ever. There is need for robust laws at the international and national levels to regulate and outlaw economic or industrial activities that damage the environment of affect individual human rights and human health.

1.4 Summary

In conclusion, law provides a basis or standards which govern human behavior. The development of IEL within the past few decades was spurred by the prevalence of man-made activities which led to deterioration of the environment. Hence, IEL encompasses a body of principles and treaties derived from international law for the global protection of the environment.

1.5 References/Further Readings/Web Resources

P. Sands, ' Turtles and Torturers: The Transformation of International Law' , 33 NYUJILP 527– 58 (2001).

P. Allott, *Eunomia: A New Order for a New World* (1990), para. 17.52.

Lal Kurukulasuriya and Nicholas A Robinson (eds) *Training Manual on International Environmental Law* pp 15 – 17.

Damilola S. Olawuyi *The Principles of Nigerian Environmental Law* (Revised Edition, Afe Babalola University Press: Ekiti, 2015) 3.

Phillippe Sands, *Principles of International Environmental Law* (2ed, Cambridge University Press: New York, 2003)136

1.6 Possible Answers to Self- Assessment Exercise

Environmental issues by their nature acknowledge the fact that ecological interdependence exists. Furthermore, is the recognition that such existence does not respect national boundaries and that issues previously considered to be matters of domestic concern have international implications. The implications, which may be sub regional, regional or global, can frequently only be addressed by international law .

The growth of international environmental issues is reflected in the large body of principles and rules of IEL which apply bilaterally, regionally and globally, and reflects international interdependence in globalizing world.

Unit Two: Sources of International Environmental Law (IEL)

Contents

2.1 INTRODUCTION

International environmental law (IEL) is a subset of international law, and international law has been developing over a long period of time. A significant part of the IEL is incorporated in multilateral environmental agreements (MEAs) i.e. treaties which are environmental based but contain provisions relating to other policy areas such as trade, agriculture, biotechnology, etc. However, for one to fully understand the intricacies of IEL, the sources of IEL must be clearly explained as is set out below.

2.2 Learning Outcomes

At the end of this unit, you will be able to discuss at least one of these sources of IEL effectively.

2.3 Sources of International Environmental Law (IEL)

Prior to the 20th century, international law functioned even without any formal overall stated basis for its rules. International trade, communications and travel all operated with

reasonable safety excepting of course when and where there was war. Until the early 20th century, peaceful settlement of disputes was conventionally sought through some temporary body set up by agreement of the parties in dispute such as a Claims Commission or an Arbitration tribunal. Terms under which arbitration proceeded were determined by mutual agreement of the parties. This was established under the Hague Convention for the Pacific Settlement of International Disputes of 1899. This was the precursor to the International Court of Justice established after the Second World War. Under Article 92 of the Charter of the United Nations, the Court of Justice is the principal judicial organ of the UN (UN 1945).

The Permanent Court of International Justice was the first permanent international body with responsibility for general jurisdiction. Its statute contained 68 Articles including Article 38 which authoritatively stated the legal sources the Court would use and apply (UN 1945). This Article 38 was carried forward into the Charter of the successor, the International Court of Justice. Article 38(1)(a), (b) and (c) of the statute of International Court of Justice are the main sources of international law and IEL Nevertheless, article 38(1)(d) also becomes a significant source in this area of law.

a) Conventions (treaties)*:* Today, treaties are the major mechanism employed by states in the conduct of their relations with each other. They provide the framework for modern international relations and the main source of international law. The starting point for determining what constitutes a treaty is to be found in a treaty itself, the Vienna Convention on the Law of Treaties, a treaty on treaty law. It was concluded in 1969 and entered into force in 1980 (“ 1969 Vienna Convention”). Whilst the United Nations has 191 Member States, the 1969 Vienna Convention has only 131 parties (as of September 2018). A treaty is binding only among its parties. Although the 1969 Vienna Convention is not a treaty with global participation, it is widely acknowledged that many of its provisions have codified existing customary international law. Other provisions may have acquired customary international law status. Since customary international law and treaty law have the same status at international law, many provisions of the 1969 Vienna Convention are considered to be binding on all states. (for example according to Article 60 if a state violates a provision of a multilateral treaty that is essential to the accomplishment of its object or purpose, such breach is

considered material.) The underlying concern in the more recent treaties has been protection of the wider environment. There are multilateral and bilateral conventions.

b) Customary laws: Rules of customary international law arise where there is a general recognition among states that certain practices and norms of behaviour are obligatory. In IEL, customary rules generally play a subordinate role to the law contained in the conventions, because their existence is difficult to establish. The most clearly established environmental rule is the " no harm rule" .

c) General Principles of Law/Soft Law: The third source of international law, as included in article 38(1)(c) of the Statute of the International Court of Justice, are general principles of law.

NOTE: Conceptual wise, general principle of law is not synonymous with soft law. Depending on the legal instrument and how text of the general principle is couched, some general principle have been elevated to hard law.

Self-Assessment Exercises

> Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.
>
> Discuss at least two sources of international environmental law?

There is no universally agreed upon set of general principles. They usually include both principles of the international legal system as well as those common to the major national legal systems of the world. The ICJ will sometimes analyse principles of domestic law in order to develop an appropriate rule of international law.

d) Judicial Decisions and Academic Commentaries: The fourth source enumerated in article 38(1)(d) of the Statute of the International Court of Justice, judicial decisions and the teachings of the most highly qualified publicists of the various nations, is qualified as an additional means for the determination of rules of law. Decisions of the ICJ itself or of other international tribunals and writings of publicists are considered if: there is no treaty on a particular contentious issue in international law, no customary rule of international law and no applicable general principles of international law. Another source for the category " highly qualified publicists" is the International Law Commission (" ILC"), established by

the United Nations General Assembly in 1947 to promote the progressive development of international law and its codification. These plays a much greater role in international law than it does in many domestic legal systems. Academic writings are not so much sources of international law per se but are means by which the existence and scope of international law may be determined.

2.4 Summary

Conclusively, the sources and development of IEL evolved from various areas, incidents and aspects of human life.

2.5 References/ Further Readings/Web Resources

Susan Wolf and Neil Stanley, Wolf and Stanley on Environmental Law, 6th Edition (Routledge, 2012) Chapter 1.

John and Sharon McEldowney, Environmental Law, (Longman, 2010) Chapter 2 and Chapter 3.

European Parliament, Analysis of the Vienna Convention on the Law of Treaties and ...
; https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)751410

Philippe Sands et al., *Principles of International Environmental Law* (3ed, Cambridge University Press, 2012) Chapters 1 and 2.

Lal Kurukulasuriya and Nicholas A Robinson (eds) *Training Manual on International Environmental Law* p 1-2.

2.6 Possible Answers to Self- Assessment Exercise

Students can discuss any two of these; ***Conventions (treaties)*** *and* ***Customary laws, Judicial Decisions and Academic Commentaries: General Principles of Law/Soft Law.***

Conventions: treaties are the major mechanism employed by states in the conduct of their relations with each other. Example of a convention is the Vienna Convention on the Law of Treaties. (note – there are other Vienna Conventions like the Vienna Convention on Diplomatic Relations and the Vienna Convention on Civil Liability for Nuclear Damage)

A treaty is binding only among its parties that is signatories to the convention. Although the 1969 Vienna Convention is not a treaty with global participation, it is widely acknowledged that many of its provisions have codified existing customary international law. The underlying concern in the more recent treaties has been protection of the wider environment. There are multilateral and bilateral conventions.

1. ***Customary laws****:* Example is the " no harm rule" (see 1.3.10). Rules of customary international law arise where there is a general recognition among states that certain practices and norms of behaviour are mandatory. In IEL, customary rules generally play a subordinate role to the law contained in the conventions, because their existence is difficult to establish.

MODULE TWO – BASIC PRINCIPLES OF ENVIRONMENTAL LAW

Unit 1 Emerging Principles of International Environmental Law (IEL) --I
Unit 2 Emerging Principles of International Environmental Law (IEL) --II
Unit 3 Emerging Principles of International Environmental Law (IEL) --III

Unit One: Emerging Principles of International Environmental Law (IEL)

Contents

1.1 Introduction

This unit encompasses the principles and objectives of IEL. General principles that are considered as applicable to relations between countries constitute important aspects of sources of international law in general, and to IEL specifically.

1.2 Learning Outcome

By the end of this Unit, you should be able to:

Know the general principles of IEL---I

Analyse the principle of state cooperation,

Discuss the precautionary principle and the polluter pays principle (PPP)

1.3 Emerging Principles of IEL

IEL has developed in response to emerging awareness of and concern over issues impacting the entire world. While laws have developed piecemeal and for a variety of reasons, some effort has gone into identifying key concepts and guiding general principles common to IEL as a whole. The general principles which will be discussed below are important for the understanding of environmental law around the world. (Note that there is difference between general principles and specific principles)

1.3.1 The principle of state cooperation

According to the Principle States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. Also that states should cooperate in the field of environmental protection is affirmed in virtually all international agreements. The preamble to the Convention on Biodiversity 1992, for example, stresses the necessity and importance of promoting international, regional and global co-operation among states. Principle 27 of the Rio Declaration states that " States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development" . The necessity for co-operation is mentioned six times in the Rio Declaration.

1.3.2 The precautionary principle: The basic impression of this principle from a widely cited statement is thus: ' when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.' The principle is to the effect that if there is threat or risk of serious or irreversible damage to human health or the environment, precautionary actions must be taken even though there is lack of full

certainty surrounding the issue. It commenced as a response to the constraints of policy and science in sufficiently addressing complex and uncertain risks and its consequences to human health and the environment. Thus it addresses risks in cases involving uncertainty and ignorance, as in the case of climate change. It aims to ensure adequate environmental protection through the taking of early action in response threats of environmental harm, even in the context of scientific uncertainty. provides a general guide for regulatory,

For this purpose it provides administrative, and judicial action in cases of risk of environmental harm. Thus to achieve its objective, the principle is deliberately flexible so as to accommodate diverse situations. This flexibility is equally one of its major challenges.

SAE

Briefly explain the precautionary principle of international law

1.3.3 The polluter pays principle (PPP): This principle embodies the idea that the polluter should bear the expense of carrying out measures decided upon by public authorities as necessary to ensure that the environment is in an acceptable state. The principle is referred to in the Rio Declaration, which states that ‘ 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 of the Rio declaration on internalisation of costs includes what has become known as the ‘ Polluter Pays Principle’ or ‘ PPP.’

According to the PPP, the environmental costs of economic activities, including the cost of preventing potential harm, should be internalized rather than imposed upon society at large. An early version of the PPP was developed by the Organization for Economic Cooperation and Development (“ OECD”) in the 1970s in an effort to ensure that companies would pay the full costs of complying with pollution control laws and were not subsidised by the state. The PPP was adopted by the OECD as an economic principle and as the most efficient way of allocating costs of pollution-prevention-and control measures introduced by public authorities in the member countries. It was intended to encourage rational use of scarce

resources and to avoid distortions in international trade and investment. It was meant to apply within a state, not between states. As a goal of domestic policy, it has been key concepts and guiding realized only partially in practice.

The 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation states in its preamble that the PPP is ' a general principle of international environmental law' (para. 7). The 1992 Convention on the Protection of the Marine Environment of the Baltic Sea Area states in Article 3(4) that the PPP is an obligatory norm, while the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes includes it as a guiding principle in article 2(5)(b). More recent examples of reference to it are found in the 1996 Amendments to the 1980 Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources (Preamble para. 5), and the 2001 Stockholm Convention on Persistent Organic Pollutants (Preamble, para. 17).

The principle of Cooperation and common but differentiated responsibility: This principle embodies the idea that some states have different environmental concerns and responsibilities from others. Thus, Principle 7 of the Rio Declaration provides:

> *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 of 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 can be divided into two parts: (1) the duty to cooperate in a spirit of global partnership; and (2) common but differentiated responsibilities. The duty to cooperate is well-established in international law, as exemplified in articles 55 and 56 of chapter IX of the Charter of the United Nations, to which all UN member states subscribe, and applies on the global, regional and bilateral levels. (See the discourse on the principle of cooperation above).

The goal of the Rio Declaration is, according to the fourth paragraph of its preamble, the establishment of a ‘ ...new and equitable global partnership. ’ Principle 7 is a way to take account of differing circumstances, particularly in each state's contribution to the creation of environmental problems and in its ability to prevent, reduce and control them. States whose societies have in the past imposed, or currently impose, a disproportionate pressure on the global environment and which command relatively high levels of technological and financial resources bear a proportionally higher degree of responsibility in the international pursuit of sustainable development. In designing specific differentiated regimes, the special needs and interests of developing countries and of countries with economies in transition, with particular regard to least developed countries and those affected adversely by environmental, social and developmental considerations, should be recognized.

1.4 Summary

In conclusion, this unit has among other things examined the importance of promoting international, regional and global co-operation among states. It also looked at the principle of precautionary principle and the polluter pay principle. The precautionary principles holds the view that it is “ better to be safe than sorry” .

1.5 References/Further Reading/Web Resources

AL Jaeckel The Precautionary Principle in International Law

https://brill.com › *downloadpdf* › *book*

P Sandin, The Precautionary Principle: From Theory to Practice

S. Bell, D. McGillivray and O. Pedersen, *Environmental law*, Chapter 3 (Values, Principles, and Environmental Law).

J Holder and M Lee, *Environmental Protection, Law and Policy: Text and Materials,* 2ed (Cambridge University Press: Cambridge, 2007), P. 18-31 and Chapter 6 (Sustainable development: Quality of Life and the future.

Elizabeth Fisher, Bettina Lange, and Eloise Scotford, *Environmental Law: Text, Cases & Materials* (OUP. 2013)

A.S. Atapu, Emerging Principles of International Environmental Law, (Transnational, Ardsley, New York, 2006)

David Freestone and Ellen Hey (eds.), The Precautionary Principle and International Law: The Challenge of Implementation, (Boston: Kluwer Law International, 1996).

Damilola S. Olawuyi *The Principles of Nigerian Environmental Law* (Revised Edition, Afe Babalola University Press: Ekiti, 2015) p 258.

1.6 Possible Answer to Self- Assessment Exercise

The principle is to the effect that if there is threat or risk of serious or irreversible damage to human health or the environment, precautionary actions must be taken even though there is lack of full certainty surrounding the issue. It commenced as a response to the constraints of policy and science in sufficiently addressing complex and uncertain risks and its consequences to human health and the environment. Thus it addresses risks in cases involving uncertainty and ignorance, as in the case of climate change. It aims to ensure adequate environmental protection through the taking of early action in response threats of environmental harm, even in the context of scientific uncertainty. provides a general guide for regulatory,

For this purpose it provides administrative, and judicial action in cases of risk of environmental harm. Thus to achieve its objective, the principle is deliberately flexible so as to accommodate diverse situations. This flexibility is equally one of its major challenges.

Unit Two : EMERGING PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW (IEL)

Unit Structure

2.1 Introduction

The purpose of the unit is to enable you understand some principles of international Environmental Law like the principle of common but differentiated responsibility, The principle of sustainable development and the principle of integration and interdependence

2.2 Learning Outcomes

By the end of this Unit you will be able to:
*Understand the purpose of the principle of common but differentiated responsibility

*The importance of The principle of sustainable development

*Discuss the principle of integration and interdependence

2.3 Emerging Principles of IEL.

2.3.1. The principle of common but differentiated responsibility (CBDR); principle of international environmental law formalised in 1992 at the United Nations Conference on Environment and Development in Rio de Janeiro establishing that all states are accountable for addressing global environmental destruction yet not equally responsible. (CBDR) was enshrined as Principle 7 of the Rio Declaration at the first Rio Earth Summit in 1992. The declaration states: " In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. Its basic meaning is first and foremost a "shared" but ' unequal' moral responsibility *between different groups of countries to address global* climate change. The principle finds clear expression in the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol where there was a distinction between Annex I and Non-Annex I *countries* (Parties to the UNFCCC not listed in Annex I of the convention are mostly low-income *countries developing* countries) . The essence of the division is for the purpose of determining the to the right of carbon emission and the right for sustainable development. The CBDR' S underlying concepts of fairness and equity has also been manifested in other global governance architectures than just the climate.

2.3.2. The principle of Sustainable development*:* Sustainable Development has been defined by the United Nations Environment Programme as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs," sustainable development may be considered together with the concepts of "integration" (development cannot be considered in isolation from sustainability) and "interdependence" (social and economic development, and environmental protection, are interdependent). Laws mandating environmental impact assessment and requiring or encouraging development to minimize environmental impacts may be assessed against this principle. Principle 4 of the Rio Declaration provides: in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. Principle 25 states also that peace,

development and environmental protection are interdependent and indivisible. Principles 4 and 25 make clear that policies and activities in various spheres, including environmental protection, must be integrated in order to achieve sustainable development.

The modern concept of sustainable development was a topic of discussion at the 1972 United Nations Conference on the Human Environment (Stockholm Conference), and the driving force behind the 1983 World Commission on Environment and Development (WCED, or Brundtland Commission). In 1992, the first UN Earth Summit resulted in the Rio Declaration, Principle 3 of which reads: ' The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.' Sustainable development has been a core concept of international environmental discussion ever since, including at the World Summit on Sustainable Development (Earth Summit 2002), and the United Nations Conference on Sustainable Development (Earth Summit 2012, or Rio+20).

Self-Assessment Exercise

Discuss the principle of sustainable development

2.3.3 ***The `principle of integration and interdependence*** are stated even more clearly in paragraph 6 of the 1995 Copenhagen Declaration on Social Development, which introduction states that " economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people…" . Paragraph 5 of the 2002 Johannesburg Declaration on Sustainable Development confirm The concepts of integration and interdependence are stated even more clearly in paragraph 6 of the 1995 Copenhagen Declaration on Social Development, which introduction states that " economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people…" .

Paragraph 5 of the 2002 Johannesburg Declaration on Sustainable Development confirms this, by stating that " we assume a collective responsibility to advance and strengthen the

interdependent and mutually reinforcing pillars of sustainable development (economic development, social development and environmental protection) at the local, national, regional and global levels." Integration was one of the main themes discussed at the 2002 Johannesburg World Summit on Sustainable Development, with particular emphasis on eradicating poverty. One of the commitments of Millennium Development Goal 7 (" Ensure environmental sustainability"), is to " integrate the principles of sustainable development into country policies and programmes…"

Paragraph 30 of the Millennium Declaration speaks of the need for greater policy coherence and increased cooperation among multilateral institutions, such as the United Nations, the World Bank, and the World Trade Organization. The definition of ' sustainable development' from the Brundtland Commission' s report, quoted above, indicates the interdependence of generations, as well. On the basis of these and other international instruments, it is clear that integration and interdependence are fundamental to sustainable development.

Note that Sustainable development is an umbrella concept/principle. It has a number of elements which have also evolved into either full concepts or principles of their own.

2.4 Summary. The unit has provided you with a good understanding of additional principles of International Environmental Law. These principles are ;The principle of common but differentiated responsibility (CBDR) the principle of Sustainable development, and the `principle of integration and interdependence

2.5 References /Further Readings/ Web Resources

The Alfred Landecker Holocaust Memorial Event
https://www.bsg.ox.ac.uk/blog/thirty-years-common-differentiated-responsibility-why-do-we-need-it-ever-more-today

2.6 Possible Answer to Self-Assessment Exercise

The modern concept of sustainable development was a topic of discussion at the 1972 United Nations Conference on the Human Environment (Stockholm Conference), and the driving force behind the 1983 World Commission on Environment and Development (WCED, or Brundtland Commission). In 1992, the first UN Earth Summit resulted in the Rio Declaration, Principle 3 of which reads: ' The right to development must be fulfilled

so as to equitably meet developmental and environmental needs of present and future generations.' Sustainable development has been a core concept of international environmental discussion ever since, including at the World Summit on Sustainable Development (Earth Summit 2002), and the United Nations Conference on Sustainable Development (Earth Summit 2012, or Rio+20).

UNIT 3: EMERGING PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW (IEL)

Unit Structure

3.1 Introduction This unit will discuss some of the main principles of International Environmental Law like Environmental Impact Assessment, The principles of inter and intergenerational equity, Principles of prior notice, and the Principle of neighborliness or the " no harm" rule.

3.2 Learning Outcomes

By the end of this unit you will be able to :

Understand the principle of Environmental Impact Assessment (" EIA")
Explain the principle of the Principle of Inter- and Intra generational Equity
Discuss the Principles of prior notice
Discuss the principle of the " no harm" rule or neighborliness principle or responsibility for transboundary harm

3.3 Emerging principles of IEL

3.3.1 Environmental Impact Assessment (" EIA") has become one of the most effective and practical tools to support the implementation of sustainable development and its integrative aspects. The great majority of countries in the world have adopted informal guidelines or mandatory regulations, applicable not only to public projects but often also as a direct obligation of citizens. In addition, in many countries, informal procedures of impact assessment for governmental activities have been developed. EIA is also widely accepted as a mechanism for public participation in planning processes and decision-making and a tool to provide information and data to the public regarding projects and other activities.

Also necessary are approaches that take into account long-term strategies and that include the use of environmental and social impact assessment, risk analysis, cost-benefit analysis and natural resources accounting. Some have proposed so-called sustainable development impact assessments, which take into account environmental social and economic aspects. The integration of environmental, social and economic policies also requires transparency and broad public participation in governmental decision-making.
At the international level EIA may still be a principle depending on the instrument one is looking at. Some people have argued that the EIA is no longer a principle in Nigeria but a rule of environmental law considering that there is the EIA Act

3.3.2 The Principle of Inter- and Intra generational Equity: Equity thus includes both ' inter-generational equity' (i.e. the right of future generations to enjoy a fair level of the common patrimony) and ' intra generational equity' (i.e. the right of all people within the current generation to fair access to the current generation' s entitlement to the Earth' s natural resources). This principle upheld the definition of sustainable development offered by the Brundtland report. It asserts that states have a duty to protect the environment not only for the current inhabitants of the planet, but for future generations. This idea is frequently found in some international environmental instruments, such as Principle 1 of the Stockholm Declaration, Article 3 of the Rio Convention on Climate Change and also Principle 3 of the Rio Declaration. Although this principle has been interpreted in different ways by different scholars, but the end answer is to preserve and secure an appropriate standard of living for the next generation. See Supreme Court of the Republic of the Philippines decided, in the Minors

Oposa case (Philippines - Oposa et. al. v. Fulgencio S. Factoran, Jr. et al. G.R. No. 101083) Minors Oposa v Secretary of Philippine.

3.3.3 Principles of prior notice, environmental impact assessment, consultation and Exchange of Information

These principles help to prevent disputes from arising in the transfrontier pollution context between the ‘ acting’ state(s) and the ‘ affected’ state(s) by providing the ‘ affected’ state with pertinent information of the planned activities of the ‘ acting’ state and with chances to reach an amicable solution to the potential problem between them. The so-called Montreal Rules of International Law Applicable to Transfrontier Pollution adopted by the International Law Association at the sixtieth conference include these principles in Articles 7 and 8.

3.3.4. The “ no harm” rule or neighborliness principle or responsibility for transboundary harm: This is the most fundamental rule of IEL and it is contained within Principle 21 of the 1972 Stockholm Declaration and Principle 2 of the 1992 Rio Declaration:

> *States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

The Stockholm Principle 21 and Rio Principle 2 contains two elements: (1) the sovereign right of states to exploit their own natural resources, and (2) the responsibility, or obligation, not to cause damage to the environment of other states or areas beyond the limits of national jurisdiction. It is a well-established practice that, within the limits stipulated by international law, every state has the right to manage and utilize natural resources within its jurisdiction and to formulate and pursue its own environmental and developmental policies. However, one of the limits imposed by international law on that right is that states have an obligation to protect their environment and prevent damage to neighbouring environments. This means that states are responsible not only for their own activities, but also with respect to all public and private activities within their

jurisdiction or control that could harm the environment of other states or areas outside the limits of their jurisdiction.

The responsibility for damage to the environment exists not only with respect to the environment of other states, but also of areas beyond the limits of national jurisdiction, such as the high seas and the airspace above them, the deep seabed, outer space, the Moon and other celestial bodies, and Antarctica. States responsibility not to cause harm by transboundary pollution first appeared as a principle (that is principle of state sovereignty) in 1941 and in 1949.The principle also appeared in numerous other conventions between 1972 and 1992, including the 1979 Geneva Convention on Long Range Transboundary Air Pollution, the 1985 Convention for the Protection of the Ozone Layer (Vienna), and the 1989 Basel Convention on Hazardous waste. The principle is now accepted as a rule of customary International Law, and its status as such has been recently recognized by the ICJ in 1996, in the Courts *Advisory Opinion on the Legality of the Threat or use of Nuclear Weapons*. See also *Trail Smelter Arbitration case 1941 United States v. Canada, 3 R. Int'l Arb. Awards* 1911, 19381949 and the *Corfu Channel Case UK v Albania* 1949, ICJ Reports 4.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

Explain the "no harm" rule or neighbourliness principle

3.4

In con

legislat

and developing countries.

3.5 References/Further Reading/Web Resources

S. Bell, D. McGillivray and O. Pedersen, *Environmental law,* Chapter 3 (Values, Principles, and Environmental Law).

J Holder and M Lee, *Environmental Protection, Law and Policy: Text and Materials,* 2ed (Cambridge University Press: Cambridge, 2007), P. 18-31 and Chapter 6 (Sustainable development: Quality of Life and the future.

Elizabeth Fisher, Bettina Lange, and Eloise Scotford, *Environmental Law: Text, Cases & Materials* (OUP. 2013)

A.S.Atapu, Emerging Principles of International Environmental Law, (Transnational, Ardsley, New York, 2006)

David Freestone and Ellen Hey (eds.), The Precautionary Principle and International Law: The Challenge of Implementation, (Boston: Kluwer Law International, 1996).

Damilola S. Olawuyi *The Principles of Nigerian Environmental Law* (Revised Edition, Afe Babalola University Press: Ekiti, 2015) p 258.

3.6 Possible Answer to Self- Assessment Exercise

The " no harm" rule or neighbourliness principle ; This is the most fundamental rule of international environmental law and it is contained within Principle 21 of the 1972 Stockholm Declaration and Principle 2 of the 1992 Rio Declaration: It states that in exercising its sovereign right to exploit its natural resources within its state, every state has a responsibility to ensure that such activity within its jurisdiction or control does not cause harm to other states or of areas outside its national boundaries.

Module Three – The Challenge of Integrated Environmental Protection

Unit One

Content

1.1 Introduction

IEL encapsulates international law, but also requires a comparative analysis of environmental regulation in multi-jurisdictional legal and political systems. These systems are quite different in many ways – political, institutional, legal. cultural and economic. They share certain fundamental structural similarities and must deal with similar problems in instituting measures to protect the environment while simultaneously promoting economic growth.

1.2 Learning Outcome

By the end of this Unit you will be able to ;

Explain the challenges associated with an integrated approach to environmental protection at the global and national levels.

1.3 The challenge of Integrated Environmental Protection

Varying jurisdictional and environmental circumstances pose the central question of how responsibility for addressing different environmental problems should be allocated among the different levels of decision making and implementation within a multi-jurisdictional system. They also pose distinctive questions as to the structure of institutions for decision making and

the regulatory instruments to be used in solving environmental problems. These issues are additionally complicated by the fact that environmental issues are inextricably bound with economic issues. The three legal and political systems examined herein are characterized by substantial but varying degrees of economic integration. The United States and the European Union were established with the purpose of developing integrated internal markets. The World Trade Organisation (WTO) for example, has fostered a higher degree of economic integration at the global level. The wider markets and broader scope for competition and innovation resulting from market integration have contributed significantly to economic growth, although not without other consequences, whether environmental, social, or political. As experience abundantly demonstrates, economic growth can be the cause of serious environmental problems. Properly directed, economic forces might also help to solve those problems and promote ecologically sustainable development. In the international context, economic integration coexists with wide disparities in wealth and the level of economic development among different nations, disparities that are less pronounced but not entirely absent within the United States and the European Union. These disparities lead the poorer nations of the world - and poor communities within the US and the EU - to emphasize the development element in sustainable development and create challenges as well as opportunities for the development of effective solutions to global environmental problems.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

What is the concern of environmentalists based on the discussion above?

There can be little doubt that economic and environmental interdependencies, trade flows, and capital mobility have important implications for environmental regulation in multi-jurisdictional settings. Adoption of different environmental regulations of products in different jurisdictions can impede trade by increasing transaction costs and preventing realization of scale economies in the broader market. Industrial firms facing intensive competition on both a regional and a global scale are concerned that the costs imposed by stringent environmental regulation of production methods and processes by the jurisdictions in which their facilities are located will disadvantage them vis-a-vis competitors in other jurisdictions with less stringent regulation. Environmentalists in turn are concerned that

industry will migrate to jurisdictions with laxer standards and that all jurisdictions will respond by competing in regulatory laxity in order to attract industry. Empirical studies cast considerable doubt on the existence or extent of competitive disadvantage or advantage associated with differences in environmental regulation. These various considerations generate demands for adoption of harmonized environmental product and process regulation across jurisdictions, which in turn implies centralization of regulatory decision-making authority at a higher level. Alternatively, industry and environmental groups located in jurisdictions with more stringent standards may push for the adoption at the local level of countervailing duties on imports from jurisdictions with less stringent standards. This is but one example of the potential use of trade measures to advance environmental objectives, and the concomitant risk that trade restrictions advanced in the name of environmental protection could be deployed for protectionist purposes.

The interdependencies between environmental protection, trade, and investment also generate conflicts between developed countries and developing countries. For competitive economic as well as environmental reasons, developed countries have sought to promote adoption of more stringent environmental standards by developing countries, both through international agreements and, occasionally, the use of trade measures. These efforts have often provoked resentment and resistance from developing countries, who argue that it is their turn to develop and that the rich countries, who have already created many environmental problems in the course of their own development, should take lead responsibility for addressing them. On the other hand, economic instruments can also be used to harness market forces to advance environmental protection and bridge gaps between developed and developing countries by targeting private investment and technology transfer to promote ecologically friendly forms of growth in developing countries.

However, in recent times, environmental policy has undergone a sea change, reflected in a switch in thinking away from a hygienic perspective (in which environmental problems are perceived primary as a threat to public health) towards the adoption of a framework based on the conditions which need to be met in order to ensure the survival of ecosystems. According to current thinking, there is only a limited role for technology to perform in solving environmental problems. Additionally, the idea of IEL has facilitated a change and a broadening in the pattern of interests surrounding environmental issues. Herein lies the challenge for integrated environmental protection. As environmental problems have crossed

(national) borders, so also has there been a concomitant increase in the variety of interests involved. In addition, the interests themselves have grown more diverse. As such, it has become difficult to decide which interests benefit and which interests suffer from particular methods of dealing with environmental problems which are themselves clouded in uncertainty.

1.4 Summary

In conclusion, this unit examined the issue of how responsibility for addressing different environmental problems should be allocated among the different levels of decision making and implementation within a legal system and the various considerations which affect an integrated approach to environmental protection.

1.5 References/ Further Reading/Web Resources

Peter Sloep and Andrew Blowers (eds) *Environmental Policy in an International Context: Conflicts* (Open University of the Netherlands: Butterworth Heinman, 1996) 5.

Richard L. Revesz, Phillippe Sands and Richard B. Stewart (eds) *Environmental Law, the Economy and Sustainable Development – The United States, the European Union and the International Community* (Cambridge University Press; Cambridge, 2000) 2-3.

Orie, E.G.(2014), "Environmental protection and Fundamental Human Right to life: a review of the Nigerian constitutional provision and the judicial posture." *NOUN Current Issues in Nigerian Law* volume 4:148-196.

1.6 Possible Answers to Self- Assessment exercise

The concern of environmentalists includes how obligation for addressing different environmental problems should be assigned among the different levels of decision making and execution of such obligations within a multi-jurisdictional system. A further challenge has to do with the structure of institutions for decision making and the regulatory instruments to be used in solving environmental problems. The additional challenge is the fact that environmental issues are usually inseparably tied

to economic issues. World Trade Organisation (WTO) for example, has fostered a higher degree of economic integration at the global level. Economic growth can be the cause of serious environmental problems. Properly directed, economic forces might also help to solve those problems and promote ecologically sustainable development.

MODULE FOUR – THE NOTION OF INTERNATIONAL ENVIRONMENTAL PROTECTION

Unit One: The concept of environmental pollution

Content

1.1 Introduction

Environmental pollution is the release of toxic harmful substances into the environment by their natural force or man and his resources. The four major types of environmental pollution are therefore air pollution, land pollution, water pollution and noise pollution.

1.2 Learning Outcome

By the end of this Unit you will be able to ;

Understand the rapid degradation of the environment through the different forms of environmental pollution

Explain the ways to protect the environment through stringent environmental legislation in Nigeria.

1.3 The concept of environmental pollution

1.3.1 Air Pollution

Air pollution is the presence of any substance in the atmosphere at a concentration high enough to produce an objectionable effect on humans, animals, vegetation, or materials to alter the natural balance of any ecosystem significantly. Air is a component of the atmosphere and is essential to humankind and other living animals. Although nature pollutes the atmosphere naturally through the eruption of volcanoes, etc., man pollutes the air and atmosphere regularly by introducing directly or indirectly substances or energy into the air resulting in deleterious effects of such a nature as to endanger human health, harm living resources, ecosystems, material property and impair or interfere with amenities and other legitimate uses of environment.

The most common sources of air pollution in Nigeria are emission from vehicle exhaust and other combustion engines, coal mining and cement factory; industrial processes such as electric plants that use radioactive substances and emission from industrial processes. Unlike water and land pollution, the effect of air pollution is not usually seen until it has caused harm to man or the environment.

International treaties

1. **Vienna Convention for the Protection of the Ozone Layer**

This was signed by Nigeria in 1989. The objective is to protect the ozone layer by taking precautionary measures to control global emission of substances that deplete it.

2. **The 1979 Convention on Long-Range Transboundary Air pollution**

The objective of this treaty is to protect man and his environment against air pollution and to endeavour to limit and, as far as possible, gradually reduce and prevent air pollution, including long-range transboundary air pollution (Article 2). As such, Contracting States are expected to *inter alia,* initiate policies and strategies for exchange of information, consultation, research and monitoring as a means of combating the discharge of air pollutants. This Convention also sought for cooperation among Contracting States in the area of research and development of existing and proposed technologies for reducing emission of sulphur compounds and other major air pollutants, including technical and economic feasibility and their environmental consequences.

Customary International Law on Atmospheric Pollution and the *Trail Smelter case*

Customary international law is law that is accepted by States as obligatory rules of conduct as if they were legally binding. The *Trail Smelter* decision has shaped the IEL principle on transboundary pollution and the international customary law principle that a State shall not allow its territory to be used in such a manner as to cause harm to the territory of another State.

In that case, during the early 20th century a Canadian smelter company was operating in Trail, British Columbia along the Columbia River which flows from Canada across the border to Washington State in the United States of American. Here a rural community of farmers existed who claimed damages from the waste emitted by the smelter. The Canadian company that smelted zinc and lead was emitting sulfur dioxide which caused injury to plant life, forest trees, soil, and crop yields in Washington State. The United States charged Canada for these injuries and the case was referred to the International Joint Commission, a bilateral tribunal that oversees issues regarding the two countries. The Tribunal held that under the principle of international law no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes or into the territory of another or the properties or person therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.

Legal Framework for air pollution in Nigeria

There are different legislations for the different sources of air pollution and these are discussed below.

(i) National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations, S. I. No. 20 of 2011

The purpose of this Regulation is to safeguard the Nigerian environment against pollutants from vehicular emission. Under this regulation, manufacturers of petrol and diesel engines are compelled to produce new technologies through the imposition of strict limit values and penalties for pollution.

(ii). National Environmental (Sanitation and Wastes Control) Regulations, S. I. No. 28 of 2009

The purpose of this Regulation is to provide the legal framework for the adoption of sustainable and environment friendly practices in environmental sanitation and waste management to minimize pollution.

(iii). National Environmental (Control of Bush/Forest Fire and Open Burning) Regulations, S. I. No. 15 of 2011

The principal thrust of this Regulation is to prevent and minimise the destruction of ecosystems through fire outbreak and burning of any material that may affect the health of the ecosystem through the emission of hazardous air pollutants.

(iv) Associated Gas (Re-injection (Continued Flaring of Gas) Act Cap A25, Laws of the Federation of Nigeria, 2010

This is an Act to compel every company producing oil and gas in Nigeria to submit preliminary programmes for gas reinjection and detailed plans for implementation of gas re-injection.

It appears that there are not so many judicial decisions relating to air pollution in Nigeria and reliance may be placed on common law remedies of negligence, nuisance and the rule in *Rylands and Fletcher* where such situations arise.

1.3.2 Water Pollution

The sources of water pollution include sewage from city sewage system, chemical wastes from industries and ships, excreta or faces from humans and animals, oil spillage and pesticide washed by erosion from farms.

Legal Framework for Water Pollution

i. Public Health Law Cap P25, Laws of Lagos state, 2003

This law seeks to protect the general public from water borne and infectious diseases and makes several provisions on water pollution. It an offence to discharge effluents and sewage into any stream so as to interfere with the flow of the stream or pollute it.

ii. Mineral and Mining Act, 1999 Cap M12 Laws of the Federation, 2004

This Act makes it an offence for any licensee to alter the water supply in a manner that will be prejudicial to the water supply enjoyed by other persons or land without the consent of the minister. Where there is a breach under this law, the offender may be directed by an order from the minister to amongst others, restore the water right. Section 5 (b) also directs the Minister to have regard to the need to make proper provision for the supply of water for the drainage, safe disposal of sewage, effluent and water-borne wastes and the control and prevention of pollution.

iii. Water Resources Act, Cap W2 LFN 2010

This Act defines pollution as any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any water or groundwater so as to render such water or groundwater less fit for any beneficial purpose for which it is, or may reasonably be used, or to cause a condition which is hazardous or potentially hazardous to public health, safety, welfare to animals, birds, wildlife, fish or aquatic life, or to plants.

iv. National Environmental (Wetlands, River Banks and Lake Shores) Regulations, S. I. No. 26 of 2009

This Regulation provides for the conservation & wise use of wetlands & their resources in Nigeria and ensure sustainable use of wetlands for ecological and tourism purposes and to protect wetland habitats for species of fauna and flora.

v. National Environmental (Sanitation and Wastes Control) Regulations, S. I. No. 28 of 2009:

The purpose of this Regulation is to provide the legal framework for the adoption of sustainable and environment friendly practices in environmental sanitation and waste management to minimise pollution.

vi. National Environmental (Coastal and Marine Area Protection) Regulations, S. I. No. 18 of 2011:

This Regulation provides for a regulatory framework for the application of preventive, precautionary and anticipatory approaches so as to avoid degradation of the coastal and marine environment

vii. National Environmental (Surface and Groundwater Quality Control) Regulations, S. I. No. 22 of 2011:

The purpose of this Regulation is to restore, enhance and preserve the physical, chemical and biological integrity of the nation's surface waters, and to maintain existing water uses.

1.3.3 Noise Pollution

Noise is not on its own harmful to the environment or humans. It becomes so when it becomes unusually loud and uncontrolled in such a way that it diminishes the quality of air and adversely affects the environment, public health and welfare. Noise pollution is one of the environmental hazards affecting humans as well as the climate. In most urban areas of the third or developing countries of the world especially Nigeria, there are lots of noise pollutants which include noise from exhaust cars, industrial as well as home generating plants. In advanced countries however, scientific experimentations like launching and re-lunching of rockets, bombs and satellites sounds constitute a major noise pollutant.

The statutory intervention on noise pollution in Nigeria can be considered from the common law perspective and through the actionable tort of nuisance. The tort of nuisance can be explained as the unlawful interference with a person's use or enjoyment of his property by another person. It can manifest in the form of noise, vibration, smoke, fume, smell, pollution, flooding, fire etc. Judicial cases using this tort are examined below.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

Explain the various regulations on air pollution in Nigeria?

Legal Framework for Noise Pollution

1. Common Law

The tort of nuisance

In *Abiola vs. Ijoma* the plaintiff and the defendant were neighbours occupying adjoining premises in a residential area. The plaintiff kept poultry at the back of his house. At a time, the defendant kept four hundred chickens in pens erected against a wall that constituted the boundary with the plaintiff. The plaintiff contended among other claims, excessive noise made by defendant's chickens in the early hours of the morning that disturbed his sleep. The court agreed with the plaintiff and awarded damages against the defendant for nuisance. The court also made an order of injunction restraining the defendant from further acts of nuisance. An effective remedy to combat noise pollution lies in the court. However, while legal action for nuisance is a potent means of confronting noise pollution in Nigeria, the use of this devise may be hampered by some legal factors which are the legal classification of nuisance into public and private nuisance.

In *Tebite vs Marine and Trading Co. Ltd* (1971) I UILR 432*,* the plaintiff, a legal practitioner occupied premises where he carried out his law practice. The defendants occupied adjourning premises where they carried out the business of boat building and repairing. The plaintiff sued contending principally that by operating its machines continuously for several hours a day the defendants had persistently caused the emission of loud and excessive noise and noxious fumes from their premises which caused the plaintiff much discomfort and inconvenience. It was established in the course of the proceedings that the noise generated and emitted by the defendants was excessive and much more than any noise that can be produced in any noisy area in Nigeria. The court held that the noise was excessive and awarded damages to the plaintiff and also restrained the defendants from further act of noise nuisance.

In *Moore vs. Nnado* (1967) FNLR 156, the plaintiff sued contending that the defendant was caused excessive to be emitted from his neighbouring by playing music unreasonably loudly until late every night. The court held that the defendant liable to the plaintiff. The court also granted the order of injunction restraining the defendant from the said act of nuisance.

However, the common law remedy through court action does not offer a comprehensive and infallible solution to noise pollution in Nigeria as a result of some inherent socio-economic factors. One of such factor is the high cost of legal fees and the frustration of forensic battles in Nigeria where the adversary system of justice system is operated. Another factor is the traditional inclination of Nigerians to avoid legal confrontation with neighbours or other people. Taken together, the likely result of these inherent factors is that many citizens may shy away from instituting court action to confront noise pollution even where they are directly affected.

2. The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act.

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act of 2007 is the major law on noise pollution in Nigeria. The law provides that:

(a) The Agency shall on the commencement of this Act, and in consultation with appropriate authorities:

(i) identify major noise sources, noise criteria and noise control technology; and

(ii) make regulations on noise, emission control, abatement, as may be necessary to preserve and maintain public health and welfare.

(b) The Agency shall enforce compliance with existing regulations and recommend programs to control noise originating from industrial, commercial, domestic, sports, recreational, transportation or other similar activities.

3. National Policy on the Environment and Noise Pollution.

The National policy on the Environment of 1989 provided that programmes will be established to:

(a) set up standards including acoustic guarantees;
(b) prescribe guidelines for the control of neighbourhood noise especially with respect to construction sites, market and meeting places.
(c) prescribe permissible noise level in noise-prone industries and construction sites and to ensure the installation of noise dampers on noise equipment;
(d) set up quiet zones especially within game parks, reserves and recreational centres;
(e) ensure compliance with stipulated standards by conducting periodic audit checks.

4. National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations and Noise Pollution.

The National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulation of 1991 enjoined designated industrial layouts separate from residential areas and to create buffer zones separating industrial areas from residential areas.

5. National Guidelines and Standards for Environmental Pollution Control in Nigeria.

The National Guidelines and Standards for Environmental Pollution Control in Nigeria of 1991 were meant to monitor and control industrial and urban pollution. It provides that:

1. There should be reduction of noise from loudspeakers and cars
2. Railway and airport should be sited far away from residential areas
3. There should be installation of soundproof in industries and generators

6. National Environmental (Noise Standards and Control) Régulations, S. I. No. 35 of 2009:

The main objective of the provisions of this Regulations is to ensure tranquillity of the human environment or surrounding and their psychological well-being by regulating noise levels.

The existence of these legislation on noise pollution is noteworthy, but their enforcement and implementation leaves much to be desired. In Lagos State, the Governor began a

controversial crackdown on noisy churches and mosques in the State in November 2019, following scores of petitions to the Lagos State Environmental Protection Agency (LASEPA) from citizens. Citizens complained about the conversion of residential properties into places of worship and the noise pollution emanating from churches and mosques, particularly churches who hold vigils at night. This is in direct violation of the requirements of the noise pollution legislation and the LASEPA (Law) which requires churches and mosques to be noise proof, including a prohibition on installing loudspeakers outside the premises of such places of worship. However, it remains to be seen how this crackdown will be strictly enforced in Lagos State.

1.4 Summary

This unit analysed the various types of pollution to enable you understand how pollution is regulated in a developing country like Nigeria.

1.5 References/Further Reading/ Web Resources

Abiola v Ijoma (1970) 2 ALL NLR 268

Samoris vs Maja (1996) 7 NWLR (pt. 460) p. 336

William Niba ' Lagos Governor shuts down places of worship for noise pollution' 19th November 2019, <http://www.rfi.fr/en/international/20191118-nigeria-lagos-shuts-down-places-worship-flouting-anti-noise-pollution-laws>

H. Ijaiya, ' The Legal Regime of Noise Pollution In Nigeria,' <*http://www.law.unilorin.edu.ng/publications/private/ho_ijaiya/14.pdf*> accessed 26 March 2020

Catherine Prunella ' An International Environmental Law Case Studey: The Trail Smelter Arbitration' December 2014 <https://intlpollution.commons.gc.cuny.edu/an-international-environmental-law-case-study-the-trail-smelter-arbitration/>

O.G. Amokaye: Environmental Law and practice in Nigeria. (2ed, Lagos, 2014)

O.G. Amokaye: Environmental Law and practice in Nigeria. (University of Lagos Press: Lagos, 2004), 390, 391-392,

Mike Ikhariale ' The Koko Incident, the Environment and the Law' in Folarin Shyllon (ed.) " The Law and the Environment in Nigeria" (1989) at 73-74.

Gbadamosi Olaide, ' Progressive Realisation of the Right to safe water and adequate sanitation,' *NIALS Journal of Environmental Law* 2011

Irekpitan Okukpon ' NESREA and the Legal Control of Noise Pollution in Nigeria' in (2010 – 2012) 13 (1) *University of Benin Law Journal* 65.

B Odunsi & T A Ogunleye (2007). Noise Pollution and Environment: The Nigerian Perspective. 5th International Conference on International Environmental Law, New Delhi, 8-9 December, 2007.

Orie, Erimma Gloria. (2016), "The legal imperatives for regulating noise pollution in Nigeria in the quest for sustainable development: Lessons from India", *International Journal of Business and Applied Social Science*, Vol.2, No.4, 50-62. < *ijbassnet.com storage app publications >*

Art 1(4) UN Convention on Long-range Transboundary Air Pollution (LRTAP) Art. 16

O.G. Amokaye: Environmental Law and practice in Nigeria. 2nd Ed 2014 Lagos page 557, 562

1.6 Possible Answer to Self- Assessment

The regulations include;

(i) National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations, S. I. No. 20 of 2011

---The regulation, compels manufacturers of petrol and diesel engines to produce new technologies through the imposition of strict limit values and penalties for pollution.

(ii). National Environmental (Sanitation and Wastes Control) Regulations, S. I. No. 28 of 2009

--Regulation provides the legal framework for the adoption of sustainable and environment friendly practices in environmental sanitation and waste management to minimize pollution.

(iii). National Environmental (Control of Bush/Forest Fire and Open Burning) Regulations, S. I. No. 15 of 2011

---Regulation prevents and minimises the destruction of ecosystems through fire outbreak and burning of any material that may affect the health of the ecosystem through the emission of hazardous air pollutants.

(iv) Associated Gas (Re-injection (Continued Flaring of Gas) Act Cap A25, Laws of the Federation of Nigeria, 2010

The Act to compel every company producing oil and gas in Nigeria to submit preliminary programmes for gas reinjection and detailed plans for implementation of gas re-injection.

(v) National Environmental (Control of Bush/Forest Fire and Open Burning) Regulations, S. I. No. 15 of 2011:

The Regulation is to prevent and minimise the destruction of ecosystem through fire outbreak and burning of any material that may affect the health of the ecosystem through the emission of hazardous air pollutants.

Unit Two: European Union and Pollution

Content

2.1 Introduction

European Union (EU) legislation on the environment can be regarded as the most progressive in the world, due to the timelines for revision of each legislation or regulation and revision of same in line with current worldwide practices or practices within the States of the EU. Thus, this module examines the EU position on the three types of position examined above – air, water and noise pollution to provide a broader perspective on the efforts being made to control these pollution and therefore improve the lives of citizens in that region.

2.2 Learning Outcomes

By the end of this unit you will be able to;

Understand the EU legislation and approaches to the management of these types of pollution, in comparison to what has been discussed about the Nigerian approach in the previous module.

2.3 European Union and Pollution

Water Pollution in the EU

Water is not a commercial product but a common good and a limited resource that needs to be protected and used in a sustainable way, in terms of both quality and quantity. It is, however, under pressure from many different uses from a variety of sectors, such as agriculture, tourism, transport and energy. In 2012, the Commission launched the Blueprint to Safeguard Europe' s Water Resources, a long-term strategy which aims to ensure the availability of a sufficient level of quality water for all legitimate uses by better implementing current EU water policy, integrating water policy objectives into other policy areas, and filling gaps in the current framework. It envisages the establishment by the Member States of water accounts and water efficiency targets, as well as the development of EU standards for water reuse.

EU policy has established two main legal frameworks for the protection and management of our freshwater and marine resources in an eco-system-based, holistic approach, the Water Framework Directive (WFD) and the Marine Strategy Framework Directive (MSFD).

I. Water Framework Directive (WFD) and specific supporting water directives

The EU Water Framework Directive establishes a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. It aims to prevent and reduce pollution, promote sustainable water use, protect and improve the aquatic environment and mitigate the effects of floods and droughts. The overall objective is to achieve good environmental status for all waters. Member States are therefore requested to draw up so-called River Basin Management Plans based on natural geographical river basins, as well as specific programmes of measures to achieve the objectives.

The WFD is supported by more targeted directives, i.e. the Groundwater Directive, the Drinking Water Directive and the Bathing Water Directive, the Nitrates Directive, the Urban Wastewater Treatment Directive, the Environmental Quality Standards Directive and the Floods Directive:

The directive on the protection of groundwater against pollution and deterioration provides for specific criteria for the assessment of good chemical status, the identification of significant and sustained upward trends, and the definition of starting points for trend reversals. All threshold values for pollutants (with the exception of nitrates and pesticides, for which the limits are set by specific EU legislation) are set by the Member States.

The Drinking Water Directive defines essential quality standards for water intended for human consumption. It requires Member States to regularly monitor the quality of water intended for human consumption by using a □sampling points□ method. Member States can include additional requirements specific to their territories but only if this leads to setting higher standards. The directive also requires the provision of regular information to consumers. Furthermore, the quality of drinking water has to be reported to the Commission every three years. On 1 February 2018, and in response to the European Citizens□ Initiative □Right2Water□, the Commission published a proposal to renew the 20-year-old directive. The reviewed directive would update existing safety standards and improve access to safe drinking water along the lines of the latest recommendations of the World Health Organisation. It would furthermore increase transparency for consumers on the quality and supply of drinking water, thereby helping to reduce the number of plastic

bottles through increased confidence in tap water. An EU-wide risk-based water safety assessment should help to identify and address possible risks to water sources already at the distribution level.

The Bathing Water Directive aims to enhance public health and environmental protection by laying down provisions for the monitoring and classification (in four categories) of bathing water and informing the public about it. During bathing season, Member States have to take samples of bathing water and assess the concentration of at least two specific bacteria once a month at each bathing water site. They have to inform the public through bathing water profiles containing for instance information on the kind of pollution and sources that affect the quality of the bathing water. There is a standard symbol for informing the public about the bathing water classification and any bathing prohibition. A summary report on the quality of bathing water is published annually by the Commission and the European Environment Agency (EEA).

The Environmental Quality Standards Directive establishes limits on concentrations of 33 priority substances presenting a significant risk to, or via, the aquatic environment at EU level and eight other pollutants in surface waters. During a review, 12 new substances were added to the existing list and an obligation was introduced for the Commission to establish an additional list of substances to be monitored in all Member States (watch list) to support future reviews of the priority substances list.

The Urban Waste Water Treatment Directive aims to protect the environment from the adverse effects of urban waste water discharges and discharges from industry. The directive sets minimum standards and timetables for the collection, treatment and discharge of urban wastewater, introduces controls on the disposal of sewage sludge, and requires the dumping of sewage sludge at sea to be phased out.

New rules are under discussion to counter water scarcity by facilitating the reuse of treated waste water for agricultural irrigation.

The Nitrates Directive aims to protect waters from nitrates from agricultural sources. A complementary regulation requires Member States to send a report to the Commission

every four years, providing details of codes of good agricultural practice, Designated Nitrate Vulnerable Zones (NVZ), water monitoring and a summary of action programmes. Both the directive and the regulation aim to safeguard drinking water and prevent damage from eutrophication.

The EU Floods Directive aims to reduce and manage the risks posed by floods to human health, the environment, infrastructure and property. It requires Member States to carry out preliminary assessments to identify the river basins and associated coastal areas at risk and then prepare flood risk maps and management plans focused on prevention, protection and preparedness. All of these tasks are to be carried out in accordance with the WFD and the river basin management plans set out therein.

II EU coastal and marine policy

The Marine Strategy Framework Directive (MSFD) is the environmental pillar of the EU's Integrated Maritime Policy (IMP), which was set up with a view to enhancing the sustainable development of its maritime economy while better protecting its marine environment. The objective of the MSFD is to reach 'good environmental status' (GES) of the EU's marine waters by 2020, to continue its protection and preservation, and to prevent subsequent deterioration. It establishes European marine regions (the Baltic Sea, the North-east Atlantic Ocean, the Mediterranean Sea and the Black Sea) and sub-regions within the geographical boundaries of the existing Regional Sea Conventions. In order to achieve GES by 2020, Member States have to develop ecosystem-based strategies for their marine waters, to be reviewed every six years. A regulation on Integrated Coastal Zone Management (ICZM), moreover, defines the principles of sound coastal planning and management to be taken into account by Member States.

The Erika oil spill disaster of 1999 prompted the EU to strengthen its role in the field of maritime safety and marine pollution with the establishment of the European Maritime Safety Agency (EMSA), responsible, among other tasks, for the prevention of, and response to, pollution caused by ships, as well as response to marine pollution caused by oil and gas installations. A directive on ship-source pollution and the introduction of penalties for infringements and its update aim to ensure that those responsible for polluting discharges

at sea are subject to effective and dissuasive penalties, which may be criminal or administrative. The discharge of polluting substances from ships is to be regarded as a criminal offence if it is intentional, carried out recklessly or arises from serious negligence, and results in the serious deterioration of water quality.

Regional agreements on regional waters

The protection of marine waters in Europe is governed by four international cooperation structures, so-called Regional Sea Conventions between the Member States and neighbouring countries sharing common waters: the OSPAR Convention of 1992 (based on the earlier Oslo and Paris conventions) for the North-East Atlantic; the Helsinki Convention (HELCOM) of 1992 on the Baltic Sea Area; the Barcelona Convention (UNEP-MAP) of 1995 for the Mediterranean; and the Bucharest Convention of 1992 for the Black Sea. EU river waters are protected under the Danube River Protection Convention of 1996 and the 2009 Convention for the Protection of the Rhine. Interregional environmental cooperation focused on marine waters or river basins has led to the creation of several macro regional strategies in the EU: the 2009 Baltic Sea Region Strategy (the first comprehensive EU strategy designed for a macro region); the Strategy for the Danube Region (2011), and the Strategy for the Adriatic and Ionian Region (2014).

Role of the European Parliament

The first ever European Citizens Initiative, Right2Water, urged the EU institutions and the Member States to ensure that all citizens enjoy the right to water and sanitation, that water supply and the management of water resources are not subject to internal market rules, and that water services are excluded from liberalisation measures. In response to this European Citizens Initiative, Parliament, by a large majority, called on the Commission to come forward with legislation implementing the human right to water and sanitation as recognised by the United Nations, and, if appropriate, a revision of the WFD that would recognise universal access and the human right to water.

Underlining the necessary transition to a circular economy, Parliament supported plans to promote water reuse for agricultural irrigation. In a similar spirit, it endorsed plans to improve the quality of tap water so as to reduce the use of plastic bottles.

In its resolution on international ocean governance, Parliament emphasizes that creating a sustainable maritime economy and reducing pressures on the marine environment require action on climate change, land-based pollution reaching the seas and oceans, marine pollution and eutrophication, on the preservation, conservation and restoration of marine ecosystems and biodiversity, and on the sustainable use of marine resources. In this context, it urges the Commission to support international efforts to protect marine biodiversity, in particular in the framework of the ongoing negotiations for a new legally binding instrument for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction and calls on the Commission to propose more stringent legislation in order to preserve and ensure sustainable uses of marine biodiversity in areas under the jurisdiction of the Member States.

Air Pollution

Air pollution can cause cardiovascular and respiratory diseases as well as cancer and is the leading environmental cause of premature death in the EU. Certain substances, such as arsenic, cadmium, nickel and polycyclic aromatic hydrocarbons, are human genotoxic carcinogens, and there is no identifiable threshold below which they do not pose a risk. Air pollution also negatively impacts on the quality of water and soil and damages ecosystems through eutrophication (excess nitrogen pollution) and acid rain. Agriculture and forests are therefore affected, as well as material and buildings. Air pollution has many sources, but mainly stems from industry, transport, energy production and agriculture. While air pollution in Europe has generally decreased in recent decades, the Union's long-term objective, namely to achieve levels of air quality that do not have significant negative impacts on human health and the environment, is still at risk. Air quality standards are often contravened, especially in urban areas (air pollution hotspots) – which is where the majority of Europeans live. The most problematic pollutants today are fine particles, nitrogen dioxide and ground-level ozone.

Achievements in combating air pollution

Air quality in Europe has much improved since the EU first started to tackle this issue in the 1970s. Concentrations of substances such as sulphur dioxide (SO_2), carbon monoxide (CO),

benzene (C_6H_6) and lead (Pb) have been significantly reduced since then. The EU has three different legal mechanisms to manage air pollution: defining general air quality standards for ambient concentrations of air pollutants; setting national limits on total pollutant emissions; and designing source-specific legislation, e.g. to control industrial emissions or set standards for vehicle emissions, energy efficiency or fuel quality. This legislation is complemented by strategies and measures to promote environmental protection and its integration into other sectors.

I Ambient air quality

Building on the objectives of the 2005 Thematic Strategy on Air Pollution (to reduce fine particles by 75%, ground-level ozone by 60%, and the threat to the natural environment from both acidification and eutrophication by 55% – all by 2020 compared with 2000 levels), a revised directive on ambient air quality came into effect in June 2008, merging most of the existing legislation in the field. Only the fourth 'daughter directive' of the earlier Air Quality Framework Directive is currently still in place, setting target values (less strict than limit values) for arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons.

Directive 2008/50/EC on ambient air quality aims to reduce air pollution to levels that minimise harmful effects on human health or the environment. To that end, it lays down measures to define and establish ambient air quality objectives (i.e. limits not to be exceeded anywhere in the EU) relating to the main air pollutants (sulphur dioxide, nitrogen dioxide, oxides of nitrogen, (fine) particulate matter, lead, benzene, carbon monoxide and ozone). Member States are required to define zones and agglomerations in order to assess and manage ambient air quality, to monitor long-term trends and to make the information available to the public. Where air quality is good it must be maintained; where limit values are exceeded, action has to be taken.

At the end of 2013, the European Commission launched the Clean Air Programme for Europe, with two key objectives: compliance with existing legislation by 2020 and new air quality objectives for the period up to 2030. The main legislative instrument to achieve these objectives is the revised National Emission Ceilings Directive, which sets stricter national emission ceilings for the five key pollutants – sulphur dioxide, nitrogen oxides, non-

methane volatile organic compounds, ammonia and fine particulate matter in order to reduce their harmful effects on the environment and halve their impacts on health compared with 2005. The directive requires Member States to draw up national air pollution control programmes. It also transposes the 2020 reduction commitments made by the EU and its Member States under the revised Gothenburg Protocol to Abate Acidification, Eutrophication and Ground-level Ozone to the United Nations Economic Commission for Europe (UNECE) Convention on long-range transboundary air pollution. A new directive to reduce air pollution from medium combustion plants, such as those involved in electricity generation or domestic heating, was also adopted as part of the programme.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

Give a summary of the EU policy for the protection and management of freshwater and marine resources.

II Road transport

Several directives have been adopted to limit pollution from road transport by setting emission performance standards for different categories of vehicles, such as cars, light commercial vehicles, lorries, buses and motorcycles, and by regulating the quality of fuel. The current Euro 5 and Euro 6 emission standards for cars and light vans set emission limits on a number of air pollutants, in particular nitrogen oxides and particulate matter. Member States are required to refuse the type approval, registration, sale and introduction of vehicles (and replacement pollution control devices) that do not comply with these limits. Since September 2017, a more realistic test cycle has been in use: Real Driving Emissions (RDEs) are now tested for new car models to reflect real driving conditions. Furthermore, there are rules on in-service conformity (which require vehicles to continue to conform to

the standards while in circulation), durability of pollution control devices, on-board diagnostic (OBD) systems, measurement of fuel consumption, and access to vehicle repair and maintenance information for independent operators. Similar rules are in place for heavy-duty vehicles such as buses and lorries. A new regulation on type approval and market surveillance of motor vehicles, applicable from 1 September 2020, has recently been adopted to increase the quality and independence of technical services and to verify whether vehicles already on the road comply with the requirements.

III Other transport emissions

To reduce air pollution from ships said to be responsible for 50 000 premature deaths every year the EU has set limits on the sulphur content of marine bunker fuels used in ships operating in European seas. The general sulphur limit will fall from 3.5% to 0.5% by 2020 in line with limits agreed by the International Maritime Organisation. Since 2015, an even stricter standard of 0.1% has applied in certain areas designated Sulphur Emission Control Areas (SECAs), such as the Baltic Sea, the English Channel and the North Sea. Further emission performance standards have been set for non-road mobile machinery, such as excavators, bulldozers and chainsaws, as well as for agricultural and forestry tractors and recreational craft such as sport boats.

IV Emissions from industry

The Industrial Emissions Directive (IED) covers highly polluting industrial activities that account for a significant share of pollution in Europe. It consolidates and merges all relevant directives (on waste incineration, volatile organic compounds, large combustion plants, integrated pollution prevention and control, etc.) into one coherent legislative instrument, with the aim of facilitating implementation of the legislation and of minimising pollution from various industrial sources. The IED lays down the obligations to be met by all industrial installations, contains a list of measures for the prevention of water, air and soil pollution, and provides a basis for drawing up operating licences or permits for industrial installations. Using an integrated approach, it takes into account the total environmental performance of a plant, including the use of raw materials or energy efficiency. The concept of best

available techniques (BATs) plays a central role, as do flexibility, environmental inspections and public participation.

Noise Pollution:

Environmental noise levels are rising in urban areas, mainly as a result of increasing traffic volumes and intensifying industrial and recreational activities. It is estimated that around 20% of the population of the EU are subjected to noise levels that are considered unacceptable. This can affect quality of life and lead to significant levels of stress, sleep disturbance and adverse health effects, such as cardiovascular problems. Noise also has an impact on wildlife.

Achievements regarding Noise Pollution

The EU's approach to noise pollution is two-fold, involving: a general framework for the identification of noise pollution levels requiring action at both Member State and EU level; and a series of pieces of legislation on the main sources of noise, such as road, air and rail traffic noise, and noise from equipment for outdoor use.

The Framework Directive on environmental noise aims to reduce exposure to environmental noise by harmonising noise indicators and assessment methods, gathering noise exposure information in the form of 'noise maps', and making this information available to the public. On this basis, the Member States are required to draw up action plans to address noise problems. Noise maps and action plans need to be reviewed at least every five years.

The regulation on the sound level of motor vehicles introduces a new test method for measuring noise emissions, lowers the existing noise limit values and includes additional sound emission provisions in the type-approval procedure. Other regulations set noise limits for mopeds and motorcycles. These regulations are complemented by further rules on the testing and limiting of tyre rolling noise levels and their gradual reduction.

Since June 2016, EU aviation noise rules in line with the balanced approach created by the International Civil Aviation Organisation (ICAO) have applied to airports with more than 50 000 civil aircraft movements per year. This approach consists of four principal elements designed to identify the most cost-efficient way of tackling aircraft noise at each individual airport: reducing noise levels at the source through the deployment of modern aircraft, managing the land around airports in a sustainable way, adapting operational procedures to reduce the impact of noise on the ground, and, if necessary, introducing operating restrictions such as bans on night flights.

In the context of the railway interoperability directive, a technical specification for interoperability (TSI) on noise sets maximum levels of noise that new (conventional) railway vehicles can produce. The noise charge regulation incentivises the retrofitting of freight wagons with low-noise composite brake blocks.

Large industrial and agricultural installations covered by the IED are able to receive permits following the use of best available techniques (BATs) as references. Noise emitted by construction plants (e.g. noise from excavators, loaders, earth-moving machines and tower cranes), as well as from recreational craft or equipment for outdoor use, is also regulated.

Role of the European Parliament

Parliament has played a decisive role in the formulation of a progressive environmental policy to combat air and noise pollution.

For instance, MEPs voted to drastically lower the harmful sulphur content of marine fuels from 3.5% to 0.5% by 2020 and successfully fought attempts to postpone this deadline by five years. In line with recommendations from the World Health Organisation, Parliament also called for stricter air quality rules, especially on fine particles. In the wake of the discovery in the US that the Volkswagen group used test-cheating software to drive down NOX emissions, Parliament set up a temporary committee of inquiry into emission measurements in the automotive sector (EMIS) to investigate the matter. In its final report, it calls for Member States and car manufacturers to be held accountable and urges them to retrofit or withdraw highly polluting cars from the market.

With regard to environmental noise, Parliament has repeatedly stressed the need for further reductions in limit values and for improved measurement procedures. It has called for the establishment of EU values for noise around airports and also for the extension of noise reduction measures to cover military subsonic jet aircraft. Furthermore, it has approved the phasing-in of new, lower noise limits for cars and has successfully campaigned for the introduction of labels to inform consumers about noise levels, similar to those of the existing schemes for fuel efficiency, tyre noise and CO_2 emissions.

2.4 Summary

Conclusively, this Unit provided an overview of the EU Position on the three types of pollution and the efforts made by the EU to facilitate enforcement of its Member States regarding the legislation adopted.

2.5 References/ Further Reading/Web Resources

EU "Clean Air Outlook" up to 2030. Article in Acid News 3/2018.

AirClim ' EU Air Pollution Policy' <https://www.airclim.org/eu-air-pollution-policy>

Zsuzsanna Laky ' Air and noise pollution' <https://www.europarl.europa.eu/factsheets/en/sheet/75/air-and-noise-pollution>

Zsuzsanna Laky ' Water protection and management' <https://www.europarl.europa.eu/factsheets/en/sheet/74/water-protection-and-management>

European Environmental Agency ' An overview of EU Environment Policy targets and objectives' 24 July 2013, <https://www.eea.europa.eu/highlights/an-overview-of-eu-environment>

Art 1(4) UN Convention on Long-range Transboundary Air Pollution (LRTAP) Art. 16 cited in O.G. Amokaye: Environmental Law and practice in Nigeria. 2nd Ed 2014 Lagos page 562

O.G. Amokaye: Environmental Law and practice in Nigeria. 2nd Ed 2014 Lagos page 557

Orie, Erimma Gloria & Akujobi Alero, (2018) "Re-use of Waste Water and harvesting of Stormwater to attain Sustainable Development goals in Nigeria: the legal / regulatory imperatives", *National Open University of Nigeria International Journal of Private & Property Law (NIJPPL)* Vol.1, 1, 31-57 (Contribution 80%).

1.6 Possible Answer to Self- Assessment;

In 2012, the Commission launched the Blueprint to Safeguard Europe□s Water Resources, a long-term strategy which aims to ensure the availability of a sufficient level of quality water for all legitimate uses by better implementing current EU water policy, integrating water policy objectives into other policy areas, and filling gaps in the current framework.

EU policy has established two main legal frameworks for the protection and management of our freshwater and marine resources, namely ; the Water Framework Directive (WFD) and the Marine Strategy Framework Directive (MSFD).

i. The EU Water Framework Directive (WFD) establishes a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. The overall objective is to achieve good environmental status for all waters.

The WFD is supported by more targeted directives, i.e. the Groundwater Directive, the Drinking Water Directive and the Bathing Water Directive, the Nitrates Directive, the Urban Wastewater Treatment Directive, the Environmental Quality Standards Directive and the Floods Directive:

The directive on the protection of groundwater against pollution and deterioration provides for specific criteria for the assessment of good chemical status, the identification of

significant and sustained upward trends, and the definition of starting points for trend reversals. All threshold values for pollutants (with the exception of nitrates and pesticides, for which the limits are set by specific EU legislation) are set by the Member States.

ii. EU coastal and marine policy

The Marine Strategy Framework Directive (MSFD) is the environmental pillar of the EU's Integrated Maritime Policy (IMP), which was set up with a view to enhancing the sustainable development of its maritime economy while better protecting its marine environment.

The objective of the MSFD is to reach "good environmental status" (GES) of the EU's marine waters by 2020, to continue its protection and preservation, and to prevent subsequent deterioration.

It establishes European marine regions (the Baltic Sea, the North-east Atlantic Ocean, the Mediterranean Sea and the Black Sea) and sub-regions within the geographical boundaries of the existing Regional Sea Conventions. In order to achieve GES by 2020, Member States have to develop ecosystem-based strategies for their marine waters, to be reviewed every six years.

A regulation on Integrated Coastal Zone Management (ICZM), moreover, defines the principles of sound coastal planning and management to be taken into account by Member States.

Generally, the protection of marine waters in Europe is governed by four international cooperation structures, so-called Regional Sea Conventions between the Member States and neighbouring countries sharing common waters: the OSPAR Convention of 1992 (based on the earlier Oslo and Paris conventions) for the North-East Atlantic; the Helsinki Convention (HELCOM) of 1992 on the Baltic Sea Area; the Barcelona Convention (UNEP-MAP) of 1995 for the Mediterranean; and the Bucharest Convention of 1992 for the Black Sea.

Unit Three: Treaty Law and Protection of the Marine Environment

Contents

3.1 Introduction

IEL is the study of various treaties, instruments, the objectives and purpose and the environmental problem which the treaty tries to remedy. As such, an understanding of IEL requires a foray into the intricacies of treaty law and the intention of treaties which are adopted by State Parties.

3.2 Learning Outcomes

At the end of this Unit, you will be able to ;

understand the differences between treaties, protocols and other agreements and their reflection of rules of international law.

3.3 Treaty Law and Protection of the Marine Environment

Treaties (also referred to as conventions, accords, agreements and protocols) are the primary source of international legal rights and obligations in relation to environmental protection. A treaty can be adopted bilaterally, regionally or globally, and is defined by the 1969 Vienna Convention on the Law of Treaties (1969 Vienna Convention) as ' an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation' . At the heart of this definition is the idea that the instrument is intended to create international legal rights and obligations between the parties. Numerous attempts have been made to classify treaties in one form or another, such as whether they are bilateral or multilateral, or of general or universal effect. These efforts frequently have not shed a great deal of light on the practical consequences of a particular treaty. Certain treaties nevertheless have greater authority than others and may assume the quality of ' law-making treaties' in the sense that they have been concluded for the purpose of laying down general rules of conduct among a large number of states.

Factors which are relevant in assessing the authority of a treaty include: the subject-matter it addresses; the number and representatives of states participating in its negotiation, and signing it or becoming parties; the commitments it establishes; and practice prior to and following its entry into force. In relation to environmental obligations, certain treaties of potentially global application might be considered to have ' law-making' characteristics, particularly where they have attracted a large number of ratifications. These include the 1946 International Whaling Convention, the 1972 World Heritage Convention, the 1987 Montreal Protocol (as amended), the 1989 Basel Convention, the 1995 Straddling Stocks Agreement, etc.

Environmental treaties share the same general characteristics as other treaties and are subject to the general rules reflected in the 1969 Vienna Convention and customary law. Nevertheless, certain special features exist, even if a standard format has not yet emerged. When regulating regional or global environmental problems, a framework treaty is frequently

adopted. This sets out general obligations, creates the basic institutional arrangements, and provides procedures for the adoption of detailed obligations in a subsequent protocol. Frequently, a framework agreement or protocol will have one or more annexes or appendices, which include scientific, technical or administrative provisions (such as dispute settlement or information exchange) but which might also list the species, substances or activities which are regulated, or the parties to which one or more substantive obligations will apply. This three-tiered approach (framework agreement, protocol, annex/appendices) introduces flexibility by allowing legal amendments or other changes in accordance with political, scientific or economic developments.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

a. Discuss the nature of environmental treaty

The process of ratification

The process of ratification is explained in this Unit as follows. In the first instance, the signatory state is required to comply with its constitutional and other domestic legal requirements in order to ratify the treaty. This act of ratification, depending on domestic legal provisions, may need to be approved by the legislature, parliament, Head of State and/or similar entity. It is necessary to differentiate between the act of domestic ratification and the act of international ratification. Once the domestic legal requirements are satisfied, in order to undertake the international act of ratification, the state concerned must formally inform the other parties to the treaty of its commitment to undertake the binding obligations under the treaty. In the case of a multilateral treaty, this constitutes submitting a formal instrument signed by the Head of State or Government or the Minister of Foreign Affairs to the depository who, in turn, informs the other parties. With ratification, a signatory state expresses its consent to be bound by the treaty. Instead of ratification, it can also use the mechanism of acceptance or approval, depending on its domestic legal or policy requirements. A non-signatory state which wishes to join the treaty after its entry into force, usually does to by lodging an instrument of accession.

Hence, the adoption of the treaty text does not by itself, create any international obligations. Similarly, in the case of multilateral treaties, signature by a state normally does not create legally binding obligations. A state usually signs a treaty stipulating that it is subject to ratification, acceptance or approval. It is the action of ratification, accession, acceptance, approval, etc which creates legally binding rights and obligations. However, the creation of binding rights and obligations is subject to the treaty' s entry into force. This means that a treaty does not enter into force or create such legally binding rights and obligations until the necessary conditions stated by it are satisfied i.e. that a certain number of States sign the treaty before it can enter into force.

The treaty-making process

The adoption and entry into force of an environmental treaty is preceded by a series of steps which will frequently take place over a lengthy period of time. Once two or more states have identified an environmental issue as requiring international legislation, they will identify the forum or institution to serve as a legislative forum. If the subject is already covered by a framework treaty, the new legal obligation could be developed in a protocol or by amendments to an existing protocol; in such cases, the appropriate forum will be the conference of the parties or equivalent institution established by the framework agreement. If the international legislation can appropriately be dealt with by an international act other than a treaty, it may be addressed simply by a binding decision, or resolution, or other act of an international organisation or the conference of the parties of an environmental treaty. If a new treaty is required, the states involved will need to determine which organisation shall conduct the negotiation of the treaty. Once the forum for negotiations is agreed, that body will establish a negotiating process. This could be anything from an informal *ad hoc* group of governmental experts (such as was established by the UNEP Governing Council for what became the 1985 Vienna Ozone Convention), to a formal institutional structure (such as the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC), established by UN General Assembly Resolution 44/212). Negotiations may be open-ended in time or established for a limited period. Once the draft text has been negotiated, it will be adopted and opened for signature. It will then enter into force in accordance with its provisions on entry into force.

3.4 Summary

This unit provided an overview of treaty law, treaty making process, the process of ratification of treaties. It is expected that you now have a grasp of specific terms which run through IEL discussions globally and at the national level.

3.5 References/Further Reading/ Web Resources

M. Fitzmaurice, ' Expression of Consent to be Bound by a Treaty as Developed in some Environmental Treaties' , in J. Klabbers and R. Lefeber (eds.), *Essays on the Law of Treaties* (1997), 59.

Lal Kurukulasuriya and Nicholas A Robinson (eds) *Training Manual on International Environmental Law* pp 4 – 6.

Phillippe Sands, *Principles of International Environmental Law* (2ed, Cambridge University Press: New York, 2003)126 -130.

3.6 Possible Answers to Self- Assessment Exercise

Although environmental treaties share the same general characteristics as other treaties and are subject to the general rules reflected in the 1969 Vienna Convention and customary law. certain special features exist, even if a standard format has not yet emerged.

When regulating regional or global environmental problems, a framework treaty is frequently adopted.

Treaties sets out general obligations, creates the basic institutional arrangements, and provides procedures for the adoption of detailed obligations in a subsequent protocol.

Unit Four: Customary International Law

Contents

4.1 Introduction

Customary international law remains one of the main sources of international law and IEL as it is connected with the fundamental problems of law. As such, it is important to understand the factors influencing the growth of international custom which makes it a very important source of international law.

4.2 Learning Outcomes

By the end of this Unit you will be able to;

Discuss the importance of customary international law

4.3 Customary International Law

Robert Ago defines customary law or *ius non scriptum*, as primarily ' the type of norm which, not having been manifested by an appropriate creative act, can only be recognized as existing by the outward manifestations of its functioning in the conscience of members of the social body.' Briggs also notes that ' the proper way to express the process by which customary international law is created is to say that a particular pattern of state conduct hitherto legally discretionary, has acquired obligatory force through its general acceptance by states as a legal obligation' Standard textbooks on international law do, of course, state the traditional requirements for the coming into existence of a new customary rule, namely, according to Hudson, the following: (a) concordant practice by a number of States with reference to a type of situation falling within the domain of international relations; (b) continuation or repetition of the practice over a considerable period of time; (e) conception that the practice is required by, or consistent with, prevailing international law; and (d) general acquiescence in the practice by other States.

On the basis of the definitions provided by Keohane and Young, the process of customary international law is clearly an institution. In Keohane' s terms, it is a persistent and connected set of informal rules which prescribe behavioural roles, constrain activity and shape expectations. In Young' s terms, it is an identifiable social convention which results from the convergence of patterned behaviour and actor expectations, and to which States conform without making elaborate calculations on a case-by-case basis. The similarities between Young' s definition of institutions and traditional definitions of customary international law, namely the convergence of State practice and *opinio juris*, are striking.

The process of customary international law would also seem to fit within the scope of the well-known definition of international regimes provided by Krasner *et al*., namely, ' sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations' . Customary law is derived from the behaviour of States according to norms generally accepted as binding.. Rules of customary law that are consistently obeyed and reinforced across context and time

can emerge as a form of super-custom and become non-derogable or peremptory norms of international law (sometimes referred to as *jus cogens*).

Some obligations under customary law, typically those involving matters of global concern, are owed to the international community as a whole, not just to a particular, identifiable State. All members of the international community have an interest in seeing these obligations respected. Most international lawyers agree that customary international law results from the co-existence of two elements: first, the presence of a consistent and general practice among States; and, secondly, a consideration on the part of those States that their practice is in accordance with law. The second, subjective element is usually referred to as *opinio juris sive necessitatis*, or simply *opinio juris*. It is clear that something in addition to State practice should be necessary for customary international law, for it is essential that one be able to distinguish between legally binding rules and patterns of behaviour which are not legally required.

An interdisciplinary approach to the study of customary international law thus leads one to regard the customary process as a set of shared beliefs, expectations or understandings held by the individual human beings who govern and represent States. Like all institutions and the international system itself, the process of customary international law is nothing but a set of ideas, no matter how tangible the consequences of those ideas may be. The most significant result of the ideas or shared understandings which constitute this process may be that State practice in respect of a legal or potentially legal issue generally provides an indication of the degree to which States are interested in a particular legal outcome.

In other words, all States agree that practice consistent with a potential, emerging or existing rule indicates support for that rule, that practice inconsistent with the rule indicates opposition to it, and that an absence of practice in the area governed or potentially governed by the rule indicates ambivalence to the rule, and may, as a result, constitute acquiescence. The existence of such a shared understanding would be consistent with the ‘ realist’ assumption that States behave in accordance with their own interests.

However, these interests are interests as States perceive them to be. They could, therefore, involve much more than simply maximizing a State’ s power in relation to other States. Much would depend on the internal political system of the State concerned, its relative

affluence and the existence or perception of external threats, be they of a military, economic, environmental or other character. The customary process thus fulfils the main purpose of Keohane' s institutions, namely that of facilitating cooperation between States in a manner which takes into account variations in their ' mutual interest' . In other words, variations in the ' mutual interest' , acting through the institution, have substantial effects on State behaviour, in this case through the development, maintenance or change of customary rules.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

4.4 Summary

In conclusion, this unit examined the definitions of CIL and the intricacies and perceived arguments based on same in international law. It is expected that you understand these arguments and the variety of definitions to deepen your understanding of the concept of CIL.

4.5 References/Further Reading/Web Resources

Marie-Claire Cordonier Segger, Ashfaq Khalfan & Salim Nakjavani Weaving he Rules for Our Common Future: Principles, Practices and Prospects for International Sustainable Development Law (2002) p 8**.**

R. Ago, ' Positive Law and International Law,' (1957) 51 American Journal of International Law 723.

H. W. Briggs, ' The Columbian-Peruvian Asylum Case and Proof of Customary International Law,' 45 American Journal o[International Law 730 (1951).

M. Serensen, Les Sources du Droit International: Etude sur la Jurisprudence de la Cour Permanente de Justice Internationale (Copenhagen: Munksgaard, 1946), p. 85.

H. W. Briggs, The Law o[Nations, (2ed, New York: Appleton-Century-Crofts, 1952), p. 25.

Michael Byers Custom, Power and the Power of Rules: International Relations and Customary International Law (Cambridge University Press, Cambridge, 2004) pps 147, 15`1-152, 154-155.

Zdenek J Slouka International Custom and the Continental Shelf - A Study in the Dynamics of Customary Rules of International Law (Martinus Nijhoff: The Hague, Netherlands, 1968) 1-3.

4.6 Possible Answer to Self- Assessment Exercise

Different scholars like Robert Ago, Briggs, Kehoane, Hudson etc have defined customary international law differently but many agree that customary international law is an institution.

Also agree that there are some traditional requirements for the coming into existence of a new customary international rule, namely, according to Hudson there should be; (a) concordant practice by a number of States with reference to a type of situation falling within the domain of international relations; (b) continuation or repetition of the practice over a considerable period of time; (c) conception that the practice is required by, or consistent with, prevailing international law; and (d) general acquiescence in the practice by other States.

Customary law is derived from the behaviour of States according to norms generally accepted as binding. In order to constitute customary law, such state behaviour must be consistent and widespread, and there must also be evidence that States act as they do because they actually believe they are bound by these norms. Rules of customary law that are consistently obeyed and reinforced across context and time can emerge as a form of super-custom and become non-derogable or peremptory norms of international law (sometimes referred to as *jus cogens*).

Some obligations under customary law, typically those involving matters of global concern, are owed to the international community as a whole, not just to a particular, identifiable State.

An interdisciplinary approach to the study of customary international law thus leads one to regard the customary process as a set of shared beliefs, expectations or understandings held

by the individual human beings who govern and represent States. Like all institutions and the international system itself, the process of customary international law is nothing but a set of ideas, no matter how tangible the consequences of those ideas may be. The most significant result of the ideas or shared understandings which constitute this process may be that State practice in respect of a legal or potentially legal issue generally provides an indication of the degree to which States are interested in a particular legal outcome.

Unit Five: Activities of International Organisations

Contents

5.1 Introduction

International organisations help to shape and implement the provisions contained in treaties and serve as a supervisory body monitoring the activities of States in relation to particular instruments.

5.2 Learning Outcomes

By the end of this Unit you will be able to discuss the key international organisations and their roles under IEL.

5.3 Activities of International Organisations

International environmental organizations are defined as agencies that have been set-up by national governments with some degree of permanence, that are beyond the formal control of national governments but are controlled by multilateral mechanisms through the collective of governments, and that serve environmental protection as a specific policy purpose. They can also be seen as hierarchically organized group of international civil servants with a given mandate and resources within the context of a given policy area. This definition thus covers the United Nations Organisation and its specialised agencies and also some of its semi-autonomous sub-bodies, such as treaty secretariats. International organizations help to create and bind international regimes, without them, there would be little in the way of monitoring performance, devising regulations, considering sanctions and arranging follow up meetings. Institutions such as United Nations have major organizations concerned with protection of the environment such as the United Nations Environment Programme (UNEP), the European Union, the Organisation for Economic Cooperation and Development (OECD), and the Council of Europe. Since ultimate responsibility for the protection of the environment remains at the national and local level, municipal laws and regulations related to the environment are increasingly being sought after.

The following are the relevant international institutions for the protection and preservation of the environment:

Self-Assessment Exercises

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

Discuss the role of the OECD in the development of international

5.3.1. United Nations Environmental Project (UNEP): It was created by the decision of the 1972 Stockholm conference as a body to guide the future of international environmental law. UNEP is the leading environmental authority in the United Nations system. UNEP uses its expertise to strengthen environmental standards and practices while helping implement environmental obligations at the country, regional and global levels. UNEP's work is focused on helping countries transition to low-carbon and resource-efficient economies,

strengthening environmental governance and law safeguarding ecosystems, and providing evidence-based data to inform policy decisions.

UNEP assists Nigeria by safeguarding ecosystems, and providing evidence-based data to inform policy decisions. It equally provides leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations.

5.3.2. The World Commission on Environment and Development (WCED): The WCED was set up in 1983: It is an independent body linked to but outside the control of governments and the UN system. The Commissions mandate gave it three objectives: re-examine the critical environment and development issues and to formulate realistic proposals for dealing with them; to propose new forms of international cooperation on these issues that will influence policies and events in the direction of needed changes; and to raise the levels of understanding and commitment to action of individuals, voluntary organizations businesses, institutes, and governments. The Commission's report known as the Brundtland Report, sought ways in which global development can be put on a sustainable path into the 21st century.

5.3.3 The Commission on Sustainable Development (CSD): The CSD was established in the wake of 1992 Rio conference to monitor and review the implementation of Agenda 21, which is the first comprehensive international plan agreed at Rio for achieving sustainable development. It serves as a permanent diplomatic forum for negotiation between governments on environmental issues.

5.3.4. International Court of Justice (ICJ): The ICJ was established under the UN Charter to serve as a principle judicial organ of the UN. Its two main functions are to settle legal disputes submitted by states in accordance with international law and to give advisory opinions on questions of law at the request of the General Assembly, Security Council and other UN bodies. Not many environmental issues have been brought before the court but in 1992 it established a special seven-member chamber for hearing environmental cases though not a single case has yet come before it.

5.3.5. The Organization for Economic Cooperation and Development (OECD): The convention *establishing the OECD* was signed on Dec. 14, 1960, by 18 European countries, the United States, and Canada and went into effect on Sept. 30. 1961. It is a group of industrialized countries which aims to promote economic growth of its members, assist developing states and encourage world trade. Much of their work concerned the problem of transboundary pollution. It was responsible for developing the well-known polluter pays principle. It was also the first international body to take legal action to control exports and imports of hazardous waste. The relevant Acts of the OECD which are binding on the member states formed the basis of the Basel Convention and Regulation of Shipment of hazardous waste. It has also produced recommendations on the management of environmental information by public bodies.

The OECD is not just a grouping of economically significant nations, but also a policy forum covering a broad spectrum of economic, social, and scientific areas, from macroeconomic analysis to education to biotechnology. The OECD helps countries, both OECD members and non-members, reap the benefits and confront the challenges of a global economy by promoting economic growth, free markets, and efficient use of resources.

Recent work has focused on the role of regional trade agreements in promoting environmental awareness and the inclusion of environmental objectives in negotiations, along with resource efficient economies and sustainable materials management. As at date, OECD member countries account for 63 percent of world GDP, three-quarters of world trade , 95 percent of world official development assistance, over half of the world's energy consumption, and 18 percent of the world's population.

5.3.6. The World Bank: The World bank gives loans to states for reconstruction and development and for projects that will enhance economic growth. It has financed projects such as building of power station, pipelines and roads that have caused environmental damage. It has committed itself to implementing the Rio Declaration by making sure it funds developments that are ecologically sound and with a requirement of Environmental Impact assessment. It funds developing nations in area of climate change, ozone depletion, biological diversity and marine conservation. NB: The World Bank has a rule not to fund projects that will impact negatively on the environment and they also serve as sanction mechanism for countries who fail to oblige to the conventions by refusing to fund them. This decision is

founded on its Group Strategy which sets out the corporate goals of ending extreme poverty and promoting shared prosperity in all its partner countries , Securing the long-term future of the planet, its people and its resources, ensuring social inclusion, and limiting the economic burdens on future generations will underpin these efforts The two goals emphasize the importance of economic growth, inclusion and sustainability—
including strong concerns for equity

5.3.7. World Trade Organization (WTO): The WTO is a forum for furthering international trade among nations and for settling disputes arising out of trade agreement but does not encourage trade in such chemicals that harm the environment. The WTO offers a powerful supporting framework for sustainable development and green economy. Sustainable development and protection and preservation of the environment are fundamental goals of the WTO. They are enshrined in the Marrakesh Agreement, which established the WTO, and complement the WTO' s objective to reduce trade barriers and eliminate discriminatory treatment in international trade relations. While there is no specific agreement dealing with the environment, under WTO rules members can adopt trade-related measures aimed at protecting the environment provided a number of conditions to avoid the misuse of such measures for protectionist ends are fulfilled.

5.4 Summary

In conclusion, this unit introduces you to a number of IEL institutions which help to shape its development and monitor the activities of State Parties to treaties.

5.5 References/ Further Readings/Web Resources

International environmental agreements: A survey of their features, formation, and effects. November 2003; Annual Review of Environment and Resources 28(1): ...
https://www.researchgate.net publication 228544665...

Mitchell, R.B., International Environmental Agreements: A Survey of Their Features, Formation, and Effects' (2003) 28 *Annual Review of Environment and Resources* 429 -461.

International Environmental Agreements*: A* Survey *of* their Features, Formation, *and* Effects. Annual Review of Environmental Resources, 28 (1), 429– 461. doi ...
https://journal.eu-jr.eu ttissh article view

A Underdal, A Quantitative Approach to Evaluating International ... 2004

https://link.springer.com › Regime Consequences

State-led global environmental governancehttps://www.cambridge.org › *core* › *books* › *stateled-glo...*
C Montagna · 2020 Welfare and Trade Effects of International Environmental ...
https://link.springer.com › *article*

5.6 Possible Answer to Self- Assessment Exercise

The OECD: Some of the ways that it has assisted in promoting development of international environmental law include;

i. to promote economic growth of its members, assist developing states and encourage world trade.
ii. concerns for the problem of transboundary pollution. It was responsible for developing the well-known polluter pays principle.
iii. was also the first international body to take legal action to control exports and imports of hazardous waste. The relevant Acts of the OECD which are binding on the member states formed the basis of the Basel convention and Regulation of Shipment of hazardous waste.
iv. also produced recommendations on the management of environmental information by public bodies.

MODULE 5: CURRENT CONCERNS ABOUT ENVIRONMENTAL DEGRADATION: AND ENVIRONMENTAL DISPUTES

Unit One

Contents

1.1 Introduction

Environmental degradation, including depletion of renewable and non-renewable resources and pollution of air, water and soils, can greatly contribute to stress on societies. This degradation is exacerbated by human activities. As such, the typical response to tackle environmental degradation is through policy responses and adaptation of consumption and production patterns, amongst others.

This module examines key environmental issues which contribute to environmental degradation such as desertification, deforestation and flooding. These three issues are discussed based on international and national responses and the extent to which conservation measures have been utilized or adapted to prevent further environmental degradation.

1.2 Learning Outcome

At the end of this Unit you will be able to;

Discuss key environmental issues like desertification, deforestation and flooding

Discuss policy responses which have been adopted at the international and national levels to tackle these issues.

1.3 Current Concerns about Environmental Degradation: Desertification

Desertification

Desertification is land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities. It affects about one sixth of the world's population and dry lands, The most obvious impact of desertification, in addition to widespread poverty, is the degradation of billions of hectares of the total area of rangeland, constituting over 80 per cent of the rangeland with a low potential for human and animal carrying capacity; decline in soil fertility and soil structure and the degradation of irrigated cropland, amounting to 30 per cent of the dryland areas with a high population density and agricultural potential.

Dry lands are defined in terms of water stress to mean that the ratio of mean annual precipitation (‘ P’) to the mean annual potential evapotranspiration (PET) is less than 1.0. Dry lands are ecologically fragile areas because they are characterized by low seasonal rainfall, variable rainfall with potential for water logging and salinization of irrigated lands. Thus, drylands are mostly prone to desertification because they recover slowly from disturbance.

Thus, the main causes of desertification is poor management of arable land including over use of pesticides, poor irrigation practices, dumping of wastes, poor land-use planning, deforestation, etc.

The problems of desertification raises a plethora of environmental issues which require international and national regulation and cooperative action to tackle them. These issues, inter alia, include: controlling human activities on fragile lands to prevent land degradation; controlling population growth to prevent and facilitate reduction of negative population impacts on fragile lands; rehabilitating degraded lands and lands experiencing impacts of drought that might lead to desertification.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

International Legal Regime on Desertification

The United Nations Convention to Combat Desertification (UNCCD) 1994 is the sole legally binding international agreement linking environment and development to desertification. It entered into force in December 1996. There are currently 197 Parties to the UNCCD.

The objective of the UNCCD is ' to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership agreements.' (Article 2) Another key provision of the Convention is Article 4 (2) (d) – (f) which enjoins parties to promote cooperation amongst them at all levels; national, sub-regional, regional and international. Cooperation allows them to create appropriate institutional mechanisms and to use existing bilateral and multilateral financial mechanisms and arrangements to facilitate their efforts to protect and conserve the environment in ways that can prevent or minimize desertification and drought. This entails, for example, the establishment by countries of joint funds to finance programmes and projects to combat desertification.

Articles 20 and 21 also obligate developed countries to financially support developing States in meeting their obligations under the UNCCD.

In recognition of the fact that desertification/land degradation and drought (DLDD) constitute global challenges, and are a contributor to the aggravation of economic, social and environmental problems like poverty, poor health, biodiversity, water scarcity, climate change, the UNCCD 2018-2030 Strategic Framework was adopted. The Framework has five key objectives: to improve the condition of affected ecosystems, combat desertification/land degradation, promote sustainable land management and contribute to land degradation neutrality; to improve the living conditions of affected populations; to mitigate, adapt to, and manage the effects of drought in order to enhance resilience of vulnerable populations and ecosystems; to generate global environmental benefits through effective implementation of the UNCCD; and to mobilize substantial and additional financial and non-financial resources

to support the implementation of the Convention by building effective partnerships at global and national level.

National Regulation on Desertification

The National Environmental (Desertification Control and Drought Mitigation) Regulations 2011 was made for the control of desertification in all affected areas in Nigeria. The objectives of the Regulation include sensitization of the public on causes and dangers of desertification and attendant land degradation; promotion of the use of alternative sources of energy, including wind, solar, briquettes, coal, gas, etc. (Section 2). The regulation also observes the principles of prevention first to prevent potentially vulnerable areas from being affected by desertification; and environmental impact assessment on lands threatened by desertification. (Section 3).

The duties of NESREA with regards to desertification control are set out under section 4, including the declaration of special protected areas under desertification or the threat of desertification (Section 5). Part III of the Regulations also provide for mitigation of drought while Part V provides for penalties on any person who violates any of the provisions of the Regulations. Such an offender shall on conviction, be liable to a penalty not exceeding one million naira or imprison for a term of not more than two years or both such fine and imprisonment, and an additional 10, 000 for everyday the offence subsists. In the case of a body corporate, the penalty is Five Million Naira and an additional fine of 50, 000 daily for everyday the offence subsists (Section 21 (1 & 2).

1.4 **Summary**; This unit has examined desertification as an environmental concern. Specifically it discussed the international and national perspectives.

1.5 References/ Further Readings / Web Resources

C Nwokocha**, Effect of Desertification on Environmental**
https://www.arabianjbmr.com › *pdfs* › *2.pdf*

Explainer: Desertification and the role of climate change
https://www.carbonbrief.org › *explainer-desertificatio..*

Yang Youlin, Consequences of desertification 2006
https://www.sprep.org IntroUNCCD-NAPkey

What Is Desertification? Causes, Effects, And Solutions https://earth.org › what-is-desertification

1.6 Possible Answer to Self- Assessment Exercise

Desertification is land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities. Dry lands are defined in terms of water stress to mean that the ratio of mean annual precipitation (' P') to the mean annual potential evapotranspiration (PET) is less than 1.0. Dry lands are ecologically fragile areas because they are characterized by low seasonal rainfall, variable rainfall with potential for water logging and salinization of irrigated lands. Thus, drylands are mostly prone to desertification because they recover slowly from disturbance.

The problems of desertification raises a plethora of environmental issues which require international and national regulation and cooperative action to tackle them. These issues, inter alia, include: controlling human activities on fragile lands to prevent land degradation; controlling population growth to prevent and facilitate reduction of negative population impacts on fragile lands; and rehabilitating degraded lands and lands experiencing impacts of drought that might lead to desertification.

The United Nations Convention to Combat Desertification (UNCCD) 1994 is the sole legally binding international agreement linking environment and development to desertification. In recognition of the fact that desertification and drought (DLDD) constitute global challenges, and are a contributor to the aggravation of economic, social and environmental problems like poverty, poor health, biodiversity, water scarcity, climate change, the UNCCD 2018-2030 Strategic Framework was adopted.

In Nigeria the principal agency for the management of desertification is the NESREA. The duties of NESREA with regards to desertification control are set out under section 4, including the declaration of special protected areas under desertification or the threat

of desertification (Section 5). The Minister of Environment in exercise of its powers under section 34 of the NESREA Act established some regulations for the management of different aspects of the environment.

The National Environmental (Desertification Control and Drought Mitigation) Regulations 2011 which was made for the control of desertification in all affected areas in Nigeria is one of the regulations.

Unit 2: Concerns on Deforestation and Flooding

Unit Structure

2.1 Introduction

Forests are an important part of sustainable development. The Food and Agriculture Organization estimates that every year, 130, 000 square kilometres of the world' s forests are lost due to deforestation. Deforestation means depletion of forests a complete clearing of tree formations (closed or open) and their replacement by non-forest land uses. Many developed countries are confronted with the effects of air pollution and fire damage to their forests. As such, effective measures and approaches are required at the national level to prevent deforestation.

2.2 Learning Outcome

By the end of the Unit you will be able to ;

Discuss the causes and the impact of deforestation on the environment

Discuss possible solutions to the impact of deforestation.

2.3 Deforestation and flooding

2.3.1. Deforestation

Deforestation contributes to global warming which occurs from increased concentrations of greenhouse gases (GHGs) leading to a net increase in the global mean temperature as the forests are primary terrestrial carbon sinks. However, the direct causes of deforestation are expansion of farming land, establishment of plantations, logging, overgrazing, fires, mining, urbanization/industrialization, wars, tourism, etc.

At the international level, there appears to be no adopted treaty on Deforestation. However, the Kyoto Protocol 1997 states that industrialized parties shall ' implement and/or further elaborate policies and measures such as..promotion of sustainable forest management practices, afforestation and reforestation.' Under the Protocol, certain human-induced activities in the land-use, land-use change and forestry sector (known as LULUCF) that remove greenhouse gases from the atmosphere, namely afforestation, reforestation and tackling deforestation, may be used by industrialized countries to offset their emission targets. Conversely, changes in these activities that deplete carbon sinks, such as deforestation, will be subtracted from the amount of permitted emissions. Many uncertainties and complexities surround the subject of deforestation, and there is a need for further definition of the concept at national and international levels.

In Nigeria, the National Environmental (Control of Bush, Forest Fire and Open Burning) Regulations, 2011 prohibits the burning or destruction, amongst others, of any bush/forest without permit from NESREA. The regulations define forest to mean ' all areas supporting woody vegetation other than planted or cultivated crops regardless of the composition or age' (Section 230. It also prohibits the burning of bush or forests for hunting of animals (section 19). In addition, States such as Cross River, Edo and Kano already have Forestry

laws in place which obligate States to practice and put in place appropriate forest conservation measures to prevent deforestation.

2.3.2 Flooding

Floods are inundation of land due to river overflow, usually caused by heavy rain or torrents of water from other areas. Flooding can inundate land that is usually dry such as agricultural lands, settlements and city centres. In Nigeria, flooding is a common occurrence especially during the rainfall seasons (June to October) annually. Human factors or activities that cause floods include changes in land use, waste management, clogged drainage systems, poor urban planning measures, etc.

The Convention on the Law of the Non-navigational Uses of International Watercourses 1997 (' Watercourses Convention') enjoins States to individually and jointly take appropriate measures to prevent or mitigate conditions that may be harmful to an international water course such as flood or ice conditions (Article 27).

At the national level, the National Environmental (Soil Erosion and Flood Control) Regulations 2011 defines ' flood' to mean ' a large volume of run-off water in places that are hitherto dry or usually contains much less flowing water; it is an abnormally large quantity of water which cannot be contained within the existing channels. This definition must be differentiated from soil erosion which means ' a process by which the land surface is worn away by the action of water and wind, sometimes accelerated by human activities (section 20) The objective of these Regulations include the minimization of losses due to flood and erosion and their effects on vulnerable areas by regulating land-disturbing activities (Section 2(1)(b). Part III of the Regulations titled ' Flood Control Regulations' provides that all infrastructural development shall incorporate flood control measures, including but not limited to the provision of surface and subsurface drainage facilities, dams, flood walls, high flow diversions and planting of trees, shrubs and grasses (Section 14(1). NESREA is also mandated to ensure compliance by States, FCT Abuja and Local Governments in prohibiting the siting of facilities and major structures in identified areas with high risk of flooding (section 14(2).

Part IV provides for offences penalties on any person who violates any of the provisions of the Regulations. Such an offender shall on conviction, be liable to a fine not exceeding one

million naira or imprison for a term of not more than two years or both such fine and imprisonment, and an additional 10, 000 for everyday the offence subsists. In the case of a body corporate, the penalty is Five Million Naira and an additional penalty of 50, 000 daily for everyday the offence subsists (Sections 19 (1 & 2). Additionally, the offender shall also be responsible for the remediation of the damage to the environment and any affected properties therein (Section 19 (3)

Self-assessment Exercise

Discuss the National Environmental (Soil Erosion and Flood Control) Regulations 2011 and NESREA with regards to flood control in Nigeria

2.4 Summary

In conclusion, this unit introduced deforestation and flooding as part of issues which contribute to environmental degradation and the regulations adopted by NESREA in tackling these environmental issues in Nigeria.

2.5 References /Further Readings/ Web Resources

Orie Erimma Gloria. (2018), "Ecosystem services: The legal issues on Nigeria' s wetlands", In Patricia Kameri-Mbote, Alexander Paterson, Oliver C. Ruppel, Bibobra Bello Orubebe and Emmanuel D. Kam Yogo (eds.), *Law, Environment & Africa*, 1st Edition, (Nomos Verlagsgesellschaft, Baden-Baden, Germany) 315-333. https://www.nomos-elibrary.de/10.5771/9783845294605/law-environment-africa

Orie, Erimma Gloria (2017), "Sustainable Wetlands and Biodiversity Conservation: Nigeria' s Lagos Lagoons in Focus", In Usha Tandon, Mohan Parasaran and Sidharth Luthra (eds*), Biodiversity; Law Policy and Governance*, India: Routledge, Taylor and Francis, 1-35. *https://www.routledge.com/Biodiversity-Law-Policy-and-Governance/Tand...*

United Nations Research Institute for Social Development ' Environmental Degradation and Social Integration' UNRISD Briefing Paper No. 3, World Summit for Social Development, November 1994, pp 3-4 <https://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/52B8B9CA2197847380256B65004C9CC9/$file/bp3.pdf>

Agenda 21 – Chapter 12 ' Combating Fragile Ecosystems: Combating Desertification and Drought'

Training Manual on International Environmental Law, Chapter 19, pgs 260-264.

UNCCD ' Status of Ratification' https://www.unccd.int/convention/about-convention/status-ratification

Decision 7/COP.13/The UNCCD 2018-2030 < https://www.unccd.int/sites/default/files/relevant-links/2018-08/cop21add1_SF_EN.pdf>

Clement Akais Okia (ed) *Global Perspectives on Sustainable Forest Management* (InTech: Croatia, 2012)

Orie, Erimma Gloria. (2016), Climate change and Sustainable Forest management in Nigeria: a case for regulatory action, *National Open University of Nigeria Law Journal*, 1,31-53.

Qomariyatus Sholilah *et al* ' The analysis of the causes of flood disasters and their impacts in the perspective of environmental law (2020) IOP Conference Series: Earth and Environmental Science 437, p 2, <https://www.unccd.int/sites/default/files/relevant-links/2018-08/cop21add1_SF_EN.pdf>

E.G. Orie (2021), Re-Thinking the Legal Framework for Flood Management In Nigeria In The Light Of Climate Change And Sustainable Development Goals (SDGs). *International Journal Of Current Research In The Humanities (IJCRH), University Of Cape Coast, Cape Coast, Ghana* , No. 25 269-290 .

2.6 Possible answer to self-assessment Exercise

The regulation defines ' flood' to mean ' a large volume of run-off water in places that are hitherto dry or usually contains much less flowing water; it is an abnormally large quantity of water which cannot be contained within the existing channels. The objective of the Regulation include the minimization of losses due to flood and erosion and their effects on vulnerable areas by regulating land-disturbing activities (Section 2(1)(b). Part III of the Regulations titled ' Flood Control Regulations' provides that all infrastructural development shall incorporate flood control measures, including but not limited to the provision of surface and subsurface drainage facilities, dams, flood walls, high flow diversions and planting of

trees, shrubs and grasses (Section 14(1). NESREA is also mandated to ensure compliance by States, FCT Abuja and Local Governments in prohibiting the siting of facilities and major structures in identified areas with high risk of flooding (section 14(2).

Part IV provides for offences penalties on any person who violates any of the provisions of the Regulations. Such an offender shall on conviction, be liable to a fine not exceeding one million naira or imprison for a term of not more than two years or both such fine and imprisonment, and an additional 10, 000 for everyday the offence subsists. In the case of a body corporate, the penalty is Five Million Naira and an additional penalty of 50, 000 daily for everyday the offence subsists (Sections 19 (1 & 2). Additionally, the offender shall also be responsible for the remediation of the damage to the environment and any affected properties therein (Section 19 (3)

Unit 3: Environmental Dispute Resolution

Unit Structure

3.1 Introduction

The unit introduces you to the relatively novel area of environmental dispute resolution. Disputes are inevitable and a part of life. Litigation is the traditional means of resolving the disputes. However due to the inadequacy and short comings of litigation, the Alternative Dispute Resolution (ADR) has been gaining strength and acceptance.

3.2 Learning outcome

By the end of this unit you will be able to:

Discuss the meaning of ADR. Discuss the various forms of ADR mechanism and their benefits. Discuss the limitations of ADR.

3.3 The **Environmental Dispute Resolution**

Disputes and conflicts are inevitable in life and different commercial, legal and even social expectations can be sources for disagreement. In addition, genuine differences can concern the meaning of contracts terms, the legal implication for a contract and the respective rights and obligations of the parties. The successful management of such conflicts or dispute is a major way of ensuring peace

Litigation is the most recognized and established form of dispute resolution system in Nigeria and even in the world today. All other systems have come to assume secondary roles and have become alternatives to the court system.

ADR is a term often used to describe a wide variety of dispute resolution mechanisms that are different from or alternative to full scale adversarial court processes

The process is not rigid as is normal with court processes. In other words, while the Court system/ procedure focuses on ' achieving justice according to law' , the ADR processes are mostly concerned with bargaining trade-offs and the rules of substantive and procedural laws are equally relaxed.

More importantly, ADR mechanism is flexible ; means that the rules of substantive and procedural law are relaxed. It promotes and protects the privacy of aggrieved parties, creates calm and friendly atmosphere for parties to discuss, agree and disagree before reaching amicable and endorsable agreement.

It is important to note that ADR is not alien to Nigeria customs and traditions.

Among alternative dispute resolution methods, arbitration is defined as a jurisdictional means of settling disputes because of the power given to arbitrators to decide a case and issue an award

Environmental Disputes (EDR) has been defined in diverse ways by various scholars like . Basically, it refers to the resolution of disputes tensions, disagreements conflicts that arise from claims or assertions over portion(s) of the ecosystem or element(s) of the natural environment.

3.3.1 Forms of ADR and the Differences

The concept of ADR therefore **comprises a wide variety of processes**, which can be fashioned to meet the **specific needs of parties in resolving disputes**;

- each process being an alternative to litigation.
- These processes can be used singly or in combination with others but
- they all focus on bringing disputing parties together,
- diffusing adversarial negotiations through an impartial third party or among themselves and
- mutually agreeing on terms of settlement, whether in managing community tensions, landlord and tenants frictions or resolving multi-million Naira disputes.

ADR may be classified into two, mainly Binding and Non-binding ADR.

(a)Non-binding ADR includes:

Early Neutral Evaluation (ENE):

Under this system an impartial senior lawyer or retired judge or magistrate may evaluate the likely outcome of a case if it were to proceed to trial. Usually the expectation is that the process will lead to more realistic negotiation between the parties, without any influence on the path or process of negotiation, nor any binding judgment imposed.

Mediation;

Mediation involves a neutral third party whose intervention facilitates communication and negotiation between the disputing parties to foster a mutually agreed settlement between them.

The mediator is actively involved in the negotiation process but, unlike a judge or arbitrator, he has no power to impose a settlement, rather he assists in shaping solutions to meet the parties' mutual interests and achieve reconciliation.

In the **Nigeria** traditional societies, mediation has always being an age long tool for settling disputes peacefully between disputing parties,

----it was also a tool for preserving cultural norms and traditional values.

In the **Nigeria** traditional societies, mediation has always being an age long tool for settling disputes peacefully between disputing parties,

----it was also a tool for preserving cultural norms and traditional values.

Conciliation;

Essentially the role of the conciliator is facilitative. The process and outcome are also non- binding. Like mediation, agreements reached in conciliation amounts at best to gentleman' s agreement.

Was recognized by the Nigeria' s ACA 1988 but not recognized by the Arbitration and Mediation Act (AMA) 2023.

Negotiations ;

Negotiation is a process whereby two or more parties seek to reach a consensual agreement. There may be no third party involvement and this feature makes it a more cost effective option than those that require third party participation.

MINI-TRIAL:

A process whereby information is exchanged before a panel comprising of representatives of the disputants who are authorized to reach an agreement. Usually there will be an impartial third party who with the rest of the panel will hear both sides of the disputes and chair a question and answer sessions with all the participants after which the panel will seek to negotiate a settlement.

Expert Determination. (ED):

This process is also known as Valuation. Expert determination is a voluntary process in which a neutral third party, who is usually an expert in the field in which the dispute arises gives binding determination on the issues in dispute. A dispute may be referred to such expert determination either by

----means of a term in a pre-existing agreement or

----on an ad-hoc basis.

Self-Assessment Exercises

What are the Forms of ADR

3.3.2 Advantages of ADR

I. **Flexibility and Simplicity of Procedures**: ADR rules and procedures are flexible and simple and also easily adaptable to various types of dispute. Parties are empowered to conduct such a proceedings in such a manner as it considers appropriate so as to **ensure fair hearing**.

II. **Quicker Decision Making**: ADR procedures saves time, as going through traditional court of law to resolve cases involves procedures that are time consuming. The processes of obtaining evidence, presenting the evidence, preparing witnesses and the defense proceedings takes time.

III. Reduced Cost: The cost of seeking the services of a legal practitioner, obtaining evidence and processing such evidence, etc. may be enormous when compared to the cost of resolving disputes via the alternative dispute resolution methods.

IV. Privacy: Where the subject matter of the dispute is sensitive, for an example an invention or technical know-how details / trade secrets, which parties may not want exposed to the public, or where the exposure or disclosure of the facts would be detrimental to a party, ADR maintains the privacy of the parties as against the conventional settlement through court.

V. ADR provides platform for informal and less confrontational means of dispute resolution. It avoids placing the label "wicked enemy" on the other party but rather creates a friendly atmosphere for dispute resolution. The parties own the decision and therefore would be committed to maintaining it.

Self-Assessment Exercise

Discuss the advantages of ADR

LIMITATIONS OF ADR

1) Inability to decide criminal matters : Criminal matters are crimes against the state and it is the state that prosecutes such matters.

2) Its adoption may also at times be limited by cost most especially when a party to a dispute cannot employ the services of a qualified ADR practitioner, or where the cost of the ADR procedure is far higher than the value of

the subject matter of the dispute. In the case of Hasley v. Milton Keynes General NHS Trust (2004) EWCA Civ 576; (2004) 1 WLR 3002, the court noted that not every case is suitable for mediation and even gave a list of factors that should be considered before deciding to use ADR.

For example, the merits of the cases, the nature of the dispute, whether ADR has a reasonable chance of succeeding, etc

3) Time to resolve a dispute may also be a limitation. In order for some disputes to be resolved for a win/win situation, the resolution may have to be concluded within stipulated time. However, when parties fail to agree, the resolution procedure drags on.

4) Due to the voluntary nature of ADR, a party may refuse to accept what is termed as the best resolution and therefore, refuse to comply with the mandate of the award.

5) Need for judicial precedent: In a situation where the parties want the court to decide on a recurrent point of law such that the decision will be established as a reference point for future decisions. No culture of precedent.

6) Issues of law and construction : Where the onus lies on the court to decide issues of law and construction, which can impact the relationship between the parties far beyond the parties present contractual relations

2.6 Summary

From the foregoing it can be safely posited that the concept of ADR in the resolution of disputes have come to stay. The growth of the ADR process has been enhanced as a result of its peculiar features of being flexible, time saving and party – driven. Considering the advantages of ADR, individuals, corporate bodies, organizations, governments and even the courts of law have come to realize that the only way to decongest the courts and to allow for settlement of disputes amicably is through the various ADR processes.

2.7 References/ Further Readings / Web Resources

E. G. Orie, An Appraisal of the Sources of Arbitration Laws in Nigeria (5) *The University of Benin Journal of Private and property law (UBJPPL), (2021) 122-146*

Hasley v. Milton Keynes General NHS Trust (2004) EWCA Civ 576; (2004) 1 WLR 3002

Aceris Law , 2018 Definition of Arbitration https://www.international-arbitration-attorney.com › def. accessed 5 August 2021

Aceris Law, Arbitration in Nigeria (2020) *https://www.acerislaw.com › News* accessed 5 August 2021
Achor v. Adejoh [2010] 6 NWLR (pt 1191) 537 at 569
In *AG. Ogun State v. AG Federation (1982) 3 NCLR 166*
Agu v. Ikewibe [1991] 3 NWLR (pt. 180) 385
Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004
Assampong v. Amuaku [1932] 1 WACA.192
Balch, T. W, ' Arbitration as a Term of International Law' [1915] (15) (7) *JSTOR , Columbia Law Review*, 590-607.

Black, H. C, *Black' s Law Dictionary with Pronunciation*, Sixth Edition, (Centennial Edition 1891-1991).

CG DE Geophysique v Etuk [2004] 1 NWLR (Pt.853)2

Ezejiofor, G., ' The Pre-requisites of customary arbitration' [1992-93] *Journal of Private and Property Law*, 16-18.
Igbokwe, VC, Law and Practice of Customary Arbitration in Nigeria: Agu v Ikewibe and applicable law issues revisited. [1997] (41) (2) *Journal of African law* 201
Okereke v Nwankwo [2003] 9NWLR (Pt 826)592
Okpuruwu v. Okpokam [1988] 4 NWLR (pt 90) 554
Ladipo O.A, ' *Where does Islamic Arbitration fit into the Judicially Recognized Ingredients of Customary Arbitration in the Nigerian* Jurisprudence?' [2008] (8) (2) *African Journal on Conflict Resolution* 104.

Latham and Watkins, Guide to International Arbitration - - < https://www.lw.com › *thoughtleadership › guide-t...* > accessed 10 June 2021

Lexology, Arbitration in Nigeria – Lexology (2019) < *https://www.lexology.com › library › detail* > accessed 10 June 2021

The Constitution of the Federal Republic of Nigeria (1999) CAP 23 LFN 2004.
The Petroleum Act 1969 Cap P10 LFN 2004.

Thomas E. Carbonneau (2012), The Law and Practice of Arbitration - 4th Edition

Nigerian Co-operatives Societies Act Cap N98, LFN 2004
Minerals and Mining Act Cap M12, LFN 2004,
National Health Insurance Scheme Act Cap N42 LFN 2004,
Nigerian Communications Commission Act Cap N97, LFN 2004
Nigerian Investment Promotion Commission Act Cap N117, LFN 2004
Regional Centre for international commercial arbitration Act Cap R5 LFN 2004

Trade Disputes Act Cap T8 LFN 2004
Public Enterprises (privatisation and commercialisation) Act Cap P38 LFN 2004

STA Law Firm, ***United Arab Emirates:*** Overview: Arbitration Proceedings in Nigeria 2019 < https://www.mondaq.com/arbitration-dispute-resolution/814570/overview-arbitration-proceedings-in-nigeria > accessed 10 June 2021

United World Ltd Inc v MTS [1998] 10 NWLR 106

S. Gilbert, *" Proposed changes to the arbitral legal framework in Nigeria for modern regulation"* (2018), <https://webcache.googleusercontent.com/search?q=cache:p141R9Xr5pUJ:https://www.ibanet.org/Article/NewDetail.aspx%3FArticleUid%3D12f49f8d-e914-4e53-8158-4387fb82fad9+&cd=1&hl=en&ct=clnk&gl=ng> accessed 17th May 2021.

The UNCITRAL Model Law 2006.

2.7 Possible answer to self-assessment Exercises

SAE 1

Forms of ADR And The Differences :

ADR may be classified into two, mainly Binding and Non-binding ADR.

(a)Non-binding ADR includes:

- Early Neutral Evaluation (ENE)
- Mediation
- Conciliation
- Negotiations
- Mini-Trial
- Expert Determination (ED)

SAE 2

Advantages of ADR include ;

I. Flexibility and Simplicity of Procedures:
II. Quicker Decision Making
III. Reduced Cost
IV. Privacy
V. ADR provides platform for informal and less confrontational means of dispute resolution.

------------------------ END OF FIRST SEMESTER ------------------------------------