

***STRENGTHENING CAPACITY FOR  
ENVIRONMENTAL AND CLIMATE CHANGE LAW IN  
ASIA AND THE PACIFIC***

***Colombo, Sri Lanka, 26 May – 1 June 2018***

**SESSION THREE**

**INTRODUCTION TO ENVIRONMENTAL AND CLIMATE  
CHANGE LAW: GOALS, PRINCIPLES AND NORMS**

**Professor Carmen Gonzalez, Seattle University School of Law, USA**



# Seattle, Washington, USA



# Facts about Seattle

- Largest city in the Pacific Northwest of the United States
- Population of Seattle: 700,000
- Population of metropolitan area: 3.5 million
- Average temperature in January: 5° Centigrade
- Average temperature in July: 20° Centigrade



# Downtown Seattle





# Seattle Space Needle, Puget Sound



# Boeing, Microsoft, Amazon, Starbucks





# Seattle University



# Walking in Seattle





# Mountains & Parks near Seattle



# Enjoying the parks near Seattle



# Learning outcomes

## Session topic:

- Goals - sustainable development and the UN Sustainable Development Goals
- Principles – essential principles of environmental law
- Norms – general rights and duties re the environment
- Basic elements of environmental law (introduction to Sessions 4-9)
- Relationship of environmental law to other disciplines

## Learning methodologies:

- Engage in short definition drafting exercise to enable students to consider the potential scope of environmental law at the outset of a course
- Appreciate the use of free form discussion to stimulate student learning.



# What are the underlying foundations of environmental law?

## Goals, principles and norms

- Goals of environmental law:
    - Goals are external to environmental laws and should be adopted separately as a “societal” goal (but implemented via legal principles set out in legislation)
    - Is there a single, underlying **goal for all environmental laws**?
    - If so, is it “Sustainable Development”?
  - Core principles of environmental law
    - **principles** of environmental law which can provide the appropriate guidance and direction with respect to both:
      - the **design** of environmental laws; and
      - the **implementation** of environmental laws.
  - Norms of environmental law:
    - comprise both general **rights and duties** concerning the environment that may be legally enforceable
    - Includes human rights-based approaches to environmental protection
- See further: [www.apeel.org.au](http://www.apeel.org.au) (Technical Paper 1 on the Foundations of Environmental Law)



## Goal of Sustainable Development

Definition from the Brundtland Report, *Our Common Future*, 1987:

*“...development that meets the needs of the present without compromising the ability of future generations to meet their own needs”*

Commonly adopted principles for the implementation of SD goal:

- Principle of intra-generational equity (“environmental justice”)
- Principle of inter-generational equity
- Precautionary principle (to be discussed in small groups later this session)
- Principle of integration: economic, environmental and social/cultural considerations

## Sustainable Development and the United Nations Sustainable Development Goals (SDGs)

- The concept of sustainable development is now widely recognised in international and national environmental law and policy
- In China, SD goal is now reflected in the concept of ‘ecological civilisation’ (see Article 1, *Environment Protection Law 2014*, China)
- A new set of **Sustainable Development Goals** has been identified by the UN for 2015 and beyond (see further, Session 10)
- All nations are expected to submit voluntary national reviews of their SDG implementation to the UN (high level political forum)
- SD Goal has been widely criticised for continuing to favour economic growth over environmental and social considerations
- There is growing interest amongst scholars in a deeper “sustainability” goal that addresses challenges such as excessive consumption, population and unbridled economic growth.



## UN Sustainable Development Goals to be achieved by 2030

1. End **poverty** in all its forms everywhere
2. End hunger, achieve **food security** and improved nutrition, and promote sustainable agriculture
3. Ensure **healthy lives** and promote wellbeing for all at all ages
4. Ensure inclusive and equitable quality **education** and promote lifelong learning opportunities for all
5. Achieve **gender equality** and empower all women and girls
6. Ensure availability and sustainable management of **water and sanitation** for all
7. Ensure access to affordable, reliable, sustainable and modern **energy** for all
8. Promote sustained, inclusive and sustainable **economic growth**, full and productive employment, and decent work for all
9. Build resilient infrastructure, promote inclusive and **sustainable industrialisation**, and foster innovation
10. **Reduce inequality** within and among countries



## UN Sustainable Development Goals (cont.)

11. Make **cities and human settlements** inclusive, safe, resilient and sustainable
12. Ensure **sustainable consumption and production** patterns
13. Take urgent action to combat **climate change** and its impacts (taking note of agreements made by the UNFCCC forum)
14. Conserve and sustainably use the **oceans, seas and marine resources** for sustainable development
15. Protect, restore and promote sustainable use of **terrestrial ecosystems**, sustainably manage forests, combat desertification and halt and reverse land degradation, and halt biodiversity loss
16. Promote peaceful and inclusive societies for sustainable development, provide **access to justice** for all and build effective, accountable and inclusive institutions at all levels
17. Strengthen the means of implementation and revitalise the **global partnership for sustainable development**



# SDG Implementation

## National Reviews

- Regular national SDG progress reports
- Multi-stakeholder consultations, including marginalized and vulnerable groups

## Regional Reviews

- Share lessons and best practices
- Tackle regional concerns such as climate change, disaster risk reduction (DRR), and job creation

## Global Reviews – High-level Political Forum on Sustainable Development

- Provide political leadership
- Connect SDG follow-up with other programs (e.g. commitments under the Paris Agreement)
- Assess progress, achievements and challenges





# All SDG Review Processes

- Voluntary and country-led
- Focused on universal, integrated and interrelated goals and targets
- Long-term orientation
- Open, inclusive, participatory and transparent
- Respect, protect and promote human rights

**Q – What is the role of Environmental law here? How can it support or help implement these goals?**



# Environmental law principles for domestic law

- **Design principles (to be considered when drafting environmental laws)**
  - “Smart” regulation: imaginative, flexible, pluralistic (based on multiple policy instruments); avoid rigidity of command and control regulation and pitfalls of deregulation
  - Polluter pays principle (and economic instruments generally)
  - Public participation, access to justice, access to information
  - EIA and other regulatory tools or mechanisms
  - Responsive and flexible environmental governance
  - Principle of non-regression
  - Principle of inter-generational equity (Q: becoming a directing principle?)
  - Principle of intra-generational equity (environmental justice provisions)



# Environmental law principles for domestic law (cont.)

- **Directing principles (to be applied when administering environmental laws)**
  - Prevention principle (linked to environmental duty of care – see next)
  - Precautionary principle:
    - “Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.” (Australian definition, in *Intergovernmental Agreement on the Environment*)
    - small groups to discuss how the core principles of environmental law are reflected in the laws of Sri Lanka and India
  - New principles emerging (e.g., in the European Union) re “environmentally sustainable innovation”:
    - a “high level of environmental protection” principle; and
    - a “best available techniques” principle (BAT).



# Norms of Environmental Law

- **General environmental rights (see Session 10)**
  - **Substantive rights** (e.g. right to a clean and healthy environment)
    - Human rights basis (e.g. right to life, shelter, etc.)
    - Constitutional provisions giving explicit recognition
  - **Procedural rights (see Aarhus Convention)**
    - Access to information
    - Public participation
    - Access to justice
  - **Rights for nature** (including “wild law” literature)
- **General environmental duties**
  - **duty of care** to avoid causing environmental harm (prevention principle)
  - **duty to restore or rehabilitate** (where environmental harm has been caused).





## THE SCOPE OF ENVIRONMENTAL LAW

- Environmental law is potentially very broad in its scope
- Sessions 4-8 explain the **key elements** of environmental law:
  - Environmental planning and impact assessment
  - Environmental protection and pollution
  - Protection of biodiversity, and natural and cultural heritage
  - The protection and sustainable use of all natural resources
  - Climate change and energy law (see also IEL session)



# ENVIRONMENTAL LAW AND OTHER DISCIPLINES

*Environmental law teachers need to make their students familiar with related disciplines:*

- Science and ecology (including geography, engineering, etc.)
- Public and environmental health
- Environmental Economics
- Ethics and philosophy
- Business & management- “Green Business”, CSR (corporate social responsibility)
- Religion and the environment
- Also another special challenge: teaching environmental law by distance method



The anthropocene age:  
from 250 years ago



Five historical mass extinction events  
Currently in 'sixth wave' of extinction  
caused almost entirely by humans  
(1000's of species lost per year)

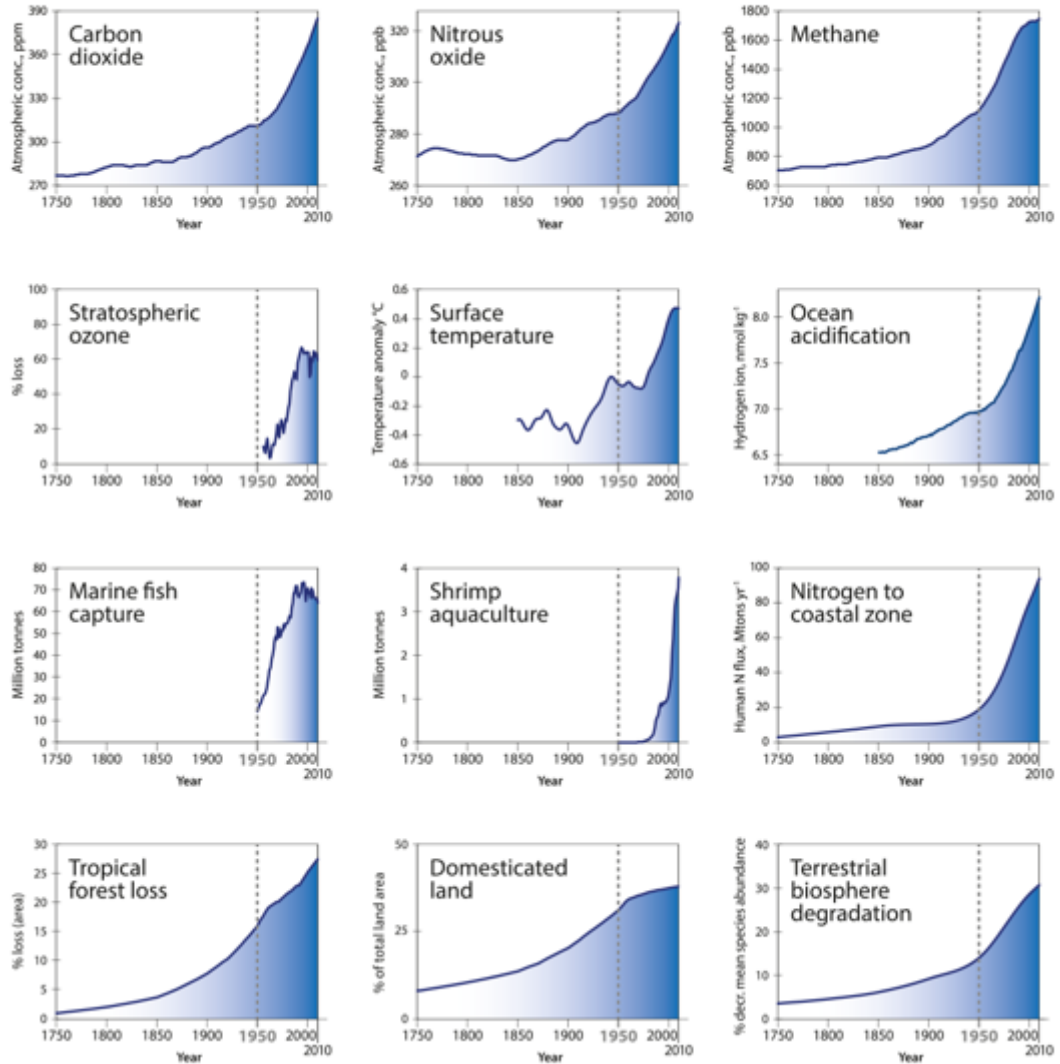
EON	ERA	PERIOD	EPOCH	Ma		
Phanerozoic	Cenozoic	Quaternary	Holocene	0.01		
			Pleistocene	Late	0.8	
		Early		1.8		
		Tertiary	Neogene	Pliocene	Late	3.6
					Early	5.3
				Miocene	Late	11.2
			Middle		16.4	
			Early		23.7	
			Paleogene	Oligocene	Late	28.5
		Early			33.7	
		Eocene			41.3	
		Paleocene		Middle	49.0	
				Early	54.8	
		Mesozoic	Cretaceous	Late	65.0	
	Early			99.0		
	Jurassic		Late	144		
			Middle	159		
			Early	180		
	Triassic		Late	206		
			Middle	227		
			Early	242		
			Permian	Late	248	
	Paleozoic		Permian	Early	256	
				Pennsylvanian	290	
			Mississippian	323		
				354		
			Devonian	Late	370	
				Middle	391	
				Early	417	
		Silurian	Late	423		
Early			443			
Ordovician		Late	458			
		Middle	470			
		Early	490			
Cambrian		D	500			
		C	512			
	B	520				
	A	543				
	Precambrian	Proterozoic	Late	900		
Middle			1600			
Early			2500			
Archean		Late	3000			
		Middle	3400			
		Early	3800?			

# GREAT ACCELERATION

The post-1945 period of rapid economic growth has produced unprecedented environmental degradation. The global economy has already transgressed four planetary boundaries

- Climate Change
- Deforestation
- Species Extinction
- Runoff of nitrogen and phosphorus into regional watersheds

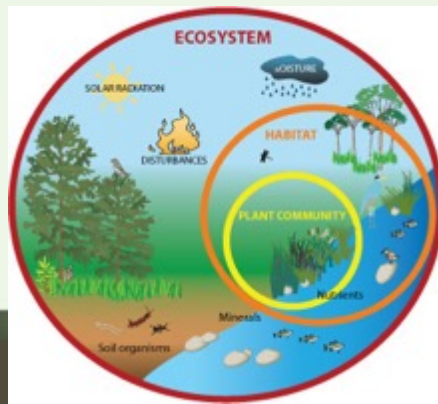
## Earth system trends



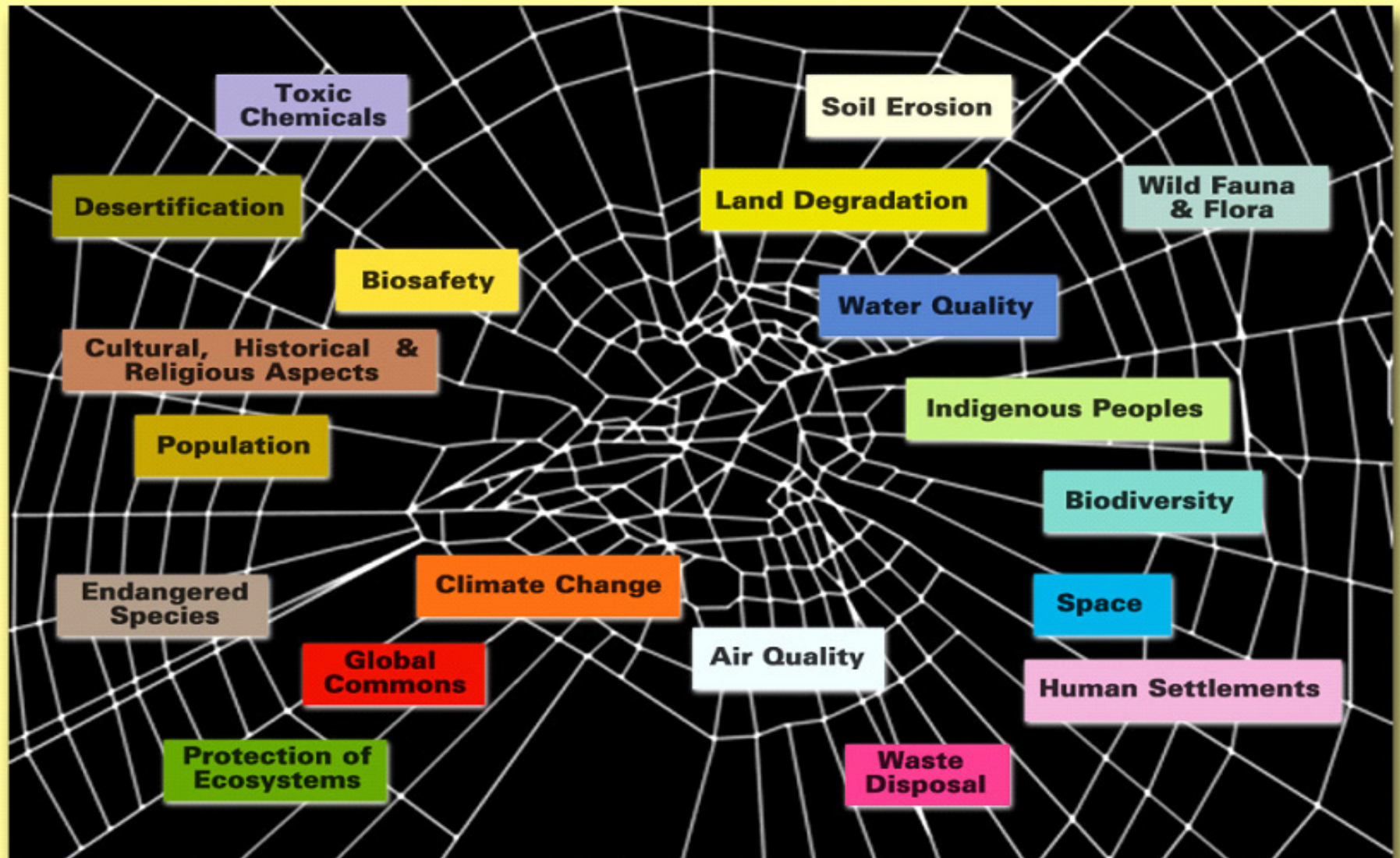


- Law students need to understand the scientific dimensions of environmental degradation and possible collapse (the “Anthropocene”)
- They also need to understand the principles of **Ecology** that govern the interactions between organisms and their environments (including concept of exponential growth).
- **Ecosystem management** is a strategy provided for through law for the integrated management of land, water, and living resources that promotes conservation and sustainable use.

How can the law encourage ecosystem management?



# ENVIRONMENTAL INTERDEPENDENCE



## Ecosystem management examples:

Law can encourage or require ecosystem management to help build **ecosystem resilience**, for example:

- “connectivity conservation” to connect separate protected areas by ecological corridors, and
- a unified approach to managing coastal zones.







- Law students need to understand the causal relationships between environmental harm and **human health** (and how these are addressed by environmental laws)
- **Environmental health** is concerned with all aspects of the natural and built environment that may affect human health (physical, chemical, and biological factors external to a person).
- Examples: exposure to pesticides, radiation or hazardous waste







- **Economics** is the social science that analyzes the production, distribution, and consumption of goods and services.
- **Environmental economics** is the branch of economics concerned with the economic effects of environmental policies,.
- In contrast, **ecological economics** is a transdisciplinary field focused on the relationships between ecological and economic systems, treating the economy as a subsystem of a larger ecological life support system.



## **Law students need to understand the role of various economic instruments provided for by environmental laws:**

- Environmental taxes (e.g., British Columbia's carbon tax)
- Environmental charges (e.g., Australia's "Load Based Licensing" which links pollution licence fees to nature and amount of emissions)
- Pollution markets (involving exchanges and credits – such as US sulfur dioxide trading system; EU emissions trading scheme )
- Economic cost of carbon (e.g. debate in the USA over the calculation of economic harms caused by carbon pollution in order to assess the costs and benefits of regulations, such as the Clean Power Plan now rejected by the Trump administration)



## ROLE of VOLUNTARY SCHEMES AS A PART OF ENVIRONMENTAL LAW (alongside regulation and economic instruments)

### CORPORATE SOCIAL RESPONSIBILITY (CSR)

- Good corporate governance – nature and extent of corporate accountability
- Corporate initiatives to assess and take responsibility for the company's effects on the environment and impact on social welfare

### ENVIRONMENTAL REPORTING

- Environmental reporting - the communication of social and environmental effects of a company's economic actions is an important element of CSR.
- See – Global Reporting Initiative & Sustainability Reporting Guidelines
- <https://www.globalreporting.org/Pages/default.aspx>
- <https://www.globalreporting.org/resourcelibrary/G3.1-Guidelines-Incl-Technical-Protocol.pdf>
- Voluntary versus mandatory reporting – see s.299(1)(f) Corporations Law (Australia)



- Students should have a basic understanding of the ethical and philosophical foundations of environmental law
  - Deep ecology, ecofeminism, ‘Buddhist’ economics, indigenous world views, Gandhi’s warning that humans “would strip the world bare like locusts”
- The ethical aspects can be introduced by examining modern statements of environmental charters and declarations





# Examples of charters and declarations on ethical/legal underpinnings of environmental law

- World Charter for Nature, 1982
- Earth Charter, 2004 (see <http://earthcharter.org/>)
- IUCN Covenant on Environment and Development, 5<sup>th</sup> ed. 2015 <https://portals.iucn.org/library/node/46647>
- IUCN World Declaration on Environmental Rule of Law 2016 <https://www.iucn.org/commissions/world-commission-environmental-law/about/environmental-rule-law>
- Draft Global Pact on the Environment 2017 <http://pactenvironment.org/global-pact-for-the-environment-projet-2/>



# Religion and the Environment

- Laudato si' – Pope's encyclical 2015  
[http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20150524\\_enciclica-laudato-si.html](http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html)
- *Islamic Declaration on Global Climate Change* – Istanbul -- August 2015
- *Rabbinic Letter on the Climate Crisis*
- Yale Forum on Ecology and Religion (2009) <http://fore.yale.edu/religion/>
- WWF – Sacred Earth : Faiths for Conservation  
<http://www.worldwildlife.org/initiatives/sacred-earth-faiths-for-conservation>
- Charter for Compassion - <http://charterforcompassion.org/>

**How adequate are these formulations? What about the rights of nature? See Universal Declaration of the Rights of Mother Earth (Cochabamba, Bolivia 2010) <https://therightsofnature.org/universal-declaration/>**



# Conclusions

- Environmental law is underpinned by a foundation based on a fundamental societal goal, principles and norms
- The scope of environmental law is very wide-ranging
- Law teachers need to present to students an interdisciplinary perspective re environmental law and policy: science, health, economics, business management, ethics, philosophy etc.
- Environmental law is now also taught commonly as a component of many other university programs (science, environmental studies or management, etc.)
- What are the special challenges to be addressed in teaching environmental law to non-law students?

