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**STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN THE
ASIA-PACIFIC: DEVELOPING ENVIRONMENTAL LAW CHAMPIONS**

Siem Reap, Cambodia, 27 November – 1 December 2017

**SESSION 3: INTRODUCTION TO ENVIRONMENTAL LAW –
DRAFTING EXERCISE – LEGISLATIVE
DEFINITION OF ‘ENVIRONMENT’**

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INTRODUCTION

- Draft a legislative definition of ‘environment’ for insertion into national legislation concerning environmental protection
- The definition of the term will indicate the scope of the legislation – a narrow definition will limit application, a broad definition will allow for wider application (but may give rise to other issues)

Methodology

- Drafting exercise – can involve drafting instructions for new legislation, drafting objectives for legislation, or even definitions for new legislation

What is the ‘environment’ in environmental law?

- Environmental law manages and regulates the environment – but what exactly is the ‘environment’?
- Do legislative instruments capture the diversity of various conceptualisations of the ‘environment’? E.g.
 - Eco-centric approaches
 - Natural and cultural heritage perspectives
- Historically (e.g. 1960s/70s) the ‘environment’ of environmental law was typically construed in anthropocentric terms (with humans as a central point of reference)
- Was generally focused on one or two areas of the environment e.g. water, or air; and point source pollution



Example: Early Legislative Definitions of 'Environment'

- ***Environment Protection Act 1970 (Vic) Australia***
 - 'Environment' means the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants and the social factor of aesthetics
- ***Environmental Planning and Assessment Act 1979 (NSW) Australia***
 - 'Environment' includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings

Both definitions emphasise human utility aspects of the environment...



UN Stockholm Declaration 1972

- According to Principle 2 of the Stockholm Declaration of the United Nations (UN) Conference on Human Environment (UNCHE, A/CONF 48/14/Rev 1, 1972) the environment encompasses **‘the natural resources of the earth, including the air, water, land, flora and fauna’**
- Provides further for **‘especially representative samples of natural ecosystems’**
- The term **‘environment’** covers **‘all those elements which in their complex inter-relationships form the framework, setting and living conditions for mankind, by their very existence or by virtue of their impact’**
(EEC OJ C 115, May 1976, p 2)



Brundtland Report 1987

- The World Commission on Environment and Development, *Our Common Future*, 1987 (the Brundtland Report):
 - The environment does not exist as a sphere separate from human actions, ambitions, and needs, and attempts to defend it in isolation from human concerns have given the very word “environment” a connotation of naivety in some political circles... **the “environment” is where we all live”**
- Environment conceived more broadly
- Introduced the notion of sustainable development:
 - “...development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”



The 'environment' in environmental law...

- Nature of the definition of 'environment' shifting owing to changing notions of 'environment' from philosophy, ecological economics, and ecological science
- More recent definitions attempt to dissolve the separation between humans and nature
- Further, while divisions between components of the environment are still apparent in some instruments, the interconnectedness between ecosystems and their constituents are more frequently recognised



Legislative Definitions of ‘Environment’

- ***Environment Protection and Biodiversity Conservation Act 1999 (Cth) Australia***
 - S528: ‘Environment’ includes:
 - (a) ecosystems and their constituent parts, including people and communities; and
 - (b) natural and physical resources; and
 - (c) the qualities and characteristics of locations, places and areas; and
 - (d) heritage values of places; and
 - (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).



Legislative Definitions of 'Environment' (cont'd)

- ***The Environment (Protection) Act 1986 (India)***
 - 'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property
- ***Environment Act 1986 (New Zealand)***
 - 'Environment' includes—
 - (a) ecosystems and their constituent parts including people and communities; and
 - (b) all natural and physical resources; and
 - (c) those physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes; and
 - (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters
- ***Environmental Protection Act 1990 (UK)***
 - The 'environment' consists of all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground.



Legislative Definitions of 'Environment' (cont'd)

- **National Environmental Management Act 107 of 1998 (South Africa)**
 - 'Environment' means the surroundings within which humans exist and that are made up of
 - (i) the land, water and atmosphere of the earth;
 - (ii) micro-organisms, plant and animal life;
 - (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and
 - (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being
- **California Environmental Quality Act 2016 (USA)**
 - 'Environment' means the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance



Legislative Definitions of ‘Environment’ (cont’d)

- **Law on Environmental Protection of Vietnam**

“Environment refers to a system of natural and artificial physical factors affecting the existence and development of human beings and creatures” (Article 3. Interpretation of terms).

- ***The 2009 Environmental Protection and Management Act (Indonesia):***

“The environment is the spatial unity of all materials, forces, situations, and living creatures, including humans and their behavior, which influences the continuation of life and welfare of humans and other living creatures”

- **Malaysia Environmental Quality Act 1974**

“Environment” means the physical factors of the surroundings of the human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics.”



Legislative Definitions of ‘Environment’ (cont’d)

- **Cambodia: draft glossary to Environment and Natural Resources Code (2017):**
- **“Environment:** All living and all non-living components, including physical, biological, social, spiritual and cultural features and conditions, including but not limited to land, air, and water; plants, animals, and other non-human living things; human beings, their communities, and their built surroundings; and the physical and non-physical relationships that exist between or among any or all of those components. Natural resources of the environment are all living and non-living components of the environment that provide flows of valuable goods and services to people.”



Legislative Definitions of 'Environment' (cont'd)

- **Laos: Environment Protection Law (revised version, 2013), Article 2:**

“Environment means any organic and inorganic features existing naturally or created by mankind and surrounding such as people, animals, plants and others and the positive and negative interaction and impacts on livelihood, production, existence and expansion of mankind and nature.

Environment consists of social and natural environment.”



Conclusion

- Tendency in many international instruments is towards a broadening of definitions of ‘the environment’
- Increasingly other values have been included – e.g. cultural heritage, ‘man-made’ environments, sustainable development and equity
- Focus more on interconnectedness of environmental issues rather than distinct matters
- Definitions are still dependent upon the overarching *objectives* of the instrument

