

***STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN THE ASIA-  
PACIFIC : DEVELOPING ENVIRONMENTAL LAW CHAMPIONS***  
*Chiang Mai, Thailand, 19-23 June, 2017*

**SESSION THREE**  
**INTRODUCTION TO ENVIRONMENTAL LAW: GOALS,  
PRINCIPLES AND NORMS**

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# Learning outcomes

## **Session topic:**

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- Goals - Sustainable development and the UN Sustainable Development Goals
- Principles - Core principles of Environmental Law
- Norms – general rights and duties
- Core components of environmental law (introduction to Sessions 4-9)
- Relationship of environmental law to other disciplines
- Challenges in teaching environmental law to non-law students

## **Learning methodology:**

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- Appreciate function of definition exercise in assisting comprehension of the scope of environmental legislation

# What are the underlying foundations of environmental law?

- **Goals, principles and norms**
  - Goal of environmental law:
    - Is external to laws themselves and should be endorsed as a societal goal
    - How do we frame such a **goal**? Is it Sustainable Development?
    - Involves the balancing of economic, environment and social considerations - but often reflects in practice an economic growth paradigm, and lacks an explicit ethical foundation for the protection of nature
    - Should we emphasise *Ecologically* Sustainable Development (this is what Australian law does) ? – may be useful, but difficult to implement?
  - Core principles of environmental law
    - **principles** of environmental law which can provide the appropriate guidance and direction with respect to both the design and implementation of environmental laws.
  - Norms of environmental law:
    - comprise both general **rights and duties** that may be legally enforceable
- See further: [www.apeel.org.au](http://www.apeel.org.au) (Technical Paper 1 on the Foundations of Environmental Law)



# Goal for Environmental Law - Sustainable Development and the United Nations

## Sustainable Development Goals

- **Why teaching about sustainable development is important:**
  - Concept of sustainable development is now fundamental to all international and national environmental law and policy
  - Sustainable development was at the heart of the 8 Millennium Development Goals, to be achieved by 2015.
  - A new set of Sustainable Development Goals has been identified for 2015 and beyond
  - In China, now reflected in the concept of ‘ecological civilisation’
    - See Article 1, Environment Protection Law 2014 China.

## Sustainable development: definition

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**”

- Principle of intra-generational equity
- Principle of inter-generational equity
- Precautionary principle
- Principle of integration: economic, environmental and social/cultural integration

## September 2015 – 17 Sustainable Development Goals 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



## September 2015 – 17 Sustainable Development Goals by 2030

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

**Q – How do we measure these? What are the Sustainable Development indicators for each country? What is the role of Environmental law here? Can law provide these indicators?**



# Environmental law principles for domestic law

- Design principles:
  - Smart regulation
  - 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 (Q: becoming a directing principle?)
  - Principle of intra-generational equity (cf., environmental justice)
- Directing principles
  - Precautionary principle
  - Prevention principle
  - Environmentally sustainable innovation:
    - a high level of environmental protection principle; and
    - a best available techniques principle (BAT).





# Norms of Environmental Law

- **General rights (see Session 10)**

- Substantive rights

- Human rights (e.g. right to a clean and healthy environment)
- Constitutional rights

- Procedural rights

- Access to information
- Public participation
- Access to justice

- Rights for nature

- **General duties**

- duty of care to avoid causing environmental harm (cf., prevention principle)
- duty to restore or rehabilitate where environmental harm has been caused.



## The Scope of Environmental Law

- Environmental law is potentially very broad.
- Sessions 4-8
- It includes:
  - 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 IEL session)



# ENVIRONMENTAL LAW AND OTHER DISCIPLINES

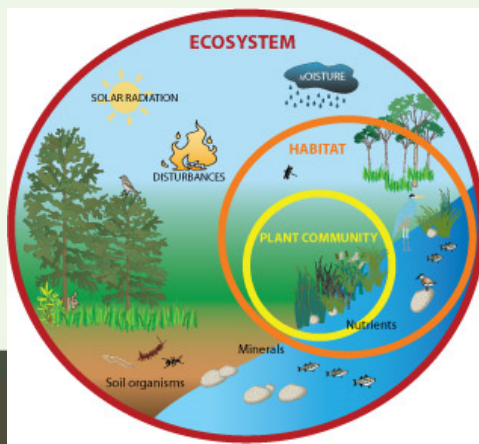
*Environmental law teachers need to make their students familiar with related disciplines:*

- 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
- A special challenge: teaching environmental law to non-lawyers



- **Ecology** studies the interactions between organisms and their environments.
- An **ecosystem** consists of living organisms like plants, animals, and microbes, and nonliving components like air, water and mineral soil that interact as a system.
- **Ecosystem management** is a strategy for the integrated management of land, water, and living resources that promotes conservation and sustainable use.

How can the law encourage ecosystem management?



## 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.

Application to Environmental Impact Assessment



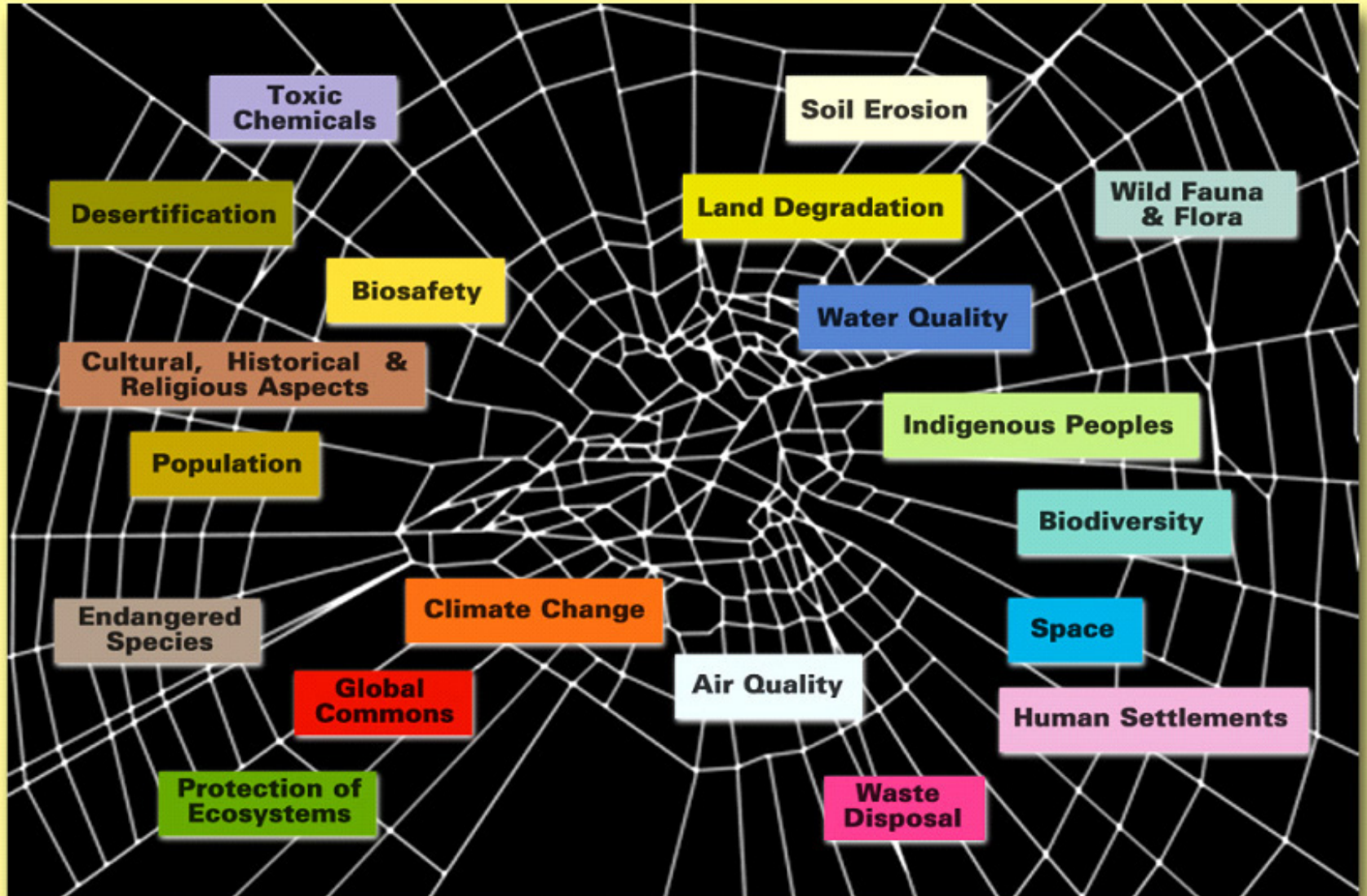
The anthropocene age:  
from 250 years ago



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			Late	41.3
		Paleocene		Middle	49.0	
				Early	54.8	
				Early	61.0	
		Mesozoic	Cretaceous	Late	65.0	
	Early			99.0		
	Late			144		
	Jurassic		Middle	159		
			Early	180		
	Triassic		Late	206		
			Middle	227		
			Early	242		
	Paleozoic		Permian	Late	248	
				Early	256	
			Pennsylvanian	290		
			Mississippian	323		
			Devonian	Late	354	
				Middle	370	
				Early	391	
		Silurian	Late	417		
Early			423			
Ordovician		Late	443			
		Middle	458			
		Early	470			
Cambrian		D	490			
		C	500			
		B	512			
	A	520				
	A	543				
Precambrian	Proterozoic	Late	900			
		Middle	1600			
		Early	2500			
	Archean	Late	3000			
		Middle	3400			
		Early	3800?			

# ENVIRONMENTAL INTERDEPENDENCE





- **Public health** seeks to ensure population health by preventing and treating disease, surveillance of cases and health indicators, and promoting healthy behaviors.
- **Environmental health** is the branch of public health that 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).
- Example: pesticides and 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.



- Environmental taxes
  - E.g. British Columbia's carbon tax
- Pollution permits
  - E.g. Clean Air Act NSPS that permit air emissions
- Pollution exchanges and credits
  - E.g. EU carbon credit trading
- Q - Singapore's taxes on cars and on road usage – the Certificate of Entitlement (COE) and Electronic Road Pricing

**Australian 'Load Based Licensing' (LBL)** Sets limits on pollutants emitted by holders of environment protection licences, and links licence fees to pollutant emissions.

- sets clear minimum standards for environmental performance
- incorporates powerful incentives for ongoing pollution reduction
- gives licensees flexibility to implement cost-effective pollution abatement methods
- increases regulatory transparency



# Business/financial management and environmental law



## CORPORATE SOCIAL RESPONSIBILITY (CSR) AND ENVIRONMENTAL REPORTING

- Good corporate governance – nature and extent of corporate accountability : who are stakeholders? shareholders v board of directors v society?  
Australian CAMAC Inquiry 2006
- Business ethics – Corporate Social Responsibility - Corporate initiatives to assess and take responsibility for the company's effects on the environment and impact on social welfare
- 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/resource-library/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
- Can be introduced by examining modern statements of environmental charters: examples:
  - World Charter for Nature, 1982
  - Earth Charter, 2004
  - IUCN Covenant on Environment and Development, 5<sup>th</sup> ed. 2015



# The Earth Charter

- The **Earth Charter** is an international declaration of fundamental values and principles for building a just, sustainable, and peaceful global society in the 21st century.
- Created by a global consultation process, and endorsed by organizations representing millions of people, the Charter "seeks to inspire in all peoples a sense of global interdependence and shared responsibility for the well-being of the human family, the greater community of life, and future generations."
- It calls upon humanity to help create a global partnership at a critical juncture in history. The Earth Charter's ethical vision proposes that environmental protection, human rights, equitable human development, and peace are interdependent and indivisible.
- The Earth Charter initiative <http://earthcharter.org/> organization exists to promote the Charter.



# 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\*](#) – issued in Istanbul in August 2015
- [\*Rabbinic Letter on the Climate Crisis\*](#)
- See the Forum on Ecology and Religion at Yale (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/](http://charterforcompassion.org/)

How adequate are these formulations? – Is a focus only on humans appropriate?



# 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?

