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

**Chiang Mai, Thailand, 19-23 June 2017**

**SESSION SEVEN: NATURAL RESOURCES  
MANAGEMENT LAW**



Presented by Rob Fowler

## LEARNING OUTCOMES OF SESSION 7

### Session Topic

- Understanding the legal concepts of ownership and allocation of natural resources
- Understanding the shift from resource exploitation to sustainable natural resources management
- Understanding the role of resource-specific legislative schemes and their relationship with other environmental laws.

### Teaching Methodologies

- Small-group structured discussion
- Role-play: explanation, allocation of roles & preparations



## INTRODUCTION TO NATURAL RESOURCES LAW

- Natural resources law is often taught as a separate and distinct subject from environmental law
- For the purposes of the TTT course, it is important for participants to understand how this category of laws governs the **management and conservation of natural resources from an environmental perspective ;**
- TTT participants may also want to consider the possibility that aspects of natural resources law can be incorporated within their own environmental law course.



## THE SCOPE OF NATURAL RESOURCES LAWS

Most countries have developed specific laws providing for **the grant of rights to own, use or extract** various types of natural resources, in particular :

- Land
- Water
- Forests
- Minerals
- Petroleum (oil and gas – including, recently, “unconventional” gas)
- Fisheries



## THE LEGAL BASIS OF NATURAL RESOURCES LAWS

- The legal basis for the operation of most natural resources laws is that the “**dominant**” **title** (or, in other words, the ownership) of such resources belongs to the government;
- The relevant level of government that enjoys this dominant title can vary from one country to another:
  - In countries with a **federal** constitutional system (e.g., USA, Canada and Australia, it is often the state/provincial governments that own natural resources such as land, forests and minerals, whilst the national (federal) governments own offshore resources (oil and gas/ fisheries)
  - In countries with a **unitary** constitutional system, either national or regional governments may own natural resources.



## THE PURPOSE OF NATURAL RESOURCES LAWS

- Original **purpose** of natural resources laws in most countries: to provide for an ordered process for the allocation of rights to natural resources (resource “tenures”) so as to avoid conflicts between competing interests;
- The original versions of natural resources laws in many developed countries date back more than 100-150 years and were not written with environmental considerations in mind;
- However, modern versions of these laws that have been developed over the last 30-40 years have included provisions that require the administering authorities to consider the environmental impacts of resource utilization activities when granting rights to natural resources;



## THE PURPOSE OF NATURAL RESOURCES LAWS

- **Balancing** the perceived benefits arising from the utilization of particular types of natural resources with the need to avoid significant environmental impacts;
- In addition, such laws aim to ensure that **renewable** resources such as water, fisheries, wildlife and forests are “sustainably” managed so as to avoid over-extraction or excessive depletion;
- Balancing process generally does not result in refusals to grant rights to relevant resource but rather in the imposition of environmental safeguards through **conditions attached to the relevant grant of rights.**



## MECHANISMS UNDER NATURAL RESOURCES LAWS

- The principal **mechanism** for the allocation of rights to utilize natural resources is the grant of various forms of resource “tenure”;
- These may range from a full **transfer of ownership** of the relevant natural resource from the government to other parties (e.g., for land, or minerals/gas) to more limited forms of tenure - such as **leases, licences or permits** (e.g., to take water, to use land for particular purposes such as the grazing of sheep or cattle or to operate as a commercial fisher);
- There may also be a requirement to make payments to the relevant government in return for the grant of resource tenures (e.g., mining and oil/gas “royalties”)





## MANAGEMENT MECHANISMS UNDER NATURAL RESOURCES LAWS

- It is common for natural resources laws in many countries to require **resource management plans** to be developed
- Purpose of these plans: to provide policy guidance to administering authorities with respect to their decisions on the allocation of tenure rights (e.g., water allocation plans, fisheries management plans and forests management plans)

## NATURAL RESOURCES LAWS TO PROTECT SOILS

In many countries, additional laws have been adopted to provide for the **protection of the land resource (soils)**, for example :

- Soil conservation legislation to protect land from degradation through poor agricultural practices;
  - Laws to prevent excessive clearance of natural vegetation by farmers; and
  - Special legislation to enable the control of “invasive” species of plants and animals.
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- These laws often employ “command and control” mechanisms such as **orders** by administrative authorities to require land-holders to take remedial action to protect the land resource for which they are responsible;



## INTEGRATED NATURAL RESOURCES MANAGEMENT

- There is a general trend towards providing for **integrated natural resources management** in order to better coordinate the operation of previously disparate natural resources management laws;
- In particular, laws have been adopted in a growing number of countries to enable the coordinated management of land and water within a particular region such as a river catchment;
- These laws may be accompanied by administrative arrangements for the establishment of **regional natural resources management authorities** to develop resource management plans and administer the granting of resources tenures.



## TRANSBOUNDARY RESOURCE MANAGEMENT ISSUES

Transboundary conflicts may arise in relation to natural resource management, especially where river systems extend across multiple jurisdictions, for example:

- Over-extraction of water by upstream users (see the Murray-Darling Basin in Australia, where relevant State and Federal jurisdictions have developed joint management arrangements)
- Reduction of water flows through the development of dams for hydroelectricity or water storage purposes (see the decision of the International Court of Justice in the *Gabčíkovo-Nagymaros Case* [1997] ICJ Rep 7 (River Danube);
- Mekong River Basin (see Session on Regional environmental Law)



## TRANSBOUNDARY RESOURCE MANAGEMENT ISSUES

- Trans-boundary pollution impacts may also arise from resource extraction or other development activities, for example –
  - Air pollution from the ongoing burning of forests in Indonesia;
  - Marine pollution and damage to fisheries from oil well spill accidents (e.g., the Montara oil spill in the Timor sea in 2009) – see case-study in Session 13;
  - Xyaburi dam (Laos/Thailand) - see case-study in Session 13



## RELATIONSHIP BETWEEN NATURAL RESOURCES LAWS & OTHER TYPES OF ENVIRONMENTAL LAWS

- Other types of environmental laws may be applicable to projects that involve the utilization of natural resources, for example:
  - Spatial planning and environmental impact assessment procedures in relation to new mining or forestry projects; or
  - Environmental protection (pollution control) measures in relation to new mining, oil and gas projects;
- however, it is common for the operation of relevant environmental protection legislation to be **excluded** by the particular natural resources legislation, which provides a “one-stop-shop” approach to the grant of resource tenure and the management of the related environmental impacts.



## CONCLUSIONS

- NRM laws constitute a distinct and substantial component of environmental law that may be taught as a separate subject (or specific subjects, e.g., water law, forestry law, mining law etc.)
- But it is also possible to include aspects of NRM law in a general course on environmental law
- For countries in the SE Asian region, there is also a trans-boundary perspective that deserves particular attention (and may involve the application of international/regional law)

