



# Developing Environmental Law Champions

Strengthening the Capacity For Environmental and Climate Change Laws in Asia and the Pacific



# *Session 3: Introduction to Environmental Law*

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# 1. Core Principles of Environmental Law

Design principles (to be considered when drafting environmental laws)

1) Polluter pays principle (and economic instruments generally):

- All individuals and organizations that discharge pollutants into the environment shall pay a certain fee in accordance with certain standards to compensate for the losses caused by their pollution behavior. Payment will prompt polluters to take measures to control pollution, or enable government and other management departments to obtain corresponding income to control pollution



# 1. Core Principles of Environmental Law

2) Public participation, access to justice, access to information:

- It can guarantee the full exercise of the rights of the general public to participate in environmental protection management. Because the quality of the environment is directly related to the quality of life of everyone and the right to pursue a happy life.



# 1. Core Principles of Environmental Law

## 3) Prevention principle

### 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.”
- At the international level, *the 1980 World Conservation Programme* provided for “expected environmental policies” and *the 1982 United Nations Convention on the Law of the Sea* proposed the precautionary principle.



# 1. Core Principles of Environmental Law

## 4) Sustainable Development Principle

- The concept of sustainable development was originally proposed by *the World Commission on Environment and Development* in the 1987 report “Our Common Future”.
- It advocates not only meeting the needs of the present, but also jeopardizing the ability of future generations to meet their own needs.
- In other words, it refers to the coordinated development of economy, society, resources and environmental protection.



# 1. Core Principles of Environmental Law

In 1995, the famous international environmental law scholar *Philip Sands* summarized the principles of sustainable development as:

- a. intergenerational equity,
- b. within generation equity,
- c. sustainable use,
- d. and integration of environment and development.

Since the United Nations Conference on Environment and Development in 1992, the idea of sustainable development has been gradually accepted by the international community and integrated into important international environmental legal documents, such as *the Convention on Biological Diversity* and *the Framework Agreement on Climate Change*.



# 1. Core Principles of Environmental Law

## 5) The Principle of Not Causing Damage to the Environment or Areas Beyond the Limits of National Jurisdiction

- *United Nations declaration of the human environment* adopted in 1972 regulated that :

In accordance with the UN Charter and the principles of international law, countries have the sovereign right to develop resources in accordance with environmental policies, and they also have the responsibility to ensure that they do not harm the environment of other countries or the environment outside the jurisdiction of each country.



# 1. Core Principles of Environmental Law

## 6) Common but Differentiated Responsibilities Principle

It was determined at the Rio Conference.

**a.** The common responsibility — — “the responsibility and obligations of all countries to protect the global environment are common”.

**b.** A differentiated responsibility — — “there is a difference between this common responsibility between developed and developing countries”.



## 2. *Scope of Environmental Law*

Environmental law is potentially very broad in its scope

1) Environmental planning and impact assessment:

**Environmental planning:**

- The purpose is to guide people to carry out various environmental protection activities, rationally allocate emission reductions, constrain the behavior of polluters, improve the ecological environment, prevent resource destruction, strive to obtain the best environmental benefits with minimum investment, and promote the environment, economy and sustainable development of society.

**Environmental impact assessment:**

- the analysis and demonstration of the possible environmental impacts of the proposed human activities, and on the basis of this, people can propose the prevention measures and countermeasures.



## 2. *Scope of Environmental Law*

### 2) Environmental protection and pollution:

- Environmental protection originated from people's treatment of pollution, so the relationship between them is close.

### 3) Protection of biodiversity, and natural and cultural heritage:

- Biodiversity is an important component in maintaining ecological balance and promoting the harmonious development between man and nature.



## 2. *Scope of Environmental Law*

4) The protection and sustainable use of natural resources:

- Fully, rational, economical and efficient use of existing resources and continuous development of new alternative resources can ensure the sustainable use of resources by human beings and meet the needs of contemporary and future generations.



5) Climate change and energy law:

- 1. What we can know is that climate change will bring great harm to all mankind, so we must pay attention to this issue.
- 2. The energy law mainly regulates the social relations in the development, utilization and management activities of energy, and then ensure safe, efficient and sustainable energy supply.



# 3. Sources of international environmental law

## Main sources:

### a. Treaty

- **Treaties are the main source of international environmental law**, including bilateral, multilateral, regional and global treaties on environmental issues.
- The treaty creates rights and obligations for the parties.
- However, due to the characteristics and nature of international environmental law, environmental treaties have some characteristics of their own. For example, in the form of treaties, environmental treaties mostly adopt the form of “framework convention + protocol + annex”.

### b. International Custom

- International habits are ancient sources that existed before the treaty appeared.
- Because the treaty cannot contain everything and international habits arise from practice, international habits are still important sources.



## Other “sources”(complementary, not true source):

### a. General Principles of Law(used less)

- It is difficult to clarify its true meaning. It is generally considered to be the general principle of domestic law recognized by the state.

### b. Judicial Precedent

- Supplementary information only for determining legal principles

### c. International Law Theory

- Just a potential source, they have little effect in practice.

### d. Legal documents such as resolutions of international organizations

- Has a high legal value, not a true source



# 4. *Hard and Soft Environmental Law*

Soft law refers to those laws that cannot be enforced by state enforcement. Soft law is relative to hard law, and hard law refers to those laws that can rely on national coercive force to ensure implementation.

The vast majority of international environmental law is soft law.

International treaties and international soft law are not one or the other. Any international treaty has varying degrees of softness and hardness.

## 1) Hard Law:

- Some treaties stipulate specific rights and obligations, have certain binding force and enforcement power, and have certain dispute resolution mechanisms.

## 2) Soft Law:

- a. Mainly refers some normative documents that are not legally binding and coercive (such as declaration, resolution, action plan....)
- made by international organizations or international conferences.

Although the documents themselves are not legally binding, they strongly influence and promote the development of international environmental law and have strong political and moral influence.



# 5. Institutional Arrangements

## HISTORY:

Since the 1970s, with the deepening of the understanding of environmental issues and the development of environmental management ideas, **various countries have begun to set up government agencies specializing in environmental protection** through environmental legislation.

Environmental management power is gradually concentrated in the central government, and countries gradually form a unified environmental supervision and management system.

From the end of the 1980s to the present, under the guidance of the idea of sustainable development, the institutions and functions of environmental management in various countries have changed.



## NOWADAYS

Due to different political, legal, economic, historical and other factors, the environmental management systems of different countries are also different.

Divided by function:

- 1) Establish an environmental protection agency mainly responsible for pollution prevention(e. g. US)
- 2) Establish a management agency responsible for pollution prevention and nature protection(e. g. South Korea)
- 3) Establish an integrated agency for environmental management and natural resource management(e. g. Russia)
- 4) Establish a management department that combines environmental and urban construction or other public affairs(e. g. Brazil)



# 6. Regulatory Tools: Standards, Approvals, Licenses

## 1) Environmental standard

Most countries impose mandatory environmental standards that are applicable to administrative actions directly in the law.

Overall, environmental standards can be divided into:

- 1.environmental quality standards
- 2.pollutant discharge standards
- 3.environmental foundation standards
- 4.environmental monitoring analytical method standards
- 5.environmental reference material standards



# *6. Regulatory tools: standards, approvals, licenses*

## 2) Environmental administrative approvals and licenses

- The environmental administrative license refers to the administrative decision of the environmental law enforcement agency to grant or permit the relative person to engage in certain activities according to the law according to the application of the relative person.



# 6. Regulatory Tools: Standards, Approvals, Licenses

## General procedure:

2. Made by authorized environmental law enforcement agencies, in most cases by environmental protection agencies

1. Relative person's application is a prerequisite

3. Generally, a written form such as a permit or approval certificate is issued to the opposite person.



# 7. Economic Tools: Pollution Taxes and Emissions Trading Systems

## 1) Pollution taxes

- In order to protect the environment, many countries have established their own environmental pollution taxation system under the guidance of tax theory.

### E. g.

- The Netherlands is the country with an early environmental protection tax. The taxes designed for environmental protection mainly include fuel tax, noise tax and water pollution tax. It is also the first country in the world to levy a carbon tax.
- In 1984, Italy levied waste recycling fees as a source of funds for local governments to dispose of waste.
- France has levied a tax on deforestation.
- The EU has also imposed a carbon tax.



# 7. Economic Tools: Pollution Taxes and Emissions Trading Systems

## 2) Carbon emissions trading

- an important mechanism for using the market economy to promote environmental protection.
- allows companies to trade with carbon emissions saved by energy savings within the total amount of emissions specified.



# 8. Enforcement Mechanisms

Violations of environmental laws may result in civil or criminal liability.

In order to protect the implementation of environmental laws and regulate the development and utilization of the environment, the corresponding legal responsibilities of environmental law are very necessary.

## 1) Civil liability

- Environmental civil liability refers to the responsibility caused by violation of environmental protection laws and regulations, causing pollution damage or environmental damage, and at the same time infringing on the legitimate rights and interests of others.
- It is generally reflected in a special tort liability.
- The means of taking responsibility mainly include stopping the infringement, removing the obstacles and harms, eliminating the dangers and harmful consequences, restoring the original state of the environment, and compensating for the losses.



## 2) Criminal liability

- Environmental criminal liability means that the perpetrator has intentionally or negligently committed a serious environmental hazard, and caused personal injury or serious loss of public and private property.
- This kind of behavior has already constituted a crime and should be subject to criminal sanctions.
- Compared with other types of criminal responsibility, the object of environmental criminal responsibility is more special.
- It generally has the characteristics of compliance, which mainly includes property ownership and personal rights that have been infringed by violations of various environmental factors and natural resources.



# 9. Conclusion

- Environmental law has developed rapidly since the 1950s and 1960s.
- As a law regulating environmental legal relations, environmental law has the characteristics of **comprehensiveness, technology, and extensive social and commonality.**



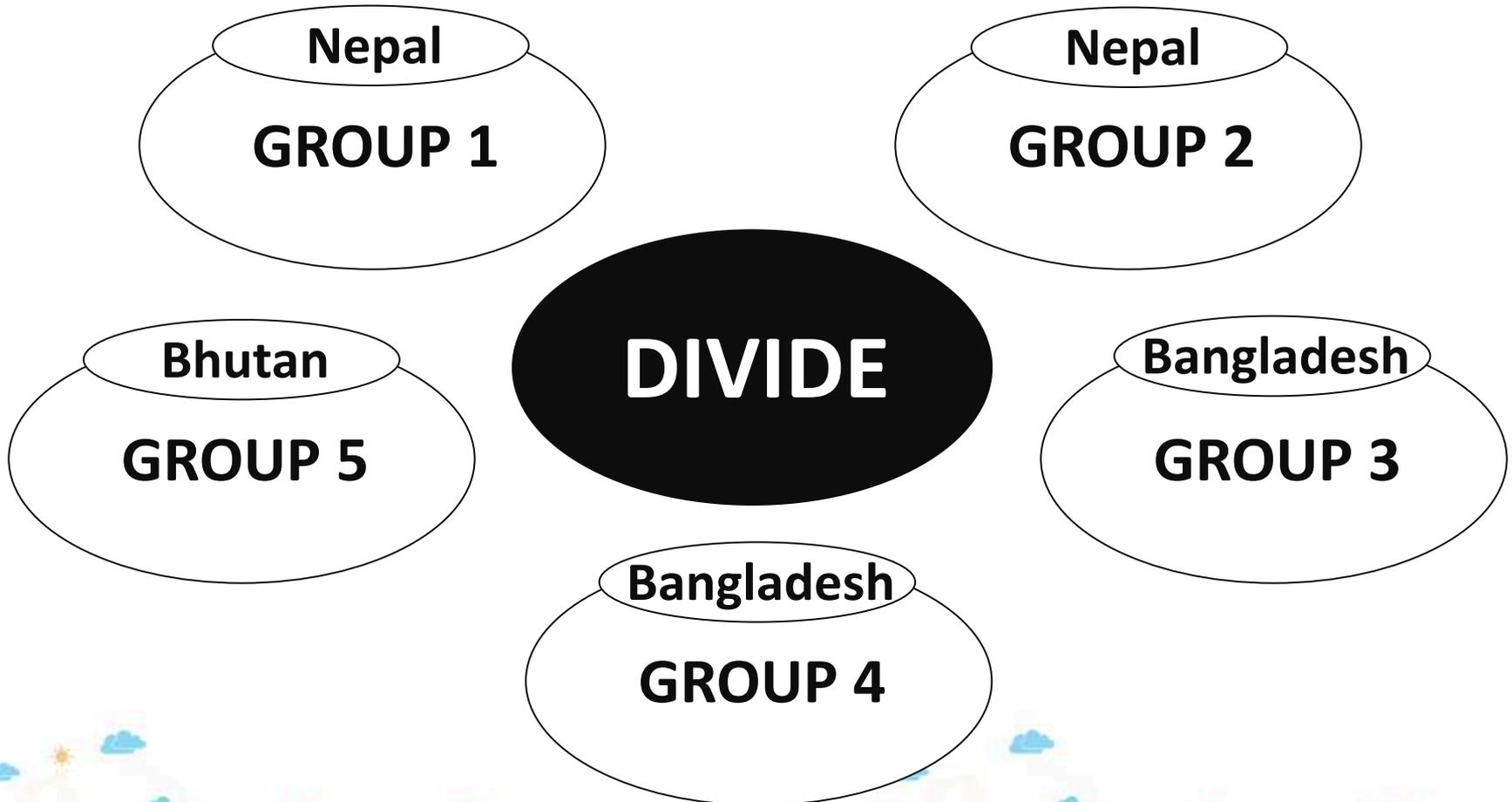
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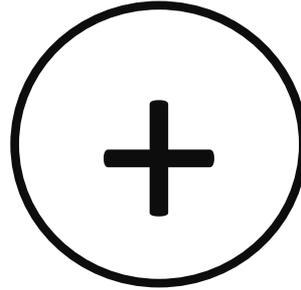
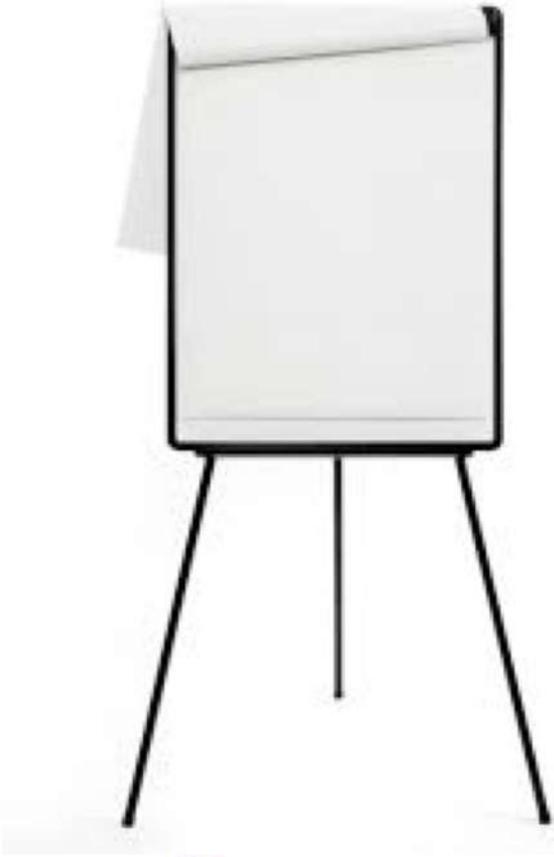
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# YOUR GROUPS



# YOUR TOOLS



# YOUR QUESTIONS

**How are the core principles and instruments of environmental law reflected in your country?**



# YOUR TASKS

**1**

**Free-form discussion**

**2**

**Write up any key points**

**3**

**Select someone to report back**

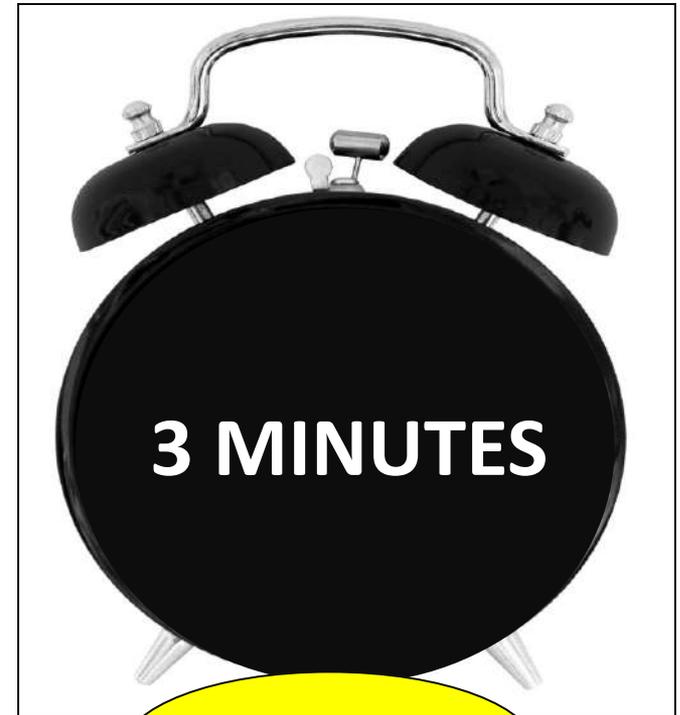


# YOUR TIME



**discussion**

**write up**



**report-back**

**1 / group**



# REFLECTIONS ON THE METHODOLOGY

- Nature & Purpose of the Methodology
- Division of Groups
- Preparations
- Free Form Discussion
- Process
  - Instructions
  - Discussion
  - Feedback
  - Large Group Discussion

