Milestones of Environmental Law

Legal systems, principles of environmental law

Environment, Environmental protection

- **Environment**: structures, systems and processes consisting of environmental elements
- **environmental element**: land, soil, air, wildlife, man-made environment and their components
- **environmental protection**: activities that aim to prevent or mitigate threats, damages and pollution of the environment, reduce the consequences of existing damage, attempt to recreate a pre-pollution state of affairs

Why do we need environmental laws?

- With our economic growth, industrial output and increased population, increased transport, we make more extensive use of natural resources
- Environmental pollution has become one of the greatest threats to mankind.
- Environmental disasters are more frequent with increasingly serious consequences.
- Environmental pollution does not respect national boundaries: transnational action is required.

Milestones of environmental legislation

- **Before WW2**: local, regional agreements only (i.e.: 1902 Paris Convention on the protection of agriculturally useful birds.) These only focused on very concrete, clearly defined, ‘isolated’ problems.
- As environmental protection increased in importance, the number and character of environmental legal cases changed
- **Trail Smelter case**: US v. Canada. A Canadian smelting facility caused serious sulphur-dioxide related damages in the US state of Washington. In 1938, an elected court found that no state has the right to use its territory in such a way that it would cause damages in the territory of another state. (i.e. it is the state’s exclusive right to decide on the use (or pollution) of its resources.)
Milestones of environmental legislation

- **After WW2**: global environmental protection comes to the forefront
- International treaties are signed more frequently, their scope becomes more general and global (1954 London Treaty on marine oil spills, 1958 Geneva Convention on open seas, etc.)
- International organisations are founded, these begin to play a key role in environmental protection. (e.g. UN, 1945)

- **1972: Club of Rome** (Founded in 1968, aims to identify global problems and propose ways of tackling problems). Issues report under the title „The Limits to Growth“
  - Population and economic growth cannot be sustained on the long run without interference: if exponential growth persists, human civilisation will collapse by the middle of the 21st Century
  - We can only prevent this crisis by international cooperation
- **1972 Stockholm – UN conference on the human environment**
  - First global attempt to create a programme for the preservation of the human environment
  - declaration on the principles and international duties of environmental protection. The right to a decent human environment, the environmental duties of states.
  - The UN Environmental Programme (UNEP) is established to coordinate international efforts: provision of data related to the environment, reporting, preparation of international treaties, assistance to states requiring it in the creation of environmental institutions

- **1992 Rio de Janeiro**: UN World Conference on Environment and Development
  - Declaration on Environment and Development (established 27 principles, declares the necessity of sustainable development, declares the responsibility of states for the environment)
  - Tasks for the 21st Century
  - UN Framework Convention on Climate Change (UNFCCC) (to reduce greenhouse gas emissions and to mitigate climate change)
  - Treaty on Biodiversity (aims to preserve biodiversity, sustainable use of environmental components, fair use and distribution of revenues from genetic resources)
  - Declaration on forests (sustainable forest management)
Milestones of environmental legislation

- To track the aftermath of the Rio Conference, the UN has created the Commission on Sustainable Development
  - Annual review of the implementation of treaties
  - Provides guidance to governments in the transition to sustainable development
- 2002 Johannesburg: World Conference on Sustainable Development
  - Review of changes since Rio Conference – several advances in cooperation, economic integration of environmental principles is all but absent
  - Implementation Plan: the action plan included in Agenda 21
  - Political Declaration: declaration of priorities of the parties for the forthcoming period
- 2012 Rio+20: UN conference on Sustainable Development
  - Assessment of achievements, debate of results and implementation obstacles and new challenges
  - Two major topics: opportunities in green economy in relation to sustainable development and the eradication of poverty, and the institutional framework for sustainable development
  - Final document: "The Future We Want"

Some important international treaties

- 1971 Ramsar: on the preservation of internationally important wetlands
- 1973 London: on marine waste discarded from vessels
- 1973 Washington: on the international trade of endangered wildlife and plantlife
- 1979 Bonn: on the protection of migrating species
- 1979 Bern: on the protection of the habitat of European wildlife and plant life
- 1979 Geneva: on cross-border and far-spreading air pollution
- 1985 Vienna: on the protection of the ozone layer
- 1989 Basle: on the monitoring of the international transport of, and the neutralisation of hazardous waste
- 1994 Sofia: on the protection and sustainable use of the Danube

Key principles of sustainable development

- Precautionary principle
- Prevention principle
- Principle of Sustainable Development
- Polluter Pays Principle (PPP)
- (Social/societal/citizen) Participation Principle
- Principle of State Liability for Damages

Precautionary principle

- It relates to phenomena occurring with a small probability;
- It aims to provide a high level of environmental protection through preventative measures in case of great risks
- It can be used if scientific and objective findings identify the probably dangerous consequences of a phenomenon, the use of a product or process
- It enables us to take preventative action without the need to wait for the true extent of risks and damages
- E.g.: any waste that was not proven to be harmless, must be considered to be hazardous waste. ("Guilty until proven innocent")
Prevention principle
- Requires preventative action against known and anticipated effects
- Possible pollution must be stopped at the source
- Multi-level
  - Legislative level – the legal system itself must be constructed in a way that this principle is upheld
  - Law implementation level – such an alternative (activity, technology, process, procedure, etc.) must be chosen even at the planning stage that poses either no threat or minimum threat to the environment
- E.g.: system of permits

Sustainable Development Principle
- Defined in „Our Common Future”
- Development that fulfils the needs of the present generation without jeopardising the opportunities of future generations
- Development is sustainable if a harmony between the economic, social and environmental dimensions is assured

Polluter Pays Principle
- Essentially an economic principle, the basis for internalising externalities. It aims to preserve the quality of the environment and to remove state subsidies of polluting industries.
- It is a fundamental principle of environmental protection, declaring that the costs of pollution prevention, control and mitigation must be borne by the polluter

Citizen Participation Principle
- Environmental protection, development and reconstruction is our common interest, and everyone is directly affected, therefore citizen participation serves the interests of environmental protection
- Related rights
  - The (active and passive) right to obtain information
  - Legislative participation
  - Participation in administrative decision making and control
  - The right to legal justice, the right to file law suits
State liability

- It reaffirms states’ sovereign rights to manage their resources
- It protects states incurring damages, recognising the duty of states to protect other states from pollution originating in their jurisdictions and control
- States are therefore not only responsible for their own actions, but for everybody under their jurisdiction

The right to the Environment

- 1972 UN World Conference on Environmental Protection: man has a fundamental right to liberty, equality and decent living conditions in an environment that enables a dignified and healthy life, but it is also mankind’s duty to preserve and improve the quality of the environment for present and future generations.
- 1992 Rio Declaration: “Human beings are at the centre of concern for sustainable development. They are entitled to a healthy and productive life in harmony with nature”.
- Elements:
  - The right to a healthy environment
  - The right to a secure environment
  - The right to an undisturbed environment
  - The right to an aesthetic environment

Environmental Law in the EU

Foundation Treaties
- 1951 Paris Treaty on the European Coal and Steel Community
- 1957 Treaty of Rome on the European Economic Community
- 1957 Treaty of Rome establishing EURATOM

Originally, these treaties did not contain anything on environmental issues (nor any other policy issues)

The European Communities had no Community level politics, therefore solutions needed to be found on the level of member states.

As environmental pollution and the differences in environmental protection affected trade as well, a Community-level approach to environmental policy began to surface, which was backed up by the 1972 Stockholm UN conference

The emergence of environmental policy and action:
- No mutually agreed treaty legitimation at first
- EC Treaty art. 100 – different environmental provisions in each state
  - Affected products – and trade between member states
  - Institutions – additional costs distorted competition
- EC Treaty, art. 308

Article 100
The Council, acting by means of a unanimous vote on a proposal of the Commission, shall issue directives for the approximation of such legislative and administrative provisions of the Member States as have a direct incidence on the establishment or functioning of the Common Market.

Article 308
If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.
Environmental Law in the EU

Single European Act (1986)

Important changes:
- Environmental policy is incorporated in the Treaty on the EC, thus giving a direct legal basis to common environmental policy setting
- The Community has the authority to legislate all issues that
  - Serve to preserve, maintain or improve the quality of the environment
  - Protect human health
  - Ensure a rational use of environmental resources
- The emergence of the clause of least stringent measures („The protective measures [...] shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties.”)
- Principle of subsidiarity: legislation on Community level is only permitted if the goals cannot be met by national or regional legislation, or if common action is more efficient.

Environmental Law in the EU

Maastricht Treaty (1992)

- Preamble states that environmental protection plays an integrative role
- Sustainable development is a goal of the Community
- General implementation of the principle of subsidiarity
- Treaty expanded the Community’s rights in environmental policy by assuming responsibilities in land management policy, urban and rural development and planning, as well as energy policy

Environmental Law in the EU

Treaty of Amsterdam (1996)

- Added a protocol to the Treaty Establishing the European Community, on subsidiarity and proportionality
- Reaffirmation of the principle of participation
- Simplified decision-making in environmental acts

Environmental Law in the EU

Treaty of Nice (2001)

- Lisbon Treaty („on the Functioning of the EU”) (2007)
  - Declares that sustainable development is one of the aims of the Union
  - Reaffirms that sustainable development is an important foreign policy matter of the EU
  - Besides preservation and maintenance of the quality of the environment, improvement is included
  - The right to a high-quality environmental protection becomes a fundamental citizen right
  - Climate change is inserted into the Treaty on the EU, indicating the importance of this phenomenon