

International Environmental law

General Framework of Environmental Law under IPL

- Areas of regulation
- Sources
- **Principles of IEL**
 - Sovereignty over natural resources
 - Duty not to cause transboundary harm
 - Principle of prevention
 - Precautionary principle - is a notion which supports taking protective action before there is complete scientific proof of a risk.
 - Sustainable development - secure a balance between developmental activities for the benefits of the people and environmental protection. It is a guarantee to the present and bequeath to the future generations.
 - Polluter pays principle
 - Duty to notify and consult
 - Duty to warn
 - Duty to assess environmental impacts
 - Common but differentiated responsibilities (CBDR)
 - Intergenerational equity
 - Common heritage of mankind
 - Common concern of humankind

The 'shrimp-turtle' case (WTO)

- Facts: India, Malaysia, Pakistan and Thailand brought a joint complaint against a ban imposed by the US on the importation of certain shrimp and shrimp products. The protection of sea turtles was at the heart of the ban. The US Endangered Species Act of 1973 listed as endangered or threatened the five species of sea turtles that occur in US waters, and prohibited their "take" within the US, in its territorial sea and the high seas. ("Take" means harassment, hunting, capture, killing or attempting to do any of these.)
- Under the act, the US required US shrimp trawlers to use "turtle

excluder devices” (TEDs) in their nets when fishing in areas where there is a significant likelihood of encountering sea turtles. It provided countries in the western hemisphere — mainly in the Caribbean — technical and financial assistance and longer transition periods for their fishermen to start using turtle excluder devices.

- Environmental Law:
 - **Appellate body:** Countries have the right to take trade action to protect the environment, the WTO does not have to “allow” them this right.
 - It also said measures to protect sea turtles would be legitimate under GATT Article 20 which deals with various exceptions to the WTO’s trade rules, provided certain criteria such as non-discrimination were met.

The tuna-dolphin dispute (WTO)

- Facts: The US Marine Mammal Protection Act sets dolphin protection standards for the domestic American fishing fleet and for countries whose fishing boats catch yellowfin tuna in that part of the Pacific Ocean. If a country exporting tuna to the United States cannot prove to US authorities that it meets the dolphin protection standards set out in US law, the US government must embargo all imports of the fish from that country. In this dispute, Mexico was the exporting country concerned. Its exports of tuna to the US were banned. Mexico complained in 1991 under the GATT dispute settlement procedure.
- Issue:
 - Can one country tell another country what their environmental regulation should be?
 - Whether trade rules permit action to be taken against the method used to produce goods?
- Holding: No
- Reasoning:
 - These domestic rules (even if there were done for the purposes of protecting the environment) contradict to the main purpose of the WTO. The main purpose of WTO-

liberalization of trade (free trade) that requires predictability through trade rules.

The Whaling in the Antarctic case (ICJ)

- Facts: 1946 International Whaling Convention: which prohibits whaling, the only exception is for scientific purposes. Japan under the JARPA – continued whaling for the purposes of science.
 - Australia applied to ICJ challenging the legality of the JARPA
 - Japan stop JARPA
 - Revoke licenses
 - Provide guarantees not to carry out similar programs until they fitful international standards.
- Issue: Whether activities under JARPA fall under the scientific exception?
- Holding: No
- Reasoning:
 - 1946 ICRW: system of international regulation for the management of whales
 - Was for the purposes of regulating whales
 - 1982 moratorium on commercial whaling, zero quota became effective in 1986.
 - preservationist approach has been taken to regulate whales.
 - Regulatory convention – preservationist convention