

Environmental & Sustainability Studies (ESS) 122

Lecture 1 THE NATURE, SCOPE & HISTORY OF ENVIRONMENTAL LAW

Prof TP van Reenen, Faculty of Law

Dr Rich Knight,

Mr S Kasker



UNIVERSITY *of the*
WESTERN CAPE

What is the Environment?

- According to The National Environmental Management Act 107 OF 1998 (NEMA):
The surroundings within which humans exist and that are made up of:
 - (i) The land, water and atmosphere of the earth
 - (ii) Micro-organisms, plant and animal life
 - (iii) Any part or combination of (i) and (ii) and the interrelationships among and between them
 - (iv) The physical, chemical, aesthetic and cultural properties of the foregoing that influence human health and well-being



What is 'Environmental Law'

Collective term describing the network of treaties, statutes, regulations, and common and customary laws addressing the effects of human activity on the natural environment



Scope of Environmental Law

- Land-use planning and development
- Resource conservation and utilization
- Waste management and pollution control
- Types of Environmental Legislation



Sources of Environmental Law

- International Law: a body of rules established by custom or treaty and recognized by nations as binding in their relations with one another
- Common Law: custom and judicial precedent rather than statutes
- Statutory Law: written **laws**, usually enacted by a legislative body.
- The Constitution: body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.
- Custom: widely accepted way of behaving or doing something that is specific to a particular society



Distinctive Principles of Environmental Law

- Introduction
- **Polluter Pays Principle:** Enforce that the party responsible for producing pollution responsible for paying for the damage done to the natural environment.
- **Precautionary Principle:** has a suspected risk of causing harm to the public, or to the environment, in the absence of scientific consensus (that the action or policy is not harmful), the burden of proof that it is not harmful falls on those taking an action
- **Other Principles**
 - Preventive Principle
 - Subsidiarity Principle



Important Concepts & Doctrines

- Duty of Care to Avoid Harm to the Environment (Environmental Citizenship):
- Life Cycle Responsibility (Cradle to Grave)
- Sustainable Development (SD)
- Triple Bottom Line (People, Planet, Profit)



Important Concepts & Doctrines

- Human Right to a 'Decent' Environment
- Legal Standing (*locus standi*) right to bring an action, to be heard in court,
- Environmental Justice
- Intra-generational equity
- Intergenerational Equity



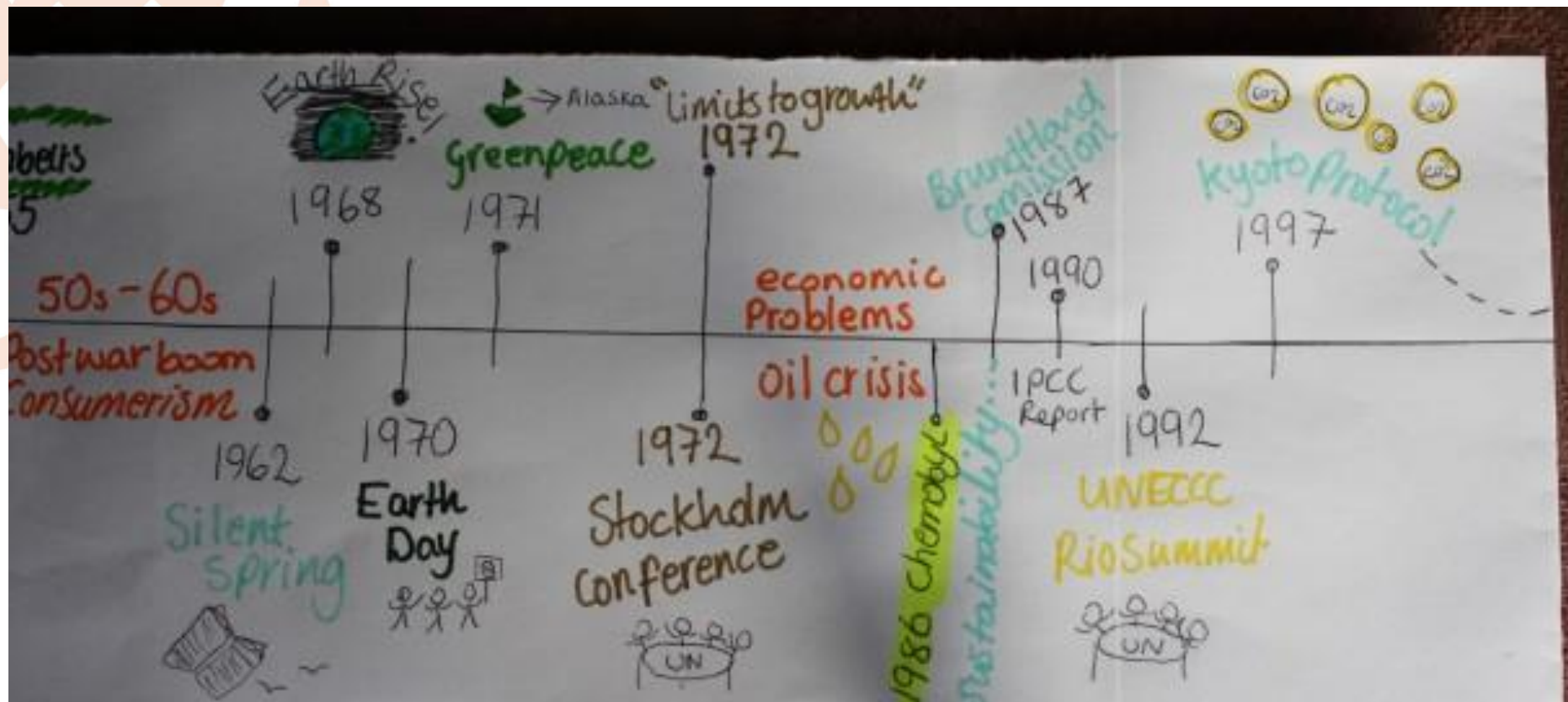
Sustainable Development

- The need to preserve natural resources for the benefit of future generations
- The aim of exploiting natural resources in a manner which is sustainable, prudent, rational, wise or appropriate
- The equitable use of natural resources, which implies that the use by one state must take into account the needs of other states
- The need to ensure that environmental considerations are integrated into economic and other development plans.



History of Environmental Law

- 1960s-1970s: Dawning of the 'Age of Environmental Law'



Reasons for Environmental Law

- Intrinsic value of nature & natural environment such as preservationists (John Muir) who wanted pure wilderness based on a spiritual appreciation for nature
- Utilitarian reasons promoted by Gifford Pinchot who advocated a resource-based approach to the management of natural resources

