

International environmental law (2)

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Environmental protection and trade

- Free trade/environmental debate: Arguments for/against free multilateral trade
- The role of WTO:
 - ✓ Debate on Article XX GATT
 - ✓ Debate on *non-product-related process and production methods* (PPMs)
- North-South relations

Environmental protection and trade

- The 1994 WTO Agreements:
 - ✓ GATT 194/94
 - ✓ Technical barriers to trade
 - ✓ Sanitary and phytosanitary measures
 - ✓ Trade in services
 - ✓ Trade-related investment measures
 - ✓ Subsidies and countervailing measures
 - ✓ Agriculture
 - ✓ Intellectual property

Environmental protection and trade

- Debate on Article XX GATT:
 - ✓ “**necessary** to protect human, animal or plant life or health”
 - ✓ “**relating** to the conservation of exhaustible natural resources”
 - ✓ “**arbitrary or unjustifiable discrimination** between countries where the same conditions prevail / **disguised restriction** on international trade (“*least trade-distorting regulation principle*”)

Environmental protection and trade

- Debate on *non-product-related* PPMs:
 - ✓ General most-favored nation treatment:
 - ✓ National treatment obligation
 - ✓ Prohibition on quantitative restrictions
- “**like products**”: whether likeness should be determined by reference to product’s characteristics + *non-product-related* PPMs by which a product is made
 - ✓ Yes: Discrimination between physically similar products on the basis of environmentally unsound PPM is accepted
 - ✓ No: Discrimination between physically similar products on the basis of environmentally unsound PPM is not accepted

Environmental protection and trade

- North-South relations (arguments):
 - ✓ To harm developing countries' competitiveness and negatively affect their exports
 - ✓ To force developing countries to buy modern technologies from the North
 - ✓ New form of protectionism by developed countries to protect their market from the cheaper products from the developing countries
 - ✓ To question environmental and social legitimacy of the developed countries' arguments
 - ✓ Trade measures are inherently unfair, as they can only be used by the economically powerful against the economically weak

Environmental protection and human rights

- Sub-Commission on Prevention of Discrimination and Protection of Minorities: Decision 1989/108
- UN Commission on Human Rights: Resolution 1990/41 on Human Rights and Environment
- Final Report of the Special Rapporteur Ksentini on Human Rights and Environment (UN Doc. E/CN.4/Sub.2/1994/9)
- Proposal of Draft principles on Human Rights and Environment (UN Doc. E/CN.4/Sub.2/1994/9)

Environmental protection and human rights

- Using recognized human rights to protect the environment:
 - ✓ UN system:
 - ✓ Universal Declaration of Human Rights (1948)
 - ✓ International Covenant on Civil and Political Rights (1966)
 - ✓ International Covenant on Economic, Social and Cultural Rights (1966)

Environmental protection and human rights

- Using recognized human rights to protect the environment:
 - ✓ Regional systems
 - ✓ Inter-American system:
 - ✓ American Convention on Human Rights (1969)
 - ✓ African system:
 - ✓ African Charter on Human and Peoples Rights (1982)
 - ✓ European system:
 - ✓ European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Environmental protection and human rights

- Creating new human rights to protect the environment:
 - ✓ Regional systems
 - ✓ Interamerican system:
 - ✓ Additional Protocol (1988) to American Convention on Human Rights (1969)
 - ✓ African system:
 - ✓ African Charter on Human and Peoples Rights (1982)
 - ✓ European system:
 - ✓ European Conference on Environment and Human Rights (1980)
 - ✓ European Parliament Declaration on Fundamentals Rights and Freedoms (1989)

Environmental protection and human rights

- Damage to environment and enjoyment of human rights :
 - ✓ Poverty, underdevelopment
 - ✓ Climate change
 - ✓ Deforestation, tree felling
 - ✓ Biological diversity
 - ✓ Pollution, dumping of toxic and hazardous products and substances

Environmental protection and human rights

- Violation of human rights and damage to environment:
 - ✓ Right to development
 - ✓ Right to self-determination
 - ✓ Right to public participation through democratic processes
 - ✓ Right to fair and suitable procedure / due process
 - ✓ Right to work with fair and suitable conditions
 - ✓ Right to information free access
 - ✓ Right to association and free expression