

CHAPTER 2: PRINCIPLES OF INTERNATIONAL (ENVIRONMENTAL) LAW AND THE ARCTIC

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General Principles of International Environmental Law and the Arctic

Kamrul Hossain

The development of international environmental law has been shaped by the understanding that the environment knows no borders. The increasing awareness of the value of cross-border cooperation in the areas of shared natural resources, cross-border pollution, climate change, the depletion of natural resources, and the loss of biodiversity has contributed to a shift in our mindset. We have begun to rethink how international environmental governance can be structured in response to the dynamics of interconnected elements of the natural system. The so-called "ecological era" in the 1960s shaped this mindset and led to the creation of a framework for a new branch of law – international environmental law. A series of systematic initiatives and processes helped promote fundamental norms as the principles of international environmental law. Among these processes, the 1972 Stockholm Conference on the Human Environment and the 1992 Rio Declaration on Environment and Development were particularly crucial. These two developments led to the birth of substantive norms considered to be principles of international environmental law, which provide useful guidelines for environmental management and cooperation. Today, international environmental law and policy developments are guided by a set of principles, the core of which are presented in the following:

Principles	Descriptions
Sovereignty	As a general norm, states have the sovereign right to exploit their resources according to national policies. However, states incur a responsibility whereby activities within their jurisdiction or control may not cause harm to the environment of other states.
Cooperation	States should cooperate in addressing the environmental concerns they share, an example being shared water courses. As environmental problems typically transcend national

	boundaries, their solution requires collaborative efforts. These in turn have given rise to environmental treaties.
Prevention	States have the duty to take preventive measures at an early stage to avoid or minimize or de-escalate environmental harm.
Precaution	The precautionary principle maintains that a lack of scientific certainty cannot be a justification for postponing cost-effective measures to prevent environmental damage. It implies that all possible measures should be undertaken in the absence of scientific consensus on the likelihood of risk to the environment.
Preservation and conservation	Both preservation and conservation aim to protect natural resources and promote biodiversity. While preservation aims to maintain and protect resources in their existing state, conservation emphasizes their responsible use and sustainable management with a view to their long-term viability. Both interests involve safeguarding natural areas, ecosystems, biodiversity, cultural heritages, as well as the human-built environment.
Polluter pays	States are responsible for ensuring that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond national jurisdiction. Liability regimes have been created that aim to hold polluters accountable and provide for compensation to affected parties.
Common but Differentiated Responsibilities	The principle recognizes states' disparate capabilities and responsibilities in addressing global environmental challenges. Global environmental justice cannot be achieved with the distribution of equal responsibility in an unequal landscape; for example, the share of greenhouse gas emissions is not equal for developed and developing countries.
Common Concern and Common Heritage	These principles, which emerged in the 1970s and 1980s, emphasize that the environment is a common concern of humanity and a common heritage of present and future generations that states have a shared responsibility to protect.

Integration	The principle calls for integrating environmental considerations into decision-making processes at all levels, including formulation of economic and social policies. It recognizes that environmental protection should not be pursued in isolation but should be integrated into broader development strategies.
Sustainable Development	States have a duty to promote sustainable development, defined as meeting the needs of the present without compromising future generations' ability to meet their own needs.
Intergenerational Equity	As aligned with sustainable development, intergenerational equity refers to the need of future generations, including the unborn ones, to have access to the same environmental resources and benefits as the present generation. It calls for the responsible use and conservation of natural resources to ensure their availability for future generations.

The application of these principles is reflected in the Arctic governance framework, which is shaped by both hard-law and soft-law processes. The sovereignty regimes of the eight Arctic states comprise the region. Cooperation among the states, initiated primarily at the beginning of the 1990s, has been driven by a spirit of making the region a "zone of peace." Environmental protection and sustainable development were set as the core agenda for Arctic governance. Establishing the Arctic Environmental Protection Strategy (AEPS) in 1991 was the first formal step towards cross-border cooperation among the Arctic states. The AEPS was replaced in 1996 by the Arctic Council, which has upheld cooperation on environmental matters. The Council sustains and advances the principles stated above through the work of its six Working Groups. The titles of these Working Groups reflect the integration of the principles enumerated above. For example, PAME (Protection of the Arctic Marine Environment) advances prevention and precaution; AMAP (Arctic Monitoring and Assessment Programme) focuses primarily on environmental impact assessments; CAFF (Conservation of Arctic Flora and Fauna) undertakes efforts directed at preservation and conservation; and the EPPR (Emergency Prevention, Preparedness and Response) reflects the importance of prevention and readiness to act in cases of emergency.

Several of the above principles, such as cooperation among the sovereignty regimes, the precautionary principle, prevention, preservation and conservation, and integration, also underlie global environmental regulations that apply to the Arctic, examples being the UN Convention on the Law of the Sea (UNCLOS), the Convention on Biological Diversity (CBD), as well as the UN Framework Convention on Climate Change (UNFCCC) and its subsequent processes. At the regional level, the Polar Code, the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), the Central Arctic Ocean Fisheries Agreement (CAOFA), and the treaties adopted under the auspices of the Arctic Council, such as the Arctic Search and Rescue Agreement (SAR Agreement) and the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response (MOSPA) reflect the importance given to issues such as cooperation, prevention, precaution, sustainable development, and inter-generational equity.

For more on this, read...

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