

HL IB Environmental Systems & Societies (ESS)



Your notes

9.3 Application & Enforcement of Environmental Law

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Your notes

Judicial Examination of Environmental Law

Judicial Examination of Environmental Law

Application in International Courts and Tribunals

- International environmental law and how it is applied to real-world cases are regularly examined and interpreted within international judicial bodies
 - These courts and tribunals play a crucial role in resolving disputes, interpreting treaties, and ensuring compliance with international environmental agreements

Examples of judicial bodies

1. International Court of Justice (ICJ):

- Role:** the principal judicial body of the **United Nations**, the ICJ hears cases involving **disputes between states**, including those related to environmental issues
- Examples:**
 - ICJ cases such as the Pulp Mills on the River Uruguay (Argentina v. Uruguay) have addressed transboundary pollution concerns
 - The Corfu Channel Case (UK v. Albania) addressed issues of state responsibility for environmental damage caused by naval mines

2. International Tribunal for the Law of the Sea (ITLOS):

- Role:** a specialised tribunal that judges disputes concerning the interpretation and application of the United Nations Convention on the Law of the Sea (UNCLOS)
- Examples:**
 - ITLOS cases like the Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore) have addressed **environmental concerns in maritime areas**
 - The Arctic Sunrise Case (Netherlands v. Russia) involved disputes over environmental protection in the Arctic region

3. European Court of Justice (ECJ):

- Role:** ensures the uniform interpretation and application of **European Union law**, including environmental directives and regulations
- Examples:**

- ECJ cases such as EU Commission v. Portugal have dealt with non-compliance with EU environmental legislation (this case focused on Portugal's failure to comply with EU environmental legislation related to the management, treatment, or disposal of waste materials)
- The Waste Framework Directive case (C-404/13) later clarified the concept of waste and its application under EU law



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Challenges faced by judicial bodies

- **Evaluation of compensation:**
 - One difficulty is determining appropriate compensation and damages for violations of environmental law
 - In cases of environmental pollution causing harm to ecosystems or communities, assessing the **monetary value** of environmental damage can be difficult
 - For example, calculating the cost of restoring a polluted river ecosystem to its original state or compensating communities for loss of livelihood due to contamination requires detailed scientific and economic analysis
- **Complexity:**
 - Environmental cases often involve intricate scientific, technical and legal issues, making fair judgements challenging
 - Cases involving complex environmental issues (such as climate change, biodiversity loss, or toxic contamination by pollutants) require judges to have an **expert understanding** of scientific concepts, technical data, and legal precedents
 - For example, determining whether industrial emissions are causing health impacts on nearby communities may involve highly sophisticated and lengthy medical studies
- **Enforcement:**
 - Implementing judgements and ensuring compliance with court decisions can be complex, particularly when **multiple jurisdictions** are involved
 - For example, enforcing restrictions on deforestation in a **transboundary** forest area may require cooperation between neighbouring countries and coordination of enforcement efforts across borders
 - Even if a court rules in favour of environmental protection measures, enforcing these decisions may face obstacles such as resistance from polluting industries or inadequate resources for monitoring and enforcement



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Strengthening Environmental Protection

Legal Personhood for Environmental Protection

- **Legal personhood** refers to entities, such as individuals or corporations, which are recognised as having **legal rights** and **responsibilities**, just like a **person**
- Recently, there have been an increasing number of laws granting legal personhood to **natural entities**, such as rivers, forests, mountains or even whole ecosystems
 - This improves the environmental protection of these natural entities
 - For example, in 2017, the High Court of Uttarakhand in India granted legal personhood to the Ganges and Yamuna rivers, declaring them "living entities" to ensure their protection and conservation

Benefits of granting legal personhood to natural entities

- **Stronger environmental protection:**
 - Granting legal personhood to natural entities gives them the legal standing to advocate for their own protection
 - This can lead to stronger legal safeguards to protect natural entities from damaging human activities
- **Similarity to corporate personhood:**
 - The concept of legal personhood for natural entities is like the established practice of granting legal personhood to corporations, which allows them to own property, enter contracts and sue or be sued in court
- **Alignment with Indigenous knowledge systems:**
 - Many Indigenous cultures see nature as interconnected and sentient, with no distinction between humans and the environment
 - Granting legal personhood to natural entities respects these views and recognises the importance of Indigenous knowledge systems
- **Environmental value systems:**
 - Legal personhood of natural entities follows the ecocentric (nature-centred) approach by recognising the intrinsic value of nature beyond its benefit to humans
- **Rights-based ethics:**
 - This approach emphasises the **inherent rights** of all beings to exist and flourish

CASE STUDY



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Whanganui River Claims Settlement Act

- In 2017, the New Zealand parliament enacted the Whanganui River Claims Settlement Act, marking a historic milestone in Indigenous rights and environmental legislation
 - This legislation was created in response to the longstanding grievances of the **Māori people**, who consider the Whanganui River as a sacred and integral part of their cultural identity
- The Act grants **legal personhood** to the Whanganui River (Te Awa Tupua), recognising it as a living entity with its own **rights** and **interests**
 - This recognition acknowledges the river's intrinsic value



A section of the Whanganui River (Duane Wilkins, CC BY 4.0, via Wikimedia Commons)

Concepts Relating to the Whanganui River Claims Settlement Act

Concept	Explanation
Te Awa Tupua	This term refers to the Whanganui River itself



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	<p>In Māori culture, rivers are often personified and regarded as living entities with their own mana (spiritual power)</p> <p>Te Awa Tupua embodies the spiritual and cultural significance of the Whanganui River to the local Māori communities</p>
Te Pou Tupua	<p>This term refers to the governance structure established by the Whanganui River Claims Settlement Act to represent and protect Te Awa Tupua</p> <p>Te Pou Tupua is a single role carried out by two individuals who are appointed to act as legal guardians and advocates for the river's health and well-being</p> <p>They have the authority to make decisions on behalf of the river and ensure its interests are upheld in legal proceedings and management practices</p>

- The Act allocates financial resources for the **restoration** and **protection** of the Whanganui River, acknowledging the need for active conservation efforts to protect its ecology and cultural significance
 - This funding demonstrates a commitment to the river's **long-term sustainability** and acknowledges its vital role in supporting biodiversity and community livelihoods
- The Act also triggered the creation of a **river strategy group** tasked with developing and implementing a long-term management plan for the Whanganui River
 - This ensured the continued involvement of different stakeholders in the river's future, including Māori communities, environmental experts and the government
- The Act is a landmark case that recognises bio-rights and grants legal personhood to natural entities
 - By giving the Whanganui River legal status and protection, New Zealand acknowledges the **interconnectedness of human and environmental well-being**
 - It also sets an example on how to approach governance and resource management in an **inclusive** and **sustainable** way



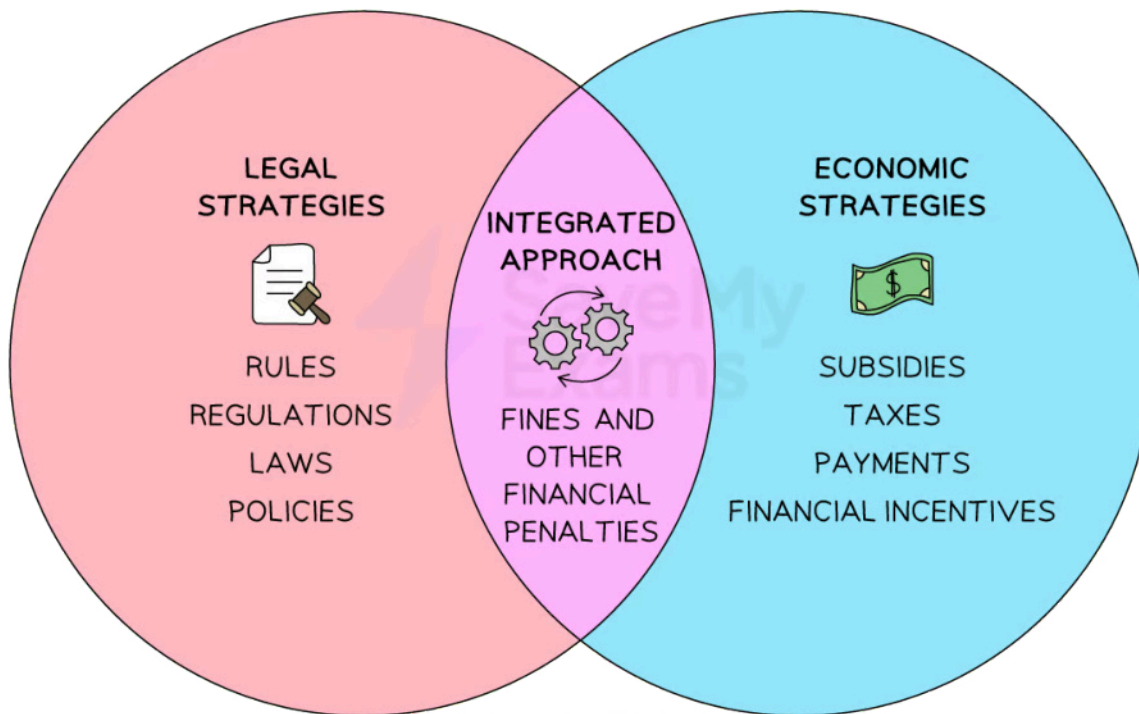
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Integrating Legal & Economic Strategies

Strategies for Sustainable Use of the Environment

- Both legal and economic strategies are crucial for maintaining the sustainable use of the environment
 - Legal frameworks establish **rules** and regulations for environmental protection, while economic strategies provide **incentives** and other practical mechanisms for sustainable resource management

STRATEGIES FOR ENVIRONMENTAL SUSTAINABILITY



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Strategies for environmental sustainability

Contributions of legal strategies

- Legal strategies involve establishing **laws**, **regulations** and **policies** to protect the environment and natural resources
 - They define the **rights** and **responsibilities** of stakeholders, set standards for environmental quality, and provide mechanisms for resolving disputes



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- For example, the Clean Air Act in the UK sets standards for air quality, regulates emissions from industrial activities, and imposes penalties for non-compliance to ensure the protection of public health and the environment

Challenges of legal strategies

- Some common legal challenges include:
 - **Achieving a consensus** among stakeholders with competing interests
 - **Ensuring compliance** with environmental regulations
- Enforcement of environmental laws can be difficult, especially in cases where there are **conflicting interests** or **limited resources** for monitoring and enforcement
 - For example, it can be complex (and therefore take a long time) to resolve disputes between industries, local communities and environmental groups over **land use** or **resource extraction** projects

Contributions of economic strategies

- Economic strategies aim to incorporate the **value of natural resources** into economic decision-making and incentivise sustainable practices
 - They include mechanisms such as **subsidies**, **taxes** and **payments** for ecosystem services to encourage environmental conservation and resource efficiency
 - For example, carbon pricing mechanisms, such as carbon taxes or emissions trading schemes, create **financial incentives** for industries to reduce greenhouse gas emissions and transition to cleaner technologies

Challenges of economic strategies

- A major challenge in economics is assigning economic value to **ecosystem services** and assessing the financial costs of **environmental degradation**
 - Economists and politicians face difficulties in quantifying the value of natural resources, such as clean air, water, and biodiversity, and incorporating these values into economic or political decision-making
 - For example, it is difficult to accurately estimate the economic value of pollination services provided by bees to agriculture, or the economic cost of habitat loss due to deforestation

Integration of legal and economic approaches

- The most successful outcomes often result from **combining legal and economic strategies**
 - For example, legal frameworks may impose fines or other financial penalties for illegal activities such as pollution or habitat destruction, providing economic incentives for compliance

- This **integrated approach** can align economic interests with environmental goals and promote sustainable practices
 - For example, imposing fines on companies for illegal dumping of waste or oil spills not only deters harmful activities but also generates **revenue for environmental restoration efforts**
- By combining legal and economic strategies, societies can better address environmental challenges, promote sustainable development, and ensure the long-term well-being of both people and the planet



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