CHAPTER 49

Passage from Natural Resources Law to Environmental Law to Sustainable Development Law

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1 Introduction

The main concern of environmental law is to govern the relationship of man with his natural surroundings. In the past, man viewed nature and her resources as available for virtually unlimited exploitation. He had become a god in his capacity to destroy. He had little thought for the future or for the harms he may have done. Fortunately, that view of nature has been modified by the concept of man's new role of 'stewardship', i.e. man is the custodian rather than the conqueror of nature.

As custodian, man must not merely exploit resources; he must also conserve them. Considering the trend towards industrial development, this task extends to planning and creating an environment of his choice. He should strive to strike a harmonious balance between development and environmental protection for his survival and well-being. More so because of the recognized unity of nature and humanity and the finitude of the earth's resources. The guiding principle should therefore be: what naturally is should be respected and preserved in its present condition, or in its prior condition if restoration of the prior condition is possible and beneficial.

Law is an essential tool for the sound management of the environment and its resources, and its development and application are of vital importance to all societies. In this regard, legally trained persons have multiple tasks to perform. The range of tasks include developing new constitutional theory, drafting implementing policies, new legislation and administrative regulations as well

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as the formulation of guidelines to ensure compliance with legal requirements, opportunities for litigation to halt environmentally degrading activities and reshaping the legal and administrative systems of governmental agencies so that environmental implications are properly taken into account in agency decisions. In connection therewith, the effectiveness of government implementation of development-oriented public policies involves the use of law as an instrument of social change and control and that inefficiencies in the legal system have been a contributing factor to ineffective development policies related to the environment.

Environmental law has been defined as that set of legal rules addressed specifically to activities which potentially affect the quality of the environment, whether natural or man-made. It consists of international and national laws relating to the protection and enhancement of the environment and encompasses both ‘hard law’ (i.e. international treaties and national legislations) and ‘soft law’ (i.e. guidelines, standards, etc.). Its elements are derived from sectoral areas (e.g. air, marine and inland water, soil, energy, biological diversity) and functional tasks (e.g. environmental impact assessment, natural resources accounting, environmental auditing, etc.) (Craig, 2002).

It should be noted that environmental law is only one component of environmental protection techniques and should be complemented by other functional tasks such as development plans, conservation strategies and institutional support. Consequently, technical understanding, economic analyses, public participation, access to information and access to justice, political will and a number of socio-cultural factors are required in order to establish a comprehensive approach to the protection of the environment.

The Environment as a Field of Law

Environmental law emerged as a branch or new field of law. Other branches of law have historically been used to remedy environmental problems. In the common law system, tort law which provides remedies for harm caused by an individual to another provided the necessary legal foundation in early cases. Nuisance actions were the most popular because they allow a successful plaintiff/litigant to receive not only compensation but also an order from the court abating the nuisance.

The inadequacies and sometimes inefficiency of tort and property law convinced governments to adopt measures to tackle the most pressing environmental problems. Environmental laws were traditionally formulated around important themes such as nature conservation and protection of the principal areas of environmental concern: air, water and land. This allows the elaboration