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Corporate Environmental Crime: Buying the World

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What will be covered today:

Introduction to International & EU Environmental Law

Development of Environmental Concepts

Environmental Protection and Economic Stability

The Environment and Economy in Portugal

Focus on Wildlife

Your Project...

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Environmental Law is not a single area - there are overlaps with many (all) other areas of law:

Property

Health and Safety at Work

Public Health

Tort

Employment

Criminal

The term is usually used to refer to the laws that *protect* the environment in some way

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Seek to control relationship between humans and natural environment

Can be:

- Positive ("you must do...");

- Negative ("you must not do...")

Different sanctions for breaches of both.

Can be:

- Reactive (wait for something to happen);

- Proactive (act in advance of a disaster)

Require assistance of many disciplines, particularly physical sciences – no point in legislating if you don't understand what is going on

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Need to predict future effect of law as well as seek to control present situation

Some solutions cause future problems – landfill tax (good idea) led to fly-tipping, for example (not good)

Integrated approach is required – a particular environmental law cannot be viewed in isolation

Constantly changing, dealing with actions which are:

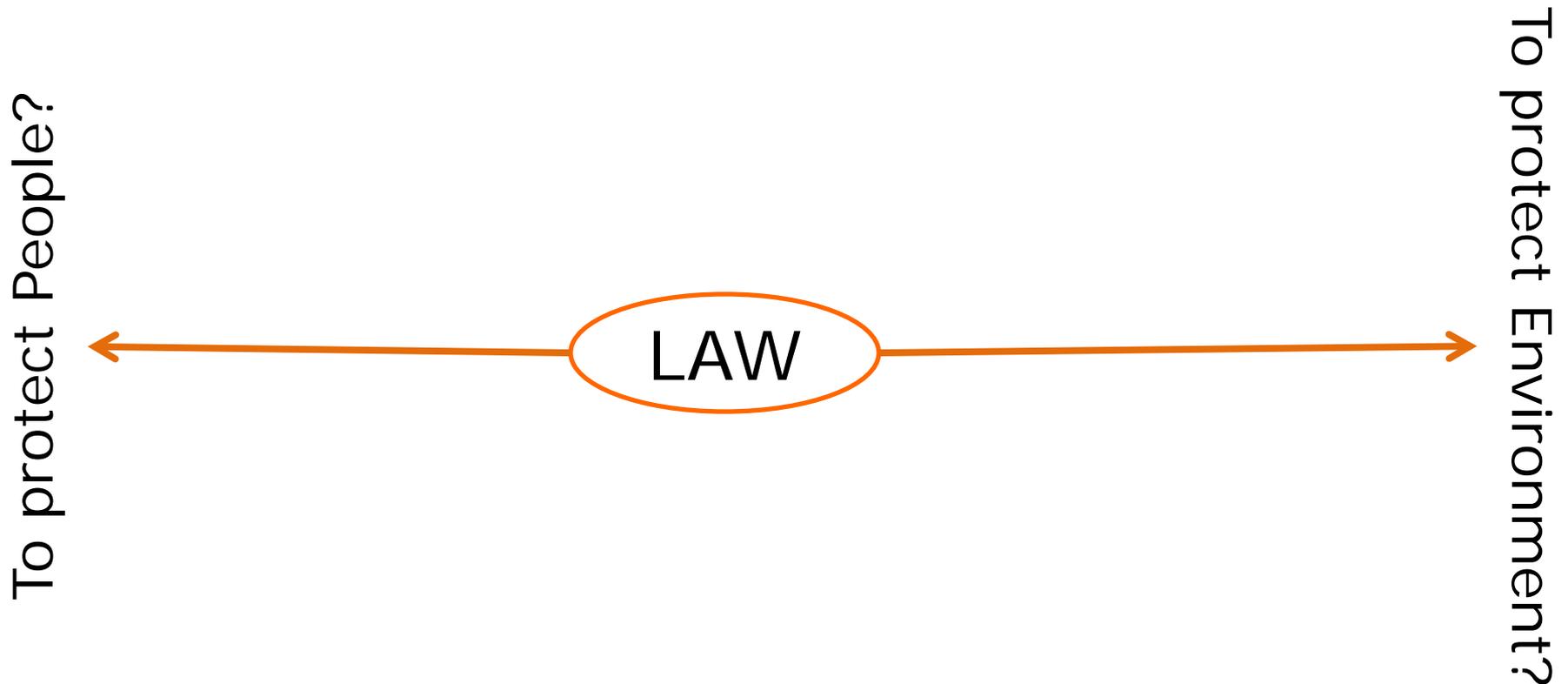
Cumulative (i.e. only cause harm after a series of events) or

Irreversible (i.e. extinction of a species)

Or both! Cumulative events need quick action, irreversible ones need careful planning – inherent conflict.

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What is "environmental law" *for*?



Pressures can pull in opposite directions

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Introduction to International Environmental Law

Background

Hard Law

Soft Law

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What is International Environmental Law (IEL)?

<p>A body of law composed of the principle rules of conduct which states feel themselves bound to observe (and therefore do observe) in their relations with each other</p>	<p>The rules of the game. No country is forced to obey them, they just do. It's like being polite to people in everyday life.</p>
<p>Rules relating to the functioning of international institutions or organisations and their relations with each other and their relations with states and individuals</p>	<p>The rules relating to the UN, or IAEA, or similar. Cover their relations with each other, with sovereign states, and with individuals</p>
<p>Rules relating to individuals and non-state entities in so far as their rights or duties are the concern of international community</p>	<p>Rules relating to anyone who isn't a state (NGO, Company, person) "in so far as their rights or duties are the concern..."</p>

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IEL is generally separated into Hard Law and Soft Law. Hard Law is binding, whereas soft law is generally persuasive in nature.

HARD LAW (Binding)

Treaties

Case Law

Custom

Juristic Works

SOFT LAW (Not binding)

Declarations and Principles

Reports and Recommendations

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A Treaty is not always called "Treaty" - also convention, protocol, covenant, pact, act, etc. Some are frameworks, some are umbrellas

Usually states have to ratify their signature of a treaty by approval of their respective parliaments. Often only comes into effect if a certain number of signatories ratify. Only bind those who sign

Often effective – e.g. 1985 Vienna Convention (for the Protection of the Ozone Layer) and its 1987 Montréal Protocol

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Treaties can be global, which protect particular species on a global basis:

1946 International Convention for the Regulation of Whaling

Passed to create an International Whaling Commission to control the global whaling industry and maintain stocks

1973 CITES (Convention on the International Trade in Endangered Species of Flora and Fauna

Separated endangered species into 3 appendices, and banned global trade in them

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Regional agreements try to protect particular regions – and sometimes their wildlife

1972 London Convention for the Conservation of Antarctic Seals

Specifically limited to areas south of 60°S (i.e. the Antarctic), and 6 species of seal

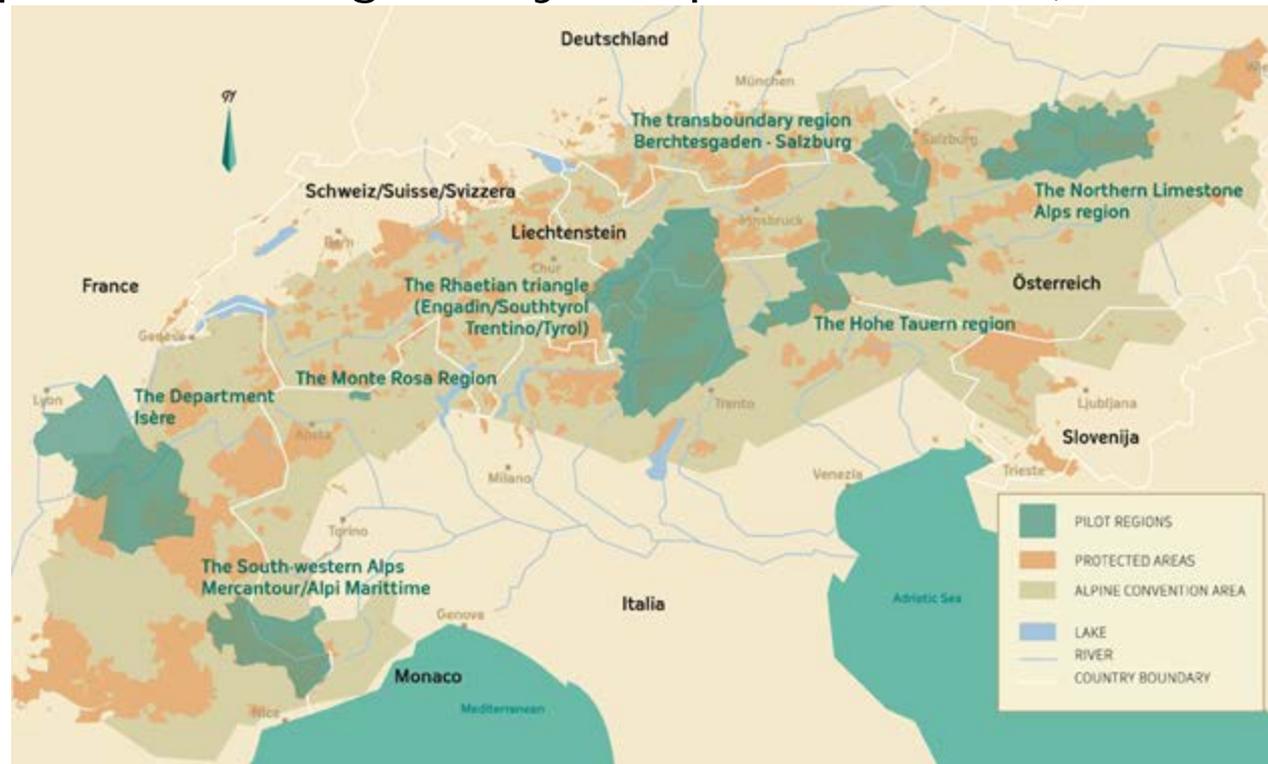


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Regional agreements try to protect particular regions
– and sometimes their wildlife

1991 Salzburg Convention concerning the protection
of the Alps

Specific regional protection, signed by 8 Alpine states* (and
no-one else)



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Bilateral agreements
are between 2 states

1988 US-Canadian
Agreement on the
Conservation of the
Porcupine Caribou
Herd

Only signed by, and
binding, on the US and
Canada

Concerns Porcupine
Caribou, 130,000 of which
migrate across Alaska, the
Yukon and the Northwest
Territories



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International Case Law:

The only *permanent* international judicial tribunal is the International Court of Justice (ICJ). Gives many decisions and opinions, and uses past decisions to assist it (although no binding precedent)

Arbitration:

States set up a judicial tribunal to deal with a particular case. May not necessarily concern a breach of international law but the settlement of the terms of an agreement

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New concepts are often not introduced through treaties but through customs generally accepted by states.

Problematic:

When does custom become part of international law?

Writings by respected commentators are referred to by courts and arbitrators when settling disputes

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Declarations and Principles are more of a non-binding "declaration of intent"

Most significant environmental examples:

UNCHE -1972 (Stockholm), and UNCED – 1992 (Rio)

Not international law immediately: - represent an intermediate step towards formulation of legally binding rules and principles

States often reluctant to sign up to a range of measures.

Can be particularly true of developing countries (and the US at Kyoto!). More are happy to agree to a series of intentions

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Reports (such as the WCED/Brundtland Report) and recommendations (such as those found in OECD publications) can form the basis for policy both internationally and nationally

International organisations (UN) can request reports which are intended to form the basis of their decision making

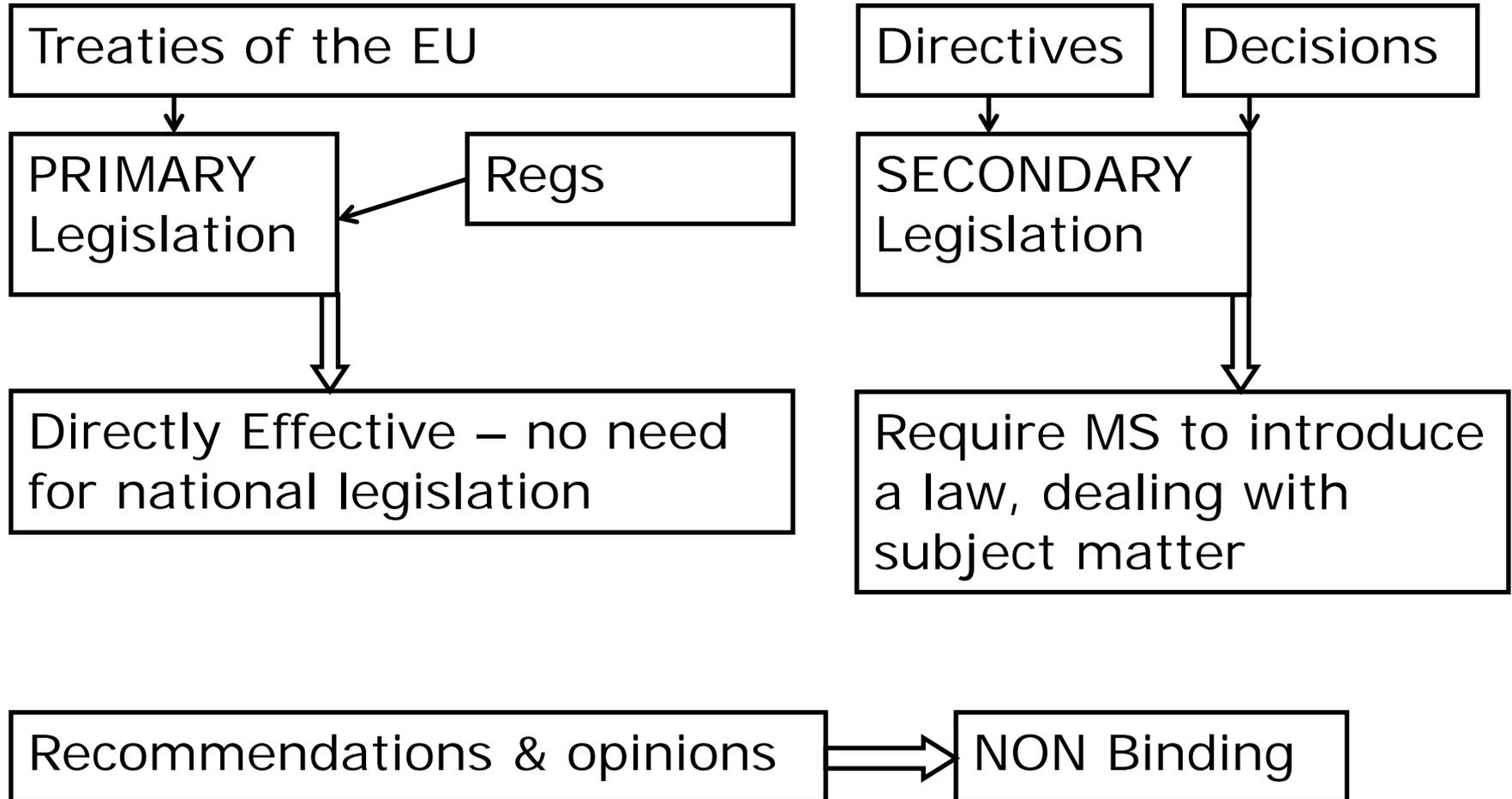
Introduction to
EU Environmental Law
Directives and Regulations
Environmental Action Programmes



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EU Environmental Law



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Initially the EEC did not consider that the Environment was within its competency

1972 UNCHE was followed in the same year by Paris Summit meeting of the EEC Member States where they declared:

Economic expansion is not an end in itself ... As befits the genius of Europe, particular attention will be given to intangible values and to protecting the environment, so that progress may really be put at the service of mankind

UK joined 1973, Portugal in 1986.

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Key features of EU Environmental Law

Improving living / working conditions of EU citizens;

Removing distortions in market operation caused by differing environmental controls and standards; and

Avoiding cross border pollution

Based on three key principles:

Precautionary;

Preventative;

Polluter Pays

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Post-UNCHE the EEC (now EU) set out several Environmental Action Programmes (EAPs), which are outline political statements on legislation

The 1st EAP set out the main principles and the Commission has then over a period of years produced the rest of the series:

1ST 1973-1977

2ND 1977-1982

3RD 1982-1987

4TH 1987-1993

5TH 1993-2000

6TH 2000-2010 – Extended to 2014

7TH 2014 -

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1st EAP principles mark a change from earlier attitude:

Deal with pollution at source

Take environmental issues into account at the earliest stage

Avoid abusive exploitation of natural resources

Promote conservation and improve standard of knowledge

The polluter should pay for the damage they caused

Activities in state shouldn't degrade environment of another

Have regard to developing countries

Should be clear long-term EU environmental policy

Environmental Protection is for everybody

Establish Action Levels for each type of pollution

Harmonisation of Environmental Protection

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6th Environmental Action Programme “Environment 2010: Our Future, Our Choice”

Improve implementation of environmental legislation

Improve integration of the environment into social and economic policies

Improve ownership of environmental protection efforts by stakeholders and citizens

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Policy based on 4 objectives & principles

Art. 191(1): 4 objectives:

Preserving, protecting, improving environmental quality

Protecting human health

Prudent / rational utilisation of natural resources

Promoting International measures to deal with regional or world-wide environmental problems

Art. 191(2): 4 principles:

Preventive;

Precautionary;

Polluter Pays and

Integration with other policies

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Article 2 of the TEU says *inter alia*

The Community shall have as its task... to promote...

A harmonious, balanced and sustainable development of economic activities;

A high level of employment and of social protection...;

Sustainable and non-inflationary growth

A high degree of competitiveness and convergence of economic performance;

A high level of protection and improvement of the quality of the environment

The raising of the standard of living and quality of life, and

Economic and social cohesion and solidarity among Member States.

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The Treaty also added a new Article 3c

Environmental protection requirements must be integrated into the definition and implementation of Community policies and activities ... in particular with a view to promoting sustainable development

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Development of Environmental Concepts

Preservation of the Biosphere

Sustainable Development

Intergenerational Equity

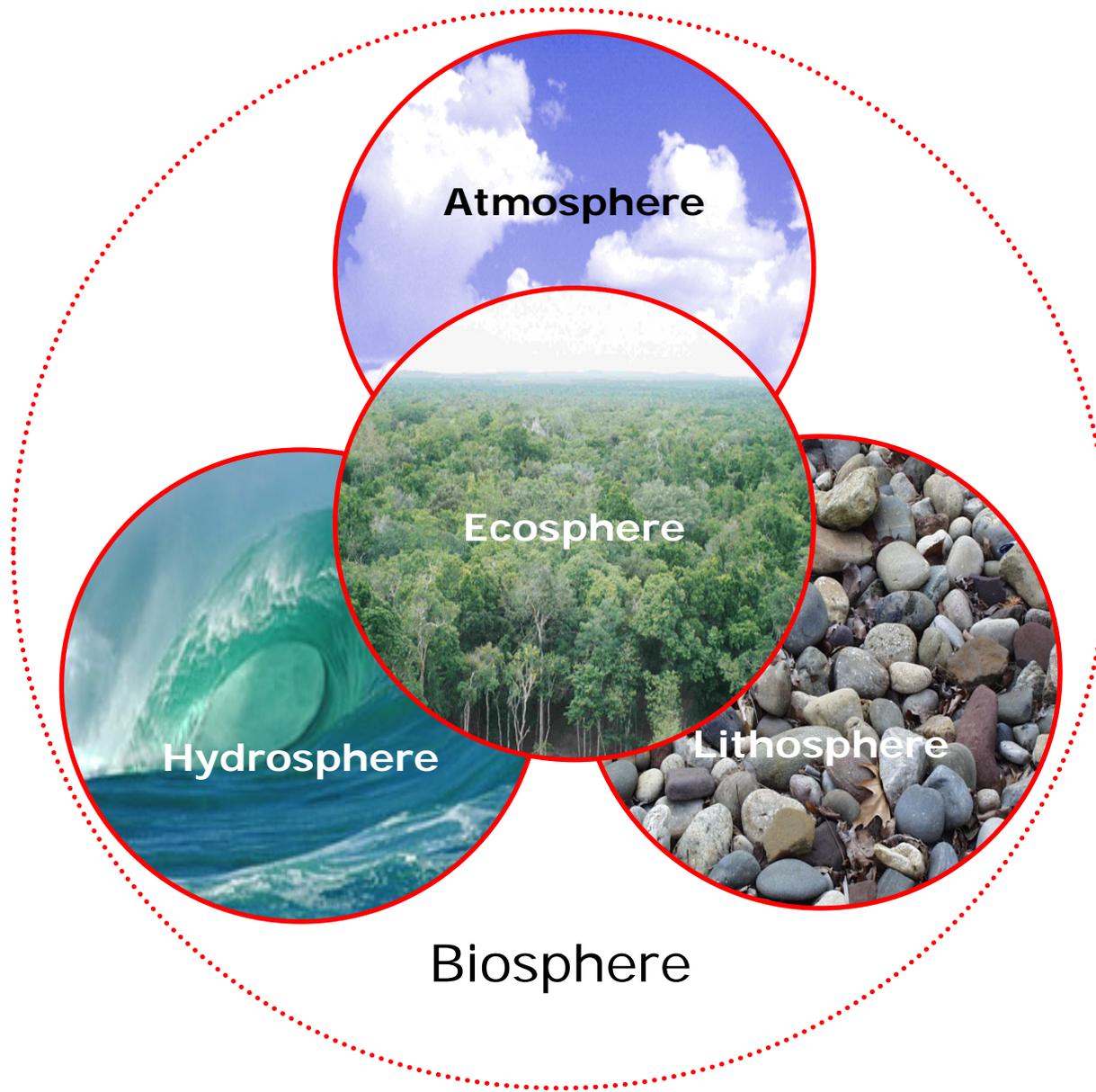
Precautionary Principle

Polluter Pays Principle

Emergence of Environmental Human Rights

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Preservation of the Biosphere is a relatively recent idea - international political acknowledgement originates from the expression of need for maintaining biodiversity at UNCED 1992

Traditionally humans viewed separately from the environment

Immanuel Kant (1724-1804) argued that humans have a *right* to exert power over the natural world in a way other species cannot

General attitudes centred on the subjugation of the natural world by human beings for their benefit. It was believed that humans had a right to exploit Nature as man's larder

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1990s alternative centred on idea that humans are part of natural world, rather than separate entities, with responsibility to care for it for their own long term benefit (Stewardship), or benefit of other organisms, or both

Still a conflict between:

- Intrinsic value (based on simple existence) and

- Utilitarian value (based on usefulness to humans)

Some rationalisation of these positions by the model of the biosphere as interdependent elements of which humans are a part

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Model works if we accept that each element relies upon another for its survival

Complexity of interdependence means one cannot say that any one element is surplus to requirements

In environmental ethics terms, biosphere protection is a concept beyond sustainable development. Has the following legal effects:

- Interdependence needs integrated solutions

- Protection extends past economically useful areas

- Problems require transboundary solutions

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The UN Conference on the Human Environment in Stockholm in 1972 (UNCHE) recognised there was a link between economic development and environmental protection

Wasn't a game-changer though.

In the 1974 UN Resolution on the *Charter of Economic Rights and Duties of States* ([A/RES/29/3281](#)), for example, little account was made of environmental impact of development

Also, many strategies put forward for environmental protection took no account of development – the 1980 [World Conservation Strategy](#) didn't really mention economics at all

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1987 WCED ("[Our Common Future](#)" or "The Brundtland Report") pointed to need to ensure SD to provide mechanisms to increase international co-operation.

It defined SD (Chapter 2, para 1) as:

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

the concept of "needs", in particular the essential needs of the world's poor, to which overriding priority should be given; and

the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

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Key features of Sustainable Development

Part of the protection of the Biosphere

Anthropocentric (human-centred)

Considers environmental protection with the emphasis on the economic and social development

Pragmatic. If applied fully, it takes into account needs of the undeveloped and developing world, and benefits/problems of technological advances

Favoured by governments post-Rio

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Intergenerational Equity (IGE)

SD can be interpreted as applying in two planes – horizontally and vertically.

Horizontal application meet the first part of the definition
(Development that meets the needs of the present)

Vertical applies to the second (the ability of future generations to meet their own needs)

It is this vertical application that can be referred to as Intergenerational Equity, or IGE.

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Principle was developed by Professor Edith Brown Weiss in the late 1980s, and she set out the 3-part core obligation (1990) as being:

First, each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations.

This principle is called 'conservation of options.'

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Principle was developed by Professor Edith Brown Weiss in the late 1980s, and she set out the 3-part core obligation (1990) as being:

Second, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations.

This is the principle of 'conservation of quality.'

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Principle was developed by Professor Edith Brown Weiss in the late 1980s, and she set out the 3-part core obligation (1990) as being:

Third, each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations.

This is the principle of 'conservation of access.'

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In the UK, the Committee on Radioactive Waste Management (CoRWM) said of IGE in 2004:

Put most simply, intergenerational equity is the balance between present and future generations based on fairness.

The difficulty with elevating the concept to the status of a principle is that it is so vague; how do we measure fairness, how do we know what future generations will want or need, how far into the future should we look?

It is an ethical rather than a legal principle.

Although it has been incorporated into a number of international legal instruments..., references are aspirational and do not elaborate on how the principle is to be implemented or enforced.

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In terms of policy and control (enforcement), whether at international, regional or local level, this vagueness causes enormous problems.

Williams (2006: 1) argues that

“Global climate change represents a classic example of intergenerational inequity” because “the generation of people that emits the greenhouse gases will always precede the generation that has to suffer the climatic changes caused.”

If that is the basis for IGE, then it could be argued that all environmental damage comes under the same category – the generation that used first CFCs is not the generation to feel the impact of a damaged ozone layer, etc.

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The Precautionary Principle (PP) is nothing new as a concept, but in 2000 the Commission Communication [COM/2000/0001/final](#) tried to clarify the PP and points out (Para 3) that

The precautionary principle is not defined in the Treaty, which prescribes it only once - to protect the environment.

But in practice, its scope is much wider, and specifically where preliminary objective scientific evaluation, indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen for the Community.

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Environmental assessment should be carried out and mitigating action should be taken to reduce the damage to the environment

It is open to a number of interpretations. Either:

The process or project should be allowed to proceed unless or until it is found to be damaging to the environment

or:

The process or project should not be allowed to proceed unless or until it is found not to be damaging to the environment

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The OECD (Organisation for Economic Co-operation and Development) states that:

The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortion in international trade is the so-called 'polluter pays principle'.

This means that the polluters should bear the expenses of carrying out remediation measures decided by the public authorities...

First mentioned as a principle in the 1st EU Environmental Action Programme in 1973

Contained in both TEU and SEA

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Under the principle, the polluter should pay the costs incurred through polluting activities, such as:

Administration of pollution control system (e.g. license fees)

Monitoring

Prevention

External costs – e.g. Landfill (through taxes)

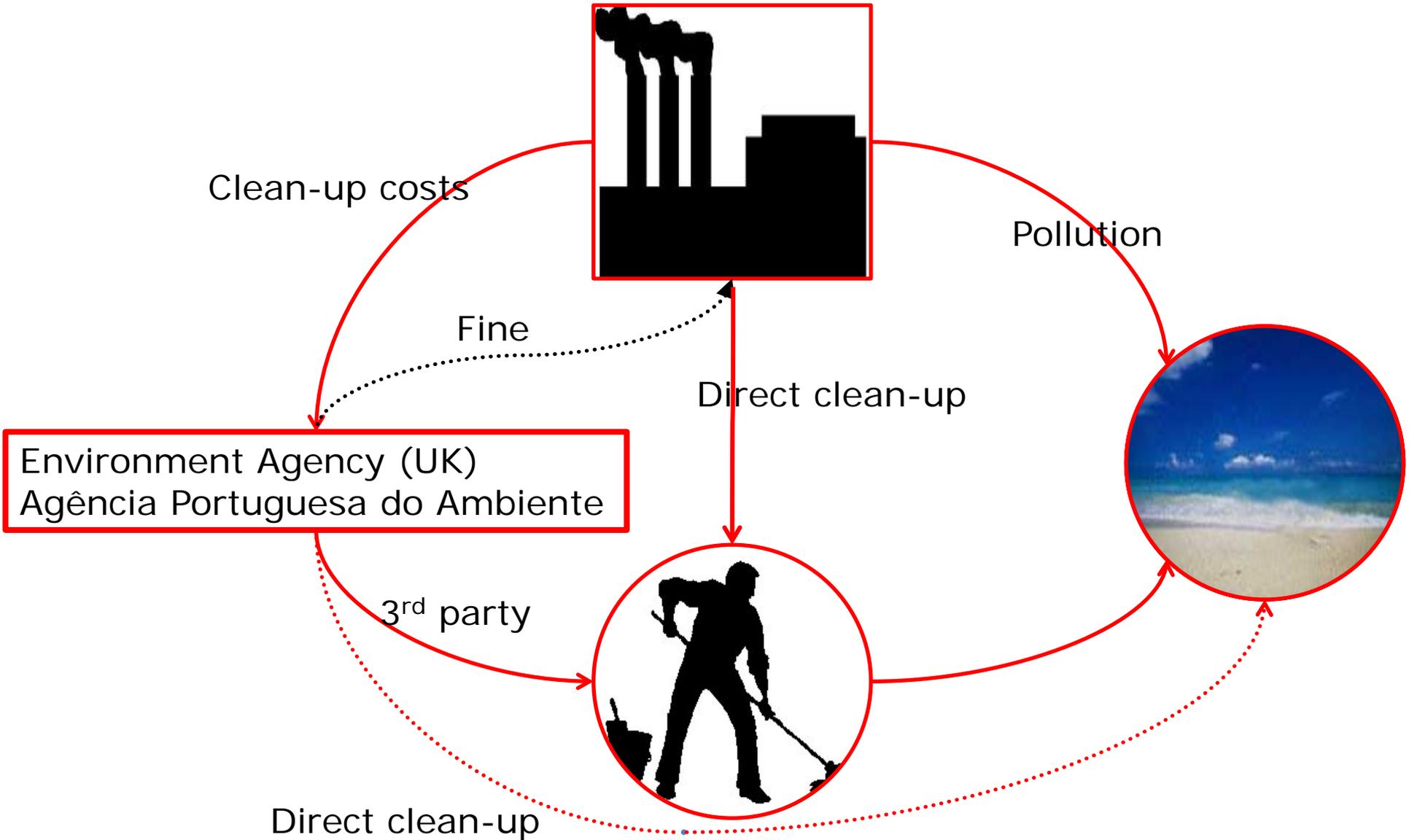
Clean-up costs (by setting requirements & standards in relation to polluting activity)

Problems:

Does the corporate polluter ever really pay, or are the costs ultimately recovered from the consumer?

Does this matter, as the consumer is effectively causing the corporation to pollute anyway?

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Emergent Environmental Human Rights

There is no “human right to the environment” as such, either in the Universal Declaration of Human Rights (UDHR), or the 1950 European Convention on Human Rights (ECHR), the European Court of Human Rights (ECtHR) has recognised that such a right might have an impact in some cases.

It is important to bear in mind that even though the action in relation to the ECHR may have failed, there may still be domestic remedies that were not exhausted.

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Emergent Environmental Human Rights

Argument in favour of having it:

Certain aspects of the environment are so strongly connected with human rights that to damage the environment is to be in breach of a human right

Film from Earth Day 2009 exploring the links



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Argument against having it:

Sole focus on humans could be detrimental to rest of environment – it gets us right back to the old days of nature serving humanity

Are humans entitled to greater consideration than the rest of the environment?

Are humans a part of environment or is it "*everything that is not me*" (Albert Einstein)

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Noise Cases:

Powell and Rayner v. UK (9310/81) 21.02.1990

Applicants, who lived near Heathrow airport, and argued the authorised noise level there unacceptable and government measures to minimise the noise to be insufficient.

Held: Not a violation of Art 8 (right to private and family life)

Hatton v. UK (36022/97) Grand Chamber judgment
08.07.2003

Applicants lived near Heathrow and claimed 1993 policy on night-flying had increased noise

Held: Not a violation of Art 8

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Noise Cases:

Moreno Gomez v. Spain (4143/02) 16.11.2004

Applicant complained of persistent noise at night caused by nightclubs near her home and of it having disturbed seriously her sleep on a prolonged basis.

The Court held that the applicant's right to respect for her home had been seriously infringed as a result of the authorities' failure to deal with the night-time disturbances. In view of the magnitude of the noise - at night and beyond permitted levels - and that it had continued over a number of years, the Court found a breach of Article 8.

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Pollution Cases:

Öneryildiz v. Turkey (48939/99) Grand Chamber judgment 30.11.2004

Slum built on rubbish tip exploded and 9 relatives of applicant died in resulting fire.

Held: Violation of Art 2 (right to life). The Government had not provided the slum inhabitants with information about the risks they ran by living there ; even if it had, it remained responsible as it had not taken the necessary practical measures to avoid the risks to people's lives. The regulatory framework had proved defective as the tip had been allowed to open and operate without a coherent supervisory system. The town planning policy had likewise been inadequate and had undoubtedly played a part in the sequence of events leading to the accident

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Pollution Cases:

López Ostra v Spain (16798/90) 09.12.1994

Applicant complained about pollution caused by a plant treating leather industrial waste, which released gas fumes, smells and contamination thus causing health problems to people living nearby. In particular, the applicant's daughter suffered from nausea, vomiting and anorexia which, according to the paediatrician, was the result of the pollution.

The Court found a violation of Article 8 in that Spain had not succeeded in striking a fair balance between the interest of the town's economic well-being - that of having a waste treatment plant - and the applicant's effective enjoyment of her right to respect for her home and her private and family life.

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Other potentially emerging principles

Conservation:

- Maintaining essential ecological processes and systems, which support life

- Preserving genetic diversity

- Achieving sustainable use of species/ecosystems

Amelioration:

- Improving the environment

Are they actually new, or are they just the underpinning ideas of all the other principles?

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Environmental Protection
and
Economic Stability

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Animated film by WWF Brazil, which illustrates their view of the impact of economic development on the environment



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“Environmental Values” is a phrase that occurs many times in Environmental Law, with different meanings.

- 1) Economic / Financial Value.
- 2) Intrinsic Value

Economic Value is conceptually easy – the price of something – but is tricky when applied to some environmental issues. Consider the price of an unspoiled view, or the value of the existence of the giant panda.

Some economists have tried to calculate the value of the environment

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Intrinsic Value is conceptually much harder.

How much value do we place respectively on humans and animals?

Is countryside *better* than town?

Are species *worth* protecting?



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A crucial part of sustainable development is the aspect of development.

The global financial crisis which started in 2008 has wiped trillions of dollars off stock markets worldwide, and triggered “austerity” measures in many countries.

In 2008, [Scientific American](#) magazine asked

A bear market might seem like a boon for the environment: less overall economic activity, like manufacturing and driving, means less overall pollution. Right?

It then goes on to suggest the opposite is true, and that lack of money leads to environmental degradation

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The [NY Times](#) reported in October 2008 that the EU was trying to “soften” the impact of carbon reduction targets because of the increasing bite of recession.

2009 reports from the New Economics Foundation and Environment Agency suggested that:

In spite of one of the biggest global recessions for a century – the trend towards ever greater overconsumption has been hardly altered ([NEF](#), p2)

and

The majority of businesses plan to cut back investment in energy and water efficiency measures to save money during the recession ([EA](#))

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In 2010, Principles for Responsible Investment, a body funded by the UN Environment Programme Finance Initiative released a [report](#) which estimated the global costs related to “global human activity”

2008 US\$6.6 trillion, 11% of global GDP

2050 (Projected) US\$28.6 trillion, 18% of global GDP

PRI approach environmental protection from a costs perspective, and argue that

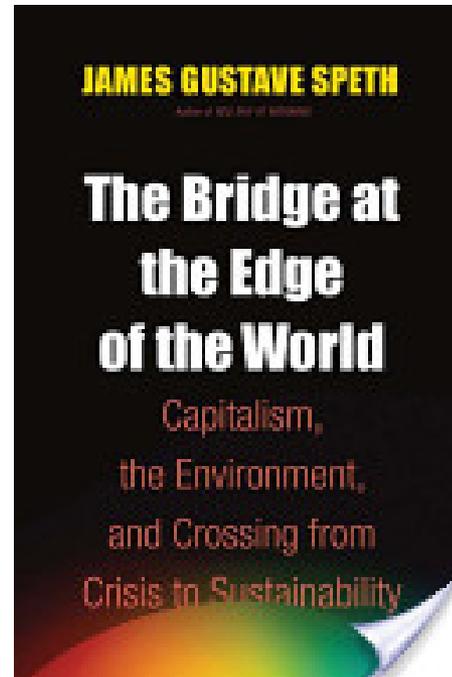
The costs of addressing environmental damage after it has occurred are usually higher than the costs of preventing pollution or using natural resources in a more sustainable way (p3)

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The problem with the global economic downturn is that it is these very measures that are being scaled down by companies and governments undergoing economic strains.

Video clip from 2008 by Gus Speth, Dean of Yale School of Forestry



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In the UK, the budget of the Environment Agency (the enforcing body for England and Wales) was cut by 25% between 2007-8 and 2013-14, not taking into account inflation.

2007-8 £1.25bn

2011-12 £1.1bn

2013-14 £1bn

To put the £150m cut into perspective, it represents the cost to the UK taxpayer of all illegal waste dumping in 2011-12

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The Environment and Economy in Portugal

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The (most recent) [OECD Environmental Performance Review: Portugal 2011](#) said :

The Portuguese economy was badly hit by the economic and financial crisis. GDP fell 2.5% in 2009, and the economy is projected to remain very weak in the following years.

In 2009 Portugal adopted fiscal measures to stimulate the economy equivalent to 0.8% of GDP.

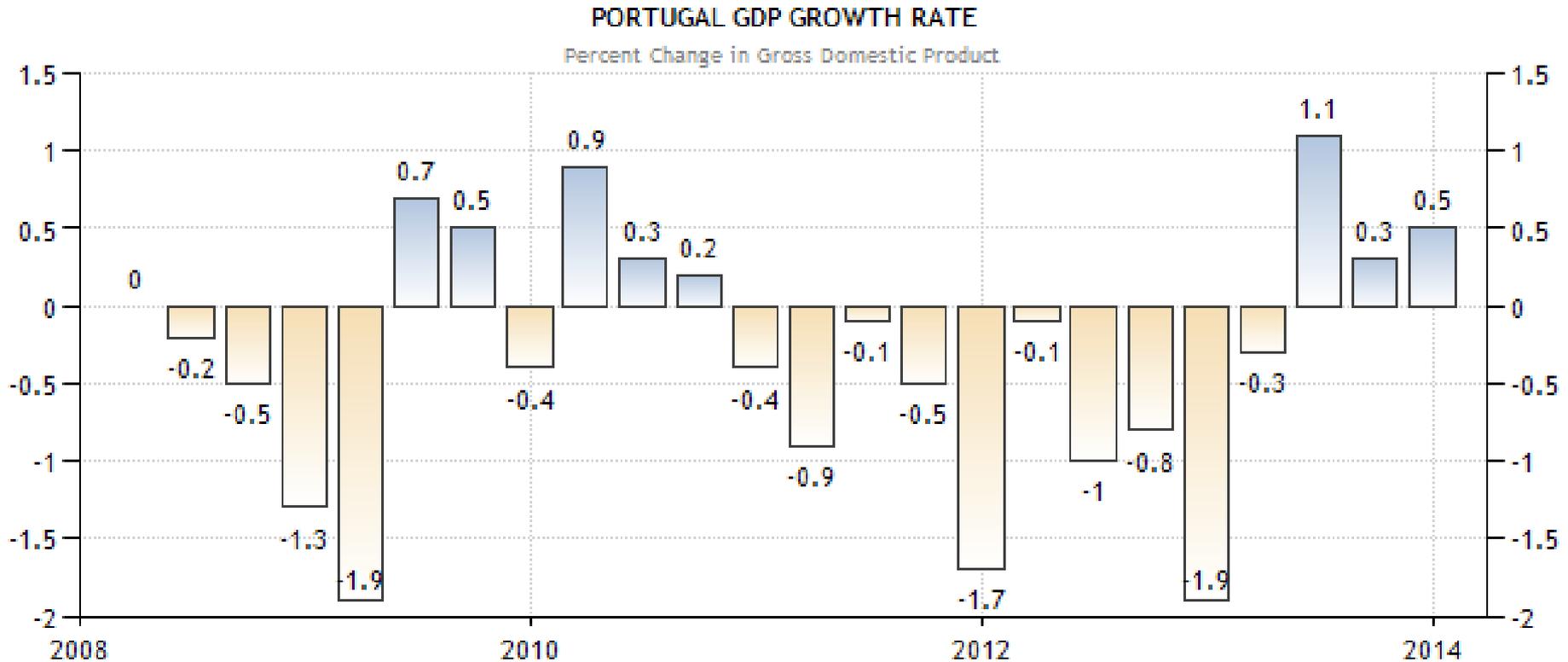
Some 18% of the stimulus was environment related, equivalent to 0.8% GDP (p10)

The OECD Review also says that some of Portugal's implementation of EU Environmental measures have

Followed the letter rather than the spirit of the law (p12)

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Since then, however, things have started to improve:



This is still a net fall of 8% since the start of 2008

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In terms of biodiversity targets, Portugal's 4th Report to the Convention on Biological Diversity Secretariat in 2010 admits that:

Despite all conservation efforts in last years the overall conservation status of natural and semi-natural habitats types in Portugal there is still a lot of work to do in order to achieve an adequate conservation status for many of them, mainly in habitat types more sensitive to impacts, those subjected to greater human pressure (such the coastal ones), and those who require a higher degree of ecological evolution to be in a good condition.

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Focus on Corporate Crime

International

EU

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What is Corporate Environmental Crime?

The House of Commons Environmental Audit committee produced a report on Environmental Crime in February 2005 [LINK](#) and they found that it happens all of the time, "*and is being committed not only by individuals but by businesses, organisations and other corporate bodies*" (Para 6, p8)

The Committee ignored the question of "what is a company" and used the following definition:

"Any environmental crime that has been committed by any corporate body" (Para 6, p8)

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Other definitions:

Clifford & Edwards (1998)

“an act committed with the intent to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing personal or business advantage”

Situ & Emmons (2000)

“an unauthorised act or omission that violates the law and is therefor subject to criminal prosecution and criminal sanction. The offence harms or endangers people’s physical safety or health as well as the environment itself. It serves the interests of either organisations – typically corporations – or individuals”

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Environment Agency (2007)

“a wide range of illegal activities, from fly-tipping to stealing birds’ eggs. We investigate some of these crimes, the police or other enforcement bodies investigate the others. All of these crimes can result in individuals or companies being prosecuted”

Environment Agency (2012) [LINK](#)

Almost all of the crimes listed on the EA website stem from, or link to, waste management

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Theme:

Environmental Crime is crime against the environment(!)

Issue:

Crime is easy – look at statute

What counts as the Environment?

s1 Environmental Protection Act 1990:

'The Environment' consists of all, or any of the following media, namely the air, water and land, and the medium of air includes the air within buildings and within other natural or manmade structures above or below ground

Article 66 of the Portuguese Constitution

"Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it" (but does not define "*Environment*")

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Definitions are important – help to frame many of the key aspects of criminal liability

Is an activity:

A technical breach of regulations, from which no harm has emerged;

Damaging to the environment but not a crime?

Leads to questions about:

Type of liability

Strictness of punishment

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EAC definition is the one we will refer to:

“Environmental Crime includes all offences either created by statute or developed under the common law that relate to the environment.

The environment is, in simple terms, where we all live”

Main focus of the rest of the session is on UK, though clearly the offences can be carried out anywhere.

The OECD says, of Portugal, that:

“Overall Portugal’s environmental enforcement system has been oriented towards sanctions imposed through administrative procedures as a means of preventing damage and ensuring compliance. Criminal Prosecutions have rarely been used” (2011, p67)

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STRICT LIABILITY

No requirement for a mental element

Avoids all the issues of identification / controlling officer

Bell & McGillivray have 4 reasons why SL is good:

- Promotes public interest goal inherent in environmental legislation;

- Acts as a deterrent which improves the quality of environmental risk protection measures;

- Increases ease of prosecution (hence deterrent effect); and

- Accords with Polluter Pays Principle

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Example – SEA EMPRESS

- Grounded in Milford Haven in February 1996, discharged c72,000 tonnes of oil into the sea
- Pollution peaked with huge oil slicks washing up on beaches
- By April, little oil remained at sea (natural dispersion and large clean-up operation)
- Rocky shorelines cleaned by natural action of the sea
- Many shores still affected by residual oil throughout the summer
- Stormy autumn weather re-mobilised buried oil, and tar balls reappeared on many beaches

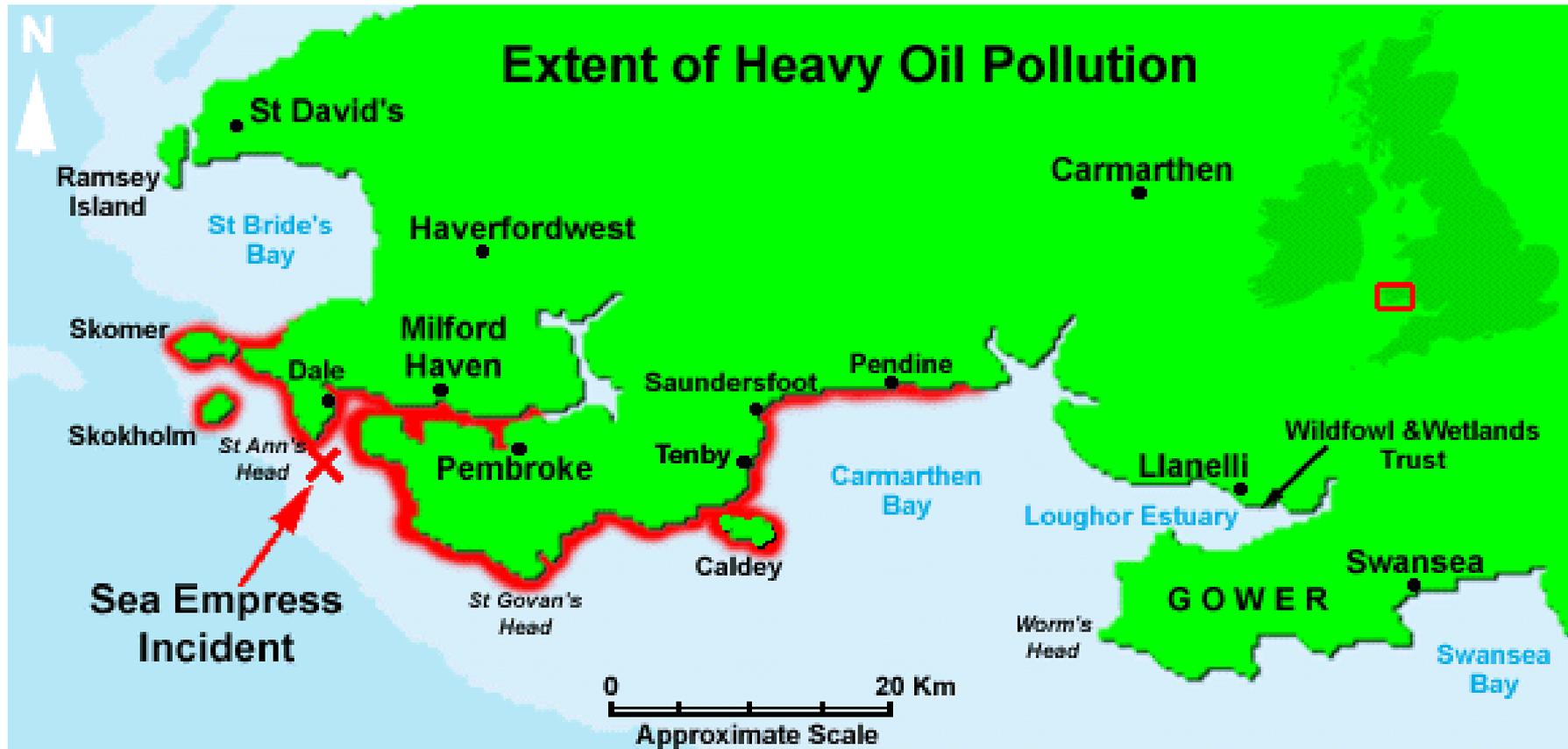
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Example – SEA EMPRESS



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Example – SEA EMPRESS



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Example – SEA EMPRESS

- By spring 1997, little environmental damage remained visible.
- Economic damage to fisheries was still present – oil in water meant that fish/shellfish could not be sold
- Merchant Shipping Act 1995 came into force 1 month before accident
- s131: If any mixture containing oil is discharged ... into UK national waters which are navigable by sea-going ships, then ... [the discharger] ... shall be guilty of an offence
- s131(3) - £50k for summary conviction, unlimited for conviction on indictment

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Example – SEA EMPRESS

- Milford Haven Port Authority fined £4m – accepted responsibility for the damage
- Reduced to £750,000 on appeal (for reasons of “public interest”)
- Estimated clean up costs for all related pollution – “should not exceed £23,500,000”
- **CLEAN UP COST WAS 31 TIMES MORE THAN THE FINE**

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Corporate Liability

Sometimes liability attaches directly to the company (e.g. breach of licence where it is the company that is the licence-holder)

Other times liability is vicarious:

NRA v McAlpine Homes East Ltd [1994] Env LR 198

Morland J: Companies should be liable for the acts of all their employees as opposed to just the “controlling minds” as the company was best placed to control the activities of even the most junior staff through training etc.

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Directors' Liability

Any director, manager, Company Secretary or other similar officer of a corporate body can be prosecuted personally if the offence is committed with their consent or connivance, or is attributable to their neglect.

For personal liability for corporate offences you need:

- Offence committed by the company; and

- Consent, connivance or neglect by individual

NB – this is not the same as personal liability to personal actions

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Enforcement Pyramid (Ayres & Braithwaite, 1995)



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Sanctions

>90% environmental crimes are dealt with by the Magistrates' Court (lower court)

Vast majority of those convicted are fined, not imprisoned (c1%)

Community service orders, conditional discharges, compensation etc. used in about 10% of cases

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FUTURE SANCTIONS?

Compliance through Probation Programmes:

- Court-ordered rehabilitation of a company

- Could include environmental awareness training, use of an environmental management system

- Supervision of the board by a regulator or representative

Community Projects:

- Court-ordered environmental improvement project as a specified cost equal to the cost of environmental damage caused by the company.

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FUTURE SANCTIONS?

Share Issues

Court-ordered share issues equivalent to the value of the environmental harm caused

Reduces the value of existing shareholders' stake

Adverse Publicity Orders

National media advert explaining circumstances of offence, remedial steps and an apology. Ultimate "name and shame"

Environmental trusts

Money put into an account (frozen in case of future insolvency) to address environmental harm in general

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Your Project...

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In groups of five prepare for a 25 minute presentation (and 5 minutes of questions) on the future of corporate environmental protection in Portugal.

This can be factual (what the future *will* be...) and aspirational (what the future *could/should* be...)

Pick one aspect of corporate environmental crime – air pollution, climate change, habitat protection, water pollution and so on – argue whether the current approach of administrative sanctions is effective, or whether it should be dealt with as a **crime**

Demonstrate your knowledge of the potential costs and economic limitations of what you think

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Useful Sources:



ambiente
PORTUGAL
AMBIÇÃO
PARA O FUTURO

 **AGÊNCIA
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European Environment Agency

