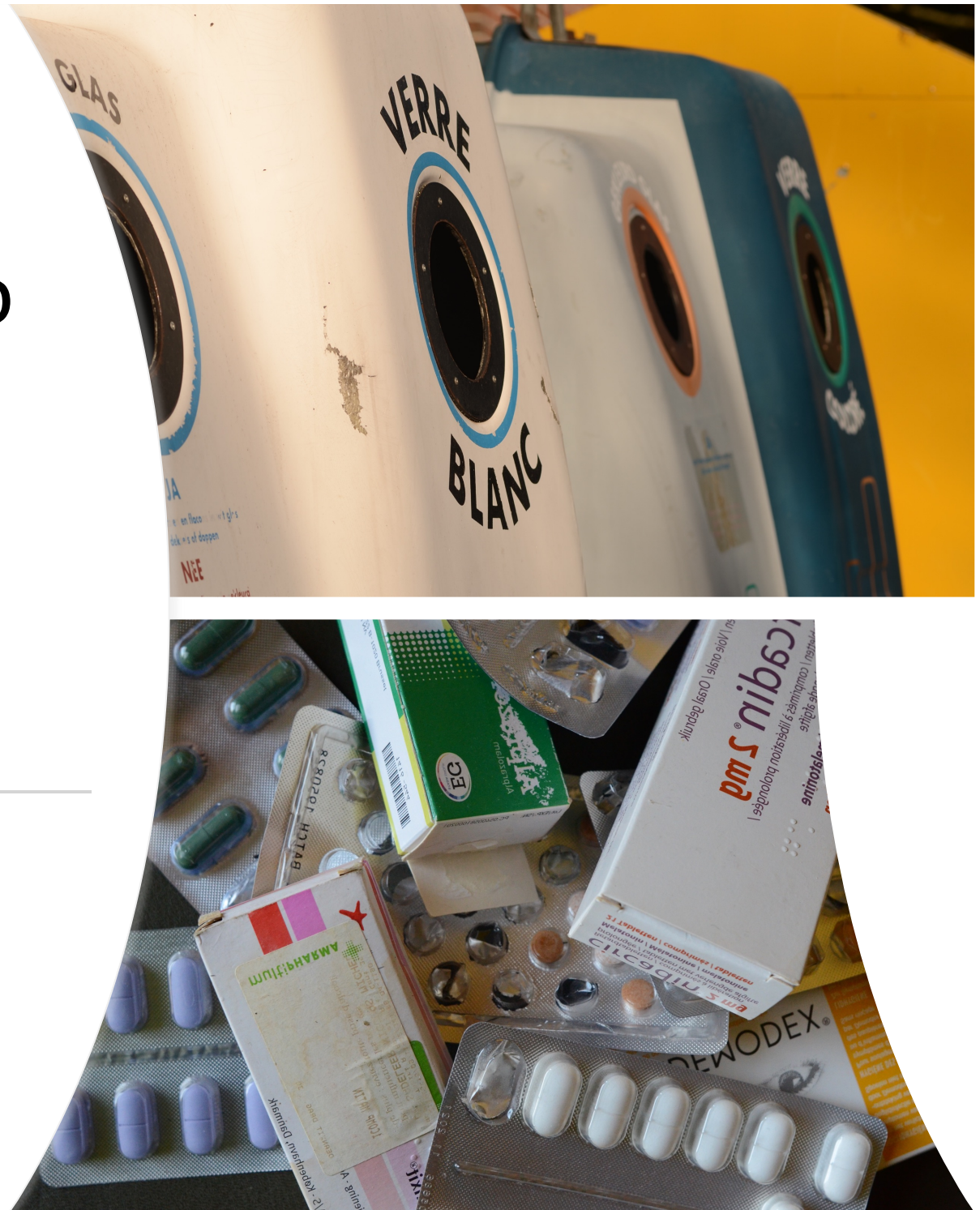



Introduction to International Environmental Law (1)

The concepts

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A photograph of a snow-capped mountain range, likely the Himalayas, with a rocky foreground and a clear blue sky. The mountains are covered in snow and ice, and the foreground is filled with dark, jagged rocks. The sky is a deep, clear blue.

I. Key concepts (sustainability, ecosystems, habitats, species)

II. The sources of IEL



I. Key concepts

- Sustainability
- Environment
- Ecosystems
- Habitats
- Species
- Pollution



A photograph of a forest floor covered in a dense carpet of bluebell flowers. Tall, slender trees with light-colored bark stand in the background, their trunks creating a vertical rhythm. The lighting is soft, suggesting a dappled sunlight filtering through the canopy. The overall scene is peaceful and natural.

1. What is sustainable development?



Report of the Brudtland Commission (1987): Our Common Future

- Sustainable development is “development that **meets the needs of the present** without compromising the ability of future generations to meet their own needs”

Rio Declaration (1992)

- **Principle 3** ‘The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations’.
- **Principle 4** ‘In order to achieve sustainable development, environmental protection shall constitute an **integral part** of the development process and cannot be considered in isolation from it.’

2030 UN Agenda for Sustainable Development (the ‘2030 Agenda’)

The 2030 Agenda has at its core the Sustainable Development Goals (SDGs) and covers the three dimensions of sustainability: economic, social and environmental.

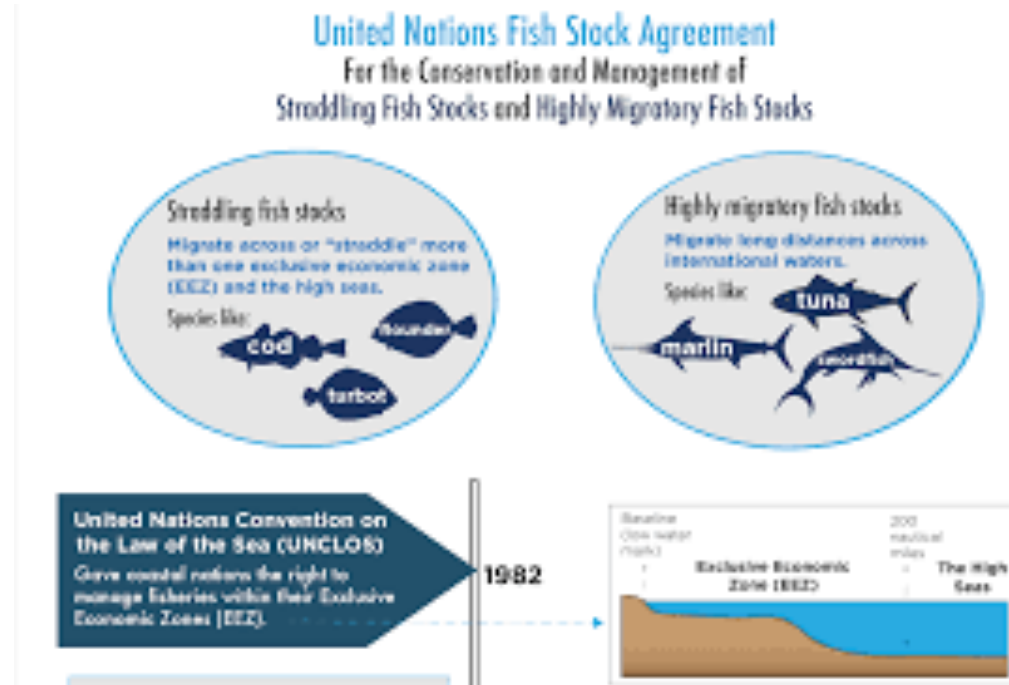
‘We envisage a world in which every country enjoys sustained, inclusive, and sustainable economic growth and decent work for all. A world in which consumption and production patterns and use of all natural resources .. are sustainable’.

Declaration Transforming our world: the 2030 Agenda for Sustainable Development

1982 UN relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Coastal States and States fishing on the high seas shall ...

(a) adopt measures to ensure **long-term sustainability** of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;



EU LEGAL ORDER

Article 3(3) TEU. The Union shall work for the sustainable development of Europe based on

- **balanced economic growth** and **price stability**,
- a highly competitive **social market economy**, aiming at full employment and social progress,
- and **a high level of protection and improvement of the quality of the environment**.

=> 'Union policy on the environment shall aim at a **high level of protection** taking into account the diversity of situations in the various regions of the Union' (Article 191(1) TFEU).

Competitive social
market economy

Economic
Growth

Environmental
protection

Commission communication

Commission communication of 22 November 2016 on the next steps for a sustainable European future

‘Sustainable development requires a **holistic** and **cross-sector policy approach** to ensure that economic, social and environmental challenges are addressed together’.

Article 19 EU-NZ FTA

- SD 'encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing' (Article 19(1) (2))
- The right of each party to 'determine its sustainable development policies and priorities' (Article 19 (2)(1) a))

Article 19 EU-NZ FTA

- ‘Each party shall strive to ensure that its relevant law and policies provide for, and encourage, high levels of environmental and labour protection, and shall strive to improve such levels, law, and policies’. (Article 19 (3))
- ‘A party shall not weaken or reduce the levels of protection in its environmental or labour law in order to encourage trade or investment’ (Article 19 (3))



SD enshrined in the EU Common Fisheries Policy

Preamble, §4. The CFP should ensure that fishing and aquaculture activities contribute to long-term environmental, economic, and social sustainability.

Article 2(1). The CFP shall ensure that fishing and aquaculture activities are **environmentally sustainable** in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies

New EU Forest Strategy for 2030

2.1 Promoting sustainable forest bioeconomy for long-lived wood products

Within the boundaries of sustainable availability and supply of wood, the forest-based sector holds significant economic potential for improving its production of sustainable and legally harvested wood for circular and long-lived materials and products. (SWD(2021) 652 final)

Taxonomy Regulation (EU) 2020/852

‘Sustainability and transition to a safe climate-resilient, more resource-efficient and circular economy are crucial to ensuring the long-term competitiveness of the Union economy’ (Preamble, §4).

‘Achieving the SDGs in the Union requires the channelling of capital flows towards sustainable investments’ (§9).

Article 1(1). This Regulation establishes the criteria for determining whether an **economic activity** qualifies as **environmentally sustainable** for the purposes of establishing the degree to which an **investment is environmentally sustainable**.

Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment



CASE CONCERNING
THE GABCIKOVO-NAGYMAROS
PROJECT
(HUNGARY/SLOVAKIA)
**JUDGMENT OF 25 SEPTEMBER
1997**

“140. The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to **reconcile economic development with protection of the environment** is **aptly expressed in the concept of sustainable development.**

For the purposes of the present case, this means that the Parties together should look afresh at the effects on the environment of the operation of the Gabčíkovo power plant. In particular they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river.”

Sub-principles of sustainable development

- Intergenerational Equity
- Sustainable and equitable use
- Principle of integration

Constitutionality of the operation of a deep geological repository for radioactive waste (France)

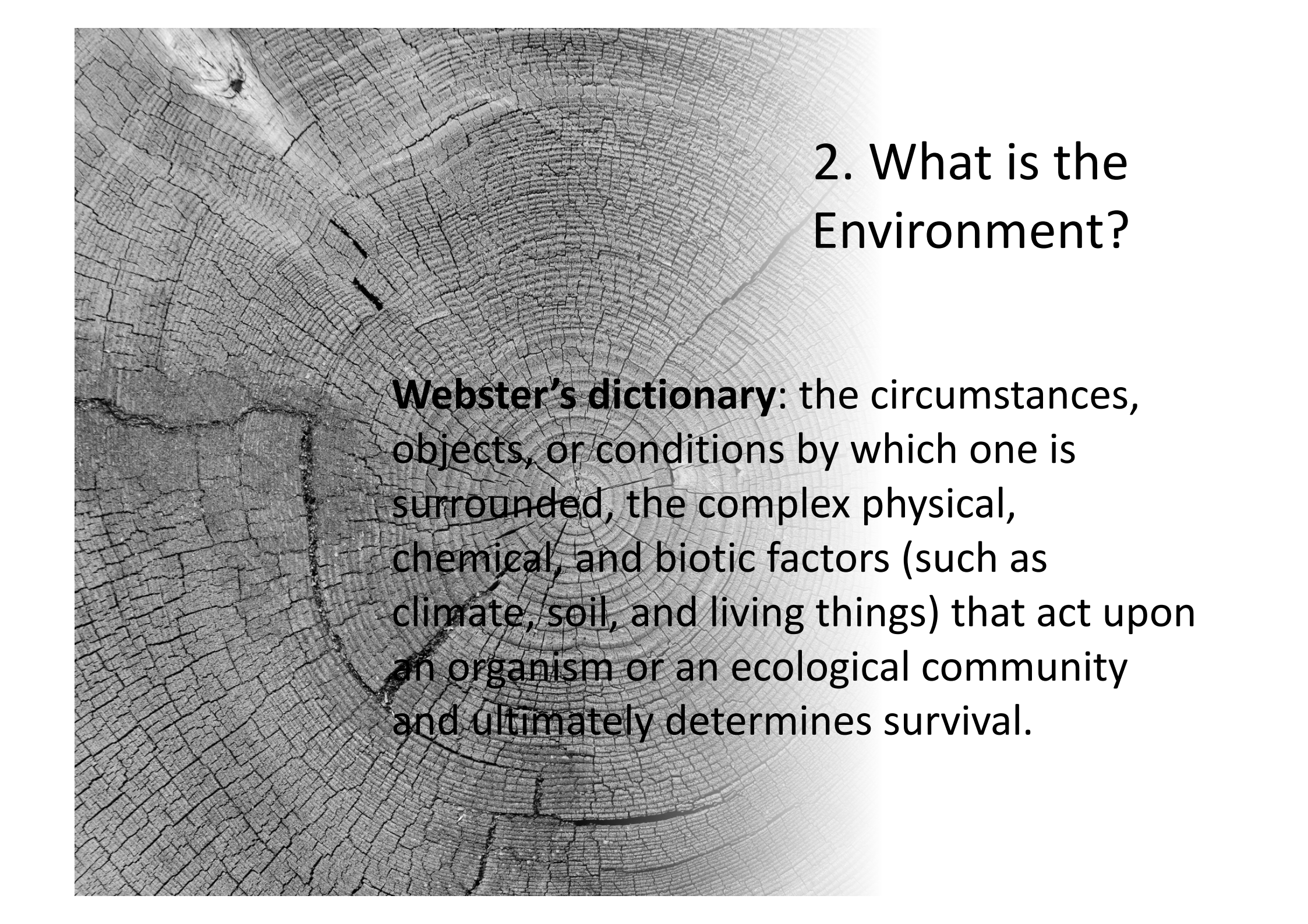
It follows from Article 1 of the Charter of the Environment, as clarified by the seventh paragraph of its preamble, that when adopting measures likely to have a serious and lasting effect on a balanced environment that respects health, the lawmaker must ensure that his choices fulfil the needs of the present and do not compromise the ability of future generations to meet their own needs, while preserving their freedom of choice in this respect (§6).

...in adopting the contested law, the lawmaker intended, on the one hand, that radioactive waste could be stored in conditions that would protect the environment and health against the long-term risks of disseminating radioactive substances and, on the other hand, that the burden of managing this waste should not be shifted onto future generations alone (§11).

- Décision n° 2023-1066 QPC du 27 octobre 2023, Association Meuse nature environnement et autres

Please discuss!

1. Prior to this course, where have you heard about sustainable development?
2. In your opinion, can sustainable development be a meaningful and effective principle?
3. What do you think about its potential as a *legal* principle?



2. What is the Environment?

Webster's dictionary: the circumstances, objects, or conditions by which one is surrounded, the complex physical, chemical, and biotic factors (such as climate, soil, and living things) that act upon an organism or an ecological community and ultimately determines survival.



2. What is the Environment?

«The environment is not an abstraction, but represents the living space, the quality of life, and the very health of human beings, including generations unborn.»

(Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, pp. 241-242, para. 29.)



What is the Environment?

1972 Stockholm Declaration : “Air, water, land, flora and fauna and natural ecosystems”

1992 International Watercourses Convention (art. 1 (2)): “human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors”

What is the Environment?

GATT, article XX

(b) “human, animal or plant life or health”

(g) “conservation of exhaustible natural resources”



WORLD TRADE
ORGANIZATION

ARBITRATION REGARDING THE IRON RHINE (“IJZEREN RIJN”) RAILWAY

(24 May 2005)

“There is considerable debate as to what, within the field of environmental law, constitutes “rules” or “principles”; what is “soft law”; and which environmental treaty law or principles have contributed to the development of customary international law. Without entering further into those controversies, the Tribunal notes that in all of these categories “environment” is **broadly referred** to as including **air, water, land, flora and fauna, natural ecosystems and sites, human health and safety, and climate.**”



The environment is also urban


2023: 73% of the Europeans live in cities > **2050:** 82%

The environmental impacts of urban development projects must be taken into account in the EIA in relation to the criteria relating to densely populated areas and to **landscapes of historical, cultural and archaeological significance** listed under Annex III of the EIA Directive 2011/92.

Case C-332/04, Commission v Spain, § 79-80.

What is an ecosystem?

An **ecosystem** is a community of living organisms (plants, animals and microbes) in conjunction with the non-living components of their environment (things like air, water and mineral soil), interacting as a system.



Convention on Biodiversity (1992): the ecosystem is defined as “a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit”.



What is an ecosystem?

In the context of fisheries, the ecosystem approach has been defined as “an extension of conventional fisheries management recognizing more explicitly the **interdependence** between human well-being and ecosystem health and the need to maintain ecosystems’ productivity for **present and future generations**, e.g. conserving critical habitats, reducing pollution and degradation, minimizing waste, protecting endangered species .

(FAO, The ecosystem approach to fisheries)

What is an ecosystem?

Art. 2(3) Reg. No 1380/2013 The EU Common Fisheries Policy shall implement the **ecosystem-based approach** to fisheries management so as to ensure that **negative impacts of fishing activities on the marine ecosystem are minimised**, and shall endeavour to ensure that aquaculture and fisheries activities avoid the degradation of the marine environment.

What is an habitat?

Article 2 CBD "Habitat" means the place or type of site where an organism or population naturally occurs.



Article 1 Habitats Directive. habitat of a species means an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle;

What is a species?

Species of EU interest are:

(i) endangered, except those species whose natural range is marginal in that territory and which are not endangered or vulnerable in the western palearctic region; or

(ii) vulnerable, i.e. believed likely to move into the endangered category in the near future if the causal factors continue operating; or

(iii) rare, i.e. with small populations that are not at present endangered or vulnerable, but are at risk.

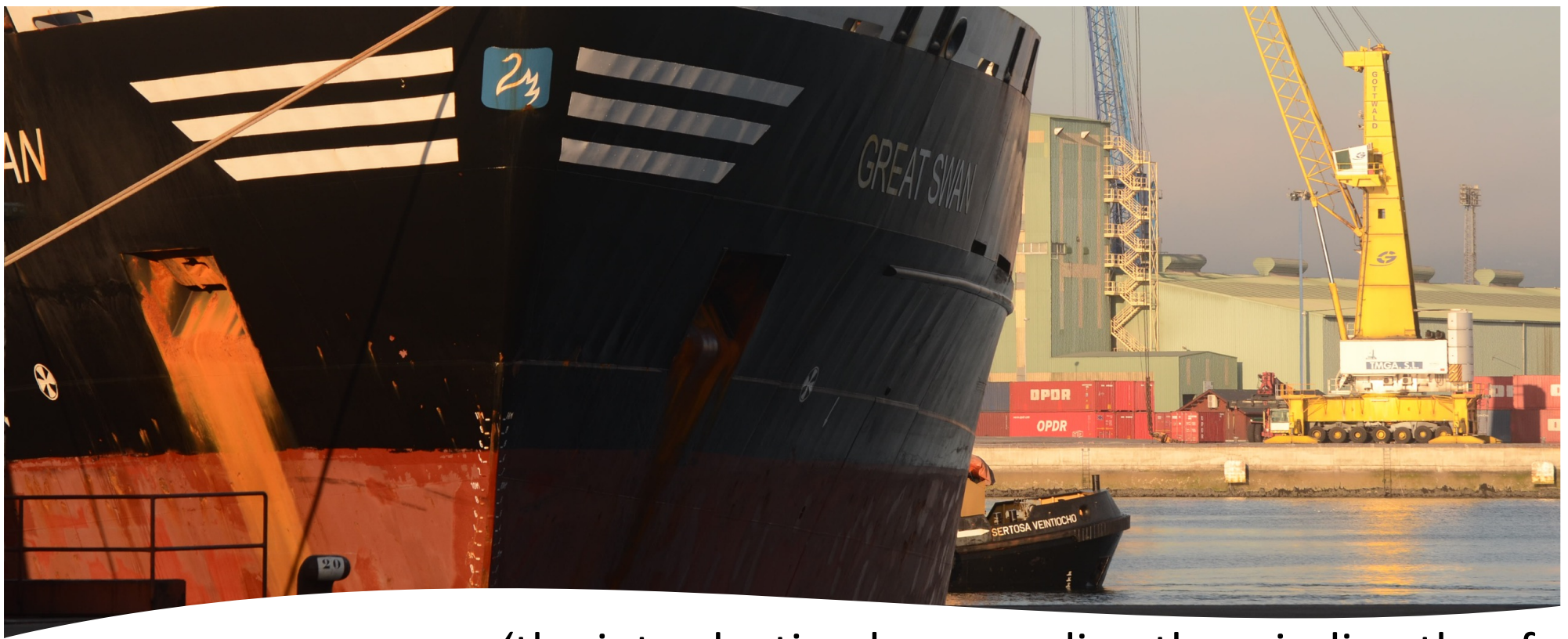
Habitats
Directive



Convention on International Trade in Endangered Species of Wild Fauna and Flora

Article I (a) "Species" means any species, subspecies, or geographically separate population thereof;





What is
pollution of
the marine
environment?

‘the introduction by man, directly or indirectly, of substances or energy into the marine environment, ..., which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities’ (UNCLOS, Art. 1(1) (4))

What is air pollution?

'the introduction by man, directly or indirectly, of substances or energy into the air resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems and material property and impair or interfere with amenities and other legitimate uses of the environment'

Article 1(a) Convention on long-range transboundary air pollution

