ESS HL.a.3 International Environmental Law

Learning Objectives

1. Outline how international environmental law works
2. Describe the role of the UN in the environmental law
3. Explain the term "personhood" in environmental law context

Framework

- Because the causes, impacts, and solutions to climate change cross national borders, environmental law often requires international cooperation.
- One of the earliest global summits on environmental issues was held by the UN in 1972.
- Since then, governments, NGOs, human rights groups, and international organisations have developed frameworks, treaties, and policies to safeguard natural resources, protect ecosystems, and encourage global collaboration—with international environmental lawyers playing a crucial role.
- Key organisations include UNEP, CITES, Greenpeace, ClientEarth, and WWF.

Agreements and Conventions

- Conventions can establish institutions to ensure implementation, such as CITES and the IUCN.
- International Court of Justice (ICJ
  - Settles disputes between states, e.g., the Chile–Bolivia Silala River case.
- International Tribunal for the Law of the Sea (ITLOS)
  - Deals with maritime disputes.
- European Court of Justice (ECJ)
  - Ensures consistent application of EU law. For instance, it ruled that waste counts as “goods,” overturning Belgium’s restrictions on waste imports.

Agreement / Organization	Where & When	Legally Binding?	Main Successes	Key Limitations / Weaknesses
Montreal Protocol	Montreal, Canada (1987), in force 1989	✅ Yes	Phased out CFCs & other ozone-depleting substances; ozone layer on track to recover	Did not initially cover HFCs (added later via Kigali Amendment); relies on national compliance; narrow scope (ozone only, not climate change)
Paris Agreement	Paris, France (2015), in force 2016	⚖️ Partially (framework binding; national targets not)	Near-universal participation; set global warming limit (1.5–2°C); mobilized climate finance & renewable energy	NDCs voluntary, not enforceable; no penalties for non-compliance; pledges still fall short (2.5–3°C warming path); slow review cycles
Kyoto Protocol	Kyoto, Japan (1997), in force 2005	✅ Yes	First binding GHG cuts for developed nations; introduced carbon trading, CDM, and JI	U.S. never ratified; Canada withdrew; excluded developing countries (major emitters); carbon markets had loopholes; global emissions still rose
CITES	Washington, D.C., USA (1973), in force 1975	✅ Yes (via national laws)	Regulates trade in ~40,000 species; reduced extinction pressure from trade (e.g., elephants, rhinos, orchids)	Enforcement uneven; illegal wildlife trade persists; focuses only on trade (not habitat loss); late species listings; loopholes (e.g., “captive-bred” laundering)
IUCN	Fontainebleau, France (1948)	❌ No (NGO/organization)	IUCN Red List (authoritative species status); major influence on treaties (CBD, CITES); conservation guidance	No enforcement power; depends on funding & voluntary cooperation; recommendations often ignored; uneven species coverage

Constitutionalisms

- A constitution defines principles, governance structures, and the relationship between legislative, executive, and judicial branches.
- Environmental constitutionalism: growing trend of embedding environmental provisions within constitutions.
- By 2017: ~150 countries had incorporated environmental provisions.
- By 2020: 11 countries included climate clauses (e.g., Algeria, Bolivia, Ecuador, Thailand, Tunisia, Vietnam).
- Most constitutional climate clauses are aspirational (guiding principles rather than enforceable obligations).
- Tunisia stands out by explicitly guaranteeing citizens' right to participate in climate protection.
- This development is often termed climate constitutionalism, reflecting the use of constitutional law to address climate change.

Case Study: African Elephants on CITES

Background on CITES and Elephant Listings

- The African elephant (*Loxodonta africana*) was originally listed in CITES Appendix I in 1989.
  - Appendix I = species threatened with extinction; trade in specimens is only permitted in exceptional circumstances.
- The listing followed a dramatic decline in elephant populations in the 1970s and 1980s due to ivory poaching, when global herds fell from an estimated 1.3 million to about 600,000.
- In 1997 and 2000, certain southern African countries (Botswana, Namibia, Zimbabwe, and later South Africa) successfully lobbied to move their elephant populations to Appendix II, due to relatively stable or increasing herds.
  - Appendix II = species not necessarily threatened with extinction but may become so unless trade is controlled.
- This allowed for controlled ivory sales under strict conditions, including the 1999 one-off sale to Japan and the 2008 one-off sale to China and Japan.

Did Illegal Trade Peak After Delisting?

- Yes, illegal ivory trade surged after the Appendix II downlistings and one-off sales.
  - The ETIS (Elephant Trade Information System) and MIKE (Monitoring the Illegal Killing of Elephants) reports indicated a sharp increase in poaching and illegal ivory flows in the mid-2000s to early 2010s.
  - After the 2008 CITES-approved ivory sale, poaching levels escalated across East, Central, and West Africa.
  - Between 2010–2014, elephant poaching peaked at crisis levels, with tens of thousands of elephants killed each year.
  - The illegal trade shifted toward highly organized international crime networks, fueling corruption and conflict in some regions.

Conclusion: Explain how environmental laws play roles in ensuring sustainability of biodiversity

How environmental laws play roles in ensuring sustainability of biodiversity

1. Prevents Overexploitation
2. Provides Enforcement Mechanisms
3. Coordinates Global Action
4. Symbolic and Normative Value

Roles of Environmental Laws

Prevents Overexploitation

- Laws like CITES restrict or ban international trade of endangered species.
- The African elephant shows how strong regulation (Appendix I ban) can collapse illegal demand and give populations a chance to recover.
- When protections were relaxed (downlisting to Appendix II), it created loopholes, and poaching surged — proving the importance of strict, enforceable legal frameworks.

Provides Enforcement Mechanisms

- Environmental law sets the legal authority for governments to patrol, seize contraband, and prosecute traffickers.
- Without laws, enforcement agencies have no mandate to act against poachers or smugglers.
- The elephant case illustrates how weak enforcement and ambiguous laws made it easier for criminals to blend illegal ivory into legal trade.

Coordinates Global Action

- Biodiversity challenges cross borders — elephants migrate, and ivory demand is global.
- Environmental treaties (like CITES, CBD, CMS) provide a unified legal framework that requires cooperation across exporting, transit, and importing countries.
- The elephant listings show how coordinated bans can reduce global demand when all major markets comply.

Balances Conservation and Development

- Environmental law provides mechanisms for sustainable use (e.g., Appendix II, where trade is regulated rather than banned).
- In theory, this can channel resources to local communities and conservation.
- The elephant experience shows the risks of poorly managed “sustainable use” — if law isn’t strict and transparent, exploitation outweighs conservation.

Symbolic and Normative Value

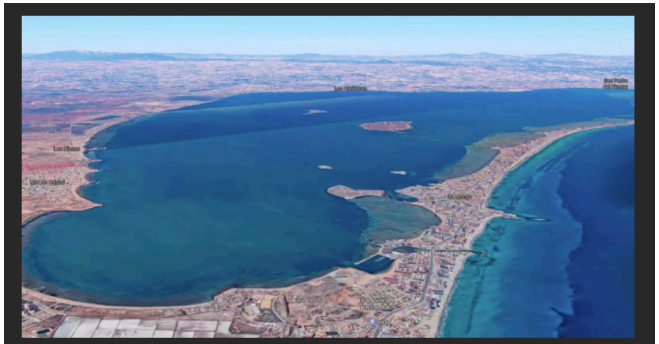
- Laws don’t just regulate behavior; they also send a signal of values.
- The Appendix I ban in 1989 sent a strong global message that ivory trade was morally unacceptable.
- Weakening laws can undermine those norms, as seen when Appendix II sales were interpreted by consumers as a sign that ivory was “acceptable again.”

Personhood

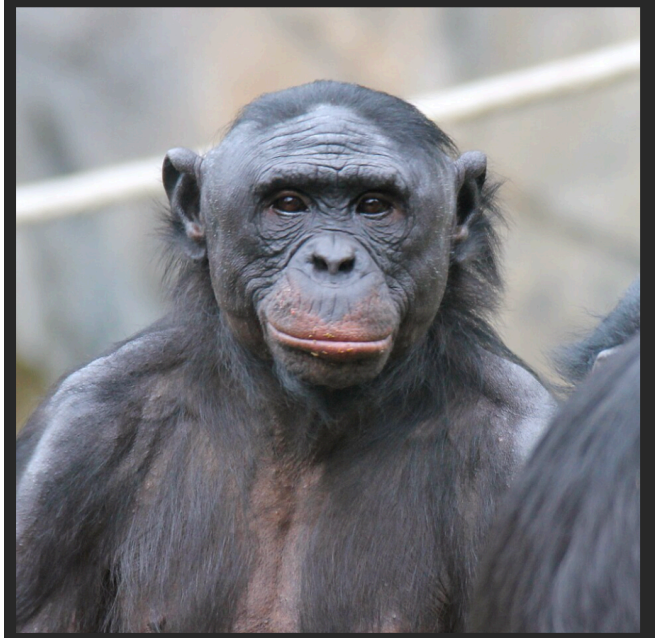
Personhood

The Ganges and Yamuna Rivers in India

The Whanganui River in New Zealand (sacred to the Māori).
Source: BBC



Mar Menor lagoon in Spain (the first ecosystem granted legal personhood). Source: https://www.brightvibes.com/



Legal personhood for great apes in some jurisdictions.
Source: Wiki

Personhood

Pros

- Stronger protection: Nature can be represented in court, preventing exploitation and environmental harm.
- Shift in worldview: Moves away from treating nature as property toward recognizing it as a rights-bearing entity.
- Indigenous alignment: Resonates with many Indigenous traditions that see humans as part of, not separate from, nature.
- Precedents exist: Examples include the Whanganui River in New Zealand, the Atrato River in Colombia, and provisions in Ecuador's constitution. These cases have led to concrete conservation outcomes.

Cons

- Enforcement issues: Having rights on paper doesn't guarantee effective protection—much depends on political will, courts, and guardians.
- Representation dilemmas: Who speaks for nature? Guardians may have conflicting interests or limited resources.
- Legal uncertainty: Personhood is a human construct; applying it to ecosystems may lead to vague or inconsistent rulings.
- Possible misuse: Rights of nature could be invoked selectively, potentially clashing with human rights (e.g., local communities needing land or resources).