

UNEP GLOBAL JUDGES PROGRAMME

APPLICATION OF ENVIRONMENTAL LAW BY NATIONAL
COURTS AND TRIBUNALS

PRESENTATION 1

INTRODUCTION

OUTLINE OF PRESENTATION

A) What is Sustainable Development ?

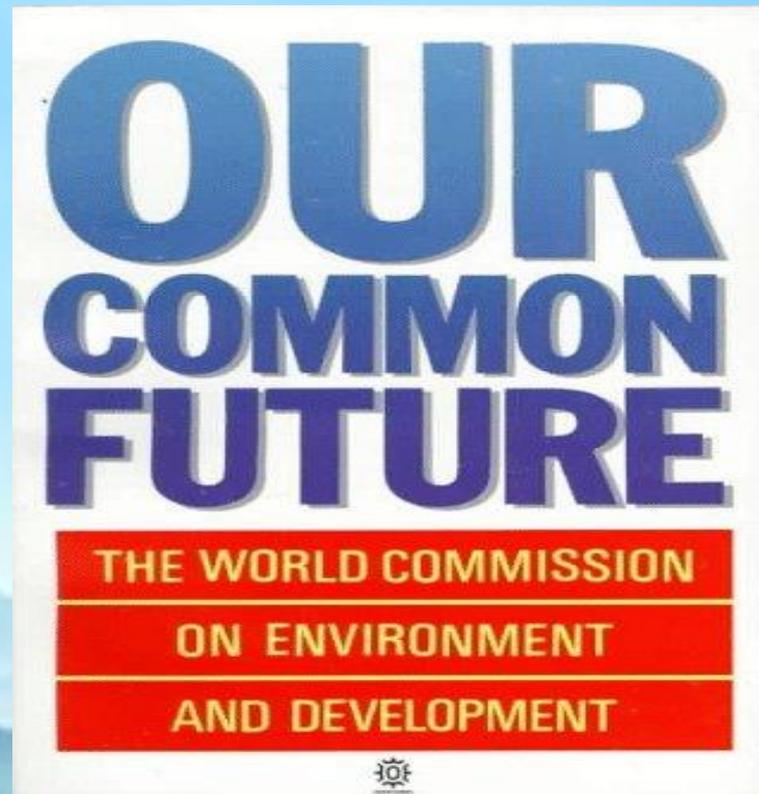
B) Judges and Sustainable Development

C) Attributes of Environmental Problems

D) Sustainable Development Concepts

WHAT IS “SUSTAINABLE DEVELOPMENT”

“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”



Judges and Sustainable Development Generally



- Why are we here?
- What do judges bring to the equation?
- The balance between environmental, social and economic considerations
- Promoting respect for environmental law

UNEP GLOBAL JUDGES PROGRAMME

“the deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contributes to the lack of effective implementation, development and enforcement of environmental law”.

Johannesburg 2002



ENVIRONMENT

indigenous
peoples

air quality

soil erosion and
land degradation

population

water quality

cultural,
historical and
religious aspects

endangered
species

human
settlements

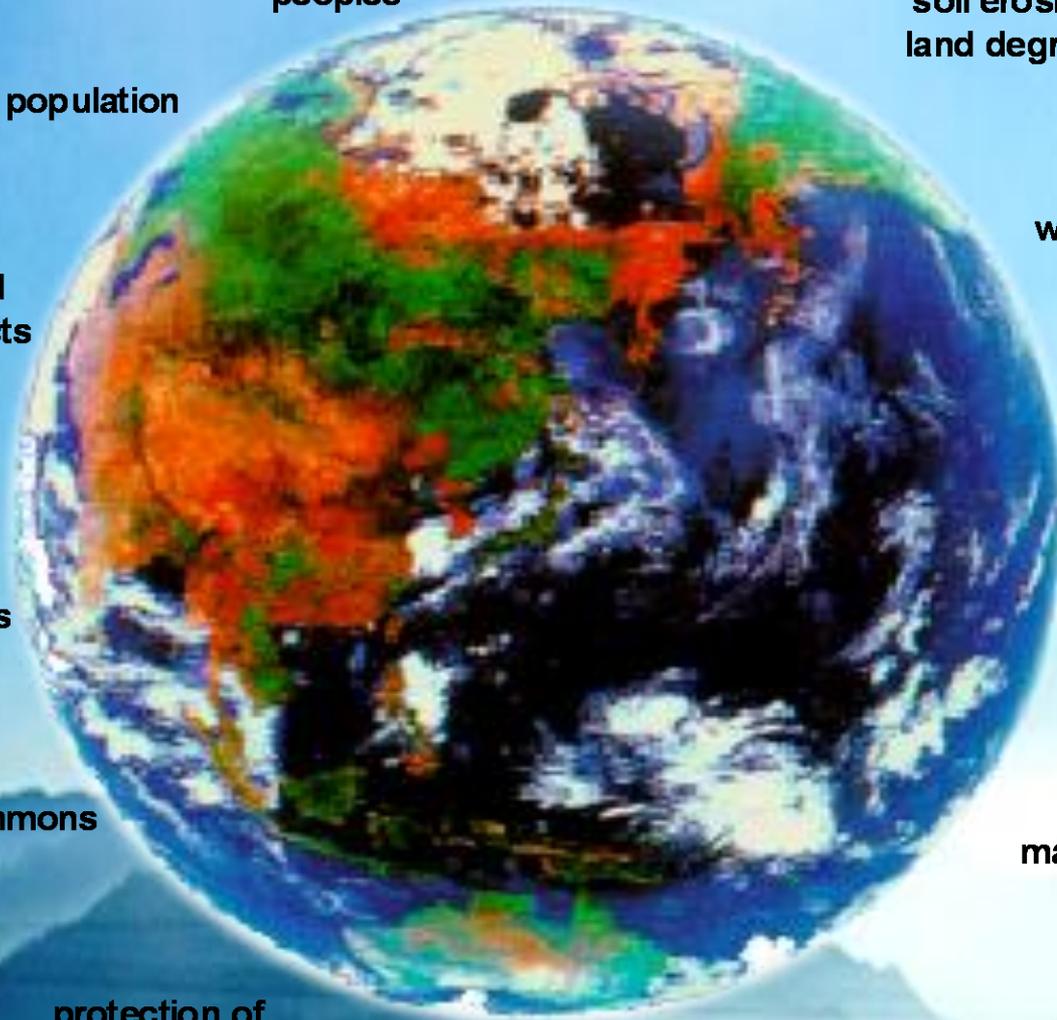
management of
dangerous
chemicals

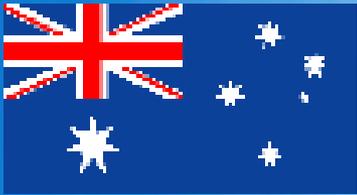
global commons

waste disposal

protection of
ecosystems

natural resources





Australia

● Australia

● Environment Protection and Biodiversity

Conservation Act s 528 "environment" includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas;
- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b) or (c)



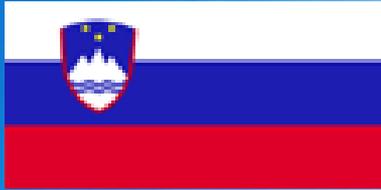
Canada

- Canadian Environment Protection Act 1999 s3(1)
- “Environment” means the components of the Earth and includes
 - (a) air, land and water;
 - (b) all layers of the atmosphere;
 - (c) all organic and inorganic matter and living organisms; and
 - (d) the interacting natural systems that include components referred to in paragraphs (a) to (c).



Egypt

- Egypt's Law No. 4 Concerning Environment; Official Journal Issue No. 5, 3 February 1994:
- Environment, is meant to denote the VITAL SURROUNDINGS which comprises the living creatures and its contents of materials, as well as the air, water, and earth within its compass, and the establishments set up by man.



Slovenia

- Republic of Slovenia The Environmental Protection Act, June 2, 1993:
- The environment is that part of nature, which is or could be influenced by human activity. The natural environment comprises primordial nature and the nature, which has been transformed by man. The living environment is that part of the environment which influences man directly. Within this Act, developed or other technological environments are part of the environment only as factors of environmental change.
 - Nature is the whole of the material world and the structure of natural laws governing its mutually linked and interdependent elements and processes. Man is an integral part of nature.
- 1.2 Natural elements are the soil, water, air, flora, and fauna which form the lithosphere, pedosphere, hydrosphere, atmosphere, and biosphere.
- 1.3 Natural factors are physico-chemical processes, relief, climate, hydrographical and biological conditions and other factors, which cause changes in the environment. Environmental factors also include the influences of human activity.

Slovenia (contd.)

- An ecosystem is a dynamic system of a biotope and biocoenosis, which appears as a combination of natural elements and natural factors, which react reciprocally as a functional unit.
- A habitat is the usual biotope of an individual organism or population.
- Natural resources are those components of nature, which are essential for the satisfaction of man's physical and material needs and interests, and may be exclusively or at the same time natural national assets, stock or flow resources, or non-expendable natural resources. Rare, precious, or more valuable natural resources shall be considered a national treasure.
- Natural national assets comprise areas in public ownership that is, undeveloped parts of a public resource on land, under the ground in water, sea, and air, allowing access and movement to everybody under equal conditions.
- Stock and flow resources are renewable or non-renewable elements, which are directly or indirectly economically exploitable.
- Non-expendable natural resources are, in addition to rare and precious natural phenomena, other valuable phenomena, components, or parts of organic or inorganic nature, natural regions or parts of natural regions, plant and animal species and their biotopes, ecosystems, parts of the natural and cultural landscape, and objects of developed nature.



St. Kitts & Nevis

- The National Conservation and Environment Protection Act 1987, No. 5 of 1987, St. Kitts and Nevis:
- “environment” means the physical factors of the surroundings of human beings including the land, soil, water, atmosphere, climate, sound, odours, tastes, and the biological factors of animals and plants of every description.

ATTRIBUTES OF ENVIRONMENTAL PROBLEMS

Interconnectedness of Ecosystems

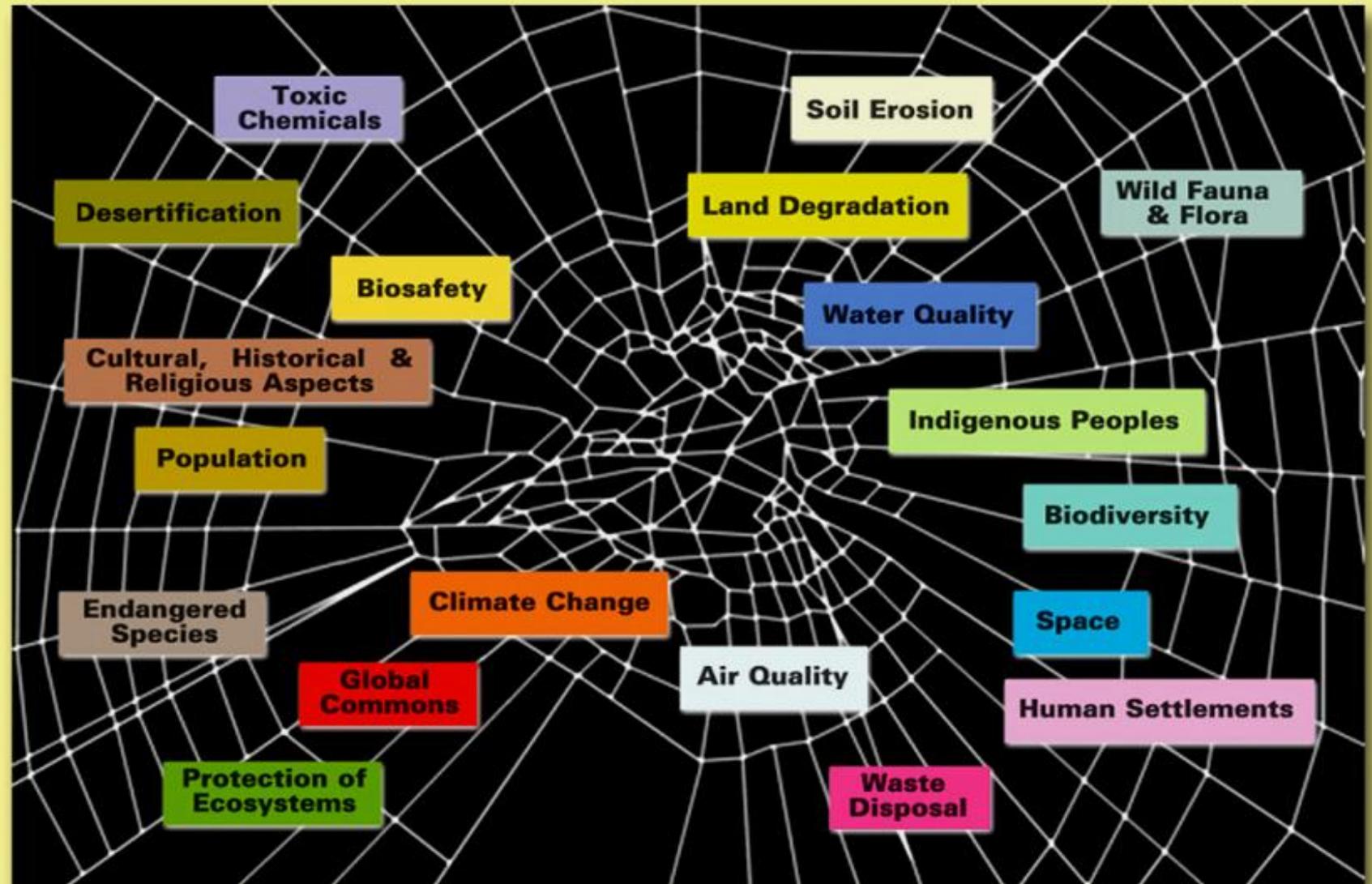
The Pollution Phenomenon

The Natural Resource Challenge

Influence of Science

Political/Economic Impacts

ENVIRONMENTAL INTERDEPENDENCE



THE POLLUTION PHENOMENON

- Pollution Sources
- Behavior of Pollution in the Environment
- Pollution Impacts
 - ◆ On human health
 - ◆ On natural resources and systems



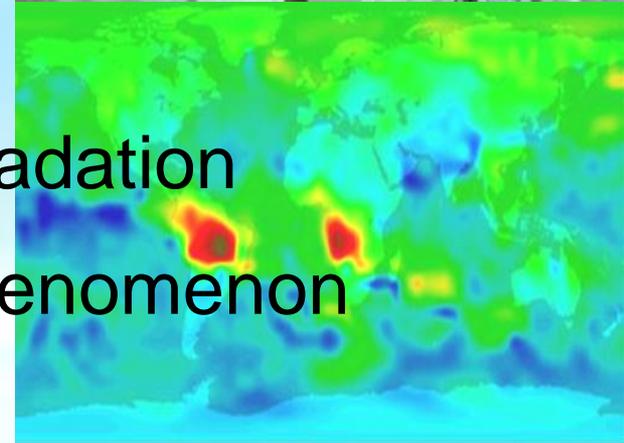
THE NATURAL RESOURCES CHALLENGE

- Conservation versus depletion of nonrenewable resources
- Sound management of renewable resources
- Protection of habitat and food chain
- Protection of natural treasures
- Pollution impacts



INFLUENCE OF SCIENCE

- Human health impacts (toxicity, exposure, risk)
- Causal connections
- Pollution synergies and “cumulative” impacts
- Biological responses
- Evaluating natural resource degradation
- Evaluating impacts on natural phenomenon (e.g., weather)



October 30, 2000

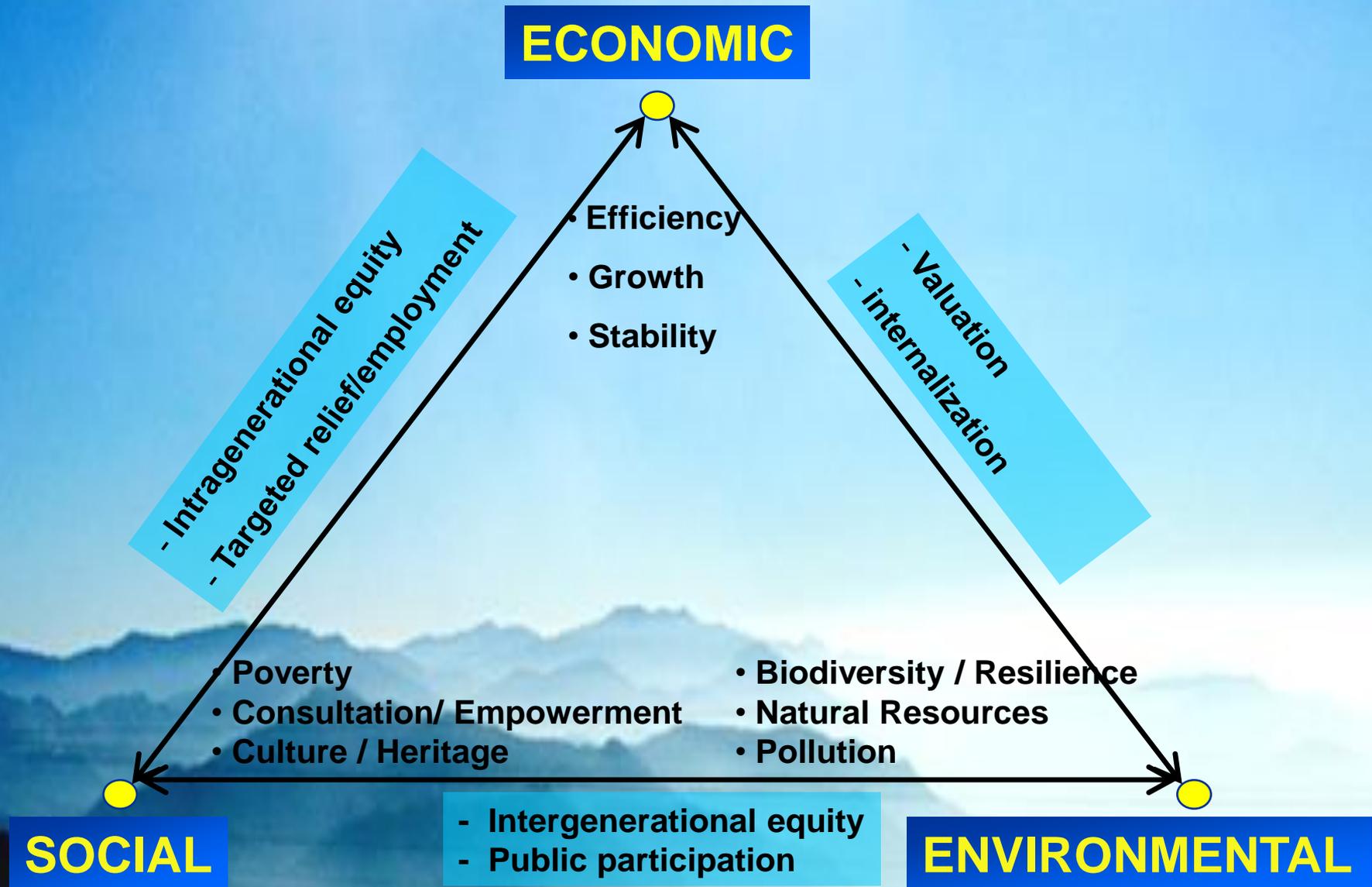


POLITICAL/ECONOMIC IMPACTS

- Economic loss associated with pollution
- Economic loss associated with loss of natural resources base
- Political instability caused by:
 - Competition over scarce natural resources
 - Cross-border pollution



KEY ELEMENTS OF SUSTAINABLE DEVELOPMENT



THE ROAD TO SUSTAINABLE DEVELOPMENT AS A COMMON CONCERN

- Experience within States
- The 1972 Stockholm Declaration
- The 1992 Rio Declaration
- The 2002 Johannesburg World Summit on Sustainable Development

STOCKHOLM: RESPONSIBILITY FOR TRANSBOUNDARY HARM

Principle 21, Stockholm Declaration:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, *and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of their national jurisdiction.*

Rio— Achieving a Mind-Shift

FROM

TO

Environment - Divisible & Separate



Interdependence of Environment

Compartmentalized Management



Partnership & Collective Decision Making

Development of Laws & Institutions



Continued Development of Law and Implementation, Including Enforcement

Piece-meal implementation of MEAs at National Level



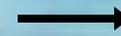
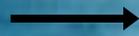
Explore Cross-Cutting, National-Level Approaches for Efficient Implementation

Government as Sole Decision Maker



Partnership with Civil Society & Private Sector

Global Politics & Implementation of MEAs



National Self Interests Demand Sustainable use of Resources and Reduction of Pollution

JOHANNESBURG SUMMIT

- Recognized the 3 components of sustainable development: economic development, social development and environmental protection
- Good governance at the national level as a primary delivery vehicle for sustainable development

SELECTED CONCEPTS FROM THE RIO DECLARATION

PREVENTION

ENVIRONMENTAL IMPACT ASSESSMENT

POLLUTER PAYS

PRECAUTION

PUBLIC RIGHTS: PARTICIPATION, ACCESS TO JUSTICE

INTER -GENERATIONAL EQUITY

SPECIAL STATUS OF INDIGENOUS PEOPLES

PREVENTION

- Concept encouraging the prevention of damage to the environment and to reduce, limit or control activities which might cause or risk such damage
- Take action at an early stage, and if possible, before damage occurs

ENVIRONMENTAL IMPACT ASSESSMENT

- Principle 17 Rio Declaration calls for all countries to use EIA in decisions on development
- The level of assessment depends on the potential for environmental harm
- Courts interpret and apply legislation on EIA

POLLUTER PAYS

- Internalization of environmental costs
- As between the general public and the polluting enterprise, the polluter should pay for the consequences of its pollution



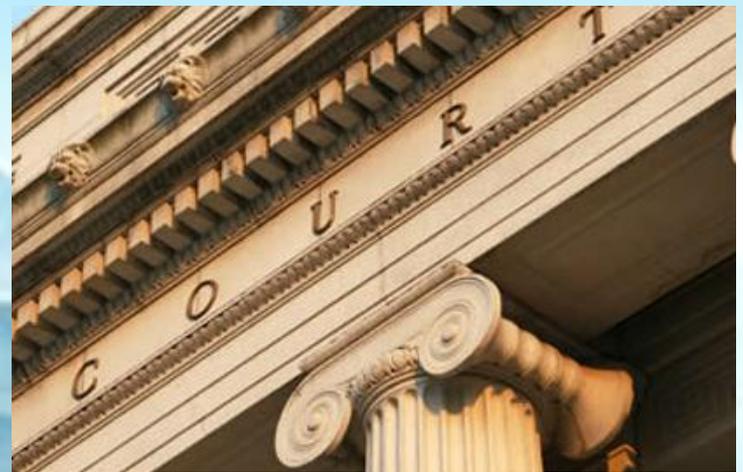
PRECAUTION

The precautionary approach aims to provide guidance in the development and application of environmental law where there is scientific uncertainty.



ACCESS TO JUSTICE, PUBLIC PARTICIPATION AND INFORMATION

In the wake of the Rio Declaration, the world has seen a shift in the direction of greater public access to environmental information and to the courts.



INTERGENERATIONAL EQUITY

“The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”



ACCESS AND BENEFIT SHARING OF NATURAL RESOURCES FOR INDIGENOUS COMMUNITIES

At the international and national levels, there has been increased recognition of the special needs by Indigenous and other local communities for access to benefits of the natural resources on which they rely for their livelihood and existence



CONCLUSION

Individual states and the international community at large have come to recognize sustainable development as an overarching paradigm for improving the quality of human life