

**Dr.zerroukAlili<sup>1</sup>,Serdoukhiba<sup>2</sup>**

<sup>1</sup>University of Blida<sup>2</sup>, Algeria

Badji Mokhtar-Annaba University<sup>2</sup>

[zerroukhemis@gmail.com](mailto:zerroukhemis@gmail.com)

[hiba.serdouk@univ-annaba.dz](mailto:hiba.serdouk@univ-annaba.dz)

## **The role of general environmental principles in the legal protection of natural resources from degradation**

### **Abstract**

The Algerian legislator recognized the importance of preserving environmental resources and their significant role, especially from economic and health perspectives. Due to their particular nature, it was necessary to establish flexible mechanisms applicable to all situations, represented by the general environmental principles enshrined in Law No. 03-10 on Environmental Protection in its Article 3. These principles differ from other general principles in terms of legal force and value, and they themselves vary in this regard. Both the administration and the judiciary refer to them to derive the appropriate ruling in cases concerning this field.

### **Introduction**

Human existence on Earth is based on the exploitation and utilization of its various resources and natural goods. For a long time, the Earth replenished its resources naturally. However, with the dramatic increase in population, particularly after the end of the world wars, resource exploitation of all kinds intensified, reaching its peak in the twentieth century after the agricultural and industrial revolutions, which were accompanied by overexploitation and mechanization in production. This led to the disruption of the natural balance of environmental resources and the depletion of especially non-renewable ones.

For a long time, it was believed that these resources were eternal and sustainable, so no concern was raised about them. However, research and studies have shown significant reductions and the extinction or near extinction of many species, revealing the environment's inability to renew its resources. Therefore, international efforts had to be consolidated to mitigate or at least reduce

this problem, as reflected in international and regional environmental conventions and forums. Since preservation requires the coordination of all efforts, domestic legislations of various countries enacted laws to contribute to this goal. The Algerian legislator aligned with this concern for the preservation of natural resources in all laws related to environmental protection, using two methods:

The first method relies on administrative legal tools granted by the legislator to the regulatory authority for resource protection. These include measures preceding damage, such as permits or declarations and technical environmental studies, including impact assessments and risk studies, which are required before any activity begins, along with prohibitive and mandatory systems. It also provides deterrent measures to address potential damages, observing a gradation in severity: starting with notifying the operator of the harmful activity and indicating observed violations and legal penalties if preventive measures are not taken, then temporarily suspending the activity if noncompliance continues, and finally permanently stopping the activity and revoking the license if necessary.

The second method is more modern and flexible, adopted by the Algerian legislator due to the specificity of environmental protection and its resources. It relies on several general principles characterized by high generality and flexibility, allowing them to accommodate various transformations, changes, and emerging cases. They also accept conflicts among themselves, enabling application to an unlimited number of environmental situations. Their flexibility allows the judiciary and administration to choose the most suitable principle for a given case to achieve optimal protection. These principles are contained in Article 3 of the Environmental Protection Law within the framework of sustainable development. These principles differ in strength and, consequently, in the level of protection they provide, ranging from purely guiding principles lacking legal force to those enforceable judicially.

From this perspective, the following question arises:

**What role can the general environmental principles declared in Algerian legislation play in protecting natural resources from degradation?**

To answer this, the study is divided into two sections. The first addresses the general guiding environmental principles established by the legislator to protect natural resources, followed by the legal protection of resources based on binding general principles.

The importance of the topic lies in the fact that many resources are wasted in Algeria without response from competent authorities. Therefore, this study seeks to clarify the legal mechanisms

capable of ensuring their protection and how to implement them in practice, especially regarding general principles, which are a new concept. It is necessary to clarify their functional aspects to understand how to apply them effectively.

### **Section One: Guiding General Environmental Principles and Their Role in Protecting Natural Resources**

The legislator limited some principles to a declarative, guiding formulation, contributing to awareness and the development of collective consciousness for environmental and resource preservation. These principles include:

- **Principle of Biodiversity Conservation (Subsection 1)**
- **Principle of Non-Degradation of Natural Resources (Subsection 2)**
- **Principle of Information and Participation (Subsection 3)**
- **Principle of Integration (Subsection 4)**

#### **Subsection 1: Principle of Biodiversity Conservation**

Biodiversity refers to “the natural diversity of living organisms, considering ecosystem diversity, species diversity, community diversity, and genetic diversity across time and space, as well as the organization and maintenance of ecosystems at biogeographical levels.” Due to its importance, a dedicated convention was adopted in 1992 at the Earth Summit. At the national level, biodiversity protection is enshrined in Law No. 03-10 on Environmental Protection, establishing a principle as a reference for evaluating any activity affecting biological species. Article 3, Paragraph 1 states: “This law is based on the following general principles: the principle of biodiversity conservation, under which any activity must avoid causing significant harm to biodiversity.”

Biological species vary across genetic, species, environmental, and cultural levels. This diversity contributes to the supply of raw materials used in producing goods and services such as food, clothing, construction materials, wood, industrial raw materials, and pharmaceuticals. Maintaining biodiversity ensures the renewal and continuity of many natural resources and prevents their depletion.

#### **Subsection 2: Principle of Non-Degradation of Natural Resources**

This principle aims to preserve natural resources in all their forms, preventing rapid depletion during exploitation of renewable and non-renewable resources and all components of the natural environment. It balances development needs with the sustainability and renewal of these

resources for future generations. Preservation includes protecting air from pollution, climate from change, and water and soil resources from degradation.

This principle is enshrined in Principle 14 of the 1992 Rio Declaration and adopted in Article 3, Paragraph 2 of Law 03-10 on Environmental Protection as part of sustainable development. It serves as the legal framework to prevent resource degradation, guiding the evaluation of activity permits and allowing legal measures against activities harming resources even after authorization.

### **Subsection 3: Principle of Information and Participation**

Effective protection of environmental resources requires individuals' contribution, as harm directly affects people's livelihoods, health, and future generations. Many resources are essential for communities, and people serve as the first to detect threats.

To participate effectively, individuals must be aware of the risks, achieved through awareness campaigns, information dissemination, and access to public information held by administrations. Participation in decision-making ensures optimal protection through consultation, public inquiries, and discussion. This right is recognized in Principles 19 and 20 of the 1972 Stockholm Declaration and Principle 10 of the 1992 Rio Declaration. Algerian law enshrines it in Article 3, Paragraph 8 of Law 03-10.

This principle is crucial for protecting environmental resources, enabling authorities to monitor harmful activities and intervene promptly. Citizen involvement fosters a sense of responsibility and encourages proactive environmental protection.

### **Subsection 4: Principle of Integration**

States seek development and economic growth, exploiting environmental resources. To prevent their depletion, rational use through planning and strategies balancing preservation and development is required. Integration involves environmental planning, defined as "a conscious concept and vision guiding all economic and social plans targeting balanced and safe resource use," supported by technical environmental studies like impact and risk assessments.

The Algerian legislator enshrined this principle in Article 3, Paragraph 4 of Law 03-10: "The principle of integration requires incorporating arrangements related to environmental protection and sustainable development when preparing and implementing sectoral plans and programs."

Despite its guiding nature, this principle has a preventive role by minimizing harm before it occurs. Scientific-based planning evaluates project impacts, enhancing resource value and ensuring their sustainability and renewal.

## **Section Two: Judicial General Environmental Principles and Their Role in Protecting Natural Resources**

Unlike guiding principles, several environmental principles carry legal force, establishing responsibility and enabling judicial claims:

- **Precautionary Principle in the Absence of Scientific Certainty (Subsection 1)**
- **Preventive Principle when Scientific Certainty Exists (Subsection 2)**
- **Polluter-Pays Principle for Environmental Damage (Subsection 3)**
- **Substitution Principle for Harmful Activities (Subsection 4)**

### **Subsection 1: Precautionary Principle**

Rapid scientific progress produces unknown risks that may cause serious environmental and health damage. In the absence of scientific certainty, precautionary measures must be taken to prevent irreparable harm. Once certainty is achieved, the principle no longer applies.

Conditions for applying this principle include scientific uncertainty and the likelihood of significant harm, excluding minor nuisances. It first appeared in Germany's 1970 Air Cleanliness Law and was reinforced internationally, including in Principle 15 of the 1992 Rio Declaration. Algeria incorporated it in Article 3, Paragraph 6 of Law 03-10: "The precautionary principle requires that lack of available technology, given current scientific knowledge, should not delay taking effective and proportionate measures to prevent serious environmental damage at an acceptable economic cost."

The precautionary principle plays a key role in protecting natural resources, shifting the burden of proof to the alleged polluter, ensuring maximum environmental protection, and serving as a preventive shield against new risks arising from scientific and technological discoveries.

### **Subsection 2: Preventive Action and Priority Damage Remediation at Source**

This principle involves measures to avoid foreseeable damage that may be difficult to remedy and actions to minimize harmful effects after an incident. It aims to prevent irreparable harm and reduce the cost of environmental remediation.

It is recognized in Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration, and in Algeria, it is codified in Article 3, Paragraph 6 of Law 03-10.

Its roles include preventing hazardous activities, requiring responsible parties to mitigate or minimize damage, and reinforcing preventive behavior. Implementation occurs through regulatory authority measures, including prohibitions, obligations, licensing, and technical studies to ensure minimal environmental impact.

### **Subsection 3: Polluter-Pays Principle**

It refers to transferring the costs of combating pollution from the shoulders of states to those responsible for pollution—whether public or private persons—with the aim of controlling it at the source. In the environmental field, this principle has two connotations: the first is that anyone whose activity causes damage is obliged to pay appropriate compensation; the second is that the person responsible for the environmentally harmful activity bears all the costs of the measures necessary to remove and prevent such damage.

The first appearance of this principle was in Recommendation No. 72-128 issued by the Organization for Economic Cooperation and Development (OECD) on 26/05/1972. It was codified in Principle 16 of the 1992 Rio Declaration. At the national level, the legislator considered it one of the principles underpinning the Environmental Protection Law, as stipulated in Article 3, Paragraph 7:

*"The Polluter-Pays Principle, under which any person whose activity causes or may cause damage to the environment or any of its elements bears the expenses of all measures to prevent pollution, reduce it, and restore the affected sites and their environment to their original state."*

The Polluter-Pays Principle serves several functions: distributing pollution costs among the polluters, providing financial resources for environmental damage prevention and remediation, and ensuring that the polluter bears the costs of preventing, removing, or minimizing the pollution they caused.

The high flexibility of the Polluter-Pays Principle allows its application in protecting environmental resources through various means: administrative, civil, financial, and even criminal. Administratively, it is reflected in the costs of technical studies required to obtain prior authorization for any activity, which the legislator imposes on the applicant. It also appears in imposing environmental fees and levies of various kinds to provide financial resources for covering remediation costs, which overlaps with financial means. Civilly, it is implemented through effective civil liability rules for environmental damage, tailored to the technical and legal characteristics of such damage. Criminally, it is applied through the imposition of criminal and financial penalties on the polluter causing harm to these resources.

### **Subsection 4: Principle of Substitution**

The Principle of Substitution refers to measures and actions taken to replace an activity proven harmful to the environment and public health with another activity that poses less risk, regardless of the cost of the new activity, as long as it provides necessary protection for the

environment and public health. The new activity is not required to be entirely harmless; it suffices that it is less harmful than the previous one, aligning with environmental protection requirements that mandate minimizing harm as much as possible.

The Algerian legislator enshrined this principle in Article 3, Paragraph 3 of Law 03-10 on Environmental Protection within the framework of sustainable development: *"The Principle of Substitution is the replacement of a harmful activity with another that is less harmful to the environment, and this latter activity is chosen even if its cost is high, provided it is appropriate to the environmental values being protected."*

In implementation, the European Parliamentary Committee on Environment, Public Health, and Food Safety (REACH) on 18 December 2006 in Brussels adopted an executive list requiring the registration, assessment, declaration, and restriction of chemical substances to halt the production of many substances hazardous to the environment and public health and replace them with environmentally friendly alternatives.

The application of the Principle of Substitution in preserving environmental resources encourages research and development of optimal solutions for maximum protection. It requires any harmful activity to develop an alternative that either eliminates or minimizes harm as much as possible, regardless of cost, aiming for an ideal environmentally friendly activity. It also serves as a backup or alternative for other principles when they fail to balance development needs with environmental protection and resource preservation.

### **Conclusion**

In conclusion, the Algerian legislator, balancing economic development needs with environmental protection and its resources, did not rely solely on administrative regulatory measures, which operate within a rigid framework. Instead, it established a set of general principles varying in strictness and legal force. Some are declarative and guiding, serving a preventive role by raising awareness and fostering collective consciousness for environmental resource preservation. Others carry judicial force, obliging those causing harm to these resources to bear responsibility regarding the costs of remediation or mitigation.

These principles are characterized by high flexibility and generality, enabling them to address most existing and emerging environmental cases, which aligns with the unique nature of environmental resource protection, where violations are difficult to fully define and document due to the diversity of sectoral laws involved. This approach provides unity and clarity in legal

texts, ensuring their effectiveness. Conflicts between principles are permissible, allowing the judiciary and administration to select and apply the most effective and protective principle.

To ensure that general principles fulfill their intended role in environmental protection and resource preservation, scholarly efforts must identify and clarify how they are implemented by both administration and judiciary, which should expand their discretionary powers to translate these principles into clear regulatory content.

### References

- Yves Jégouzo, *Les principes généraux du droit de l'environnement*, RFDA, 12 (2) March-April 1996, p. 234.
- Haddad Saïd, *Administrative Legal Mechanisms for the Protection of Biological Diversity in Algeria*, Complementary Memoir Submitted for the Master's Degree in Legal Sciences, Faculty of Law and Political Science, University of Setif 02, 2015, p. 18.
- Convention on Biological Diversity, 1992, ratified by Algeria under Presidential Decree No. 95-163, dated 06 June 1995, Official Gazette No. 32, 1995.
- Article 03, Paragraph 01 of Law 03-10, dated 19/07/2003, on Environmental Protection within the Framework of Sustainable Development, Official Gazette No. 43, issued on 20/07/2003. Chapter Three of this law is dedicated specifically to the protection of biological diversity and, more generally, all environmental resources. Its first section is entitled "Provisions for the Protection of Biological Diversity," and the following sections include provisions for the protection of air, water and aquatic environments, land and subsoil, desert environments, and the living environment.
- Jean-Marc Lavieulle, *Le droit en question: Droit international de l'environnement*, 2nd edition, Ellipses, Paris, 2004, pp. 08.
- Rio Declaration on Environment and Sustainable Development, adopted in 1992, [www.écologie.gouv.fr/IMG/agenda21/textes/rio](http://www.écologie.gouv.fr/IMG/agenda21/textes/rio).
- Ben Mehrah Nassima, *The Role of Environmental Information in Protecting the Environment*, Al-Mi'yar Legal Journal, Tissemsilt University Center, Algeria, Issue 08, 2013, p. 95.
- Algerian legislation recognized only the mechanisms of consultation and public inquiry, while adopting consultation on a limited scale.
- United Nations Conference on the Human Environment, held in Stockholm from 5 to 16 June 1972.

- The law made it one of the principles underpinning this legislation, stating: “*The principle of information and participation, under which every person has the right to be informed about the state of the environment and to participate in preliminary procedures when decisions that may harm the environment are taken.*” This law also devotes, in its second part on environmental management tools, Chapter One to the right to environmental information and Chapter Six to the right of citizen participation.
- Hassouna Abdelghani, *Legal Protection of the Environment within the Framework of Sustainable Development*, Doctoral Thesis, Department of Law, Mohamed Khider University of Biskra, 2013, p. 141.
- This principle is also enshrined in several international agreements, including Article 130R of the Maastricht Treaty, 1992.
- Madine Amal, *Classified Facilities for Environmental Protection (Comparative Study)*, Memoir Submitted for the Master’s Degree in Law, Faculty of Law and Political Science, University of Aboubekr Belkaid, Tlemcen, 2013, p. 167.
- Only preventive measures are taken here; see: Farida Takarli, *Precautionary Principle in International Environmental Law*, Memoir Submitted for the Master’s Degree in International Law and International Relations, Faculty of Law, University of Algiers, 2005, p. 32.
- Yahya Wanas, *Legal Mechanisms for Environmental Protection in Algeria*, Doctoral Thesis in Public Law, University of Aboubekr Belkaid, Tlemcen, 2007, p. 303.
- Examples include: United Nations Convention on the Law of the Sea, dated 10 December 1982, on the protection and preservation of the marine environment; Vienna Convention for the Protection of the Ozone Layer, 1985; Maastricht Treaty 1992, Article 174(R); Paris Convention, 22 September 1992, on the Protection of the Atlantic Marine Environment; Danube Cooperation Agreement for the Protection and Sustainable Use of the Danube, signed 29/05/1994; as well as several other international agreements referring to this principle. See: Lamri Mohamed, *Precautionary Principle for Preventing the Risk of Serious Environmental Damage*, Memoir Submitted for the Master’s Degree, Faculty of Law, University of Aboubekr Belkaid, Tlemcen, 2016, pp. 86, 98.
- The principle is also explicitly stated in Article 8 of Law 04-20, Law No. 04-20 dated 25 December 2004, on the Prevention of Major Hazards and Disaster Management within the Framework of Sustainable Development, Official Gazette No. 84, 2004, and in Chapter One of Part Four of Law No. 09-03, dated 25/02/2009, on Consumer Protection and Combating Fraud,

Official Gazette No. 15, dated 08 March 2009, entitled Precautionary Measures and the Precautionary Principle.

□ Youssef El Azouzi, article titled: *What Role Does the Precautionary Principle Play in Enhancing Environmental Sustainability?* Retrieved from: <http://platform.almanhal.com/Files/2/97596>, p. 104, accessed 17/12/2017, 19:00.

□ These two approaches have multiple applications embedded in sectoral environmental laws, which the legislator relied upon significantly in environmental resource preservation, including Law 04-07, dated 14/08/2004, concerning Fishing, Official Gazette No. 51/2004; Law 05-12, dated 04/08/2005, concerning Water, Official Gazette No. 60; Law No. 84-12, dated 23/06/1984, concerning the General Forest Code, Official Gazette No. 26, 1984, etc.

□ Prior authorization is required before commencing any activity, subject to a penalty of one-year imprisonment and a fine of 500,000 DZD, in addition to temporary suspension of activity until obtaining the license. Even after authorization, temporary suspension may continue until the sites are restored to their original state, according to Article 102 of Law 03-10 on Environmental Protection.

□ Maamer Rateb Mohamed Abdelhafid, *International Responsibility for the Transport and Storage of Hazardous Waste*, Dar Al Nahda Al Arabia, Egypt, 2007, p. 124. Regarding the application of the principle at the international level.

□ Mohamed Bouat, article titled: *Effectiveness of the International Liability System for Environmental Protection from Pollution*, Academic Journal of Social and Human Studies, Department of Economic and Legal Sciences, Hassiba Ben Bouali University, Chlef, Algeria, Issue 15, 2016, p. 173.

□ *Polluter-Pays Principle*, Futura Sciences, <http://www.futura-sciences.com>.

□ *Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC, and repealing Council Regulation (EEC) No. 793/93.*