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“...to promote sustainable development...”

The expression “sustainable development” in the
Swedish Environmental Code as seen from the
perspective of environmental ethics

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Summary

In 1987 the Brundtland commission presented its report entitled *Our Common Future*. According to the report, sustainable development can be defined as:

A development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

The term *sustainable development* has been a central part in all international environmental law documents ever since. In 1999, the term sustainable development was received into the Swedish legislation, in chapter 1, section 1 of the Swedish Environmental Code (SFS 1998:808).

This thesis presents the term sustainable development in a legal development perspective: how it is formulated in the legal text, and what were the views of the legislator concerning the term when the legislation was enacted. Also, the legal literature in this field is reviewed. An examination and interpretation of the relevant material is performed, and the research question is formulated as follows:

Which theory (or theories) of environmental ethics can be seen as being reflected in the legislator's ideas of sustainable development in the legal text and in the preparatory works concerning the opening section of the Environmental Code - and reflected in what way?

To answer this question, different theories of environmental ethics are presented, both in a historical perspective and according to the systemization by *Mikael Stenmark*. The result of the interpretation of the examined material is then compared with the essence of the different theories of environmental ethics, in order to find out which theory, or theories, can be seen as reflected in the legislator's ideas of sustainable development.

The author arrives at the conclusion that what actually is reflected in chapter 1, section 1 of the Swedish Environmental Code is a blend of holistic inter-generational anthropocentrism and weak ecocentrism.

Sammanfattning

År 1987, kom Brundtlandkommissionens rapport med titeln *Vår gemensamma framtid*. Enligt rapporten så kan hållbar utveckling definieras som:

En utveckling som tillfredsställer dagens behov utan att äventyra kommande generationers möjligheter att tillfredsställa sina behov.

Begreppet *hållbar utveckling* har ända sen dess varit en central del av alla internationella miljörettsliga dokument. År 1999, blev begreppet hållbar utveckling en del av svensk lagstiftning genom kapitel 1, paragraf 1 i Miljöbalken (SFS 1998:808).

Den här uppsatsen presenterar begreppet hållbar utveckling i ett rättsutvecklingsperspektiv: hur det är formulerat i lagtexten och hur såg lagstiftaren på begreppet när lagstiftningen antogs. Rättslig litteratur på området är också betraktad. En undersökning och tolkning av relevant material utförs, och frågeställningen är formulerad på följande sätt:

Vilken (eller vilka) miljöetisk teori kan ses som varande återspeglad i lagstiftarens idéer om hållbar utveckling i lagtexten och i förarbetena gällande portalparagrafen i miljöbalken - och på vilket sätt återspeglas detta?

För att besvara denna fråga presenteras olika miljöetiska teorier, både i ett historiskt perspektiv, och enligt systematiseringen gjord av *Mikael Stenmark*. Resultatet av tolkningen av det undersökta materialet har sedan jämförts med innehållet i de olika miljöetiska teorierna, för att reda ut vilken teori, eller teorier, som kan ses som återspeglad i lagstiftarens idéer om hållbar utveckling.

Författaren når slutsatsen att vad som faktiskt återspeglas i kapitel 1, paragraf 1 i miljöbalken är en blandning av holistisk intergenerationell antropocentrism och svag ekocentrism.

Preface

A hearty thank you goes to Uta Bindreiter for the eminent supervision that has been provided me, in a careful and encouraging way. It has been an honor to take part of such broad knowledge and great experience. Thank you also for splendid teaching and co-ordination of the course in Law and Philosophy, which got me to further follow that path with this thesis.

Further appreciation goes to Annika Nilsson for dedicated and inspirational teaching in environmental law. This has contributed to my interest of that legal field, which this thesis also relates to. Appreciation also goes to my uncle, Bosse Hansson, at the Linnaeus University, for giving me valuable comments and suggestions during the process with this thesis.

Abbreviations

CSD	Commission on Sustainable Development
EC	Environmental Code (1998:808)
EEC	European Economic Community
EU	European Union
KK	Swedish Government's public notice
OJEU	Official Journal of the European Union
PBA	Planning and Building Act (2010:900)
SFS	Swedish Code of Statutes
SOU	Swedish Government Official Reports
SÖ	Sweden's international agreements
TEU	Treaty of the European Union
TFEU	Treaty of the Functioning of the European Union
UN	United Nations
UNCED	UN Conference on Environment and Development
UNCHE	UN Conference on the Human Environment
UNCSD	UN Conference on Sustainable Development
UNEP	UN Environment Programme
WCED	World Commission on Environment and Development
WSSD	World Summit on Sustainable Development

1 Introduction

1.1 Presentation

The term *sustainable development* is a general expression that is widely recognized. When and where it came from, however, and what it actually consists of (depending on the context), is not quite as well known.

Since the term has become part of the Swedish environmental legislation, there is an obvious interest in trying to find out more about the thoughts surrounding sustainable development. When something becomes a part of the legislation, there is often a massive work done with investigations and diverse political documents before it is implemented, and the reasons behind the legislation and potential effects is thoroughly examined from many different aspects. The preparatory works are, therefore, a useful source for getting a wider knowledge of the legislator's intentions in a specific area.

Even if it is not often explicitly stated in the preparatory works, there are many answers to ethical questions involved in the reasons why a certain piece of legislation is constructed in a certain way. It is therefore of interest to try and find out more about the ethics that are hidden in the legislation, in that part of the environmental law that concerns sustainable development.

Frequently studies are performed, on the one hand, in the academic field of legal science, and, on the other, in other academic fields separately. This is the case, for example, when trying to establish what the law actually says in a certain legal area or situation, or when trying to establish the content of a certain ethics in the academic field of philosophy.

This thesis will deal both with the idea of sustainable development in environmental legislation, and with some of the theories of environmental ethics that are related to such ideas, and thus - in a way tie together law and philosophy.

1.2 Purpose

The overall purpose of the thesis is, *firstly*, to examine the legislator's ideas of the term *sustainable development*, as expressed in chapter 1, section 1 of the Swedish Environmental Code (SFS 1998:808) and in the relevant parts of the preparatory works; and, *secondly*, to investigate into the issue of, which theory or theories of environmental ethics can be seen, to a greater or lesser degree, as related to these ideas.

1.3 Research question

The research question of the thesis can be formulated as follows:

Which theory (or theories) of environmental ethics can be seen as being reflected in the legislator's ideas of sustainable development in the legal text and the preparatory works concerning the opening section of the Environmental Code - and reflected in what way?

1.4 Delimitations

In the *first* part of the thesis (the legislation part), only the preparatory works for the present Environmental Code in force are considered. It is the legislator's intentions put into it, and at the time of creation, that is of importance here. There have been no changes in the original text of chap. 1, sec. 1, of the Environmental Code.

From this follows that no preparatory works concerning previous environmental legislation, or other legislation mentioning sustainable development, falls within the scope of this study. Neither do other political documents referred to in the preparatory works - such as, for example, the previous Government Writ 1997/98:13 - unless information is expressly reproduced in the preparatory works. The same applies to references in the

preparatory works to, at that time, future political documents, such as, for example, the environmental political proposal Government Bill 1997/98:145. This also means that the environmental goals set by the Swedish parliament are not considered, since they are not a binding part of the legislation.

Further, the focus in the legislation part is on the legislator's ideas as expressed in the legal text and in the preparatory works *previous to* the EC coming into force, which implies that the practical application of the law by the courts is not addressed. Consequently, there is no case law chapter in the thesis.

In the *second* part of the thesis (the ethics part), only three theories of major environmental ethics, and different versions of them, are presented. Other smaller, or to a specific area more narrow, environmental ethics have been left outside. In the presentation of the different theories, or in their application, no difference is made between deontological ethics, virtue ethics or consequential ethics, and this issue has not been further developed.

1.5 Method

In the *first* part of the thesis, the status of the term *sustainable development* in the legislation, and the legislator's ideas concerning the meaning of the term given in the preparatory works, are presented. The term is also investigated in a legal development perspective, and comments on the legislation from the doctrine are reviewed. This first part of the thesis is presented in a purely descriptive way.

The same applies to the *second* part of the thesis, dedicated to ethical concepts and different theories within environmental ethics. Thus, anthropocentrism, biocentrism and ecocentrism together with the general ethical remarks are presented. Also here, the different theories within environmental ethics are presented in a historical perspective, in order to describe the development in the field of environmental ethics over time.

In the *third* and final part of the thesis, the analysis, the author has employed a version of what is usually called the legal philosophical method.

“Legal philosophy studies conceptual, definitional, or other abstract and theoretical and/or philosophical characteristics of the law”.¹ The relevant parts and formulations of the legal text and the legislator’s ideas about, or conception of, sustainable development as presented from the preparatory works, are subject to interpretation. The interpretation of the preparatory works offer more information and understanding of the definitions in the legal text, and what is actually stated in the law. The result of the interpretation is thereupon related to the values inherent in the different theories within environmental ethics, in order to find out which of them can be seen as being reflected in the legislator’s ideas concerning sustainable development. Here, the author is also using what might be called a method of exclusion, when analysing the possible compliance between the legislator’s ideas of sustainable development and the different theories within environmental ethics.

1.6 Material

An official translation of the *Environmental Code*, produced by the Ministry of Environment, is used in the thesis. The main preparatory works for the Environmental Code consists of the Environmental Code Commission’s report, Focused and Co-ordinated Legislation for Sustainable Development (SOU 1996:103), and of the proposal (resulting from the Commission’s report) with the official title, the Government Bill 1997/98:45. The proposal is the most important product, among the preparatory works and is therefore mainly used. The report 1997/98:JoU20 contains no significant differences compared to the proposal, and is therefore not used.

Literature concerning environmental law is used as material for the presentation in the legal part of the thesis. Concerning comments on the legislation, the most extensive work is, *Miljörättslig Tidskrift* 1999:1-3, produced by Staffan Westerlund. The comments in the literature, are merely used as a support for the author’s interpretation and analysis.

¹ Zamboni, M., Korling, F., *Juridisk metodlära* (Lund: Studentlitteratur AB, 2013) p. 426.

In the ethics part of the thesis, the most used material is Mikael Stenmark's work *Miljöetik och miljövard* (2000). This work provides a general pedagogical overview of the field of environmental ethics. Stenmark's concept formation and definitions are therefore used as a basis, with smaller modifications at some points. The work of other authors in the field of environmental ethics - such as, for example, - Peter Singer's *Practical Ethics – Second Edition* (originally in 1993) is used for further elaboration (that is, if possible without interfering with Stenmark's system).

In view of the subject matter of the thesis, mostly Swedish literature is used (but also some international literature). Since the Swedish Environmental Code did not enter into force before January 1, 1999, most of the legal literature dates from 1999 onwards.

1.7 Research situation

Certainly, there is extensive research work done in the area of law related to the term sustainable development in the Environmental Code, but then, it is only related to specific areas of environmental law, such as, for example, biological diversity, natural cycles, environmental quality standards, and the legal operationalization of sustainable development. References to environmental ethics are almost non-existent in this research. In Sweden, Staffan Westerlund has played a central role in the research concerning environmental law and sustainable development. He saw a need for reevaluating the legal system, in order to adapt it to the requirements of sustainable development. His last major work was *Miljörättsliga grundfrågor 2.0* (2003).

Similarly, there is also research related to the term sustainable development in environmental ethics, done in other fields than law. There, the references to environmental law, are almost non-existent. For example, Mikael Stenmark's book (mentioned under subchapter 1.6 above) deals with the relationship between environmental policies and environmental ethics. It was published in 2000, that is, shortly after the Environmental Code was enacted, and consequently legislation is not mentioned at all. Stenmark

criticizes the lack of research in the field. His work, (and also that of other writers, at that time) is more related to an international context and the national policies related to international obligations, than to legislation.

1.8 Structure

The structure of the thesis is as follows. Chapter 2 is dedicated to the term sustainable development in Swedish environmental legislation, and in particular, in the Environmental Code. Subchapter 2.1 gives the historical background in an international, European and Swedish context, while subchapter 2.2 provides a general overview of the aim of the law in this area. Subchapter 2.3 deals with the preparatory works and the legislator's view on the reasons for the legislation, why it is shaped in a certain way, and what is set to be accomplished. Subchapter 2.4 contains comments from the legal literature on the subject matter.

Chapter 3 is concerned with environmental ethics. First there is, in subchapter 3.1, the historical background to this academic field. Subchapter 3.2 offers a general overview of ethical terms and values. Subchapter 3.3 deals with the environmental ethics theories in anthropocentrism, whilst subchapters 3.4 and 3.5 deal with those of biocentrism and ecocentrism, respectively.

Finally, in chapter 4 (analysis) the author takes stock and offers some conclusions.

2 Sustainable development

2.1 Historical background

To be able to put the term sustainable development into a context, and to understand the development of it, this subchapter will provide a historical background. Subsection 2.1.1 first is in an international environmental law context. Subsection 2.1.2 secondly describes it from a European environmental law context point of view, and subsection 2.1.3 is in a Swedish environmental law context. Finally, subsection 2.1.4 offers a summary.

2.1.1 International environmental law context

There are many reasons why the international environmental law started to develop on a wider scale. For a long time the common opinion was that environmental problems should be dealt with internally within the states respectively. The principle of state sovereignty meant that every state had the control of its own natural resources, and therefore could decide by themselves in what way to exploit them. Gradually the opinion started to change because of the insight among the individual states that environmental problems crossed borders, and had effect on other states in the region, or even globally.²

Because there could be seen actual effects of that the natural environment had become worse off following the growing industrialization after the Second World War, and because there had been a growing consciousness even among the general public about the dangers and threats to the environment, something had to be done on a global level. So the United

² Michanek, G., Zetterberg, C., *Den svenska miljörätten* (Uppsala: Iustus Förlag AB, 2012) [hereinafter: Michanek/Zetterberg] p. 75.

Nations (UN) summoned to an international conference, UN Conference on the Human Environment (UNCHE), held in Stockholm in 1972.³

The most important document from the conference was the so called Stockholm Declaration, which contained 26 principles concerning the international environment and its protection. Another result of the conference was an Action Plan containing of 109 recommendations, and also a resolution leading to the establishment of UN Environment Programme (UNEP), with the headquarter in Nairobi in Kenya.⁴

After the conference in 1972 and until the beginning of the 1980's, there were a contrast between the developing countries demand for their own economic growth and development, and on the other hand the industrialized countries demand for co-ordinated actions for the protection of the environment as a whole. To solve the problem the UN General Assembly in 1983 decided to form the World Commission on Environment and Development (WCED), led by the prime minister of Norway, Gro Harlem Brundtland,⁵ and therefore more known as the Brundtland Commission.⁶

In 1987, the Brundtland commission presented its report entitled *Our Common Future*. According to the report, sustainable development can be defined as:

A development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

This being so, the goals for economic and social development in all states, must be defined in terms of sustainability.⁷ The human legal instruments for this purpose had to be reformulated, in order to create a harmony between human activities, and nature's unchangeable and universal laws.⁸

³ Mahmoudi, S., Rubenson, S., *Miljörättens grunder* (Stockholm: Norstedts Juridik AB, 2004) [hereinafter: Mahmoudi/Rubenson] p. 21-22.

⁴ Mahmoudi/Rubenson, p. 22-23.

⁵ Brundtland (1939-) took a master's degree in public health at Harvard in 1965. She became Minister of Environment in the Labour government in 1974. In 1981 she became the first female Norwegian Prime Minister. She has also worked as Director-General of the World Health Organization and as UN Special Envoy for Climate Change. Kavanagh, D., Riches, C., *A Dictionary of Political Biography* (Oxford: Oxford University Press, 2013).

⁶ Mahmoudi/Rubenson, p. 23-24.

⁷ Världskommissionen för miljö och utveckling, *Vår gemensamma framtid* (Stockholm: Bokförlaget Prisma och Tidens Förlag, 1988) [hereinafter: Vår framtid] p. 57.

⁸ Vår framtid, p. 355.

Sustainable development was really a key term and an overall goal in the report, and got its breakthrough on an international legal level. It has been a central part in all international environmental law documents, from that moment onwards.⁹

The report showed that the industrialized countries way of producing and consuming led to an overexploitation of natural resources, and to a very high level of pollution that could not be tolerated. To put it into perspective, less than 20% of the population in the world used more than 85% of the common resources. The Brundtland Commission finally concluded and recommended that it was time again for a new UN international conference on environment and development to take place.¹⁰

The result of this proposal was the UN Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992, and therefore later came to be called the Rio Conference. The thoughts at this summit were connected with the Brundtland commission's report, that there is a relation between environmental problems and economic change for the worse.

A sustainable development demanded that both social and economic aspects had to be considered, especially a change in consuming patterns to protect peoples environment, their health and to fight poverty. It also included dealing with the increase of the population in the world, and the preservation and administration of natural resources.¹¹

The term sustainable development went as a red thread through all achievements at the conference, and three major agreements were adopted. The Rio Declaration on Environment and Development with a series of principles, the global action plan Agenda 21 and a statement with principles about the sustainable development of forests.¹² There were also two multilateral treaties introduced. The first one on climate change, and the other one on biological diversity.

⁹ Mahmoudi/Rubenson, p.24 and p. 26.

¹⁰ Persson, C., Persson, T., *Hållbar utveckling* (Lund: Studentlitteratur, 2007) [hereinafter: Persson/Persson] p. 184-185.

¹¹ Persson/Persson, p. 185-186.

¹² Report of the United Nations Conference on Environment and Development, A/CONF.141/26/Rev.1 (New York, 1993).

The most important result of the conference was Agenda 21, although it is a legally non-binding agreement. It consists of actions presented for a better protection of ecosystems, and a better living standard for the world community. It holds the standpoint that a sustainable development, both from an environmental and an economic point of view, is not only possible but absolutely necessary.¹³ It is stated in the preamble of the agenda that humanity stands at a defining moment in history, and that no state can achieve everything on its own, but with a global cooperation for sustainable development it is possible.¹⁴

The Rio Declaration also holds references to sustainable development:

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.¹⁵

Another interesting part from the Rio Conference is the preamble of the Convention on Biological Diversity, stating that the contracting parties are:

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components,¹⁶

The convention was signed in 1992, but went into force in 1993, and for Sweden in 1994.¹⁷

After the Rio Conference there have been several reviews of the implementation of Agenda 21. At first, in 1997 by the Commission on Sustainable Development (CSD), which the UN General Assembly formed after the conference in 1992. Secondly, a review took place in 2002, at the World Summit on Sustainable Development (WSSD) in Johannesburg¹⁸, and then 10 years later again at the UN Conference on Sustainable

¹³ Mahmoudi/Rubenson, p. 24-25.

¹⁴ United Nations Conference on Environment and Development, *Agenda 21*(Stockholm: Norstedts Tryckeri AB, 1993) chapter 1, p.1.

¹⁵ Principle 1, Rio Declaration on Environment and Development, in Report of the United Nations Conference on Environment and Development, A/CONF.141/26/Rev.1 (New York, 1993).

¹⁶ Convention on Biological Diversity, Ch_XXVII_8, Vol – 2. Environment (Rio de Janeiro, 1992).

¹⁷ Sveriges internationella överenskommelser, SÖ 1993:77.

¹⁸ Mahmoudi/Rubenson, p. 25.

Development (UNCSD) in 2012, this time back in Rio de Janeiro once more.¹⁹

Sweden is a member of the UN since 1946,²⁰ and European Union (EU) is an observer member since 1974, with enhanced participation rights, but with no right to vote, since 2011.²¹

2.1.2 European environmental law context

When it comes to the development of environmental law and the protection of the environment in Europe, the EU plays a central role. Several of the member states have no own comprehensive environmental legislation, and for those who already have one, the EU environmental legislation is instead an important complement in that area.²²

Compared to the international level where the implementation of international environmental law sometimes is weak, there is a different situation in the EU. Here it is possible to legislate in a way that is directly binding for the member states, their authorities and individuals, and thereby gets a greater influence on the national level. The EU also has institutions that can resort to apply sanctions against member states if there is a violation against the legislation.²³

Until in 1973, there had not been a statement between the member states about a joint environmental policy, but then it came in the shape of a so called Environmental Action Programme. It was about shared environmental problems, and how these problems ought to be addressed. The programme could also be seen as a guideline in the efforts to produce drafts for environmental legislation.²⁴

The first time that environmental protection got its own part in the original Rome Treaty that created the European Economic Community

¹⁹ Michanek/Zetterberg, p. 76.

²⁰ UN General Assembly Resolution, A/RES/34(I).

²¹ UN General Assembly Resolution, A/65/PV.88.

²² Mahmoudi/Rubenson, p. 29.

²³ Michanek/Zetterberg, p. 80.

²⁴ Rubenson, S., *Miljöbalken* (Stockholm: Norstedts Juridik AB, 2008) [hereinafter: Rubenson] p. 16-17.

(EEC), was by the changes made in it through the Single European Act in 1987, where some of the goals and principles from the three first Environmental Action Programmes produced until then were implemented.²⁵

In 1993, it was time for a new treaty for the creation of the EU, the Maastricht Treaty, and with it came changes in the Rome Treaty that strengthened the environmental regulations.²⁶ They were stated in Article 130 r. (1) and (2). Except for these more specific environmental goals, the Maastricht Treaty had in its own preamble a common goal with a determination to promote environmental protection.²⁷

With the Amsterdam Treaty of 1999 there were changes made in both the Rome Treaty and in the Maastricht Treaty making the environmental regulations clearer. The parts in Article 130 r. (2), about a high level of protection of the environment, and about integration of environmental protection into other community policies, were moved also to the beginning of the Rome Treaty. This was to stress the important role of the environment in the EU.

Another change was the addition and introduction of a new basic environmental principle: the principle of sustainable development. At that time put in Article 2, and in Article 6 of the treaty.²⁸ Also the common goals in the preamble of the Maastricht Treaty was rewritten with the addition of the principle of sustainable development, and further on it was stated in Article 2 of the same treaty, that the EU shall set as an objective to achieve balanced and sustainable development.²⁹

In 2003, came another treaty into force, containing changes both in the Rome Treaty and in the Maastricht Treaty. This document went under the name the Nice Treaty. With concern to the environmental regulations, there were no important changes made to the previous treaties.³⁰

²⁵ Mahmoudi/Rubenson, p. 29 and p. 60.

²⁶ Mahmoudi/Rubenson, p. 30-31.

²⁷ Europafördrag (Stockholm: Norstedts Juridik AB, 1998) p. 14, and 158-159.

²⁸ Mahmoudi/Rubenson, p. 31 and p. 66, and Europafördrag (Stockholm: Norstedts Juridik AB, 1998) p. 68, 70 and 158-159.

²⁹ Mahmoudi/Rubenson, p. 60, and Europafördrag (Stockholm: Norstedts Juridik AB, 1998) p. 14, and 17.

³⁰ Mahmoudi/Rubenson, p. 30-31.

The Lisbon Treaty from 2009 has produced the latest changes in the area of primary legal sources in the EU. There are now two fundamental treaties with the same legal status. First, there is the Treaty of the Functioning of the European Union (TFEU), which is built on the former Rome Treaty, and secondly there is the Treaty of the European Union (TEU), which is a developed version of the former Maastricht Treaty.³¹ References to sustainable development can now be found in the TFEU under Title II, Provisions having general application, in Article 11:

Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.³²

This means that the environmental aspects must be taken under consideration, when regulations are made concerning for example transports and agriculture.³³ In the TEU there is a reference to sustainable development in the preamble and under Title I, Common provisions, in Article 3:

“DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection...”³⁴

1 The Union shall establish an internal market. It 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. [...]

5 In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth...³⁵

Even if the need for environmental protection is often balanced against other interests, still with these regulations it at least has a unique position in the EU policies.³⁶ Finally, also in the TEU, under Title V, Chapter 1, General provisions on the Union's external action, in Article 21:

³¹ Michanek/Zetterberg, p. 80.

³² Treaty of the Functioning of the European Union, Official Journal of the European Union (OJEU), C 326/391, 26.10.2012.

³³ Nilsson, A., *Introduktion till EU:s miljö rätt* (Stockholm: Santérus Förlag, 2014) [hereinafter: Nilsson] p. 10.

³⁴ Treaty of the European Union, OJEU, C 326/391, 26.10.2012.

³⁵ Treaty of the European Union, OJEU, C 326/391, 26.10.2012.

³⁶ Nilsson, p. 9.

(2) The Union shall define and pursue common policies and actions, and [...]

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; [...]

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;³⁷

The most important differences are that the principle of sustainable development has got a wider expression in the TEU than it had before, because it now has no connection solely to economic activities. Also Articles 3 (5) and 21 indicate that EU now wants to take a greater responsibility for sustainable development, not just in the EU but, in the world.³⁸

Besides the references in the two major treaties, there is also one in the Charter of fundamental rights of the European Union³⁹, which is referred to in Article 6 of the TEU. It is stated in article 37, Environmental protection, of the Charter, that a high level of environmental protection and the improvement of the quality of the environment, must be integrated into the policies of the EU, and ensured in accordance with the principle of sustainable development. Although, the environmental protection can be found in this charter, it is not formulated as an explicit right like some other that are stated there, but more like a common principle.⁴⁰

There is no definition of sustainable development in the treaties of the EU, but there is one in a secondary legal source, which in the beginning under The Council of the European Union, has adopted this regulation, in Article 2 statutes:

For the purposes of this regulation: [...]

4. 'Sustainable development' means the improvement of standard of living and welfare of the relevant populations within the limits of the capacity of the ecosystems by maintaining natural assets and their biological diversity for the benefit of present and future generations.⁴¹

³⁷ Treaty of the European Union, OJEU, C 326/391, 26.10.2012.

³⁸ Michanek/Zetterberg, p. 81.

³⁹ Charter of fundamental rights of the European Union, OJEU, C 326/391, 26.10.2012.

⁴⁰ Nilsson, p. 10.

⁴¹ European Tropical forests Council Regulation (EC) No 3062/95 of 20.12.95 on operations to promote tropical forests.

This definition is somehow different from the definition brought forward by the Brundtland commissions report.⁴² The definition in that report is still considered to be the established definition in the international environmental law at present time.⁴³

EU law is part of Swedish law because of the membership, according to the provisions in the TFEU under Chapter 2, Section 1, The legal acts of the Union, in Article 288. There are also provisions set in the national Swedish legislation, in the law (1994:1500) from the 20th of December 1994 on the occasion of Sweden's accession to the European Union.⁴⁴

2.1.3 Swedish environmental law context

Swedish environmental law developed separately in three major areas: legislation concerning the protection of health, legislation concerning the protection of nature and resources, and legislation concerning the protection of the environment from nuisance and pollution.

Legislation concerning health was the first area that needed to be organized. The densely populated cities with poor accommodations created unhealthy conditions. Diseases were spread and mortality was high. These unsatisfactory state of things, led to reforms in the legislation concerning cleaning, water and waste products already in the late 19th century. An improvement for the environment was not the direct purpose of the legislation concerning health, although it had these positive effects.⁴⁵

The next area to be organized was the legislation concerning the protection of nature and resources. In 1909, two laws were introduced: one about national parks, and the other about the preservation of natural landmarks. After that, the legislation developed gradually, but it was not until 1952 that a law on the protection of nature was introduced. Then in

⁴² See subsection 2.1.1, cf. p. 12.

⁴³ Mahmoudi/Rubenson, p. 67.

⁴⁴ Michanek/Zetterberg, p. 84-85.

⁴⁵ Rubenson, p. 15.

1964, these former legislations were replaced and a new law about nature conservation went into force.⁴⁶

The legislation concerning the protection of the environment from nuisance, about limitations on disturbance from an activity on a landed property, was organized some years later. In 1969 came the first developed and uniform law on environmental protection from pollution both on land, in water and in the air.⁴⁷

An important part in this area is the legislation on water, and then particularly the industrial wastewater. Demands regarding that larger industries should have a license for activities including disposal of this kind of waste, and also regulations on the right to compensation for land owners, who had suffered damage because of nuisance from other properties.⁴⁸

Another related area that, like the legislation on water, stretches over the three major areas, is the legislation on the use of and control of chemicals. Like with biocide for example, it can both damage the one using it, but it can also have negative effects on animals and nature.⁴⁹ The biocides got stricter regulations already during the 1960's, but for a more uniform chemical legislation to take shape, it took until 1973.⁵⁰

After these initial modern legislations in every area respectively, they developed for 20-25 years, to a large number of separate laws, regulations and directives from authorities. The many different environmental problems and the scope of the legislation affected the co-ordination in the legal application. This led to the insight that the legislation needed to be modernised, and better co-ordinated to be effective.⁵¹

In 1989 started the comprehensive preparatory work to uniform the central environmental legislation into one law, when the government appointed a committee, the Environmental Protection Committee, for that purpose. A parliamentary resolution, and it was also proposed by the committee, decided that the legislation should take the shape of a code. This

⁴⁶ Rubenson, p. 15.

⁴⁷ Rubensson, p. 16.

⁴⁸ Mahmoudi/Rubenson, p. 45.

⁴⁹ Mahmoudi/Rubenson, p. 46.

⁵⁰ Rubenson, p. 16.

⁵¹ Mahmoudi/Rubenson, p. 46-47.

was to stress the importance given to environmental questions at present time. The legislator wanted to show that environmental law now was as important as for example penal law or civil law.⁵²

A proposal about an environmental code was presented to the parliament in 1994. Then came a change of government after the election the same year, and the proposal was withdrawn.

Instead, another committee got the assignment to present a proposal about an environmental code, the Environmental Code Commission. A couple of years later they delivered their report, *The Environmental Code – Focused and Co-ordinated Legislation for Sustainable Development*,⁵³ and the government presented a new proposal, the Government Bill 1997/98:45, about an environmental code. The parliament passed the proposal at a session in the summer of 1998, and with the official name *The Environmental Code (1998:808)*, it went into force in the 1st of January 1999.⁵⁴

The Environmental Code (EC) replaced 16 environmental laws covering the three major areas; legislation concerning the protection of health, legislation concerning the protection of nature and resources and legislation concerning the protection of the environment from nuisance and pollution, but also other areas like water and chemical legislation.

Despite this co-ordination there is still a large number of laws beside the code, in some way concerning the same interests, and they are to be applied in addition to the code, according to chap. 1, sec. 3, par. 1 of the EC. Subsumed under The EC is also over 50 governmental ordinances, and many directives from different authorities. Seen in an international perspective, this construction that Sweden has chosen with a code, is quite unique.⁵⁵

⁵² Rubenson, p. 43.

⁵³ SOU 1996:103 Huvudbetänkande av miljöbalksutredningen, *Miljöbalken – En skärpt och samordnad miljölagstiftning för en hållbar utveckling*. Main report from the Environmental Code Commission, *The Environmental Code – Focused and Co-ordinated Legislation for Sustainable Development* [hereinafter: SOU 1996:103].

⁵⁴ Michanek/Zetterberg, p. 73-74.

⁵⁵ Michanek/Zetterberg, p. 22-23.

Another law from a legislation area related to the environmental law in Sweden is the Planning and Building Act (PBA). In the former law from 1987, a change was made in 1993 in chap. 1, sec. 1, Purpose, content and definitions, as a connection to the Rio Declaration and Agenda 21, and to put the environmental questions on top in the physical planning.⁵⁶ This became the first reference ever in Swedish legislation, connected to the thoughts of sustainable development. A new law went into force in 2010, the PBA (2010:900), and it still statutes:

This act contains provisions on the planning of land and water areas as well as building. The provisions aim, with due regard to the individual's right to freedom, at promoting societal progress towards equal and good living conditions and a good and lasting sustainable environment for the benefit of the people of today's society as well as future generations.⁵⁷

After a change made in 2014 in chap. 3, sec. 5 of the PBA, General map planning, it now also contains a reference to sustainable development.⁵⁸

Although there was this reference to sustainable development in Swedish legislation already in 1993, the first time the actual whole term was regulated was through the EC in 1999. In Part one, General provisions, in Chapter 1, Objectives and area of application of the Environmental Code, in Section 1, in the first paragraph, it is stated:

The purpose of this Code is to promote sustainable development which will assure a healthy and sound environment for present and future generations. Such development will be based on recognition of the fact that nature is worthy of protection and that our right to modify and exploit nature carries with it a responsibility for wise management of natural resources.⁵⁹

After the EC there has also been a constitutional change and introduction of the term in 2003, in the Instrument of Government, Chapter 1, Basic principles of the form of government, in the Article 2, in the third paragraph:

The public institutions shall promote sustainable development leading to a good environment for present and future generations.⁶⁰

⁵⁶ Michanek/Zetterberg, p. 455.

⁵⁷ Planning and Building Act (2010:900), official translation by the National Board of Housing, Planning and Building.

⁵⁸ Planning and Building Act (2010:900).

⁵⁹ Environmental Code (1998:808), official translation by the Ministry of Environment.

⁶⁰ Instrument of Government (KK 1974:152), official translation.

This can be seen as a constitutional expression of a goal for the welfare State, and as a general obligation and working spirit for the public institutions.⁶¹

2.1.4 Summary

On the international level, the term sustainable development was introduced by the Brundtland commission in its report *Our Common Future*, in 1987. After the UNCED in Rio de Janeiro in 1992 it became part of the action plan Agenda 21 and the Rio Declaration.

In the EU, the first mention of the term sustainable development came with the Amsterdam Treaty in 1999. That treaty produced changes in both the Rome Treaty and in the Maastricht Treaty, and the term was established in both of them. After the Lisbon Treaty from 2009, the two treaties are now referred to as the TFEU respectively the TEU.

On the national level, the first reference to the term sustainable development was introduced in the Swedish legislation in 1993. At that time, in the sectorial special legislation, the PBA. With the enactment of the EC in 1999, the actual whole term was regulated. In 2003, there was a constitutional change made and the term sustainable development was then written into the Instrument of Government.

2.2 The aim of the law

This subchapter presents the aim of the EC, both as a general overview and with the more specific aim as stated in the opening section. The next subsection 2.2.1 gives some general remarks on the aim of the law. The following subsection 2.2.2 will take a closer look at the aim of chap. 1, sec. 1 of the EC. In subsection 2.2.3 there is a summary.

⁶¹ Ebbesson, J., *Miljörätt* (Uppsala: Iustus Förlag AB, 2008) [hereinafter: Ebbesson] p. 110.

2.2.1 General remarks

The EC begins with regulations about the goals, and these reflect the general aim of the legislation. That is for the EC to be seen as a united environmental and resource legislation where the interests of protection are the centre of concern. It also reflects the general environmental political idea that through legislation, push the development forward in accomplishing an ecologically sustainable society.⁶²

Even if the environmental protection now is more in the centre of concern through the EC, the aim of an environmental legislation is not to constantly, no matter what the situation, protect the environment against damage and detriment. It is to find an acceptable balance between the interest of environmental protection, and other interests in society. The regulations shall present precautionary measures and limitations also concerning businesses and establishments that most of us want, and that we can see the importance of. To do this, in the light of sustainable development, is a real challenge for the environmental legislation.⁶³

2.2.2 Chapter 1, section 1 of the Environmental Code

It is often difficult to establish a characterization of the aim of the law, which in detail can arouse acceptance by all concerned parties. It depends on the theory of law that is preferred, as well as moral beliefs and political views. One way to proceed, that on a general level describes an important role of the law, and can be seen as supporting large parts of the regulation, is

⁶² Rubenson, p. 25-26.

⁶³ Ebbesson, p. 17-18.

by watching the more specific aim of counteracting detrimental consequences of human behaviour.⁶⁴

The full length of the statute in Part one, General provisions, Chapter 1, Objectives and area of application of the Environmental Code, Section 1 states:

The purpose of this Code is to promote sustainable development which will assure a healthy and sound environment for present and future generations. Such development will be based on recognition of the fact that nature is worthy of protection and that our right to modify and exploit nature carries with it a responsibility for wise management of natural resources.

The Environmental Code shall be applied in such way as to ensure that:

1. human health and the environment are protected against damage and detriment, whether caused by pollutants or other impacts;
2. valuable natural and cultural environments are protected and preserved;
3. biological diversity is preserved;
4. the use of land, water and the physical environment in general is such as to ensure a long term good management in ecological, social, cultural and economic terms; and
5. reuse and recycling, as well as other management of materials, raw materials and energy are encouraged with a view to establishing and maintaining natural cycles.⁶⁵

Here in par. 1, is the comprehensive legal goal of promoting sustainable development. Without fully knowing the meaning of sustainable development it is, at least to some extent, promoted with the aim of counteracting detrimental consequences of human behaviour. In par. 2 there are some parts stated as of special importance, that shall be applied in a certain way for the promotion of sustainable development. Those parts provide more information about which specific detrimental consequences of human behaviour that the EC seeks to counteract.⁶⁶

This means that the EC applies to in principle all human effect that in an observable way can be adventurous for the goal of the legislation. To achieve this goal it is necessary to apply the EC according to the intentions of the legislator, and through this direct the courts, authorities and individuals. This regulation in the first chapter contains the frame for the application area of the EC, and especially in par. 2 also a more precise meaning of the term sustainable development.⁶⁷ To systemize, the focus is

⁶⁴ Wahlberg, L., *Legal Questions and Scientific Answers: Ontological Differences and Epistemic Gaps in the Assessment of Causal Relations* (Lund: Lund University, 2010) [hereinafter: Wahlberg] p. 67-68.

⁶⁵ Environmental Code (1998:808), official translation by the Ministry of Environment.

⁶⁶ Wahlberg, p. 68.

⁶⁷ Rubenson, p. 25.

on the protection of the environment and natural resources, and then related to certain types of human behaviour, and addressed by the regulation are individuals, authorities as well as courts.⁶⁸

Because it is stated in this section that the purpose of the EC is to promote sustainable development, and that the EC shall be applied as to ensure that, it is in a way designed as a regulation imposing an obligation to refrain from a particular human behaviour, or at least to take preventive measures. In this part the regulation functions by trying in a direct way to prevent some detrimental consequences of human behaviour from occurring in the future. If the law is correctly applied, and sustainable development is taken into account either by activity or by passivity, hopefully there will be no detrimental consequences in that matter.⁶⁹

The area of application of the EC does not contain a limitation to damages or other detriments that arises from the use of land, structures or establishments. Consequently, these main regulations are addressed to all humans. The EC applies to each and every one, whether they are in trade and industry or a private person, conducting a business or committing an act that affects human health or the environment in a way that is not negligible. They are then obliged to make sure that human health and the environment are protected against damage and detriment.⁷⁰

This type of regulation impose a counteractive responsibility on the basis of the risk associated with such business or acts. The prescription does not presuppose that detrimental consequences would in fact follow, if the counteractive responsibility is not fulfilled. Regulations like this one that are designed in a general way, are often imperfect instruments with which to achieve the aim of counteracting detrimental consequences of human behaviour.⁷¹ The section is therefore supposed to function together with other material rules. For example the rules in chapter 2 of the EC, or other material rules that it contains.⁷²

⁶⁸ Westerlund 1999:2-3, p. 258.

⁶⁹ Wahlberg, p. 69.

⁷⁰ Rubenson, p. 25-26.

⁷¹ Wahlberg, p. 69-70.

⁷² Westerlund 1999:2-3, p. 285.

Because regulations containing comprehensive legal goals are often very general prescriptions, and that they are not addressed just to one main figure or smaller group involved, the courts and authorities tend to be very careful about attaching to great importance to them. With the legal goal in the EC though, it is different. It contains comprehensive criteria that is helpful in the interpretation of other regulations, and therefore should be given such importance in the application of the law, by the courts and authorities.⁷³

If some different interests within the area of application conflicts, and needs to be balanced or solved, or if a regulation is unclear and needs a discretionary judgement, it can often be done by asking what is most consistent with the comprehensive legal goal of sustainable development in the EC. That the precise meaning of the term sustainable development is hard to figure out, is not a reason for the courts and authorities to put it aside. They must acknowledge the central parts of the goal, and in the application of the law have a view consistent with the goal in their judgement.⁷⁴

In conclusion, the different regulations in the EC, and in other regulations promulgated with support of it, shall be applied in a way that best promote the comprehensive legal goal. Although, if another regulation in the EC expressly and with no doubt allows a behaviour that can be seen as counteractive to sustainable development, the legal goal cannot prevent this. Even so, the EC now provides a more powerful and better protection for environmental interests, than before it went into force. In this matter chap. 1, sec. 1, of the EC plays an important role.⁷⁵

2.2.3 Summary

The general aim of the EC is to be seen as a united environmental and resource legislation. The centre of concern is to accomplish an ecologically

⁷³ Michanek/Zetterberg, p. 38-39.

⁷⁴ Michanek/Zetterberg, p. 94-95.

⁷⁵ Michanek/Zetterberg, p. 96.

sustainable society, and to find an acceptable balance between the interest of environmental protection, and other interests in the society.

The EC applies to in principle all human effect that in an observable way can be adventurous for the goal of the legislation. The focus is on the protection of the environment and natural resources, and then related to certain types of human behaviour. Individuals, authorities as well as courts are addressed by the regulations.

Chap. 1, sec. 1 of the EC is in a way designed as a regulation imposing an obligation to take preventive measures or to refrain from a particular human behaviour, that could have detrimental consequences to sustainable development. The section is supposed to function together with other material rules in the EC.

It contains comprehensive criteria that are helpful in the interpretation of other regulations, and the goal of sustainable development should be given importance in the application of the law.

2.3 Preparatory works

The main preparatory works for the EC was the Environmental Code Commission's report Focused and Co-ordinated Legislation for Sustainable Development (SOU 1996:103), which led to the proposal with the official name, the Government Bill 1997/98:45. The following subsections will provide a presentation report from the preparatory works. Unless otherwise stated, the proposal is the main source.

To provide a wider perspective, subsection 2.3.1 will describe the policies underpinning the legislation. Subsection 2.3.2 will address the legislator's comments on sec. 1 of the EC. Finally, subsection 2.3.3 will offer a summary.

2.3.1 The policies underpinning the legislation

According to the government's opinion there has been a change in the field of environmental work the last decade (before the EC went into force), where the environmental questions have gone from a rather narrow perspective concerning specific environmental problems, to a wider perspective with a commitment to sustainable development as a whole. The government now also works in that direction, so that a better social welfare, and economic development should go hand in hand with the protection of the environment, and the good long term management of natural resources.⁷⁶

As a result of these efforts it was thought that, the vision of sustainable development should be transferred to the environmental work at all levels of the society. It was also considered that one main issue in the national environmental work, was to get the pollution down to levels that are not a threat to the ecosystems or human health. To be able to do this they saw a need for an insight that we have to make changes in our present consumption and production patterns.⁷⁷

Efforts for this described so called zero pollution vision to be reached, was considered as one important step to achieve ecological sustainable development, and another one was the establishment of a good long term management of land and water resources. The way we used the land was of importance, and that we should build our society so that the material foundation for production and welfare was kept also for future generations.

It was also seen as important that the ecosystems' long term production capability, and the biological diversity should be preserved, and that valuable natural and cultural environments should be protected from the results of the activities concerning use of resources and building a society.⁷⁸

⁷⁶ Regeringens proposition 1997/98:45 Miljöbalk, del 1. Government Bill 1997/98:45 Environmental Code [herinafter: GB 97/98:45] part 1, p. 155.

⁷⁷ GB 97/98:45, part 1, p. 153.

⁷⁸ GB 97/98:45, part 1, p. 156.

From the government's point of view, the proposed EC must reflect all these changes described, and the new political goals concerning the environment, the natural resources, and the health protection. The EC was thought to be a united comprehensive legislation for the entire environmental area, where the conditions of the environment, and the environmental demands and goals, should be the foundation for the work in this area.⁷⁹

The environmental legislation proposed was supposed to work as a primary tool in the overall environmental and resource policies, and should ensure that the political goals in these areas were secured. To create an ecologically sustainable society, it was considered that efforts were needed at many levels, and by many different persons. The role of the state should be to create conditions for everybody, to be able to contribute to such a society.⁸⁰

That the environmental work should have an impact on all sectors in society, was considered to be a main condition in the reach for a sustainable development. It was therefore seen as of importance in the practical management of our common environment, that views and policies from different sectors, such as, culture, traffic and consumption got united.⁸¹

The future environmental work should be characterized by that the state and community authorities, companies, and households, more and more put environmental demands on each other. That they should be competitive about being ahead, compared to the obligatory demands. Then environmental policies would be pushed in the direction of the environmental goals that had to be reached. This was seen as one way to accomplish the vision of an ecologically sustainable society.⁸²

In order for the EC to be able to contribute to promote a sustainable development on the environmental area, the government proposed into it, several new tools as a complement to the ones already in the former legislation. They also saw the EC as in several cases to be a sharpening of

⁷⁹ GB 97/98:45, part 1, p. 153.

⁸⁰ GB 97/98:45, part 1, p. 159.

⁸¹ GB 97/98:45, part 1, p. 158-159.

⁸² GB 97/98:45, part 1, p. 159-160.

these existent tools. Overall, the government proposal therefore was seen as, a thorough modernization of the national environmental legislation.⁸³

The government's ambition with the EC reform was to give the legal frame for the future environmental work, and the main political thoughts about the legislation could be summarized as follows:

- Create conditions for a decentralized and preventive environmental work,
- Inspire participants to think and act to be ahead of the obligatory demands,
- Have clear national environmental goals that can be examined,
- Be able to use economic steering to affect the participants,
- Create an open, accessible and quality guaranteed information about different products and participants, and finally that,
- The state management should be a role model and push forward the development.⁸⁴

The government considered that the EC should have expressed aims, that followed the general political goals. Although, the legislation should play a central role in realizing ecologically sustainable development, it should not be the only instrument. The commitment of individuals in environmental questions, knowledge about environmental problems, and economic conditions, were also considered of importance for the goals to be reached.

Despite the fact that difficulties were admitted about to put general goals into a legal system as a base, it was seen as of utter importance that the EC should function as an instrument to accomplish the environmental policies goals. The government further meant that, there should be a description of the aim of the environmental policies, that covered all of the application area of the EC. This led to the proposed construction of the comprehensive goal of sustainable development in the chap. 1, sec. 1, of the EC.⁸⁵

2.3.2 Statute comment

In its statute comment in the proposal, on the comprehensive regulations in the beginning of the EC, the government reminded about the connection to

⁸³ GB 97/98:45, part 1, p. 163.

⁸⁴ GB 97/98:45, part 1, p. 160.

⁸⁵ GB 97/98:45, part 1, p. 165.

the UNCED in Rio in 1992, and the global action plan Agenda 21.⁸⁶ About the idea that at all humans need to contribute, in order for the environmental work to be successful, in accordance with sustainable development. The action plan was produced as a legally non-binding document, but on a political and moral level it created an obligation for the national authorities work. That obligation should be fulfilled in the planning of the society.

Through the EC, the government desired to create a legally binding regulation, that should give opportunities to fulfil the action plan and its goals. The thought was also that it, in all other respects, should give opportunities for an ecologically sustainable society to flourish.⁸⁷

The government further meant, that when it came to every individual's responsibility in relation to the comprehensive legal goal of sustainable development, it should primarily be the regulations laid down in chap. 2 of the EC, that should be of concern. About what precautionary measures that should be taken under consideration, and how each and all should act.

This responsibility that should be given to each and all by the EC, was also seen as of importance for the more long term environmental work. The Agenda 21 characterized the intolerable patterns of production and consumption, in above all the industrialized countries, as the most important cause behind the continuing destruction of the environment, and the overexploitation of natural resources.

To change the living patterns of the individual citizens was therefore seen as necessary for the environmental work to be successful. There were examples given on the possibility to diminish the detriment on the environment, and the use of resources by the citizens on their own. This could be done by choices made concerning products, heating and in transport and communications, so that the environmentally better alternatives were chosen. There were different actions suggested also in the Agenda 21, that put focus on how to increase the consciousness among the

⁸⁶ See subsection 2.1.1, cf. p. 13-14.

⁸⁷ GB 97/98:45, part 2, p. 5.

public about their role in the environmental work, and of what difference they could make.⁸⁸

In all examination and supervision according to the EC, as when dealing with businesses and actions that have effect on the environment, humans' health or the management of resources, the EC regulations should be applied in a certain way. That was the way which best promoted the comprehensive legal goal of sustainable development. The same thing was stated about directives that authorities promulgated, that were based on the regulations in the EC. They should be applied in the same way.⁸⁹

According to the government the goal in sec. 1, par. 1 of the EC was supposed to affect humans as well as the natural and cultural environment. It should be directed towards both the limitation of the present negative effects on the environment and the health, and also to create long term good conditions in these areas.

A main thought in the proposal of the EC was that, the present inhabitants of the earth should not live their lives in a way that harmed the environment, and reduced the natural resources. It was expressed that, not only the present generation of humans should be assured a healthy and sound environment to live in, but also future generations should have this. The main conditions for biological life must be maintained, in order to serve also a future world.

Another idea presented in the comment was that nature should not only be seen as the living environment for humans, but should also have a worth of protection of its own. This should be considered as an own part of what could be said to constitute a sustainable development. It was therefore seen as of importance, that the development in the society should be directed towards ways that are sustainable in the long term.⁹⁰

In another part of the proposal about the ethical concerns in connection with genetic engineering, there were also statements made referring to the fact that nature should be worthy of protection. That an ethical dimension was especially expressed in the proposed chap. 1, sec. 1 of the EC, and that

⁸⁸ GB 97/98:45, part 2, p. 5.

⁸⁹ GB 97/98:45, part 2, p. 6.

⁹⁰ GB 97/98:45, part 2, p. 7.

this was meant to be a starting point for ethical values that formed the base for the application area of the EC also in other respects, such as the proposed chap. 13.

It was also stated that within the term environment in the EC, when it came to protection according to chap. 1, sec. 1, should be included the protection of animals and animals' health, in the meaning of animal populations, but not individual animals. This referred to all animals, and not only those who were held in captivity. Rules concerning the individual animals' health, should also after the EC was put into force, be in the special legislation, the Animal protection act (1988:534).⁹¹

In the Environmental Code Commission's report, there were no suggestions in their original proposed legislation, in par. 1, about the phrase that nature as such should be worthy of protection.⁹²

Although limiting the environmental detriment is considered as an important part in creating conditions for a sustainable development, the government thought that, it should also be about securing a long term wise management of natural resources. They thought that the use of energy and other resources must be more effective than it was at the time. This management was often about balancing several different interests concerning the use of land and water. National economic, social and ecological interests then must be weighed against each other, in a way that all together should promote a long term wise management of natural resources.

The use of land and the building of a society must be shaped in a way consistent with an ecologically sustainable society. By this was meant a society that should safeguard the material welfare also for generations to come. They thought that implied within this was that the ecosystems' long term production capability must be preserved. Another matter was that valuable natural and cultural environments should be protected. It was considered that the planning of the use of land and other exploitation of resources, must be combined with protective actions, and in some cases

⁹¹ GB 97/98:45, part 1, p. 388, and part 2, p. 156.

⁹² SOU 1996:103, part 2, p. 7.

reparative actions.⁹³ It was considered that, a reference somewhere in the EC to the protection of human health and the environment, should result in that sec. 1 should be noticed, in those parts that are relevant in the matter.⁹⁴

According to the government, the starting point of the regulations in the EC should also be that nature has a value as such. Further, that the right for humans to exploit nature, should be associated with a responsibility for wise management. This was to be understood in a way that precaution should be observed so that unnecessary detriment or damage should not occur. As an example, it was mentioned that a damage could be considered to have occurred, if a primeval forest was being cut down, even if the land could be used for an economically more profitable purpose. The government also considered that, to establish if a damage could have occurred or not, then if a change or which change that was made in the economic situation by a disturbance, should not be of definite importance.⁹⁵

In the Environmental Code Commission's report, there were no suggestion in their original proposed legislation, in par. 1, about the right to use nature or the responsibility for wise management of natural resources.⁹⁶

The par. 2, item 3, in the proposal concerns a special kind of protection of nature. It is stated that the biological diversity should be protected and preserved. This, the government thought was only a natural result of that nature should be given recognition as independently worthy of protection. Both diversity of ecosystems, as well as diversity between and within species, was referred to in the statement in this item.⁹⁷

In the Environmental Code Commission's report, there was more information given about the consideration of biological diversity. That it should be preserved includes that, good living conditions should be maintained for all natural existing animals and plants. Biological diversity should be seen as, the richness of variation among living organisms of all

⁹³ GB 97/98:45, part 2, p. 7.

⁹⁴ GB 97/98:45, part 2, p. 8.

⁹⁵ GB 97/98:45, part 2, p. 8-9.

⁹⁶ SOU 1996:103, part 2, p. 7.

⁹⁷ GB 97/98:45, part 2, p. 9.

origins. The term should contain land based, marine and other aquatic eco systems, and the ecological complexes that these organisms are part of.⁹⁸

The par. 2, item 4, in the proposal concerns the good long term management of land and water, and of the physical environment in other respects. Besides that nature should be given a recognition as worthy of protection as such, it was also considered that nature with its resources should be seen as a main condition for production and welfare, and therefore of importance for the future existence of mankind.⁹⁹

2.3.3 Summary

A main thought by the government was that the present inhabitants of Earth should not live their lives in a way that harmed the environment, and reduced the natural resources. It was not only the present generation of humans, who should be assured a healthy and sound environment to live in, but also future generations should have this. The main conditions for biological life must be maintained, in order to serve a future world.

The government further stated that the use of land and the building of a society, must be shaped in a way consistent with an ecologically sustainable society, that should provide for the material welfare also for generations to come. Implied within this was that the ecosystems' long term production capability must be preserved. Another matter was that valuable natural and cultural environments should be protected. The planning of the use of land and other exploitation of resources must be combined with protective actions, and in some cases reparative actions.

Another idea presented was that nature is not only the living environment for humans, it also has its own value of protection. This should be considered as an separate part of what could be said to constitute a sustainable development. Further that the right of humans to use nature, should be associated with a responsibility for wise management. This was to

⁹⁸ SOU 1996:102, part 1, p. 8, and part 2, p. 225.

⁹⁹ GB 97/98:45, part 2, p. 9.

be understood in a way that precaution should be observed so that unnecessary detriment or damage should not occur.

An example mentioned was that a damage could be considered to have occurred, if a primeval forest was being cut down, even if the land could be used for an economically more profitable purpose. To establish if a damage could be considered to have occurred or not, then if a change or which change that was made in the economic situation by a disturbance, should not be of definite importance.

It was stated that the biological diversity should be protected and preserved. This was considered as a natural result of the fact that nature should be given recognition as independently worthy of protection. Both diversity of ecosystems, as well as diversity between and within species, was referred to.

2.4 The doctrine

While subsection 2.4.1 gives some general remarks on the doctrine (and some comments on the preparatory works). Subsection 2.4.2 gives a more detailed account of certain comments on the environmental legislation. Finally, subsection 2.4.3 offers a summary.

2.4.1 General remarks

From the doctrine with comments on the opening section of the EC, and the comprehensive legal goal of sustainable development, has been chosen only the parts that are not simply uncommented references to what is stated in the preparatory works. The parts that refer to previous legislation, or to the legal application by the courts, has also been excluded.

Besides comments with criticism towards the preparatory works for the EC, in the review from the Legal Council,¹⁰⁰ there have been comments with criticism also in the doctrine. It is mentioned that it sometimes seem

¹⁰⁰ GB 97/98:45, part 1, p. 164

like different texts have been put in mixed together, without a clear theoretical thread, or with a good overview of the preparatory works as a whole.¹⁰¹

2.4.2 Comments on the legislation

Since the EC was enacted, there have been efforts in the doctrine in trying to analyse, characterise and systemise the regulations, and then especially in relation to the thoughts of sustainable development. A new construction is seen in the legislation, because never before in Swedish environmental legislation has there been such a purpose as stated in chap. 1, sec. 1 of the EC, as to give an absolute consideration to future generations. This is a special construction in the legislation, because it means that future humans that do not exist, are given rights that the now living humans has to take into account. This obligation is called Stewardship.¹⁰²

Even if there are in a way rights that have to be taken into account, the EC is not constructed as to expressly formulate a material right to a healthy and sound environment, given to all individuals in order for them to be able to claim that right. Not even the present generation can do that.¹⁰³ This only means that the environmental decisions in general shall have this direction, to promote a development of this kind. Although, it is not the decisions by themselves that will assure that future generations will have a healthy and sound environment, it is the sustainable development as such that has this meaning. It does not seem like the purpose shall be decisive in every single decision, but that the sum of all decisions shall have this result. Especially decisions of precedential importance, shall take the long term purpose into account.¹⁰⁴

¹⁰¹ Westerlund, S., *Miljörättslig tidskrift* 1999:1 Spaltkommentar Miljöbalken 1-17 samt 24 kapitel (Björklinge: Institutet för miljö rätt, Åmyra Förlag, 1999) [hereinafter: Westerlund 1999:1] p. 17.

¹⁰² Westerlund 1999:1, p. 6.

¹⁰³ Ebbesson, p. 111.

¹⁰⁴ Bengtsson, B., *Miljöbalkens återverkningar* (Uppsala: Norstedts Juridik AB, 2001) [hereinafter: Bengtsson] p. 46.

This thought about consideration to future generations, is one out of two ethical starting points in the section. The other one is that the nature as such is worthy of protection. The application of the EC, does not imply that it is a human that is affected.¹⁰⁵ It is commented that this insight about what sustainable development is founded on, does not give much importance in the interpretation of the EC, when it comes to concrete decisions, besides the other rules in the EC. That nature is worthy of protection, could maybe be of interest to questions about compensation of environmental damage. Since it is not said that the nature has an economic value, it probably has limited effect on the present legal situation. Maybe it can lead to it becoming easier to get compensation for so called ecological damage, as for example damage to biological resources and biological diversity, according to chap. 2, sec. 8 of the EC.¹⁰⁶

Another new construction seen in the legislation is the interpretation rule, in par. 2 called the interpretation imperative. This is directed to each and all who applies the EC. This means that the EC with all its chapters, and also ordinances and directives based on it, as far as possible, shall be applied in such a way as to ensure sustainable development.¹⁰⁷

It is further commented, that the EC is meant to have a very extensive application area and that it is not limited to certain kinds of activities, on what is called the activity side. It is related to what can happen with the environment and natural resources as a result of human behaviour, on what is called the effect side. This means that as soon as anything can happen in the environment or to natural resources, that in some way directly or indirectly depends on human behaviour, then the EC fully applies. In the comment, this human behaviour is referred to as anthropogenic.¹⁰⁸ The decisive question is whether an activity or measure is within the scope of the interests of protection mentioned in sec. 1, par. 2 which therefore gives the application area for the EC.¹⁰⁹

¹⁰⁵ Michanek/Zetterberg, p. 92-93.

¹⁰⁶ Bengtsson, p. 47 and p. 163.

¹⁰⁷ Westerlund 1999:1, p. 6 and p. 22.

¹⁰⁸ Westerlund 1999:1, p. 6 and p. 23.

¹⁰⁹ Bengtsson, B., Bjällås, U., Rubenson, S., Strömberg, R., *Miljöbalken. En kommentar, Del I* (Uppsala: Norstedts Juridik AB, suppl. 5, 2006) [hereinafter: Bengtsson et al.] p. 1:5.

Staffan Westerlund¹¹⁰ has further systemized the term sustainable development in his work. To begin with, he puts the term in relation to legal subjects. These can only appear on the activity side. On that side are the human laws, the market and economic growth, and also conflicts of interests and legal disputes between persons. Despite the fact that legal subjects are only on one side, there is a relation between the sides. Humans' activity side and its economy needs food and resources from the effect side to function, and this human behaviour results in waste and environmental impact, that together with natural processes, have an effect on nature, according to the laws of how nature functions. This, according to the comment, means that the problem of development is on the activity side, and the problem of sustainability is on the effect side.¹¹¹

If a legal relationship can only appear on the activity side, this means that the nature cannot be entitled to any rights, and neither can animals or plants. Still one aim of the environmental legislation is in a way to protect nature. The environmental legislation solves this, but not by giving nature rights. The purpose of environmental legislation is not to establish a legal relationship between humans and nature, in the usual sense, but to be an instrument to regulate the amount of change that is produced on the effect side. This purpose is put in focus by chap. 1, sec. 1 of the EC when stating that nature is not allowed to be destroyed to the degree, that it endangers the possibility for future generations to fulfil their needs.¹¹²

Further, it is thought in the comments that, even if the focus is on the sustainability part of the problem, on the effect side, it is not a legal relationship between humans and nature. It is neither a legal relationship between the individuals and the community at large, it is still a relationship between humans. It is the sustainability of humanity, that is the purpose of the aim and direction on sustainable development, and to maintain this there

¹¹⁰ Westerlund had his research connected to the Faculty of Law at Uppsala University. He was a pioneer in the field of environmental law in Sweden. His contribution to the legal science is comprehensive. Passed away in 2012. Michanek/Zetterberg, p. 31.

¹¹¹ Westerlund, S., *Miljörättslig tidskrift 1999:2-3 Delkommentar Miljöbalken 1-17 samt 24 kapitel* (Björklinge: Institutet för miljö rätt, Åmyra Förlag, 1999) [hereinafter: Westerlund 1999:2-3] p. 258-260.

¹¹² Westerlund 1999:2-3, p. 261.

has to be limits for every generations exploitation of nature and its resources. The above mentioned Stewardship.¹¹³

Stewardship gives the described obligation for the present generation, and rights for the future generations. To be able to refer to legal relationships in this matter, according to the doctrine, there must be a developed view on the activity side. There must be another dimension added, so that it does not only contain a horizontal present perspective between humans, but there is also a vertical future perspective needed.

This means that there cannot be a matter of balance, when it comes to such resources that are of importance for the future generations. The ecological sustainability and its limits are on the effect side, and is not about a balance between interests on the activity side.

Even if the sustainability of humanity is a legal relation on the activity side, the focus and the aim must be on the effect side, and what degree of exploitation nature and the natural resources can manage, to still be able to provide for the continuing existence of humanity.¹¹⁴

It is further expressed in another comment, that the main thought of sustainable development is, to place the future generations on an equal footing with the present. This means that the present generation must be moderate enough concerning the management of the natural resource base and the biosphere, in order for it to be available and useful also in the future.

The relationship between humans and nature is, according to this doctrine, an ecological relationship, compared to economy and social conditions, which are relationships between humans. The ecological relationships follows the natural laws, not human laws. Without a natural resource base, there cannot be a sustainable development in neither economy or social conditions. An ecological sustainability is therefore a necessary condition, in relation to economic and social sustainable development.

This results in that, if ecological sustainability is not considered and the resources are exploited in an irreversible way, then the conditions for the

¹¹³ Westerlund 1999:2-3, p. 262.

¹¹⁴ Westerlund 1999:2-3, p. 262-263.

future economic and social development are affected. This development is consequently not sustainable. It is only a temporary development. It is therefore concluded in this comment that, ecological sustainability cannot be balanced against other aspects, such as economy or social aspects.¹¹⁵

A balance between the environment and development can only be done, when it comes to alternatives concerning the environmental quality, where all alternatives are per definition sustainable.¹¹⁶

When the protection of human health and the environment are mentioned at the same time, as in sec. 1, par. 2, item 1 it does not necessarily mean that the protection is equal in between them. Usually an immediate health risk, will be more important than an environmental risk, either these are in a long or short perspective. Environmental risk is also a very extensive term, which can contain even small negative effects, for example of the aesthetic kind.

This is at least the general view, but it can also be assumed that serious threats to sustainable development, for example risks concerning large and essential natural resources, is more important to protect than a smaller inconvenience for the humans in the surrounding. The importance of protection should be depending on the scale of the risk. The question then is how likely it is that an activity or measure affects human health or the environment, and then also how serious such affect could be in the specific case. The answer will depend on the different situations.¹¹⁷

Natural resources according to sec. 1, seems to be everything in nature. Through the principle of long term management and the principle of recycling, in chap. 2, sec. 5 the protection is extended to also natural resources that are worked, cultivated or even waste, as long as it is not hazardous to the environment. Decisive is what resources that are necessary, and it is obvious that the EC can be more or less protective, depending on the importance of the natural resources to humans' living conditions. Everything considered a natural resource shall be secured as far as possible, as for example forests, arable land, gravel, minerals and peat, but also wild life for hunting, possibilities of fishing and the use of land as reindeer

¹¹⁵ Westerlund, S., *Miljörättsliga grundfrågor 2.0* (Björklinge: Åmyra Förlag, 2003) p. 25.

¹¹⁶ Westerlund 1999:2-3, p. 296.

¹¹⁷ Bengtsson, p. 48.

pasture. These long term perspectives shall be of more importance than to satisfy more short term needs and interests, as for example recreation and tourism.¹¹⁸

2.4.3 Summary

A special construction is seen in the environmental legislation in chap. 1, sec. 1 of the EC, that consideration should be given to future generations. Humans that do not exist, are given rights that the now living humans have to take into account. This obligation is called a Stewardship.

The other ethical starting points in sec. 1, is that nature as such is worthy of protection. The application of the EC, does not imply that it is a human that is affected. Another new construction seen in the legislation is the interpretation imperative, in par. 2. This is directed to each and all who applies the EC. This means that the EC as far as possible, shall be applied in such way as to ensure sustainable development.

Humans' so called activity side and its economy needs food and resources from the so called effect side to function, and this human behaviour results in waste and environmental impact that have an effect on nature.

This means that the problem of development is on the activity side, and the problem of sustainability is on the effect side. The purpose of environmental legislation is not to establish a legal relationship in the usual sense between humans and nature, but to be an instrument to regulate the amount of change that is produced on the effect side.

This results in that, if ecological sustainability is not considered and the resources are exploited in an irreversible way, then the conditions for the future economic and social development are affected. This development is consequently not sustainable. It is only a temporary development. It is therefore concluded that ecological sustainability cannot be balanced against other aspects, such as economy or social aspects.

¹¹⁸ Bengtsson, p. 50-51.

3 Environmental ethics

3.1 Historical background

To be able to put the theories of environmental ethics into a context, and to understand the development of them, the next subsections will provide an historical background. Subsection 3.1.1 is about the social contract. Subsection 3.1.2 concerns the development in modern times, and subsection 3.1.3 contains thoughts of something called the natural contract. Finally, in subsection 3.1.4 there is a summary.

3.1.1 The social contract

In a long historical perspective, even before there were states and societies, the smaller population of humans who then inhabited the earth, lived in freedom with unused natural resources. With the population development and more use of resources, agriculture and states, followed problems with slavery and organized oppression against the citizens. At the time philosophers saw a need for more personal freedom, and limits for the exercising of power. For example, Rousseau in his book *Du contrat social* from 1762, gave his idea about a social contract, resting on the natural law.

The social contract was one of humanities decisive steps forward. It stated that every human had the right, to live a life in freedom and security. Further that the exercise of power, was only legitimate when it accomplished the will of the citizens. These ideas were the foundation for the democratic constitutions, which later were to be created.

In spite of all the great results from this, there was one large problem. The social contract had no consideration for the environment. It was created in a time when the attitude towards nature was only exploitation oriented.¹¹⁹

¹¹⁹ Sörlin, S., *Naturkontraktet* (Stockholm: Carlsson Bokförlag, 1991) [hereinafter: Sörlin] p. 196-197.

3.1.2 Development in modern times

As development went on, with the Earth's population reaching its first billion in the beginning of the 19th century, and a growing industry with increasing demands for natural resources, there were more problems with the environment discovered. In the USA at this time grew two environmental ethics movements, with ideas of the protection of nature.

One was the preservationists, who wanted to preserve nature for its own sake, for its spiritual and aesthetic values. They wanted to protect nature against humans. The other one was the conservationists, who wanted a rational management of nature, so that its resources should be used more effectively, and therefore last longer. They wanted to protect nature for humans.¹²⁰

An ideologist that was interested in the preservation thoughts, was the American Aldo Leopold,¹²¹ who in the middle of the 20th century, as a pioneer created an ecology oriented environmental ethics, which he called a land ethic. It had a deep understanding for all living organisms, and their need of a continued existence. Geographic characteristics like mountains and rivers were also included. Ecosystems and biotic communities were seen as organic totalities where all parts were needed, and humans' faith were connected with all animals and plants.

It was about that preservation of biological diversity on the specie level that was of importance. Humans had to recognize this, otherwise it would finally lead to an ecological collapse. Humans could no longer claim to be in a special position in the creation, and the view of nature should no longer be that nature only existed for humans. Leopold's thoughts were at the end of his life gathered in his book, *A Sand County Almanac*, and published in 1949.¹²²

¹²⁰ Sörlin, p. 170 and 174.

¹²¹ Leopold (1887-1948) graduated from Yale University's Forest School in 1909. He became a leading innovator at the U.S. Forest Service, and then professor at the University of Wisconsin in 1933, where he applied concepts from the science of ecology to the management of wildlife populations and habitats. Boyer S. P., *The Oxford Companion to United States History* (Oxford: Oxford University Press, 2001).

¹²² Sörlin, p. 176-179.

His thoughts later had huge importance as inspiration for the ecological movement in the USA, and for the development of the environmental ethics. It was not until the 1960's, when the interest for environmental questions came back on the agenda again, after years of recovery from the Second World War. The environmental ethics then grew in the political field, and in the academic field, but also among the general public as a moral concern.¹²³

Rachel Carson's¹²⁴ famous book with the pertinent title *Silent Spring*, published in 1962, also contributed to the development of the environmental ethics. It was an accusation against the modern agriculture and the chemical industry. Her opinion was that the use of accumulating and harmful chemicals had to be limited, in order to save the environment from pollution. This was a central problem to solve, but it was also important to change our view on other forms of life. About our dependence on the ecological system, and that nature not existed only for humans.¹²⁵

In the 1970's there were voices raised about an increased consciousness concerning humans' status in the hierarchy on earth. To put humans in the centre, could be seen in the same way as putting the own race in the centre concerning racism. This so called speciesism was no longer needed, since humans did not have to compete with others for survival, and now had a superior technological civilization. With this situation came a new responsibility, to create an ethical mission for the management of biological diversity. Humans needed protection from its own exaggerations, and from the abuse of its newly acquired technical advantage over nature.¹²⁶

The 1970's also had some major landmarks as a sign of change, for example the celebration of the first Earth Day, which was thought to be devoted to serious considerations about the environment. The UNCHE in

¹²³ Sörlin, p. 180.

¹²⁴ Carson (1907-1964) was an American scientist and writer known as "the mother of the environmental movement". She had an education in zoology and marine biology, and worked as chief of the U.S. Fish and Wildlife Service until 1952. She assembled evidence of how chemicals damaged the ecology of the Earth. Cuff, D., Goudie, S. A., *Encyclopedia of Global Change* (Oxford: Oxford University Press, 2001).

¹²⁵ Worster, D., *De ekologiska idéernas historia* (Stockholm: SNS Förlag, 1996)

[hereinafter: Worster] p. 264-265.

¹²⁶ Sörlin, p. 181 and 183.

Stockholm in 1972¹²⁷ was another event that started a series of actions with new thoughts on environmental control at an international level.¹²⁸

Another essential environmental ethics contribution at this time, came from the Norwegian professor Arne Naess,¹²⁹ who founded the Ecosophy, the ecological philosophy. This was about the importance of ecological connections. What he called Deep ecology, was an emotional and psychological experience of coherence with nature. An understanding of the right for continued existence for everything.

Naess meant that life had no meaning beyond itself, and that there was no metaphysic idea in the existence. His philosophy was instead influenced by the thoughts of self-realization of our true nature, and of that as an interest superior to everything else. This principle applied to all living things in nature, maybe even the non-living part of nature. The conclusion was that all human acts should admit for all living organisms, as far as possible, to realize their inner true expression. This ultimate norm, should lead to the maximum joy of the existence when fulfilled.

Humans could not motivate their own acts against other living beings, with their position in nature. No specific specie was considered to be superior to any other, and Naess spoke of a democracy in the biosphere, and of ecological equality. His major piece of production, *Ecology, Community and Lifestyle*, was published in 1973.¹³⁰

In the 1980's, an ethical view, related to Naess' standpoint, was brought forward by the American philosopher Paul W. Taylor.¹³¹ His book *Respect for Nature* was published in 1986, and a main thought was that nature and its beings had interests of their own, separate from humans. Respect for nature, meant to work with an ambition to favour the living beings of nature.

¹²⁷ See subsection 2.1.1, cf. p. 11.

¹²⁸ Worster, p. 273.

¹²⁹ Naess (1912-2009) was professor at Oslo University from 1939-1970, and founder of "the Oslo School". Besides being a philosopher he had a deep connection to nature as a mountaineer, and climbed among others the highest peak in the Hindu Kush, the Tirich Mir (7.690 m.). Blackburn, S., *The Oxford Dictionary of Philosophy* (Oxford: Oxford University Press, 2008).

¹³⁰ Sörlin, p. 185-187.

¹³¹ Taylor (1923-) is emeritus professor of philosophy at Brooklyn College, City University of New York, where he specialized in normative and applied ethics. Callicott, J. B., Frodeman, R., *Encyclopedia of Environmental Ethics and Philosophy* (New York: Macmillan, 2008).

That power, control and economic growth, was not enough motivation for exploitation. Instead, nature had a right to exist for itself.

The thought was acceptance of humans as biological beings who originate from other species through evolution, and live their lives off the organic life in nature. The relation that humans have to other living beings, was a state of dependence. Respect for nature, did not mean that nature could not be used. Of importance was not where human activities were pursued, but how they were pursued.¹³²

3.1.3 The natural contract

The area of environmental ethics is dynamic, in the way that it represents the actual situation in an everlasting process. In a long historical perspective, as referred to in the beginning of the historical background with the social contract, it could be said that humans now are in a situation where they are negotiating and drawing up a new contract in the society. The old contract did not mention the environment, and the environmental problems discovered in the 20th century showed the need for change.

To change the relationship with the natural environment, the earth and the biosphere is not a simple intellectual and moral regeneration process. It was revolutionary when humans got their human rights with the social contract, and the new revised contract with nature also demands a fundamental change, into something that could be called the natural contract.¹³³

It was in the 1990's that Sverker Sörlin¹³⁴ wrote about the natural contract, and it has been an ongoing process. The natural contract did not refer to nature as a contracting party, but the negotiation was about the change in the society, and that humans had to come to a consensus concerning their common interest: nature. That the social contract had to be

¹³² Sörlin, p. 188-190.

¹³³ Sörlin, p. 196-197.

¹³⁴ Sörlin (1956-) became professor of Environmental History at Umeå University in 1993. Since 2002 he has the same position at KTH (Royal Institute of Technology) in Stockholm. <https://www.kth.se/en/abe/inst/philhist/historia/personal/sverker-sorlin-1.38487>.

expanded, and also consider the wider perspective of humans' relation to nature, in order to have a long term functioning society.¹³⁵ The UNCED in Rio in 1992¹³⁶ had its new thoughts about sustainable development emanating from the Brundtland commission's report¹³⁷, and the work went on. In his book *The Ages of Gaia*, the Englishman James Lovelock, a Doctor of medicine and chemistry involved in the environmental movement wrote: "Let us forget about human concerns, human rights and human suffering, and instead concentrate on our Earth, that may be sick." The view of Earth as a living organism which we all depend on, and that we therefore had to change focus.¹³⁸

3.1.4 Summary

The social contract was one of humanities decisive steps forward. It stated that every human had the right to live a life in freedom and security. Further that the exercise of power, was only legitimate when it accomplished the will of the citizens. The problem was that the social contract had no consideration for the environment.

The American Aldo Leopold was a pioneer who in the middle of the 20th century, created an ecology oriented environmental ethics, which he called a land ethic. It had a deep understanding for all living beings, and their need of a continued existence. In the 1960's the scientist and writer Rachel Carson also contributed to the development of the environmental ethics. She criticized the modern agriculture and the chemical industry, and spoke of humans' dependence upon the ecological system, and that the existence of nature was not only for the convenience of humans.

In the 1970's the Norwegian professor Arne Naess, founded the Ecosophy, the ecological philosophy, about the importance of ecological connections. The so called Deep ecology, was an emotional and

¹³⁵ Sörlin in Forskningsrådsnämnden, *Miljöetik – för ett samhälle på människans och naturens villkor* (Uppsala, Ord & Form AB, 1994) p. 100-101.

¹³⁶ See subsection 2.1.1, cf. p. 13-14.

¹³⁷ See subsection 2.1.1, cf. p. 12-13.

¹³⁸ Worster, p. 292, 295 and (Lovelock cited on) p. 299.

psychological experience of coherence with nature. An understanding of the right for continued existence for everything.

In the 1980's, another related ethical view was brought forward by the American philosopher Paul W. Taylor. His ideas of respect for nature was mainly about that nature and its living beings had interests of their own, separate from humans. It was about nature's right to exist for itself.

It could be said, that humans now are in a situation where they are negotiating and drawing up a new contract in the society. The old contract did not mention the environment, and the problems discovered in the 20th century showed the need for a change, constituted in something referred to as the natural contract.

3.2 Ethical terms

Subsection 3.2.1 contains some general remarks about ethical terms, and subsection 3.2.2 is about instrumental and intrinsic value. Subsection 3.2.3 offers a summary.

3.2.1 General remarks

The term environmental ethics consists of two parts. The first part is connected with the environment, and here it will be used as synonymous with the term nature. The term nature can be used in both a descriptive sense to in a comprehensive way represent specific natural things or phenomena, and in a normative sense to represent a desirable state of things as an ideal.

In the descriptive sense the term nature can then be used in at least three ways. There is the wide sense including everything in the natural world such as humans, animals, plants and non-organic material. It can also be used in a more narrow sense, excluding humans and their products. Another even

more narrow use, is to only refer to the untouched nature or wilderness. The use here will hopefully follow from the context.¹³⁹

There is a difference between environmental moral and environmental ethics. In this distinction, environmental moral is our actual moral attitudes towards nature or the environment. It is our human opinions about, what is good or bad, or when an act is right or wrong. Environmental ethics, on the other hand, is the systemized and critical study of our value positions, which control our attitudes towards nature.

This means that all humans have environmental moral, but not all humans has systematically reflected over the content of their moral, and therefore does not have an environmental ethics. Since the main question in environmental ethics is about how humans should relate to nature, including animals, plants, species and ecosystems, this makes it different from human ethics, which is about relations between humans.¹⁴⁰

In the definition of environmental ethics above, the narrow sense of the term nature is used. It is something separate from humans. This is also the matter in another way. Humans are self-confident beings. They can give themselves moral restrictions, and they are therefore moral actors. They are the only beings that can act right or wrong, and are alone responsible for their actions. Other living beings are considered as a-moral beings. They can neither be moral or immoral.¹⁴¹

A morally concerned part, on the other hand, is a being that can be treated in a morally right or wrong way. A moral actor can therefore have moral obligations towards a morally concerned part. If they have moral significance, then humans have an obligation to consider them in their actions.¹⁴²

What is meant by the term view of nature, is of course depending on in which sense the term nature is used. Here the term view of nature will be

¹³⁹ Stenmark, M., *Miljöetik och miljövård: Miljöfrågornas värdemässiga dimension* (Lund: Studentlitteratur, 2000) [hereinafter: Stenmark] p. 23-25.

¹⁴⁰ Stenmark, p. 21.

¹⁴¹ Stenmark, p. 24.

¹⁴² Stenmark, p. 44-45.

mainly used as an individual's, a group's or a society's opinion about the character of nature and its structure.¹⁴³

3.2.2 Instrumental and intrinsic value

There are some distinctions that have to be clarified, when it comes to ethical values. Those are between:

- Instrumental value: The value that an object has as a mean of achieving something else, that in turn is recognized as an intrinsic value. This is an objects value as a resource, or as the value for the user.
- Intrinsic value: The value that an object has independently of the use it may be to other individuals. This is an objects non-instrumental value.¹⁴⁴

An object has an instrumental value if it has a value as a mean for the realization of, something else that is considered as valuable. The objects value is depending on the use it has for the one who uses the object. It has a value as long as it is useful, and after that the object has no value. For example, if we take a look in our rear-view mirror into history, slaves were considered to have only an instrumental value. They were seen as nothing more than a resource or an asset, which their owners could use in the way that best suited them.

When an object has intrinsic value, then it is denied that it only has instrumental value. It has a value in itself, independent of the value it might have for the realization of something else that is considered as valuable. For example, in present time humans have an intrinsic value. This means that every human has a value in itself, independently of the value that it has as use for other humans or the society. It is also considered that all humans have the same value, and therefore the same basic rights and freedoms.¹⁴⁵

In relation to the previous subchapter, and the explained term morally concerned part, if something is ascribed intrinsic value, then this implicates in which way the object in question should be considered morally by humans in their actions. If it is ascribed intrinsic value, then humans have

¹⁴³ Stenmark, p. 25.

¹⁴⁴ Stenmark, p. 43.

¹⁴⁵ Stenmark, p. 40-41.

moral obligations towards this morally concerned part. It is not always that a morally concerned part is ascribed intrinsic value on the individual level, sometimes species are assumed to have this.¹⁴⁶

It is worth noting that an object can have an instrumental value and an intrinsic value at the same time. A human has a value in itself, and can at the same time be someone who other humans or the society has use for. It is therefore possible to put a value on a human out of the use one has of the person, without denying that human its intrinsic value. The intrinsic value then constitutes a limit of in which way and to what extent a human can be used, as a resource for other humans' purposes.¹⁴⁷

3.2.3 Summary

The term nature can be used in a wide sense including everything in the natural world, such as humans, animals, plants and non-organic material. It can also be used in a more narrow sense, excluding humans and their products. Another even more narrow sense, is to only refer to the untouched nature or wilderness.

Environmental moral is our actual moral attitudes towards nature or the environment. It is our human opinions about, what is good or bad, or when an act is right or wrong. Environmental ethics, on the other hand, is the systemized and critical study of our value positions, which control our attitudes towards nature. Humans are the only beings that can act right or wrong, and are alone responsible for their actions. Other living beings are considered as a-moral beings. They can be neither moral or immoral. A morally concerned part, on the other hand, is a being that can be treated in a morally right or wrong way. A moral actor can therefore have moral obligations towards a morally concerned part. Moral significance obliges humans to consider them in their actions.

¹⁴⁶ Andersson, K., *Naturens värde och hållbar utveckling – En analys av etiska uppfattningar i Naturskyddsföreningen* (Nora: Bokförlaget Nya Doxa, 2011) [hereinafter: Andersson] p. 23-24.

¹⁴⁷ Stenmark, p. 44.

Instrumental value is the value that an object has as a mean of achieving something else, that in turn is recognized as an intrinsic value. This is an objects value as a resource, or as the value for the user. Intrinsic value is the value that an object has independently of the use that other individuals has of it. This is an objects non-instrumental value.

3.3 Anthropocentrism

The first theory of environmental ethics presented is referred to as anthropocentrism. According to Mikael Stenmark's¹⁴⁸ systemization, anthropocentrism is divided into two main theories. Subsection 3.3.1 is about a traditional form of anthropocentrism, and subsection 3.3.2 concerns a newly developed form of anthropocentrism. Subsection 3.3.3 gives a summary.

3.3.1 Dualistic intra-generational anthropocentrism

The human-centred ethics that is dualistic and intra-generational can be systemized by its different value-components. First, there is a standpoint that can be classified as implicit (I) basic value-components (P):

- (IP) Dualistic intra-generational anthropocentrism: That only humans have intrinsic value. This means that nature only has instrumental value. Further that the individuals attitude towards nature and environmental actions, only should be judged on basis of how it affects the present generation of humans. Finally the statement that humans differ in a fundamental way from all other forms of life on Earth, that it cannot be seen as a part of nature.¹⁴⁹

To be more precise and further systemize and integrate after this, there are some more explicit basic value-components in this anthropocentrism:

¹⁴⁸ Stenmark is a professor at the Department of Theology at Uppsala University. His research is mainly how science and religion relates to each other, but also about different views of nature. <http://katalog.uu.se/empinfo/?id=N94-1473>.

¹⁴⁹ Stenmark, p. 40, 48 and 51.

- (P1) The principle of humans unique position: That it is humans' needs that should be in the centre of concern in the relation to nature. This means that the normative starting point is, that an environmental action should be judged on the basis of how it affects humans.
- (P2) The principle of nature's value as a resource: That nature should be seen solely as a resource. This means that nature is an asset, which humans have the right to use for their purposes.
- (P3) The principle of intra-generational justice: That humans within every generation should try to accomplish, a more fair distribution of resources between rich and poor humans. This distribution is fair if the basic needs of all living humans are as far as possible satisfied, and that the acquisition of other natural resources, or the distribution of these between humans, are made in an ethical acceptable way.¹⁵⁰

Besides these basic value-components there are three important ecological assumptions, that can be added to this theory and its view of nature:

- (T1) The thesis of the distinction between humans and nature: That humans differ in a fundamental way from all other forms of life on Earth. This means that it cannot be seen as an actual part of nature.
- (T2) The thesis of unlimited natural resources: That the assets that nature provides humans are great, to the extent that they practically are infinite.
- (T3) The thesis of nature's durability: That nature's ability to always be able to absorb human waste products, is an everlasting ability.¹⁵¹

The dualistic intra-generational anthropocentrism is also referred to as, the traditional anthropocentrism (or the old ethics).¹⁵²

3.3.2 Holistic inter-generational anthropocentrism

In a speech in 1988, Gro Harlem Brundtland¹⁵³ stated to that it was time for a new holistic ethics. She meant an ethics in which the economic growth, and the environmental protection, could go hand in hand. Holistic could be understood as global, but it could also be understood in the sense that the biosphere is an interrelated and mutually depending entity. This form of ecological holism is referred to here.¹⁵⁴

¹⁵⁰ Stenmark, p. 37 and 59.

¹⁵¹ Stenmark, p. 45.

¹⁵² Stenmark, p. 71.

¹⁵³ See subsection 2.1.1, cf. p. 12-13.

¹⁵⁴ Stenmark, p. 27 and 47-48.

As could be seen with the dualistic intra-generational anthropocentrism, there is not much consideration to nature, but what reason can there be in a human-centred ethics to consider nature? For example, the greenhouse effect threatens to result in a higher water-level which will cause flooding in coastal areas, which in turn will affect millions of humans all over the world.¹⁵⁵

Also the anthropocentric ethics that is holistic and inter-generational, and that has more consideration to nature than the preceding, can be systemized by its different value-components. First, also in this case, there is a standpoint that can be classified as implicit (I) basic value-components (P):

- (IP) Holistic inter-generational anthropocentrism: That only humans have intrinsic value. This means that nature therefore, only has instrumental value. Further that the individuals attitude towards nature and environmental actions, should be judged on the basis of how it affects both the present generation of humans, and the future generations. Finally the statement that humans are related to nature, and a part of it in the same way as all other organisms in an ecological coherence. This means that humans therefore also are, dependant on a functioning ecosystem, for their existence.¹⁵⁶

To be more precise and further systemize and integrate after this, there are some more explicit basic value-components also in this anthropocentrism:

- (P1) The principle of humans unique position: That it is humans' needs that should be in the centre of concern in the relation to nature. This means that the normative starting point is, that an environmental action should be judged on basis of how it affects humans.

- (P2) The principle of nature's value as a resource: That nature should be seen solely as a resource. This means that nature is an asset, which humans have the right to use for their purposes.

- (P3) The principle of intra-generational justice: That humans within every generation should try to accomplish, a more fair distribution of resources between rich and poor humans. This distribution is fair if the basic needs of all living humans are as far as possible satisfied, and that the acquisition of other natural resources, or the distribution of these between humans, are made in an ethical acceptable way.

- (P4) The principle of inter-generational justice: That we have moral obligations towards future humans. This means that in the use of natural resources, we should not only regard the need of the present generation of humans, but also the needs of future generations of humans.¹⁵⁷

¹⁵⁵ Singer, P., *Praktisk etik* (Stockholm: Stiftelsen Bokförlaget Thales, 2009) [hereinafter: Singer] p. 237.

¹⁵⁶ Stenmark, p. 40, 48 and 51.

¹⁵⁷ Stenmark, p. 37 and 59.

(P4) means that the holistic inter-generational anthropocentrism is a truly new ethics. It means that the principle of human dignity has expanded in time. The fact that all humans have the same value and the same basic rights, applies also to future generations. It is then not only an expansion in time, but also in the number of individuals that humans have to consider morally in their actions. Because of problems with the identification of future generations of humans, the principle goes from an individual level, to a collective level.¹⁵⁸

As an example, also aesthetic and biological values have to be taken into consideration. The wilderness is humans' world heritage from their ancestors, and they have a responsibility to pass that heritage on. If a primeval forest is cut down, then the continuance is lost forever. No short-term economic profits, can buy back that relation to the past. The present humans do not know if the future generations will appreciate the wilderness in the same way, but if they will, the present humans must make sure they still have the choice. The present generation of humans does not have the choice anymore to see animals like the dodo or Steller's sea cow.¹⁵⁹

This last principle (P4), can be divided into three interpretations:

- (P4A) The strong principle of inter-generational justice: That the future generations of humans can expect to reach a quality of life, that is equal to the one of the present.
- (P4B) The weak principle of inter-generational justice: That the future generations of humans can expect to fulfil their basic needs, to an extent equal to the present.
- (P4C) The minimal principle of inter-generational justice: That the possibilities of life is not threatened for the distant future generations of humans.¹⁶⁰

In addition to the principles (P1) – (P4), there is also here a kind of conditional value-statement, that can be seen as deduced from (P3) and (P4):

- (S1) The principle of economic growth: That humans should try to attain economic growth, as long as such growth contributes to that the basic needs of all humans are satisfied. Further, only as long as such growth is attained in an ecologically sustainable way.¹⁶¹

¹⁵⁸ Stenmark, p. 49-50 and 61.

¹⁵⁹ Singer, p. 237-240.

¹⁶⁰ Stenmark, p. 61, 63 and 69.

¹⁶¹ Stenmark, p. 38.

This ethics does not imply that economic growth is more important than, for example, the preservation of the wilderness. Instead, there is an insight that economic growth based on the exploitation of irreplaceable natural resources, has a price that future generations will have to pay.¹⁶²

Further the value-statement that can be seen as deduced from (P4):

- (S2) The efficiency and long term principle: That humans' use of natural resources, should be carried out in an efficient and long term way.¹⁶³

Besides the basic value-components there are three important ecological insights, that can also be added to this theory and its view of nature:

- (T1) The thesis of mutual dependence: That there is an interaction and mutual dependence between humans and all other organisms in natural ecological systems. This means that humans are an integrated part of nature.

- (T2) The thesis of limited natural resources: That the assets of natural resources that nature provides humans with, are not infinite. Further also the insight that humans have not used these assets, in an effective and long term manner.

- (T3) The thesis of the natures limited durability: That there is a limit in the ecosystems' ability to always be able to absorb human waste products. Further, that this limit is already reached in several areas.¹⁶⁴

Even if the holistic inter-generational anthropocentrism contains the same value-components (P1) – (P3) as the dualistic intra-generational anthropocentrism, these ecological insights are completely different.

3.3.3 Summary

In dualistic intra-generational anthropocentrism only humans have intrinsic value, and nature therefore only has instrumental value. Further, that individuals attitudes towards nature and environmental actions, only should be judged on basis of how they affect the present generation of humans. Finally, the statement that humans differs in a fundamental way from all other forms of life on Earth, that they cannot be seen as a part of nature. It is also thought that the assets nature provides humans are great, to the extent

¹⁶² Singer, p. 241.

¹⁶³ Stenmark, p. 51.

¹⁶⁴ Stenmark, p. 37-38.

that they practically are infinite, and that the nature's ability to always be able to absorb humans' waste products, is an everlasting ability

There are several new elements in the holistic inter-generational anthropocentrism. That humans should not only regard the need of the present generation of humans in the use of natural resources, but also the needs of future generations. Further, with the sustainability part, the insights that there is an interaction and mutual dependence, between humans and all other organisms, with effects on the common natural ecosystems. That humans' use of natural resources, should be carried out in an efficient and long term way, because they are not infinite, and that there is a limit in the ecosystems' ability to always be able to absorb human waste products. Finally, with the development part, that humans should try to attain economic growth, as long as such growth contributes to that the basic needs of all humans are satisfied, and as long as such growth is attained in an ecologically sustainable way.

3.4 Biocentrism

This subchapter contains a presentation of the environmental ethics called biocentrism. Subsection 3.4.1 is about strong biocentrism, and subsection 3.4.2 contains two levels of weak biocentrism. Finally in subsection 3.4.3 there is a summary.

3.4.1 Strong biocentrism

To give a more precise meaning of what attributes the life-centred environmental ethics that is classified as biocentrism, this can be stated:

- Biocentrism: That all living beings, and only them, have an intrinsic value or are morally significant, and therefore that humans' attitudes towards nature and environmental actions, should be judged on the basis of how they affect also other living beings than humans.¹⁶⁵

¹⁶⁵ Stenmark, p. 82-83.

The most famous spokesman of strong biocentrism is Paul W. Taylor.¹⁶⁶ His thoughts are that living beings, distinguished from mountains or ecosystems, are so called teleological centres of life. They strive for something that is good for them, like a condition of matureness or to reproduce.¹⁶⁷ An ecosystem on the other hand, can only fulfil its own good through the individual parts. It is nothing more but the individuals it consists of.¹⁶⁸

Taylor's strong biocentrism concerns obligations towards organisms who lives in a natural ecosystem. Animals and plants that are under human control are excluded from his theories. They are instead part of the bio-culture. There are a lot of difficult ethical questions in that area as well, but his theories are not aimed to answer them.¹⁶⁹

The view of nature in strong biocentrism has four central assumptions:

- (T1) The thesis that humans are members of a global life community, in the same way and on the same conditions as all other living beings.
- (T2) The thesis that all living beings are part of a system of mutual dependence, in a way that every beings survival is not only dependant on its surrounding, but also on its relation to other living beings.
- (T3) The thesis that every living being is a teleological centre of life.
- (T4) The thesis that humans do not have any inherent rights to put themselves on top of other living beings, consequently they are not a higher form of existence than others.¹⁷⁰

According to this ethics, the assumption (T4) is the most important. It dismisses a view of nature that is hierarchical. Instead it promotes the idea that the forms of life on Earth, cannot be set in higher or lower categories according to value. Strong biocentrism embraces the doctrine of species impartiality.¹⁷¹ That humans should look at all living beings as they look upon themselves, and attach the same value to their existence.¹⁷²

There is in strong biocentrism at least four fundamental ethical rules, that humans in order to respect nature should follow. The rules are considered to

¹⁶⁶ See subsection 3.1.2, cf. p. 47-48.

¹⁶⁷ Stenmark, p. 84.

¹⁶⁸ Andersson, p. 27.

¹⁶⁹ Salwén, H., *Miljöetik – En introduktion* (Stockholm: Stiftelsen Bokförlaget Thales, 2013) [hereinafter: Salwén] p. 107.

¹⁷⁰ Stenmark, p. 84.

¹⁷¹ Stenmark, p. 84-85.

¹⁷² Singer, p. 245.

be so called prima facie rules, in the meaning that they apply on the condition that no other more important ethical rule applies. These are:

- (R1) The rule of non-maleficence: That humans have an obligation, to not cause harm or suffering to other living beings.
- (R2) The rule of non-interference: That humans have an obligation, to not limit or infringe on other beings freedom.
- (R3) The rule of fidelity: That humans have an obligation, to not mislead living beings who are in a wild condition, or abuse the trust that they have in humans.
- (R4) The rule of restitutive justice: That humans have an obligation, to compensate other living beings, when they have been treated in an immoral way, as a breach of (R1) – (R3).¹⁷³

If there are situations where these four ethical rules come in conflict with each other, then a set of five priority principles are proposed:

- (P1) The principle of self-defence: That humans have a moral right, to protect themselves against other living beings, that threatens their existence. To access this right, humans must as far as possible avoid these situations, and must not use more violence than necessary.¹⁷⁴

The following principles apply to conflicts where other living beings are not dangerous to humans. These are per definition all situations that do not fall within the principle of self-defence. A distinction is also introduced between basic and non-basic interests. Examples on the first expression are food and medical treatment, and on the other to play golf or go on vacation. Within non-basic interests there is also a distinction between those consistent with respect for nature, and those who are not. Examples on the first alternative is roads and airports, and on the second, fur industry and angling.¹⁷⁵

- (P2) The principle of proportionality: That humans have an obligation, in situations where their non-basic interests are inconsistent with other living beings basic interests, to put the other living beings interests first.
- (P3) The principle of minimum wrong: That humans have an obligation, in situations where their non-basic interests are inconsistent with other living beings basic interests, to try to satisfy their interests in a way that cause the least harm and suffering to other living beings.

¹⁷³ Stenmark, p. 85-88.

¹⁷⁴ Stenmark, p. 91.

¹⁷⁵ Lundmark, F., *Människan i centrum – En studie av antropocentrisk värdegemenskap* (Stehag: Förlags AB Gondolin, 2000) [hereinafter: Lundmark] p. 167.

- (P4) The principle of distributive justice: That humans have an obligation, in situations where their basic interests are inconsistent with other living beings basic interests, to give them equal concern.

- (P5) The principle of restitutive justice: That humans have an obligation, in situations where they give their non-basic and basic interests priority ahead of other living beings basic interests, to compensate other living beings.¹⁷⁶

According to strong biocentrism, there are three ways that a living being can be treated immorally. When they are affected as an individual, as a member of a specie or when a biotic community is affected.¹⁷⁷

3.4.2 Two levels of weak biocentrism

Besides strong biocentrism, there are two forms of modified ideas, that can be seen as two levels of weak biocentrism. The reason that they are described as weak, compared to strong biocentrism, is the fact that they allow value differentiation. This means that they also accept the notion that all life has an intrinsic value, but according to these ideas, some living beings can have a higher value, and some can have a lower value:

- Animal rights biocentrism: That humans' attitudes towards nature and environmental actions, should be judged on the basis of how they affect all living beings, but in the first place humans' and the sentient animals' wellbeing.

- Weak biocentrism: That humans' attitudes and environmental actions, should be judged on the basis of how they affect all living beings, but in the first place humans' wellbeing.¹⁷⁸

This means that the priority principles (P1), (P3) and (P5), mentioned above, still applies, but there are in these two forms of biocentrism limitations made concerning the principles (P2), the principle of proportionality, and in (P4) the principle of distributive justice, in accordance with which living beings that are given higher intrinsic value.¹⁷⁹

¹⁷⁶ Stenmark, p. 93-97

¹⁷⁷ Stenmark, p. 88.

¹⁷⁸ Stenmark, p. 98-100.

¹⁷⁹ Stenmark, p. 101-102.

Peter Singer¹⁸⁰ comments the difference between strong biocentrism, and his promoted animal rights biocentrism.¹⁸¹ He argues that plants are not conscious and cannot commit any deliberate actions. They may strive for their own best, but they cannot experience or feel anything. When there is no consciousness, there is no good reason to have respect for the physical processes that controls the growth of a living thing, more than to the processes that controls a non-living thing.¹⁸²

All sentient living beings, on the other hand, who can experience suffering and pleasure, are on the same level and must be treated equally. Otherwise more value is given to the own specie's interest in front of another specie's in a conflict, and that is the same as racism, but here referred to as speciesism.¹⁸³ Arguments based on that only sentient living beings interests matter, are still enough to show that the value of protection for wilderness exceeds the economic value gained through its destruction, at least in a society where humans' basic needs are not at stake.¹⁸⁴

3.4.3 Summary

Biocentrism is the idea that all living beings, and only them, have an intrinsic value or are morally significant, and therefore that humans' attitudes towards nature and environmental actions, should be judged on the basis of how they affect also other living beings than humans. There are some general assumptions in biocentrism. Humans are members of a global life community, in the same way and on the same conditions as all other living beings, and that it is a system of mutual dependence. Further, that every living being is a teleological centre of life, that strive for something

¹⁸⁰ Singer (1946-) has besides his book *Practical Ethics* also written *Animal Liberation* in 1976. He lived and worked for many years in Australia. He has also worked with a Centre for Human Bioethics, but since 1999 he is a professor at Princeton. Honderich, T., *The Oxford Companion to Philosophy* (Oxford: Oxford University Press, 2005).

¹⁸¹ Singer actually refers himself to the theory of environmental ethics called sentientism, but in the use of Stenmark's system it has been put under the label animal rights biocentrism.

¹⁸² Singer, p. 246.

¹⁸³ Singer, p. 60.

¹⁸⁴ Singer, p. 250.

that is good for itself. Finally, that humans have no inherent right to put themselves on top of other living beings.

In strong biocentrism there are at least four fundamental ethical rules, that humans in order to respect nature should follow. These rules are so called prima facie rules, and they apply on the condition that no other more important ethical rule applies. If there are situations when these four ethical rules come in conflict, then a set of five priority principles are proposed.

Animal rights biocentrism consists in that humans' attitudes towards nature and environmental actions, should be judged on the basis of how they affect all living beings, but in the first place humans' and the sentient animals' wellbeing. Weak biocentrism consists in that humans' attitudes and environmental actions, should be judged on the basis of how they affect all living beings, but in the first place humans' wellbeing.

3.5 Ecocentrism

This subchapter is about ecocentrism, which is another non-anthropocentric environmental ethics. Subsection 3.5.1 contains two levels of strong ecocentrism, and subsection 3.5.2 is about weak ecocentrism. Subsection 3.5.3 provides a summary.

3.5.1 Two levels of strong ecocentrism

Ecocentrism claims that also ecological entities like species, ecosystems and the biosphere as a totality, has an intrinsic value. That for example, also mountains, rivers and forests are morally concerned parties, towards which humans can act right or wrong, and who are morally significant.¹⁸⁵ To be able to talk about moral obligations towards an entity, like in this case species and ecosystems, there must be something about it that can be promoted or counteracted, by humans' actions. This means that humans' obligations cannot be reduced to only the obligations they have towards the

¹⁸⁵ Stenmark, p. 103.

parts of the entity, because what is good for the entity is not always good for its parts.¹⁸⁶

Aldo Leopold was a pioneer in the field of environmental ethics, and then especially ecocentrism.¹⁸⁷ He summed-up the foundations for the land ethics with the statement: “A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise”.¹⁸⁸ His ethics meant a radical decentralization of humans, and he shaped the first ideas of a strong ecocentrism:

- Radical ecocentrism: That only ecological entities has an intrinsic value. Further that the value of the ecological parts of the entity, is depending on how much they contribute to the survival and wellbeing of the ecological entities.¹⁸⁹

Another quotation from Leopold was that: “The land ethic changes the role of *Homo sapiens* from conqueror of the land-community to plain member and citizen of it”.¹⁹⁰ This contained the very controversial standpoint, that humans only have an instrumental value. Because of this, it was difficult to get any wider acceptance, and ecocentrism has developed over time, with alternative interpretations of the basic principle. One of them is:

- Strong ecocentrism: That both ecological entities, and the individual parts of the entity, has an intrinsic value. Further that humans’ attitudes towards nature and environmental actions, shall primarily be judged on the basis of how they affect the good in ecological entities, and secondly on the basis of how they affect the wellbeing of the living beings.¹⁹¹

Since there is, in this form of strong ecocentrism, a thought that we are not only part of a biotic community, but also members of a human community, this theory does not always allow that humans’ interests are sacrificed.

There is:

- The principle of proximity: That humans have a moral right to primarily consider its family or specie, when its interests are not a threat to the existence and wellbeing of the biotic community.¹⁹²

¹⁸⁶ Stenmark, p. 117.

¹⁸⁷ See subsection 3.1.2, cf. p. 45-46.

¹⁸⁸ Singer, p. 247.

¹⁸⁹ Stenmark, p. 104 and 106.

¹⁹⁰ Lundmark, p. 175, italics in original.

¹⁹¹ Stenmark, p. 106 and 108.

¹⁹² Stenmark, p. 111-112.

This does not mean that humans have a higher intrinsic value than other living beings or processes. It only means that it is possible with a behaviour, that in certain situations, puts the own kind in the first place, and this is seen as something that is common among most living beings.¹⁹³ In a more practical sense of strong ecocentrism, there can be formulated a principle that can function as guidance when it comes to an obligation, towards an entity on the ecosystem level:

- The principle of restoration: That humans have an obligation, to try and rehabilitate those areas of nature, which ecologically seen, still can be restored to wilderness.

The thought is that humans should live in a way, that leaves as much as possible of the original nature on the face of the Earth untouched, and not turned into cultural landscape, only for humans.¹⁹⁴

Arne Naess wrote about a part of the ecological movement called deep ecology,¹⁹⁵ that could be seen as a form of strong ecocentrism. The ecologists in this part wanted to preserve the integrity of the biosphere for its own sake. This was supposed to be independently of the use it could have for humans. With the term biosphere was also understood non-living things like ecosystems, landscapes and rivers.¹⁹⁶ Compared to the land ethic, the deep ecology is more of a draft for a whole philosophy of life. It has its own deep ecological platform, with eight assumptions:

- (1) The flourishing of human and nonhuman life on Earth has intrinsic value. The value of nonhuman life forms is independent of the use they might have for narrow human purposes.
- (2) The richness and diversity of the life forms are values in themselves and contributes to the flourishing of human and nonhuman life on Earth.
- (3) Humans have no right to reduce this richness and diversity other than to satisfy vital needs.
- (4) The present human interference in the nonhuman world is excessive, and the situation is rapidly worsening.
- (5) The flourishing of human life and human culture is compatible with a substantial decrease of the human population. The flourishing of nonhuman life requires such a decrease.
- (6) Substantial changes in the life conditions to the better demands changes in the policies. These concern basic economic, technological and ideological structures.

¹⁹³ Stenmark, p. 114.

¹⁹⁴ Stenmark, p. 121-122.

¹⁹⁵ See subsection 3.1.2, cf. p. 47.

¹⁹⁶ Singer, p. 247.

- (7) The ideological change is mainly that of appreciating *life quality* (to be in situations with intrinsic value) rather than adhering to a high standard of living. There will be a profound awareness of the difference between big and great.
- (8) Those who subscribe to the foregoing points have an obligation directly or indirectly to participate in the attempt to implement the necessary changes.¹⁹⁷

Those who join the platform, motivate their moral positions, with the platform as a starting-point. They also justify the platform on the basis of ultimate starting-points. These exist in different life philosophies, which Naess calls ecosophies. He called his own Ecosophy-T (from his cottage Tvergastein).¹⁹⁸ Ecosophy-T contains the ultimate norm that humans should try to maximize self-realisation, and the ultimate hypothesis, that the higher level of self-realisation humans reach, the stronger they identify themselves with other living beings and nature. This is linked to maturity, and better self-understanding, and about the world that surrounds us. To find that there is no significant difference between humans and the rest of nature. That humans should try to seek self-realisation for all living beings.¹⁹⁹

3.5.2 Weak ecocentrism

An ecocentrism with another value differentiation could be decided as:

- Weak ecocentrism: That both ecological entities, and the individual parts of the entity, have an intrinsic value, but humans have the highest individual value. Further that humans' attitudes towards nature and environmental actions, shall primarily be judged on the basis of how they affect the wellbeing of humans, and secondly on the basis how they affect species' and ecosystems' wellbeing.²⁰⁰

The fact that weak ecocentrism gives humans a unique position in the biotic community, does not mean that non-human living beings lacks intrinsic value. It only means that in the value differentiation, their intrinsic value is considered quite low. Still weak ecocentrism leaves an opportunity open, that the total value of other living beings or processes, in certain special situations can exceed the value of humans. This means that they in a conflict

¹⁹⁷ Salwén, p. 143, italics in original.

¹⁹⁸ Salwén, p. 144.

¹⁹⁹ Salwén, p. 146-147.

²⁰⁰ Stenmark, p. 113 and 115.

of interests, can outweigh humans' interests.²⁰¹ When there is a comparison made in weak ecocentrism between the lower value of sentient life and the higher value of an ecosystem, they tend to mean only non-human life. In strong ecocentrism, on the other hand, sentient life seems to include human life in the balance, and therefore gives the ecosystems a stronger position.²⁰² Compared to the principle of restoration,²⁰³ there is another principle in weak ecocentrism, towards an entity on the ecosystem level:

- The principle of preservation: That humans have an obligation, to leave the remaining areas of wilderness untouched.²⁰⁴

In addition to this principle, the original ecosystems that still exists as a part of the cultural landscapes for humans, must also be preserved. This second principle of weak ecocentrism on the ecosystem level is formulated as:

- The principle to leave room for the use of ecosystems: That humans have an obligation, to in the transition of areas of wilderness into cultural landscapes for humans, leave room for the original ecosystems and its living beings.²⁰⁵

If we move from the ecosystem level to a specie level, then in weak ecocentrism there could be two other principles formulated, whereof the first is considered a prima facie principle, that in certain situations of human interest, can be declared as invalid:

- The principle to not harm other species: That humans have an obligation, to treat other living species, in a way that they are not under threat of extinction, because of their actions, but instead preserved in a functioning ecosystem.
- The principle of non-interference concerning natural suffering: That humans have no obligation, to reduce the suffering, that exists as a natural part of nature.²⁰⁶

If we instead move further to the individual level, there are in weak ecocentrism, environmental ethics principles concerning sentient animals:

- The homologous principle: That humans have an obligation, to not cause a sentient living being suffering, that exceeds the amount that they are exposed to in a condition of wilderness.

²⁰¹ Stenmark, p. 114.

²⁰² Stenmark, p. 123.

²⁰³ See subsection 3.5.1, cf. p. 66.

²⁰⁴ Stenmark, p. 118.

²⁰⁵ Stenmark, p. 119.

²⁰⁶ Stenmark, p. 124 and 125.

- The principle against unmotivated suffering: That humans have an obligation, to try and avoid to cause a sentient living being, an unnecessary suffering.²⁰⁷

If we finally move on to the individual level concerning insects and plants, then the weak ecocentrism has two other principles:

- The principle of the non-loss of goods: That the value attained for humans, through the use of a non-sentient living being, must exceed the intrinsic value or the value in an untouched condition, of that non-sentient living being.
- The principle against unmotivated harm: That humans have an obligation, to try and avoid to cause a non-sentient living being, an unnecessary harm.²⁰⁸

In contrast to the situation at the ecosystem level, there seems to be no difference between weak and strong ecocentrism, when it comes to humans' obligations concerning animals, insects and plants, on the specie or the individual level.²⁰⁹ When there is a strong emphasis on humans' interests, compared to the interests of these entities, weak ecocentrism is close to another ethics. That is the holistic inter-generational anthropocentrism.²¹⁰ The difference is that, while in the last mentioned ethics, only humans have intrinsic value, in weak ecocentrism, all parts of an ecological entity have intrinsic value, but humans have the highest individual value.²¹¹

3.5.3 Summary

Radical ecocentrism holds that only ecological entities have an intrinsic value, and that the value of the ecological parts of the entity, is depending on how much they contribute to the survival and wellbeing of the ecological entities

Strong ecocentrism means that both ecological entities, and the individual parts of the entity, have intrinsic value, and that humans' attitudes towards nature and environmental actions, shall primarily be judged on the basis of how they affect the good in ecological entities, and secondly on the basis of how they affect the wellbeing of living beings. The so called

²⁰⁷ Stenmark, both on p. 126.

²⁰⁸ Stenmark, p. 127 and 128.

²⁰⁹ Stenmark, p. 129.

²¹⁰ See subsection 3.3.2, cf. p. 55-56.

²¹¹ Stenmark, p. 115.

principle of proximity does not mean that humans have a higher intrinsic value than other living beings or processes, but that it is possible with a behaviour, that in certain situations, put the own kind in the first place.

Arne Naess wrote about a part of the ecological movement called deep ecology, which could be seen as a form of strong ecocentrism. It had its own deep ecological platform, with eight assumptions. If humans get a better understanding of themselves, and the world that surrounds them, they will find that there is no significant difference between humans and the rest of nature. Humans should try to seek self-realisation for all living beings.

Weak ecocentrism contains that both ecological entities, and the individual parts of the entity, have an intrinsic value, but that humans has the highest individual value. Further, that humans' attitudes towards nature and environmental actions, shall primarily be judged on the basis of how they affect the wellbeing of humans, and secondly on the basis how they affect species' and ecosystems' wellbeing.

In weak ecocentrism both the survival of present and future generations of humans, and of species and ecosystems are in the centre of concern. When there is a strong emphasis on human interests, compared to the interests of these entities, weak ecocentrism is close to another ethics, namely the holistic inter-generational anthropocentrism.

4 Analysis

In the Introduction to this thesis, the research question has been formulated in the following way:

Which theory (or theories) of environmental ethics can be seen as being reflected in the legislator's ideas of sustainable development in the legal text and the preparatory works concerning the opening section of the Environmental Code - and reflected in what way?

To answer this question, I shall *first* offer an interpretation of the legal text in chap. 1, sec. 1 of the EC, to see how the section is constructed, and which expressions have been used, and also, how these expressions can be characterized. *Then*, I shall offer an interpretation of the relevant parts of the legislator's ideas as presented in the preparatory works, to find out more about what has actually been "put into" the legislation in this part concerning sustainable development. *Thereupon*, each of these relevant parts of the ideas behind the legislation will be related to the different environmental ethics theories that have been presented, in order to establish which of them can be seen as being reflected in the legal text and in the legislator's ideas from the preparatory works.

In the analysis of the possible compliance between the legislator's ideas of sustainable development and the different theories within environmental ethics, an analytical method that might be called a method of exclusion, is used. If a theory fails to comply with the ideas of the legislator at some vital point, then the theory is ruled out as not reflected. Finally, the conclusions are gathered and some final remarks are made.

How can the legal text be interpreted?

In order to facilitate a clear understanding of the interpretation and to relate to the legal text, the most important part of the opening section is presented again. Chap. 1, sec. 1, par 1 of the EC states as follows:

The purpose of this Code is to promote sustainable development which will assure a healthy and sound environment for present and future generations. Such development

will be based on recognition of the fact that nature is worthy of protection and that our right to modify and exploit nature carries with it a responsibility for wise management of natural resources.²¹²

From this, it is possible to distinguish, in par. 1, two different levels. The *first* level (1) contains the first sentence, stating what sustainable development will assure, and for whom: a healthy and sound environment for present and future generations. This sentence is stated at the beginning of the whole legislation, and with an inherent purpose: the purpose of the EC is to promote sustainable development for humans.

The *second* level (2) contains the second sentence of the par. 1 which, in turn, can be divided into two types of recognition relating to sustainable development for humans mentioned in the first sentence. Such development will be based on:

- (A) recognition of the fact that nature is worthy of protection, and
- (B) recognition of the fact that humans' right to modify and exploit nature carries with it a responsibility for wise management of natural resources.

The second sentence of par. 1 merely refers and connects to the purpose in the first sentence, providing it with two very important pillars to stand upon, and in a way limits to work within, in the fulfilment of the purpose. The recognitions have to be considered in the promotion of sustainable development for humans mentioned in the first sentence.

In this level (2) of par. 1, nature is mentioned. The definition of nature here seems to be excluding humans and their products.²¹³ It is implied here that the humans have a right, our right, to use nature, but that we do not know where this right is derived from. From the use of the words “exploit” and “natural resources”, it can be concluded that everything except humans seems to be included in the reference to nature, such as animals, plants and non-organic materials.²¹⁴ Even if more neutral words had been used in the translation (the Swedish original text uses the words “bruka” and

²¹² Environmental Code (1998:808), official translation by the Ministry of Environment; cf. p. 26.

²¹³ See subsection 3.2.1, cf. p. 50.

²¹⁴ See subsection 3.2.1, cf. p. 50.

“naturen”)²¹⁵, there are still references to the use of land, water and the physical environment in general (in par. 2, item 4).

With respect to interpretation and systemization at this stage, it is possible to make some comments on the relation to ethical values.

The first sentence, or level (1), of the section concerns sustainable development only for humans, and therefore seems to ascribe intrinsic value only to humans. The statement in the first recognition (A) in the second sentence, or level (2), seems to ascribe intrinsic value to nature as well. However, the legal text alone does not reveal *why* nature is worthy of protection – and therefore not if it is worthy of protection in itself, or only indirect for the interest of humans. Then, the second recognition (B) in the sentence says that humans have a right to *use* nature, and thus, at least or also instrumental value is ascribed to nature. If nature, according to the legal text, should have both intrinsic and instrumental value, then this is quite possible and no contradiction per se: also humans can have instrumental value to other humans and, at the same time, have intrinsic value.²¹⁶ There is not much information given by the legal text about what the responsibility for wise management actually consists in.

Let us keep this interpretation of the legal text in mind, in order to relate to the interpretation of the preparatory works in the following chapters.

Sustainable development – for whom?

In the preparatory works, there are many references given by the government to the international environmental work with the UNCED in Rio de Janeiro in 1992 and the Agenda 21. According to the policies underpinning the legislation, a better social welfare and economic development should go hand in hand with the protection of the environment and the good long term management of natural resources; further that we should care about the way we use the land and build our society, so that the material foundation for production and welfare is kept also for the future

²¹⁵ See Appendix.

²¹⁶ See subsection 3.2.2, cf. p. 52 and 53.

generations.²¹⁷ In the statute comment, it is stated that the action plan was produced as a legally non-binding document. [...] Through the EC, the government desired to create a legally binding regulation, that should give opportunities to fulfil the action plan and its goals.²¹⁸

In Stenmark's system, the ideas from the Brundtland Commission, UNCED and the Agenda 21 are categorized as belonging to the theory of holistic inter-generational anthropocentrism. Gro Harlem Brundtland²¹⁹ for example, pointed out that it was time for a new holistic ethics, meaning an ethics in which economic growth and environmental protection could go hand in hand.²²⁰ Further, principle 1 of the Rio Declaration states that human beings are at the centre of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature.²²¹

Thus, the legislator's view on the purpose of sustainable development, as described above, seems to follow the same pattern and spirit as the ideas of the holistic inter-generational anthropocentrism. The legislator used even the same terminology as Brundtland had used when stating that economic development should go hand in hand with the protection of the environment. The expressions mentioned in the preparatory works fit in with the principles of this environmental ethics, especially (P4) and (S1) defined as:

- (P4) The principle of inter-generational justice: That we have moral obligations towards future humans. This means that in the use of natural resources, we should not only regard the need of the present generation of humans, but also the needs of future generations of humans.
- (S1) The principle of economic growth: That humans should try to attain economic growth, as long as such growth contributes to that the basic needs of all humans are satisfied. Further, only as long as such growth is attained in an ecologically sustainable way.²²²

In the preparatory works, it is stated in the statute comment that:

²¹⁷ See subsection 2.3.1, cf. p. 29.

²¹⁸ See subsection 2.3.2, cf. p. 32.

²¹⁹ See subsection 2.1.1, cf. p. 12-13.

²²⁰ See subsection 3.3.2, cf. p. 55.

²²¹ Principle 1, Rio Declaration on Environment and Development, in Report of the United Nations Conference on Environment and Development, A/CONF.141/26/Rev.1 (New York, 1993), see subchapter 2.1.1, cf. p. 14.

²²² See subsection 3.3.2, cf. p. 56 (P4) and 57 (S1).

A main thought in the proposal of the EC was that, the present inhabitants of the earth should not live their lives in a way that harmed the environment, and reduced the natural resources. It was expressed that, not only the present generation of humans should be assured a healthy and sound environment to live in, but also future generations should have this.²²³

Here, the essential idea seems to be that what is of paramount importance, is how the humans live their lives, what they should be guaranteed and what future humans should be assured of. This is the very idea that resulted from the interpretation of the legal text, of the first sentence of par. 1 in the section,²²⁴ namely that the purpose of the EC is to promote sustainable development for humans. The comment seems to refer to this as well.

In the preparatory works, there is another interesting statement to interpret: According to the government the goal in sec. 1, par. 1 of the EC was supposed to affect humans as well as the natural and cultural environment. It should be directed towards both the limitation of the present negative effects on the environment and the health, and also to create long term good conditions in these areas.²²⁵

This could be interpreted in such a way that the purpose of the EC is to promote sustainable development for humans and nature alike, and to ascribe them intrinsic value on the same level. The word “affect” (the Swedish original text uses the word “berör” – a verb that can mean both “be about” and “affects”)²²⁶ is used, but nothing more is said about why, or how, the goal affect both humans and the environment, or the balance between humans and the environment. Interestingly, the word nature is not used. Given the interpretation of the legal text and the earlier references to the holistic inter-generational anthropocentrism in the preparatory works, a more reasonable interpretation of the quotation is, that it merely indicates the scope of the whole par. 1, without dividing up the sentences, or ascribing them a specific meaning. That the comment is about, which different areas are involved in the work towards the ambition of sustainable development for humans. The legislator’s purpose with the quotation was *not* to give nature intrinsic value on the same level as humans.

²²³ See subsection 2.3.2, cf. p. 33.

²²⁴ Cf. p. 72.

²²⁵ See subsection 2.3.2, cf. p. 33.

²²⁶ See Appendix.

After the interpretation of the preparatory works concerning this area, the result seems to be the same as after the interpretation of the first sentence of par. 1 of the legal text: the purpose of the EC is to promote sustainable development for humans. The ideas presented correspond to the definition of the holistic inter-generational anthropocentrism (IP), namely that only humans have intrinsic value. This entails that nature merely has instrumental value.²²⁷

Even if it is holistic inter-generational anthropocentrism that is reflected in the first sentence of par. 1, there is no contradiction to biocentrism or ecocentrism concerning the idea to consider future generations. The difference lies in the fact that according to those theories of environmental ethics, non-human living beings or all parts of nature have intrinsic value.²²⁸ The dualistic intra-generational anthropocentrism is not applicable, because it does not consider future generations.²²⁹

To what extent is nature worthy of protection?

As could be seen in the interpretation of the legal text, the first recognition (A) in the second sentence of par. 1 of the section, that nature is worthy of protection, it seems that nature, too, has intrinsic value according to the legislator.²³⁰ Thereupon, the following question arises: Is in the legislator's opinion the expression "worthy of protection" the same thing as intrinsic value?

In the preparatory works, there are some important comments concerning the expression "worthy of protection". One of them is that nature should not only be seen as the living environment for humans, but should also have a worth of protection of its own.²³¹ Another terminology is used here, and that is notable, because of the expressions; "not only", and "own". In another general comment it is thought that the starting point of the regulations in the

²²⁷ See subsection 3.3.2, cf. p. 56.

²²⁸ See subsection 3.4.1 and 3.5.1, cf. p. 59 and 65.

²²⁹ See subsection 3.3.1, cf. p. 54.

²³⁰ Cf. p. 72-73.

²³¹ See subsection 2.3.2, cf. p. 33.

EC should also be that nature has a value as such.²³² Here the word “value” was used, and not the expression “worthy of protection”, and also the expression “as such” constitute a deviation from the legal text.

In a comment from the government concerning par. 2, item 3 of the section, about that the biological diversity should be protected and preserved, this was seen as a natural result of that nature should be given recognition as independently worthy of protection.²³³ Also here, the expression in the comment differs from the one used in the legal text, because of the expression “independently”. In another comment concerning par. 2, item 4 of the section is expressed: Besides that nature should be given a recognition as worthy of protection as such, it was also considered that nature with its resources should be seen as a main condition for production and welfare, and therefore of importance for the future existence of mankind.²³⁴ Also here, there is a difference in the language due to the addition of the words “as such”.

From all these comments, it emerges that nature, apart from possessing instrumental value to humans, also has intrinsic value in the ideas expressed in this way by the legislator. By the words used in the preparatory works, as described above, the meaning seems to be that nature has a value separate from humans and their interests.

This means that concerning the question which environmental ethics can be seen as being reflected in this part, the first recognition (A) in the second sentence of par. 1 of the section, *anthropocentrism, is ruled out*. The interpretation does not correspond to the definition of holistic inter-generational anthropocentrism (IP) that only humans have an intrinsic value, and that nature consequently has merely instrumental value.²³⁵

Since the definition of nature, from the interpretation of the legal text, seems to be that everything but humans and their products are included, and therefore contains, animals, plants and non-organic materials such as natural

²³² See subsection 2.3.2, cf. p. 35.

²³³ See subsection 2.3.2, cf. p. 35.

²³⁴ See subsection 2.3.2, cf. p. 36.

²³⁵ See subsection 3.3.2, cf. p. 56.

resources,²³⁶ *also biocentrism is ruled out*. If nature has intrinsic value, and nature is not limited to consist only of living organisms, then it follows that this does not correspond to the definition of biocentrism, namely, that all living organisms, and only living organisms, have intrinsic value.²³⁷

This leaves us with the environmental ethics of ecocentrism. If the interpretation of the legislator's ideas concerning this first recognition (A) in the second sentence of par. 1 of the section, that nature has intrinsic value, should have any consistency with the interpretation of the legal text concerning the first sentence on the first level (1) of the section, or with the interpretation of the comments in the preparatory works referring to sustainable development for humans, as in UN:s international environmental work,²³⁸ then what is left, is weak ecocentrism as the nearest theory to be considered.

Both radical and strong ecocentrism gives priority to ecological entities over the wellbeing of humans. These theories do not believe that humans have a higher intrinsic value than other living organisms or processes. Although, the principle of proximity means that humans have a moral right to primarily consider its own family or specie, but this only applies in situations when its interests are not a threat to the existence and wellbeing of the biotic community. This is seen as a common behavior among most living beings.²³⁹

The legislator seems to incline towards the idea that humans always have a higher intrinsic value than species and ecosystems. This corresponds with the classification of weak ecocentrism, namely, that both ecological entities and the individual parts of the entity have an intrinsic value, but that humans have the highest individual value. Further, that the attitude of humans towards nature and environmental actions shall primarily be judged on the basis of, how they affect the wellbeing of humans; and, secondly, on the basis of how they affect the wellbeing of species and ecosystems.²⁴⁰

²³⁶ Cf. p. 72.

²³⁷ See subsection 3.4.1, cf. p. 59.

²³⁸ Cf. p. 72, and p. 74-75.

²³⁹ See subsection 3.5.1, cf. p. 65.

²⁴⁰ See subsection 3.5.2, cf. p. 67.

The only possible one of the presented theories of environmental ethics to be seen as reflected in the legislator's ideas concerning this first recognition (A) in the second sentence of par. 1 of the section, is weak ecocentrism. There is one problem, though. Weak ecocentrism leaves open the possibility that the total value of other living beings or processes, in certain special situations, can exceed the value of humans. This means that in a conflict of interests, they can outweigh human interests.²⁴¹ This is not in accordance with the interpretation of the first level (1) in the first sentence, par. 1 of the section, namely, that the purpose of the EC is to promote sustainable development for humans.²⁴²

On the issue of the right to use nature, and the concept of Stewardship

As mentioned in the interpretation of the legal text, there is in the second recognition (B) in the second sentence of par. 1, a right for humans that seems to be implied, concerning the modification and exploitation of nature.²⁴³ The preparatory works do not say much about why this right exists only, that humans are considered to have this right, and that it exists. It seems natural to view this right as derived from the "old" ethics, the dualistic intra-generational anthropocentrism, dating back to a time when one thought that the assets that nature provides humans with were great, to the extent that they practically were infinite, and that nature's ability to always be able to absorb humans' waste products, was an everlasting ability.²⁴⁴ From this there emerged the holistic inter-generational anthropocentrism, still embracing the following principle (P2):

- (P2) The principle of nature's value as a resource: That nature should be seen solely as a resource. This means that nature is an asset, which humans have the right to use for their purposes.²⁴⁵

²⁴¹ See subsection 3.5.2, cf. p. 67.

²⁴² Cf. p. 72-73 and p. 73-74.

²⁴³ Cf. p. 73.

²⁴⁴ See subsection 3.3.1, cf. p. 55.

²⁴⁵ See subsection 3.3.2, cf. p. 56.

Even if the right to use nature is mentioned in the second sentence, par. 1 of the section, it does not actually exist there. It is only implied there to explain that its existence carries with it limits to this right to use nature, the idea of a Stewardship, which is the essential part of the second recognition. The right is not stated anywhere else in the Swedish legislation, and therefore seems to be more according to customary law. The legislator's ideas presented of that nature is worthy of protection and the fact that nature is ascribed intrinsic value, according to the interpretation of the preparatory works²⁴⁶, could have further reduced this right for humans to use nature compared to the view in anthropocentrism that it derives from, where nature is seen solely as an resource. Let us see what the idea of a Stewardship means.

The concept of Stewardship in the second recognition (B) in the second sentence, par. 1 of the section, emerges as more detailed in the preparatory works, and seems to consist of two components. *First*, the present generation's responsibility to perform a wise management of natural resources, so that also future generations will be provided with a fair amount of them; and, *secondly*, the present generation's responsibility towards nature as such, as well as its future (as mentioned, the Swedish original text uses the same word, "naturen", twice, but the English translation uses first "nature" and then "natural resources").²⁴⁷

In the preparatory works, there are comments concerning the relation to future generations and to nature, and to what extent their interests should be considered. It seems that the content of the two components is not merely to focus on the future survival of humans and nature, but also to consider a certain quality of existence in both directions:

the present inhabitants of the earth should not live their lives in a way that harmed the environment, and reduced the natural resources. [...] not only the present generation of humans should be assured a healthy and sound environment to live in, but also future generations should have this. The main conditions for biological life must be maintained, in order to serve also a future world.²⁴⁸

an ecologically sustainable society. [...] that should safeguard the material welfare also for generations to come. [...] the ecosystems' long term production capability must be preserved. [...] valuable natural and cultural environments should be protected. [...] the

²⁴⁶ Cf. p. 77.

²⁴⁷ See Appendix.

²⁴⁸ See subsection 2.3.2, cf. p. 33.

planning of the use of land and other exploitation of resources, must be combined with protective actions, and in some cases reparative actions.²⁴⁹

The idea of Stewardship in relation to future generations of humans is grounded in the environmental ethics of the holistic inter-generational anthropocentrism, and its principle of inter-generational justice (P4).²⁵⁰ An interpretation of the statements above yields the conclusion that the strong principle of inter-generational justice (P4A) seems to be meant.

- (P4A) The strong principle of inter-generational justice: That the future generations of humans can expect to reach a quality of life, that is equal to the one of the present.²⁵¹

Not only the present, but also the future generations should be guaranteed the same status of environment, a healthy and sound one, and an ecologically sustainable society should safeguard the material welfare also for generations to come, as stated in the comments above.

When it comes to the second component of Stewardship, the responsibility towards nature, the ideas can no longer be characterized in the same way, even if the same statements are used in the interpretation. This is related to the fact that nature, according to the earlier interpretations, has intrinsic value,²⁵² and that we no longer can relate to anthropocentrism. The direction of Stewardship in this second component is no longer humans. This means that a blend of theories of environmental ethics is reflected in the legislator's ideas concerning Stewardship. The comments from the preparatory works presented above on harming the environment, the conditions for biological life, the ecosystems' production capability and the protection of valuable environments, can of course be seen both from the perspective of human interests, and from nature's interest. The first perspective is anthropocentrism, the second perspective is ecocentrism.

Furthermore, there is another interesting comment made in the preparatory works in relation to nature's value as such, and to Stewardship concerning nature:

²⁴⁹ See subsection 2.3.2, cf. p. 34.

²⁵⁰ See subsection 3.3.2, cf. p. 56-57.

²⁵¹ See subsection 3.3.2, cf. p. 57.

²⁵² Cf. p. 77.

[...] nature has a value as such. Further that the right for humans to exploit nature, should be associated with a responsibility for wise management. [...] that precaution should be observed so that unnecessary detriment or damage should not occur. [...] a damage could be considered to have occurred, if a primeval forest was being cut down, even if the land could be used for an economically more profitable purpose. [...] to establish if a damage could have occurred or not, then if a change or which change that was made in the economic situation by a disturbance, should not be of definite importance.²⁵³

This comment corresponds to the two principles in weak ecocentrism concerning plants, namely, the principle of the non-loss of goods and the principle against unmotivated harm:

- The principle of the non-loss of goods: That the value attained for humans, through the use of a non-sentient living being, must exceed the intrinsic value or the value in an untouched condition, of that non-sentient living being.
- The principle against unmotivated harm: That humans have an obligation, to try and avoid to cause a non-sentient living being, an unnecessary harm.²⁵⁴

Related to the comment, these principles mean that the value for humans must exceed the intrinsic value of parts of a primeval forest, or the value of parts of a primeval forest in an untouched condition, and that humans have a duty to try and avoid to cause unnecessary harm to parts of a primeval forest. The legislator seems to admit that not only economic values, or value to humans, are of importance. It is also possible for nature to be of aesthetic value to humans²⁵⁵, but the above mentioned comment is combined with the expression that nature has a value as such, and Stewardship concerning nature, and does not refer to aesthetic value to humans. It is distinct from the first component of Stewardship, which instead relates to future generations of humans.

Even if the above mentioned principles in weak ecocentrism also can be used in strong ecocentrism on the specie or individual level²⁵⁶, there are problems if we put a primeval forest on the ecosystem level. Then, strong ecocentrism means that we shall primarily judge actions towards a primeval forest on the basis of how they affect the good in the ecological entity, and secondly on the basis of how they affect the wellbeing of living organisms. This means that a higher intrinsic value is ascribed to the ecosystem than is

²⁵³ See subsection 2.3.2, cf. p. 35.

²⁵⁴ See subsection 3.5.2, cf. p. 69.

²⁵⁵ See subsection 3.3.2, cf. p. 57.

²⁵⁶ See subsection 3.5.2, cf. p. 69.

ascribed to humans²⁵⁷, and this - as has been interpreted earlier both from the legal text and the preparatory works – is not consistent with the legislator’s ideas of sustainable development for humans.²⁵⁸

Since the legislator’s ideas include that also non-living organisms seem to have intrinsic value, then - in the same way as with the first recognition (A) - biocentrism is not reflected here, either. According to this theory of environmental ethics, the living organisms of a primeval forest does have intrinsic value, and there is no contradiction up to this point with for example weak ecocentrism, which is seen as reflected, but since the legislator’s view of nature includes non-living organisms there is an important difference and biocentrism is in the end ruled out as not reflected.²⁵⁹

Conclusions

The interpretation of the legal text in chap. 1, sec. 1, par. 1 of the EC and of the relevant parts of the preparatory works, yields that a blend of holistic inter-generational anthropocentrism and weak ecocentrism are reflected in the legislator’s ideas concerning sustainable development.

The comprehensive legal goal of the EC, as the legal text can be interpreted, seems to promote sustainable development with the focus on present and future generations of humans. The main theme of the ideas connected to this part, as can be seen in the preparatory works, also relates to the UNCED in Rio de Janeiro in 1992 and the Agenda 21. The ideas that humans are in the centre of concerns for sustainable development, and that only humans have intrinsic value – ideas following from the theories of holistic inter-generational anthropocentrism are reflected.

The legal text also states that nature is worthy of protection. The legislator’s ideas concerning this part, as presented with its chosen expressions of nature’s value used in the preparatory works, is that nature, apart from possessing instrumental value to humans, also has intrinsic value.

²⁵⁷ See subsection 3.5.1, cf. p. 65.

²⁵⁸ Cf. p. 72 and p. 74-76.

²⁵⁹ See subsection 3.4.1, cf. p. 59-60.

To be consistent with the interpretation of the first sentence of the legal text, or with that of the comments in the preparatory works referring to sustainable development for humans, then *weak ecocentrism* comes closest and must be seen as reflected. This includes a value differentiation, namely, that both ecological entities and the individual parts of the entity have intrinsic value, but that humans have the highest individual value.

The right for humans to modify and exploit nature is implied in the legal text, but it is not expressed where this right is derived from. The preparatory works do not reveal this fact either, and the right is not stated anywhere else in the Swedish legislation. It seems natural to view this right as derived from dualistic intra-generational anthropocentrism and, over time, transformed into holistic inter-generational anthropocentrism, which still views nature solely as a resource. This right seems to exist according to customary law. The legislator's ideas presented of that nature is worthy of protection and the fact that nature is ascribed intrinsic value, according to the interpretation of the preparatory works, seems to have further reduced this right for humans compared to the anthropocentrism that it derives from, where nature is not ascribed intrinsic value and is seen solely as a resource.

The concept of Stewardship - the responsibility for wise management of natural resources – seems, according to the preparatory works, to consist of two components: the responsibility towards future generations, and the responsibility towards nature as such. The content is not merely to focus on the future survival of humans and nature, but also to consider a certain quality of existence. From the legislator's ideas presented in the preparatory works follows that concerning future generations, holistic inter-generational anthropocentrism is reflected. The ideas relate to that future generations of humans should have a quality of life equal to the quality of the present. Concerning the responsibility towards nature, weak ecocentrism is reflected instead. The statements of the legislator in the preparatory works concerning Stewardship towards nature, and that nature has intrinsic value, correspond with the main theory and two of the principles in this theory of environmental ethics.

The other theories of environmental ethics are often ruled out, and for different reasons. Dualistic intra-generational anthropocentrism is ruled out because it does not consider future generations. Biocentrism is ruled out because it only ascribes intrinsic value to living organisms, and strong ecocentrism is ruled out because it generally ascribes ecosystems a higher intrinsic value than humans (who are part of them).

Final remarks

At first glance, it seems slightly odd that a blend of holistic inter-generational anthropocentrism and weak ecocentrism is reflected in the Swedish legislator's ideas of sustainable development, and on a theoretical level, the two theories are under certain circumstances also both out of discussion. A holistic inter-generational anthropocentrism cannot be seen as reflected in the parts where nature has intrinsic value, and weak ecocentrism cannot be seen as reflected to such an extent that the total value of other living organisms or processes, in certain special situations, exceeds the value of humans. The answer to the research question raises in turn some new questions: What did the legislator actually have in mind with this blend, and how is it supposed to function? I will therefore offer some final remarks in this matter.

One possibility is that the legislator did not intend to ascribe to nature intrinsic value by the expression "worthy of protection" in the legal text, or that the legislator did not understand the significance of ascribing to nature intrinsic value. Even if the expression was not part of the Environmental Code Commission's report, and first emerged with the Government Bill, this possibility is unlikely. The new special formulations in the legal text got there by a reason, because the legislator wanted to make a specific change compared to the report, and the expressions used in the preparatory works to give more information, make distinctions and explain the ideas, seem well considered and deliberately chosen out of sufficient knowledge in this area, to give nature a better protection in certain parts.

Another possibility is that the legislator's aim of this united legislation with the environmental interests in the centre of concern, and the political idea of an ecologically sustainable society, is thought to be accomplished independent of that a blend of theories of environmental ethics are reflected in the ideas behind the legislation. That the EC provides a better protection for environmental interests than before it went into force, and that nature therefore will be given sufficient protection anyway, irrespective of which of the two theories of environmental ethics that will be leaned on.

A third possibility is that the legislator's idea is that the practical legal application of the EC by the authorities and the courts is not affected by the fact that a blend of different theories of environmental ethics is reflected as underpinning the legislation on a theoretical level; that an interpretive space has been left open by the legislator, for legal application to make its own interpretations and balances in different situations; and that there will always be a possibility to make a decision on the practical level, as to which environmental ethics theory that should be emphasized in relation to sustainable development.

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FÖRSTA AVDELNINGEN

SFS 1998:808

ÖVERGRIPANDE BESTÄMMELSER

1 kap. Miljöbalkens mål och tillämpningsområde

1 § Bestämmelserna i denna balk syftar till att främja en hållbar utveckling som innebär att nuvarande och kommande generationer tillförsäkras en hälsosam och god miljö. En sådan utveckling bygger på insikten att naturen har ett skyddsvärde och att människans rätt att förändra och bruka naturen är förenad med ett ansvar för att förvalta naturen väl.

Miljöbalken skall tillämpas så att

1. människors hälsa och miljön skyddas mot skador och olägenheter oavsett om dessa orsakas av föroreningar eller annan påverkan,
2. värdefulla natur- och kulturmiljöer skyddas och vårdas,
3. den biologiska mångfalden bevaras,
4. mark, vatten och fysisk miljö i övrigt används så att en från ekologisk, social, kulturell och samhällsekonomisk synpunkt långsiktigt god hushållning tryggas, och
5. återanvändning och återvinning liksom annan hushållning med material, råvaror och energi främjas så att ett kretslopp uppnås.