

PROBLEM IN ENFORCEMENT OF CONTEMPORARY INTERNATIONAL ENVIRONMENT LAW IN DEVELOPING COUNTRIES

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ABSTRACT

Since the 1972 Stockholm declaration on the Human Environment, ecological degradation has become an issue of great global concern. Since then, hundreds of International and Regional Treaties, thousands of national laws and countless of administrative regulations has been promulgated by more than 180 countries. It has been noticed in various instances that these laws have been enacted by the states with the sole purpose of meeting its International obligation. What exactly is happening in the developing countries and third world nation is that, they are just copying model Environment laws from developed nations despite these laws are not meeting social as well as ecological circumstances of these states at domestic level. It seems like in actuality the International Environment Law is succeeding but the nature is dying. How to enforce International Environment Law in developing countries and third world nation when most of the principles of IEL do not create binding effects is a question of great importance. The second important question which this research paper focuses upon is how IEL can be enforced through principle of Public International Law.

INTRODUCTION

Environment is the most important resource for humans without which the existence of human being is not possible. We get water, power and oxygen which are the basic need for human existence from the environment. There are various resources which we get from environment but if these are not used sustainably then after some time we may run out of resources and this is something which is alarming the human existence.² Despite knowing this fact, environment is something which is the most ignored part of human life. It is not earlier than 1972 Stockholm Conference; Environmental issues received lots of attention from international community³. The

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²<http://foramessage.weebly.com/why-we-need-to-save-the-environment.html> Last visited 15/03/2016 at 5 PM.

³The United Nations Conference on the Human Environment was held in Stockholm, Sweden in June 5–16 in 1972.

focus of this conference was on “stimulating and providing guidelines for action by national government and international organizations” facing environmental issues⁴. Even after the voluntary consensus of almost all the nations worldwide in Stockholm Conference on Human Environment to protect environment, heavy deterioration of human environment and natural resources wasn’t stop. Keeping this in mind and making participation of developing nation in protecting environment more effective, United Nation General Assembly decided to establish Brundtland commission⁵ to insist all the nations of the world to pursue sustainable development together. Several major initiatives in other key areas of sustainable development were further introduced in United Nations Conference on Environment and Development in 1992⁶. Three major agreements adopted in this conference by community of states was-

- Rio Declaration on Environment and Development, a series of principles defining the rights and responsibilities of States⁷.
- Agenda 21, a global plan of action to promote sustainable development⁸.
- Statement of Forest Principles, a set of principles to underpin the sustainable management of forests worldwide.

After Rio conference, General Assembly Special Session on the Environment was called by United Nation General Assembly in 1997 to review the implementation of agenda 21⁹ in both developed and developing nation. For further review the progress in the implementation of

⁴DeSombre, Elizabeth (2006). *Global Environmental Institutions*. Rutledge. pp. 22–23.

⁵ The World Commission on Environment and Development (WCED) formally known as the Brundtland Commission’s mission was established with the purpose of uniting countries to pursue sustainable development together. The Chairman of the Commission, Gro Harlem Brundtland, was appointed by Javier Pérez de Cuéllar, former Secretary General of the United Nations, in December 1983.

⁶The United Nations Conference on Environment and Development (UNCED) widely known as the Rio de Janeiro Earth Summit, Rio Summit, Rio Conference, and Earth Summit (Portuguese: ECO92), was a leading United Nations conference held in Rio de Janeiro from 3 to 14 June 1992.

⁷ United Nations Conference on Environment and Development. “Rio Declaration on Environment and Development”. Habitat.igc.org. Retrieved 4 August 2014.

⁸United Nations Agenda 21 Archived May 10, 2009 at the Wayback Machine, United Nations Conference on Environment and Development. “Agenda 21: Table of Contents. Earth Summit, 1992”. Habitat.igc.org. Retrieved 4 August 2014.

⁹General Assembly Special Session on the Environment held in 1997.

Agenda 21 since its adoption in 1992 world summit on sustainable development was convened by United Nation General Assembly in 2002¹⁰. The outcome of this conference was-

- Johannesburg Declaration on Sustainable Development,¹¹
- Plan of Implementation.¹²

The third international conference on sustainable development was held by United Nation General Assembly was United Nations Conference on Sustainable Development in 2012.¹³ The object of this conference was to reconciling the economic and environmental goal of global community.

The most recent in 2015, United Nation Climate Change Conference, COP 21 was held in Paris, France in December 2015¹⁴. The conference negotiated the Paris agreement which primarily concerned with climate change. The agreement will become legally binding if joined by at least 55 member countries of the agreement together represent at least 55 percent of global greenhouse emissions of the world¹⁵. The agreement aims at zero net anthropogenic greenhouse gas emissions to be achieved by the second half of the 21st century. Since Stockholm Conference 1972 to COP 21 efforts have been made by United Nation at international level to reach consensus among developed and developing nation regarding keeping in mind the preventive

¹⁰The World Summit on Sustainable Development, WSSD or ONG Earth Summit 2002 took place in Johannesburg, South Africa, from 26 August to 4 September 2002. It was convened with the purpose of discussing sustainable development principle by the United Nations. WSSD gathered a number of leaders from business and non-governmental organizations, 10 years after the first Earth Summit in Rio de Janeiro. (It was therefore also informally nicknamed “Rio+10”).

¹¹<http://www.johannesburgsummit.org/> Last vsited 18/03/2016 at 4PM.

¹²https://sustainabledevelopment.un.org/documents/WSSD_POI_PD/English/POIToc.htm Last visited 16/03/2016 at 3PM.

¹³The United Nations Conference on Sustainable Development (UNCSD), which is also known as Rio 2012, Rio+20, or Earth Summit 2012 was the third international conference on sustainable development aimed at reconciling the economic and environmental goals of the global community.

¹⁴It was the 21st yearly session of the Conference of the Parties (COP) to the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and the 11th session of the Meeting of the Parties to the 1997 Kyoto Protocol. “19th Session of the Conference of the Parties to the UNFCCC”. International Institute for Sustainable Development. Retrieved 20 February 2013.

¹⁵“Adoption of the Paris agreement—Proposal by the President—Draft decision -/CP.21” (PDF). UNFCCC. 2015-12-12. Archived from the original on 2015-12-12. Retrieved 2015-12-12. Also read The Editorial Board (28 November 2015). “What the Paris Climate Meeting Must Do”. New York Times. Retrieved 28 November 2015. Also read Borenstein, Seth (29 November 2015). “Earth is a wilder, warmer place since last climate deal made”. Retrieved 29 November 2015.

measures for dying environment while economic advancement and it did succeed at international level by retaining assurance from all the nations worldwide to protect environment but it failed to enforce the outcome of these various conferences at domestic level specially in developing countries. It seems like these countries are merely providing assurance and showing their concern regarding environmental issues at international level for the sole purpose of meeting their international obligation and in reality doing nothing at domestic level to keep their respective promises up. This is happening primarily due to three reasons:

- That the agreements of UN Environment Conference either do not create binding effect on member states ipso facto or the conditions which must be satisfied to create binding effect of these agreements is so rigid that it becomes very difficult to create binding effect.
- That the principles of international environment have not yet received the status of international custom and jus cogen therefore member states of international environment conference do not feel obligated to comply with the results of the agreement.
- That the economic and industrial development is so important for all the countries that the same cannot be compromised for environment.

ADDRESSING CLIMATE CHANGE IN DEVELOPING COUNTRY IS A FUNDAMENTALLY DIFFERENT CHALLENGE

One of the most controversial issues in the debate of climate change is the division of interest and obligation of developed and developing nation with respect to environment. If we go by the principle of equity then it is the developed nations which are primarily responsible for most of past and current carbon emission therefore developed nation should act first to reduce carbon emissions. This principle is also embedded in the 1992nd *United Nations Framework Convention on Climate Change*¹⁶ and in the *1997 Kyoto Protocol*¹⁷, which sets binding emission targets for developed countries only. With the Protocol now to be expected to enter into force, the focus will

¹⁶United Nations Conference on Environment and Development (UNED) 1992 Convened by General Assembly resolution 44/228 of 20 December 1988.

¹⁷The Kyoto Protocol is an international treaty, which extended the 1992 United Nations Framework Convention on Climate Change (UNFCCC) that commits State Parties to reduce greenhouse gases emissions, based on the premise that (a) global warming exists and (b) man-made CO₂ emissions have caused it. The Kyoto Protocol was adopted in Kyoto, Japan, on 11 December 1997 and entered into force on 16 February 2005. There are currently 192 Parties (Canada withdrew effective December 2012) to the Protocol.

turn gradually more to the question of developing country emissions. The per capita income as well as per capita emission of developing countries is far below than that of developed nation therefore developing nations are taking all measures to increase per capita income as well as per capita emission. Some of the most important perspective that developing countries have been posing since Stockholm conference to COP 21 is balancing the need to bring hundreds of thousands of people from poverty and starvation while also consciously developing their own paths for mitigating their impacts on climate change¹⁸. Developing nations wants to alleviate poverty by engaging their people in either industrial sector or service sector and they also want to provide their people with the basic amenities by improving their manufacture capabilities and the same is not possible without consumption of coal and oil. One thing has been clear so far that as far as the perspective of developing nations are concerned they are not going to compromise with their economic growth for environmental issues by incorporating harsh environmental law in their respective legal framework to fulfill the assurance made by them at international level but various research have been showing that climate mitigation is happening in the developing countries due to outgrowth of efforts driven by economic, security or local environmental issues. Many developing countries are taking significant action without compromising their economic growth to reduce their greenhouse emission growth. Developing countries are also using their policies to leverage human capacity, investment, and technology to capture large-scale mitigation opportunities, while simultaneously augmenting their development goals.

RESPONSIBILITY OF DEVELOPING STATES FOR ENVIRONMENTAL HARM

It is generally recognized customary principle of international law that liability can be imposed or states can be made accountable for their illegal breach of international obligation. Various international treaty and conferences on environment defined possible element for environmental damage as¹⁹:

- Fauna, flora, soil, water, and climatic factors
- Material assets,
- The landscape and environmental amenity and

¹⁸<http://www.triplepundit.com/2015/12/perspectives-developing-nations-cop21/> Last visited 17/03/2016 at 6PM.

¹⁹Read more at Law Teacher: <http://www.lawteacher.net/free-law-essays/international-law/the-responsibility-of-states-for-environmental-harm-international-law-essay.php#ixzz40RLro3zZ> Last visited 20/03/2016 at 3PM.

- The interrelationship between the above factors.

If a country is agreed party to the treaty or conference which defines these elements causing damage to the environment as mentioned above then liability can be imposed on that country if it breaches its international obligation. There are various international treaty and conferences on environment which recognizes the responsibility of the state for environmental damage. Principle 22 of Stockholm declaration on human environment call for development of international law to *imposes liability on states and provides compensation for victim of pollution and other environmental damage caused by such activities within the jurisdiction of such state to area beyond their jurisdictional control*²⁰. Further Reo declaration²¹ imposed obligation on member states to *emphasize the need of developing municipal environment law and to create effective system to enforce liability for environmental damage*. But the problem lies on the fact that these treaties are just declaration which do not creates binding effect on member states therefore they are nothing but the promises by member states most importantly by the developing countries which in any circumstance if broken then there is nothing much under public international law to impose liabilities against that state. According to article 1 of ILC, *the relevant international obligation of parties to the treaty must be identified to establish responsibility of the state for its internationally wrongful act*²². Most of the environment treaties creates only positive obligation on member states which if broken then also do not constitute any wrongful act under article 1 of ILC. The Vienna convention on law of treaties enforces obligation applicable under environmental treaties where there is no as such procedure under treaty to enforce obligation or treaty's machinery to enforce obligation proves ineffective²³. The application of principles of

²⁰Declaration of the United Nations Conference on the Human Environment (UNHE) 1972, Principle 22- "States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction".

²¹The Rio Declaration on Environment and Development, often shortened to Rio Declaration, was a short document produced at the 1992 United Nations "Conference on Environment and Development" (UNCED), informally known as the Earth Summit, and signed by over 170 countries. The Rio Declaration consisted of 27 principles intended to guide countries in future sustainable development.

²²International Law Commission Report on the work of its fifty-third session (23 April-1 June and 2 July-10 August 2001), General Assembly Official Records Fifty-fifth Session Supplement No. 10 (A/56/10) [...]. Article 1. Responsibility of a State for its internationally wrongful acts- Every internationally wrongful act of a State entails the international responsibility of that State.

²³The Vienna Convention on the Law of Treaties (VCLT) is a treaty relating to the international law on treaties between states. It was adopted on 22 May 1969 and opened for signature on 23 May 1969.

international law by virtue of State Responsibility for breach of international obligation by developing state for the primary purpose of repairing such breaches to environmental problem is particularly a problematic issue because in many cases it is simply impossible to prove that particular damage has been caused by one particular source. Accordingly, the approach for dealing with environmental issues has shifted from bilateral state responsibility paradigm to establishment and strengthening of international co-operation among developed and developing states to resolve dispute.

INTERNATIONAL CO-OPERATION BETWEEN DEVELOPED AND DEVELOPING NATIONS

It has been noticed in number of international conferences on environmental damage that international co-operation for environmental protection can be more effective to protect environment rather than creating obligation on states for environmental damage. The differences between developing and developed nation cannot be settled by imposing liability on developing states for causing carbon emission because it is something which is demanded to alleviate poverty and other like problems in their country. Therefore international co-operation is demanded to understand the concerns of developed and developing nation. The first attempt to deal with the international co-operation was taken in Stockholm Declaration on human environment in which important *soft law principles* was adapted to international co-operation for environment protection. Principle 24 of the same declaration noted that *International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing*²⁴. This principle particularly demanded co-operation irrespective of developed or developing nation that environmental issues should be handled with co-operative spirit. Principle 7 of Rio declaration of 1992 also emphasized that *state shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the earth's ecosystem*²⁵. Other soft law principle is principle 13 of Rio declaration which states that, 'States shall ...cooperate in an expeditious and

²⁴Principle 24 of Declaration of the United Nations Conference on the Human Environment.

²⁵The United Nations Conference on Environment and Development (UNCED), which is also known as the Rio de Janeiro Earth Summit, Rio Summit, Rio Conference, and Earth Summit (Portuguese: ECO92), was a leading United Nations conference held in Rio de Janeiro from 3 to 14 June 1992.

more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction'. The duty to inform other states of known environment hazards can be deduced from the Cofu Cannel case²⁶ which establishes the principle that states are not allowed to use their territory knowingly for the acts contrary to the rights of another state. All these settled principles of various convention as well as rulings of international court demanded that international co-operation for protecting environment would more effective rather than imposing principle of state responsibility on states which breached its international obligation.

CONCLUSION

There are number of international environment organizations which attempt to analyze and resolve the problem relating to environment in developing as well as developed nation. However none of these organizations have enforcement power. United Nation General Assembly established UNEP in 1972 with the purpose of promoting co-operation and co-ordination among nations and to recommend environment policies and general policies guidelines in international environment arena for all nations. Unfortunately UNEP does not have power and ability to create binding international law. Instead it merely adapts non-binding resolutions and charters. That is the reason why developing nation participating in international environment conferences just for the sake of fulfilling their international obligation. Now one by one we look into the reason that why it is very difficult to enforce international environment law in developing countries. Firstly, primary sources of international law are international agreement, customs, and general principle of international law. A shortcoming of IA is that only signatories are legally bound to observe the same. In absence of IA one must look into International customs and general principle of international law. These sources of law are either vague or almost always controversial. It is also very difficult at international level to obtain a consensus concerning these customary norms. For example, now a day's many of customary norms created by industrialize capitalist countries are generally challenged by developing countries. Secondly, the current system for handling international environmental disaster is inadequate to meet today's numerous environmental problems such as ozone depletion, global warming, hazardous waste, deforestation and species

²⁶ICJ Report, 1949, pp. 4, 22; 16 AD, pp. 155, 158.

elimination. Thirdly, there is a growing body of international environmental law that is well-intentioned yet unenforced. It is very important to create an enforcement mechanism for this defined body of law, since without enforcement, the law is but a superficial code riddled with uncertain rationalizations. Most multilateral agreements governing international environmental protection are merely morally binding. Therefore, the success of such agreements in developing nation is reliable upon the willingness of countries to abide by the provisions and enforce compliance among their citizens²⁷. Lastly, most of developing countries are facing various socio-economic problems like poverty, starvation and hunger etc. and these problems can be solved with the economic development of country which requires industrialization. Industrialization remains the biggest source of environment pollution which developing nations can't stop. Even the principle of equity demands that developed nation should reduce carbon emission thereby giving chance to developing nations to develop their economy and compensate environment. Enforcement of international environment law in developing nation requires international co-operation rather than imposing of liability on breaching state because environment is such an issue which if not protected will ultimately affect the whole nature.

²⁷Michael S. Giauno, Deforestation in Brazil" Domestic Political Imperative - Global Ecological Disaster, 18 ENVTL. L. 537 (1988).