



## ROLE OF PUBLIC INTERNATIONAL LAW IN FACILITATING GLOBAL PROTECTION OF ENVIRONMENT

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**“We have forgotten how to be good guests, how to walk lightly on the earth as its other creatures do”.**

**- Barbara Ward**

### ABSTRACT

In the recent years, the relationship between the environment and mankind has significantly changed. We have seen it evolving, from times when there existed a decent coexistence to the time, when we constantly encounter a demonstration of a struggle between the environment and the humans. This is probably due to human greed of exploiting natural assets found in the nature. However, constant misuse and mismanagement of these assets, is now posing a worldwide concern. Climatic Changes, global warming, rise in levels of air and water pollution are concerns we stumble upon very often which is causing strife in the natural cycles. While it is extremely important for human life to advance, it is important that we understand that such advancement should not be affected at the cost of environment. The idea of sustainability and maintaining the natural balance should not be misplaced. It redirects our interests towards a quick need of measures, strategies, arrangements towards the accomplishment of sustainable development objectives. Environment

Protection is not the concern of an individual state, but is a global concern. A global effort has to be initiated by each country with concerning nationals to proceed within a decided structure to contest all subjects directing any sort of predicament on the environment. International environment law is subject of public international law supervising the conduct of States on subjects relating to environment that require attention and care. The article discusses the role of Public International Law in respect to Environment, its conversation and protection. The article encloses relevant cases which are considered briefly for the enhanced deliberation of the topic.

Keywords: International, Environment, Sustainable, Nature, Development

### INTRODUCTION

Black's Law Dictionary defines 'environment' as the whole of Physical, Economical, Cultural situation and factors which enclose and affects the prestige and significance of property; further it most importantly affect the prominence of human beings and other lives existing in the natural habitat. The society often regards earth as the Mother Nature; however we as the societal whole are destroying the natural splendor and ecological balance with human disturbances. These factors often lead to environmental degradation. It is the corrosion of the environment causing damage to natural assets precisely the air, water, soil, and annihilation of the wildlife.<sup>1</sup>

An eminent primatologist and conservationist, Jane Goodall expresses, it's our populace development that underlies

<sup>1</sup> Rajiv Chopra, "Environmental Degradation in India: Causes and

Consequences", <[https://www.ripublication.com/ijaes16/ijaesv11n6\\_21.pdf](https://www.ripublication.com/ijaes16/ijaesv11n6_21.pdf)> accessed 19<sup>th</sup> March 2021



pretty much each and every issues that we've exacted on the planet. In the event there were only a couple of us, at that point the dreadful things we do wouldn't generally make a difference and Mother Nature would deal with it yet there are significant numbers of us.<sup>2</sup> Since most of us knowingly or unknowingly tend to cause disintegration of the earth it becomes the prime duty to cooperate steps for protection, and improvement of human environment which is a worldwide concern. Hence, to preserve the genetic resource for the future, all countries need to show a sense of solidarity<sup>3</sup>.

### **BASICS OF INTERNATIONAL ENVIRONMENTAL LAW**

In words of Sir Cecil Hurst's," International law is the aggregate of rules which ascertains determine the right, one state is authorized to claim on behalf of itself, or its public against the other state.<sup>4</sup> Therefore, International environmental law can be understood as rules or regulations governing state conduct in respect of environment.<sup>5</sup> International environmental law acts in accordance with sources and categories of law as chief authority under Article 38<sup>6</sup> of the Statute of the I.C.J.<sup>7</sup>.

The principles can be applied to international community for the protection of the

environment.<sup>8</sup> Public International law derives itself from sources such as conventions; customs; general principles of law and judicial decisions.<sup>9</sup>

### **GENERAL PRINCIPLES GOVERNING ENVIRONMENTAL ISSUES**

General principles of international law play a facilitative role in strengthening relations among States. It becomes necessary for treaties and customs to show evidence as a proof for establishing legal obligation that can bind the countries. However, the case is not the same with general principles.<sup>10</sup> These principles are discussed below.

#### *Transboundary Harm*

The principle of not causing Trans Boundary harm is a well recognised concept of customary International law. The term "Trans Boundary harm" refers to the harm inflicted in the country of or any other area under the jurisdiction a particular state apart from the state of origin. The notion of transboundary harm can be acknowledged by Latin phrase "sic utere tuo ut alienum non laedas", meaning "use your own property in such a way that you do not injure others". It is to be kept in psyche that "Every Right creates a corresponding duty." The expression tends to explicate that all states have a right to carry out activities in its own territory but while doing so, it has a duty to

<sup>2</sup> "Many prominent individuals have expressed concern about population." <<https://populationmatters.org/quotes>> accessed 19<sup>th</sup> March 2021

<sup>3</sup> S.K.Verma, "Public International Law", 2<sup>nd</sup> Edn, Satyam Law International, 2012

<sup>4</sup> Cecil Hurst, "International law", Stevens and Sons Ltd., London, 1950

<sup>5</sup> Supra Note 3

<sup>6</sup> Article 38, Statute of International Court of Justice

<sup>7</sup> Heidi Frostestad Kuehl, "A Basic Guide to International Environmental Legal

Research", <[https://www.nyulawglobal.org/globalex/International\\_Environmental\\_Legal\\_Research1.html](https://www.nyulawglobal.org/globalex/International_Environmental_Legal_Research1.html)> accessed 19<sup>th</sup> March 2021

<sup>8</sup> B. Cheng, General principles of law as applied by International Courts and Tribunal 376 (1953)

<sup>9</sup> M. Virally, "The Sources of International Law", Manual of Public International Law 143", (1968)

<sup>10</sup> Dr. Luther Rangreji, "International Environmental Law (IEL) in the global context", <[https://assets.wwfindia.org/downloads/lecture\\_notes\\_session\\_2\\_1.pdf](https://assets.wwfindia.org/downloads/lecture_notes_session_2_1.pdf)> accessed 19<sup>th</sup> March 2021



not inflict damage or violate the rights of other states.<sup>11</sup> International Environmental Law has two indispensable goals which are, states have sovereign rights over their natural assets, and secondly states must not inflict harm to the environment.<sup>12</sup>

The principle of Transboundary harm is also contained in the Stockholm Declaration on the Human Environment, 1972. Principle 21 of Stockholm Declaration on the Human Environment, 1972 declares that states have the sovereign right to exploit their resources pursuant to their environmental policies, and the accountability to make certain that activities carried out within their jurisdiction do not harm the environment of other states or any territory beyond their jurisdiction.<sup>13</sup> Principle 22 of Stockholm Declaration on the Human Environment, 1972 declares that states shall cooperate to develop the international law regarding liability and compensation for the victims of pollution and other environmental damage.<sup>14</sup> This duty of cooperation is associated to the obligation of states not to cause harm or environmental damage to other states.<sup>15</sup>

- **Trail Smelter Case:**

The case of USA vs. Canada<sup>16</sup> is also commonly recognised as the Trail Smelter's Case. The dispute arose between two states where United States being the petitioner sought damages from Canada. The case was

initiated by the state of Washington due to the air pollution caused by a Canadian business, "Trail Smelter" that was domiciled in Canada. Thus, Washington prayed for an injunction. The Canadian company located in Canada was involved in smelting lead and zinc at trail of Colombia River situated in the US. An International Joint Commission was set up and the matter of dispute was referred to the commission. Whether trail smelter should be refrained from causing damage in state of Washington or not was the main question before the tribunal while dealing this case. The tribunal stated that under the principles of international law- no state has the right to use or allow the use of its territory in such an approach that can cause injury to the territory of other state or property/person therein. In this case, the fumes caused in the territory of Washington had serious consequences, and the damage could be recognised by obvious evidence.<sup>17</sup>

- **Lake Lanoux Arbitration Case:**

On account of Spain versus France<sup>18</sup> also known as Lake Lanoux arbitration case, a disagreement arose between two states where Spain complained that France violated the Bayonne treaty<sup>19</sup> by redirecting water of river carol before entry into Spain. The Tribunal analyzed the Bayonne Treaty, Additional Act, and the contentions placed respectively by Spain and France Government. The inquiry was whether France had considered

<sup>11</sup> Jervan, Marte, "The Prohibition of Transboundary Environmental Harm. An Analysis of the Contribution of the International Court of Justice to the Development of the No-Harm Rule", <<https://ssrn.com/abstract=2486421>>, accessed 19<sup>th</sup> March 2021

<sup>12</sup> Siddharth Jain, "Transboundary Harm in International Law", <<https://blog.ipleaders.in/transboundary-harm/>> accessed 19<sup>th</sup> March 2021

<sup>13</sup> Principle 21 Stockholm Declaration on the Human Environment, 1972

<sup>14</sup> Principle 22 Stockholm Declaration on the Human Environment, 1972

<sup>15</sup> Supra Note 3

<sup>16</sup> USA vs. Canada ,3 RIAA 1905

<sup>17</sup> Ibid

<sup>18</sup> France v. Spain ,24 ILR 101(1957)

<sup>19</sup> Treaty of Bayonne, 1866



Spanish interests into sufficient contemplation. The Tribunal pointed out some essentials to be considered while determining obligations set out in Article 11 of the Additional Act which would act as an aid in solving the query in question. It analyzed certain factors such as how the plan was mulled over the interests in question, the manner by which negotiations were carried, the interests that were introduced, the value which each party had been prepared to pay to have those interests protected.<sup>20</sup> After analyzing all relevant points, the Tribunal was of opinion that the French scheme complied with the obligations of Article 11 of the Additional Act. The tribunal further stated that provisions 15 and 16 of the Additional regarding the obligation to enter into any prior agreement stood negative. Hence, the French Government was not committing a breach of the provisions of the Treaty of Bayonne, and the Additional Act.

### *The Principle of State Sovereignty*

The idea of a state's power over its common assets is established in the rule of territorial sovereignty. Further, the United Nations General Assembly has additionally uplifted it declaring, inter alia, that the privilege of people and countries over their assets and natural riches must be practiced in light of a legitimate concern for public and national interest, and for the prosperity of the individuals of the state.<sup>21</sup> This goal mirrors the privilege to lasting power of permanent territorial sovereignty over natural assets as

an international or global right, and has been acknowledged by tribunals as an impression of worldwide international traditions.<sup>22</sup> The notion further should be understood as an overall obligation not to make or inflict any sort of natural harm to natural heritage of other states, or to regions past the state's jurisdiction. The Rio Declaration, 1992 notices that states have, as per the Charter of the United Nations and the standards of global law, the sovereign option and capacity to abuse their own assets according to their own ecological and formative arrangements, and the duty to guarantee that such exercises inside their locale, territory or control don't make harm other states or any part or zones of such states beyond the limits of national jurisdiction.<sup>23</sup>

### *Principle of Common but Differentiated Responsibilities*

The idea of Common but Differentiated Responsibilities (CBDR) is mirrored in Principle 7 of the Rio Declaration. It emerged in the 1992 conference as cooperation between the developed and developing countries concerning the environmental protection. CBDR is based on relationship between industrialization and change.<sup>24</sup> Idea of CBDR developed from two conventions namely the Convention for the Establishment of an Inter-American Tropical Tuna

<sup>20</sup> Lake Lanoux Arbitration (France v. Spain), <<https://www.ecolex.org/details/court-decision/lake-lanoux-arbitration-france-v-spain-b09cb956-2cb5-479e-ba3a-bbfd4f7b68fc/>> accessed 19<sup>th</sup> March 2021

<sup>21</sup> Declaration on Permanent Sovereignty over Natural Resources Pe1803 (XVII) (Dec. 14,1962)

<sup>22</sup> Texaco Overseas Petroleum Co. and California Asiatic Oil Co. v. Libya, 53 I.L.R. 87, Kuwait v. Independent Am. Oil Co., 21 I.L.M. 976.

<sup>23</sup> Principle 2 ,Rio Declaration 1992

<sup>24</sup> Cullet, Philippe, "Differential Treatment in International Law: Towards a New Paradigm of Interstate Relations". European Journal of International Law,1999



Commission of 1949<sup>25</sup> based on the notion of "common heritage of mankind" and the UN Convention on the Law of the Sea, 1982.<sup>26</sup> The principle from one viewpoint, addresses the requirement for all states to assume a sense of duty or responsibility for worldwide ecological issues and the need to perceive the wide contrasts in levels of economic improvement between states.<sup>27</sup>

### *Principle of Sustainable Development*

The principle of sustainable development was defined by the 1987 Brundtland Report<sup>28</sup> as a development that meets the needs of the present without compromising the future. In a nutshell, it refers to ability of future generations to meet needs. It imposes the idea of limitations on the environment's capacity to meet present and futures needs. Some of the salient principles which underlie the concept of sustainable development were spelled out in the Rio Declaration 1992<sup>29</sup> and Agenda 21<sup>30</sup> Sustainable development, as reflected in international agreements, encompasses at least three elements.<sup>31</sup> These are:

### *Intergenerational Equity*

It refers to the duty of each person on this world to leave the natural inherited wealth no less than what they inherited. The basic feature of this principle is fairness, implying sustainable development. The United Nation Framework Convention on Climate Change inserted Article 3 demonstrating intergenerational equity within the

international climate change regime as a founding principle. It focuses on the need to protect the climate system for the benefit of present and future generations of humankind. Intergenerational equity as a guiding principle also shaped the climate action which was reaffirmed by the Paris Agreement. Although the principle is widely referred in various instruments of environmental international, it is nonbinding and therefore, remains undefined and open to interpretation.

### *Use and Conservation of Natural Resources*

This principle necessitates that natural assets of the earth ought to be used cautiously and with awareness so that they may be conserved, monitored and upgraded for the coming age. This standard was perceived universally in the Rio Earth Summit Declaration, 1992.<sup>32</sup> Principle 8 provides that to accomplish a sustainable development and a calibre of life for all individuals, states ought to diminish and dispose of unreasonable acts of manufacturing, distribution and utilization.<sup>33</sup> Principle 23 of the Rio-Declaration (1992) explicitly expresses that the environment and natural assets under exploitation, mastery and occupation, shall by all means be protected.<sup>34</sup>

### *Polluter Pays Principle*

The "Polluter pays" principle was acknowledged as a crucial part of the sustainable development worldwide. It is internationally included in form of principles to protect the environment and seeks to pay

<sup>25</sup> Convention for the establishment of an Inter American Tropical Tuna Commission, 1949

<sup>26</sup> United Nation Convention on Law of the Sea, 1982

<sup>27</sup> Charlotte Epstein, "Common but differentiated responsibilities"<

<https://www.britannica.com/topic/common-but-differentiated-responsibilities>> accessed 19<sup>th</sup> March 2021

<sup>28</sup> Report of the World Commission on Environment and Development (The Brundtland Report), 1987

<sup>29</sup> Rio Declaration, 1992

<sup>30</sup> Agenda 21, 1992

<sup>31</sup> Supra Note 28

<sup>32</sup> Rio Earth Summit Declaration, 1992

<sup>33</sup> Principle 8 Rio Earth Summit Declaration, 1992

<sup>34</sup> Principles 23 Rio Earth Summit Declaration, 1992



costs for the injury or the harm caused and to take all necessary steps as directed by the competent authority to return the environment to its original state regardless of the intent.

### ***Precautionary Principle***

According to this principle, “where there is danger of genuine, legitimate or irreparable biological impairment, lack or deficiency of full logical sureness or reasonableness ought not be utilized as an explanation behind deferring measures to prevent the environmental degradation.”<sup>35</sup> Preceding the precautionary principle as consolidated in Principle 15 of the Rio-Declaration 1992<sup>36</sup> principle 6 of the Stockholm Declaration 1972<sup>37</sup> identifying the Assimilative Capacity principle was the governing rule. Assimilative Capacity refers to the capacity of the environment to carry out the waste inputs without adverse affects on the environment or the individuals using such resources.

### **INTERNATIONAL ATTENTION FOR ENVIRONMENT PROTECTION**

General principles play a vital role in facilitating the protection and conversation of the environment. Apart from these principles several declarations, treaties and conferences served a major purpose in awakening the spirit of protecting environment and as a

result environmental law can be gathered from sources such as treaties and conventions. These are important in framing rules and regulations for the conduct of states concerning acts relating to the environment. Some of the most notable efforts taken in lieu of maintaining the environmental standards are -

### ***The Stockholm Declaration on Human Environment***

The United Nations Conference on the Human Environment (otherwise called the Stockholm Conference) was a worldwide meeting met under United Nations support held in Stockholm, Sweden in the month of June, 1972.<sup>38</sup> The gathering settled upon a Declaration containing 26 standards concerning the need to protect environment and its advancement; an Action Plan with 109 suggestions, and a Resolution.<sup>39</sup> The meeting also activated and concentrated and need of global collaboration on environment protection.<sup>40</sup> The meeting additionally shaped the “Framework for Environmental Action,” an action plan containing 109 explicit suggestions identified with human settlements, resource administration, pollution curbing , educational and instructive social outlook concerning the environment development, advancement and various environmental international organizations.<sup>41</sup>

<sup>35</sup> Kavita,” Sustainable Development, Guiding Principles And Values”, <<http://www.legalservicesindia.com/article/1641/Sustainable-Development,-Guiding-Principles-And-Values.html>>accessed 20th March 2021

<sup>36</sup> Principle 15 Rio-Declaration, 1992

<sup>37</sup> Principle 6 Stockholm Declaration, 1972

<sup>38</sup>Sustainable Development Goals<<https://sustainabledevelopment.un.org/milestones/humanenvironment>> accessed 20th March 2021

<sup>39</sup> John Baylis, Steve Smith. 2005. The Globalization of World Politics (3rd ed). Oxford. Oxford University Press. pp. 454–455

<sup>40</sup> Cecil J. Olmstead,” Prospects for regulation of environmental conservation under International Law in the present state of International Law and other essays”1972.p245 at 253

<sup>41</sup>“United Nations Conference on the Human Environment”, <<https://www.britannica.com/topic/United-Nations->



### *The Rio Declaration*

The Rio Declaration contains 27 standards, which reflected two significant concerns: the deterioration of the environment and its ability to sustain life and the extending mindfulness that drawn out financial advancement and the requirement for the security must be viewed as commonly interdependent.<sup>42</sup>The most significant part of the affirmation is that it indicated on the Precautionary rule that states in order to secure the earth; the prudent methodology of the precautionary principle will be generally applied by the states as indicated by their capacities where there are dangers of genuine or irreversible harm. An absence of full logical sureness will not be utilized as purpose behind delaying practical measures to forestall the ecological degradation.<sup>43</sup> Further, national authorities should try to advance the internalization of environmental costs and the use of financial instruments, considering the methodology that the polluter should, in principle, bear the expenditure of contamination, with due regard to the public interest and without distorting the trade and investment.<sup>44</sup>The principle focused on the relationship between the environment and its improvement.<sup>45</sup> Henceforth Development and Environment both are similarly significant for us and along these lines one ought not to be advanced at the expense of another.

### *The United Nations commission on Sustainable Development*

The commission<sup>46</sup> was recognized in 1992 by UN General Assembly as a participatory

commission that aimed towards fulfillment of Agenda 21. The commission (also recognised as earth summit) was directed to ensure efficient action of United Nations Conference on Environment and Development (UNCED). Since its foundation, CSD in its official actions invited a wide range of authorized stakeholders and partners to deliver a participative outlook.

The main functions of CSD were arranged into three categories

- To monitor the criterions of information gathering from various international institutions and agencies as placed in Agenda 21.
- To determine whether the developed countries are honouring their commitments towards helping the developing countries adopt Agenda 21.
- To Act as a stage for discussion and decision-making.

### CONCLUSION

Environmental Protection and its development call for a collective effort and hence, it is duty of each state and individual to make efforts for environmental advancement sustainability. The environment is a common inheritance of the past, present and the future. Bearing in mind, the fact that the environment and natural resources make human life possible it is duty and responsibility of all, nationally and internationally to take conscious step towards it. While each country has its own law for environment, international environmental law is for all member states. Protection of

Conference-on-the-Human-Environment> accessed 20th March 2021

<sup>42</sup> Supra Note 3

<sup>43</sup> Principle 15 Rio Declaration, 1992

<sup>44</sup> Principle 16 Rio Declaration, 1992

<sup>45</sup> Principle 12 Rio Declaration, 1992

<sup>46</sup> “Sustainable Development Goals”, <<https://sustainabledevelopment.un.org/intergovernmental/csd/about>>last accessed on 22<sup>th</sup> March 2021



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environment is a major ingredient of International Law. Thus, international environmental law developed between all sovereign states as a mark to develop certain standards, policies, and rules at an international level to afford the state obligation. The framework of international law consists of treaties, principles, conventions and protocols. All member states that sign to certain obligations are bound to work with a cohesive conduct and to demonstrate support in combating environmental problems. The resolutions, conferences, treaties and all other international agreements in last few years have emerged according to growing and altering environmental concerns, and all states have performed a plausible responsibility in fulfilling community goals and global interests. The International Law has to continue being diverse in indentifying the new ways, and approaches in the environmental field.

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