

## CHAPTER SEVENTEEN

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### AN EXAMINATION OF INTERNATIONAL ENVIRONMENTAL LAW PROTECTION

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#### **Abstract**

*The environment is indeed a common heritage of mankind and thus, humans should strive for its protection in all endeavours. Today, certain actions of humans, for instance, gas flaring, are carried out with total disregard of the need to protect the environment. To this end, this study considered the existing international laws protecting the environment. The study found that there is a need for cooperation amongst nations to come together and make a common agenda for sustainable survival and progress of the environment.*

**Keywords:** Environment, sustainable development, environmental law protection.

#### **Introduction**

According to the Black's Law Dictionary,<sup>1</sup> environmental law is “the field of law dealing with the maintenance and protection of the environment, including preventive measures such as the requirements of environmental-impact statements, as well as measures to assign liability and provide clean-up for incidents that harm the environment”. Environmental law legally means the abiotic, biotic and socio-economic components with which man interacts and simultaneously to which he adapts, transforms and uses in order to satisfy his needs.<sup>2</sup> The *New Zealand Environment Act*,<sup>3</sup> defined the environment as including:

- a) ecosystems and their constituent parts; b) all-natural and physical resources; c) the social, economic, aesthetic and cultural conditions which affect the environment or which are affected by changes to the environment.<sup>4</sup>

The environmental law system, therefore, is an organised way of using all the laws in our legal system to minimize, prevent, punish, or remedy the consequences of actions which damage or threaten the environment, public health, and safety.<sup>5</sup>

Turning to International Environmental Law, it originated as a collection of rules that grew sporadically as a response to specific environmental problems since the 19<sup>th</sup> century.<sup>6</sup> This is owing to the fact that the environment is intrinsically intertwined with humanity and currently, it has achieved a certain amount of coherence based on a unified foundation.<sup>7</sup> Perhaps the most stunning recent development in environmental policy has been the rapid rise of international concern for the environment.<sup>8</sup> Environmental problems increasingly are viewed as transcending national borders and, in some cases, posing major risks to the health of the planet that could cause worldwide economic and social dislocation.<sup>9</sup> The globalization of environmental concern is having a profound impact on international trade and diplomacy, stimulating the development of new international legal regimes that are assuming an increasingly important role in environmental policy.<sup>10</sup>

International Environmental Law, therefore, is based on the philosophical thought that humankind is inherently inseparable from the rest of nature as humans must exploit natural resources for the benefit of human beings<sup>11</sup> and as a result, three (3) issues are of concern to humanity to wit: “the protection of the environment; the conservation of natural resources; and the thought about future generations”.<sup>12</sup> This was aptly captured in the case of *Cambridge Water Co. Ltd v Eastern Counties Leather Plc.*<sup>13</sup> Such concerns can also be seen at the local, national and international levels which have brought about the organisation of different sub-regional and international conferences.<sup>14</sup> Notable of such conferences is the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil in 1992 where “Agenda 21”, a remarkable blueprint on sustainable development was endorsed.<sup>15</sup>

More so, it is also pertinent to state that the steady growth in international trade has caused some industries to support voluntary environmental standards to provide a common baseline to apply even in countries with weak environmental laws.<sup>16</sup> Consequently, due to the impact of science, technology and population growth on the global landscape, humanity started expressing fears of total destruction in the past three (3) decades.<sup>17</sup>

### **1. International Environmental Law Protection**

As against domestic law, where common law, legislation and constitutional provisions provide a relatively clear framework for the operation of environmental regulation, international law depends largely on negotiations and political relationships in defining the rights and responsibilities of sovereign states.<sup>18</sup> Most parts of international law operate with “little procedural hierarchy” and gives no court or agency an “accepted primacy over another”.<sup>19</sup> Litigation and adjudication are rare due to the fact that International Law is “soft law” which is largely the product of international diplomacy and custom and whose enforcement depends less on “legal” sanctions than on “moral” suasion or fear of diplomatic retribution.<sup>20</sup>

Protection of the environment via International Law started in the early 19<sup>th</sup> century due to industrialisation and exploitation of natural resources. This protection started as a body of laws and as a collection that developed sporadically in an attempt to respond to specific environmental problems.<sup>21</sup> Today, it has attained a certain amount of coherence coupled with a clear philosophical foundation.<sup>22</sup> The clearest and most significant source of international environmental law is agreements between sovereign states.<sup>23</sup> International treaties or conventions are akin to contracts in that they derive their legal force from the consent of the parties<sup>24</sup> and as a result, bilateral agreements to address cross-boundary environmental problems have been popular for a long period of time.<sup>25</sup> Notable of such agreements is the *Boundary Waters Treaty of 1909* between the United States and Canada which was the basis for the arbitral decision in the case of *United States v Canada (Trail Smelter)*;<sup>26</sup> and the *Migratory Bird Treaty of 1916* between the same nations which gave rise to the Supreme Court's decision in *Missouri v. Holland*.<sup>27</sup>

In the *Trail Smelter decision (supra)*, the arbitral tribunal rightly observed that:

Under the principle of International Law, no State has right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or property or person therein when the case is of serious consequences and the injury is established by clear and convincing evidence.

## **2. Brief Facts of the case of *United States v. Canada (Trail Smelter) (supra)***

As a result of the activities of a smelter in Canada, the damage was occasioned in the territory of the United States. This damage was as a result of sulphur dioxide fumes which were being emitted from the smelter in Canada. The arbitral tribunal held Canada to be responsible under International Law for the conduct of the Trail Smelter and they gave a further directive that the Trail Smelter should refrain from causing further damage in the territory of the United States of America. It was further noted that a State owes at all times a duty to protect other states against injurious acts by individuals within jurisdictions.

In the same vein, where there is the absence of express agreements between sovereigns, International Law can also be derived from customary practices observed by nations in the course of their international relations, which give rise to reliance interests.<sup>28</sup> The domestic practices of most or all the states also can be a source of deriving general principles of International Law. The assumption is that rules observed by nearly all sovereigns are significantly fundamental to be deemed a component of international law.<sup>29</sup>

Against the foregoing background, it is paramount to consider the salient provisions of some of the conferences and the declarations therefrom on the International Protection of the Environment.

## **3. The United Nations Conferences**

A lot of efforts have been made to develop general principles for the resolution of transboundary pollution disputes and for combating other international environmental problems in both regional and global Inter-Governmental Organisations (IGOs).<sup>30</sup> The United Nations convened the first Conference on the Human Environment at Stockholm in 1972 in which 133 nations were represented. The Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) outlined international environmental rights and responsibilities in strong, but highly general language to wit:

### **Principle 1**

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

**Principle 2**

The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management as appropriate.

**Principle 3**

The capacity of the earth to produce vital renewal resources must be maintained and wherever practicable, restored or improved.

**Principle 4**

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gradually imperilled by a combination of adverse factors. Natural conservation including wildlife must, therefore, receive importance in planning for economic development.

**Principle 5**

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.

**Principle 6**

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported.

**Principle 7**

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

**Principle 8**

Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the management of the quality of life.

**Principle 21**

States have, in accordance with the Charter of the United Nations and Principle of International Law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction".<sup>31</sup>

The Stockholm Conference was a landmark event even though it left the development of more specific principles of international environmental law to future negotiation.<sup>32</sup> This launched a process of international collaboration on environmental policy and thus brought about the creation of the United Nations Environmental Programme (UNEP) in 1982 with its headquarters in Nairobi, Kenya.<sup>33</sup> The Nairobi conference led to the creation of the World Commission on Environment and Development (WCED). In 1987, the Commission issued a report, titled “Our Common Future” which proposed that the United Nations develop an international convention outlining new environmental rights and responsibilities for all nations based on principles of sustainable development in order to facilitate the resolution of disputes unable to be resolved by parties through negotiations.

#### **4. The Four (4) Statements of the Commission (WCED)**

- i. To recognise and respect reciprocal rights and responsibilities of individuals and States regarding sustainable development.
- ii. To establish and apply new norms for State and inter-State behaviour to achieve sustainable development.
- iii. To strengthen and extend the application of existing laws and international agreements in support of sustainable development.
- iv. To reinforce existing methods and develop new procedures for avoiding and resolving environmental disputes.

This is in line with the need for a law on the protection of the environment and hence, today, legal regimes are rapidly expanding and formulating laws to keep human activities in harmony with the unchanging and universal laws of nature.<sup>34</sup>

The process initiated with the 1972 Stockholm Conference continued with the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro.<sup>35</sup> The Earth Summit, as the Rio meeting was called, was an event of unprecedented size and complexity, an Olympics of international environmental negotiation larger than any previous international summit.<sup>36</sup> Thus, it is apt to highlight some of the salient provisions of the Rio de Janeiro Declaration.

#### **Principle 1**

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

#### **Principle 2**

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

**Principle 3**

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

**Principle 4**

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it...

**Principle 7**

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

**Principle 8**

To achieve sustainable development and a higher quality of life for all the people, States should reduce and eliminate unsustainable patterns of productions and consumption and promote appropriate demographic policies...

**Principle 10**

Environmental issues are best handled with the participation of all concerned citizens at the relevant levels. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

**Principle 13**

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damages caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

**Principle 14**

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

**Principle 15**

In order to protect the environment, the precautionary approach shall be widely applied to

States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

### **Principle 16**

National authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

## **5. Conclusion**

Probably the most significant provision common to the two declarations (Stockholm and Rio de Janeiro) relates to the prevention of environmental harm. In identical language, the second part of both Stockholm Principle 21 and Rio Principle 2 establishes a State's responsibility to ensure that activities within its activity or control do not cause damage to the environment of other States or to areas beyond national jurisdiction or control.<sup>37</sup> This obligation is balanced by the declarations' recognition, in the first part of the respective principles, of a State's sovereign right to "exploit" its natural resources according to its "environmental" (Stockholm) and "environmental and developmental" policies (Rio).<sup>38</sup> While at Stockholm some countries still questioned the customary legal nature of the obligation concerned, today there is no doubt that this obligation is part of general international law.<sup>39</sup>

Environmental law is therefore concerned with not merely raising the standard of living but providing basic tools to tackle environmental problems. In other words, protecting the environment is so important that law can no longer close its eyes no matter the cost, for environmental improvement must be made regardless of the cost.<sup>40</sup> There is, therefore, a dire need for a law that can effectively and efficiently address itself to the problems posed by the activities of man with a view to enhancing the quality of life of the people and to guarantee sustainable development.<sup>41</sup>

Ever since the UN Stockholm Declaration on Human Environment made in 1972, we see global environment movement for the protection of nature as the man was getting out of harmony with nature. The global environment movement has also highlighted the problems of the common survival of mankind. The Natural Disasters like Tsunami in December 2004, Katrina in the USA in 2005, earthquakes in Gujarat, and heavy rainfalls in Bombay and elsewhere in 2005 have brought forth that mankind must face these common dangers irrespective of the world being a federation of sovereign States.<sup>42</sup> The movement has also produced hope for mankind to live in harmony and peace. There is the possibility to improve the environment, and live in comfort with sustainable development, provided sovereign States to cooperate, and make a common agenda for survival and progress.

The environment movement since 1972 has produced a plethora of international laws and declarations. Today modern international law is predominantly oriented towards

environment law. Combining law and global science, in particular, ecological science and international law provides a new paradigm for the world order. This combination has already helped develop a new global consciousness towards the harmony of man with other human beings, and of a man with nature. It provides a unified vision to grasp global scientific and social order and seek appropriate solutions.

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