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Principles of Sustainable Development for Resource Conservation in International Law

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Abstract: Both the definition and the legal status of the concept of sustainable development have been hotly contested. Is it genuinely a legal precept? These discussions are linked because it is difficult to adopt or apply the sustainable development concept in the legal system in a clear manner due to the terminology's ambiguity and general vagueness. Legal academics have often classified "sustainable development" as a notion, a goal, a policy target, a directive, an ideal, a meta-principle, a questionable international legal norm, a concept, or a legal precept. However, since its emergence in international environmental law in 1992, both domestic and international courts have increasingly alluded to sustainable development when drafting environmental and other accords. The more often sustainable development has been mentioned, whether as an aim or a principle, its normative authority and legal standing have grown. It may be said with authority that incorporating environmental issues into decision-making processes is a requirement under the law. Thus, this article attempts to show the general principles and rules of international environmental law that have emerged from international treaties, agreements, and customs. This work submits that the significance of the generality of these principles is that they can be applied to the international community for the protection of the environment.
Keywords: International law; Sustainable Development; Resource Conservation; International Treaties.

INTRODUCTION

Traditional viewpoints hold that public international law is derived from one of four sources: judicial decisions and the teachings of highly trained legal academics; international conventions; international norms; and basic legal principles accepted by civilised states (Bederman, 2002). From the aforementioned sources as well as from less traditional and binding sources, relatively new international environmental law is forming. The rights and obligations of nations with regard to environmental issues are not set up in any international treaty with universal application. However, the practises and judgements of international courts, which have been crucial in the creation of regulations, are stated in the resolutions and declarations of international organisations in charge of environmental controls, such as the Atomic Energy Agency (Nanda, 2006).

International environmental law has evolved between two ideas that seem to be at odds with one another. First, a state's natural resources are subject to its sovereign rights. Second, governments shouldn't harm the environment. The United Nations General Assembly has further supported the idea of a state's sovereignty over its natural resources, stating, among other things, that the right of peoples and nations to permanent sovereignty over their natural resources and wealth must be exercised in the interest of their national development and of the well-being of the state's population (Essien and Njok, 2019). This resolution supports the global right to perpetual sovereignty over natural resources, which has been acknowledged by tribunals as reflecting international norms. International accords have reaffirmed national sovereignty over natural resources. The idea of sovereignty is not unqualified, and it is subject to a general obligation not to harm the environment of other nations or of regions outside of a state's national boundaries. According to the Rio Declaration of 1992:

> 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 (Sifonios, 2018).

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This is a derivation from the general maxim that the possession of rights involves the performance of corresponding obligations.' The responsibility not to cause environmental damage precedes the Rio Declaration. There is an obligation of all states to protect the rights of other states, as elaborated in Trail Smelter,9 a case which stated that:

> under principles of international law . . . no state has the right to use or permit the use of territory in such a manner as to cause injury by fumes in or to the territory of another of the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence (Dupuy and Vignes, 1991).

The United Nations General Assembly expanded on this principle in 1961 when it stated that the fundamental principles of international law impose a responsibility on all states regarding actions which may have harmful biological consequences for "the present and future generations of peoples of other states by increasing the levels of radioactive fallout" (Sands and Peel, 2012). In international treaties as well as other international practises, "the duty to avoid environmental damage has also been accepted." The basic notion is the requirement for fair and harmonious utilisation of the resource in the case of shared resources, which are resources that do not entirely come within the authority of one state. To ensure the best use of these resources without jeopardising the legitimate interests of other states, this commitment is essentially connected to collaboration based on an information system, prior consultation, and notice. The idea that applies in those regions outside the purview of state authority, such as the high seas, is not one of sovereignty but rather one of humanity's shared heritage (Bray, 2016). Simply put, global property is open, and nations are unable to take its riches. States are merely the administrators of the wealth and benefits of property. The protection of those places and the sharing of their economic advantages require cooperation between the states (Anthony et al., 2019). The idea of the shared heritage of humanity has recently been used to safeguard Antarctica.

As a result of the foregoing, this article serves as a summary of the broad principles and regulations of international environmental law that have resulted from treaties, accords, and conventions at the international level. The importance of these principles' universality is that it allows the world community to use them to safeguard the environment.

INTERNATIONAL ENVIRONMENTAL LAW: EVOLUTION

Modern international environmental law can be traced directly to international legal developments that took place in the second half of the nineteenth century. International environmental law has evolved over at least five distinct periods, reflecting developments in scientific knowledge, the application of new technology and an understanding of their impacts, changes in political consciousness and the changing structure of the international legal order and institutions.

The first period began with bilateral fisheries treaties in the nineteenth century and concluded with the creation of the new international organizations in 1945 (Sunoko and Huang, 2014). During this period peoples and nations began to understand that the process of industrialization and development required limitations on the exploitation of certain natural resources [flora and fauna] and the adoption of appropriate legal instruments (Anthony and Essien, 2018). Concern for the environment first began to appear on the international agenda during the early twentieth century with the conclusion of a number of international conventions. The first such treaties include:

1. *Convention for the Protection of Useful Birds to Agriculture*, 1902
2. *Treaty for the Preservation for Fur Seals*, Washington, 1911
3. *Convention Concerning the Use of White Lead in Painting*, Geneva, 1921
4. *Convention for the Regulation of Whaling* 1931.

As their names suggest, these conventions were narrow in scope, aimed at protecting only a few species, which were considered valuable resources to humans, or to protect human health.

The number of international environmental treaties increased dramatically during this time. There were approximately 60 international agreements concluded by 1970 (Benvenisti and Downs, 2007). Nevertheless, upon examination, it is apparent that the primary motivation for their conclusion was the protection of components parts of the environment considered 'valuable' in human terms. The utilitarian approach saw environmental protection achieved by the regulation of use. On the other hand, towards the end of the 1960s, the awareness of the extent and implication of environmental degradation increased and became a focal point for public pressure on national governments. It was at this time that the focus

of environmental action started to shift from an *ad hoc* attack if isolated environmental problems to a more holistic approach.

The second period commenced with the creation of the UN and culminated with the UN Conference on the Human Environment, held in Stockholm in June 1972 (Paglia, 2021). Over this period, a range of international organizations with competence in environmental matters were created, and legal instruments were adopted, both at the regional and global level, which addressed particular sources of pollution and the conservation of general and particular environmental resources, such as oil pollution (Adoga-Ikong et al., 2021), nuclear testing, wetlands, the marine environment and its living resources, the quality of freshwaters and the dumping of waste at sea. During this period the UN tried to put in place a system for co-coordinating responses to international environmental issues, regional and global conventions were adopted, and for the first time, the production, consumption and international trade in certain products was banned at the global level.

The 1972 UN Conference on Human Environment can be marked as the landmark international convention for the protection of environment. The Conference considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment (Wheeler, 1993). The Stockholm Declaration sets out 26 Principles from which a body of international environmental law has since been developed. The declarations, places great emphasis on the need to protect both species and their habitats, particularly at Principles 2 and 4, which read as follows:

> 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 2]
>
> Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperiled by a combination of adverse factors. Nature conservation including wildlife must therefore receive importance in planning for economic development" [Principle 4] (Wheeler, 1993; Dixon et al., 2011).

The Conference enlisted 26 principles, to be followed by states in their policy to preserve and improve the human environment. Some of the important principles are as follows:

1. The conference recognized that Man has the fundamental right to freedom, equality andadequate conditions of life in an environment of quality that permits a life of dignity and well being; he bears a solemn responsibility to protect and improve the environment for present and future generations.
2. The capacity of the earth to produce vital renewable resources must be maintained and wherever practicable, restored or improved.
3. The discharges of toxic substances or other substances and the release of heat, in such quantity or concentration as to exceed the capacity of the environment must be stopped.
4. Economic and social development is essential for ensuring a favorable living and working environment for man. The same should be rationally planned and constituted as an essential tool for balancing the needs of development, with the need to protect and improve the environment.
5. Man and his environment must be spared from the effects of nuclear weapons and all other means of mass destruction.
6. States shall co-operate to develop the international law relating to liability and compensation for the victims of pollution and other environmental damage.
7. States have sovereign right to exploit their own resources pursuant to their environmentalpolicies and the responsibilities to ensure that the activities within their jurisdiction do not cause damage to the environment of other states.
8. Planning must be applied to human settlement and urbanisation with a view to avoid adverse effects on the environment.
9. For developing countries stability of price and adequate earnings for primary commodities and raw materials are essential for environmental management.

In practice, the development of 'soft' law norms with regard to the protection of the human environment began immediately after the Stockholm Conference, one of the consequences of which was the creation of a special subsidiary organ of the UN General Assembly. This body, the United Nations

Environmental Program has played a leading role in environmental protection as well as sensitization. Soft law instruments, such as declarations of principles, charters or resolution of international organizations, are not binding in law. In other words, they do not contain legal obligations that could be enforced in a court of law in the event of non-compliance. The moral value of such instruments may be very high, however, especially where they can be considered as the manifestation of a broad consensus on the part of the worldcommunity. It is thus generally understood that 'soft' law creates and delineates goals to be achieved in the future rather than actual duties, programs rather than prescriptions, guidelines rather than strict obligations.

WCS was prepared in 1980 by the World Conservation Union [IUCN], with the assistance of the WWF and UNEP (Gössling et al., 2008). The World Conservation Strategy was a plan of action presented to governments and public bodies around the world. It identified a range of priorities and actions designed to achieve three key objectives:

1. The maintenance of essential ecological processes and life support systems
2. The preservation of genetic diversity; and
3. The sustainable use of species and ecosystems

Two years later, on 28 October 1982, [to mark 10 years of Stockholm] the United Nations General Assembly adopted and solemnly proclaimed a *World Charter for Nature*, which had been prepared by IUCN at the request of the President of Zaire. The Charter proclaims principles of conservation 'by which all- human conduct affecting nature is to be guided and judged, and incorporates not only the Stockholm Principles but also the three objectives of the World Conservation Strategy.

In the Charter, the General Principle 2 states that the 'genetic viability on the Earth shall not be compromised, the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival and to this end, necessary habitats shall be safeguarded' (Naish et al., 2007). 'All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all different types of ecosystems and to the habitats of rare and endangered species'. [Principle 3]. 'Ecosystem and organisms as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity but not in such a way as to endanger the integrity of those other ecosystems with which they co-exist'.[Principle 4]

The World Commission on Environment and Development also placed considerable emphasis on the need to preserve biological diversity and to abide by the principle of optimum sustainable yield in the use of natural animal and plant resources. The UN General Assembly adopted the conclusions of the Brundtland Report in 1987 as a framework for future cooperation in the field of environment and development (Linnér and Selin, 2013).

In 1991 Caring for the Earth, the successor to the World Conservation Strategy was preparedin cooperation with the UNEP. It concentrates on the following areas:

1. Energy
2. Business, industry and commerce
3. Human settlements [*i.e.* wherever people live];
4. Farm and range lands
5. Forest lands
6. Fresh waters; and oceans and coastal areas.

Although a more discursive document, it does endeavor to define actions that are necessary to achieve sustainable development. It contains a broad range of prescriptions on environmental policy and include a substantial section on the content of environmental law.

The Rio Declaration conference was named as 'Earth Summit', to send warning signals to member Statesthat unless the whole world comes together to save the earth and its environment, life would be unbearable and unthinkable from time to come. The biggest conference, attended by more than heads of 140 Nations, the conference is a landmark event in the history of international law (Mintzer and Leonard, 1994). Adopted in 1992, it contains 27 principles to guide activities in relation to the environment of nations and individuals. It builds on the Stockholm Declaration of 1972, and introduces the mandate of sustainable development as the basis for global, national and local action. It recognizes intergenerational equity; that the right to development must be fulfilled so as equitably to meet developmental and environmental needs of present and future generations. It calls on States to enact effective environmental

legislation; adopts the precautionary principle; where there are certain threats of serious or irreversible damage, lack of full scientific certainty is not a sufficient reason for postponing cost effective measures to prevent environmental degradation.

The important principles proclaimed at Rio were as follows:

1. Human beings are entitled to a healthy and productive life in harmony with nature.
2. State has sovereign right to exploit their own resources and responsibility to ensure that activities within their jurisdiction do not cause damage to the environment of other states.
3. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations [Doctrine of Intergeneration equity]
4. In Order to achieve sustainable development, environmental protection shall constitute an integral part of the developmental process. [Doctrine of Sustainable Development]
5. All states and all people shall cooperate in the essential task of eradicating poverty
6. The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority.
7. In order to protect the environment, the precautionary approach shall be widely applied by the states. Lack of scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation. [Precautionary Principle]
8. National authorities should endeavor to promote the internalization of environmental costs taking into account the approach that the polluter bear the cost of pollution [Polluter Pays Principle]
9. Peace, development and environmental protection are interdependent and indivisible (Essien and Anthony, 2017).
10. States should recognize and duly support the indigenous people and other local communities because of their knowledge and traditional practices relating to environmental management and development (Essien and Anthony, 2017; Umotong, 2021). States should also enable their effective participation in the achievement of sustainable development.
11. States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in this declaration.

Agenda 21 is an action plan for sustainable development, which was agreed to by all governments at the UNCED Conference. Agenda 21 was an instrument adopted at the UN conference on Environment and Development held at Rio de Janerio in 1992 (Weiss, 1992). Agenda 21 is a non-binding instrument that presents a set of strategies and detailed programmes to halt and reverse the effects of environmental degradation and to promote environmentally sound sustainable development in all countries. It aims at establishing a global partnership among government, the general public, NGOs and other groups for sustainable development.

These instruments fulfill the mandate given to the UNCED Conference 'to devise integrated strategies that would halt and reverse the negative impact of human behavior on the physical environment and promote environmentally sustainable economic development in all countries. Agenda 21 provides mechanism in the form of policies, plans, programs and guidelines for national governments, by which to implement the principles contained in the Rio Declaration. Agenda 21 consists of 40 chapters, divided into four sections:

1. Socio-economic dimension [habitats, health, demography, consumption and productionpatterns etc.]
2. Conservation and resource management [atmosphere, forest, water, waste etc.]
3. Strengthening the role of the NGO and other social groups such as Trade Unions, Women, youth etc.]
4. Measures of implementation [financing, institutions etc.]

The Agenda for the 21st century stressed on international cooperation in environmental protection as an absolute necessity, to conserve the environment in its totality. Cooperation between states for environmental protection appears most often in the work of international organisations. Many environmental problems cannot be solved by simple adoption of regulation; they need ongoing cooperation between the concerned states (Anthony and Essien, 2018). The principle of preservation and protection of the environment can be achieved only through international effort, as environment is not the concern of one state or group of states, but of this planet.

The forestry principles were agreed at UNCED. It would appear there was not sufficient political

will at UNCED and thereafter to transform these principles into a global convention; thus the matter has remained at the level of principles only. The Forest Principles are described as a non-binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forest, both natural and planted, in all geographic regions and climatic zones (Bradbrook and Wahnschafft, 2001). The Principles are designed to encourage governments to promote and provide for community participation in development, implementation and planning of national forest policies and urges that all aspects of environment protection and social and economic development relating to forest should be integrated.

While evaluating the effectiveness of an environmental treaty, it is also important to recognize that many environmental problems do not admit of short-term solutions. International action often begins slowly, with information exchange, cooperative scientific effort, the establishment of consultation procedures, or simply the announcement of shared principles. Effective institutions can affect the political process at three key points in the sequence of environmental policy making and policy implementation: (1) they can contribute to more appropriate agendas, reflecting the convergence of political and technical consensus about the nature of environmental threats; (2) they can contribute to more comprehensive and specific international policies, agreed upon through a political process whose core is intergovernmental bargaining; and (3) they can contribute to national policy responses which directly control sources of environmental degradation.

Once a state has formally accepted an international environmental obligation, usually following the entry into force of a treaty which it has ratified or the act of an international organization by which it is bound, it will usually need to develop, adopt or modify relevant national legislation or give effect to national policies, programmes or strategies by administrative or other measures. Some treaties expressly require parties to take measures to ensure the implementation of obligations, or take appropriate measures within their competence to ensure compliance with the convention and any measures in effect pursuant to it. Some agreements require parties to designate a competent national authority or focal point for international liaison purposes to ensure domestic implementation. The 1982 UNCLOS provides a typical example, its provisions being drawn from different precedents in the field of marine pollution (Khare, 2021). It includes provisions on implementation of pollution requirements from different sources and provides specifically for the enforcement by states of their laws and regulations adopted in accordance with the Conventions and the implementation of applicable international rules and standards. It also requires states to ensure that recourse is available under their legal system for prompt and adequate compensation for damage caused by marine pollution by persons under their jurisdiction. Treaty obligations which have not been implemented domestically will usually be difficult to enforce in national courts.

INTERNATIONAL PRINCIPLES FOR CONSERVATION OF NATURAL RESOURCES

It was in 1970 that the world started to look at protecting the Earth and its environment. It started with the observation of the Earth Day in America. Later the UN convention on Human Environment in 1972 took the world attention towards conservation and preservation of the human environment. The uncertainty of scientific proof and its changing frontiers from time to time have led to changes in environmental concepts between the Stockholm Conference of 1972 and the Rio Conference of 1992. The emphasis shifted to the 'Precautionary Principle', from the 'assimilative capacity' rule, at the U. N General Assembly resolution on World Charter for Nature, 1982 (Khare, 2021). This was reiterated in the Rio Conference of 1992 in Principle 15. Major instances of environmental harm, whether or not accidental, are likely to have transfrontier connotations. The sources of the damage, or the persons responsible for it, may be in countries other than those where the damage occurs: there may be victims or defendants from several countries, and so on.

Domestic, or national, law refers to the legal system applicable to a defined territory over which a sovereign power has jurisdiction. International law, on the other hand, regulates the conduct of states and other international actors (Slaughter and Burke-White, 2006). Over the years domestic and international systems of law have evolved in parallel. In certain fields and regions of the world, international law has shaped and significantly contributed to the development of domestic environmental law. Yet, international environmental law also reflects domestic experiences considered successful by the Community of Nations. The result is a complex relationship in which the two levels of environmental law mutually contribute to and reinforce each other.

International environmental protection, though largely developed in the last three decades, confronts two major problems: the feebleness of international law considering its enforcement, and the need for economic development in many countries. International environmental law isat a very early stage of development and has evolved at a time when the heterogeneity of the international community has rapidly intensified and when economic problems have correspondingly increased and the needs and aspirations of the poorer States have become urgent.

The traditional sources of international law are international treaties and customs. However, other texts, such as UN General Assembly resolutions or Declarations, which, in principle, have no binding effect, could be considered at least as guidelines towards a rational interpretation of international environmental law. States must ratify treaties in order to bind them legally. No equivalent to the Universal Declaration on Human Rights898 or the International Covenant on Civil and Political Rights or Economic and Social Rights 899 has yet been adopted or appears imminent. Any effort to identify general principles and rules of international environmental law must necessarily be based on a considered assessment of state practice, including the adoption and implementation of treaties and other international legal acts, as well as the decisions of international courts and tribunals. The rights and obligations of States pertaining to the protection of the environment constitute the essence of international law, since its rules are *letterae mortae* if they have no power to impose their respect or to be enforced. Certain rules imposing the respect of environmental protection regulations are included in UNEP principles, in the UN Convention on the Law of the Sea (UNCLOS), and in the projects of bodies such as the International Law Commission (ILC), the International Law Association (ILA), the World Commission on Environment and Development (WCED) and in the UN's Conference on Environment and Development (UNCED) Rio Declaration.

Established Norms of International Environmental law are general legal principles that are widely accepted. This acceptance is evidenced in a number of ways, such as international agreements, national legislation, domestic and international judicial decisions, and scholarly writing. The principles expressing the fundaments of a legal order play a very important role in the creation, development and application of law in general. The principles are superior to ordinary rules because the rules should be based on these principles. Some of the leading norms in the field of international environmental law are discussed below.

DUTY TO PREVENT, REDUCE AND CONTROL ENVIRONMENTAL HARM

The responsibility or obligation, not to cause damage to the environment of other states or of areas beyond the limits of national jurisdiction is one of the fundamental objectives for the development of international environmental law. According to this customary principle, the States are required by international law to take adequate steps to control and regulate sources of serious global environmental pollution or transboundary harm, within their territory or subject to their jurisdiction. Principle 21 of the 1972 Stockholm Declaration on the Human Environment imposes upon States the obligation to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or to areas beyond the limits of National jurisdiction (Pallemaerts, 1992).

The responsibility of states not to cause environmental damage in areas outside their jurisdiction pre-dates the Stockholm Conference and is related to the obligation of all states 'to protect within the territory the rights of other states, in particular their right to integrity and inviolability in peace and war' (Louka, 2006). The obligation was subsequently relied upon and elaborated by the Arbitral Tribunal in the much cited *Trail Smelter case*, which stated that: 'under the principles of international law.... no state has the right to use or permit the use of territory in such a manner as to cause injury by fumes in or to the territory of another of the properties or persons therein, when the case is of serious consequences and the injury is established by clear and convincing evidence' (Nanda, 2006). Although the *Trail Smelter case* involved a closely circumscribed arbitration proceeding, it is cited frequently as the genesis for the rule against causing environmental damage in a foreign state or the global commons (Dinwoodie, 1972).

The development of this principle can also be traced to earlier environmental treaties besides the Stockholm treaty. The 1951 International Plant Protection Convention in its preamble expressed the need to prevent the spread of plant pests and diseases across national boundaries. The 1963 Nuclear Test Ban Treaty in Article I(1)(b) prohibits nuclear tests if the explosion would cause radioactive debris 'to be present outside the territorial limits of the state under whose jurisdiction or control such explosion is

conducted' and the 1968 African Conservation Convention in Article XVI(1)(b) requires consultation and cooperation between parties where development plans are 'likely to affect the natural resources of any other state' (Langevin and Owens, 1964). Under the 1972 World Heritage Convention, in Article 6(3), the parties agreed that they would not take deliberate measures which can directly or indirectly damage heritage which is 'situated in the territory' of other parties (Goodwin, 2008; Wirth, 1994). Article 30 of the Charter of Economic Rights and Duties of States provides that: 'all states have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction'. It was endorsed by the 1975 Final Act of the Helsinki Conference on Security and Cooperation in Europe, Principle 3 of the 1978 UNEP Draft Principles, which requires states to ensure that 'activities within their jurisdiction or control do not cause damage to the natural systems located within other states or in areas beyond the limits of national jurisdiction' and the 1982 World Charter for Nature, which in Paragraph 21(e) declares the need to 'safeguard and conserve nature in areas beyond national jurisdiction' (Wirth, 1994).

Even more compelling is the reference to Principle 21 in many treaties. It has been referred to, [as in the 1992 Baltic Convention] or wholly incorporated [as in the 1972 London Convention; the 1979 LRTAP Convention; and the 1985 Vienna Convention], in the preamble to several treaties. It was fully reproduced in the operational part of a treaty, for the first time, as in Art. 3 of the 1992 Biodiversity Convention. Principle 2 of the Rio Declaration is incorporated into the Preamble of the 1992 Climate Change Convention.

TRANSBOUNDARY CO-OPERATION IN CASES OF ENVIRONMENTAL RISK AND THE PRINCIPLE OF PREVENTIVE ACTION

This principle expects from States to co-operate with each other in mitigating transboundary environmental risks. Closely related to this Principle is the '**Principle of preventive action**, which obligates Nations in preventing damage to the environment, or to otherwise reduce, limit or control activities which might cause such damage. The preventive principle seeks to minimize environmental damage as an objective itself. The preventive principle requires an activity which does or will cause damage to the environment in violation of the standards established under the rules of international law to be prohibited and has been described as being of 'overriding importance in every effective environmental policy, since it allows action to be taken to protect the environment at an earlier stage. It is no longer primarily a question of repairing damage after it has occurred.

The preventive principle is supported by an extensive body of domestic environmental protection legislation which establishes authorization procedures as well as the adoption of international and national commitments on environmentalstandards, access to environmental information and the need to carry out environmental impact assessments in relation to the conduct of certain proposed activities. The current focus on pollution prevention, both by industry and policy makers, reflects a growing knowledge that avoiding or reducing pollution is almost always less expensive than attempting to restore a contaminated area. The preventive principle may, therefore take a number of forms, including the use of penalties and the application of liability rules. 'If it is not possible to make a decision with some confidence, then it makes sense to err on the side of caution and prevent activities that may cause serious or irreparable harm. An informed decision can be made at a later stage when additional data is available or resources permit further research. To ensure that greater caution is taken in environmental management, implementation of the principle through Judicial and legislative means is necessary'.

In this wide sense, the prevention principle is linked with the precautionary principle, derived from the German Vorsorgeprinzip. This principle expresses essentially a 'moral' obligation to good husbandry in the management resources. As such, this approach is more protective of the environment than the preventive principle, as it prescribes action where the consequence of inactivity may be thought to be irreversible even though full scientific proof may be lacking.

Principle 24 of the Stockholm declaration reflects a general political commitment to international cooperation in matters concerning the protection of the environment and Principle 27 of the Rio Declaration states rather more succinctly that 'States and people shall cooperatein good faith and in a spirit of partnership in the fulfillment of the principles embodied in this Declaration and in further development of international law in the field of sustainable development' (McIntryre, 2006). The importance attached to the principle of cooperation and its practical significance is reflected in many international instruments, such as the Preamble to the 1992 Industrial Accident Convention, which

underlined in support of the specific commitments 'the principles of international law and custom, in particular, the principles of good neighbourliness, reciprocity, non-discrimination and good faith'.

The obligation to cooperate is affirmed in virtually all international environmental agreements of bilateral and regional application and global instruments. The obligation may be in general terms, relating to the implementation of the treaty's objectives, such as in the Art. XVI(1) of the 1968 African Conservation Convention, or relating to specific commitments under a treaty, such as in Art. 14 of the 1989 Lome Convention (Arts, 2000).

The general obligation to cooperate has been translated into more specific commitments through techniques designed to assure information sharing and participation in decision making. These specific commitments include rules on environmental impact assessment, rules ensuring that neighboring states receive necessary information [requiring information exchange, prior notification and prior informed consent, consultation and notification in the case of an emergency], the provision of emergency information and emergency assistance, transboundary enforcement of environmental standards and the requirement to coordinate international scientific research. The extent to which these commitments are interrelated is reflected in Principle 7 of the 1978 UNEP Draft Principles.

"POLLUTER PAYS" PRINCIPLE

Polluter pays principle holds the polluter, who creates an environmental harm, liable to pay compensation and the costs to remedy that harm. The principle of polluter pays means whoever has contributed to the environmental degradation, contamination, the responsibility is on that individual (Khan, 2015):

1. To pay for the damages,
2. Or to install costly environmental equipments to prevent happening of environmental degradation.

This principle means that the polluter should bear the expenses of carrying out the measures decided by public authorities to ensure that the environment is in an acceptable state. The OECD's definition of this principle is that the polluter should bear the expenses of carrying out measures decided by public authorities to ensure that the environment is at an "acceptable state," or, in other words, that the cost of these measures should be reflected in the cost of goods and services, which cause pollution in production and/or in consumption. According to eminent commentators, the "Polluter Pays" principle is essentially a principle of economic policy and its primary object is economic, not environmental, that is the restitution of costs of pollution. This principle has been held to be a sound principle by the Supreme Court in *Indian Council for Enviro Legal Action* and the *Kamal Nath casev* (Sati, 2019).

In *Vellore Citizens case* the Court held that any principle evolved in this behalf should be simple, practical and indigenously suited, and that once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity (Müller, 2023). The rule is premised upon the nature of the activity. The Court stated the rule to have derived from the Common law rule of absolute liability. So in this case, the polluting industries were held absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to underground water, and were bound to take all necessary measures to remove pollutants in the affected areas.

The 'Polluter Pays' principle was interpreted to mean that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'sustainable development' and as such, the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. This recognizes that the polluter should pay for any environmental damage created and that the burden of proof in demonstrating that a particular technology, practice or product is safe should lie with the developer, not the general public. Unfortunately, when and how much the polluter should pay is often unclear. The principle of non-discrimination obliges the States to give equivalent treatment to the domestic and transboundary effects of pollution and requires that polluters causing transfrontierpollution should be subject to standards no less severe than would apply to pollution with domestic effects only.

THE NEW ENVIRONMENTAL PHILOSOPHY: GLOBALIZATION

In the growing jurisprudence and ethos of sustainable development, the key words are "globalization" and "equity." Several forms of environmental damage extend across national borders to the degradation of the global commons, affecting a global society. Therefore, the concept of a global society involves the need for global perspectives which, in turn, call for new definitions of jurisprudential, economic, and social relationships. Definitions which arose from the old order tend to lose their validity when reckoning with human society in a global dimension. With the development of new philosophic systems in modern international law, such as human rights, the individual is now treated as the direct beneficiary of the law. The members of a global society, in the final analysis, are individuals, and individuals are the beneficiary of both state law and international law. Because some areas of legal rights and obligations are common to both the state and international legal systems, one can conceive of the individual as positioned in the center of two concentric circles, an inner circle embodying the operation of state law and a larger circle embodying the operation of global law. With that metaphor, in common legal areas, such as environmental law, one may envisage global values flowing into the content of state law. In such areas, global perspectives need to be considered to arrive at a true and comprehensive interpretation of individual rights and obligations. The globalization of human society and of human values has been developing during the second half of this century,and has taken a vitally significant and irreversible direction. All over the world, a stirring of global consciousness has occurred, from the theaters of armed conflict to the institutions of humanitarian relief.

This is not to say that the doctrine of state sovereignty has lost its basic validity. Developing nations, including Nigeria, insist on their right to development, both in terms of the right to freely determine their economic, social, political, and cultural priorities, and in terms of their right to the use of their natural and other resources. Upon attaining independence, the new States realized that, among other things, poverty and low standards of living at home led to comparatively weaker bargaining positions in the arenas of international diplomacy and international economic opportunity. International disputes on the environment raise quite a number of different issues and therefore the tasks to be entrusted to institutionalised arbitration and conciliation would be quite varied. On the one hand, there is the problem of disputes between states as to the interpretation, implementation and enforcement of multilateral or bilateral international environmental agreements which, as the reference of some conventions to arbitration and conciliation as a mechanism for dispute settlement evidences, is a genuine role for arbitration and conciliation. Moreover, a court of arbitration and conciliation could make an important contribution to further developing the international law of the environment. In particular, it could "mould emerging environmental law principles … with a view to giving these principles a sense of coherence and direction". Emerging principles of international environmental law, many of which are spelt out in the Rio Declaration, include the principle of sustainable development, the precautionary principle, the principle of prevention, the principle of conservation of biodiversity, the polluter pays principle, the principles of solidarity and shared but different responsibility, the principle of restoration, the principles of participation and information, and the principle of effective judicial control.

The experience of the International Court of Environmental Arbitration and Conciliation shows that from the point of view of concerned individuals and NGOs, there is a need for international adjudication of environmental conflicts. However, states and their subdivisions are reluctant to submit themselves to such adjudication, especially in the relationship with individuals and NGOs. Although one may safely state that the international law of the environment is on the road to strengthening the role of non-state actors, there is still a long way to go before access of these actors to international adjudication will be fully recognised. In the meantime, besides the Permanent Court of Arbitration, the International Court of Environmental Arbitration and Conciliation, especially in view of its flexible procedure for issuing consultative opinions, offers an international forum for accomodating the need for some sort of international adjudication of environmental conflicts. An important barrier is constituted by the costsof litigation. The Court has responded to this problem by introducing a short-cut procedure which is gratuitous, but in the long run other solutions such as an international legal aid fund would be preferable.

A review of international agreements and declarations has shown that in general they only seek to bind states on broad objectives and principles (Nabiebu and Out, 2019). Commitments to specific targets for reduction of transboundary pollution often gets ignored.

1. The UN Frame Work Convention on Climate Change is under the heat of debate by the

Developed and the Developing Nations trying to forge a solution to the ever increasing danger of Global Warming. USA, which alone contributes more than one third towards Ozone Depletion and Industrial pollution has refused to sign the convention or even to adhere to its commitment under the Montreal protocol. Further as the discussion on ozone depleting substances reveals, consensus on specific measures are not easy to reach. The nature and extent of commitment of the developing and the developed nations tend to be at variance.

2. There is concern among Nations around on the means through which underground water exploitation and contamination is to be regulated. Nigeria is a party to the Helsinki convention on the Protection and use of Transboundary Water Course and International laws, 1992. This Convention seeks to consider ground water as an aspect for 'transfrontier pollution'. 'Water being a State subject, no State in Nigeria has shown any keen interest on regulating ground water use and exploitation. The Central Ground Water Board is working on a model bill which would be suggested to the States as guidelines for enactment. There is also a proposal to treat ground water as a mineral, thus bringing directly under the Central Rule.

3. Nigeria is party to the Wetland Convention held in Ramsar, in 1971, still hardly anything has been done to conserve these bio diversity rich lands (Ignatius et al., 2022). Few States in Nigeria have prepared some policy papers and action plans to rejuvenate and recharge these precious gifts of nature. States have realized the importance of these wetlands in recharging ground water and sustainable plant and animal life, apart from making the most of rain water through the technique of rain water harvesting.

4. The Concept of sustainable development has received growing recognition but is a new idea for many business executives. For most, the concept remain abstract and theoretical. If sustainable development is to achieve its potential, it must be integrated into the planning and measurements systems of business enterprises. Sustainable emphasizes that economic activity must not irreparably degrade or destroy these natural and human resources. It we are to meet today's need without compromising the ability of future generation to meet their own, Sustainable Development should be followed globally.

The WTO report on need for environmental cooperation argues that there is no basis for the sweeping generalizations that are often heard in the public debates, arguing that trade is either good or bad for the environment. There have been allegation against the developed Nations of dumping outdated technologies, products, machinery and waste in the barge of trade and economic liberalization. Developing Nations have shown apprehensions against the discriminatory policies of the WTO regime, which would have negative impact on their growth and development and the right to self determination and state sovereignty.

The WTO has emerged as the apex body controlling and monitoring trade activities across the worlds. While environmental issues have traditionally been addressed by way of multilateral environmental agreements which have dealt with specific issues one at a time, the WTO has no specific agreement dealing with the environment. However number of WTO agreements include provisions dealing with environmental concerns. Concept like 'Green Consumerism', Eco friendly products', Eco mark', recycling waste', have helped infuse environmental awareness among the business community.

5. International Institutions are also concerned with increasing the forest cover. With Forest being treated as 'carbon sinks', the rate of depletion of forest is closely watched, essentially for maintaining the global climate.

6. The view that business firms are *rational polluters* and that they pursuit their self interest must imply that environmental regulators must deter pollution through the imposition of fines and penalties. The modern view of imposition of taxes and use of tradable permits through economic instruments is very much the need of the hour to combat the increase of pollution load by industries both large and small scale units. International cooperation and uniform procedure for the use of economic instruments would be an area of interesting debate in the years to come.

However, the international conventions, show that a framework for cooperation between various countries have been devised which can be utilized to further strengthen the 'global partnership' which is vital for the battle against the problem of pollution. Nigeria has successfully implemented some of the general principles of international environmental law like the 'polluter pays principle', which has gained

widespread international recognition. This principle has led to the creation of a regime of liability of states on environmental damage, while the precautionary principle is yet to find a sure footing in international law.

CONCLUSION

In international law, a distinction is often made between hard and soft law. Hard international law generally refers to agreements or principles that are directly enforceable by a national or international body. Soft international law refers to agreements or principles that are meant to influence individual nations to respect certain norms or incorporate them into national law. Although these agreements sometimes oblige countries to adopt implementation legislation, they are not usually enforceable on their own in a Court.

It is suggested that, it does not seem appropriate to resolve each conflict by an *ad hoc* panel of experts. In this way, a homogeneous development of environmental law that we need to protect the planet is not secured. A*d hoc* arbitration in which always-different persons may take part bears the risk of a slower construction of environmental law with more frequent contradictions between the awards. One must try to incorporate all legal cultures of the world into the court, which requires an institutional solution. Therefore an institutionalised arbitration and conciliation with a limited list of arbitrators and conciliators, but permanently in touch with the evolution of environmental law is a better way to guarantee the construction of the structure of environmental law. This is just the way international trade law is being developed with absolutely positive results.

The Ministry for the Environment is working collaboratively with the Local Government Association on this. Nigeria has obligation under numerous international treaties and agreements that relate to resource conservation. As a contracting party, Nigeria must have ratified a treaty, that is, by adopting it as national law before it came into force, or by acceding to it after it has come into force. Likewise the Constitution and statutory provisions protect a person's right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment.

International law has contributed positively to resource conservation. It has been the guiding force behind third world nations to take active measures to ensure that vital resources like water, air and forests are conserved for the benefit of the people and the community at large. International law, through its conservation needs has increased its economic help to the poorer nations to understand the devastation of over industrialization and exploitation of resources, for better and effective management of its natural environment.

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