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Lex Terra

News Updates on Environmental Law

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"The environment is where we all meet; where all have a mutual interest; it is the one thing all of us share."

—Lady Bird Johnson

"**Lex Terra** is an initiative by the members of Centre for Environmental Law, Advocay and Research(CELAR) of National Law University. Through *Lex Terra*, we are making an effort to put forward the various facets related to Environment from different sources which is published every fortnight among the society so that a community of environmentally conscious people emerge out of the legal and non-legal fraternity.

Each edition of *Lex Terra* highlights some noteworthy eco-news, both at global as well as national arena.

This newsletter is extensively prepared by the members and researchers of CELAR, the members of NLUA.

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Photo courtesy: Pushpanjali Medhi

About CELAR

The primary mission of Centre for Environmental Law, Advocacy amd Research (CELAR) of National Law University, Assam is to engage in advocacy and research on public interest environmental issues. For the purpose, it will organize workshops and seminars to educate and develop skills, convene conferences to promote exchange of ideas, conduct training programmes for capacity building in environmental law issues, undertake research on legal concerns and publish periodically, newsletters and journals.

The objectives of the CELAR are as follows:

- To inspire and educate students by providing hand-on advocacy experience and direct exposure to the issues.
- Strengthen access to justice by undertaking high quality multi– disciplinary research on contemporary legal issues pertaining to environment.
- Advocate for reforms in environmental law through scientifically sound legislative proposals.
- Organise training programmes for strengthening the legal capacity building on environmental laws doe civil servants, law enforcement authorities, non-governmental organizations and media personnel.
- Publish periodically journals and newsletters on environmental law.

— Professor (Dr.) Yugal Kishore,

Centre Head, CELAR

Message from Team *Lex Terra*

Dear Readers,

It is with much joy and anticipation that we present to you the nineteenth issue of CELAR's fortnightly newsletter, *Lex Terra.*

We congratulate the team for its continuous and praiseworthy collective efforts.

The team of *Lex Terra* wishes to thank all of those who supported this initiative. We would like to express out gratitude to our respected Vice– Chancellor and Centre Head Prof. (Dr.) Yugal Kishore for his continuous support and timely inputs. We would like to thank Mr. Chiradeep Basak, Centre Co-ordinator of CELAR, who has been a source of inspiration from the outset, along-side his unrelenting contribution to all phases of the job, from planning, to setting clear goals and appraising the outcome. Lastly, we would also like to extend our gratitude to our faculty advisors, Ms. Shannu Narayan and Mr. Nayan Jyoti Pathak for their ideas and relentless support.

Based on our publication's impact factor as well as some requests and suggestions by academicians from other law schools, we now share our publication with all law schools, administrators along with a pool of eminent environmental activists, researchers and lawyers in India and overseas. We are also accepting short articles for publication . **So if you are willing to be part of this venture, kindly contribute.**
Our issues goes online every 1st and 16th of each month.
Please keep pouring down your support and concern for mother nature.

Thank you!

Happy Reading!

TECHNOLOGY INTO ENVIRONMENT TOWARDS SUSTAINING THE TERRA

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INTRODUCTION

'Any sufficiently advanced technology is indistinguishable from magic'- Author A. Clarke

Evironment and technology are idiosyncratic in nature, yet the existence of one is vulnerably clingned on to the other. With the ever growing technology speed, the crisis of environment saving has been now flashing for quite some time. Irrespective of the geographical conditions, the exigency is persistent. The quest for restoring of mother earth for the present and the future generation had incepted the concept of "*sustainable development*". Wasteful energy policies, overuse of resources, water supply shortages, global climate change, and deforestation are just some of the issues experts say need to be addressed for humans to achieve sustainable living on this planet. By the year 2025, an additional 2.9 billion people will strain tightening water supplies, and the world's energy needs will go up 60 percent by 2030, according to the United Nations.

SUSTAINABLE DEVELOPMENT

The year 1972 brought with it Stockholm Conference bringing together the then industrially advanced nations along with developing nations to address issues like – rights to adequate food; supply of hygienic water; re assurance of humane connection with nature. A series of meetings followed. In 1980, the International Union for Conservation of Natural Resources (IUCN) was held wherein the plight of sustainabity was rehearsed. World conservation strategy was formed; wherein prominently it was concluded, unless productivity and fertility was protected life on earth was at risk. A decade later the world conservation strategy culminated with approval of World Charter for Nature. Also during 1983 onwards many more bodies came to existence. World Commission on Environment and Development (WCED) formulated 'a global agenda for change'. The report wove together social, economic, cultural and environmental issues and global solutions. It concluded by saying the two are inseparable. The year 1992, the first UN Conference on Environment and Development (UNCED) was held in Rio de Jenerio where "Agenda 21' was adopted. Each nation's right to pursue social and economic progress and assigned the responsibility of adopting a model of sustainable development; the Statement of Forest Principles. Agreements were also reached on the Convention on Biological Diversity and the Framework Convention on Climate Change. UNCED for the first time mobilized the Major Groups and legitimized their participation in the sustainable development process. This participa-

tion has remained a constant until today. For the first time also, the lifestyle of the current civilization was addressed in Principle 8 of the Rio Declaration. The urgency of a deep change in consumption and production patterns was expressly and broadly acknowledged by State leaders. Agenda 21 further reaffirmed that sustainable development was delimited by the integration of the economic, social and environmental pillars. The spirit of the conference was captured by the expression "Harmony with Nature", brought into the fore with the first principle of the Rio Declaration: "*Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature*". Then in 2002, ten years after the Rio Declaration, a follow-up conference, the World Summit on Sustainable Development (WSSD) was convened in Johannesburg to renew the global commitment to sustainable development. The conference agreed on the Johannesburg Plan of Implementation (JPOI). In 2012 'Rio+20' or 'Rio 20' was held. The Conference seeded three objectives: securing renewed political commitment to sustainable development, assessing the progress and implementation gaps in meeting already agreed commitments, and addressing new and emerging challenges.

THEORY OF TECHNOLOGY

Technology and innovation was initially a theory, developed by *Radovan Richta* a Czech philosopher. He defined *'technology' as a material entity created by application of mental and physical effort in order to archive some value.* The theory is divided into three stages. The emergence of technology, made possible by development of rational faculty, paved the way for first stage: the tool. A tool provides a mechanical advantage in accomplishing a physical task, such as an arrow, plow or hammer that allows physical labor to more efficiently achieve his objective. The later part developed animal powered tools involving animals like horse and cow with plough which increased the productivity of food production ten times more. Tools allow one to do things impossible to accomplish with one's body alone, such as seeing minute visual detail with a microscope, manipulating heavy objects with a pulley and cart, or carrying volumes of water in a bucket

The second technological stage was the creation of the machine. A machine (a powered machine to be more precise) is a tool that substitutes the element of human physical effort, and requires only to control its function. Machines became widespread with the industrial revolution, though windmills, a type of machine, are much older.

Examples of this include cars, trains, computers, and lights. Machines allowed humans to tremendously exceed the limitations of their bodies. Putting a machine on the farm, a tractor, and increased food productivity at least tenfold over the technology of the plow and the horse & cow.

The third and final stage of technological evolution is the automation. The automation is a machine that removes the element of human control with an automatic algorithm. Examples of machines that exhibit this characteristic are digital watches, automatic telephone switches, pacemakers, and computer programs.

ENVIRONTECH

Environment technology is a amalgamating the two horizons creating a sustainable energy generating technology. The examples would be energy vehicles, hydrogen fuel cell, pyrolysis, composting toilets etc. the scope of renewable sources are no more restricted to conventional sources. Several breakthroughs throughout the world as crisis knock the door.

Eco-friendly technology often involves few of the following:

- Recycled/bio-degradable content
- Plant based materials
- Reduction of green house gas emission
- Multifunctinality

Here are few ***RECENT BREAKTHROUGHS*** that are changing the way we see sustaining environtech's.

On one hand due to increasing population, growing industrialization, expanding agriculture and rising standards of living have pushed up the demand for water. Efforts have been made to collect water by building dams and reservoirs and creating ground water structures. There is a growing realization that there are limits to 'finding more water' and in the long run, we need to know the amount of water we can reasonably expect to tap and also learn to use it more efficiently. At the time of Independence, i.e., in 1,947, the per capita availability of water in India was 6,008 cubic metres a year. It came down to 5,177 cubic meters' a year in 1951 and to 1,820 cubic meters' a year in 2001. According to midterm appraisal (MTA) of the 10th Plan, per capita availability of water is likely to fall down to 1,340 cubic meters in 2025 and 1,140 cubic meters in 2050. Right on the very other hand, the recent break through; wherein Indian scientist have developed an ecotech for water softening, that could be used in civic water treatment plants for generation of potable water. The team from institute of advance study in science and technology (IASST) in ASSAM; GUWAHATI crafted a Biopolymer using a naturally occurring substance called chitosan (obtained from harder outer skeleton of shellfish, including crab, lobster and shrimps) as backbone for carbon nanoparticles to sit on. In the biopolymer, nano particles are the functional parts which remove calcium and magnesium components of water through ion exchange, the same process that is used by common water purifiers. This material has potential to act as biodegradable and green material for water softening

Electricity and availability ever since invention has been a major requirement in the daily life. But due to lack of resource and renewable ones being a costly installation the scarcity is in continuation.

Blood lamp is one of such creation. A drop of human blood shall activate lights. The secret is luminal - when this react with the iron cells in red blood

corpuscles, it lights up. Another reason besides being a all time available, resource one shall also think twice before wasting energy (putting up lights on).

Bioluminescent Trees are the perfect example sustainability. The luminescent abilities of jelly fish; mushrooms; fireflies are injected into DNA profiling of the chloroplast of resulting into naturally glowing trees. Replacing the old street lights and the energy resource into a convertible source.

White Goats are the new thing in town, which converts normal paper, which cannot be re used again (newspaper, office work papers, old drafts) into toilets rolls. 40 sheets convert into one roll of tissue.

"Sprouts" are the pencils which grow into trees. These are lead free pencils certified with FSC/ PEFC, which means that while one tree is being used for making pencils another is being planted. And addition to that, once the pencil is too small to be used, it can be planted and it grows into a plant or flower.

Another revolution is Pencil Printer. This is where one does not need to buy ink cartize. This printer uses pencils to print pages and can be erased and re used.

Cremation sends more than 6.8 million tons of carbon emissions into the atmosphere every year, caskets take a long time to biodegrade and burial leads to methane emission (the second most prevalent greenhouse gas). But environmental friendly Burial Options are becoming more prevalent. Wicker and cardboard coffins can replace traditional wood, and dry ice is used rather than formaldehyde. These are coffins made from newspapers and have low smoke emission rate. Also one has the choice to customize the design and colour.

Electronic Paper is the next big thing. The piece of newspaper in the morning can be used as a notebook in the class or to read a novel. This paper has tiny micro capsule filled with particles that carry electric charge bonded with steel foil. This paper can rolled certain pattern as designed to and can be reused again and again.

Lily Pads shall turn into a normal idea by the next 30 years. The planet is warming, glaciers are melting, and sea level increasing as a result low lying land shall soon be sun merged. These are eco friendly cities made of polyester fibers which can take in 50000 to 1 lakh populous. The city shall run on only renewable source of energy.

CONCLUSION

Both environment and technology have come a long way since the inception of human race. Some of them by following natural principles of physics and rest by rational part of thinking and observing. But the present condition is not a stage where the environment could be put on hold. Rather for the safeguarding mother earth more of the environtech's are required. Number of nations have involved development of scientific temperament in its grundnorm and numerous initiatives in form of legislations have been framed such as; the intellectual property rights dealings with patents, copyrights etc. The Indigenous and genuine upcoming tech's ought to achieve the stage of sustainability in the soon near future.

'Technology gives us power, but it does not and cannot tell us how to use that power. Thanks to technology, we can instantly communicate across the world, but it still doesn't help us know what to say'

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ENVIRONMENTAL JUSTICE – WHAT IT MEANS AND WHY IT IS NEEDED

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"The greatest threat to our planet is the belief that someone else will save it."

-Robert Swan

The words 'environment' and 'justice' are seldom coined together, despite their overbearing impact and significance both individually as well as when used together. The meaning of the terms 'environment' and 'justice' are well imbibed in our systems but 'environmental justice' is a concept that has not yet made home in our field of vision.

To lay down a simple meaning, 'environmental justice' is said to be prevalent when everyone enjoys the same degree of protection from environmental and health hazards on one hand and have equal access to and say in the decision making process for a healthy environment. A corollary of the same means that there would be full and fair participation by all potentially affected communities in decision making and that there is prevention of denial of, or reduction in, or delay in receipts of benefits by the minorities or the poor. Thus, each and every incident of disproportionate suffering by disadvantaged/minority groups at the international or national or regional levels of environmental risks and hazards and consequent violation of their fundamental human rights is nothing but 'environmental injustice'. It would not be farfetched to say that the poor and the minorities are burdened with more than their share of environmental risks while enjoying a very miniscule portion of the benefits conferred by environmental development. Further fuelled by factors like rural/ urban divide, illiteracy and unawareness, lack of political will and political apathy, biased environmental legislations and undertaking of environmentally hazardous activities by the minorities themselves due to unawareness and partial/total lack of economic alternatives, environmental justice has been reduced to a mere nomenclature.

The present challenge is to understand the link that social justice also extends to and includes the environment. This simply means that we need to step up and challenge the abuse of power which is resulting in environmental damage due to the greed of a privileged few. The goal is to understand that environmental justice and civil rights are not separated from each other. Social justice and equal protection of law are the tools which will help us put an end to institutionalized environmental discrimination.

India has kept up with one parameter of

environmental justice i.e. by recognizing that environmental equity is a fundamental right of every citizen. The core Indian environmental legislation coupled with pro-environment judicial activism more or less heralded a golden period in environmental jurisprudence in the country. Expansion of the scope of the right to life as guaranteed under Article 21 of the Indian Constitution to include the right of every citizen to 'a healthy and pollution free environment' as well as the expansion of environmental law principles form one leg of the journey towards ensuring environmental justice. Coupled with help from Article 48A and Article 51A(g), environmental matters has finally started to receive the attention they deserved. The legislature also responded to the push by the higher judiciary and enacted a few pro-environment and environmental justice enhancing statutes, the latest being The National Environment Tribunal Act, 1995 and The National Environmental Appellate Authority Act, 1997. However, the second and equally important leg of environmental justice, i.e., public participation is conspicuous by its absence.

For environmental justice to turn into reality there has to be both procedural justice as well as distributional justice in the sphere of public participation. Procedural justice implies firstly, that there shall be 'political recognition', meaning that individuals and/or communities are recognised taking into account their history, identity and culture. This is for the simple reason that laws cannot be made in vacuum without understanding the background of a community. Secondly, the public has to be actively granted the ability to participate as equals in the process. On the other side of the weighing scale lies distributional justice which initiates from recognizing that diseases caused due to contaminated food and water and the lack of rapid and effective healthcare and allied services due to factors like poverty, remoteness etc are also injustice. Consequently, meaningful participation would involve constant effort for effective and deliberative tools for participation and the inculcation of capacity at the individual as well as institutional level. Distributional justice is thus a three-pronged process involving inclusion, meaning reaching beyond barriers of lack of education, technology, access and incorporating extensive lobbying; interaction, meaning both sided effective communication and representation of neutral and moderate elements as opposed to radicalized notions; and empowerment, which gauges the degree of influence on the final decision and availability of ongoing opportunities guaranteeing continuous involvement of the masses.

With the above submissions, it is the author's humble suggestion that we take active steps towards the inculcation of environmental justice as a part of our Constitutional philosophy. It is now imperative that we sit up and take notice of the impunity with which environmental injustice is being propagated in our vicinity. It is about time that we take measures to make environmental justice a reality and not let it sit as a mere ideal situation.

THE NEED FOR AN INTERNATIONAL COURT OF ENVIRONMENT

Rishabh Bhojwani

&

Swatilekha Chakraborty

"It is a trite observation that environmental problems, although they closely affect municipal laws, are essentially international; and that the main structure of control can therefore be no other than that of international law"

- Sir Robert Jennings QC, former President of the International Court of Justice, 1995

All States are economic actors who are hesitant to protect the global environment at the expense of their economy. States also have an obligation to protect the national interest and may be reluctant to adhere to global agreements which may appear to come into conflict with that national interest. As a result, the vast majority of Multilateral Environmental Agreements are declaratory initiatives, rather than legally binding treaties with strong compliance and enforcement mechanisms. If a compelling model for compliance and enforcement is created, it could encourage States to buy into global environmental protection standards with the assurance that all States will be held to that standard. In other words, States will operate within a 'level playing field'.

There is no international court which offers a specialized environmental chamber with judges knowledgeable on matters of environmental science, supported by independent scientific advisors. It is crucial that any court that hears environmental cases has judges that fully understand the science behind the case they are dealing with, as their decisions will inevitably influence future State practice and the creation of customary international law.

The global environmental governance regime is a collection of different organizations and MEA secretariats which work together to create a cohesive system. The current state of the environment and the continued advance of climate change suggest that this system could benefit from institutional reform. It is necessary to integrate the decentralized environmental governance regime and provide an enforcement mechanism that holds States and non-state actors to account. There is steady support for a World Environment Organization (WEO) which would provide a centralized hub for compliance and monitoring, and clearer coordination between all of the separate MEA secretariats and international organizations.

The International Court for the Environment would provide an ideal dispute resolution/ enforcement mechanism for a WEO.

A new human "right to a healthy environment" needs to be enshrined in law – and a new International Court on the Environment set up to enforce it – to help poor communities seek "climate change justice" against companies and countries that harm them by accelerating global warming.

That is the recommendation of the International Bar Association (IBA), the legal profession's global representative group, following an in-depth study into the provision of law to fight climate change.

The legal system is woefully unprepared to help the world reduce the greenhouse gas emissions that are exacerbating climate change, and to remedy their consequences, the report found.

Existing legal mechanisms addressing mitigation, adaptation and remediation of climate change are failing to cope with the scale of the global issue and its wide-ranging impact on individuals, leaving climate change justice issues unaddressed. That climate change raises concerns of ethics and justice is now without question.

The report points out that human rights law does not traditionally provide individuals with any remedy against climate change. It calls for a complete overhaul of legal, regulatory and institutional rules to help states, companies and individuals to, for example, more readily access courts to obtain judicial orders to limit further greenhouse gas emissions and provide remedies for victims of climate change impacts, such as rising temperatures or sea levels.

This is a huge task that will largely need to be done from scratch. Among other things, it will involve identifying the "actionable rights" that will determine which climate change transgressions lie within the scope of the court, establishing appropriate standards for proving a legally cognizable causal link between greenhouse emissions and relief sought, and developing methods for awarding remedies.

Natural issues reach out crosswise over universal limits, yet there are no successful worldwide organizations to manage them legitimately. The outcome: the issues exacerbate and endeavors by nations to illuminate them come up short because of the absence of an institutional structure inside of which to manufacture the important worldwide accord and trust.

The present corpus of worldwide ecological commitments – in traditions and multilateral natural ascensions (MEAs) – is cracked and frequently covering. There is practically no open door for the advancement of steady basic leadership or understanding of those commitments. Instability results, to the hindrance of every single intrigued party – States, organizations, groups, NGOs and people.

There are proposition for a "World Environment Organization" (a "WEO" – equal in degree to the

World Trade Organisation). Such a body would require a court or Tribunal to determine debate and issue elucidations of commitments – along the lines of the WTO's Dispute Settlement process. Existing debate determination systems in the universal natural field confine access to equity, by and large to States (as with the ICJ) or where no less than one gathering is a State (as with the Permanent Court of Arbitration) or exceptionally constrained classes of non-state on -screen characters. This leaves huge voting demographics without access to those administrations – an abnormal position in an interconnected world where States are regularly not the key performing artists in cross-outskirt collaborations.

There is no suitable discussion in a matter of seconds ready to apply exploratory and legitimate aptitude to universal natural question or issues. The highly regarded ICJ has been scrutinized in such manner (missing "a brilliant open door") by its own judges in a contradicting feeling in *Argentina* vs. *Uruguay – Pulp Mills* (20 April 2010).

AN INTERNATIONAL COURT FOR THE ENVIRONMENT (ICE)

We want to create an ICE that would help to solve these problems. It would:

- Serve as the default gathering for determination of question concerning global natural law; maintain on issues of ecological
  essentialness without any biased and with the advantage of autonomously confirmed science; and illuminate existing universal ecological law by issuing consultative assessments and announcements of inconsistency.
- Encourage the consensual and dynamic improvement of global ecological law.
- Provide an impartial, straightforward and principled question determination gathering which could manufacture trust and to conflict with the pervasive natural issue "the deplorability of the hall": for instance, in the continuous UN environmental change arrangements and in angling.
- Seek to arbitrate expertly on the science and in addition the law, utilizing: judges with involvement in both science and law; counselors on a legal board; and/or free specialists accessible for inquiries/round of questioning.
- Initially be built up as an intentional debate determination gathering, open to anyone wishing to profit by the mastery and fair arbitration offered, and demonstrating its value by case.
- Serve as the chamber for all MEAS which reference Art 33(1) of the UN Charter, encouraging correspondence, critical thinking and the exchange of thoughts and ability and staying away from the compartmentalization of the present framework.
- Provide backing to a WEO. ICE would be a characteristic accomplice to such an association to give debate determination administrations as found in the WTO and to help with blending universal reactions to ecological issues.

- Offer access to equity to State and non-State on-screen characters alike, addressing a need in the worldwide economy where national outskirts are progressively unessential. It would have a constitution intended to mirror the requirement for the security of both present and future eras and would be completely dedicated to executing Principle 10 of the Rio Declaration and the Aarhus Convention, obliging access to equity for every single concerned national.
- Apply a de minimis or other limit or adequate reality test to avoid vexatious or meritless cases.
- Apply every one of those significant legitimate standards and standards, whether worldwide or civil, which it considers suitable and appropriate having respect to the character of the question before it.

• Likely be found far from the "standard thing" seats of universal courts (The Hague, Geneva, New York, and so forth) to reflect:

- the issues with which it will bargain (regularly in creating nations).
- the risky connection between monetary development and natural debasement (primarily a creating nation issue).

The actuality that huge numbers of the clients of the court won't be in the rich West.

ICE COALITION AT PRESENT

The ICE Coalition is calling for the establishment of an ICE. Its work to date includes:

• Obtained charge absolved status in California under IRC s.501(c) (3).

• Engagement with UK Government, specifically: DECC, DEFRA, FCO.

• Becoming a part association of the United Nations Environment Program

• (UNEP) Stakeholder Forum, which leads on worldwide partner engagement and effort in the keep running up to the UN Earth Summit in Rio de Janeiro, 2012. Engagement with the UN Secretariat in New York.

• Engagement and association with UNEP itself and specifically its International Environment Governance work stream (counting, most as of late, at the 26th Session of the Governing Council, Nairobi, February 2011).

• Involvement with the UNFCCC process, including showing at the COP-MOP in Copenhagen 2009.

• Established joins with Governments of Bangladesh, Brazil, India, Kenya, UK, Finland, Mauritius and with the EU.

• Obtained backing of worldwide law offices: Clifford Chance, DLA Piper.

SUMMARY RECOMMENDATIONS

• Explicit consideration of an ICE in arrangements rising up out of UNFCCC and UNEP forms.

• Recognition of the requirement for an ICE by national governments, business, HGOs, media.

• High-level backing in government, science, discretion, UN, lawful calling and legal. Concurrent working of famous backing, chiefly on the web.

• Offers of backing from any individual, association or nation willing to have an ICE in its underlying structure.

CONCLUSION

In 2002, more than 120 senior Judges from 60 nations around the globe - including 32 Chief Justices - met in Johannesburg on the eve of the World Summit on Sustainable Development to talk about the part of the legal in advancing administration and the principle of law in the field of ecological and supportable advancement. The result of the Symposium was a consistent acknowledgment of the vital part that the legal plays in improving natural administration and the guideline of law through the understanding, improvement, usage and requirement of ecological law with regards to manageable advancement.

THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE IN THE DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW

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Introduction

International Environmental Law is a new and emerging branch of the Public International Law. States started realizing the importance of "a healthy environment" only from 1970's. Before that, their priority always remained safeguarding their economic interests. But when the States started facing the consequences of their acts and scientific developments also started giving the proofs of long term harms of human activities on environment, International Environmental Law also started growing.

International Court of Justice (including its predecessor Permanent Court of International Justice) also known as "World Court", is a principle judicial organ of the United Nations. It is primarily a court of civil jurisdiction entrusted with the task primarily of settling disputes that arise between States. Environmental cases may be brought before the Court in several ways, and the International Court of justice (hereinafter referred as ICJ) only has general and obligatory jurisdiction in contentious matters to the extent that jurisdiction has been conferred upon it by States in accordance with Article 36 (2) of the Statute of the ICJ. In addition to its contentious jurisdiction, the ICJ also has competence to render advisory opinion 'on any legal question at the request of whatever body may be authorised by or in accordance' with the United Nations (hereinafter referred as UN) Charter to make a request. Article 96 (2) of the UN Charter empowers General Assembly, Security Council and Other Organs of the UN to seek its advisory opinion. In the year 1993, ICJ established a special chamber for environmental matters exclusively. It was established under Article 26 (1) of the Statute of the ICJ. Unfortunately, it did not hear any single case till date.

International Environmental Law is perhaps that segment of Public International Law which has attracted least attention of the ICJ. The main reasons may be that either the States do not give much importance to the environment issues or they believe in settling their environment related issues by other mean e.g. through diplomatic channels or alternative dispute resolution methods. Yet, ICJ has made a remarkable contribution in the development of the International Environmental Law through various judgements and advisory opinions. A case to case assessment will help in a better way in understanding the contri-

bution of the Court in the development of the International Environmental law.

Assessment of Cases

Following are some important cases in which the Court made some important and notable observations which helped a lot in the development of International Environmental Law.

Territorial Jurisdiction of the International Commission of the River Oder Case

(United Kingdom, Czechoslovakia, Denmark, France, Germany, Sweden vs. Poland) (1929)

This case decided by the Permanent Court of International Justice (hereinafter referred as PCIJ) was centered mainly on the question that whether the jurisdiction of the International Commission of the River Oder extends to the tributaries rivers also of the River Oder. As such, this case did not involve any direct environmental issue but the Court set out an important international law principle which is very much applicable to International Environmental Law as well. The Court stated that:

"…when consideration is given to the manner in which States have regarded the concrete situations arising out of the fact that a single waterway traverses or separates the territory of more than one State, and the possibility of fulfilling the requirements of justice and the considerations of utility which this fact places in relief, it is at once seen that a solution of the problem has been sought not in the idea of a right of passage in favour of upstream States, but in that of a community of interest of riparian States. This community of interests in a navigable river becomes the basis of a common legal right, the essential features of which are the perfect equality of all riparian States in the user of the whole course of the river and the exclusion of any preferential privilege of any one riparian State in relation to the others."

Thus, this case laid down the important principle of *equitable sharing of water* which was later widely incorporated in different international treaties and applied by different courts and tribunals.

The Corfu Channel Case

(United Kingdom of Great Britain and Northern Ireland vs. Albania) (1949)

This case was based on the incident in which British naval warships were damaged by the mines in Albanian waters while they were passing through the Corfu Channel. The United Kingdom claimed compensation from Albania. Thus, this case was also not directly on any environmental issue. But, it is interesting to note that the ICJ in this case confirmed the principle of *sic utere tuo ut alienum non laedas* (i.e. one should use his own property in such a manner as not to injure that of another). This principle was earlier applied in *Trail Smelter arbitration* of 1948 (United States vs. Canada) also. Later, Stockholm Declaration (1972) and Rio Declaration (1992), the two important environment related international declarations, have incorporated this dictum in their principles. *Principle 21* of the Stockholm Declaration provides that:

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 policies, and 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.

The Rio Declaration has also incorporated this dictum in its Principles with minor modifications. *Principle 2* of it states that:

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 of areas beyond the limits of national jurisdiction.

Nuclear Tests Cases

(Australia vs. France; New Zealand vs. France) (1976)

The same international law principle *sic utere tuo ut alienum non laedas* was repeated by the ICJ in these cases. The Court in its interim order indicated that France should avoid its nuclear tests which can harm the environment of Australia and New Zealand by the radioactive fallout.

This case never reached at its conclusion as the subject matter of the case ceased to exist because of the unilateral statement of the French government assuring not to further conduct any nuclear test. However, these cases drew the attention of the world community towards the negative impacts of the nuclear weapons on environment.

Legality of the Threat or Use of Nuclear Weapons

(Advisory Opinion) (1996)

The United Nations General Assembly in accordance with Article 96 (1) of the Charter of the United Nations in the year 1995 filed a request with the ICJ to give its advisory opinion on the question that 'Is the threat or use of nuclear weapons in any circumstance permitted under international law?' No explicit reference was made to the negative impact of the nuclear weapons on the environment. However, in the course of the proceedings, some States made references to some international treaties and protocols protecting environment with the argument that the use of the nuclear weapons will be unlawful under these legal instruments.

The Court stated its opinion on the environmental issue in the following words:

"…States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. Respect for the environment is one of the elements that go to assessing whether n action is in conformity with the principles of necessity and proportionality.

This approach is supported, indeed by the terms of Principle 24 of the Rio Declaration, which provides

that: Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary."

The final conclusion of the Court do not makes any explicit reference to environmental law. However, in its discussions the Court indicated important environmental factors that are properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflicts.

Gabcikovo-Nagymaros Project Case

(Hungary vs. Slovakia) (1997)

This was the first case before the ICJ in which an environmental problem came before the Court as a direct issue. As per the facts of the Case, in 1977, Hungary and Czechoslovakia concluded a treaty for the construction of a dam project on the Danube River. One of the objectives of the treaty was to preserve the eco-system of the island delta. In 1980's, Hungary stopped working on the project and claimed that it did so on the environmental grounds mainly to protect the wetlands which were been destroyed because of this dam project. The Court had mainly to consider the question that whether there was a state of necessity which would have permitted Hungary to abandon the project. The Court on this point stated that as Hungary itself had helped by act or omission to bring this situation, it cannot rely upon the state of necessity principle. Hungary then further claimed that it is entitled to suspend the work as new requirements of international law for the protection of environment has arrived. On this issue, the Court observed that:

"What is required in the present case by the rule *pacta sunt servanda*, as reflected in Article 26 of the Vienna Convention of 1969 on the Law of Treaties, is that the Parties find an agreed solution within the cooperative context of the Treaty. Article 26 combines two elements, which are of equal importance. It provides that 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith'. This latter element, in the Court's view, implies that, in this case, it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized."

In his separate opinion, Judge Weeramantry tried to draw a hierarchy between right to development and the preservation of the environment:

"After the early formulations of the concept of development, it has been recognized that development cannot be pursued to such a point as to result in substantial damage to the environment within which it is to occur. Therefore development can only be prosecuted in harmony with the reasonable demands of environmental protection.

…a Court cannot endorse actions which are a violation of human rights by the standards of their time merely because they are taken under a treaty

which dates back to a period when such action was not a violation of human rights."

Thus, this case is a landmark case in the development of the international environmental law. In this case, the Court highlighted the emerging importance of the environment conservation so that the coming generation can also get a well preserved earth. The Court made this point clear that development and the environment protection should go together and right to clean environment is a basic human right.

Pulp Mills on the River Uruguay Case (Interim Measures)

(Argentina vs. Uruguay) (2006)

As per the facts of this case, dispute arises between Argentina and Uruguay concerning alleged breaches by Uruguay of obligations incumbent upon it under the statute of the River Uruguay, a treaty signed between the two. One of the main purposes of the treaty was to establish the joint machinery necessary for the optimum and rational utilization of the River Uruguay, which is shared by the two States. Under the treaty, the parties had agreed to establish a regime for the use of the river.

In its application, Argentina charged Uruguay unilaterally authorized the construction of a pulp mill near the city of Fray Bentos, and having failed to comply with the obligatory prior notification and consultation procedure provided by the Statute. Argentina claimed that these mills will pollute the environment of the River Uruguay, and will badly harm the biodiversity and fish stocks.

Argentina accordingly requested the Court to indicate provisional measures requiring Uruguay to suspend forthwith all authorization for the construction of the mills in question, and to take all necessary measures to halt building work on the mills.

The Court in its order emphasized that that the present case highlighted the need for the protection of natural resources while allowing sustainable economic development. It stated that:

"…notwithstanding the fact that the Court has not been able to accede to the request by Argentina for the indication of provisional measures ordering the suspension of construction of the mills, the Parties are required to fulfil their obligations under international law it stressed 'the necessity for Argentina and Uruguay to implement in good faith the consultation and cooperation procedures provided for by the 1975 Statute, with CARU constituting the envisaged forum in this regard'; and encouraged both Parties 'to refrain from any actions which might render more difficult the resolution of the present dispute'."

Concluding Remarks

After discussing various judgements, observations and opinions of International Court of Justice, it can justifiably be concluded that now there are some general obligations upon the States to respect and follow some environmental related principles of environmental law. For example, there is a general obligation upon the States to ensure that activities

within their jurisdiction and control with respect to the environment do not harm the environment of other States. This obligation can be put in the category of customary principles international law. Further, some obligations related to environment are now of *erga omnes* character. A State cannot take defence of violations by other States while justifying its own wrongful activities. Moreover, from the advisory opinions of the Court, it is clear to the States cannot harm the environment while fulfilling their legitimate military objectives.

The court connected right to healthy environment with basic human rights and raised many environment related issues which hopefully will be addressed by the Court in near future.

The effects of the Court's judgements are far reaching particularly on treaties. States are paying proper attention to these observations while concluding any agreement or treaty. This may lead to further development of environmental law in future, and some observations may be turned into concrete environmental principles to be followed universally.

It is true that environment law did not draw much attention of the Court comparatively to other disciplines of international law. States primarily believe on bilateral or multilateral treaties to deal with their environmental issues. But the efforts of the International Court of Justice in the development and formulation of environmental law cannot be ignored while discussing the development of International Environmental Law.

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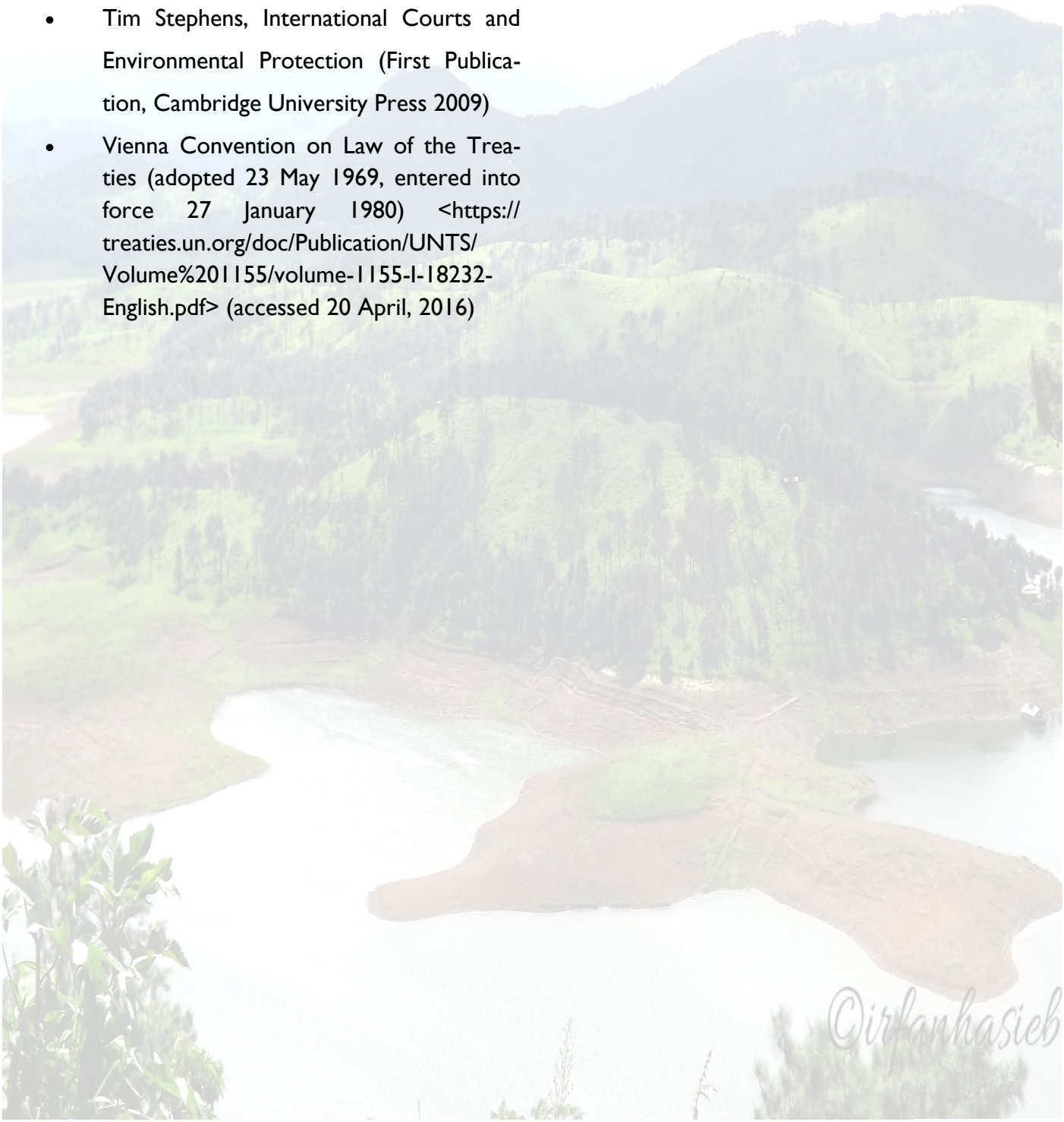

ANALYZING THE CASE, *BHOJRAJ AIRE ON BEHALF OF PRO-PUBLIC Vs. MINISTRY OF POPULATION AND ENVIRONMENT* (WRIT NO: 4196), UNDER THE LENS OF ENVIRONMENTAL JURISPRUDENCE

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Generally, prior to the enactment of the Interim Constitution of Nepal, 2007, and the prevailing Constitution of Nepal (2015), Public Interest Litigations on environmental issues were filed citing the Right to Constitutional Remedy for the infringed Right to life, which is a fundamental right guaranteed by the constitution, as the provision on rights regarding the environment was not recognized as a fundamental right, unlike in the prevailing constitution.

In this case, the plaintiff, Bhojraj Aire on behalf of Pro-Public, filed the case against the Ministry of Population and Environment stating that in the absence of the pollution standards, the legal provisions against pollution are not brought into operation.

The plaintiff claimed that: "Environmental Degradation has risen as a global phenomenon. Increasing air, water and sound pollution, deforestation, hazardous waste materials has caused various consequences, with a massive impact on people and their health. The Ministry of Population and Environment should fix the standards on noise, heat and radioactive and other waste, by issuing a notice in the Nepal Gazette, as provided by Section 7(1) of the Environment Protection Act, 1997, and Rule 14 of the Environment Protection Rules, 1997. But the Ministry of Population and Environment has not been able fix the standards. The inaction of the Ministry thus has violated the Right to life, which included the Right to live in a healthy environment guaranteed by Article 12(1) of the Constitution of the Kingdom of Nepal, 1990".

The case was filed for the Constitutional Remedy for the infringed Right to life, which is a fundamental right guaranteed by the constitution.

In response, the defendant, Ministry of Population and Environment, stated that: "The Ministry has been working to enforce the Environmental Protection Act and Environmental Protection Rules. Various researches are being conducted for the purpose. The standards, as

prescribed by the Act and Rules shall be soon issued, after the completion of research".

The Supreme Court of Nepal, in its first verdict, on June 2nd, 2000 A.D. observed that:

The Ministry of Population and Environment has been working to frame the Environmental Standards, as prescribed by the Act and Rules.

The Supreme Court issued an order against Ministry, to come up with the tentative time schedule in issuing the Environmental Standards, along with related documents.

In response to the order, Ministry provided a letter stating that it shall issue Environmental Standards of air, water and sound pollution on the fiscal year 2002/03 A.D. Also, the Ministry provided its research documents related to the environmental standards, as asked in the verdict.

Again the defendant claimed that the research documents provided by the Ministry didn't meet the international standard, as prescribed by the World Health Organization. Also the experts are of the opinion that the research didn't prescribe the adequate standards to combat the multidimensional aspects of environmental pollution.

After hearing the parties, The Supreme Court, on its final verdict of February 2nd, 2002 A.D. held that: "The protection of the environment and control of pollution are inherent human rights and it is the duty of state to make necessary arrangements for the same. In the absence of the pollution standards, the legal provisions against pollution cannot be implemented". Hence, the Supreme Court issued an order of mandamus in the name of respondents to fix pollution standards within the coming fiscal year in consultation and cooperation with concerned stakeholders, including industrial institutions, local bodies, governmental and non-governmental institutions, as prescribed by the Section 7 of the Environmental Protection Act and Rule 15 of the Environmental Protection Rules.

Analyzing of the Case:

Bhojraj Aire on behalf of *Pro-Public* v. *Ministry of Population and Environment* is regarded as one of the landmark cases in Nepalese Environmental Jurisprudence because of the following reasons:

1. Public Interest Litigation and Locus Standi

The court widened the Locus Standi of Public Interest Litigation by stating that on matters related to public interest (such as environmental issues) public spirited individual or a NGO can file the case.

2. Judicial Activism and Environment

The court recognized the environment as an important and sensitive issue. The court issued an order of mandamus in the name of the respondents to fix pollution standards within the coming fiscal year, in spite of the fact that the plaintiff claimed that they were issuing the standards soon. It shows the proactive role of the judiciary in environmental cases; recognizing its sensitivity and importance.

3. Protection of Environment is an Inherent Human Right

The court observed that the protection of the environment and control of pollution is an inherent human right, and that it is duty of the state to make necessary arrangements for it. Hence, the verdict tried to link the environmental issues with human rights.

4. Internationally recognized Standards and Expert Opinions

The court held the opinion that while fixing the environmental standards, standards that have been recognized internationally and the opinions of experts should be considered as well. Here the court has emphasized the importance of internationally recognized standards and expert opinions in matters of environment.

5. Consultation and Cooperation

The court noted that the consultation and cooperation with the concerned stakeholders, including industrial institutions, local bodies, governmental and non-governmental institutions is an important element while fixing environmental standards. So, the court has recognized the constructive role of multi-stakeholders in environment issues.