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# International measures to protect the environment

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**Abstract**
The advent of the industrial revolution began the course of exploitation of natural resources for the benefit and comfort of the humankind at a pace which was exponentially greater than the rate of their regeneration. This, in addition to the loss of these resources, resulted in the disturbance of the composition of various constituents of the environment leading to the environmental pollution. this phenomenon was not constrained to a single nation rather the entire world faced the issue. Consequently, the world attempted to address the issue jointly. In this paper, an effort has been made to discuss some of the such steps taken by the international community.

**Keywords:** world heritage convention, the convention on international trade in endangered species, the london ocean dumping convention and shortly after the conference, the UNEP regional seas conventions, stockholm conference, 1972, united nations environment programme (UNEP), united nations conventions on human environment (UNCHE), world charter for nature

## Introduction

International environmental law was based on the principles of unfettered national sovereignty over the natural resources and the absolute freedom of the seas beyond the three miles territorial limit. Early attempts to develop the environment law were focused on the conservation of wildlife [1] and to a limited extent the conservation of the rivers and seas. At this time scientific studies were undertaken to understand the effects of industrialization on the various aspects of the environment. This led to the adoption of the early legislation on the national level. The adoption of treaties was ad-hoc, sporadic and limited in scope. Bilateral fishery conventions were adopted in the mid-nineteenth century to stop over-exploitation. The first whaling convention was adopted in 1931 [2]. Similarly a number of conventions were adopted which were primarily concerned with the protection and preservation of the wildlife and natural resources [3].

The next phase of the development of international environmental law began with the creation of the United Nations and the specialized agencies in 1945. It was a period characterized by two features: international organizations at the regional and global level began to address the environmental issues, and the range of environmental concerns addressed by international regulatory authority broadened to include the causes of pollution from certain ultra-hazardous activities. A third feature was the limited recognition of the relationship between economic development and environmental protection. The UN did not set up an environmental organization in its specialized agencies. Further, the UN Charter did not include any provisions related to environment protection. However, in October 1948, the International Union for the Protection of Nature was set up.

During the 1950s and early 1960s, new environmental concerns emerged. Agreements governing international liability for nuclear damage were negotiated, as was the 1954 International Convention for the Prevention of Sea by Oil.

In the late 1960s, there was a significant increase in the multilateral international agreements. Several conventions were negotiated relating to interventions in case of oil-pollution casualties, to civil liability for oil-pollution damage, and to controlling oil pollution in the North Sea. The African Convention on the Conservation of Nature and Natural Resources was concluded in 1968.

The Modern international environmental law dates back to 1972, when countries gathered for the United Nations Stockholm Conference on the Human Environment and the United Nations Environment Programme was established. Many important legal developments took place in the period surrounding the Conference, including the negotiation of the World Heritage Convention, the Convention on International Trade in Endangered Species, the London Ocean Dumping Convention and shortly after the Conference, the UNEP Regional Seas Conventions. If we include Bilateral and multilateral instruments (binding and non-binding), there are more than 870 international legal instruments that have one or more provision addressing the environment. The relevant players on the international environmental law stage now included not just states but corporations, intergovernmental and non-governmental organizations and individuals.

## The Good Neighborliness Principle

It is one of the principles of the modern International

1 Convention between Britain and France relative to fisheries, 11 Nov. 1867 and North Seas Fisheries (Overfishing) Convention, 1882.
2 Convention on the Regulation of Whaling, Geneva, 24 September, 1931.
3 Convention to Protect the Birds Useful to Agriculture, 1902; Water Boundaries Treaty between the United States and Canada, 1909 (first treaty to commit the parties to prevent the pollution); Convention on the Preservation of Fauna and Flora in their Natural State, 1933.

Environmental Law and the doctrine has traditionally being applied in the municipal laws of various nations particularly while deciding the cases of nuisance. The principle has been expressed by the maxim '*sic utere tuo, et alienum non laedas'* which translates into the phrase that 'one should use his property so as not to affect adversely the other's'. The Trail-Smelter Arbitration (United States v. Canada) [4] is a significant judicially decided case at the international level which has applied the said principle while adjudicating upon the issue of Cross-Border environmental pollution. The International Arbitral Tribunal, has held in the aforesaid case that "Under the principles of the International Law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence." The subsequent decisions of the International Court of Justice have confirmed the aforesaid principle as described by the above said legal maxim and applied in the Trail-Smelter Arbitration case.

**Stockholm Conference, 1972**

The first United Nations Conference on the Human Environment (UNCHE) was held in Stockholm, Sweden from June 5 to June 16, 1972. Representatives from 113 countries were present, as well as representatives from many international non-governmental organizations, intergovernmental organizations, and many other specialized agencies. This was the first United Nations conference on the environment as well as the first major international gathering focused on human activities in relationship to the environment, and it laid the foundation for environmental action at an international level. The conference acknowledged that the goal of reducing human impact on the environment would require extensive international cooperation, as many of the problems affecting the environment are global in nature. Following this conference, the United Nations Environmental Programme (UNEP) was launched in order to encourage United Nations agencies to integrate environmental measures into their programs.

**United Nations Conventions on Human Environment (UNCHE)**

The UNCHE emphasized that defending and improving the environment must become a goal to be pursued by all countries. The Stockholm Declaration and Action Plan defined principles for the preservation and enhancement of the natural environment, and highlighted the need to support people in this process [5]. The Conference indicated that "industrialized" environmental problems, such as habitat degradation, toxicity and acid rain, were not necessarily relevant issues for all countries. In particular, development strategies were not meeting the needs of the poorest countries and communities.

Some of the specific issues addressed were the role which industrialized countries should have in the process of protecting the environment, stating that industrial countries should help to close the gap between them and underdeveloped countries while keeping their own priorities and the protection and improvement of the environment in mind. The conference developed a long set of recommendations to act as goals to pursue its mission. Recommendations included that governments communicate about environmental issues that have international implications (such as air pollution), that governments give attention to the training of those who plan, develop, and manage settlement areas, and that agencies work together to address many issues, such as access to clean water and population growth.

However, it was the pending environmental problems that dominated the meeting and led to wider public environmental awareness.

**United Nations Environment Programme**

One of the greatest achievements of the UNCHE was the creation of the United Nations Environment Programme (UNEP), based in Nairobi, Kenya. The mission of UNEP is "to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations."[6] UNEP is the voice for the environment within the United Nations system and works toward this mission by:

- Encouraging international participation and cooperation in addressing environmental issues and environmental policy
- Monitoring the status of the global environment and interpreting environmental data collected
- Creating environmental awareness in governments, society, and the private sector
- Coordinating UN activities pertaining to the environment
- Developing regional programs for sustainability
- Helping environmental authorities, especially those in developing countries, form and implement policy
- Helping to develop international environmental law

It is, therefore, right to say that the Stockholm Conference eventually opted for a non-binding declaration of principles, reflecting commitments of a political and moral, rather than a legal nature, a document 'embodying the aspirations of the world's people for a better environment, rather than imposing self-obligations on the governments in order to fulfill those aspirations. Nonetheless, the Stockholm Declaration is generally regarded as the foundation of the modern international environmental law. Despite its weaknesses, some of the Principles laid down by it are now considered as part and parcel of general international law and as binding on the governments, independent of their specific consent. Numerous principles laid down in it have been subsequently incorporated in the preambles and also in the binding provisions of the treaties.

**World Charter for Nature, 1982**

World Charter for Nature was adopted by the United Nations member nation-states on October 28, 1982. It proclaims five

4 3 UNRIAA 1911,1963-81 (1941)

5 Principles 1 and 2, U.N. International Conference on Human Environment, 1972

6 Statement of Objective, UNEP

"principles of conservation by which all human conduct affecting nature is to be guided and judged." The vote was 111 for, one against (United States) and 18 abstentions.

The Charter demonstrates the widespread acceptance of the principles enunciated at the Stockholm Conference and the practical difficulty of making these principles operational in a world of sovereign and antagonistic States. Nevertheless, the adoption of the Charter is important.

The World Charter is not a binding Treaty but it exerts a considerable moral force on accepting States and the member of the United Nations. The purpose of the Charter is to provide a procedural and substantive protection to the global environment from the impact of industrialization. The Charter recognizes that mankind is a part of nature and life depends on the uninterrupted functioning of the natural systems. Hence, the man must recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources.

The Charter laid down that "Nature shall be respected and its essential processes shall not be impaired [7]. The Charter states that due account shall be taken of the fact that the conservation of nature is an integral part of social and economic development activities. The Charter demands that activities which are likely to cause irreversible damage to nature shall be avoided. It set forth 'principles of conservation by which all human conduct affecting nature is to be guided and judged' [8]. The Charter differs from the Stockholm Declaration in substance and form: it is an avowedly ecological instrument. Whereas the Stockholm focused on the protection of nature for the benefit of mankind, the Charter emphasizes the protection of nature as an end in itself. The Charter was strongly supported by developing countries, marking a change from the general reluctance which many of these countries had expressed at Stockholm ten years ago for international environmental policy. As a standard of ethical conduct, many of its provisions are now reflected in treaties.

**The Montreal Protocol (Ozone Treaty), 1987**

The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 [9] is an international treaty [10], designed to protect the Ozone Layer by phasing out the production of a number of substances believed to be responsible for ozone depletion. The treaty was opened for signature on September 16, 1987, and entered into force on January 1, 1989, followed by a first meeting in Helsinki, May 1989. Since then, it has undergone seven revisions/amendments [11]. It is believed that if the international agreement is adhered to, the ozone layer is expected to recover by 2050. Due to its widespread adoption and implementation it has been hailed as an example of exceptional international co-operation with Kofi Annan [12] quoted as saying that "perhaps the single most successful international agreement to date has been the Montreal Protocol".

**Scope of the treaty**

The treaty is structured around several groups of halogenated hydrocarbons that have been shown to play a role in ozone depletion. All of these ozone depleting substances contain either chlorine or bromine (substances containing only fluorine do not harm the ozone layer). For each group, the treaty provides a timetable on which the production of those substances must be phased out and eventually eliminated.

The stated purpose of the treaty is that the signatory states shall accept a series of stepped limits on CFC use and production.

Under the Montreal Protocol on Substances that Deplete the ozone Layer, Parties to this Protocol agreed to set year 2013 as the time to freeze the consumption and production of HCFCs. They also agreed to start reducing its consumption and production in 2015. The time of freezing and reducing HCFCs is then known as 2013/2015.

There are a few exceptions for "essential uses", where no acceptable substitutes have been found (for example, in the metered dose inhalers commonly used to treat asthma and other respiratory problems) or Halon fire suppression systems used in submarines and aircraft (but not in general industry).

Several reports have been published by various governmental and non-governmental organizations to present alternatives to the ozone depleting substances, since the substances have been used in various technical sectors, like in refrigerating, agriculture, energy production, and laboratory measurements.

**Multilateral Fund [13]**

The *Multilateral Fund for the Implementation of the Montreal Protocol* provides funds to help developing countries to phase out the use of ozone-depleting substances.

The Multilateral Fund was, perhaps, the first financial mechanism to be created under an international treaty. It embodies the principle agreed at the United Nations Conference on Environment and Development in 1992 that countries have a common but differentiated responsibility to protect and manage the global commons.

The Fund is managed by an executive committee with an equal representation of seven industrialized and seven Article 5 countries, which are elected annually by a Meeting of the Parties. The Committee reports annually to the Meeting of the Parties on its operations.

Up to 20 percent of the contributions of contributing parties can also be delivered through their bilateral agencies in the form of eligible projects and activities.

The fund is replenished on a three-year basis by the donors. Pledges amount to US$ 2.1 billion over the period 1991 to 2005. Funds are used, for example, to finance the conversion of existing manufacturing processes, train personnel, pay royalties and patent rights on new technologies, and establish national ozone offices.

**Impact of the Montreal Protocol**

Since the Montreal Protocol came into effect, the atmospheric

7 Principle 1, World Charter for Nature

8 Principle 6, World Charter for Nature. (he roots of the subsequently popular Precautionary Principle can be found in Principle 6)

9 (a protocol to the Vienna Convention for the Protection of the Ozone Layer, 1985)

10 hence a legally binding document,

11 in 1990 (London), 1991 (Nairobi), 1992 (Copenhagen), 1993 (Bangkok), 1995 (Vienna), 1997 (Montreal), and 1999 (Beijing).

12 Former Secretary General, The United Nations.

13 established under Article 10, the Montreal Protocol.

concentrations of the most important chlorofluorocarbons and related chlorinated hydrocarbons have either leveled off or decreased. Halon concentrations have continued to increase, as the halons presently stored in fire extinguishers are released, but their rate of increase has slowed and their abundances are expected to begin to decline by about 2020. Also, the concentration of the HCFCs increased drastically at least partly because for many uses CFCs (e.g. used as solvents or refrigerating agents) were substituted with HCFCs. While there have been reports of attempts by individuals to circumvent the ban, e.g. by smuggling CFCs from undeveloped to developed nations, the overall level of compliance has been high. In consequence, the Montreal Protocol has often been called the most successful international environmental agreement to date. In a 2001 report, NASA found the ozone thinning over Antarctica had remained the same thickness for the previous three years. However, in 2003 the ozone hole grew to its second largest size. The most recent (2006) scientific evaluation of the effects of the Montreal Protocol states, "The Montreal Protocol is working. There is clear evidence of a decrease in the atmospheric burden of ozone-depleting substances and some early signs of stratospheric ozone recovery."

Unfortunately, the Hydrochlorofluorocarbons, or HCFCs, and Hydrofluorocarbons, or HFCs, are now thought to contribute to anthropogenic global warming. On a molecule-for-molecule basis, these compounds are up to 10,000 times more potent greenhouse gases than carbon dioxide. The Montreal Protocol currently calls for a complete phase-out of HCFCs by 2030, but does not place any restriction on HFCs. Since the CFCs themselves are equally powerful as greenhouse gases, the mere substitution of HFCs for CFCs does not significantly increase the rate of anthropogenic global warming, but over time a steady increase in their use could increase the danger that human activity will change the climate.

**Rotterdam Convention, 1998**

The Rotterdam Convention [14] is a multilateral treaty to promote shared responsibilities in relation to importation of hazardous chemicals. The convention promotes open exchange of information and calls on exporters of hazardous chemicals to use proper labeling, include directions on safe handling, and inform purchasers of any known restrictions or bans. Parties can decide whether to allow or ban the importation of chemicals listed in the treaty, and exporting countries are obliged to make sure that producers within their jurisdiction comply.

The text of the Convention was adopted on 10 September 1998 by a Conference of Plenipotentiaries in Rotterdam, the Netherlands.

The Convention entered into force on 24 February 2004.

**The objectives of the Convention are**

- to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm;
- to contribute to the environmentally sound use of those hazardous chemicals, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

The Convention creates legally binding obligations for the implementation of the Prior Informed Consent (PIC) procedure. It built on the voluntary PIC procedure, initiated by UNEP and FAO in 1989 and ceased on 24 February 2006.

**Major Provisions**

The Convention covers pesticides and industrial chemicals that have been banned or severely restricted for health or environmental reasons by Parties and which have been notified by Parties for inclusion in the PIC procedure. One notification from each of two specified regions triggers consideration of addition of a chemical to Annex III of the Convention, Severely hazardous pesticide formulations that present a hazard under conditions of use in developing countries or countries with economies in transition may also be nominated for inclusion in Annex III.

There are 40 chemicals [15] listed in the Convention and subject to the PIC procedure, including 25 pesticides, 4 severely hazardous pesticide formulations and 11 industrial chemicals. Many more chemicals are expected to be added in the future. The Conference of the Parties decides on the inclusion of new chemicals.

Once a chemical is included in Annex III, a "decision guidance document" (DGD) containing information concerning the chemical and the regulatory decisions to ban or severely restrict the chemical for health or environmental reasons, is circulated to all Parties.

Parties have nine months to prepare a response concerning the future import of the chemical. The response can consist of either a final decision (to allow import of the chemical, not to allow import, or to allow import subject to specified conditions) or an interim response. Decisions by an importing country must be trade neutral (i.e., apply equally to domestic production for domestic use as well as to imports from any source).

The import decisions are circulated and exporting country Parties are obligated under the Convention to take appropriate measure to ensure that exporters within its jurisdiction comply with the decisions.

The Convention promotes the exchange of information on a very broad range of chemicals. It does so through:

- the requirement for a Party to inform other Parties of each national ban or severe restriction of a chemical;
- the possibility for Party which is a developing country or a country in transition to inform other Parties that it is experiencing problems caused by a severely hazardous pesticide formulation under conditions of use in its territory;
- the requirement for a Party that plans to export a chemical that is banned or severely restricted for use within its territory, to inform the importing Party that such export will take place, before the first shipment and annually thereafter;

14 The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,1998

15 Annexure III, the Rotterdam Convention

- the requirement for an exporting Party, when exporting chemicals that are to be used for occupational purposes, to ensure that an up-to-date safety data sheet is sent to the importer; and
- Labeling requirements for exports of chemicals included in the PIC procedure, as well as for other chemicals that are banned or severely restricted in the exporting country.

In view of the aforesaid, it is evident that the Rotterdam Convention vindicates the Precautionary Principle of the environmental law, which stresses upon taking measures to prevent the degradation of environment rather than on treating it once the damage has been caused.

**The United Nations Conference on Environment and Development, 1992**

To effectively highlight the consequences of man's recklessness [16] the United Nations Conference on Environment and Development [17] was held in Rio de Janeiro from June 3 to June 14, 1992.

172 nations participated in the conference, with 108 sending their heads of state or government. Some 2,400 representatives of non-governmental organizations (NGOs) also attended the Summit.

The Rio Declaration laid 27 Principles which inter-alia emphasize on Sustainable Development [18] to equitably meet the developmental needs of the present and future generations [19], eradication of poverty programmes [20], reduction and elimination of unsustained patterns of production and consumption and promotion of demographic policies [21], public participation in decision making [22], national environment legislation [23], precautionary approach to protect the environment, undertaking the Environment Impact Assessment for proposed activities which are likely to have a significant adverse impact.

The issues which divided the developed and the developing countries throughout the world were discussed and addressed at the Summit. Some of the said issues were:

1. **Greenhouse Gas Emissions**: The developed countries wanted a shift from the use of coal and wood for energy and to stabilise the Carbon dioxide emission at 1990 levels by 2000 A.D. On the other hand, the developing and the underdeveloped countries blamed the rich nations for excessive emissions and opposed any substantial cut in their emissions lest it hampers their development.
2. **Forests:** The developed world wanted a legally binding convention to restrict deforestation in the tropical countries rich in biodiversity, while the not so rich opposed the same on the ground of the breach of the national sovereignty. They demanded that the rich must compensate them for any such conservation and must be ready to share the profits for research on species.
3. **Population:** the rich wanted the poor world to control their population with a view to protect the environment while the poor blamed the excessive consumption based attitude of the rich countries for the ills of the environment.
4. **Technology transfer:** the rich world asserted that the development of the Green Technology was commercial and any body desirous of utilizing the same must pay for the same which was not acceptable to the Third World and developing countries.
5. **Finance:** the developed world stated that the existing mechanism of the Global Environment Fund was sufficient and stressed on voluntary contribution from all the participants. On the contrary the Developing and underdeveloped nations stressed on the "Polluter Pays Principle" and demanded an international institution in place of the GEF.

**Achievements of the Summit**

1. An important achievement of the Summit was an agreement on the *Climate Change Convention*, [24] to reduce the carbon dioxide emission which was signed by 150 countries including the biggest polluter, the Unites States.. Another agreement was to "not carry out any activities on the lands of indigenous peoples that would cause environmental degradation or that would be culturally inappropriate"
2. **Rio Declaration on Environment and Development [25]:** The Rio Declaration is a set of 27 principles covering environmental protection and responsible development. These legally non-binding principles define the rights of people to development, and their responsibilities to safeguard the common environment. The Declaration recognises that the only way to have long term social and economic progress is to link it with environmental protection and to establish equitable global partnerships between governments and key actors of civil society and the business sector.

   The Declaration includes many progressive approaches like the polluter-pays-principle (the polluter bears the costs of pollution) or the precautionary principle (carry out environmental assessments to identify adverse impacts and eliminate any potential harms from a project before it is started). It advocates that today's development shall not undermine the resource base of future generations and that developed countries bear a special responsibility due to the pressure their societies place on the global environment and the technologies and financial resources they command. Strong environmental policies are inevitable but should not be used as an unjustifiable means of restricting international trade and shutting off the Northern markets for Southern countries. However, nations shall eradicate unsustainable patterns of production and consumption.
3. **Agenda 21:** a blueprint for ecologically safe development upto the year 2000 and beyond was adopted. It covered the issues involving the transfer of environment-friendly technology, creating environmental awareness, an

16 this led to the destruction of the large parts of the rainforests in Brazil.
17 also known as the Rio Summit and the Earth Summit (or, in Portuguese, Eco '92)
18 Article 1
19 Article 3
20 Article 5
21 Article 8
22 Article 10
23 Article 13
24 The said Convention in turn led to the Kyoto Protocol
25 Also known as the Earth Charter.

integrated approach to land resource use, checking desertification, peaceful use of the nuclear technology etc. However, ironically, the Agenda was conspicuous by its silence over the issue of the liability of payment needed for the implementation of the aforesaid issues.

4. **Convention on Biological Diversity, 1992:** At UNCED, the UN Convention on Biological Diversity was signed by 154 member countries. The main objectives of the convention were to conserve biological species, genetic resources, habitats and ecosystems; to ensure the sustainable use of biological materials; and to guarantee the fair and equitable sharing of benefits derived from genetic resources. *"The worlds biological diversity - the variability among living organisms - is valuable for ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic reasons."* With these opening remarks and the conclusion that some human activities reduce diversity the convention stresses the need to conserve it prevent its loss by providing substantial investments, which *"...will pay off with a broad range of environmental, economic and social benefits."* Humans should make sustainable use of world's biological diversity so as not to lead to its long-term decline.

   It has to be noted, that many countries had grave reservations about the convention. The reluctance did not relate so much to the protection of habitats such as rainforests or wetlands, as to the question how the genetic wealth was to be used. Eventually, the US did not sign the convention, because it was feared that the convention would constrain US companies from accessing the genetic resources of developing countries (which was indeed an objective of the convention).

   **The Convention stated that**

   - Countries are to facilitate access to genetic materials within their borders for environmentally sound use. Access will be allowed with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other use of genetic resources;
   - Developing countries are to have access to environmentally sound technologies that they need for the conservation and sustainable use of biodiversity. This access will be under fair and most favourable terms, and will recognise patent rights;
   - Developing countries are to have access to technology that makes use of resources they provided. They are also to have a role in biotechnological research;
   - Developing nations are to receive technical and scientific assistance, so that they can develop their own institutions and expertise in sustainable use of biological diversity;
   - Countries are to consider the need for an agreement on the safe handling and use of living organisms modified by biotechnology.

   Financing of programs of the convention was to be provided by developed countries that sign the convention and shall provide new financial aid to developing countries to help them implement terms of the Convention. The initial funding will be handled by three United Nations Organizations involved in environment and development.

5. **New UN Panel on Environment:** To assess the environmental impact of lending by the World Bank and the International Monetary Fund, and implementation of Agenda 21 it was agrees that a panel should be set up.

**Significance of the Earth Summit**

The Earth Summit was intended to call attention to the environment as an urgent international issue and to agree on how to fix it. What in actual the summit achieved was that the problem of environment was recognized as central to saving this planet and inscribed as the agenda of the age.

However, the summit failed to achieve consensus on crucial environmental issues and to extract definite commitments for financial resources from the developed countries. The summit failed to raise enough funds for the GEF. The dispute related to the technology transfer remained unclear. The issue of the ever increasing world population was not addressed by the Summit. It appeared that the developed nations are unwilling to bear the responsibility to improve the environment, which has suffered a lot due to their unsustainable way of living. Thus, it emerged from the 1992 Summit that for any concrete action on the issue of the global environment, it is inevitable that the developed world has to be more firm in its commitments and the developing countries must endeavor to delink, as much as possible, the issue of environment from the development.

**Cartagena Protocol on Biosafety, 2000**

On 29 January 2000, the Conference of the Parties to the Convention on Biological Diversity adopted a supplementary agreement to the Convention known as the Cartagena Protocol on Biosafety. The Protocol seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology[26]. It establishes an advance informed agreement (AIA) procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. The Protocol contains reference to a precautionary approach (precautionary principle) and reaffirms the precaution language in Principle 15 of the Rio Declaration on Environment and Development. The Protocol also establishes a Biosafety Clearing-House [27] to facilitate the exchange of information on living modified organisms and to assist countries in the implementation of the Protocol. The Biosafety Protocol would require exporters of genetically modified organisms to obtain prior approval from the importing country. Such regulations are intended to allow countries to reduce the ecological risks from introducing genetically altered plants, animals and microorganisms into the environment. The US and other big agricultural exporters, in order to protect the interests of their farmers, were in denial mode about the Protocol.

However, even in absence of any treaty or protocol, the countries can regulate the import of any genetically modified organism through the national laws as was done by India

26 specially the genetic modification.

27 Established under Article 20, paragraph 1, of the Cartagena Protocol on Biosafety

through the recently enacted, *Biological Diversity Act,2002.*

**Biosafety Clearing House**

The term "clearing-house" refers to a mechanism or institution that brings together seekers and providers of goods, services or information, thus matching demand with supply.

The BCH is established as part of the Clearing-House Mechanism (CHM) of the Convention on Biological Diversity (CBD), in order to:

a. Facilitate the exchange of scientific, technical, environmental and legal information on, and experience with, living modified organisms; and
b. Assist Parties to implement the Protocol, taking into account the special needs of developing country Parties, in particular the least developed and small island developing States among them, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity.

The BCH fulfills its mandate by providing a dynamic platform where information is registered through the Management Centre and where it can be easily searched and retrieved

**U.N. Framework convention on climate change (UNFCCC)**

The United Nations Framework Convention on Climate Change (UNFCCC) was opened for signature at the 1992 United Nations Conference on Environment and Development (UNCED) conference in Rio de Janeiro (known by its popular title, the Earth Summit). On June 12, 1992, 154 nations signed the UNFCCC that upon ratification committed signatories' governments to a voluntary "non-binding aim" to reduce atmospheric concentrations of greenhouse gases with the goal of "preventing dangerous anthropogenic interference with Earth's climate system." These actions were aimed primarily at industrialized countries, with the intention of stabilizing their emissions of greenhouse gases at 1990 levels by the year 2000; and other responsibilities would be incumbent upon all UNFCCC parties. The parties agreed in general that they would recognize "common but differentiated responsibilities," with greater responsibility for reducing greenhouse gas emissions in the near term on the part of developed/industrialized countries, which were listed and identified in Annex I of the UNFCCC and thereafter referred to as "Annex I" countries.

According to terms of the UNFCCC, having received over 50 countries' instruments of ratification, it entered into force March 21, 1994. Since the UNFCCC entered into force, the parties have been meeting annually in Conferences of the Parties (COP) to assess progress in dealing with climate change, and beginning in the mid-1990s, to negotiate the Kyoto Protocol to establish legally binding obligations for developed countries to reduce their greenhouse gas emissions.

**The Third Conference of the Parties to the UNFCC (COP-3), The Kyoto Protocol on Climate Change**

The Kyoto Protocol to the United Nations Framework Convention on Climate Change was adopted by COP-3, in December 1997 in Kyoto, Japan, after intensive negotiations. Most industrialized nations and some central European economies in transition (all defined as Annex B countries) agreed to legally binding reductions in greenhouse gas emissions of an average of 6 to 8% below 1990 levels between the years 2008-2012, defined as the first emissions budget period. The developing Countries expressed the view that their economic conditions do not permit them to accept such commitments. Therefore, they should be exempted for the time being under the Protocol. They only agreed for emissions trading among all countries as part of Clean Development Mechanism (CDM) [28]. The Protocol provides for trading in emission credits between those who don't use their entitlement and those who exceed it, purportedly to enable the developing countries to replace their dirty technologies. The CDM seemingly allows developed countries to implement and pay for carbon-reducing projects in developing countries. However, the provision is largely undefined. India and China resisted emission trading scheme because they wanted the developed countries to bear the major costs of the global carbon reductions.

The Kyoto Protocol is criticized on the ground that it calls for a sharp reduction of emissions in relatively a shorter period of time. The targets are ambiguous with no limit on compliance cost (which could be too high). The USA argues that the Protocol is unfair to it and other developed nations as it exempts 80% of the world from compliance. However, in reality, it is these developed countries which are primarily responsible for much of the global warming, the USA topping the list. Under the Protocol, the United States would be required to reduce its total emissions an average of 7% below 1990 levels, however neither the Clinton administration nor the Bush administration sent the protocol to Congress for ratification. The Bush administration explicitly rejected the protocol in 2001.

**COP-15, Copenhagen, Denmark**

COP15 will be held in Copenhagen, Denmark and will last two weeks from 7 December to 18 December 2009. It is expected that ministers and officials from 192 countries will take part. In addition, there will be participants from a large number of organisations.

The overall goal for the COP15 United Nations Climate Change Conference hosted by Denmark is to establish an ambitious global climate agreement for the period from 2012 when the first commitment period under the Kyoto Protocol expires. All eyes form the world over are lover the COP15, as, according to an IPCC report, it is perhaps the last time where an international accord to prevent the Global Warming could be arrived at before it's too late act.

**Aarhus Convention [29]**

The Aarhus Convention was signed on June 25, 1998 in the Danish city of Aarhus and entered into force on 30 October 2001. As of July 2009, it had been signed by 40 (primarily European and Central Asian) countries and the European Community and ratified by 41 countries. It had also been ratified by the European Community, which has begun applying Aarhus-type principles in its legislation, notably the

28 Article 12, the Kyoto Protocol

29 The UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,1998

Water Framework Directive [30].

The Aarhus Convention grants the public rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the local, national and trans-boundary environment. It focuses on interactions between the public and public authorities.

The Convention has a unique Compliance Review Mechanism, which can be triggered in four ways:

1. a Party makes a submission concerning its own compliance,
2. a Party makes a submission concerning another Party's compliance,
3. the Convention Secretariat makes a referral to the Committee, or
4. a member of the public makes a communication concerning the compliance of a party.

The Compliance mechanism is unique in international environmental law, as it allows members of the public to communicate concerns about a Party's compliance directly to a committee of international legal experts empowered to examine the merits of the case. Nonetheless, the Compliance Committee cannot issue binding decisions, but rather makes recommendations to the full Meeting of the Parties (MoP). However, in practise, as MoPs occur infrequently, Parties attempt to comply with the recommendations of the Compliance Committee. As of August 2009, 41 communication from the public - many originating with non-governmental organizations - and 1 submission from Party had been lodged with the Convention's Compliance Committee.

The Kiev Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention was adopted on 21 May 2003, in Kiev, Ukraine. 36 States and the European Community signed the Protocol. As of July 2009, 18 countries had ratified the Protocol. The European Community had also ratified the Protocol.

The Kiev Protocol is the first legally binding international instrument on Pollutant Release and Transfer Registers (PRTRs). PRTRs are inventories of pollution from industrial sites and other sources such as agriculture and transport. The objective of the Protocol is "to enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers (PRTRs)." The Protocol places indirect obligations on private enterprises to report annually to their national governments on their releases and transfers of pollutants.

The influence of the Aarhus Convention also extends beyond the environmental field. At the 2nd Internet Governance Forum, held on 12-15 May 2007, in Rio de Janeiro, the Convention was presented as a model of public participation and transparency in the operation of international forums.

**International Agreements and Declarations and the Indian Constitution**

The Directive Principles of State Policy provide for promotion of international peace and security [31]. Moreover, the Constitution confers wide and overriding power on the Parliament 'to make any law for the whole or any part of India for implementing any treaty, agreement or convention with any country or any decision made at any international conference, association or body.' [32] The Supreme Court in the case of *PUCL* v.*Union of India* [33] after referring to the International Covenant of Civil and Political Rights, 1966 and the Universal Declaration of Human Rights, 1948 observed that-

"It is almost an accepted proposition of Law that the rules of the international customary law which are not contrary to the municipal lawshall be deemed to be incorporated in the domestic law"

Sekri C.J. also clarified in *Kesavanand Bharti* v. *State of Kerala* [34] that-

"It seems that, in view of Article 51 of the Constitution, this court must interpret the language of the Constitution, if not intractable, which is after all a municipal law, in light of the United Nations Charter and the solemn declarations subscribed by India."

Therefore, the Supreme Court has referred to, time and again, several international covenants while interpreting Fundamental Rights and cases relating to environmental pollution and ecological imbalances.

**International Environmental Law and Its Application into the Domestic Law**

The Indian Parliament has passed many environmental laws to implement the international environmental treaties, covenants and protocols etc. Following are some of the instances where such laws have been passed by the Indian Parliament:

- 'The Environment (Protection) Act, 1986 and the Air (Prevention and Control of Pollution) Act, 1981, have been passed to implement the decision taken at Stockholm Declaration in 1972.
- CFC Substance Rule of 2000 notified under the Environment (Protection) Act, 1986, to implement the Montreal Conference 1987, Vienna Convention for the Protection of the Ozone Layer, 1985 and the Kyoto Protocol, 1997 etc.
- The Public Liability Insurance Act, 1991 was passed to fulfil the commitment made by India 'to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages' called upon as per decision at the United Nations Conference on Environment and Development (UNCED) held at Rio-de-Janeiro in June, 1992.
- The National Environment Tribunal Act, 1995 provides that the Act has been passed as 'decisions were taken at the UNCED, in which India participated, calling upon the States to develop national laws regarding Liability and compensation for the victims of pollution and the environmental damages.'

30 Directive 2000/60/EC.

31 Article 51, the Constitution of India

32 Article 253, the Constitution of India.

33 (1997) 1 SCC 301

34 (1973) 4 SCC 225

**View of the Indian Judiciary Regarding the Applicability of the International Conventions and Agreements to the Domestic Law**

In consonance with the aforesaid provisions of the Indian Constitution, the Indian courts of law have been proactive in deciding the issues concerning the environmental protection and preservation in accordance of the relevant international conventions. In addition thereto, India is among one of those nations where, through the ingenuous device of the Judicial Activism and the Public/Social Interest Litigation, the courts have often exceeded the conservative judicial boundary predefined by the Constitution to vindicate the environmental justice and fill up the vacuum created by the complacency of the Indian Legislature and the Executive.

For instance, Dr. A.R. Lakshmanan, J. of the Supreme Court, in the case of *Intellectuals Forum, Tiirupathi* v. *State of A.P* [35]. considered the issue of the economy and ecology dichotomy and after acknowledging the Stockholm Convention, the Rio Declaration and the Brundtland Report, decided the issue on the basis of the principle of Sustainable Development, as codified under the Principle 4 of the Rio Declaration on Environment and Development.

Similarly, in the case of *Karnataka Industrial Development Board* v. *C. Kenchappa* [36], the Supreme Court speaking through Dalveer Bhandari J., has reiterated that the Stockholm Convention is the Magna Carta of our environment. The Court further showed its approval to its earlier observations in the case of *Vellore Citzens' Welfare Forum* v. *Union of India* [37] accepting the Sustainable Development and the Polluter Pays Principle as fundamental to the Indian Law.

As such it can safely be said that the Indian Judiciary has followed a liberal and open minded approach while deciding the cases related to the environment and has not restrained itself from exploiting the principles as set out at the international front while dealing with the environmental issues.

**Summary**

In addition to the aforesaid international institutional meetings and agreements there have been many more, such as the Report of the World Commission on Environment and Development (WCED), 'Our Common Future', (Brundtland Report),1987 which has re-emphasized the golden principles of environment protection, namely the concepts of *sustainable development, precautionary principle, and principle of the intra and inter generational equity.* Similarly, the World Summit on Sustainable Development (WSSD), 2002 (Johannesburg Summit) had also tried to set some vague targets to address the issue of the environmental degradation.

However, it is a matter of great worry and irony that instead of adopting any pragmatic approach and a set agenda the world is engaged in the futile play of empty rhetoric and a senseless bush beating when it comes to the issue of Climate Change/ Global Warming/ environmental pollution. The world has unanimously acknowledged the terrorism as a common challenge, however it has preferred to overlook the environmental issues which are far severe in their impact over the global population.

The climate issue is too complicated to swallow in one gulp, as was tried in Kyoto in1997. This invites a toothless agreement that could be more posturing than progress. We should think about the component parts of real progress, and then insist on practical policies by all major players, even as the legal framework is hammered out for later signature. There is still time for three part package: a political framework, a financing package and a series of practical steps announced by all major region to tilt the trajectory of emissions. In addition to all the talks the governments should announce a meaningful set of practical programmes to reduce emissions on a large scale. These should include: testing carbon capture and sequestration at coal-fired plants in the US, Europe, China, India and Australia; tightening global supervision to support a rapid expansion of a safe nuclear power; increasing global projects in renewable power; establishing a global network of engineering and scientific institutions to help each government to understand the costs, benefits and trade-offs of clean-tech options; increasing the donor financing of clean energy in low income Africa; raising energy efficiency through rapid adoption of specific improved technologies; and a new generation of electric-powered vehicles.

Let's hope that when the world converges in Copenhagen, prepared not only to sign a political statement but launch a range of legal actions that can begin to turn away from the global threat of catastrophe. Taking the problem in steps and committing to practical actions is each area would set a path towards bold emission reductions, and would help to inspire the world to do more. The world is confused. A practical approach of the U.S., China, Europe and others on specific technologies and avoid deforestation can help to break the logjam.

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36 AIR 2006 SC 2038
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