

## **Understanding the Importance of Biodiversity and Conservation and Its symbiotic relation with mankind based on International and National Legal Setting**

*M. Sabri Yusof.  
Suria Fadhillah bt Md Pauzi*

### ABSTRACT

*The livelihood of mankind, this generation and the other generation to come is interdependent on how we appreciate and approach the environment and the many abundance pool of biodiversity around the globe. Mankind must acknowledge the problem that was created due to the over exploitation of the earth biodiversity for commercial short term benefit; and try our very best to ratify our mistake through a regime of positive action that are more sustainable in nature. Concerted measures must be taken by all state actors to implement agreed international environmental law and policy at both global and national level.*

**Keyword:** *Biodiversity, Conservation*

### **Introduction**

Conservation of biodiversity includes the conservation of flora and fauna, variety among living organisms and the ecological communities which they inhabit. Biodiversity can be considered in relation to three hierarchical categories which describe different aspects of living systems measured in different ways—Phillippe Sands (1980), p. 368. It includes genetic diversity (the variation of genes within a species), species diversity (the variety of species within a region), and ecosystem diversity (the variety of ecosystems within a region). Other expressions of biodiversity include the relative abundance of species, the age structure of populations, the pattern of communities in a region, and changes in community composition and structure over time. -Ibid.

While extinction of species is in the natural order, it has reached alarming proportions—Alexandra Kiss and Dinah Shelton, (1991) *International Environmental Law*, pp.239-40. This impoverishment that represents the humanity and the universe in general is not only biological, but also scientific, cultural and economic. As a result, international environment measures of protection has gain enormous importance.

### **The Importance of Conservation of Biodiversity**

The reasons for conserving nature and biodiversity are the essentially threefold: First, biodiversity provides an actual and potential source of biological resource (including food, pharmaceutical and other material values which support fisheries, soil conditions and parks). Second, biodiversity contributes to the maintenance of the biosphere to conditions which support human and other life. Third, biodiversity is worth maintaining for non-scientific of ethical and aesthetic value—Phillippe Sands (1994) *Principles of International Environmental Law*. Vol.1.pp.368-69.

### **Categories of the International Law for Conservation of Biodiversity**

Today, international law for the conservation of biodiversity is well-developed. There are now a large number of bilateral and regional treaties, incorporating new approaches reflected in the E.C.'s 1991 Habitats Directive,<sup>1</sup> and the 1992 Biodiversity Convention.<sup>2</sup>

International law for the conservation of biodiversity may be arranged in three categories:

First, treaties which are potentially applicable to all species and habitats on the planet. There are only two such treaties: the 1973 Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and the 1992 United Nations Convention on Biological Diversity.

Second, rules and treaties which include obligations which are applicable to all species and habitats within a particular region. For example, the 1968 African Nature Convention, 1985 Nairobi SPA Protocol, 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, 1978 Treaty for Amazonian Co-operation, 1990 Kingston SPA Protocol, 1976 Apia Convention, 1986 Noumea Convention, 1979 Berne Convention, 1982 Benelux Convention, 1981 Convention on the Protection of the Alps, 1992 EC Habitats and the Agreement on the Conservation of Nature and Natural Resources (1985 ASEAN Agreement).

Third, treaties and other international agreements which are applicable at the regional or global level but which have as their objective the conservation of particular habitats or species types. This includes the 1971 Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), 1983 International Tropical Timber Agreement, 1992 Forest Principles, 1951 FAO International Plant Protection Convention, 1951 International Convention of the establishment of the European and Mediterranean Plant Protection Organization, 1954 Phyto-Sanitary Convention for Africa South of the Sahara, 1956 Plant Protection Agreement for the South East Asia and Pacific Region and the 1959 Agreement concerning Co-operation in the Quarantine of Plant and their Protection against Pests and Diseases, 1958 High Seas Fishing and Conservation Convention, 1982 United Nations Convention on the Law of the Sea, 1946 International Whaling Convention, 1992 Small Cetacean Convention, 1949 Tropical Tuna Convention, 1966 Atlantic Tuna Convention, 1989 Convention Establishing the Eastern Pacific Tuna Organization, 1950 Birds Convention, 1970 Benelux Convention on the Hunting and Protection of Birds, 1979 EC Wild Birds Directive, 1973 Agreement on Conservation of Polar Bears, 1979 Convention for the Conservation and Management of the Vicuna, and 1979 Convention on the Conservation of Migratory Species of Wild Animals (1979 Bonn Convention).

In 1972, the United Nations adopted a Declaration of the United Nations Conference on the Human Environment calling for flora and fauna and representative samples of natural ecosystem to be safeguarded for the benefit of present and future generations through careful planning or management,<sup>3</sup> for the maintenance of the Earth's capacity to produce vital renewable resources<sup>4</sup>, and for States to prevent pollution liable to harm living resources and marine life.<sup>5</sup> It also declared that "man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat..."<sup>6</sup>. This 1972 Stockholm Declaration later led to the adoption of the 1973 Convention on International Trade in Endangered Species of Wild Flora and Fauna (known as CITES).<sup>7</sup> It recognized that "wild flora and fauna in their many beautiful and varied forms are an irreplaceable part of the natural systems of the Earth which must be protected for this and the generations to come."<sup>8</sup>

The convention operated through a permit system; prohibited commercial trade in species threatened with extinction and controlled trade in those whose survival could be threatened if trade in them were not controlled.

A more comprehensive treaty which is potentially applicable to all species and habitats on the planet was the 1992 United Nations Convention on Biological Diversity- S. Johnson (ed.). (1993) The Earth Summit: The United Nations Conference on Environment and Development, Dordrecht. It affirmed that the conservation of biodiversity is "a common concern of mankind" and that States are "responsible for conserving their biological biodiversity and for using their biological resources in a sustainable manner".<sup>9</sup> The convention included several commitments of a general nature. It required States "to co-operate for the conservation and sustainable use of biological diversity in aspects of areas beyond national jurisdiction";<sup>10</sup> to develop national strategies, plans or programs for the conservation and sustainable use of biological diversity...<sup>11</sup> and "to integrate the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programs and policies".<sup>12</sup>

It also provided detailed rules for in situ and ex situ<sup>-13</sup> conservation.<sup>-14</sup> The Convention also required components of biodiversity to be used sustainably,<sup>-15</sup> The carrying out of environmental impact assessment of proposed projects likely to have significant adverse effects, and the ensuring of the minimization of adverse impacts.<sup>-16</sup>

Besides the 1992 Convention on Biodiversity, the 1992 E.C Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (1992 E.C Habitats Directive)<sup>-17</sup> was an equally important instrument which incorporated new approaches for “ensuring biodiversity”. The Directive has two objectives: the conservation of natural habitats and habitats of species, and the protection of species. It is the first international instrument to adopt the comprehensive protection of all habitats, both in terms of geographical region and type. It recognized that “measures to promote conservation of habitats and species of a community interest is a matter of ‘common responsibility’”.<sup>-18</sup>

### **The International Court and Protection of Biodiversity**

The duty to protect biodiversity can also be inferred from the Pacific Fur Seal Arbitration and the International Court of Justice judgment in the Fisheries Jurisdiction Case.<sup>-19</sup> The Pacific Fur Seal Arbitration<sup>is</sup> concerned on the right of States to adopt regulations to conserve fur seals in areas beyond national jurisdiction. It arose out of a dispute between the United States and Great Britain, following their failure to agree on international rules to protect fur seals fisheries in the Bering Sea from indiscriminate destruction and extermination by over-exploitation. One of the questions submitted to the tribunal relates to the issue of whether the United States had any right, and if so what right, “of protection or property in the fur seals frequenting the islands of the United States in the Bering Sea, when such seals are found outside the ordinary three mile limit?”<sup>-20</sup>

On the important question on conservation, the Arbitral Tribunal held that the United States had no “right of protection or property in the fur seals frequenting the islands of the United States in the Bearing Sea, when such seals are found outside the ordinary three mile limit”.<sup>-21</sup>

Having rejected the United States’ claims, the arbitrators adopted regulations for the protection and preservation of fur seals outside jurisdictional limits. They prohibited the two countries from allowing the killing, capture or pursuit of fur seals at any time within a zone of sixty miles around the Pribilou Islands, including the territorial waters, and between 1 May and 31 July inclusively, on the high seas in certain other parts of the Pacific Ocean.<sup>-22</sup> Such fur seals fishing as was permitted could only be carried out with the issue of sailing vessels authorized by a special government-issued license and carrying a distinguishing flag.<sup>-23</sup> The Regulations also prohibited the use of nets, firearms and explosives.<sup>-24</sup> The arbitrators also adopted a Supplementary Declaration on fur sealing within the territorial limits of each State which recommended that “the critical condition of fur seal populations required both governments to come to an understanding to prohibit any killing of fur seals, either on land or at sea, for a period of two or three years, or at least one year, subject to appropriate exception.”<sup>-25</sup>

In the Fisheries Jurisdiction Case,<sup>-26</sup> the issue of conservation was also considered. The International Court of Justice held that “States concerned had an obligation to take full account of each other’s rights of other States and the needs of conservation for the benefit of all...”

From the above judgments, we can conclude that it provides a basis for the establishment of further limitations on the rights of States, in respect both of fisheries and of other shared natural resources.

### **Environmental protection, management and enforcement mechanism within the International and Malaysian legal framework: Problem and Solutions.**

Problems:

- Facing a very wide environmental issues and problems;
- Lack of funding and ineffective fund distribution procedures and process;

- Lack of enforcement mechanism and effective procedures;
- Difficulty in assessing the sincerity and strength of the commitment to environmental policies;
- Conflicting approaches between Third World or developing countries which are holding to State Rights Orientation as compare to Liberal Orientation by the developed nations;
- Lack of technical expertise, expert and environmentally safe technology;
- Existineffective and incomplete environmental data and inventory system regarding species group, zone or state, and problem of restricted public access to data and inventory.
- Problem of identifying violators.
- Not enough violators are sanctioned, and when they are sanctioned, penalties are too weak to communicate that violations will not be tolerated.

#### Solution:

- Enhancing awareness and common understanding through environmental education, showing the economic and social benefits human being can gain from the environment, flora and fauna.
- Opting for renewable energy and resources; green energy such as wind energy, solar energy and energy extracted from sea and water using turbines.
- Adopting a societal welfare perspective by setting fines at levels that could promote compliance. Thus communicating to violators that compliance is economically justified.
- Mandatory yearly report on levels of compliance in accordance to international environmental standards and other initiatives towards environmental protection to the Environmental Protection Agency under the auspice of United Nations.
- Provision for funding and economic help in area which requires technical expertise and environmentally friendly technologies to the developing and under develop countries or region.
- Provision for setting of earth inventory and genetic bank for plant and animal species at national and regional demographical area.

### Concluding Remarks

Due to the speed of human activities which have disruptive direct and indirect impact on the environment and the abundance of biodiversity, the flora and fauna and the many living creatures on earth time is pressing on us all for a concerted assertive action to protect them. Without such positive action one cannot blame but oneself for their failures to take stern affirmative action. The earth biodiversity should be regard as the soul of the earth environment and mankind and the world human being and all the countries and their leaders have the highest responsibility bestowed by the present and future generation to keep this duty sacred and to hold it dearly in our heart.

### End Notes

1. Council Directive 92/43/EEC of 21 May 1992, OJL 206, 22 July 92.
2. Nairobi, 22 May 1992; reprinted in 31 I.L.M. (1992) 818.
3. Principle 2
4. Principle 3
5. Principle 5.
6. Principle 4.
7. 12 I.L.M. (1973) 1055.
8. Preamble.
9. Ibid, preamble.

10. Article 5
11. Article 6.
12. Article 6 (b).
13. Article 8 (a)-(m)
14. Article 9(a)-(e).
15. Article 10.
16. Article 14.
17. Council Directive 92/43/EEC of 21 May 1992, OJL.206.
18. Preamble.
19. I.C.J.Rep.1973, 3.
20. 176 C.T.S. 447, VIII I.P.E. 3874.
21. VIII I.P.E.3877.
22. RegulationsArticles 1 and 2.
23. Regulations, Article 3.
24. Regulations, Article 6
25. Declaration II, 956.
26. Fisheries Jurisdiction Case (United Kingdom v Iceland) (Merits),I.C.J.Rep.3; (Federal Republic of Germany v Iceland)(Merits), 1974 I.C.J. Rep. 175.

## References

- Ball,S. & Bell,S.(1991). *Environmental law : The Law and Policy relating to the protection of the Environment*, Blackstone Press Ltd., London.
- Batchelor.(1988).*The Preservation of Wildlife habitat in Eco-system : Toward a New Direction Under international Law to Prevent Species Extinction”* , 3 Florida ILJ 307.
- Chase.(1994).*Tropical Forest and trade Policy : The Legality of Unilateral Attempts to Promote Sustainable Development Under the GATT*. 17 Hasting International & Comp LR 340.
- Dixon, M. & McCorquodale .(1991). *Cases and Material on International Law*, Blackstone Press.
- Dixon, M.(1996). *Textbook on International Law*, Blackstone Press.
- Glennon. (1990). *Has International Law Failed the Elephant?*, 84 AJIL 1.
- Hughes,D. (1996). *Environmental Law* , Butterworth, London.
- Higgins,R.(1996). *Problem & Process : International Law and How We Use It*. Oxford, Clarendon Press.
- Kiss.(1992). *The Implication of Global Change for the International Legal System*, in Brown-Weiss (ed) *Environmental Change & International Law*, p. 315.
- Matthews. (1992). *Problems Related to the Convention on the International Trade in Endangered Species*, 41 ICLQ 590.
- Myers.(1992). *The Anatomy of Environmental Action : The Case of Tropical Deforestation”*, in Hurrell and Kingsbury (eds) , *The International Politics of the Environment*, p. 430.

Schneider. (1989). *The Changing Climate*, 12 Scientific American 70.

Steiner, J.H. & Alston, P. (1996). *International Human Rights In Context, Law, Politic, Moral*, Oxford, Clarendon Press.

---

M. SABRI YUSOF., SURIA FADHILLAH BT MD PAUZI.  
Universiti Teknologi MARA (Pahang).