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## **HUMAN BEING, ENVIRONMENTAL PROTECTION AND CONSERVATION OF BIODIVERSITY: THE INTERNATIONAL ENVIRONMENTAL LAW PERSPECTIVE.**

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### **ABSTRACT**

*This paper will bring into view the impact of environmental and biodiversity depletion on human being and their very existence; and the role of international environmental law in balancing the human needs and issues regarding environmental protection and conservation of biodiversity.*

**Keyword:** International environmental law.

### **INTRODUCTION**

International law at first comprises of a system of rules and principles that govern relations between nations at international level and other institutional organizations like the United Nations and the institutions established under it. In the last few years we see rules of international law moving forward to cover almost every facet of inter-state activities including matters of environmental concern. At the fourth quarter of the last millennium, we have seen major changes in the more politically neutral areas like the 1982 UN Law of The Sea Convention (UNCLOS) as modified by the 1994 Deep Sea Bed Agreement; introduction of The Vienna Convention for the Protection of the Ozone Layer 1995; 1992 UN Framework Convention on Climate Change; the Kyoto Protocol; the 1992 UN Convention on Biological Diversity and the introduction of the 1991 Draft Convention on Environmental Conservation and Sustainable use of Natural Resources. These show that international law of today is not closing its eyes to issues of environmental concern.

#### **Human Being and Environmental Protection: The Role Of International Community.**

In the last decade there has been an increasing concern and awareness regarding the need to protect the environment, both at national and international level. Environmentalist, NGO and scientist around the globe had warn about the rate of destruction suffer by the environment which in the end threaten human own existent. Part of the way of putting this concern into action is by looking through international environmental law perspective. Today international environmental law which is still developing began to fulfill the aspiration of most of the international community to protect the environment.

Dixon and McCorquodale explained that the sheer scale of the environmental issues means that national action by itself, while important, is insufficient, and that international cooperation is required.

Gro Harlem Brundtland, Chairmen of the World Commission on Environment and Development argued that over the course of this century, the relationship between the human world and the globe that sustains it has undergone a profound change. That "when the century began, neither the human numbers nor technology had the ability to radically alter planetary systems. As the century closes, not only do vastly increased human numbers and their activities have that power but major, unintended changes are occurring in the atmosphere, in soils, in water, among plant and animals and the relationship among all these". The rate of change is outstripping the ability of scientific disciplines and our current capabilities to assess and advise. Developing countries for example are facing the life-threatening challenges of desertification, deforestation and pollution. The entire human family of nations would suffer from the disappearance of rain forest, the loss of plant and animal species, and change in rainfall patterns if concerted affords are not mobilized to tackle these issues. Industrial nation on the other hand face the challenges of toxic chemicals, toxic waste, and acidification. All nations may suffer from the releases by industrialized countries of carbon dioxide and gases that react with the ozone layer, and from any future war fought with the nuclear arsenals controlled by those nations.

P.Sands suggested that due to the increasing urgency of environmental problem, pragmatic and practical approaches are required. He argued that if the international law is to have a role in the protection of the environment a considerable change in the way we have traditionally understood international society in legal terms must be made. For this purpose three steps were suggested. First, the political reality that non-governmental organizations are important participants in international society ought to be given legal expression. Second, the notion of environmental rights ought to be established on the international plane. Third, international law should recognize the role of NGOs as legal guardians of those rights. Specifically

NGOs should be allowed to enforce these rights in international arena by negotiating with states and appearing before international institutions and tribunals.

### **Environmental Protection: A New Generation Human Rights?**

Human rights issues related to environmental protection are based on the view that environment protection is primarily justified as a means of protecting humans rather than as an end in itself. Principle 1 of the Declaration of the UN Conference on the Human Environment and its preamble supports this approach. It declares that “man has the fundamental right to freedom, equality and permits a life of dignity and well-being. It proclaimed that man’s natural and man-made environment “are essential to his well-being and to the enjoyment of basic human rights; even the right to life itself”.

Support for man’s right to a level of environmental quality materialized in a number of international instrument including the International Covenant on Economic, Social and Cultural Rights 1966,<sup>1</sup> the Convention on the right of the Child,<sup>2</sup> the African Charter on Human and People’s Right,<sup>3</sup> San Salvador Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights,<sup>4</sup> the 1989 Declaration of the Hague on the Environment.<sup>5</sup> and the 1982 World Charter for Nature.

1982 World Charter for Nature for example recognized mankind as a part of nature and that life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients. It also recognized civilization as rooted in nature and that living in harmony with nature gives man the best opportunities for the development of his creativity and for rest and recreation. The 1989 Hague Declaration on the Environment also gives testimony to man’s right to live in dignity in a viable global environment. To this end it also recognized “the fundamental duty to preserve the ecosystem” and the “duty of the community of nations vis-à-vis present and future generations to do all that can be done to preserve the quality of the environment”.

E.Brown-Weiss<sup>6</sup> suggest that we, the human species, hold in trust the natural environment of our planet in common with all members of our species: past, present and future generations. He said that “... The purpose of human society must be to realize and protect the welfare and well being of every generation. This requires sustaining the life-support systems of our planet, the ecological processes and the environmental conditions necessary for a healthy and decent human environment ...”.

The presentations at the international conference entitled ‘Earth Rights and Responsibilities: Human Rights and Environmental Protection’<sup>7</sup> suggested several ways to protect the environment using mechanisms developed by the human rights community:

1. Environmental rights advocates may invoke established civil and political rights to protect environmental victims and advocates;
2. Reinterpret provisions in the human rights instruments so as to incorporate standards of environmental quality in the monitoring of recognized human rights;
3. Champion a new substantive right or a series of rights to a healthy, safe, or sustainable environment; and
4. Environmental activists may seek to develop an enforceable environmental right at the national level.

### **Conservation of Biodiversity: The International Environmental Law Perspective.**

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.<sup>8</sup> It includes:

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<sup>1</sup> Articles 12 and 25; reprinted in 6 I.L.M.360 (1967).

<sup>2</sup> Article 29(1) (e); 28 I.L.M. 1448 (1989).

<sup>3</sup> Article 24; 21 I.L.M. 59 (1982).

<sup>4</sup> Article 11; 28 I.L.M. 161 (1989).

<sup>5</sup> Declaration of the Hague on the Environment, 11 March 1989, 28 I.L.M. (1989).

<sup>6</sup> ‘our right and obligation to future generations for the environment’ 84 AJIL 198 (1990).

<sup>7</sup> See A.Chapman, ‘Symposium Overview’, 18 Yale JIL (1993) 215-7.

<sup>8</sup> See Phillippe Sands, Principles of International Environmental Law, 17 May 1980;

- a. genetic diversity ( the variation of genes within a species ),
- b. species diversity ( the variety of species within a region ), and
- c. ecosystem diversity ( the variety of ecosystems within a region ).

Other expressions of biodiversity include:

- a. the relative abundance of species,
- b. the age structure of populations,
- c. the pattern of communities in the region, and
- d. the changes in community composition and structure over time.<sup>9</sup>

The reasons for conserving nature and biodiversity are essentially threefold:

First, biodiversity provides an actual and potential sources 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 and to conditions which support human and other life.

Third, biodiversity is worth maintaining for non-scientific reasons of ethical and aesthetic value.<sup>10</sup>

Though extinction of species is in natural order, it has reached alarming proportions.<sup>11</sup> The impoverishment this represent for humanity and the globe in general is not only biological, but also scientific, cultural and economic. As a result, international environmental measures of protection have taken on enormous importance.

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 1992 Biodiversity Convention, and the E.C.'s 1992 Habitats Directive.

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

1. treaties which are potentially applicable to all species and habitats on the planet.<sup>12</sup>
2. rules and treaties which include obligations which are applicable to all species and habitats within a particular region.<sup>13</sup>
3. treaties and other international agreements which are applicable at the regional or global level but have as their objective the conservation of particular habitats of species types.<sup>14</sup>

reprinted in 19 I.L.M. 869 (1980), p.368.

<sup>9</sup> Ibid.

<sup>10</sup> See Phillippe Sands, Principles of international Environmental Law- Vol.1, 1994, pp.368-69.

<sup>11</sup> See Alexandra Kiss and Dinah Shelton, International Environmental Law, 1991, pp.239-40

<sup>12</sup> see the 1973 Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and the 1992 UN Convention on Biological Diversity.

<sup>13</sup> see for example, the 1968 African Nature Conservation, 1985 Nairobi SPA Protocol, 1940 Conservation on Nature Protection and Wildlife Preservation in the Western Hemisphere, 1978 Treaty for Amazonian Co-operation, 1990 Kingston SPA Protocol, 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).

<sup>14</sup> see the 1971 Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), 1983 International Tropical Timber Agreement, 1992 Forest Principle, 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, the 1959 Agreement concerning Co-operation in the Quarantine of Plants and their Protection against Pests and Diseases, 1958 High Seas Fishing and

Concerted and new policy approaches for the conservation of biodiversity can be seen from the early seventies. 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, for the maintenance of the earth capacity to produce vital renewable resources, and for States to prevent pollution liable to harm living resources and marine life. It also declared that “man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat...”. 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). CITES recognized that “wild fauna and flora 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”.

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.<sup>15</sup> This treaty was signed during the Rio Conference at Rio de Janeiro from 3 to 14 June 1992. It affirmed that the conservation of biodiversity is “a common concern of mankind” and that States are “responsible for conserving their biological diversity and for using their biological resources in a sustainable manner”.<sup>16</sup> The Convention included several commitment of a general nature. It required States :

- 1) to co-operate for the conservation and sustainable use of biological diversity in aspects of areas beyond national jurisdiction,<sup>17</sup>
- 2) to develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity...,<sup>18</sup> and
- 3) to integrate the conservation and sustainable use of biological diversity into relevant sectoral and cross-sectoral plans, programmes and policies.<sup>19</sup>

The 1992 Convention also provided detailed rules for in situ and ex situ<sup>20</sup> conservation. For In-situ Conservation, each States Party shall, as far as possible and as appropriate:

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (d) Promote the protection of ecosystem, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;
- (f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies;

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Conservation 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).

<sup>15</sup> 31 I.L.M. (1992) 818; S.Johnson (ed.) The Earth Summit: The United Nations Conference on Environment and Development, Dordrecht, 1993.

<sup>16</sup> Ibid., preamble.

<sup>17</sup> Article 5.

<sup>18</sup> Article 6.

<sup>19</sup> Article 6 (b).

<sup>20</sup> Article 8 (a)-(m).

- (g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;
- (h) Prevent the introduction of, control and eradicate those alien species which threaten ecosystems, habitats or species;
- (i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;
- (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefit arising from the utilization of such knowledge, innovations and practices;
- (k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;
- (l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities; and
- (m) Cooperate in providing financial and other support for in-situ conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries.

As for ex-situ conservation each contracting party shall, as far as possible and as appropriate, and for the purpose of complementing in-situ measures inter alia adopt measures for the ex-situ conservation of components of biological diversity, preferably in the country of origin of such components.

The Biodiversity Convention also required:

1. components of biodiversity to be used sustainably,<sup>21</sup>
2. the carrying out of environmental impact assessment of proposed projects likely to have significant adverse effects,<sup>22</sup> and
3. the ensuring of the minimization of adverse impacts.<sup>23</sup>

Besides the 1992 Biodiversity Convention, the E.C. Directive on the Conservation of Natural Habitats and Wild Fauna and Flora ( 1992 E.C. Habitats Directive)<sup>24</sup> was an equally important instrument which incorporated new approaches for “ensuring biodiversity”. The Directive has two objectives:

- a) the conservation of natural habitats and habitats of species, and
- b) the protection of species.

The E.C. Directive 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>25</sup>

## CONCLUSION

Today there exist a considerable number of established international environmental regimes both at regional and global level which call for States to protect and preserve the environment including the atmosphere, international water-courses, seas and marine environment, biological diversity, outer space and the Antarctica.

As Birnie and Boyle noted , in reality international environmental law has provided the framework for much political and scientific cooperation, for measures of economic assistance and distributive equity, for the resolution of international disputes, and for the adoption and harmonization of a great deal of national environmental law and can be said to have laid the foundation of a new system of global environmental order.

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<sup>21</sup> Article 10.

<sup>22</sup> Article 14.

<sup>23</sup> Ibid.

<sup>24</sup> Council Directive 92/43/EEC of 21 May 1992, OJL 206.

<sup>25</sup> Preamble.

Neither the individual nor the State can deny the importance, and benefits all human beings and the living creatures can gain through concerted efforts to protect the Earth's environment.

The environment is dependent on our collective actions; tomorrow's environment depends on how we act today. Social progress and economic well-being around the world depend on activities which deplete the earth's resources and which can cause pollution. Fortunately in the past the earth's remarkable regenerative system has been able to cope with the environmental impact of human activity. But this capacity is now stretched beyond its limit. The two need to be brought into balance.

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