Global Cooperation and Domestic Legislation to Save the Earth

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The end of the Cold War induced a shift in the international community's reference of security from traditional to non-traditional. Present day international relations place a newfound emphasis on fields such as the economy, energy, development and human rights. However, one field in particular has been growing in relevance as the failure to address its concerns may induce destructive consequences not just to individuals, but to this planet, and this is the environment. As portrayed by various films in the past decade such as "2012" and "Happy Feet," the deterioration of our environment can lead to horrific and irreversible consequences. What makes this area far more complex is that it requires a worldwide effort; no state alone can alleviate the world from this threat. It is not enough for only the main subjects of international law to address this concern, but participation from all levels of society, from the government to the individual and to multinational corporations, is also vital. Hence, a branch of international law has taken shape in the form of International Environmental Law. This paper aims to examine the existence of environmental legislation in the international level and its entry into the municipal level, and introduce the relevance of international environmental law to both the international and domestic stages.

Now more than ever is an initiative towards environmental protection and regulation needed. A study by the United Nations Environment Programme outlines the different repercussions of climate change on the Earth.[1] Among the affected sectors are agriculture, forestry and ecosystems, water resources, human health, and industry, settlements and society. In the domestic scene, no level of society, may they be in the upper or lower class, educated or illiterate, urban or rural, can be spared from the horrors of climate change. All states, developed or developing, democratic or socialist, in the Northern or Southern Hemisphere, are affected by its repercussions. Also, the UN Environment Programme provides the statistic that 35 major conflicts and 2,500 disasters related to the environment have transpired over the past decade.[2] With this, billions of people have been injured, killed or displaced and billions of dollars have been spent for the damages incurred by these disasters and conflicts. It can now be concluded that the environmental problem has far-reaching implications for the global community. The broadness of this phenomenon coupled with the gravity of its consequences contributes to its rightful inclusion in the agenda of interstate affairs.

Regulation of International Environmental Law

Antonio Cassese outlines six major regulatory bodies or guidelines of international environmental law which are general principles, customary laws, treaties, supervisory and preventive mechanisms, and international institutions.[3] It is vital to discuss each as these play a role in bridging international law and municipal law in matters concerning the environment.

General Principles

The following are the general principles borne out of the need to address global environmental concerns:[4]

1. Enjoining every state not to allow its territory to be used in such a way as to damage the environment of other states of or areas beyond the limits of jurisdiction
2. Imposing upon states the obligation to co-operate for the protection of the environment

3. Requiring every state immediately to notify other states of the possible risk that their environment may be damaged or affected by an accident that has occurred on its territory or in an area under its jurisdiction

Common among these general principles is that all were borne out of certain frameworks, namely the 1972 Stockholm UN Declaration on the Human Environment and the 1992 Rio Declaration on Environment and Development. These two initiatives serve as the foundation of state responsibilities regarding international environmental law and will be discussed later on in this paper.

Customary Law

Three customary rules are said to be emerging in the present.[5] The first is the protection and preservation of the marine environment. Special mention is given here to coastal states, which possess the right to conserve the living and non-living resources of the marine environment and to take action against marine pollution within their territorial waters. This norm was a result of the 1982 Law of the Sea Convention. The second emerging norm is the conservation of the living resources of the marine environment, which differs from the previous custom as it applies to all states. The last norm is the use of a precautionary principle in shaping policies where states adopt measures to prevent negative effects on the environment. This final norm faces relative contention as to its position whether as an emerging customary rule or a general principle.

Aside from these three customary rules exists a customary law which emerged from the Trail Smelter case.[6] In this case, theUnited States andCanada entered a dispute where the former accused the latter of damaging the crops, fauna and vegetation of its territory due to the operation of a Canadian smelter and its release of sulphur dioxide fumes which made its way to theUnited States. TheUnited States ultimately won the dispute, where the Canadian government was urged to pay reparations amounting to $350,000. The judiciary decision stated that:

“Under the principles of 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 the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”[7]

This later formed an international customary rule regarding atmospheric pollution.

Treaties

Treaties in the sense of international environmental law generally do not pertain to written bilateral or multilateral agreements between state parties, but are in the form of framework conventions.[8] Framework conventions are defined as a special treaty where guidelines, obligations and principles are enumerated and where it lays the foundation for the creation of future agreements. Two framework conventions have earned a significant place in the evolution of international environmental law: the 1972 Stockholm UN Declaration on the Human Environment and the 1992 Rio Declaration on Environment and Development.

1972 Stockholm UN Declaration on the Human Environment

The Stockholm Declaration is credited to have initiated collective efforts in addressing international environmental issues.[9] With the participation of 113 states, its main objective was to reconcile the two conflicting goals of protecting the environment and advancing economic development. Perhaps the most fruitful result of this conference was the conception of the United Nations Environment Programme (UNEP), a branch of the United Nations at the forefront of facilitating cooperation among states through studying the environment, initiating conferences and allowing for interstate agreements. The Stockholm Declaration enumerates 26 Principles with the purpose of guiding contracting states “in the preservation and enhancement of the human environment.”[10]

1992 Rio Declaration on Environment and Development

As the Stockholm Declaration put forth the guiding principles in protecting the environment and achieving economic development, the Rio Declaration sought to put these principles into practice.[11] More specific than its predecessor, the Rio Declaration outlines 27 Principles and introduces certain terms absent from the previous declaration such as "sustainable development," "precautionary approach," and "pollution."[12] This step paved the way for the creation of numerous treaties, with the latest and the quite controversial one being the Kyoto Protocol of 1997.

Supervisory and Preventive Mechanisms

In order to ensure the compliance of states on consensual framework conventions, various mechanisms have been introduced.[13] The first mechanism is the creation of collective bodies that represent the various actors in the international community which are tasked to create measures of prevention, supervision, assistance and punishment. Minimal regard is also given to judicial proceedings. The second mechanism is the use of supervisory systems in terms of self-reporting procedures, inspection, non-compliance procedures and preventive global monitoring as imposed by treaties.

Self-reporting procedures involve the creation of reports on the implementation of state obligations arising from agreements, which are then submitted to the Secretariats of certain international organizations. Also, states may be obliged to create environmental impact assessments based on an existing or forthcoming phenomenon affecting the environment.[14] Certain international organizations or individual contracting states prefer to carry out on-site inspections to ensure the implementation of their obligations. A non-compliance procedure is also utilized and may result in the creation of a binding decision based on a complaint by a state. The last is the prevention of certain harmful actions or circumstances using the collection and assessment of data. These four instruments make up the supervisory system in the implementation of treaty obligations in international environmental law.

International Institutions

As a collective initiative is needed to address environmental concerns and ensure the fulfillment of treaty provisions, an international organization was established in the form of the United Nations Environment Programme (UNEP), which is the primary instrument and venue in the solution of global environmental problems. Established in 1972 as a result of the Stockholm Conference, it is now tasked with bringing up environmental issues concerning the global community and the initiation of conventions and agreements relating to the environment and the supervision of regulations imposed as a result of conventions and agreements undertaken by individual states.[15] With over 56 Member States, the UNEP remains as the chief organization in addressing international environmental issues. It is through the UNEP that various groundbreaking initiatives have been made, such as the 1985 Vienna Convention for the Protection of the Ozone Layer, the 1987 Montreal Protocol and the 1992 Convention on Biodiversity.

International Environmental Law and Municipal Law

As a state enters into a treaty with another state, it is under the obligation to fulfill the agreements in good faith accordance to the principle of *pacta sunt servanda*. [16] Following this, states must do everything in their power to fulfill the obligations under international environmental law, and this may have consequences for municipal law. States must reconcile international environmental law to their domestic policies. Using the Stockholm Declaration and the Rio Declaration as key treaties, these provide obligations for their contracting states where their municipal law is concerned.

The Stockholm Declaration considers the economy of a state as vital to the protection and preservation of the environment. Principle 10 of the Stockholm Declaration states that:

"For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management, since economic factors as well as ecological processes must be taken into account."

With this, it is a state's duty, specifically for developing countries, to maintain a stable economy to make way for

domestic action towards caring for the environment. However, it is not only the maintenance of a stable amount of goods and income of the economy that is urged by the Stockholm Declaration. Principle 13 lays down the need for a plan for development.

“In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.”

Principle 15 and 17 pertains to the relationship between human society and the environment where:

“Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect projects which are designed for colonialist and racist domination must be abandoned.”

“Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development.”

Principle 19 of the Stockholm Declaration addresses civil society and urges national governments to take steps in informing and involving civilians to take part in the protection of the environment.

“Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminates information of an educational nature on the need to project and improve the environment in order to enable mal to develop in every respect.”

The Rio Declaration then provides a more detailed account of the participation of civil society:

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

Additionally, the Rio Declaration mentions the participation of the different sects in civil society. Principle 20 gives recognition to the role of women in working towards sustainable development. Principle 21 acknowledges the potential of the youth and their involvement for a better future for all while Principle 22 considers the traditions and culture of indigenous communities in environmental management.

Perhaps the most widely used principle of the Stockholm Declaration is Principle 21, which was also adopted in the 1992 Rio Declaration. It states that:

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

Principle 21 recognizes the sovereign characteristic of a state and its need to cooperate with other states in matters pertaining to the environment. The previously mentioned principles taken from the Stockholmand Rio Declarations

are guidelines that states should consider in legislating or creating policies in the domestic sphere in fulfillment of the principle of *pacta sunt servanda*.

International Environmental Law as Basis for Domestic Legislation

Certain principles in the Stockholmand Rio Declarations explicitly state the need for states to incorporate international environmental law into municipal law. Principle 11[17] of the Rio Declaration points out the diversity in culture between states; hence, the need for each state to individually legislate these international environmental laws appropriately into their domestic laws. On the other hand, Principle 13[18] urges states to legislate regarding liability and compensation in the event of damage to individuals, property, or the environment. The transformation of international law into domestic law is the chief instrument in translating environmental policies into action while allowing states to consider their international obligations; hence, making international environmental law effective and practical and fulfilling its purpose of safeguarding the environment.[19]

The UNEP suggests the following actions to render international environmental law effective in the municipal level:[20]

- Ensure the effectivity in practice of the instruments used by the government to enact laws pertaining to the environment and sustainable development. The UNEP encourages carrying out various programmes such as seminars, conferences, and other supplementary measures to educate officials tasked to enforce such laws on sustainable development and the environment.
- Establish judicial and administrative procedures for breaches of environmental and developmental and ensure its availability to all.
- Promote cooperation between intergovernmental organizations, non-governmental organizations and municipal governments in effectively adapting international environmental law into domestic law
- Offer training and education to individuals to allow such training to contribute to the effective application, improvement and enforcement of laws
- Develop strategies that increase compliance with laws of sustainable development

The Kyoto Protocol: An Example of the Use of International Environmental Law in Municipal Law

The Kyoto Protocol is an agreement entered into in 1997 by over 35 industrialized countries and members of the European Communities under the United Nations Framework Convention on Climate Change (UNFCCC).[21] It aims to reduce greenhouse gas emissions by key industrialized countries by 5% compared to that of 1990 to prevent the worsening condition of the ozone layer. The extraordinary characteristic of the Kyoto Protocol is that all its signatories are **committed** to adopt the mechanisms stated to decrease carbon emissions and submit to the various impositions such as the submission of progress reports and the supporting of the Adaptation Fund, which was formed to assist contracting developing countries. The Kyoto Protocol is evidence of the increasing weight of international environmental law on municipal law and rising importance of global concern for the environment.

Although it is set to expire in 2012, the global community is coming together to prepare for the conclusion of the Kyoto Protocol and to conclude an agreement for its replacement. The increasing global participation not only includes states, but other actors such as intergovernmental organizations and non-government organizations.[22] The issue of environmental preservation seems to have earned a significant place in global affairs as exhibited by the Kyoto Protocol and the widespread participation of various state and non-state actors.

The Relevance of International Environmental Law on Municipal Law

Clearly, a single state acting to conserve the earth's environment and its resources is not enough to eradicate the problem, let alone make a significant change. However, a collective effort from all states can have the potential to do so. The instrument that may be used to instigate this change is international environmental law. With the birth of this branch of international law, the protection of the environment has come to be regarded as the common responsibility of humankind and a link has been established between the environment, development, and even the fulfillment of

human rights.

International environmental law would only be efficiently fulfilled with its practice within the national jurisdiction of each state. Additionally, states are diverse in terrain, culture and capability that a "one-size-fits-all" policy with regards to the adoption of international environmental law may prove to be difficult to uphold. Because of this diversity, states must incorporate or transform established principles or agreements made in the international level to be acceptable in the domestic level. The relevance of international environmental law to municipal law is that it serves as the basis for domestic environmental concerns to be addressed. Municipal law alone cannot solve problems of magnitude such as global warming. States must be guided by uniform principles which would serve as the basis for legislating domestic laws that protect the environment and individuals. Conversely, international environmental law would be useless if not practiced as law in the domestic setting. Agreements such as the Kyoto Protocol illustrates the thinning gap between international law and domestic jurisdiction as these agreements are able to practice jurisdiction over land, water, and even air within the territory of a state.[23] Though not discussed in this paper, a major impediment to the fulfillment of international obligations to the environment lies in whether states are willing to transcend *realpolitik* and accept the possibility of economic and political compromise for earth-friendly initiatives.

After a century and a half's worth of industrialization, the earth is finally showing signs of wear and tear. Even if China reduces its carbon emissions by half, the world would not heal. It would take decades, even centuries, of environment-friendly efforts not from one state, nor a region, but from a collective effort from all states to restore balance in the environment. However, states should not be left to initiate the action. All sectors must take part in the effort for the environment, from the youth to the multinational corporations to the indigenous tribes. What is needed is not merely a collective effort of states, but of mankind, and the role international environmental law is vital to the restoration of the environment's former glory.

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[3] Antonio Cassese, *International Law*, (Oxford:OxfordUniversity Press, 2005), 487-497.

[4] Ibid., 488-490.

[5] Ibid., 490-491.

[6] Malcolm Shaw, *International Law*, (Cambridge:CambridgeUniversity Press, 2003), 872.

[7] United Nations. *Trail Smelter Case.*New York: United Nations, 2006.

[8] Cassese, *International Law*, 493.

[9] Norman J. Vig, "Introduction: Governing the International Environment," in *The Global Environment: Institutions, Law and Policy* (United States: Congressional Quarterly, Inc., 1999), 1.

[10] United Nations Environment Programme. *Declaration of the United Nations Conference on the Human Environment.*New York: United Nations, 1972.

[11] Vig, *Global Environment*, 2.

[12] United Nations Environment Programme. *Rio Declaration on Environment and Development.* New York: United Nations, 1992.

[13] Ibid., 493-496.

[14] Shaw, *International Law*, 865.

[15] Shaw, *International Law*, 845-846.

[16] Ibid., 903.

[17] Principle 11 states that, "States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries."

[18] Principle 13 states that States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental

damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

[19] United Nations Environment Programme. *Selected Texts of Legal Instruments in International Environmental Law.*New York: Transnational Publishers, Inc., 2005.

[20] Ibid., 6-7.

[21]Kyoto Protocol

[22] Anna Spain, "Who's Going to Copenhagen?: The Rise of Civil Society in International Treaty-Making,"*The American Society of International Law* 13 (December 11, 2009), 1-2.

[23] Edith Brown Weiss, "The Emerging Structure of International Environmental Law," in*The Global Environment: Institutions, Laws and Policy* (New York: Congressional Quarterly, Inc., 1999), 105.

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