



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Environmental Law: The Shift in Paradigm across Continents

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Received 15 July 2022; *Accepted* 03 August 2022; *Published* 05 August 2022

Environmental law today is not anywhere near what it originally was a few decades ago. As a concept, it has existed for over 1900 years, yet we have seen its evolution only in the recent past. We have degraded our planet so rapidly that alarms began to ring to open our eyes to our crimes. We have developed from laws made for territorial disputes to laws made for protecting the environment. In a few years, we learnt that environmental problems are not restricted to boundaries and began to develop international laws. Around this period, globalisation helped develop global alliances that enabled international cooperation to combat a vast array of ecological problems. Upon understanding the magnitude of the problem at hand, we began to consider the macro and micro sides of things. By considering the needs and problems of smaller regions, countries began to progress toward where they stand today—an age of inter-organisation collaborations and earth jurisprudence with an ecocentric concern at the centre of our mindsets.

Keywords: *environmental law, earth jurisprudence, ecocentrism, continents.*

INTRODUCTION

Franklin D Roosevelt once said, “A nation that destroys its soils destroys itself. Forests are the lungs of our land, purifying the air and giving fresh strength to our people.” A matter of such significance needs to be protected by rules and regulations thus came the concept of environmental law. Environmental laws can be traced back to AD 80; the Roman senate

passed legislation to protect the purity of the city's water supply. However, until the 20th century, these laws focused mainly on disputable areas such as borders, shared watering holes and fishing regions. We completely disregarded detrimental factors such as pollution, limited availability of resources and the effect of our activities on the plethora of flora and fauna. Only around 1902 did we begin to consider the results of our actions; twelve European governments came together to sign a convention to protect birds that are useful to agriculture. The following five decades would witness various resolutions that protect flora and fauna from harmful activities conducted by humans. In the 1960s, '*environmentalism*' gained traction in socio-political life. Around this period, Japan was going through rapid industrialisation, which led to immense consequences such as mercury poisoning in an entire town. To combat this, the Japanese government became the first to pass an all-embracing environmental law, the Basic Law for Environmental Pollution Control.

In 1962 Rachel Carson wrote and published a book called *Silent Spring* which demonstrated the deleterious effects of using fertilisers made of chlorinated hydrocarbons. This book made people question their actions' profound consequences and began a paradigm shift. The US government passed multiple laws dealing with curbing pollution in various ways and protecting other species of flora and fauna. They also appointed an Environmental Protection Agency to ensure that all the laws are enforced appropriately. By the 1970s, wetlands and their biota gained recognition for their significance in maintaining ecological equilibrium. In 1975 the Ramsar convention came into force, which today has over a hundred parties. The convention required that every party country designate a minimum of one 'protected wetland area'. Over the next few decades, newer and more significant issues such as depletion of the ozone layer, controlled development of nuclear fuel sources, transnational consequences of pollution and causes and effects of global warming were considered and resolved through summits and treaties.

THE RISE OF 'ECOCENTRISM'

Over a century, we have evolved from mindless degradation of our planet to developing the concept of sustainable development, utilising the resources we have in the present without harming the environment and saving enough for future generations. However, even under

sustainable development, we are following an anthropocentric (the mindset that humans are the penultimate beings and all that matter) approach to combat an issue that plagues our home planet. Fortunately, the need for an ecocentric mindset has been gaining recognition recently. Ecocentrism is a relatively new concept that environmental philosophers use to denote an environment-centred state of living. “The radical shift from anthropocentrism to ecocentrism, which is the core idea of Earth jurisprudence, is seen reflected in the legal system of a few countries to confer legal rights to Mother Nature by passing the historic Law of the Right of the Mother Earth in 2009-2010. Ecuador is the first constitution under Title II (Chapter 7). On 28 January 2017, the new Constitution of Mexico City adopted the Rights of Nature in its articles 13, paragraphs 2 and 3. On March 14, 2017, the New Zealand Parliament voted to pass the Te Awa Tupua (Whanganui River) Claims Settlement Bill (the Bill), establishing that the river has its legal personality. On March 25, 2022, the entire body of Chile's Constitutional Convention formally approved the Rights of Nature within its proposed constitutional text.”¹

This paradigm shift can be observed by analysing a significant characteristic of environmental law. The study of law is usually classified into categories such as private and public law or international and domestic law. However, globalisation has begun to erase the line that distinguishes between categories. Environmental problems are not limited to the region causing the problem; thus, environmental law shares similarities across national and transnational borders. While such similarities exist, they do not fail to address the local issues. The most common approach is to encourage states to develop their own contingency plans to combat regional environmental problems while incorporating internationally accepted conventions. This method has proven to be the most effective way to create an inclusive and flexible frame of laws so far. This method’s applications can be seen in part nine of the United Nations Convention on the Laws of the Sea (UNCLOS); this part encourages cooperation between neighbouring regions which exist near semi-enclosed seas to come up with laws to protect the marine ecology of the region. Similarly, the Basel Convention suggests that “state

¹ Neema Noor, ‘The ‘Only One Earth’ and Her Legal Rights: A Paradigm Shift from Anthropocentrism to Ecocentrism’ (*Live Law*, 6 June 2022) <<https://www.livelaw.in/columns/world-environment-day-only-one-earth-international-criminal-police-organization-interpol-environmental-crime-earth-jurisprudence-ecocentrism-200962>> accessed 13 July 2022

parties should enter into bilateral, multilateral and regional agreements concerning the transboundary movement of hazardous wastes providing that they do not derogate from the environmentally sound management of hazardous waste. (Article eleven)”²

ENVIRONMENTAL LAW AND GLOBAL COOPERATION

Environmental law has grown to incorporate regional problems with international sustainability; however, it would all be for nought if there was no global cooperation. Only if every nation contributes to protecting the environment will true ecocentric sustainability be achieved. Through the nineteenth century, many conventions were born through global alliances. In 1945, one of the world’s largest global organisations came into existence, the United Nations; it presently has 193 member nations. “The first major manifestation of the United Nations’ concern for environmental matters was its sponsorship of the 1972 Stockholm Conference on the Human Environment, through which the United Nations Environment Programme was established.”³ The 1985 ASEAN (Association of South-East Asian Nations) Agreement on the Environment in the Asia-Pacific region was also signed. In 1992, The United Nations Framework Convention on Climate Change and the Convention on the conservation of Biological Diversity came into existence.

Outside United Nations, other large organisations also exist that facilitate cooperation between various countries. The World Trade Organisation was intended to monitor and enable international trades; this organisation is capable of aiding and disrupting the growth of environmental laws. As it primarily focuses on liberalisation and removing trade barriers, it can aid in controlling the use of environmentally hazardous products. However, it could also get in the way of laws preventing trade between multiple countries. In the Asia-Pacific region, there exists a forum that came into effect in 1989 with (presently) 21 member countries known as The Asia Pacific Economic Cooperation Forum (APEC). Over 40% of the world's pollution comes from APEC-associated countries. “Climate change can cause extreme weather conditions, damage and deplete natural resources and affect livelihoods and food security.

² Ben Boer, Ross Ramsay & Donald R Rothwell, *International Environmental Law in the Asia Pacific* (Vol 47 Kluwer Law International BV 1998) 19

³ *Ibid* at 26

This impacts both individuals and economies, with developing economies experiencing the most adverse effects. In addition, climate change is believed to contribute to the increasing number of natural disasters, about 70 percent of which occur in the Asia-Pacific region. Thus, it is imperative that APEC economies, which account for approximately 60 percent of world energy consumption, find ways to reduce the use of fossil fuels to meet energy demands. As the region becomes increasingly industrialized and the population shifts from rural to urban areas, these consumption levels are set to rise. APEC aims to tackle climate change through various concerted efforts such as fostering renewable energies, collaborating on ocean and forest conservation, reducing energy consumption, promoting trade in environmental goods and helping farming and fishing communities adapt to changing weather patterns.”⁴

Based in Gland, Switzerland, is an organisation comprised of law authorities and Non-Government Organisations known as the International Union for Conservation of Nature, also known as the World Conservation Union. They currently have 1400 members from over 170 countries. This organisation is responsible for a significant portion of the growth of environmental law. Similarly, The Nature Conservancy is a private conservation organisation based in the United States. They work on raising funds to purchase vast quantities of land to conserve them.

THE WAY FORWARD

The amount of damage we have inflicted on this planet is almost irreversible’ It will take more than global cooperation to bring change before it is too late. The organisations formed out of the alliance between many countries will have to promote each other and collaborate to have a significant impact. The Secretariat of the Pacific Regional Environment Programme (SPREP) is a prime example of the benefits we can gain through inter-organisational collaborations. “SPREP was established in 1978, originally as a part of a joint programme of the South Pacific Commission based in Noumea, together with the South Pacific Forum, United Nations Environment Programme (UNEP) and the United Nations Economic and Social Commission

⁴ ‘How is climate change relevant to APEC?’, (APEC, December 2021) <<https://www.apec.org/about-us/about-apec/fact-sheets/climate-change#:~:text=APEC%20aims%20to%20tackle%20climate,adapt%20to%20changing%20weather%20patterns>> accessed 13 July 2022

for Asia and the Pacific (ESCAP). It became an Autonomous body in 1991 and is now based in Apia, Western Samoa. It is now governed by the 1993 Agreement Establishing the South Pacific Regional Environment Programme.”⁵SPREP currently has 21 member countries and five metropolitan member countries. “SPREP’s mandate is to promote cooperation in the Pacific region and provide assistance in order to protect and improve its environment and to ensure sustainable development for present and future generations”⁶. According to the annual report published by SPERP for the year 2020, they have successfully managed to conduct Pacific virtual training on environmental governance during the covid-19 pandemic. They are also working on a 64-month project called The PacWastePlus programme, funded by the European Union. “The programme addresses both the cost-effective and sustainable management of waste and pollution in the priority waste streams of hazardous wastes including asbestos, healthcare waste, and e-waste; solid wastes including organic waste, disaster waste, bulky waste, and recyclables; and related aspects of wastewater.”⁷

CONCLUSION

It is bewildering to understand why such an old concept as environmental law has made advancements only in the last century. However, on the other hand, it is also impressive how much environmental law has evolved in just a few decades. It has grown from rules made to address regional disputes to the development of concepts such as ecocentrism and earth jurisprudence. We have begun to understand that ecocide is a pertinent and paramount problem. This understanding has led to the emergence of global organisations where countries across the world come together to form a set of rules and conventions to protect common interests in the environment. It is indeed delightful that these organisations also considered the needs and problems of smaller regions. This intra-regional understanding is critical as a problem with a vast magnitude such as ecocide cannot be combated at a macro level alone. Only if the goals, visions, and missions percolate to the micro-level can these organisations

⁵ Ben Boer, Ross Ramsay & Donald R Rothwell (n 3) at 41

⁶ ‘About Us, Mandate’ (SPREP) <<https://www.sprep.org/about-us#:~:text=SPREP%20has%2021%20Pacific%20island,Tonga%2C%20Tuvalu%2C%20Vanuatu%20and%20Wallis>> accessed 13 July 2022

⁷ Secretariat of the Pacific Regional Environment Programme, *Annual Report (2020)* <<https://library.sprep.org/sites/default/files/2021-09/sprep-ar-report-2020-eng.pdf>> accessed 13 July 2022

efficiently combat the problems. Hopefully, in the future, we will begin to see more inter-organisation collaborations as environmental degradation is not a problem that can be contained to individual regions. Evo Morales, the former President of Bolivia, said, “Sooner or later, we will have to recognise that the Earth has rights, too, to live without pollution. What mankind must know is that human beings cannot live without Mother Earth, but the planet can live without humans.” The faster we realise this, the better chance we have at surviving.