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# Globalisation and International Environmental Law

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## ABSTRACT

*Today, forces of globalisation bind the world more closely together than ever before. Globalisation implies a growing degree of interdependence among economies and societies through cross border flow of information, ideas, technologies, goods, services, capital, finance and people. It has ushered in an era of fast paced changes. It has challenged the capacity of national governments to control and regulate. The rapid pace of economic integration has led to interlinking of world markets and economies demanding synchronization of national policies on a number of issues. One dimension of this relates to environment. From shared natural resources such as fisheries and biological diversity, to the potential for transboundary pollution spillovers across the land, over water, and through the air, we now understand that governance defined solely by the traditional notion of national territorial sovereignty cannot protect us from global-scale environmental threats. Environmental law is developing on a global scale in new important ways. Courts around the world also are responding to environmental concerns in new way. Environmental activism of the Supreme Court is also well known; it has passed very important decisions including its decision to require taxis in New Delhi to use compressed natural gas to reduce air pollution.*

## I. INTRODUCTION

There is an enormous strain on the world's resources. The population of the planet is increasing at a steady rate and most of them desire to lead a better quality of life. Population stress contributes to the rising demand for food, energy, minerals, etc. International Environmental Law is the study of how treaties, principles, custom and other sources of international law can be used to address these strains.<sup>2</sup> Growth of international environmental law began in the 1970s with the Stockholm Conference on Environment in 1972. Since then interest in this area has steadily increased and it has emerged as one of the fastest growing areas of international law. Current issues of international concern covered by environmental

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<sup>2</sup> Shawkat Alam, Md. Jahid Hossain Bhuiyan, Tareq M.R. Chowdhury and Erika J. Techera (Eds.), Roulledge Handbook of International Environmental Law, Routledge, 2013, p.

law include ozone layer depletion and global warming, desertification, destruction of tropical rain forests, marine plastics pollution from ships, international trade in endangered species (i.e. ivory trade), shipment of hazardous wastes to Third World countries, deforestation of Brazil and the Philippines, protection of wetlands, oil spills, transboundary nuclear air pollution (i.e. Chernobyl), dumping of hazardous wastes, groundwater depletion, international trade in pesticides, and acid rain.<sup>3</sup>

## **II. GLOBALISATION AND ITS EFFECTS ON ENVIRONMENT**

Globalisation can have both positive and negative effects on the environment. It can aggravate environmental problems as well as provide new means for addressing them. Though it creates new opportunities but may also give rise to new issues and problems. For example, liberalized trade may generate economic growth which may translate into increased pollution and unsustainable use of natural resources. Current environmental problems such as air pollution, hazardous waste, climate change, depletion of ozone layer, etc. have global ramifications. For instance, Chinese coal-fired plants are contributing to a large extent to particulate pollution over Los Angeles.<sup>4</sup> Globalization can intensify environmental harms where regulatory structures are inadequate.

### **(A) Positive Effects**

Increasing interdependence among nations often lead to a sense of community which builds a foundation of shared values and gives citizens a basis for demanding that those with whom they establish trade meet certain baseline moral standards, including a commitment to environmental protection. If countries wish to deepen their economic ties it will be necessary to create a sense of community. This dynamic may create tensions as some countries, particularly those in the developing world, may have an expectation of complete national sovereignty in setting their own environmental standards. But the idea that environmental policy can be made in a political vacuum and be immune from external pressures misunderstands the imperatives of deepening economic integration. At the same time, developed nations which believe that their moral preferences should be accepted by others without question will find themselves facing a major backlash.

Trade liberalization can also be used as a tool to spur greater environmental protection. During the negotiations of the North American Free Trade Agreement, concerns about potential

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<sup>3</sup> Retrieved from <https://www.law.georgetown.edu/library/research/guides/InternationalEnvironmentalLaw.cfm>

<sup>4</sup> J. Kahn and J. Yardley, *As China Roars, Pollution Reaches Deadly Extremes*, New York Times, 26 August, 2007, Available online at <http://www.nytimes.com/2007/08/26/world/asia/26china.html>

competitive downward pressures on environmental standards in the United States resulted in Mexico enacting significant reforms of its environmental regulatory system, including the creation of a special attorney general for the environment

### **(B) Negative Effects**

Globalization has led to an increase in the consumption of products, which has impacted the ecological cycle. Increase in consumption leads to an increase in the production of goods, which in turn puts stress on the environment. Globalization has also led to an increase in the transportation of raw materials and food from one place to another. Now, people consume products that have been developed in foreign countries. The amount of fuel that is consumed in transporting these products has led to an increase in the pollution levels in the environment.<sup>5</sup> It has also led to several other environmental concerns such as noise pollution, etc. and has also put a strain on the non-renewable sources of energy, such as gasoline. Gases that are emitted from the aircraft lead to the depletion of ozone layer apart from increasing the greenhouse effect. The industrial waste that is generated as a result of production is laden on ships and dumped in oceans as a result of which many underwater organisms are killed. The damage caused to ecosystem from the oil that spilled from one of the leaking containers of British Petroleum in 2010 is just one of the examples of the threat globalization poses to the environment.<sup>6</sup> The toxic waste causes a lot of damage to plants by interfering in their genetic makeup. Plastic is one of the major toxic pollutants, as it is a non-biodegradable product but it's of immense use when it comes to packaging and preserving goods that are to be exported. This has led to increased use of plastic, causing widespread environmental pollution.

#### **1. Increased Greenhouse Gas Emissions**

Climate change stems mostly from the greenhouse effect – meaning the excessive retention of solar energy in the atmosphere due to an accumulation of certain gases, particularly CO<sub>2</sub>.<sup>7</sup> The main sources of CO<sub>2</sub> emissions are industrial production, transportation and deforestation. These three human activities existed independently of globalisation, but their considerable development during the 20th century, and particularly in recent decades, is partly linked to accelerated globalisation.

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<sup>5</sup> Retrieved from <http://www.environment.co.za/environmental-issues/globalization-and-its-impact-on-the-environment.html>

<sup>6</sup> *ibid*

<sup>7</sup> Huwart, Jean-Yves and Loïc Verdier, "What is the impact of globalisation on the environment?", in *Economic Globalisation: Origins and consequences*, OECD Publishing., 2013, p.112

## **2. Impoverishes biodiversity**

A large number of species have become extinct in recent decades. The link between the extinction of some species and globalisation is indirect. Globalisation implies the multiplication of distribution channels that creates new needs and new demand for products that are used around the world. This accentuates industrialisation and the quest for exploitation of new lands, subsoil and resources, thus weakening many ecosystems. The example of fishing is particularly telling. Overfishing has emptied the oceans of some fish species. Stocks of Atlantic cod – formerly one of the most abundant species in Canadian waters – collapsed in the 1970s, decimated by overfishing and rising global demand.<sup>8</sup> Mediterranean blue fin tuna has met with the same fate. Open international markets have made some exotic raw materials and farm products affordable to consumers of developed countries. Rising demand slowly accentuated pressure on some plants. The positive spiral of development, which itself is partly linked to globalisation, is faced with a huge challenge.

Trade liberalization and outsourcing of manufacturing activity has obscured responsibility for global greenhouse gas emissions. Relocating manufacturing activities to other countries has enabled businesses to take legitimate competitive advantages, such as closer proximity to raw materials or more skilled labor, as well as to exploit weak environmental standards, ineffective and corrupt regulatory systems. Global trade allows consumers in one part of the world to enjoy the benefits of goods produced elsewhere without bearing the associated negative consequences of pollution. Globalization has thus facilitated the spread of environmental ills.

### **III. FACTORS DRIVING THE DEVELOPMENT OF GLOBAL ENVIRONMENTAL LAW**

#### **1. Growth of global trade and multinational corporate enterprises:**

Companies who want to sell their products throughout the world have an incentive to push for greater harmonization of environmental standards. To simplify compliance, some companies are even deciding to adhere to the highest standards applicable to them in the various countries where they operate.<sup>9</sup> Globalization may have positive environmental effects as global ties may increase self-regulation pressures on firms in low regulated countries. Trade liberalization can also be used as a tool to spur greater environmental protection.

There is an increased pressure for harmonizing environmental standards. For instance, during the negotiations of the North American Free Trade Agreement, concerns about potential

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<sup>8</sup> *ibid.*

<sup>9</sup> Robert V. Percival, *The Globalization of Environmental Law*, University of Maryland School of Law, Legal Studies Research Paper, No. 2009 – 34, Also available at <http://ssrn.com/abstract=1474747> p.456

competitive downward pressures on environmental standards in the United States resulted in Mexico enacting significant reforms of its environmental regulatory system, including the creation of a special attorney general for the environment.

## **2. Tremendous global growth of public concern for the environment:**

The protection and improvement of human environment is an issue which affects the wellbeing of people and economic development all over the world.

## **3. Increased global collaboration between and among environmental non-governmental organizations (NGOs) and environmental officials:**

Several informal global networks have been formed to help improve the implementation and enforcement of environmental law. Greenpeace was one of the first and the best known NGO which is devoted to environment protection. They helped expose incidents where developed countries sought to surreptitiously dump toxic waste in the developing world.<sup>10</sup> An important example of global collaboration among government officials is the International Network of Environmental Compliance and Enforcement (INECE). This organization regularly sponsors conferences where environmental enforcement officials from all over the world meet to share information about strategies for improving enforcement of the environmental laws.

4. Development and implementation of multilateral environment agreements such as the Kyoto Protocol to the U.N. Framework Convention on Climate Change. Various multilateral environmental agreements are being entered by the international community.

## **IV. DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW**

### **Stockholm Conference**

The United Nations (UN) Conference on the Human Environment, held in Stockholm in 1972 was a catalyst for the development of a wide range of international responses to global and regional environmental problems. The concept of sustainable development received a further impetus from the Stockholm Declaration. This conference was a remarkable achievement as 114 nations participated in it and they agreed generally on declaration of principles and an action plan. The Stockholm Declaration on Human Environment proclaimed that man is both the creator and moulder of his environment, which gives him physical sustenance and affords him the opportunity of intellectual, moral, social and spiritual growth.<sup>11</sup>

At the Conference the States did not adopt any treaties, yet they agreed on two important

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<sup>10</sup> p.459

<sup>11</sup> P.S. Jaswal and Nishtha Jaswal, *Environmental Law*, Allahabad Law Agency, Delhi, 2009, p.94

documents:-

- The Declaration of Principles for the Preservation and Enhancement of the Human Environment (Stockholm Declaration), and an Action Plan making suggestions for environmental management.

### **1. United Nations Environment Programme (UNEP)**

One of the most important outcomes of the Stockholm Conference was the establishment of the United Nations Environment Programme (UNEP). It was the first UN body established to focus specifically on environmental issues. It was also the first UN body to be located in a developing country like Kenya.

The Declaration consists of 26 Principles and these formed the precursor to the Rio Declaration of 1992. In the Rio Declaration most part of the Stockholm Declaration was reiterated.

After the Stockholm Conference several treaties were adopted on environmental issues, some under the auspices of UNEP and others under different arms of the UN.<sup>12</sup> Several new global treaties were adopted such as relating to address the dumping of waste at sea, pollution from ships, protection of wetlands of international importance, international trade in endangered species, and protection of world cultural and natural heritage. The United Nations Convention on the Law of the Sea was also negotiated. The Convention on the International Trade in Endangered Species (CITES) was adopted in 1973 and is regarded as one of the most significant treaties addressing living natural resources. Under it, a system was set up where trade in certain species was either prohibited or needed consent from the state of origin.

The UN Convention on the Law of the Sea was adopted in 1982. It is a comprehensive treaty dealing with the rights of the States with regard to the world's oceans.

The Montreal Protocol on Substances that Deplete the Ozone Layer was adopted in 1987 and aimed at the elimination and cuts in the production and consumption of ozone depleting substances such as chlorofluorocarbons (CFCs). The pact was signed by 48 nations, mostly developing countries.

### **Brundtland Commission**

The World Commission on Environment and Development (Brundtland Commission) It was set up by the General Assembly of UN in 1983. The Brundtland Report gave a very

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<sup>12</sup> Retrieved from [http://www.unep.org/environmentalgovernance/Portals/8/documents/training\\_Manual.pdf](http://www.unep.org/environmentalgovernance/Portals/8/documents/training_Manual.pdf)

comprehensive definition of term sustainable development in the following words-

“Sustainable development is the kind of development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

### **Rio Conference**

In 1992, on the twentieth anniversary of the Stockholm Conference, the UN Conference on Environment and Development (UNCED), popularly known as Earth Summit was held in Rio de Janeiro, Brazil. This was one of the largest UN conferences and put the world on a path of sustainable development. Five legal instruments were adopted in this Summit, which were-

#### **1. The Rio Declaration on Environment and Development**

It lays down a series of principles defining the rights and responsibilities of States;

#### **2. Agenda 21**

It is a comprehensive programme of action for global action in all areas of sustainable development;

#### **3. Forest Principles**

A set of principles which underlies the sustainable management of forests worldwide.

#### **4. The UN Framework Convention on Climate Change (UNFCCC)**

The UNFCCC sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. Its objectives are to stabilize greenhouse-gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, within a time-frame sufficient to allow ecosystems to adapt naturally to climate change; to ensure that food production is not threatened: to enable economic development to proceed in a sustainable manner.<sup>13</sup>

#### **5. The Convention on Biodiversity**

The objectives of CBD are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from commercial and other utilization of genetic resources. It covers all ecosystems, species and genetic resources.

The last two documents were binding and were aimed at preventing global climate change and eradication of biologically diverse species.

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<sup>13</sup> Retrieved from <https://www.cbd.int/rio/>

## **Kyoto Protocol**

The Kyoto Protocol to the UNFCCC was adopted in 1997 and entered into force in 2005. It was adopted in Kyoto, Japan, on December 1997 and entered into force on 16 February, 2005. The detailed rules for the implementation of the Protocol were adopted at Conference of Parties 7 in Marrakesh, Morocco, in 2001, and are referred to as the “Marrakesh Accords”. Its first commitment period started in 2008 and ended in 2012.

It commits its parties by setting internationally binding emission reduction targets. Recognizing that developed countries are principally responsible for the current high levels of GHG emissions in the atmosphere as a result of more than 150 years of industrial activity, the Protocol places a heavier burden on developed nations under the principle of “common but differentiated responsibilities”.<sup>14</sup>

Then, there has been a dramatic increase in the number of countries that participate in negotiations and become parties to Multilateral Environmental Agreements (MEAs). This increased participation is partly a product of increased awareness and concern about environmental problems and the need for solutions throughout the countries.

Like national environmental law, much of international environmental law is now concerned not only with regulating environmental problems, such as prevention or mitigation of pollution, but also with promoting conservation and sustainable use of natural resources and biological diversity more broadly. The use of overarching framework treaties, such as the UNFCCC, which set out broad principles but provide for detailed rules to be elaborated through regular meetings of the parties, has given the international law-making process a dynamic character, allowing successive protocols to be negotiated.

## **V. PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW**

Principles of international environmental law are reflected in treaties, binding acts of international organizations and state practices. Some of them are universally accepted and are frequently endorsed in state practice.<sup>15</sup> The principles of international environmental law can be discussed under the following heads:

1. Sustainable Development, Integration and Interdependence
2. Inter-Generational and Intra-Generational Equity
3. Responsibility for Transboundary Harm

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<sup>14</sup> Retrieved from [http://unfccc.int/kyoto\\_protocol/items/2830.php](http://unfccc.int/kyoto_protocol/items/2830.php)

<sup>15</sup> Shawkat Alam, et. al, *Routledge Handbook of International Environmental Law*, Routledge, 2013, p. 43

4. Transparency, Public Participation and Access to Information and Remedies
5. Cooperation, and Common but Differentiated Responsibilities
6. Precautionary principle
7. Prevention
8. Polluter Pays Principle
9. Access and Benefit Sharing regarding Natural Resources
10. Common Heritage and Common Concern of Humankind
11. Good Governance

### **1. Sustainable Development, Integration and Interdependence**

Sustainable Development is susceptible to different definitions but the most commonly accepted and cited definition is that of the Brundtland Commission on Environment and Development, which stated in its 1987 Report, that sustainable development is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” It requires activities to be carried out without causing harm to the environment. The definition of “sustainable development” given in the Brundtland Commission’s report indicates the interdependence of generations. On the basis of this, it is clear that integration and interdependence are fundamental to sustainable development. The concepts of integration and interdependence in international environmental law are wholly consistent with the nature of the biosphere, i.e. the concentric layers of air, water and land on which life on earth depends.<sup>16</sup> There is interdependence between the various elements of the biosphere and changes in one aspect can affect others. Environmental considerations are becoming a feature of international economic policy and law, for example, the Preamble to the 1994 World Trade Organization Agreement mentions both sustainable development and environmental protection. There are numerous regional and global treaties supporting an approach that integrates environment and economic development, such as the 1992 Convention on Biological Diversity (CBD), the 1994 United Nations Convention to combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa and the Kyoto Protocol on Climate Change, 1997. Environmental Impact Assessment (EIA) has become one of the most effective and practical tools to support the implementation of sustainable development and its integrative aspects.<sup>17</sup> A great majority of

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<sup>16</sup> Retrieved from [http://www.unep.org/environmentalgovernance/Portals/8/documents/training\\_Manual.pdf](http://www.unep.org/environmentalgovernance/Portals/8/documents/training_Manual.pdf)

<sup>17</sup> *ibid.*

countries have adopted informal guidelines or mandatory regulations that are applicable not only to public projects but are also imposed as a direct obligation on the citizens.

## **2. Inter-Generational and Intra-Generational Equity**

Equity includes both inter-generational equity (the right of future generations to enjoy a fair level of access to the earth's natural resources) and intra-generational equity (i.e. the right of all people of the current generation of fair access to the earth's natural resources). This means that the current generation should make sure that the health, diversity and productivity of the environment continues for the benefit of future generations.<sup>18</sup> The present generation has a right to use and enjoy the resources of the earth but is also under an obligation to take into account the long-term impact of its activities and to sustain the global environment for the benefit of future generations of mankind.

## **3. Responsibility for Transboundary Harm**

It is a well-established practice that, within the limits stipulated by international law, every state has the right to manage and utilize the natural resources within its jurisdiction and to formulate and pursue its own environmental and developmental policies. However, one of the limits imposed by international law on this right is that states have an obligation to protect their environment and prevent damage to neighbouring environments. The sovereign right of each state upon its natural resources, emphasizing that it is limited by the responsibility for transboundary harm is recognized under Principle 21 of the Stockholm Declaration and has been reiterated in the Rio Declaration and various other declarations.

## **4. Transparency, Public Participation and Access to Information and Remedies**

Public participation and access to information are recognized in Principle 10 of the Rio Declaration. It means that members of the public should be able to participate at different stages of environmental decision-making processes. There are different opportunities to participate in decision-making, depending on the rights given to the public under different Acts in a State. At an international level, agreements such as the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998 (called the Aarhus Convention) reflect the principles of public participation.

## **5. Cooperation, and Common but Differentiated Responsibilities**

Principle 7 of the Rio Declaration enshrines this principle. The concept of global partnership

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<sup>18</sup> Retrieved from <http://edont.org.au/factsheets/guiding-principles-environment-law/>

is more recent reformulation of the obligation to cooperate, and is becoming increasingly important. International organisations, business entities, especially transnational business entities and NGOs should cooperate in and contribute to this global partnership.

The principle also speaks of common but differentiated responsibilities. This element takes into account differing circumstances in respect of each State's contribution to the creation of environmental problems and in its ability to prevent, reduce and control them. States whose societies have in the past imposed, or currently impose, a disproportionate pressure on the global environment and which command relatively high levels of technological and financial resources bear a proportionally higher degree of responsibility in the international pursuit of sustainable development.<sup>19</sup> According to the concept of common but differentiated responsibilities, developed countries bear a special burden or responsibility of reducing and eliminating unsustainable patterns of production and consumption and to contribute in capacity- building in developing countries by providing financial assistance and access to environmentally sound technology. A number of international agreements recognize a duty on the part of industrialized countries to contribute to the efforts of developing countries to pursue sustainable development and to assist developing countries in protecting the global environment.<sup>20</sup>

## **6. Precautionary principle**

Precautionary principle is essential for protecting the environment, including human health and is accordingly one of the most commonly encountered concepts of international environmental law. It is also one of the most controversial because of disagreements over its precise meaning and legal status and also because of the concern that it may be misused for trade-protectionist purposes. Probably the most widely accepted articulation of Precautionary principle is under Principle 15 of the Rio Declaration, 1992 which states-

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

This means that if there is an uncertainty about the potential environmental damage that our activities may cause, we should take precautions to prevent the possible damage. It requires anticipatory action to be taken to prevent harm.

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<sup>19</sup> supra note 15

<sup>20</sup> *ibid.*

## **7. Polluter Pays Principle (PPP)**

It simply means that the costs of pollution and waste should be paid by those who cause the pollution or create waste. Principle 16 of the Rio Declaration of 1992 enunciates this principle in the following words-

“National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”

In 1972, the member countries of Organization for Economic Cooperation and Development (OECD) agreed to base their environmental policies on this principle in an effort to ensure that companies would pay the full costs of complying with pollution control laws. It was intended to encourage rational use of scarce resources and to avoid distortions in international trade and investment. Since 1972, the PPP has gained acceptance and has moved beyond the developed country context. It has also been increasingly accepted and applied at national level including in statutes and in national supreme courts of many countries in the developing world, including India.

## **8. Access and Benefit Sharing regarding Natural Resources**

Many indigenous and local communities rely on natural resources such as forests, deserts, wetlands, waterways and fisheries for their livelihood or even for their existence. In addition, they also have their cultures integrated with natural resources. Principle 10 of Rio Declaration and international human rights norms enshrine the principle that these communities and the individuals comprising them have the right to participate in decision-making processes with respect to these resources.

## **9. Good Governance**

The concept of good governance is relatively recent. It implies, among others, that states and international organizations should:

- adopt democratic and transparent decision-making procedures;
- take effective measures to combat official or other corruption;
- respect due process in their procedures and observe the rule of law more;
- protect human rights; and
- conduct public procurement in a transparent and in non-corrupt manner.

Good governance includes business enterprises and NGOs also, i.e. they should also be subject to internal democratic governance and effective accountability. In addition, good governance also calls for corporate social responsibility and socially responsible investments as conditions for the existence of a sustainable global market that will result in an equitable distribution of wealth among and within communities.

## **VI. CONCLUSION**

Globalization refers to international integration through the interchange of world views, products, ideas and other aspects of culture. With the rise of globalisation, various environmental issues are emerging which are affecting the global environment. Globalization is having both positive and negative effect on the environment. Treaties, conferences, conventions are being organised in regard to the protection of global environment which impose certain obligations on the nation states to adhere to while formulating their policies. Trade liberalization, an aspect of globalization, is used as a tool to spur enhanced environmental protection. It has been realized that national laws cannot protect a nation from the global scale environmental threats, there has to be a global law which addresses the issues relating to environmental protection. With the emergence of globalisation, the concept of sustainable development has received widespread attention. Environmental law around the world is developing in new important ways. Courts around the world are responding to international environmental concerns by incorporating various aspects of international environmental law in their policies.

Various treaties, conferences, conventions, etc. are being entered into by the international community and they impose some obligations on the member countries like reducing carbon emissions, etc. Various principles of international environmental law are being evolved which guide the countries in framing their policies. So, with globalisation international environmental law has emerged in the scenario and both are interconnected.

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