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Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



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**Responsibility of Nation states and third world Countries towards environment in the age of globalization**

**Author** - Rachit Sharma, Faculty Associate (Law), IILM University

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**ABSTRACT**

Today, the world has become close knit family as trades are happening globally between countries from different corners of the world which has led to a revolution called Globalization, which enables states to trade with any state around the world with ease. But with increasing Globalization, the nation states have forgotten about the most important thing in the world i.e., 'The Environment'.

Many Multi National Companies (Hereinafter referred to as MNCs) are degrading the environment by providing cheap and lucrative products which are harmful for the environment or by directly using production processes which directly hampers the environment. Moreover, the fact that such activities are taking place at such large scale, makes it more gruesome issue. The Most vulnerable state with this is Under Developed or Developing Countries which have low Gross Domestic Product (Hereinafter referred to as GDP) and more vulnerable to the harmful effects on the environment. Not only this, the International Court of Justice has also encountered and settled various matters between nations states and have always tried to resolve the issue and stop degradation of environment by imposing heavy sanctions and fines on the wrongdoer. But the fact that such incidents are still happening, points towards the failure of International Court of Justice as a Dispute Resolution Body

The Issue of globalization affecting the environment is however, not very new as many Authors have talked about Globalization, its adverse effects on Environment, Liability of the state degrading the environment, its impact on third world countries etc. the authors have given different reasons as to why such problems are occurring. While some reasons are true and backed by factual data, while others are clearly observations of the author which need not be completely true.

This Paper talks about '*Responsibility of Nation states and third world Countries towards environment in the age of globalization*' with the help of four articles by eminent authors from around the world along with the Four Decisions of International Court of Justice. The Articles and Judgments referred in the article are critically examined to clearly understand the issue in hand.

**Keywords:** Globalization, Environment, Nation States, Third World Countries, MNCs

**Responsibility of Nation states and third world Countries towards environment in the age of globalization**

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**ARTICLE 1**

**Title of the article reviewed:** Globalization: its Effects

**Authors:** Ali M. Alli, Gregory S. Winter and David L. May, Oklahoma City University.

**Title of the journal:** International Business & Economics Research Journal, Vol 6, No. 1

**Year of Publication:** 2007

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The Article was written by Research scholar named Ali M. Alli<sup>211</sup>(2007). The article primarily focuses on the effects of globalization, its

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<sup>211</sup> Ali M. Alli, Gregory S. Winter and David L. May, Globalization: its effects, Vol 6 No. 1, International Business & Economics Research Journal, 2007

process and adverse effects of Globalization on Environment.

Ali M. Ali argues that globalization is facilitated by technology as people are interdependent on each other which has brought them closer. People are better able to communicate with each other by using technology and are able to learn more things about each other. People are now looking beyond sectarian religionism nationalities, genders, and cultures and are aiming towards the global village.

Above contention of the author is precise as globalization has surely boomed in the age of technology. People are now able to do trade with a person sitting in another corner of the world with just a click on their electronic devices. Not only this, technology has paved way more many people to come up with new ventures and products as they know that the demand for new and innovative product in the market is ever rising because of the technology.

Ali M. Ali further argues that globalization has led to adverse effect on environmental degradation, public health, education as new companies have come up in the market with just the motive of earning profit even if it requires them to adversely affect environment or health of people.

This argument of Ali M. Ali however is not completely a valid argument because even though the Globalization has brought some adverse effects on environment but we cannot shy away from the fact that it has also brought many countries to come together to talk about climate and environmental issues and has also encouraged companies to invest in saving environment. Looking into these facts, Meetings of countries at world level like World Summit on Sustainable Development (2002), UN Conference on Sustainable Development (2012), UN Sustainable Development Summit (2015) etc., clearly shows that, the world has started talking about it and now the only step which is

to be taken is to implement environment friendly norms.<sup>212</sup>

Moreover, now, because of the globalization, the states are so concerned of their reputation in International field that they are ready to bring any dispute to the International Court of Justice, which they think, if not raised, would negatively affect their global image. Similar thing was witnessed in the case *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*.<sup>213</sup>

### **Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2006<sup>214</sup>**

**Introduction:** On 30 April 2005, Argentine citizens started a five-year blockade of the Libertador General San Martín Bridge which connected the Argentine city of Gualeguaychú with Uruguayan city of Fray Bentos. The citizens feared severe environmental damages caused by two pulp mills which were to be constructed on the Uruguayan side of the Uruguay River which separates the two countries. In 2006, Argentina feared that environmental damages might affect their reputation and tourism so, it referred the dispute to the International Court of Justice (ICJ).

The judgment made some significant contributions to the progress of international environmental law.

**Facts:** The States of Uruguay and Argentina are separated by the Uruguay River. In order to ensure co-operation to the end of an optimum and rational utilization of this shared natural resource, the two States established the Statute of the River Uruguay (1975 Statute). In the Statute, the states set up the Administrative Commission of the River Uruguay (CARU). CARU served as a 'joint machinery' to ensure co-operation between the Parties and to watch over the implementation of the 1975 Statute. However, CARU was not able to prevent or resolve the conflict about the authorization by

<sup>212</sup> United Nations Dag Hammarskjöld Library, <https://research.un.org/en/docs/environment/conferences> (Last Visited February 14, 2021).

<sup>213</sup> <https://www.icj-cij.org/en/case/135/judgments>

<sup>214</sup> ICGJ 425 (ICJ 2010)

Uruguay CMB (ENCE) pulp mill and the actual construction of the Orion (Botnia) mill.

Especially on the Argentine side of the river, citizens worried about lasting environmental damage coming from the pulp plants which would also harm the tourist industry. Uruguay, however, maintained that studies showed that there would be no such damage and pollutants would be kept within legal limits. CARU requested documents from Uruguay in order to assess whether the planned constructions might cause significant damage to Argentina. However, in both cases, Uruguay authorized constructions of the mills without providing CARU with the documents it had asked for. Plans to build the CMB (ENCE) mill were finally suspended in 2005. The dispute, however, continued over the construction of the Orion (Botnia) mill. After repeated failures to resolve the issue, Argentina, on 4 May 2006, submitted the dispute to the ICJ.

### Holdings of the Court

The judgment concerned the interpretation and application of the 1975 Statute, principally whether Uruguay had breached its procedural obligations under the Statute in authorizing the construction of the CMB (ENCE) mill and the construction and commission of the Orion (Botnia) mill, and whether Uruguay had complied with its substantive environmental obligations since the commissioning of the Orion (Botnia) mill.

Procedural obligations: As regards procedural obligations, Articles 7-12 of the 1975 Statute constituted the most prominent provisions for the judgment. They set out a 'machinery of notification and consultation which must be followed in respect of 'any works which are liable to affect navigation, the régime of the river or the quality of its waters.'

The Court first prominently recognized a 'functional link' between procedural and substantive obligations. It denied, however, Argentina's claim that a breach of procedural

obligations would automatically entail a breach of substantive ones.

It then continued to determine that Uruguay had breached its procedural obligation to inform CARU under Article 7.1 and its obligation to notify its plans to Argentina under Article 7.2 and 7.3 of the 1975 Statute. By establishing that there had been no agreement to derogate from the procedural obligations, the Court held that Uruguay also had failed to comply with the obligation to negotiate (Article 12).

*Substantive obligations:* As regards substantive obligations, the Court started its observation by addressing two issues of particular importance to the case: the burden of proof and expert evidence. Argentina claimed that the 1975 Statute adopts a precautionary approach which implied that the burden of proof would be reversed and placed upon Uruguay being the state causing damage to the shared resource. The Court rejected this claim by stating that the *onus probandi incumbit actori* principle was a well-established principle of general international law.

Given the vast amount of factual and scientific material presented by the Parties in the case, the Court criticized the Parties for presenting their evidence as counsel instead of expert witnesses. However, the Court still held that it would rely on the facts presented to it in order to 'make its own determination' of facts. With regard to the substantive violations of Articles 1, 27, 35, 36 and 41(a) of the 1975 Statute which Argentina claimed, the Court did not find any breach by Uruguay, mainly justifying this conclusion by referring to a lack of evidence.

In its examination of Article 41(a), the Court came to the highly significant conclusion that undertaking an EIA 'may now be considered a requirement under general international law [...] where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context. In addition to the obligation under customary law, it also found

that states must conduct an EIA in order to fulfill their obligation of due diligence.

### The Court's capacity to deal with environmental issues

Several Judges argued that the Pulp Mills judgment constituted a 'wasted golden opportunity' to demonstrate the ability of the Court to approach scientifically complex disputes in a state-of-the-art manner. The Court in this case indeed missed its chance to present a clear position regarding issues of particular importance to environmental issues. The Court also assessed EIA, which has been described as an 'explicit statement' and the most meaningful part of the judgment.

#### 4.1 Reversal of the burden of proof

The question of burden of proof is a good example for the high hurdles in environmental protection claims. Proving in advance that a project will be harmful to the environment presents serious problems: multiple factors affect the outcome; much crucial information may be unknown or otherwise unavailable and expert testimony may fail to provide reliable evidence.

Ali M. Ali's another argument that Globalization has led to Degradation of environment is also not absolutely correct because even though it has played a contributory role but the main reason for degrading of environment is increasing population and its never-ending needs and wants. So, just Blaming Globalization for degradation of environment is an easy way out.<sup>215</sup>

Globalization can help spread the positive effects of environment friendly technologies and practices from developed to developing countries. This can reduce pollution in developing countries by importing greener technologies from developed nations.

<sup>215</sup> Robert V. Percival, *The Globalization of Environmental Law*, 26 PACE ENVTL. L. REV. 451, 461-62 (2009).

#### ARTICLE 2

**Title of the article reviewed:** Globalization: Definition, Processes and Concepts

**Author:** Sandu Cuterela, National Defense University

**Title of the journal:** Revista Română de Statistică – Supliment Trim IV/2012

**Year of Publication:** 2012

Sandu Cuterela<sup>216</sup> (2012) discusses about how the term 'Globalization' came into being and how the whole process of globalization has developed in such a long period. She further talks about how some people are supporting Globalization as it benefits people by reducing costs and generating employment opportunities but, Sandu Cuterela also talks about the critics who see globalization as a short-term replacement which can cause social and economic inequality in the long run. There is no point of criticizing the process of Globalization by calling it a short-term process because process of Globalization is never ending process and it will keep on expanding day by day. Globalization has helped in creating jobs, businesses and has provided people with wide variety of options in products and services. So, criticizing it, is just unjustified.

Sandu Cuterela specifies some key aspects of globalization in which she mentions that many big MNCs like coca cola, Nike, Puma etc. have paved their way in smaller countries through the process of globalization and have now become a natural part of our lifestyle. Globalization is further letting businesses to work independently and thus; the state is slowly losing grip towards the industries.<sup>217</sup>

<sup>216</sup> Sandu Cuterela, *Globalization: Definition, Processes and Concepts*, Vol. 4, Revista Română de Statistică – Supliment Trim IV, 2012

<sup>217</sup> Michael Ewing-Chow & Darryl Soh, *Pain, Gain, Or Shame: The Evolution of Environmental Law and the Role of the Multinational Corporations*, 16 IND. J. GLOBAL LEGAL STUD. 195, 215 (2009)

The statement that big companies have paved their way in small countries is true as many brands, products etc. which were unheard of 20 years ago are found even in the poorest of poor countries due to its demand. However, the statement that this has led to state losing its superintendence is not one hundred percent correct as the government of almost every country have made very stringent laws in regards to trade with foreign Multi-National Companies and these laws does not allow each and every company to come in their country and do business. In India only, The Government have put different types of taxes, minimum Investment limit etc. to ensure that the local business is not affected in the garb of Globalization. The 'Make in India' campaign is a prime example of this as it not only encourages people to manufstature domestic goods but also empower them to export those goods to other countries. Moreover, to reduce degradation of environment by companies, the Government of India has also imposed sanctions on the companies to spend some amount as part of their corporate social responsibility towards environment. Hence, the argument that government is losing grip towards the industries is clearly negated.

Moreover, the International Court of Justice is also keeping a close watch and has through many landmark decisions prevented big corporations from hampering environment in the name of Development. The famous example of this is a very old case of *Trail Smelter Arbitration* where a big corporation of Canada was causing air pollution in USA and were forced to pay damages.

### **Trail Smelter Arbitration (United States v. Canada)<sup>218</sup>**

**Citation:** Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)

<sup>218</sup> Trail Smelter Arbitration (United States v. Canada) Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)

**Brief Fact Summary:** The United States (P) sought damages from Canada for causing air pollution in the state of Washington by suing them in court and also prayed for an injunction, by the Trail Smelter, a Canadian corporation which is domiciled in Canada (D).

**Synopsis of Rule of Law:** The duty to protect other states against harmful acts by individuals from within its jurisdiction at all times is the responsibility of a state.

**Facts:** The Tail Smelter located in British Columbia since 1906, was owned and operated by a Canadian corporation. The resultant effect of from the sulfur dioxide from Trail Smelter resulted in the damage of the state of Washington between 1925 and 1937. This led to the United States (P) suit against the Canada (D) with an injunction against further air pollution by Trail Smelter.

**Issue:** Is it the responsibility of the State to protect to protect other states against harmful acts by individuals from within its jurisdiction at all times?

**Held:** Yes. It is the responsibility of the State to protect other states against harmful act by individuals from within its jurisdiction at all times. No state has the right to use or permit the use of the territory in a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein as stipulated under the United States (P) laws and the principles of international law.

By looking at the facts contained in this case, the arbitration held that Canada (D) is responsible in international law for the conduct of the Trail Smelter Company. Hence, the onus lies on the Canadian government (D) to see to it that Trail Smelter's conduct should be in line with the obligations of Canada (D) as it has been confirmed by International law. The Trail Smelter Company will therefore be required from causing any damage through fumes as long as the present conditions of air pollution exist in Washington. So, in pursuant of the Article III of the convention existing between the

two nations, the indemnity for damages should be determined by both governments. Finally, a regime or measure of control shall be applied to the operations of the smelter since it is probable in the opinion of the tribunal that damage may occur in the future from the operations of the smelter unless they are curtailed.

**Comments:** Responsibility for pollution of the sea or the existence of a duty to desist from polluting the sea has never been laid at the feet of any country by any international tribunal. Although regulation of pollution is just commencing, it must ensure that there is equilibrium against freedom of the seas guaranteed under general and long-established rules of international law and no corporation of any country can ignore the environmental regulations of the country in the garb of globalization and if they do, then they can be held liable.

Even though Globalization has played a prominent role in degrading environment as per Sandu Cuterela but, no one can argue on the fact that Globalization has also made Nation States to take responsibility for hampering the environment and thereby, has increased their liability for environmental degradation at the International Level as well. The Next article talks about this only.

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### ARTICLE 3

**Title of the article reviewed:** State Liability for International Environmental Degradation: An Economic Perspective

**Authors:** Ralph C. d'Arge and Allen V. Kneese

**Title of the journal:** Natural Resources Journal, Volume 20 Issue 3 Summer 1980

**Year of Publication:** 1980

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Even though this article is way old and may not seem to be of much importance in present times but on the contrary, the importance of the article doubles as the seeds of globalization

were sown during that time period only and a lot has changed since that time and this article helps in analyzing the comparison between the two-time period.

In this article, Ralph C. d'Arge<sup>219</sup>(1980) emphasizes upon the time period in which, the concept of globalization was relatively new and the world had just started talking about responsibility of Nation States towards the environment and how the polluting state can be held financially liable for polluting the environment.

The article mentions the famous *Trail Smelter Case*<sup>220</sup> where the tribunal held that a state owes a duty to protect other states against injurious acts by individuals from within its own jurisdiction.<sup>221</sup> And for this The Organization for Economic Cooperation and Development (OECD) adopted the "polluter pays" principle (PP) in 1972. According to which person/company/state causing pollution of any kind must pay compensation to the other person/company/state which has suffered such damage.

This happened in the case of *Jugheli and ors. V. Georgia*<sup>222</sup> in which European Court of Human Rights (ECHR) awarded compensation from the state to the three people whose health was affected by the presence of Thermal Power Plant in their close proximity.

### Jugheli and ors. V. Georgia, 2017<sup>223</sup>

**Facts:** The three applicants lived in Tbilisi in close proximity to a thermal power plant. The plant was constructed in 1911 and started operating in 1939. Several accidents occurred during its lifetime and experts found that it had not been repaired between 1986 and 1996. It was privatized in 2000 and ceased operation

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<sup>219</sup> Ralph C. d'Arge and Allen V. Kneese, State Liability for International Environmental Degradation: An Economic Perspective, Vol 20 Issue 3, Natural Resources Journal, Summer 1980

<sup>220</sup> Trail Smelter Arbitration (United States v. Canada) Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)

<sup>221</sup> Case Briefs, <https://www.casebriefs.com/blog/law/international-law/international-law-keyed-to-damrosche/chapter-18/trail-smelter-arbitration-united-states-v-canada/> (Last Visited February 14 2021).

<sup>222</sup> <https://ehrac.org.uk/resources/jugheli-others-v-georgia/>

<sup>223</sup> (no. 38342/05)

the following year. Although City Hall had requested the plant install chimney filters, it never did.

The applicants had experienced problems with noise and pollution from living close to the plant as early as the 1990s, when an explosion seriously damaged their apartment building. The applicants and other residents brought action against the plant for environmental damage in 2000. Although they reached a friendly settlement, it was never enforced.

The Georgian Forensic Medical Examination Centre found that protracted exposure to Sulphur dioxide, carbon monoxide, nitric oxide and nitrous oxide levels, black dust, noise and electromagnetic pollution had impacted the health of two applicants negatively (the third, for unstated reasons, had not been included in the examination).

Although the Georgian Supreme Court ordered the operators, City Hall and Ministry of the Environment to pay GEL 7,000 (€2,938) to two of the applicants and a monthly payment to one, it rejected their complaint regarding electromagnetic and air pollution. It also did not order measures which would have reduced future harm, such as calling on the plant to install filters. The applicants were represented by EHRAC and the Georgian Young Lawyers' Association.

**Judgment:** The applicants complained that the State failed to protect them from the air, noise and electromagnetic pollution, which caused severe disturbance to their environment and risk to their health. They argued that this had seriously interfered with their health and wellbeing, thereby violating their right to private life and home (Art. 8 European Convention on Human Rights, 1953).

The ECHR found a violation of Art. 8 European Convention on Human Rights, 1953 on the basis that even if air pollution had not caused them quantifiable harm, it may have made them more vulnerable to disease, and it had adversely affected their quality of life. It found

that the State failed to strike a balance between the community's need for a thermal plant and the applicants' right to respect for home and private life. The applicants were awarded €4,500 each in damages. It dismissed the applicants' claims on noise and electromagnetic pollution

**Comments:** Jugheli builds on EHRAC's previous litigation before the ECHR concerning environmental rights, including *Fadayeva v Russia* and *Ledyayeva and others v Russia*, on which the Court relied in this case. The judgment, which highlights the State's obligation to give due consideration to citizens' health and wellbeing of citizens as part of overseeing compliance of industrial activities to environmental standards, will provide renewed impetus for Georgia and neighboring states to take their environmental responsibilities seriously

Ralph C. d'Arge makes some interesting arguments:

1. *Polluter Pays Principle*<sup>224</sup> - It talks about U.N. Stockholm Conference Declaration which states that 'nations have 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'. for this, if the damage is caused, Ralph C. d'Arge suggests polluter pays principle, which, according to the researcher is not at all correct and should not be applied in this case as Polluter pays principle because of Globalization has now become 'Pay and Pollute Principle' according to which, the states/companies pollute the water bodies, environment etc. and then pays a meagre fee in the form of compensation to continue doing so. It is now time that people start understanding that Money will not help in bringing our environment back. So,

<sup>224</sup> Boris N.Mamlyuk, *Analyzing the Polluter Pays Principle Through Law and Economics*, Vol. 18.1, Southeastern Environmental Law Journal, 46-51, 2010

apart from imposing fines on them, The International Bodies should make deterrent provisions which creates fear within the offenders, so that they think a thousand time, before polluting the environment/water bodies.

2. *Dividing Oceans, stratosphere etc.* – Ralph C. d'Arge contend that, the countries which cause spillovers in oceans or pollutes the air can be stopped, if the common resources like oceans, stratosphere, and electromagnetic spectrum are distributed among the countries or that a sense of ownership of these things are provided within the countries.

This, according to the researcher is a completely baseless argument because the Land area of the whole world has already been divided and it is not like that no state is polluting their own land. So merely, granting ownerships of common water bodies, stratosphere etc. to the countries as it will bring a sense of belongingness amongst them and then they will not pollute it, is vague. In India, only, the Government is running 'Swachh Bharat' campaign from quite a long time, but still the goal of clean India is a distant dream. In all this how can you expect, that if we give some kind of exclusive rights to India in the Indian Ocean, then it will stop polluting the Ocean. In today's world, the focus should be on uniting the world by taking collective measures to save the environment, rather than drawing boundaries even in the oceans and other water bodies.

3. *Environment Friendly techniques are costly and can be afforded only by rich countries*<sup>225</sup> – Ralph C. d'Arge opines that the developing countries are financially dependent on developed countries and as the cost of employing environment

friendly techniques is very high, so generally poor countries are not able to afford it.<sup>226</sup> This statement cannot be said to be 100% true because even though countries doing the least for environment protection are the poorest of the poor countries like Burundi, Haiti, Iraq etc. but the countries doing most for the environment protection like Denmark, Finland, Norway etc. are not also the richest countries in the world.

Qatar is the richest country in the world but as per Environment Protection Index 2020 (Hereinafter referred to as EPI 2020), it ranks at 122 out of 180 countries, similarly Saudi Arabia is also one of the richest countries but ranks at 90 in EPI 2020. These statistics clearly shows that that wealth of a country is not the only reason as to why countries are not going for environment friendly measures and procedures.

Thus, even though Rich Nation states have their fair share in polluting the environment, still, we cannot ignore the fact that The Third World Countries have also not done wonders to save the environment, rather, they are the ones who are knowingly or unknowingly polluting environment the most from a long time and now reaping the seeds which they had sown before. i.e., the people in third world countries do not have fresh air to breathe and not even fresh water for drink. The Next article talks about Environment Problems of these Third World Cities only.

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#### ARTICLE 4

**Title of the article reviewed:** "Environmental problems of third world cities: A global

issue ignored?": Public administration and development

**Authors:**  
and David Satterthwaite

J. E. Hardoy

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<sup>225</sup> ARTHUR C. PIGOU, *THE ECONOMICS OF WELFARE*, 183 (4th ed. 1932)

<sup>226</sup> Duncan Kennedy, *Cost-Benefit Analysis of Entitlement Problems: A Critique*, 33 STANFORD L. REV. 387, 394 (1981).

**Title of the journal:** Public Administration and Development, Vol. 11,341-361 (1991), Researchgate.net

**Year of Publication:** 1991

J. E. Hardoy<sup>227</sup>(1991) has divided the article into two parts. The first part talks about the environmental problems in third world cities ranging from home, workplace and cities and also its impact mainly on human health. The second half presents some conclusions for the problems such as unsafe and inadequate water supplies, inadequate provision for sanitation and solid waste disposal (including toxic waste), overcrowding, hazardous working conditions and ineffective pollution control.

The article talks about Environmental Problems like presence of pathogens or toxic substances in the human environment, insufficient fresh water, damage to natural resources such as forests, fisheries or agricultural land. But willfully excludes other important aspects, including noise pollution, food contamination etc. Even though J. E. Hardoy has stated the reason of length of paper for excluding some important aspects, it is still not acceptable as Noise pollution and food contamination are also one of the facets of environmental pollution caused by globalization and deserve equal attention as others. Constant setting up of loud factories, automobiles etc. leads to noise pollution and the third world countries are prime example of that.

The article specifies environmental problems at four scales:

1. The indoor environment in the home and workplace
2. The wider neighborhood or district
3. The city

<sup>227</sup> J. E. Hardoy and David Satterthwaite, Environmental problems of third world cities: A global issue ignored? Public administration and development, Vol. 11,341-361, Public Administration and Development, Researchgate.net, 1991

4. The region surrounding the city and the rural-urban linkages between the two  
Dividing the environmental problems according to the spot they occur cannot be justified as pollution is pollution, no matter it takes place in home, workplace or in the streets. You cannot expect the people to stop polluting the spots individually i.e., Government will not be issuing guidelines to stop environment degradation separately for home, workplace and streets because causing pollution anywhere is wrong and methods must be implemented to curtail pollution at each scale.

However, J. E. Hardoy deserves credit for its observation that polluting the environment at workplace or at home, not only creates problems for the future generations but can also reduce the life expectancy of the people of the current generation. This is an interesting observation because most of the other articles related to environment protection talk about protecting mother earth so that the future generations can also reap benefits of it but this article stated that if at workplace proper measures of environment friendly techniques are not taken then, the hazardous gases, chemicals etc. which will emit from such Industries and factories will be inhaled by people working there on a regular basis and this would considerably lead to a short life span as compared to the life span they would have, had they taken proper measures. This problem will be faced mostly by Working class people of the poor countries as they are the ones who cannot avoid getting exposed to this polluted environment.

The Article draws out the environmental problems and its impact on third world cities but omits to mention the reasons as to why these cities are facing such problem. The only reason which J. E. Hardoy find suitable for environmental problems in third world cities is 'Low GDP'. But if we dig deeper, then we will find that the Economic capacity of a country is not the only reason for it being unable to fulfill its

environmental obligations. There are other compelling reasons as well like –

1. *Globalization*<sup>228</sup>: Concept of Enhanced Technology, Laissez faire, Hunger for Development etc. have paved their way in third world countries because of which the demands of people have increased, as now the citizens of these countries are not just satisfied by getting their basic necessities fulfilled, they now need more, which is forcing these countries to do everything they can even at the cost of the environment.
2. *Lack of Awareness amongst citizens*<sup>229</sup>: Merely, blaming the Government for environment degradation is not correct, as the citizens are equally responsible. Generally, the citizens of these third world countries are not aware about the damage they are doing to the environment by continuing with the practice they have been doing from a long time. And even if some of them are aware, then also they don't pay much heed to that fact and are recklessly hampering the environment.
3. *Lack of Corporate Social Responsibility Commitments*<sup>230</sup>: Globalization is the reason because of which Industries of the third world countries have become so powerful that they practically run the whole country. But as the saying goes 'with great power comes great responsibilities', it is high time that these industries understand that they have no right to kill the very environment in which we live. They must contribute towards saving the environment as part of their CSR practice by employing environment friendly techniques, by educating their employees about environment protection and by contributing as much

as they can towards saving the environment rather than destroying it.

One other reason which probably is the most important one is Careless attitude of the Government as generally, the government of these countries focus on their own personal agendas instead of focusing on saving the environment, so even if an individual or a company tries to hamper environment for their personal growth, then also they are not stopped by their government as the environmental laws in these countries are not strong enough to stop them from violating them. Moreover, sometimes the government themselves delves in such practices which affects environment either in their own country or in other country. The most recent example of this is the 2018 judgment of *Certain Activities Carried Out by Nicaragua In the Border Area (Costa Rica v. Nicaragua)*<sup>231</sup> in which ICJ settled a long 10-year legal battle in which both countries blamed each other for violating the environment and this was the first time where ICJ has exclusively decided a case on environment compensation.

#### **Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)**<sup>232</sup>

**Facts:** The case originated from a territory dispute between Costa Rica and Nicaragua over a 3-kilometer area of wetland in the northern part of Isla Portillas. In 2010 Costa Rica had instituted proceedings with the International Court of Justice against the Republic of Nicaragua for unlawful incursion, occupation and use of Costal Rican territory, including claims of serious damage to protected rainforests and wetlands. The environmental damage claim arose from Nicaragua's activities in excavating a cano (channel) for navigational purposes, which included removal of trees and vegetation. Nicaragua responded by instituting proceedings against Costa Rica in 2011 claiming violations of Nicaraguan sovereignty and major

<sup>228</sup> B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8, International Community Law Review, 15-17, 2006

<sup>229</sup> Neelam Kumar Sharma, *Globalization and its Impact on the Third World Economy*, Volume 1.1, Crossing the Border: International Journal of Interdisciplinary Studies, 22-26, 2013

<sup>230</sup> Lok Yiu Chan, *Corporate Social Responsibility of Multinational Corporations*, Global Honors Theses, 22-23 (2014).

<sup>231</sup> <https://www.icj-cij.org/en/case/150/judgments>

<sup>232</sup> [2013] ICJ Rep 354, ICGJ 475 (ICJ 2013)

environmental damage arising from a road construction works by Costa Rica along the border area between the two countries.

In 2013 the Court joined the two cases. During the interim the Court issued a provisional order restricting both parties from any activities that aggravate or extend the dispute. Notwithstanding the Court's provisional order, Nicaragua proceeded to excavate two more canos in the disputed territory, which led to another hearing before the Court in 2013 and a new order allowing Costa Rica to take the necessary measures to prevent irreparable prejudice to the environment after consultation with the Secretariat of the Ramsar Convention on Wetlands of International Importance especially Waterfowl Habitat.

**Held:** In 2015 the Court decided the sovereignty dispute in favor of Costa Rica rendering Nicaragua's activities unlawful under international law, which gave rise to an obligation of reparation by Nicaragua. However, as the parties were unable to reach an agreement on the issue of compensation for the damage within the time period given by the Court, new proceedings for compensation were instituted.

Costa Rica claimed compensation for two categories of damages: quantifiable environmental damages caused by Nicaragua in excavation of the 2010 cano and 2013 eastern cano; and costs and expenses incurred due to Nicaragua's unlawful activities, including expenses to monitor and remedy the environmental damage. Nicaragua countered the claim by saying that Costa Rica was only entitled to "material damages" which are damage to property or other interests of Costa Rica that can be assessed in financial terms. The total amount of compensation Costa Rica claimed for the impairment or loss of goods and services was US\$2,148,820.82 for the 2010 cano, US\$674,290.92 for the 2013 eastern cano, US\$57,643.08 for restoration costs: US\$ 54,925.69 for replacement soil in the two canos, and US\$2,708.39 for wetland restoration.

Nicaragua countered with replacement cost valued at between US\$27,034.00 and US\$34,987.00.

On the question of compensation, the Court began by identifying the legal principles of international law for the determination of compensation. The first is the well settled principle of international law that a breach of an obligation gives rise to an obligation to make reparation in adequate form. There was no dispute between the parties that damage to the environment was compensable under international law. What is significant is that Court recognized ecosystem services as part of the compensable damage to the environment, including both direct and indirect services. The Court stated that "damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law," which may include indemnification for such impairment or loss or payment for restoration of the damaged environment. In light of Nicaragua's wrongful acts in the disputed territory the Court concluded that Nicaragua had an obligation to make full reparation for environmental damages caused by its wrongful acts.

The Court awarded US\$120,000.00 for the impairment or loss of environmental goods and services of the area in question. In addition, the Court rejected Costa Rica's claim of US\$54,925.69 to replace the lower quality soil used by Nicaragua. However, the Court awarded in full Costa Rica's claim of US\$2,708.39 to compensate for measures taken to restore the wetland.

**Comments:** The case is important for several reasons:

- It is the first time the 72-year-old International Court of Justice has decided an environmental compensation case.

- It marks a clear affirmation that environmental damage includes ecosystem services.

the Court however, failed to provide details as to how it calculated the value of the impairment or losses to the environmental services because, the court did not give any reason with regard to that.

### CONCLUSION

Thus, the collective reading and reviewing of above-mentioned articles and cases clearly tells us that it is high time that instead of just talking about environment and climate challenges, all the countries should come together as a cohesive unit and should take positive steps in saving the environment. Moreover, it is not just the responsibility of Rich Nation States but also of the poor and third world countries to ensure that they take environment friendly measures in Industries, Factories etc. within their countries. Saving the environment shall be prime agenda in manifestos of each and every Government in the world.

Saving the environment and working towards its betterment is necessary for the survival of future generations. Advancement of Technology might have made the lives of people easier but it has surely affected the environment and the entities attached to it including Marine animals, Land Animals and Human Beings as well.

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