2. 1. Introduction

Scientific and technological development and industrialization on the one hand; poverty on the other has been witnessed destruction of the environment in the Mother Earth. The traditional international law describes that both the sovereign right of state to exploit resources as well as principle of *good neighbourliness*. However, the present status of environmental degradation is seriously threatening the very survival of human beings. Considering integration of trade and environmental issue is need of the hour there are serious measures are adopted nationally, regionally and internationally. In the early 1990 to integrate the trade and developmental measures the concept of Sustainable Development was adopted; that ensures fairness and opportunities for dignified life for all without further destroying recklessly the word’s finite resources of both present and future generation. This raises a serious doubt that the concept of Sustainable Development is a complementary or contradictory to conserve the resources. To resurrect the mandate in achieving sustainability in international law; this chapter is covers introduction, the Meaning and Definition of the concept of Sustainable Development, various dimensions of Sustainable Development. This chapter also traces the evolution of the concept of Sustainable Development both customary and modern international law in detail and its bindingness of the concept of Sustainable Development and conclusion. Let us have a detail account of the chapter.
2. Meaning and Definition

The concept of “sustainability” and “Sustainable Development” is a catch word for the policy makers both at the national and international arena that are not self-evident. The concept sustainability originates from the Latin word “sustinere” which means “to hold up”, “to endure”. Webster’s New Collegiate Dictionary\(^1\) describes sustainability as “to give support” to “to keep up”. Chambers 21\(^{st}\) Century Dictionary defines “Sustainable” as capable of being sustained said of economic development and capable of being maintained at a set level.\(^2\) Cambridge English Dictionary defines, “Sustainable” is also used to refers to a way of suing natural products so that no damage is cause to the environment. “Sustainability” using the resources in a way that does not cause environmental damage.\(^3\)

The World Conservation Strategy (WCS) although not define the concept of Sustainable Development. However, the WCS describes that “living resources conservation improve the human conditions in an environmentally sustainable way.”\(^4\) Sustainable Development is defined as using living resources in a manner that ‘does not exceed their natural capacity for regeneration’ as using natural resources in or manner which ensures the preservation of the species and ecosystem for the benefit for future generations.\(^5\) For the first time, World Commission on Environment and Development

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(WCED), chaired by Brundtland submitted a report Our Common Future. The Report defines the concept of Sustainable Development as,\(^6\)

“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

The Concept of Sustainable Development contains the two key concepts:

The concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and

The idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.\(^7\) Caring for the Earth defines\(^8\)

“Sustainable Development as “improving the quality of human life while living within the carrying capacity of supporting ecosystem”.

An eminent environmentalists Dr. M. S. Swaminathan defines

“Sustainable Development implies a future in which standard of life is improved would wise through economic development where local environment and biosphere are protected and science is mobilized to create new opportunities for human progress.”\(^9\)

Abdul Kalam remarks

“Sustainable Development does not imply absolute limits to growth and it is not a new name of environmental protection. The concept leads a unique meaning to development and sets an integrated target for the measurement

\(^6\) In 1983, the General Assembly of the United Nations, set up a Commission, headed by Norway’s Prime Minister, Gro Harlem Brundtland, to examine the state of World Environment and Development, beyond 2000 and also World Commission on Environment and Development, ‘Legal Principles for Environmental Protection and Sustainable Development’, 25 ILM 494 (1986).


of development which has a combination of parameters including economic status, poverty, education, health, women empowerment, harmony, physical connectivity and environmental aspects.”

Raymond defines “the most object and potentially measurable criteria for Sustainable Development is the preservation of the productivity and the full functioning of the resource base.”

K.Parikh defines, Sustainable Development may be defined as, “the preservation of the reduction possibilities of an economy to provide the some goods and services obtained from the state of nature.”

Paul Elkins observes, “there is literally no experience of an environmentally sustainable industrial economy, anywhere in the world, where such sustainability refers to a non-depleting stock of environmental capital. It is therefore not immediately apparent that, on the part experience only, the term Sustainable Development is any more than an oxymoron”.

Pearce defines Sustainable Development as “a situation in which the development vector that is, the vector of desirable social objectives that include access to resources, as well as increases in real income per capita, improvement in health and nutritional status, educational achievement fairer distribution of income and increases in basic freedom does not decrease over time.”

Stephen Viederman, emphasizes that

“sustainability is a vision of the future that provides as with a road map and helps to focus our attention on a set of values and ethical and moral principles by which to guide our actions, as individuals and in relation to

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12 ibid
More generally, Conway understands sustainability as “the ability of a system to maintain productivity in spite of a major disturbance such as that caused by intensive stresses or a large perturbation. Lack of sustainability may be indicated by declining productivity. In environmental politics, it is considered that “[s]ustainable development, if it is not to be devoid of analytical content, means more than seeking a compromise between the natural environment and the pursuit of economic growth. It means a definition of development which recognises that the limits to sustainability have structural as well as natural origins.”

“[I]t simply means a form of economy that does not undermine the capacity of the earth and all its component parts to provide both nurture and the basic resource needs for all living matter, including human beings.”

Lipschutz, inspired by the common characteristics identified in the various existing definitions in environmental politics, suggests the following definition of Sustainable Development:

“a broad notion that human consumption of resources and environmental services must be sustainable and should not exceed the capacity of the biosphere/environment -possibly in conjunction with technology and social organisation- to supply those resources or absorb waste products. That is, `natural' stocks and flows of goods and services must not be degraded or damaged to the point that they collapse or disappear. At the same time the concept of Sustainable Development implies some degree of improvement in


human standards of living -not necessarily unfettered economic growth in the classical sense, but some sort of growth, nonetheless”.18

In sum, “Sustainable Development “ensures continuing growth and progress for humankind, whilst arresting and changing those processes which cause irreversible damage to the environment (...) over all, it exposes a concern which focuses on human need rather than human want”.19

Abbot has described the concept of Sustainable Development favours open economic relations and economic growth, because poverty is a prime cause of environmental degradation and growth provides greater resources and environmental protection. At the same time, the basic notion is that economic growth must be sustainable for the benefit of future generations.20

Sustainable Development is about being fair to the future. It is about leaving the next generation a similar, or better, resources endowment than that which the present generation inherited. The concept is honouring the environment's limited capability for receiving waste. It means using exhaustible resources wisely so that, as they are depleted, the profits from their use are reinvested in technology and other forms of capital wealth.21 Blowers defines “This involves wholesale shift from resource exploitation to conversation,

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a redistribution of wealth from rich to poor in order to meet the needs and withdrawal of those activities which could harm future generation.”

In 1974, President of the World Bank Mc Namara has elaborated “there are really no material obstacles to a sane, manageable response to the world’s developmental needs. The obstacle lie in the minds of men, we have simply not thought long enough and hard enough about the fundamental problems of the planet” and described environmental sustainability is a big challenge.

From the overall exposition, the concept of Sustainable Development is also understood not clearer than its nature. However, WCED’s definition offers a satisfactory and well accepted description more generally on environmental limits and restrictions. Hence, the Brundtland Report identified critical objectives for environment and development policies reflected in the concept of Sustainable Development:

(i) Reviving growth and changing its quality,
(ii) Meeting essential needs for job, food, energy and sanitation
(iii) ensuring a sustainable level of population,
(iv) Considering and enhancing the resource base,
(v) Reorienting technology and managing risk and
(vi) merging environment and economics in the decision making.

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22 Supra note 11.
The concept of Sustainable Development is broad but vital focus on the conservation of resources in a cleaner environment for a better quality of life for the posterity. The concept requires present generations to protect the natural, man made and human capital resources that they leave behind enough of these for the future generations to be able to attain at least the same level of social well-being as enjoyed by themselves.\textsuperscript{25} The concept eliminates the dichotomy between economic growth and environmental protection\textsuperscript{26} that necessitates in formulating environmental sustainability policies by states according to their economic, political or legal perspective as \textit{principles directeurs}.

Regardless the precise definition of WCED, the concept of Sustainable Development clearly sets forth definite legal rules as operational goals or obligations;\textsuperscript{27} such as liberty, justice and equity into the debate. The concept is based on the belief that human progress must conform to basic ecological precepts and human needs in order to endure.\textsuperscript{28} Human rights lawyers for instance, focus more particularly on the aspect of equity within and between generations, and on the satisfaction of basic human needs,


including the need for a clean and healthy environment.\textsuperscript{29} Ksentini Report reveals that environmental damage has direct effects on a series of human rights including, \textit{inter alia}, the right to life, to health, and to a satisfactory standard of living.\textsuperscript{30} Farbara has quoted the Ksentini Report the understanding and relationship between environment and human rights in global in character of environmental problems and their human aspects has made it possible to move ‘from environmental law to environmental rights’.\textsuperscript{31}

The Report of the ILA Committee on NIEO describes that “Sustainable Development is not a fixed state of harmony but rather a process of change in which the exploitation of resources, the divesting of investment, the orientation of technological development and institutional change, is made consistent with future as well as present needs.”\textsuperscript{32} Such Sustainable Development in the agriculture, forestry, industry, energy and genetic resources is environmentally non-degrading, technically appropriate, economically viable, ecologically sustainable and socially acceptable.\textsuperscript{33} This has also helped in realising the various dimensions of the concept of Sustainable Development.


\textsuperscript{32} ILA Report of the 65\textsuperscript{th} Conference, 21-26 April 1992 (Cairo, 1993), 407 at para. 1.12.

2. 3. Dimension of Sustainable Development

The concept of Sustainable Development is not a new prior to the UNCED.34 The Earth Charter was remarkably intended to be a crystallization of new thinking in the form of a set of concrete objectives and strategies for achieving sustainability. Although some scholars have recognized, environmental and economic dimensions, there are other dimensions of the sustainability also exists.35 Though, some scholars have recognized only four dimensions of sustainability levels.36 There are many dimensions of sustainability has been accepted at all level are described as below; such as,

1. Geographical Sustainability
2. Biological Sustainability
3. Ecological Sustainability
4. Social Sustainability
5. Cultural Sustainability
6. Demographic Sustainability
7. Economic Sustainability

Considering the limitation of the present study, let us examine economic, social and environmental sustainability in detail.

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2. 3. 1. Economic Sustainability

Economic sustainability depends upon the relationship between benefits and costs. It is more easily measurable than social sustainability because it can be defined in numerical terms, primarily units of currency. Economic sustainability is conditioned mainly by the availability and cost of inputs. The resources of an economic process are the need to use in ways that do not damage the environment. The imperative to reduce costs must not be an excuse to affect the long term economic as well as ecological sustainability. Economic sustainability is constrained anything that upsets a viable balance between benefits and costs. In reality, national policies play a predominant role in achieving economic sustainability.

2. 3. 2. Social Sustainability

Social sustainability reflects the relationship between development and current social norms. It is also significant that we live in a world of fast moving social and economic change. If any social sustainability will arise or which would breach existing social values the people will oppose or resist that activity. This leads clearly to the question of how to define the social limits that must be respected to achieve sustainability. These social norms are based on religion, tradition and custom. However, a social limit is hard to

38 Many principle of the Rio Declaration significantly emphasises that the mandate of the national policies in achieving effective conservation of resources both for present and future generations. See Principles 11, 12, 13, 14, 15, 16 and 17, Supra note 37.
define, measure and evaluate. Social sustainability is impossible to be codified in law, and social limits. For this type of development to become a reality at the global and regional level action and respect of all states is required.

2.3.3. Environmental Sustainability

Ecological degradation is considered as the only root cause for socio-cultural erosion. Environmental Sustainability is presented as the priority goal of the concept of Sustainable Development, and is distinguished from economic and social sustainability. The effect of deterioration of resources has seriously threatening the life supporting systems and often causes conflict to security\(^{40}\) including environmental security\(^{41}\) both at the time of peace as well as war.\(^{42}\)


The Millennium Development Goals (MDGs) also widely accepted environmental security is one of the leading international community’s agenda. Irrespective the conservation of resources, environmental sustainability is now widely recognized as a mandate in an international arena. It should maintain, recover and restore the natural resource base, as finite resources. Sustainable Development described as one of the means for reaching that goal. An environmental sustainability means, it must not degrade the diversity and biological productivity of ecosystems nor ecological processes and vital systems. Environmental sustainability challenges the environmental security that has also been equated with national security. Surprisingly, Since Rio environmental sustainability expressed in obligatory terms. Two distinct features of environmental security are:

(i) the environmental causes of conflict, i.e. environmental factors behind potentially violent conflicts; and

(ii) the impact of environmental degradation on overall political economy, health and life of the people.


47 In the late 1990s the multilateral environmental agreements used should and shall.
2.4 Origin and Development

Until the late 19th century, there was no evidence to qualify any trade and development which led to the destruction of resources areas beyond national jurisdiction.\(^{48}\) Any environmental pollution and its consequences are considered as a domestic and national issue. In the late 1940s, the formation of UN on the one hand the GATT on the other help the state to exploit their resources to carry out trade and developmental activities with limited restrictions.\(^{49}\) Similarly, in the early 1960s, the UN in its General Assembly Resolution conferred an unfettered freedom and sovereignty over natural resources\(^{50}\) even beyond the territorial limit.\(^{51}\) The Cocoyoc Declaration also remarkably stressed that the states sovereignty in exploiting their resources.\(^{52}\) When a state is committed in quantifying their economic status and with right to self-determination has resultant many irreversible environmental problems even beyond the national boundaries and created a serious threat to the human survival.


The global environmental movement had understood the interdependence of the people and the environment and established an honourable place in the multilateral trading system a serious attempt was made for future survival of human being. It is also believed that the UN has also contributed most noteworthy an appropriate environmental management and planning. For the first time, in the early 1970s, environmental issues began as a growing part of public international law; in the late 1980s the concept of Sustainable Development has emerged in the contemporary history of


The various MEAs expressly or impliedly reemphasise the need for an
effective conservation of resources for the better of present and future generations. To
demarcate the development and the conservation of resources, in the early 1980, World
Commission on Environment and Development was set up.

Conservation of resources to achieve environmental sustainability by the national
governments subsequently endorsed universal level at Rio. Agenda 21 in its preamble
refers ‘the need for a global partnership for Sustainable Development’, and most of its
provisions are intended to promote the concept. WSSD also describes methods and
means for implementing the mandate to achieve environmental Sustainability. There are
substantial efforts in order to ensure the timeless prosperity of mankind in terms of both
the ecological and economic development of international environmental law.

This chapter is also tracing an evolution of the concept of Sustainable Development
both customary law and modern law perspective.

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2. 4.1. Customary International Law on Environmental Protection

Customary international law *sine qua non* offers responsibility to the state to solve transboundary environmental problem. For the first time, in 1893 the *Behring Sea Seals* case the tribunal observed that the states had authority to adopt measures for the protection marine mammals in the high seas. The *Oder*66 and *Meuse*,67 the PCIJ examined the extent of jurisdictional reach of the international commission to regulate the use of the river. The judicial decisions demonstrate the importance of the principle of equity in the development of international law.68 The equity principle is certainly a fluid principle. Despite its fluidity, the principle has played legitimacy in the consumption of common resources.

In the early 1940s, the classic adjudication,69 affirmed that the principle of “*Good Neighbourlines*. In *Lac Lanoux case*,70 the court established the importance of prior consultation before undertaking a project that has transboundary effects. Such a principle has been repeated in a number of international instruments, including the Convention of Environmental Impact Assessment (EIA).71 The tribunal further stated:

66 PCIJ Ser, A. No. 23, 10th December, 1929.
67 PCIJ Ser. A/B, No. 70 28th June 1937.
“the rule according to which States may utilize the hydraulic force of international watercourses only on condition of a prior agreement between the interested States cannot be established as a custom, nor even less as a general principle of law.”

In the aftermath of the Lac Lanoux case, a new bilateral treaty was signed between France and Spain. This agreement authorises the state to take all necessary measures to resolve the situation including making reparations. In Nuclear Test case, the ICJ emphasised that international environmental law does not specifically prohibit the use of nuclear weapons but provides important environmental rules and principles international humanitarian law. The court also underlined the importance of environmental consideration in the principles of proportionality and necessity in the pursuit of armed conflict. The Court also rejected the argument that the use of nuclear weapons infringed on the right to life as stated in the Covenant on Civil and Political Rights. And declared that erga omnes obligation to stop such testing. The Court also emphasized that:

“the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The existence of the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to the environment... And states must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. Respect for environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality”.

72 16 ILM 242 (1976).
The early growth of international environmental issues is reflected in the large body rules of customary law which apply bilaterally, regionally and globally. Subsequently, the custom has characterized and accepted as a source.\textsuperscript{76} The environmental issues also reflect international interdependence. The conditions which have contributed to the emergence of International Environmental Law are two fold:

1. Environmental issues are accompanied by recognition that ecological interdependence does not respect national boundaries, and
2. Issues previously considered to be matters of domestic sovereign concern have international implications: The implications which may be bilateral, sub regional or global can frequently only be addressed by international law and regulation.\textsuperscript{77}

One requirement of the test of custom is that a general recognition must be found among nations that a certain practice is obligatory.\textsuperscript{78} Professor Ian Brownlie concludes in a survey of the international customary rules of environmental protection that custom “provides limited means of social engineering”.\textsuperscript{79} To him the limitations of custom, evidence the need for the development of new institutions, standards and localized regimes. As a result of the judicial decision on environmental protection the web treaty law on environment increases.\textsuperscript{80}


\textsuperscript{78} \textit{Supra note} 8.


2. 4. 2. Modern International Law on Environmental Protection

The judicial decision on the one hand and the UNCHE on the other remark that there are legitimate instances where transboundary harm is permitted, because many harms that occur every day resulting from ordinary economic and other social activity occurs by an accident, often unrelated to fault. 81 This can help not only protecting the sovereignty but also resolving conflicts between generations to share in the earth’s limited resources. The UN Charter describes that no state is to violate the sovereignty of another state. 82 Realising the need for conservation of common resources between generations the prominent contribution MEAs focuses on various strategies, such as planning, management. At the turn, early in the century, there were relatively few multilateral or bilateral international environmental agreements were concluded to protect commercially valuable species. 83 Environmental agreements are also facilitating navigation and guaranteeing fishing rights. It is also interesting to note that, the subject-matter of international environmental agreements has expanded significantly. Hoffman has describes

“in response to this demand, however, the United Nations General Assembly has fostered the development obligations of state with respect to the environment without concomitant attention to that part of international law-making that serves to build a structure of world environmental order, namely the development of secondary or functional rules of international law which exist to promote the practical realisation of the substantive or primary rules of international law defining the content of a state’s legal obligations”. 84

The PSNR\textsuperscript{85} and RTD\textsuperscript{86} are the legal elements of the concept of Sustainable Development. The sovereign right to exploit resources is not contemplating the customary principle of international law. The UNCHE categorically reemphasise the international responsibility\textsuperscript{87} to protect the territorial rights of neighbouring state\textsuperscript{88} whose prospects may be jeopardized.\textsuperscript{89} There are issues relating to state responsibility.

Firstly, whether and to what extent a state is responsible for pollution damage originating either within its own territory or from an entity subject to the jurisdiction and cause damage outside its territory to another state or entity; and

Secondly, if there is such responsibility, under what principles of liability should compensate or other damages provided to the victim.\textsuperscript{90}

Today there are agreements to address environmental issues and effective conservation of resources in all media; such as conventions relating to whaling practices,\textsuperscript{91}


\textsuperscript{89} Environmental Protection and Sustainable Development Legal Principles and Recommendations, adopted by the Experts Groups on Environmental Law on the WCED, (Graham & Trotman/ Martinus Nijhoff, 1986).

\textsuperscript{90} Principle 13 and Principle 22, Supra note 34.

fisheries,\textsuperscript{92} birds,\textsuperscript{93} oil pollution in oceans,\textsuperscript{94} and agreements governing international liability for nuclear damage,\textsuperscript{95} oil-pollution casualties,\textsuperscript{96} to civil liability for oil-pollution damage,\textsuperscript{97} Convention on oil pollution in the North Sea,\textsuperscript{98} marine pollution,\textsuperscript{99} long range transboundary air pollution,\textsuperscript{100} protection of the ozone layer,\textsuperscript{101} climate change,\textsuperscript{102} biodiversity,\textsuperscript{103} desertification,\textsuperscript{104} trade in endangered species of wild fauna and flora,\textsuperscript{105} transboundary movement of hazardous wastes and their disposal,\textsuperscript{106} industrial accidents,\textsuperscript{107} wetlands\textsuperscript{108} and so on.

It is interesting to note that, combating these problems states have accepted their response to transboundary environmental problems through international agreements which requires co-ordination among states.

\footnotesize{92} U.N.T.S. 72.
\footnotesize{96} 327 U.N.T.S. 3; 11 ILM 284 (1972).
\footnotesize{98} 30 ILM 733 (1990).
\footnotesize{99} ILM 1295 (1972); ibid.
\footnotesize{102} UN Doc. A/AC. 237/18 (Part II); 31 ILM 849 (1992).
\footnotesize{104} UN. Doc. A/AC. 241/15/Rev. 3 ; 33 ILM 1332 (1994).
\footnotesize{107} 31 ILM 1330 (1992) and 32 ILM 1228 (1993).
\footnotesize{108} 11 ILM 963 (1973).}
2. 4. 2. 1. United Nation Convention on Human Environment

Since the creation of the UN, great efforts have progressed to adopt appropriate and adequate measurer in environmental protection and still continuing the work. Prior to the Stockholm Declaration on Human Environment several international environmental agreements have been adopted, in particular, some on marine pollution. However, environmental management triggered a flurry of activity at international levels. The Modern system on environmental management dates to the 1972 UNCHE held in Stockholm 5-16 June 1972. UNCHE attracted 103 affirmative votes, 12 abstentions and not a single negative vote. The 7 universal truths and 26 principles were adopted in the UNCHE. The UNCHE was a magnificent achievement which brought the attention on environmental issues which is a classic concern to conserve the resources for present and future generation with global approach. During the debate of UNCHE it was described “the declaration is an important milestone in the history of the human race” and that it was “starting point in the task of making the planet a fit place for future generations”.

110 UNGA Res.2994, 2995 and 2996; and Supra note 34.
The Stockholm Declaration also describes that the present generation has a duty to know an environmental quality but also have a “solemn responsibility to protect and improve the environment for present and future generations.” UDHR accomplished for the protection of fundamental freedoms and human rights, that is essentially a manifesto, expressed in the form of ethical code, intended to govern and influence future action and programmes both at the national and international levels. UNCHR has also asserted a link between preservation of the environment and promotion of human rights. A fundamental question is whether human rights and environmental protection are premised upon fundamentally different social values, such that efforts to implement both simultaneously would produce conflict with each other. Considering the overlapping with each other; the UNCHE is described as Magna Carta on environmental protection.

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113 Supra note 37.
Principle 1 of the UNCHE emphasized the fundamental right to adequate conditions of life for present and future generations. Principle 2 of the declaration emphasized that the natural resources must be safeguarded for the benefit of present and future generations. Principle 8 emphasized that, economic and social development is essential for ensuring a favorable living and working environment for man that are necessary for the improvement of the quality of life. Principle 11 stresses that states commitment to make appropriate environmental measures. Principle 21 is a classical example for customary principle of international law with regard to state responsibility in conservation of resource. Jaydeepsinh has described that Principle 21 has been attaining the status of juscogens that is to say the body of peremptory principles or norms from which no derogation is permitted. Principle 22 of UNCHE urged the states to develop the international law regarding liability and compensation for the victims of pollution and

119 Supra note 34.
120 ibid
121 Ibid
122 ibid
123 Principle 21 declares that States have, in accordance with the Charter of the United Nations and the principle of international law the sovereign right to exploit their own resources to their own environmental policies, and the responsibility to ensure that the 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. Supra note 34.
other environmental damage caused by the activities within the jurisdiction or control of such states to areas beyond their jurisdiction”.127

The UNCHE, basically have two conflicting approaches. The first approach is the primary concern of control of pollution and conservation of natural resources. The second approach is social and economic development. The two seemingly opposite approaches were as two sides of the coin that are inseparable from each after. The declaration does not tell us how these aims, which may be mutually incompatible, are to be achieved.

The UNCHE led to the establishment of the UNEP headquartered in Nairobi, Kenya. UNEP is to act as a catalyst for the environment in the UN system.128 Over the years, UNEP contribute significantly, by adopting a significant number of MEAs as well as many regional agreements.129 UNEP push states, probe their policies, as the environmental science of the UN system.130 Boyle describes that soft law consists of general norms or principles not rules.131 UNEP is the principal source of environmental data, assessment and reporting and advance stage of cooperation. All UNEP financed by direct, voluntary contribution from member states. However, UNEP cannot coerce the state to commit to comply soft law instruments.

127 Supra note 34.
2. 4. 2. Modern International Law on Environmental Protection

States have undertaken a range of international obligations in respect of protection of the environment under customary International law as well as general principles of international law.\textsuperscript{132} To put some flesh on the bones of Principle 21 UNCHE, the ILC began its initiatives in 1978.\textsuperscript{133} International law and institutions should be used efficient tools for the peaceful resolution of those international economic conflicts which already exist or can be foreseen in the field of natural resources.\textsuperscript{134} Resource management has unquestionably been dominated by a concern with technical sophistication as a source of creditability of political, cultural, economic and social relevance.\textsuperscript{135}

The principle of state responsibility is reemphasised in the codifications of international environmental law\textsuperscript{136} that helps ‘to achieve international standard of justice.’\textsuperscript{137} Alan Boyle has characterized that the effort by writing that “it is liable to seem


\textsuperscript{133} The ILC established the Working Group on International Liability for Injurious Consequences arising out of acts not prohibited by International Law at its 152\textsuperscript{nd} meeting on June 16, 1978 and Robert Q. Quentin - Baxter was appointed special Rapporteur (1987).


at best a questionable exercise in reconceptualising an existing body of law, or at worst, a
dangerously retrograde step which may seriously weaken international efforts to secure
agreement on effective principles of international environmental law.” Under the state
responsibility states are liable for injurious consequences arising out of acts not prohibited
by international law.” Many of them are now viewed with a sense of urgency that could
not have reasonably been expected on the basis of the scientific evidence then available. The principle of state responsibility concerning transboundary interferences are:

1. A State is responsible under international law for a breach of an
international obligation relating to the use of a natural resource or the prevention or
abatement of an environmental interference.

2. In particular, it shall:
   (a) cease the internationally wrongful act;
   (b) as far as possible, re-establish the situation which would have existed if
       the internationally wrongful act had not taken place;
   (c) provide compensation for the harm which results from the internationally
       wrongful act;
   (d) where appropriate, give satisfaction for the internationally wrongful act.

This present part also covers the initiatives of the International Law Commission
under the state responsibility to achieve environmental sustainability both for the present
and future generations.

“State Responsibility and Abnormally Dangerous Activities,” 13 Harv. Int’l LJ. (1972), pp 197-244 at
243.
138 Alan Boyle. “State Responsibility and International Liability for injurious Consequences of Acts not
prohibited by International Law: A necessary Distinction”, 39 ICLQ (1990), pp 1-26 at 22.
140 Supra note 34.
2. 4. 2. 1. World Conservation Strategy, 1980

In March 1980, for the first time, Director General, David Munro launched the WCS which was prepared by IUCN, WWF and the UNEP. WCS was the major attempt to integrate environment and development concerns into umbrella concept of living resource “conservation”.\(^\text{141}\) The chief objective of resource conservation as follows;

- maintenance of essential ecological processes and life support systems;
- preservation of genetic diversity; and
- sustained utilization of species and ecosystem.

But the WCS did not go deep into the social and political changes needed for the developing countries to realize these objectives.\(^\text{142}\)

2. 4. 2. 2. Charter for Nature, 1982

The idea of the Charter was mooted in 1975 at the Twelfth General Assembly of the IUCN. The proposal was accepted and an international group of experts as a code of conduct for managing natural resources based on the proposition that all human conduct affecting nature must be guided and judged.\(^\text{143}\) The Charter for Nature was nearly unambiguously endorsed by the United Nations General Assembly in 1982.\(^\text{144}\) The Charter also comes to grips with the problem of global environmental change by imposing a requirement on states and ultimately their national territories which are likely to pose

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\(^\text{141}\) Supra note 5.
\(^\text{144}\) Supra note 34.
significant risk to nature shall be preceded by an exhaustive examination. The Charter for Nature, a genuine 'moral code of action', acknowledges the interrelatedness of every form of life, economic, social and political stability and environmental preservation, and extensively addresses, albeit without expressly referring to it, the idea of sustainable consumption.

“Lasting benefits from nature depends on the maintenance of essential ecological processes and life support systems, and on the diversity of life forms, which are jeopardised through excessive exploitation and habitat destruction by man.”

2. 4. 2. 2. 3. Nairobi Declaration, 1982

To celebrate the tenth anniversary of the Stockholm Declaration on Human Environment, 105 nations gathered at a meeting held at Nairobi to look at progress from May 10-18, 1982. At the meeting, the decision was taken for the creation of a special commission to propose long-term environmental strategies for achieving Sustainable Development by the year 2000 and beyond which was endorsed by the UNEP’s Governing Council. The enthusiasms of the developed countries seemed to be on the wane at Nairobi.

145 Preambular para 4 (a), Supra note 5.
2. 4. 2. 4. World Commission on Environment and Development, 1987

In 1982, the Experts Group on Environmental Law established by the World Commission on Environment and Development (herein after referred to WCED) had an easier task than the ILC.\textsuperscript{149} WCED was held under the chairmanship of Prime Minister of Norway and submitted a report called “Our Common Future.” The committee formulated a report on legal principles for environmental protection and sustainable development and for accelerating the development of International Law. The group produced elements of a draft convention in 1986, setting out clear principles of liability concerning transboundary interferences. The Report not only elaborated the relation and nexus but also defined the concept of Sustainable Development and stresses the factor of environmental degradation causing the violent relationship between the resource management and development and stresses:

“Sustainable Development as a framework for the integration of environment policies and development strategies in order to assure that growing economies remain firmly attached to their ecological roots and that these roots are protected and nurtured so that may support growth over the long term.”\textsuperscript{150}

The whole discussion of the thesis is based on the definition of Our Common Future and the various principles that are unanimously adopted in various environmental agreements by the UN member countries at various levels.

\textsuperscript{149} Supra note 6.
\textsuperscript{150} Supra note 7, at 29.
2. 4. 2. 2. 5. Caring for the Earth, 1991

A Strategy for Sustainable Future was developed by the second world conservation project comprised of the representatives of the IUCN, UNEP and WWF. The central theme of the report is the application of the principle of Sustainable Development. Caring for the earth represents current, middle-of-the road thinking on the relationship between conservation and development. The document also concerns both human rights and the biodiversity and environmental degradation. Specific recommendations of the report include:

- establishing a constitution commitment to the principles of Sustainable Development;
- establishing a comprehensive system for environmental law, and providing for its implantation and enforcement;
- reviewing the adequacy of legal and administrative control and of implementation and enforcement mechanisms;
- making information on the environment more accessible; and
- subjecting projects, programmes and policies to environmental impact assessment.

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153 Supra note 151.

Amongst the United Nations measures; the Rio Declaration invigorate the tussle and integrate trade, development and environmental goals. In early 1990s, two parallel Conference on Environment and Development\(^{154}\) held in Rio de Janeiro, Brazil from June 3-14, 1992 wherein more than 170 governments participated. Rio Declaration significantly consolidate the interests of developing and developed states gave a new global commitment and general obligation of states in the field of environment and conservation of resources. During the Preparatory Committee (Prep Comm) UNCED’s mission was to put to world on a path of Sustainable Development which aims at meeting the needs of present and future generation.\(^{155}\) UNCED Secretary General, Maurice Strong and UN Secretary General Boutrous Ghali each called on states to negotiate a move legally progressive “Earth Charter”. During the negotiations, one delegate from the developed countries stated thus: “The Earth Charter should be framed and put in the room of every child of the world”.

Earth Charter produced five documents.\(^{156}\) The 27 principles UNCED is something of a ‘package deal’ negotiated by consensus that reflects a real consensus to identify agreed norms of North South compromising guidelines for sustainability. The Rio Declaration has thus been called: “A text of uneasy compromises, delicately balanced interests, and dimly


\(^{156}\) Supra note 34.
discernible contradictions, held together by the interpretative vagueness of classic UN-ese. However, none of the principles either define the Sustainable Development or articulate the mandate in principle 1 of Stockholm Declaration i.e., the Human Right to a decent environment a fundamental right.

The preamble of the declaration integrates the global environmental and developmental system an interdependent part of own development. Principle 1 of the declaration describes that, human beings are at the centre of concerns for Sustainable Development. They are entitled to a healthy and productive life in harmony with nature. Environment being the vital source for developmental activities this principle recognizes the definition of Sustainable Development, and also given more concentration on the protection of environment. Principle 3 of the declaration reemphasise that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. Principle 4 also in the someway, it state that to achieve Sustainable Development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

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158 Supra note 37.
159 Principle 12 Declares State should cooperate to promote a supportive and open international economic system that would lead to economic growth and Sustainable Development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions o deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global problems, should, as far as possible be used on an international consensus. Supra note 34.
160 Supra note 37.
161 Ibid.
Considering the applicability of these principles, experts describe UNCED concentrates strictly on environmental issues.\footnote{Supra note 57, p. 33.}

On liability for environmental damage it merely reiterates the need to develop the law.\footnote{Principle 13, Supra note 37.} Principle 16 of the UNCED describes that commitment of states on economic issues.\footnote{Marc Pallearts, “International Environmental Law From Stockholm to Rio: Back to the Future” in Sands (Edn.), Greening International Law”, 29 GEO. LR (1995), pp 254-279 at 261.} Principle 25 of the declaration\footnote{Supra note 37.} emphasizes that peace, development and environmental protection are interdependent and indivisible. This principle clearly states that the concept of Sustainable Development has attained the international status. Lastly, it calls for the further development not of international law relating to the environment but of international law in the field of Sustainable Development.\footnote{ibid.} Despite these qualifications, it is right to view the Rio Declaration in generally positive terms. It is much too pessimistic to characterize it as a backward step in the development of international environmental law.\footnote{Richards and Hahn, “The Internationalization of Environmental Regulation”, 30 Harv. ILJ. (1989) pp at 421.} On the contrary the declaration has articulated the shared expectations of developed and developing states and brought together an important body of new and existing law. It does not deal with environmental crimes.\footnote{See. Gen. Bowett, in McDonald and Johnston, The Structure and process of International Law Dordrecht, (1983), pp 46-51; Dr. A. David Ambrose, “Green Crimes Need Red Signal”, 23 The Year Book of Legal Studies (2000), pp 21-34 at 22; Supra note 24, p. 329.}

The MEAs and MTAs adopted prior to and at UNCED reflect the growing range of economic activities which are a legitimate concern of international community and subject
to international regulation.\textsuperscript{169} UNCED agreed priorities could be divided into two categories.

a) Those relating to protection of various environmental media, and

b) Those relating to regulation of particular activities or products.

For both categories the international legal issues are complex and cannot be addressed without taking into account political, cultural, economic and scientific concerns.\textsuperscript{170}

UNCED and Agenda 21 was reviewed to build upon a strategy to harmonise the various economic, social and environmental policies and plans for the benefit of future generations.\textsuperscript{171} The Strategy was build upon and harmonize Collection of improved information, analysis and dissemination of data and calls for international cooperation\textsuperscript{172} is needed to interpret the treaty obligation through the Earth Watch programme of the UNEP. It should be developed through widest possible participation.\textsuperscript{173} The Rio Conference helped establish the United Nations Commission on Sustainable Development (herein after referred to UNCSD) and reaffirmed the role of the Global Environment Facility (GEF), thus widening the organizational basis for the Environment and Sustainable Development within the United Nations System.\textsuperscript{174}


\textsuperscript{171} Supra note 37.

\textsuperscript{172} \textit{ibid}.

\textsuperscript{173} \textit{ibid}

In 2002, the WSSD was adopted by the United Nations General Assembly to strengthen the global commitment of the UNCED. The Conference held at Johannesburg from 26 August to 4 September 2002.\textsuperscript{175} This summit also stresses the mandate for national policies to implement Agenda 21 of UNCED and remove obstacle for achieving Sustainable Development.\textsuperscript{176} The conference adopts two documents,\textsuperscript{177} such as the Johannesburg Declaration and the plan of Implementation. However, WSSD does not provide a succinct definition of the concept of Sustainable Development.

The declaration makes the link with the three pillars of Sustainable Development.\textsuperscript{178} Poverty is primary factor of ecological degradation\textsuperscript{179} WSSD prescribes method and means to eradicate poverty, consumption and production patterns and manage the natural resource which is the greatest global challenge.\textsuperscript{180} The World Development Report 2006


also describes greater equity does not guarantee less poverty.\textsuperscript{181} However, from a multilateral perspective, it is quite difficult to require countries within jurisdiction, which necessitates international cooperation. Peace, security, stability and respect for human rights and fundamental freedoms are deemed to be essential for achieving Sustainable Development.\textsuperscript{182}

It must be mentioned that the UN and its specialized Agencies have elaborated and concluded under their auspices more than 150 conventions and treaties on the environment and resource management. This magnificent development of the treaty law on environment manifests a great achievement of the UN system on the International Environment Law. This great progress has specifically been achieved by great efforts and contribution and collaboration of UNEP, UNCED and other UN Organisation which coordinated their efforts with the UN in developing international environmental law. It is necessary to mention the role of the UNEP, as it carried the great burden of the work which has been accomplished by the UN and thus contributed to the development of environmental science, law, study, international cooperation, planning and drawing international environmental strategy.

The newly emerging security concerns have been characterized as non-traditional, and are now considered a major component of what is christened as comprehensive security. Among these emerging problems replacing the threat of East-West ideological

divide, military aggression and struggle for global preponderance is the global environmental crisis. It looms large in terms of global warming, sea level rise, acid rain, greenhouse effect, diminishing capacity of the agricultural system, depletion of earth’s finite resources, punching holes in the ozone layer, and biodiversity loss.

MEAs incorporates both the positive and negative elements.\textsuperscript{183} The positive elements are:

1. Stimulation of awareness of issues affecting all or most nations;
2. Opportunity for arising grievances and revealing hidden tension, and
3. Obtaining agreement among nation-states sufficient to afford a basis for cooperative action, including research and institutional arrangements.

Negative elements are;

1. Opportunities for inflammatory rhetoric and distortion of issues for purpose of propaganda;
2. Tendency to compromise issues to a point of inaction; and
3. Uncertainty regarding the ability of government to honor conferences commitments.


In 2012, realising the need of harmonization of trade and developmental polices for the effective conservation of resources in the *Mother Earth* the Future we want was adopted.\(^{184}\) The United Nations Convention of Sustainable Development was held from 20 to 22 June 2012 at Rio De Jenerio. There are more than 200 states were actively participated. In fact at Rio, there are strategic plans are adopted. However, for the purpose of this research the Future we want only analysed in detail.

Future we want recalled the UNGA Resolutions and emaphsise that mandate of the state to incorporate environmental principles and in their trade and developmental polices to achieve the Millennium Developmental Goals.\(^{185}\) The Convention also emphasizes need for integrating the three dimensions of sustainable development\(^{186}\) including the inclusive and people centered growth by involving and benefitting all people.\(^{187}\) The Convention also remarkably emphasise the mandate of Preamble of the WTO and covered agreements of the WTO.\(^{188}\) This has seriously raised a doubt that whether the concept of Sustainable Development is mandatory or obligatory. Realising status of the concept; the various legal elements of the concept of Sustainable Development is analysed in detail.

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186 Paras. 20, 75-76, *Supra note* 181.
187 Para. 31, *Supra note* 181.
188 Paras 78, 142, 178, 282, *ibid.*
2. 5.  Soft Law

To save the generations form environmental deterioration in the *Mother Earth*; there are sizeable literatures including judicial contribution has been burgeoning. It is understood, the very prominence of the concept of Sustainable Development is recognized in various multilateral environmental and trade agreements. Some of the agreements, declaration, convention and treaties are mixing with binding and non-binding governing principles.\(^{189}\) In fact, the term soft law has no clear-cut definition in international law. However, it raises a serious doubt about the binding aspects of the documents and concern with whether the governing principle of Sustainable Development is obligatory or discretionary? The enforceability and binding can be drawn from custom or treaties.

There is serious doubt about the bindingness of the concept of Sustainable Development to the effect of conservation of resources. The traditional international law remarks that responsibility of state to take appropriate measure both in precaution as well as to provide remedy to that pollution. These factors are also often proved with state practice before it hardens to legally enforceable. It is interesting to note that to decide applicability and legal status of custom in international arena, the norms represent will become binding upon all countries, whether or not they are party to the relevant agreement?

Considering the mandate of the state in effective conservation of resources it is need of the hour to discard the political options of the states in protecting the common property. Adaptation of the Resolutions, Conventions and Declarations is a remarkable step to combine the political decision with legal enforceability. These UN initiatives on Sustainable Development also considered as a prime catalyst in compelling the states to adopt appropriate national polices to conserve the resources for the present and future generations. There are also weaknesses in adopting the UN-ease measures. The process for adoption of make take long time. When there is a specific commitment on states the states may shy away from the specificity they often involve. This can also alter the circumstances in which an issue is considered. Soft law provisions that create no immediately legally binding obligations have emerged as tools to formulate societal values and express consensus.\textsuperscript{190} It may, however, be used to categories those ambiguous obligations found in binding international agreement. It may also be used for those non-binding standards of conduct found in declaration, resolutions and other non-binding instruments. Resort to soft law leaves large amounts of discretion to states.

Above all, recognizing the equity, the Earth Charter is the key document remarkably incorporating the legal elements both are soft and hard law. The concept of Sustainable Development can be analsyed and interpreted on the basis of equity rather than on legal obligation.

2. 6. Conclusion

From the analysis of the customary and modern international, such as, the MEAs it is concluded that the Concept of Sustainable Development is a buzz word. Prominence of the traditional international law describes that no activities of a sovereign state should not make transboundary pollution, *sic utero tuo non lades*. The remarkable contributions of the Judiciary also emphasis that the state practice and *opinion juris* also reiterates that environmental protection is a part of customary international law. The concept of Sustainable Development links the social, economic, environmental rights both for the present and future generations. Environmental security dimension mandates that national policy maker to make appropriate policy for the effective conservation of resources both for the present and future generations. Although, the definition for the concept of Sustainable Development is not precise and clear; the modern international law transformed the practice among states in the form of multilateral environmental agreements (MEAs). Rio Declaration, in its various legal elements, mandate national governments to make appropriate measures the need for effective conservation of resources both for the benefit of present and future generations at all level. Since, these MEAs imposes only obligation still there are serious doubt regarding the bindingness of the concept of Sustainable Development. This can be realized only with the effective acceptance and recognition of the national legislation and polices.

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