5.1 Talks about Impotency of International Court of Justice

Indirectly it was Thomas Robert Malthus who in very first instance gives us the concept of environmental degradation when he said “in an inquiry concerning the improvement of society, the mode of conducting the subject which naturally present itself is to investigate the causes that how impeded the progress of mankind towards happiness and to examine the probability of total or partial removal of these causes in future”1 According to him, “It is constant tendency in all animated life to increase beyond the nourishment prepared for it.”

He was absolutely right in concluding the constant and over-ambitious approach towards development. Further quest for development raise the notion of getting it at every cost which was further though indirectly staged as survival of the fittest in struggle for existence by Charles Darwin in his book on the origin of species by means of natural selection or preservation of favoured cases in struggle for life. These sorts of concepts lead to over exploitation of each and every thing available in Earth. As in process, man become developed, he saw a more strong law to protect his specie for future as law is to regulate the conduct of human beings, then to preserve such species, laws were pottered.

System was enacted to give justice in case of violation of certain rights imposed on human beings. One of those rights, one most important right is Right to Environment for which Al-Gore in his book ‘Earth in the
Balance’ has talked of a Marshall plan based on historic plan of George Marshal after Second World War to re-establish Europe. According to Gore New Plan will require the wealthy nations to allocate money for transfer of environmentally helpful technologies to Third World and to help improvised nations to achieve a stable population and a new pattern of sustainable economic progress.\(^2\)

But question comes before is How we can make all these plans effective? What problems one has to face in Court of Justice when his right is violated? Environment is not a National subject rather an International subject. To deal with one subject there is international legislation namely treaties, conventions, commissions, conferences. And in case of any violation of such right, International control régime is there i.e. International Court of Justice. Few points can be raised regarding the jurisdiction of International Court of Justice to deal with the environment problems which are:

1. According to Article 34 of Statute of International Court of Justice, only States can be parties in cases before Court. It means individual don’t have any access to International Court of Justice.

2. Secondly, Article 59 of Statute says decision of Court has no binding force except between the parties and in respect of that particular case whereas Article 38(d) says Court shall apply judicial decisions in
deciding the disputes. But subject to Article 59 provisions, it means Court don’t have precedent theory.

3. Court has advisory jurisdiction under Article 65 of Statute. It can given an advisory opinion on any legal question at request of whatever body may be authorized by or in accordance with Charter of United Nations to make such a request. Article 96(2) of United Nations Charter authorize any agency authorized by General Assembly to request advisory opinion of Court on Legal Questions arising within the scope of its activities. Now what activities are within scope and what are not has not been made clear by Charter and Statute both. It is left on Court to decide. Such stances whether this clause should be amended to extent of questions arising within scope of its activities or not.

Now first question determines the aspect that only states are the parties to cases before court. Individual can’t have access to Court. It means individuals are not the subject of International Law. But impact of each and every decision falls on individuals. When individual has to suffer for wrong enforcement or for violation of his/her rights why he can’t approach Court for justice.

In *Danzing Railway Official Case*, Permanent Court of Justice ruled but that, if in any treaty the intention of parties is to confer certain rights upon some individuals, then international law will recognize such rights and will enforce them. In this case Poland had acquired under an
international agreement with Danzing railway Company. Under said agreement Poland had agreed to provide certain facilities to officials of said company. Poland argued that since the said agreement was in the form of an international treaty. It created rights and duties only in respect of parties to treaty and hence individuals as such cannot possess any right under said treaty. But Permanent Court of International Justice rejected the contention of Poland is to confer certain rights upon individuals then International law will not only recognize such right of individuals but may also enforce them.

Whether International Law binds individuals is by no mean of theoretical significance only. Towards the end of the Second World War when the Allies were concerting measures to prosecute war criminals, there was some hesitation whether International law could reach out to punish head of state, ministers and high military and administrative functionaries responsible for initiating the war and authorizing the perpetration of atrocities. For this purpose International trial tribunals were set up in Nuremberg and Tokyo. Offence for which charges were laid were Crimes against Peace, Crimes against humanity, Crimes under the laws of war and conspiracy to commit these crimes. Judgement of Nuremberg Tribunal was of historic significance as it established the guilt of defendants by affirming their individual responsibility under International Law.

Article 6 of the Charter of International Military Tribunal at Nuremberg held individuals responsible for crimes against humanity, peace
and war crimes (See Annexure). Article 7 of the same make it apparent not to consider official positions of defendants, whether as Heads of States or responsible officials in Government departments, to shun out their responsibility in committing such crimes.

Article 8 rejected the contention of order of Government or superior orders in eschewing responsibility for crimes committed. Article 9 says at the trial of any individual member of any group or organisation of which individual was a member was a criminal organisation. Law no. 10 of Control Council to give effect to terms of Moscow declaration of 30 October 1943 and London agreement of 8 August, 1945 (See Annexure) enacts law containing five Articles for punishment of persons guilty of war crimes whose Article II Clause 2 define a person responsible for committing such crimes individually.

On basis of these principles, individual cannot be put outside the realm of International law. Further Nuremberg Trial Tribunal (See Annexure) speaks “Crime against international law are committed by men, not by abstract entities and only by punishing individuals who commit such crimes can the provisions of International Law be enforced.”

Same responsibility was held in Eichman Trial by Israel Court as he was abducted from another country and when he took plea of superior order, this plea was rejected following Nuremberg Trial. Tokyo trial to
punish Japanese War Criminals is another leading point in this respect to 
prove individual as a subject of International Law “Sans doubt e”.

Notion of attaching direct responsibility to individual was re-
affirmed in Genocide Convention adopted by United Nations General 
Assembly on 9 December 1948, under which states parties agreed that 
genocide and conspiracy or incitement to commit genocide, attempts and 
complicity there in, should be punishable on trial by national courts or by 
an international criminal tribunal. Article IV of convention says persons 
committing the acts should be punished, “whether they are constitutionally 
responsible rulers, public officials or private individuals, thereby it 
confirms individual responsibility.

Moreover, European Convention for protection of Human rights and 
fundamental freedoms signed at Rome. On 4 November, 1950 results in 
establishment of European Commission of Human Rights and a European 
Court of Human Rights with administrative power to investigate a report 
on violation of Human Rights. Both Commission and Court have required 
the power to investigate into a violation of human rights alleged by an 
individual against it’s own government.

But under the auspices of International Court of Justice, no such 
provision is there. Moreover even after First World War few treaties (e.g. 
Treaty of Versailles (Article 297 and 304) and British-German Convention 
of 15 May, 1922 (relating to upper Silesia) allowed individual claimants to
access various mixed tribunals set up pursuant of these instruments.\textsuperscript{6} Again under treaty creating European Coal and Steel Community of 18 April, 1951, under treaty established European Economic Community of March 25, 1957 and under treaty establishing the European Atomic energy community of 25 March, 1957, individuals, private enterprises and corporate entities have been given certain rights of direct appeal to court of justice of community against decisions of organs of community.

Moreover piracy is an international crime in International law committed by individuals or group of individuals. A pirate is treated as an outlaw, as the enemy of mankind whom any nation may, in interest of all, capture and punish. This concept of universal jurisdiction has been adopted by Geneva Convention on High Seas 1958, whose Article 19 confer such power on States to capture and seize a pirate ship or aircraft on high Seas or in any other place outside the jurisdiction of any state. By this provision result out are that individual is a subject of International Law hence under the jurisdiction of International Court of Justice.

Further Tokyo Convention 1963 clarify the place of individual under International Law by virtue of Article 11 which says when a person has unlawfully committed by force or threat, an act of interference, seizure or wrongful exercise of control of an aircraft in flight, contracting panties shall take all appropriate measures to restore control of aircraft. Furthermore Hague Convention of 1970- speaks the same intention of crime committed by a person on board an aircraft in flight by virtue of
Article 1. Article 1 of Montreal Convention 1971 provides that any person commits an offence unlawfully and intentionally, if he performs an act of violence against person on board an aircraft, destroy an aircraft in service or cause damages, destroy navigation facilities or interfere with its operation, communicate false information endangering the safety of aircraft. Under this convention state parties have undertaken that they will provide deterrent punishment to Hijackers. So it also confer universal jurisdiction of such crimes committed by individuals.

The ambit of Montreal Convention for the suppression of unlawful acts against the safety of civil aviation 1971 was extended by the Montreal Protocol 1988 to include acts of violence against a person at an airport servicing international civil aviation which cause or likely to cause serious injury or death, destroying or seriously damaging the facilities of such an airport or aircraft not in service located there and disrupting the services of airport.

In past under Several others law making conventions such as Geneva Conventions dealing with the suppression of Counterfeiting Currency 1929, single Narcotic Drugs Convention adopted at New York, 1961, states have concerted their action for punishment of certain international offences or crimes in which individuals alone were concerned. Therefore delinquents such as international drug traffickers, hijackers and counterfeitors etc. have become subjects of international law so should be rather are under the jurisdiction of International Court of
Justice rather International Criminal Court now as established on 17 July, 1998.

One of the purposes of UN Charter as enumerated in Article 1(2) is of Right of Self determination of people. Self determination is a right given to people in group to determine their distinct cultural, political, social identity. Groups are made of individuals, so indirectly it is a right given to individuals. It comes within United Nation’s one of the primary purposes.

Further resolution 1514 (XV) of General Assembly (declaration granting of Independence to colonial countries and people) adopted in 1960 by 89 votes to none with 9 abstentions states that all people have the right of self determination and by virtue of that right they freely determine their political status and fully pursue their economic, social and cultural development.

Whole of this scenario shows the place of individual in international arena. When individual is a subject of law among nations, when impact of each and every international policy or state policy is on Individual then why individual don’t have any access to Highest Court of World (being as a subject of same jurisdiction).

Even now individuals have certain rights even against their own states for the violation of their rights. Covenant on Civil and Political rights, 1966 and Covenant on Economic, Social and Cultural rights and optional protocol conferred rights on individuals.
So what Law, International Court of Justice enforce, of course international law or International environmental law in present context. If individual is the subject of International law, obviously he will be a subject of International Environmental Law. Since all environment conventions, conferences impose certain rights as well as duties on individual. So where the individual has to go in case of violation of its right. Clearly to States Judicial organ but when he cannot get any right under State Control régime why he can’t approach International Court of Justice against such violation of his right. Few practical examples can be quoted here as:

5.2 Grass-root realities

5.2.1 China

In China, Environmentalists in China are facing grave risk to their safety and personal freedom, when they attempt to analyze and speak out against large scale development projects. In particular the just Earth! Programmers concerned about two major projects where China Government has made clear that dissent is not welcome. Those are three Gorges Dam and Western Poverty Reduction projects.

China is currently undertaking an ambitious plan to build the World’s largest hydro-electric dam; at a cost of $77 billion. This dam will stretch a mile over Yangtze river, creating a 400 miles long reservoir flooding hundred of miles of China’s most fertile Farmland and will flood 800 villages and displace nearly 2 million residents. Environmentalists says
the project is ill-advised as it will endanger highly threatened species including giant panda, pink river dolphin the clouded leopard and golden eagle. A 1998 survey by Chinese scientists found 40 new animal species, which reveal how little is known about diversity.

Whoever speaks against this project, is jailed. In 1989 Chinese environmental journalist Dai qing edited and published book “Yangtze-Yangtze”. In which she and other authors criticized. The dam project which result in temporary postpone of project. Result was, Dai qing was banned from publishing in China and was imprisoned for 10 months on ground that her work had abetted the turmoil of pro-democracy movement.

In Western Poverty Reduction Projects with a cost of #311 million to resettle thousands of villagers in three areas of Western China has drawn sharp criticism from within and outside China as project threatens to dilute the minority Tibetan and Mangolian populations and cultures and destroy fragile agricultural lands. According to World Bank Qinghai province would resettle about 60,000 poor farmers – mostly ethnic Han Chinese. Critics says massive influx of predominantly Han Chinese will only further marginalize the minority populations in resettlement zone. Government policies in other autonomous area have generated growing ethnic discontent, increased discrimination, unequal economic and educational opportunities and curbs on religious and cultural rights.
5.2.1.1 Harassment and Detention of International Monitors

In 1999, an American Daja Meston and Australian Gabrielle Lafitte along with their Tibetan translator Tsering Dorjee travelled to region to conduct an independent investigation of project. Two international researchers were temporarily detained and interrogated by authorities. Both were forced to sign confessions and were not allowed to contact their embassies for several days while in detention.

Now here what an individual could do except to approach Highest Control régime for justice. But International Court of Justice can not be accessed by individual. China’s autocratic government is notorious for its human right violations. Secondly government is not a democratic government and such Government shouldn’t be continued even in United Nations but of no avails.

5.2.2 Russian Nightmare

Further in Russia which is at a critical stage of economic and political transition that require the establishment of a strong civil society, people who talk of a safe environment are too often considered dangerous and treated enemies of state Valdmir putin (then as Prime Minister)told newspaper Komsomolskaya pravada in July of 1999 that he thought that Federal Society services FSS (Formerly K.G.B.) should keep a close watch on environmental organisations as they were infiltrated by spies. Human
Right and environmental advocates are increasingly becoming target of official harassment and persecution in Russia.

On 2 July, 1999 Aleksander Nikitin a former Soviet Submarine Captain was charged 8th time with espionage for blowing the whistle or illegal nuclear waste dumping. In “The Russian northern Fleet: Sources of Radioactive Contamination”. A report co-authored with Bellona foundation Norway’s leading environmental organisation, Nikitin helped document the problems of radio active pollution from mothballed nuclear submarines. Report warns i.e. without international co-operation and financing a grave situation could arise and picture Chernobyl if safety measures are not implemented. Nikitin was constantly harassed. His home and office were bugged. Car was routinely followed and vandalized his lawyers were harassed by Russian Police.

Further military weapons, radioactive pollution being a by-product remain one of Russia’s major export. Neither military nor its clients industries want enviromentalists piercing through it. Despite Constitutional provisions to right to environment, reliable information about its condition and compensation for damage to health and property caused by ecological violations. Russian Government suppressed the environmentalists e.g. Arrest and Conviction of Navy Captain Grigory Pasko for his efforts to expose nuclear waste dumping and radio active pollution problem caused by Russia’s decaying nuclear submarine. Raid on Scientist Valdimir Soifer’s Laboratory while he was researching into contamination of Pacific
Ocean by radio active waste. Arrest of socio-ecological union anti-nuclear campaigner Valdmir Shvyak on false charge of terrorists. In 1998 Russian Federal justice department enacted a degree that allows State authority to deny official registration of many human rights and environmental groups. In 1999 August, Moscow City Court upheld a lower court’s decision to deny official registration for Moscow based Advocacy coalition for environment and human rights led by Aleter Yablokov a former Environmental advisory to former President Yeltsin and leader of Russia’s environmental movement. Russian Justice department official claimed that protection of human rights in state is the responsibility of state itself.

Now here when control régime of a state becomes silent in case of violation of right of individual who has to face the impact of each and every problem whether or not International Court of Justice should open its door by amending provision of Article 34 for individual access.

5.2.3 Mexican Wreath

National and transnational timber companies have stripped the white pine and fir old-growth forests of Southern Sierra Madre in State of Guerrero, Mexico. Peaceful protests were over there. These were not welcomed by land owners in the region and government and it results in extra-judicial executions, torture, rape, arbitrary arrests by military against members of indigenous community in connection with counter insurgency
operations and human right abuses are closely linked to environmental problems.

On 2 May, 1999 soldiers of 40th infantry Battalion of Mexican Flores and Teodoro Cabrera Garcia in town of Pizotta for alleged ties to a guerrilla movement. Both are the members of organisation and Coyunca de Catalan, a local environmental organisation that opposes logging in Sierra de Petatlan. Both were beaten and tortured to confess involvement with a guerrilla group and forced to pose for a photo holding rifles used by soldiers.

State attorney General’s office had described them as members of an “ecological guerrilla organisation”. Both were tortured and former is even tortured with electric currents on his genitals. Logging according to Sierra Club and International forum on globalisation had been on rise since 1955, North America free trade agreement was implemented. In implementing NAFTA, Mexico repealed a constitutional article which gave people rights to Communal land ownership eliminate restrictions on foreign ownership of property, and relaxed environmental regulations. This paved the way for largest timber companies in world to make a five year deal with Mexican Government in 1915 to secure exclusive rights to buy timber.

In July 1995, 17 unarmed peasants were massacred near Agua Balancas by members of State Judicial Police. They had gathered to protest
against Governor decision to resume logging in area. Eye witness said many witness were shot at point blank as they pleaded for their lives. Inter American Commission on Human Rights investigate and report to Mexican Government to implement justice but so far it has failed to implement justice.

Whether now an individual can approach International Court of Justice against state terrorism. Is there no need to change Article 34 so as to include individual in it.

5.2.4 Kenyan Dictatorship

People engage in non-violent grass-root campaigns to preserve Kenya’s public lands (activities such as tree planting and peaceful public protest) have been arrested beaten and harassed. Deforestation of Karura forest, North of Nairobi is concern of these Human right violations. Private development of Kenya public land will have serious human and environmental consequences. It will deprive wildlife of their natural habitats hurt tourism, which is main source of Kenya income, and also increase draughts officials at a fraction of its market value. Environmentalists like Prof. Wangari Maathai who is co-ordinator of Kenyas Green belt movement most successful tree planting programme in Africa has been beaten and imprisoned for her efforts to preserve Kenya’s national wonder on 8th Jan, 1999. Prof. Maathai and 20 of her guards as they attempt to plant trees in Karura forests. Police did nothing to stop it.
5.2.5 Indian Composition

In April, 1998 Amnesty International expressed concern that peaceful protesters, who were attempting to stop construction of a dam at Maheshwar project site in Madhya Pradesh were arrested and mistreated by Police under unlawful assembly. In response to excessive force against women protesters on April 22 and 23, 1998 at Maheshwar project site, National Commission for women visit the site and found excessive use of force. Activitists of Narmada Bachao Andolan have been arrested and beaten on several occasions.

On September 23, 1999 Medha Patekar and 300 of her supporters were arrested and beaten by Police when they were peacefully protesting. Narmada project is likely to degrade the fertile agricultural soil due to continuous irrigation and may result in decline in fish population, will flood more than 370 square kilometres of forest and agricultural land; displace more than half a million of people destruction of precious habitat for tigers, panthers, sloth bear, barking deer, several rare tree species and hundred of plants with medicinal potentials. World Bank who has supported the project with a $450 million loan has withdrew its support in 1993 after review of an independent panel appointed by it.

5.3 Need of Strict Stands

Now where States become despotic in delivering justice to its subjects as in above these examples specially in Russia and China where
autocratic governments are notorious for their human right violation lay an individual take recourse to International Court of Justice, obviously no First loopholes in implementation of International environmental law is Article 34 itself which has a pseudo standard. It make it clear that state only can approach International Court of Justice but impact of every policy project is on individual, it has forgotten.

This question has no answer with International Court of Justice. Need to amend Article 34 is felt. Transboundary environmental laws have done much in the field of environmental law and in delivering justice as it deliver justice to individuals who have suffered due to nuisance of other in another state. Though place of conduct and place of impact is distinguished but relief given is based on principles that states are required by International Law to take adequate steps to control and regulate sources of serious global environmental pollution or transboundary harm with their territory or subject in their jurisdiction. Secondly, states are required to co-operate with risk.

Thirdly it give effect to polluter pay where individual access to court for compensation due to conduct of other party to another state and it is delivered, e.g. Walter Poro’s case, Rhine Salt case. Arbitration tribunal has also played a role in proving access to individual in getting justice though it was through states yet on request of individuals example can be quoted of Trail Smelter case etc. European Court of Justice has proved
that it can be accessed by individual though through State or Commission but yet facility is over there.

Though individual can litigate before European Court of Justice in very limited manner in pursuant to Article 173 of European Economic treaty.

There is a desirability of revising Article 34(1) of International Court of Justice’s Statute so that individuals would have *locus standi* before World Court. It is no longer valid to hold that only sovereign states can be only subjects of International law. Individuals have emerged as procedural subject of law before important fauna. On other hand individuals often benefit directly from actions taken by international organisations. Frequently International Organisation take action specifically for the express purpose of benefitting individuals and group theory that individual is a beneficiary of international and regional law, may be used to afford considerable protection to individuals e.g. Environment Communities is directed towards quality of life improvement, EC Commissions programme for consumer protection can be cited as illustrations. W. Paul Goronkey had made observation as to beneficiary theory regarding individual in 1966:

“Citizen is recognised as having full positive rights but lacking an effective legal remedy. For instance such phases of inter-national law as laws of land and naval warfare, drug traffic. Slavery, white slavery, piracy,
conservation of natural resource etc. confer rights and duties upon individuals that can only be enforced at the instance of sovereign states."

Though now individual is recognised as subject of International Law still International Court of Justice statute has same old philosophy of only state are the partners of statute. This need change with immediate effect.

Second question which demurred is this that there is no application of theory of precedent according to Statute of International Court of Justice. Article 38(d) of Statute says court shall decide disputes submitted to it by applying judicial decisions. But subject to provisions of Article 59 of Statute. Article 59 of statute says that decisions of court shall have no binding force except between parties and in respect to that particular case.

What a paradox! On one hand it give the concept of apply precedent theory by virtue of applying judicial decisions and same virtue is changed into vice by application of Article 59. Precedent means court shall apply same decision when facts and circumstances of a case are similar to case decided earlier.

National laws as well as regional laws (e.g. EEC treaty) are most of the times based on theory of precedent which helps court to decide a case according to same parameters as held right in an earlier decision.
European Court of Justice has applied this principle a lot of times. Examples can be quoted as in case of Commission v/s Spain\textsuperscript{15} while deciding the question that in implementing the directive, member states are not authorised to invoke at their option, grounds of derogation based on taking other interests into accounts. Court take help of its previous decision of Commission v/s Germany\textsuperscript{16} and used that observations in Spain’s case as precedent. In same cases court take help of its previous decision in Commission v/s Belgium\textsuperscript{17} and Commission v/s Italy\textsuperscript{18} in deciding that interest as referred in directives doesn’t constitute an autonomous derogation from general system of protection establish by directive.

More examples can be quoted of National Laws but at International level there is no such provision applicable. So precedent in European Court of Justice is often seen as compared to International Court of Justice, where it doesn’t exist.

There is a need to alter either Article 38(d) to the extent of judicial decisions or Article 59 to the extent of applicability of decision only among parties and that to the particular case.

Thirdly court has no power which could be named as *suo-moto*. It can decide disputes only submitted to it. Base of every effort to give justice must have rather have this power at Domestic law. But at International Court of Justice, this dearth can be felt. Provisions should be altered to insert this power in régime of Court. Further Article 94(2) speaks if a party
fails to perform obligation imposed on it under a judgement rendered by Court. It can have recourse to Security Council. What is guarantee that security council can take effective steps when one of that party is so called Big powers having veto power.

So besides this that Court (International Court of Justice) should alter its statute to include individual as its subject who could call on court for violation of his rights and applicability of theory of precedent should have power to call on violation in *suo moto* capacity. Court by limitizing the concept of sovereign immunity can go one step ahead in enforcing international environmental law and security council must include threat to environment as threat to security of world, for which it could take action against environmental violations.

But still these suggestions are not in sight in near future then what else should be done.

5.4 What is needed to be done?

As concluded by Prof. Mary Ellen O’Connell that enforcement of International Law is based primarily on compliance, she posits that International Environmental Law should be enforced by domestic courts as by enforcing through domestic courts, problems of sovereign immunity, doctrine of *locus standi* and *forum non-conveniens* can be overcome. As domestic courts have control over persons and assets, need for borrowing
the forum of domestic courts will increase as environmental rules become more directed at those individuals.

Being agreed with this proposition, it could be made clear when International Court of Justice dealt with nuclear test case. Question of legal interest comes as an obstacle as well as sovereignty of states but by applying enforcement mechanism through domestic courts, wanted results could be achieved as domestic courts may do this by controlling assets, freedom or very existence of law breakers.

On the other hand, states created security council a supra national institution with enforcement power. But the council has authority to enforce the law only against those states threatening international peace and security. Delegate to drafting conference in San Francisco specifically rejected the proposal that security council become a general law enforcement agency. There is a need to change the definition of threat to security by adding environment degradation as a threat to security of blue planet and endangered human specie. So International Court of Justice has only limited enforcement mechanisms.

Second problems with international Control régime is non-binding rules which are only moral obligation depends upon states to fulfil or not. Often a state responsible for environmental degradation is not a party to a particular treaty or treaty places no binding obligation on state to prevent damage e.g. USA is a party to long range transboundary A/R pollution
treaty having no important obligations which are contained in protocols and USA is not a party to those protocol which require the reduction of sulphur dioxide release into atmosphere. So regardless of how much soft coal USA burns, it hasn’t violated action against it even in International Court of Justice.

Thirdly environmental law may require that governments should mass transit to eliminate automobile emissions and in environmental law, goal is to obtain compliance not to harm environment but if harm occurs then what penalty has to be imposed, is not clear in itself.

Further need for enforcement through domestic courts will increase as environmental law to develop more concrete, detailed and wide reaching rules. Reason is clear, environment protection has less to do with state to state affairs than with activities of individuals, which are focus of most domestic laws. Much environmental law concerns individuals and corporations for whom it makes sense to use the method of borrowing domestic courts. Use of domestic courts makes particular sense in environmental area because domestic courts tend to focus on the most common polluters – individuals and corporations.

Court’s clear authority over assets and person is necessary for successful enforcement. Most courts can issue injunctions which may prevent environmental damage before it occurs or if once occurs, can be refrained in future to occur again. Domestic court may enforce
international environmental law in several different ways. The most common is in the form of enforcing domestic law e.g. convention on International trade in endangered species forbids the export and import of certain endangered species through domestic law, states that are party to convention control their citizens who wish to import and export endangered animals. Many states through their legislature adopt the provisions of treaty. A court enforcing such laws might not mention the treaty but treaty is automatically being enforced.

Doctrine of sovereign immunity is a significant obstacle to enforcement of International Law. The doctrine holds that a state through its government or top officials may not be subjected to judicial process of another state. It (principle of sovereignty) flows from equality of states on international plane. Minimising sovereign immunity is only one mechanism which could be used to reform the courts, so permitting effective enforcement of International Environmental law more effectively. Further when a government fails to uphold an obligation, court can order government to meet its responsibility, these are classic tools in enforcing law which is not available at international level.

So best approach for enforcing most rules which target the behaviour of individuals will be borrowing the forum of domestic courts and domestic courts have powers to penalise any violator with physical and financial punishments as can be seen in some decisions of U.S. courts while applying specific doctrines where International Court lacks in
penalties, which can be fashioned as physical penalties. Domestic courts can institute these by demonstrating International Law through its own order and with a spirit to hold justice strictly best examples can be quoted or rather have been seen in US laws and interpreted through US courts.

In USA Michael Weitzenhoff and Thomas Marian\textsuperscript{20} spent over 21 months in federal penitentiary as result of unprecedented merger of two judicial trends by ninth circuit court of appeals. First trend is growing number of prosecutions for violations of environmental laws. Secondly, the use of public welfare offences doctrine which create an exception to established criminal law requirement of a requisite mental state in enforcing regulatory offences. The result of this merger is strict liability for environmental violations.

In \textit{United States v/s Hopkins}\textsuperscript{21}, Second circuit court specifically followed ninth circuit and affirmed 21 month sentence of Robert Hopkins, former vice president of manufacturing for Spirol International Corporation and here also prosecution was not required to prove that defendant knew his action violated the NDPES permit (National Pollution Discharge Elimination System) of manufacturing facility.

Now need is to hold strict stands. At the case of our criminal justice system is the notion that “an injury can amount to a crime only when inflicted by intention” the idea that a crime required the concurrence of evil meaning mind with an evil-doing hand was firmly established in English
Common Law. To constitute a crime against human laws, there must be a vicious will, and secondly, an unlawful act consequent upon such vicious will. Increasing complex demands of a growing and industrialised society in the late 19th century and early 20th century led to increase in social regulation.

Society shifted its focus from protecting individuals rights to protecting public and social interests. From this movement emerged new regulatory measures that involve no moral delinquencies. Legislatures and court turned to criminal law to enforce these new offences that were punishable without any regard to intent, these are termed as public welfare offences by Kepten D. Carmidrael.22

This doctrine was first introduced in Commonwealth v/s Boyton23, by Massachusetts Supreme Court, where a Court convicted defendant of selling intoxicant liquor. Ignoring the traditional mens-rea requirement court affirmed conviction despite the fact defendant was unaware that beverage was intoxicating. This doctrine has fundamental purpose to protect public health and safety where dangerous or deleterious devices or products or obnoxious waste material are involved, the probability of this regulation is so great that any one who is aware that he is in possession of them or dealing with them must be presumed to be aware of regulation. On other hand Ignorance of law is no excuse. Thirdly for these offences there is no requirement by mens-rea.
Final Charter of Public Welfare Offences involve the penalties which Statute impose.

Second Doctrine which should be a part of domestic law as in America as well as of International Law is that of Responsible Corporate officer doctrine.\textsuperscript{24}

In \textit{United States v/s Dotterweid}\textsuperscript{25}, Supreme Court upheld the conviction of a company president for the shipment of misbranded drugs under the Federal food, drug and cosmetic act. While the president employed numerous workers to carry out the day to day operations of company, court held that offence was committed by all who do have such a responsible share in the furtherance of the transaction which statute outlaws. The holding placed a burden on all those “standing in responsible relation to a public danger” to ascertain all the facts relating to regulated activity. It apparently includes corporate executives and employees who were responsible for the operation of activities which were regulated by public welfare statutes. This holding established the responsible corporate officer doctrine.

In \textit{United States v/s Park}\textsuperscript{26}, Supreme Court of America applied the responsible corporate officer doctrine to uphold the criminal conviction of a President of a nation wide food chain for failure to maintain a sanitary food warehouse under Federal food, Drug and cosmetic act applying doctrine as established in Dotterweich Court concluded that jury need not
find that president engaged in any wrongful action. Instead the court found that as President, defendant had a responsible relation to situation and authority to effect change and therefore could be held liable. Conviction was based solely on his constructive knowledge of unsanitary conditions of warehouse. This opinion declared that corporate executives who engage in regulated activity must take affirmative steps to prevent any violation. This doesn’t only impose a positive duty to seek out and remedy violations when they occur but also and primarily a duty to implement measures that will insure that violations will not occur. The requirements of foresight and vigilance imposed on responsible corporate rights are beyond question.

Besides these criminal sanctions U.S. department of justice and environmental protection agency created an independent environmental crime section to prosecute environment crimes. By 1992 this section had grown to 28 attorneys Federal Bureau of investigation (F.B.I.) assigned 100 agents to assist EEC (Environmental Crime Section) in its investigation of environmental crimes. Environmental protection agency’s criminal investigation staff increased from 6 to 62 criminal investigators between 1982 and 1992. Upto 1995 it had 160 such investigators throughout the country.

Today needed is of such type of response by governments and by International environmental control régime. If every Government relies on the Marvellous steps as taken by USA in implementing the environmental regulations, it is dead sure we can save our most valuable earth.
5.5 Overview of Chapter

Though International Court of Justice is a weak body having no immune system still it is mute guardian of violations of human rights. As we can say small is effective. Recourse can be taken to European Court of Justice which is showing its effectiveness and if application of International Environmental Law through Domestic Court is made applicable then reliance on world body will not be needed over there. Physical penalties, financial penalties and domestic courts jurisdiction over asset and freedom of violators remove obstacles of individual access to court, theory of sovereign immunity, theory of precedent can be overcome.

Need to amend Article 34(1) and 59 of Statute of International Court of Justice are felt. It should be changed as according to the need of time. Nothing more is needed than a spirit to make a positive change, both at domestic as well as international level. When protectors themselves are becoming predators, how prey can be saved? Only and only wish to do a positive action with an enlightened spirit can solve this crisis of turning our blue planet to black.
References


2. Earth in the Balance Al-Gore, further taken from Classics in Environment Studies. Page 386.


5. Ibid, Page 62.

6. Ibid, Page 64.


8. Ibid


10. Ibid

11. Ibid

12. See Chapter III

13. See Chapter IV


15. ECR 1993, I 4221
16. ECR 1991, 1883
17. ECR, 1987, 3029
18. ECR 1987, 3073
20. See Chapter III
21. 53, F. 3d 533 (2nd Circuit, 1995)
23. 84 Mass, 2 (Allen) 160, 1861.
24. See Reference 21
25. 320, US 5277,278, 1943