CHAPTER - 3

ENVIRONMENT PROTECTION UNDER MODERN INTERNATIONAL REGIME: STOCKHOLM AND BEYOND
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The preceding chapter has demonstrated the development of international legal sanction regarding environment protection under historical perspective right from pre-charter period till the Stockholm Conference. During this period, various international measures, such as conventions, treaties, agreements, declarations, etc., have been taken in order to strengthen international mechanism for the said purpose. Finally all these legal instruments, as developed under International historical perspective in association with Judicial perception in it, had helped to develop modern international legal regime having its tremendous effect in developing legal control for environment protection at different national level in various countries. In this regard, Indian scenario is not quite different. Therefore it is essential to discuss about modern international legal regime, regarding environment protection, including the Judicial response to it, having its immense effect in developing legal control in India for environment protection and this chapter is primarily dealing with this aspect.

3.1 Stockholm Conference - A Mile Stone In World Wide Environment Protection Movement

3.1.1. General Overview

Though various measures in the form of international sanction, through
treaties, conventions, resolutions, agreements had been taken at international level to protect the environment, but they were concentrated mainly to some specific environmental issues, like protection of migratory birds and animals, marine fisheries, protection of marine water from pollution due to deliberate and accidental discharge of oil and oily matter from the vessels and also pollution problem arising out of nuclear radiation from radioactive substances. But gradually necessities had been felt to concentrate on various other general pollution problems like air, water, both marine and terrestrial, land pollution, including other environmental pollution problems, because all these problems had been developing beyond the consideration of United Nations, as well as other international agency, since mid 60s.

In these facts and circumstances, showing keen concern on the growing problems of environment pollution, as emerged on certain global environmental issues, like acid rain, deposition of heavy metal in fish and birds, the United Nations had initiated to take effective steps and passed resolution in this regard. The economic and Social council of the United Nations passed a resolution being No. 1346(XLV), on the 30th July, 1968, regarding convening an international conference on the problems of human environment. This was followed by a subsequent resolution No. 2398 (XXIII), passed on 3rd December, 1968, by the United Nations General Assembly.1

In this resolution, it was considered that over all attentions to the problems of human environment is essential for the socio-economic development of mankind. It had been also expressed therein with strong

hope that through appropriate international co-operation, developing countries would derive particular benefit from the mobilization of knowledge and experience about the problems of the human environment and it would enable them to forestall the occurrence of many environmental pollution problems. Considering the purports of these resolution, United Nations was very much eager to conven an international convention on Human environment and ultimately in 1972 at Stockholm, "United Nations conference on the human environment", popularly known as "Stockholm conference" was held.

This historic "United Nations conference on the Human Environment" which took place at Stockholm from 5-16 June, 1972, in pursuant to the United Nations General Assembly's above mentioned Resolution of 3rd day of December, 1968, is regarded as the major effort to solve the Global problems regarding protection and improvement of the human environments by international agreement and negotiation at international level. This Stockholm conference was the culmination of a two years long preparatory process. In the preparatory process, Intergovernmental working Groups drew up plans, which had been endorsed by the conference later and put into operation by the United Nations Environment programme (UNEP) for a Global Environmental Monitoring System (GEMS), an International Register of Potentially Toxic Chemicals (IRPTC) and an International Referral System for Sources of Environmental Information (INFOTERRA). Actually the Stockholm Conference worked in a system of environmental co-ordination for United Nations and the

3.1.2 Action Plan

In this conference, an "Action plan" had been prepared for the protection and enhancement of the environment. This plan was in effect in a more or less logical fashion taking into consideration of all recommendation for international action adopted by the conference for environmental protection. Such action plan made a rearrangement programme which involved three parts, an 'Earthwatch' programme to identify problems of international significance so as to warn against impending environmental crisis; recommendation concerning 'environmental management, or in other words the application in practice of what was shown to be desirable or necessary in regard to the environment; and 'supporting measures' such as education, training, public information and finance. In this regard, it may be stated here that the main contribution of this 'Action plan' is to give emphasis upon national and international action and co-operation for the identification and appraisal of various environment problems having its global significance.

Having considered the need for a common outlook and for common principles to inspire and to guide the peoples of the world in the preservation and improvement of the human environment, consensus opinion of the said conference proclaims that the protection and improvement of human environment is a major issue which effects the well-being of peoples and economic development throughout the world.

5. Ibid.
6. Ibid.
It has been also proclaimed that through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale by exploiting natural resources, but destruction and depletion of irreplaceable resources and gross deficiencies become harmful to the physical, mental and social health of man, in the man made environment, particularly in the living and working environment.

The natural growth of population has been continuously creating problems on the preservation of the environment and in this regard adequate policies and measures should be adopted, as appropriate, to face these problems. It has been also proclaimed that in the developing countries most of the environmental problems are caused due to their under development conditions where millions are deprived of adequate food and clothing; shelter and education; health and sanitation and as such, developing countries must direct their efforts towards development, bearing in mind regarding their priorities and the need to safeguard and improve the environment. In this regard it has been also proclaimed that the industrialised, developed countries should make efforts to reduce the gap between themselves and the developing countries.

It has been also further proclaimed that to defend and improve the human environment for present and future generation has become an imperative goal for the mankind and it is to be pursued together with and in harmony with the established and fundamental goals of peace and worldwide economic and social development. Ultimately it has been proclaimed that to achieve these aforesaid environmental goal, citizens and communities and various institutions and enterprises at every level
should share equitably their common efforts for the preservation of the environment of both, present and future.

3.1.3 Stockholm Declaration

Along with these proclamations, as an outcome of this international conference, all the participating nations have jointly formulated 26 principles which are known as Magna Carta on human Environment and prepared for the following basic objectives.

It was suggested by these principles of Stockholm declaration 1972\(^{7A}\) that Government of all the participating nations must evolve necessary laws to protect and improve the flora and fauna, non-renewable resources, wildlife and human health. It was also provided that appropriate national institution must be entrusted with the task of planning, managing or controlling the environmental resources of the state with the view of enhancing environmental quality. Such provisions are being discussed here under the various perspectives.

Responsibility of Man

Under the principle one of this Stockholm declaration, it has been suggested that man himself also bears a solemn responsibility to protect and improve the environment for present and future generations, since the man has fundamental right to freedom, equality and adequate conditions of life, in an environment of quality which permits a life of dignity and well beings and in this regard man shall also bear special responsibility to safeguard and to manage the heritage of wild life and its

habitat which are now gravely imperilled by a combination of adverse factors.

Responsibility of States

Under the Principle 7 of this declaration, it has been also further provided that states shall take all possible steps to prevent pollution of seas, caused by the substances which are hazardous for human health, as well as for other living resources including marine lives. But the environmental policies of all states should be enhanced in such a way that it would not affect adversely the present and future development potential of developing countries and in this regard appropriate steps should be taken by the states and international organisations, as it has been provided under the principle 11 of these declaration.

National Planning

It has been also suggested therein that national planning should be made as an essential tools for reconciling the conflict between the needs of development and the need to protect and improve the environment. In this regard appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of states with the view of enhancing environmental quality as laid down under the Principle 17 of the said declaration.

Research and Development

It has been also held as one of the settled principles, as laid down under Principle 20 of this Stockholm declaration that scientific research and development in the context of environmental problems, both national and international, must be promoted in all countries. In addition to it, the protection and improvement of the environment should be handled in a co-operative spirit by all countries on an equal footing.
Co-operation between State and International Organs

Lastly, under the Principle 26 of this declaration, it has been suggested that States must strive to reach prompt agreement, in the relevant international organs on the elimination and complete destruction of nuclear weapons and all other means of mass destruction. Ultimately under this declaration state shall ensure that international organisations would play a coordinated, efficient and dynamic role to protect and improve the environment.

So, in this way, environment has been emerged as prime consideration in the United nations’ conference on the Human Environment, as held in Stockholm in June, 1972. This Stockholm conference has provided directives for international and national actions based on mutual cooperation which is ultimately speaking about system of environmental coordination. It has helped to initiate the process for creating inseparable link between environment and economic development. The declarations, as adopted on the Human Environment, stated above, may be regarded as a measure for the protection of the environment of the earth what the universal Declaration of Human Rights of 1948 has set as one of its main focal objects for the protection of human rights and fundamental freedoms in much before.

3.1.4 United Nations Environment Programme (UNEP)

3.1.4.a Components of UNEP

The Stockholm Declaration on the Human Environment constituted a solid foundation regarding future work of environment protection. The action plan as prepared in the Stockholm Declaration, was embodied in
the United Nations Environment programme (UNEP). The institutional and financial arrangements had been set out in the Stockholm conference report which had provided the basis for the establishment of UNEP by the United Nations General Assembly. Governments of various participating nations at Stockholm had made it clear that they were not in favour in establishing a new United Nations Agency for the purpose of environment protection. Actually, the goal was to establish small co-ordinating secretariat, to introduce an integrated programme and in this regard establishment of UNEP was the solution. UNEP, as envisaged by the Stockholm conference was established with four principal components, as follows:

(i) **The Governing Council** - This Governing Council is composed of governments of 58 member states elected on a rotating basis for four years. This council initially met annually but later decided to meet every two years with additional special sessions at every six years and others, if it would have been necessary. It usually reports through ECOSOC to the General Assembly.

The first session of The Governing Council, which had been established as the policy making body of the United Nations Environment programme (UNEP), to frame work for co-ordination of world environment activities, was held at Geneva in June, 1973.

(ii) **The Environment Secretariat** - This secretariat is headed by the Executive Director, who is elected by the United General Assembly on the nomination of the United Nation Secretary-General.

(iii) **The Environment Co-Ordination Board** - This Board is established

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to ensure an operation among all the United nations' bodies having a mandate for environmental programmes. It use to function within the framework of the United Nations' Administrative Committee on co-ordination and under the Chairmanship of UNEP's Executive Director and use to give report annually to the UNEP Governing Council.

(iv) The Environment Fund - It was established to enable the Governing Council to fulfill its policy-guidance role for the direction and co-ordination of environmental activities by providing financial support either wholly or partly to the cost of the new environmental initiatives, undertaken within the United Nations' system. This fund is also to be used for assistance for national, regional and global environmental institutions with taking into consideration of the needs of developing countries, and to ensure that the development priorities of developing countries would not be adversely affected. It was contemplated that 'a $US 100 million, five-year fund' would be created.

3.1.4.b. Role of UNEP and its Mode of Functioning

Environmental Policy and Implementation —

UNEP has come to play a leading role in developing environmental policies and promoting their implementation. Through the collection and dissemination of environmental information and through the development of policy guidance along with the mobilization of support for the sound development programme, the UNEP has converted its limited authority and resources into a strong and highly visible environmental activism.

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Mass Media Campaign —

UNEP has taken tremendous initiatives in reaching the public through various massmedia campaigns and programmes. It has also conducted various of international conferences and seminars for that purpose and as a part of that programme, 5th June has been declared as World Environment Day. It may be mentioned here that the International Environmental Education Programme (IEEP) was established by UNEP and UNESCO in 1975 as public participation programme in persuant to the Stockholm conference recommendation.

Public Awareness Programme —

Co-operation with Non-Governmental Organisations (NGO), is another important element in UNEP’s public awareness programme. The Environmental Liaison Centre International (ELCI) was established in 1974 at Nairobi as a direct result of the Stockholm Conference. It is a global coalition of NGO’s whose aim is to strengthen NGOs working for the protection and preservation of the environment and also for the development programme, particularly in the developing nations.

Through the aforesaid programme, UNEP has tried to involve effective representation of youth and women’s groups, eminent religious figures, leaders of industry, Parliamentarian, and others well-established personalities in their respective fields in environment protection movement. In this way, UNEP builds a broad public support and its participation in international, regional and national forums in environment protection movement.

It may be mentioned here that UNEP has used following three particular techniques to promote international Law in respect of
Environmental issues :-

1. The 'action plan'\(^{9A}\) approach - as a means of mustering both scientific consensus and political support to secure agreement on legally binding instruments.

The action plan device evolved out of preparations for the Stockholm conference and become effective being creatively combined with the development of soft Law and framework conventions within ambit of UNEP.

2. 'Soft Law\(^{78}\) instruments - non binding guidelines and principles adopted as guidance at the regional and global level - which foster more uniform standards and practices among nations and which may ultimately be incorporated into either binding international legal agreements or national Law; and

3. Recourse to conventions to command agreement on general principles and institutional mechanisms among states parties, supplemented by protocols specifying more detailed right and obligations as Governments become willing to address them.

It may be mentioned here that initially the functions of UNEP were much more of a promotional nature than of a operational, but gradually it has achieved its operational character. In this regard, some examples may be referred to. In 1978, UNEP sought to achieve formulations of principles to guide states in respect of co-operation for sharing resources, and in respect of the problems of liability and compensation for pollution and environmental damage. In 1978-79, UNEP took the initiative of


proposing a world conservation strategy in regard to living resources and this was formally endorsed by the United Nations General Assembly in 1979. Commencing in 1979, UNEP was given the responsibility of administration of three environmental trust funds, such as for the protection of the Mediterranean against pollution; for the protection and development of the marine environment and coastal areas of Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates; and a third one for the convention of 1973 on International Trade in endangered species of wild Fauna and flora. One of the main achievements of UNEP has been the United Nations conference on the Human settlements, popularly known as the "Habitat Conference", held at Vancouver on and from 31st May to 11th June, 1976.10

3.1.4.c Beyond UNEP

In order to commemorate the tenth anniversary of the Stockholm conference of 1972, 105 states being assembled at Nairobi from 10 to 18 May, 1982 adopted a special Declaration know as the "Nairobi Declaration" on 18th May, 198211. In this Nairobi Declaration emphasis was given on the necessities to promote the progressive development of international environmental Law by the world states alongwith the need for environmental management and assessment. Here emphasis was further given on the development of new technical innovation in promoting resource substitution, recyling and conservation due to emergence of new environmental problems, like deforestation, soil and water degradation, desertification, changes in the ozone layer, increasing concentration of carbondioxide, acid rain, extinction of a various animal and plant species.

11. Ibid at page 414.
This Nairobi Declaration has helped to identify the prevailing deficiencies in international environmental law during post Stockholm period and proposal for more stringent and just international rules, regulations and guidelines to combat newly emergent environmental problems. This Nairobi Declaration was further supplemented by the elaborate World Charter for Nature (on conservation of nature) adopted by the UN General Assembly in a Resolution of 20th October, 1982\textsuperscript{12}. Apart from this Declaration, other significant resolutions were also adopted, including one for the creation of a Special Commission to propose long term environmental strategies for achieving 'sustainable development to the year 2000 and beyond'\textsuperscript{13}.

In 1987, the Governing Council of UNEP endorsed a long terms programme of international environmental strategies under the title of a "World Environmental perspective to the year 2000 and Beyond"\textsuperscript{14}. The most notable achievement of UNEP in the period 1984-88 was its sponsorship of the historic Vienna International Convention for the protection of the Ozone Layer concluded in March 1985 and the protocol to the convention signed in September, 1987. The convention was designed to combat the threat to the Ozone Layer \textsuperscript{15} due to excessive emission of Chlorofluoro Carbons (CFCs) and to control the spread of CFCs.

Thus in this way, ultimately united nations environment programmes (UNEP) has established itself as an effective machinery of the United

\textsuperscript{12} Ibid at page 415.
\textsuperscript{13} Ibid.
\textsuperscript{14} Ibid at page 416.
\textsuperscript{15} A layer in the upper atmosphere serving to protect life on earth from the risks occasioned by ultra violet radiation – Starke J. G; Introduction to International Law; Aditya Books Pvt. Ltd., New Delhi; 10th Edition; 1994; page 416.
Nations for facilitating the development of international environmental Law by convening various conventions, adopting resolutions and making agreement, including formulation of various environmental programmes and co-ordinating various international, national, regional activities to fulfill the commitment of the Stockholm Declaration, mainly for the development of better human environment and settlements. So without any hazitation it may be stated here that Stockholm conference and establishment of United Nations Environment Programmes were the two major steps to solve one of the most pressing global problems of the present days, the problem of environmental pollution.

3.2 International Movements for the Protection of Environment during Post-Stockholm Conference Period.

After Stockholm conference, it was the principal agenda of the United Nations to achieve success in respect of each and every commitment and proposal of the conference, as made through its proclamations and principles, as formulated in the conference. With this aim and object, United Nations environment programme (UNEP) was established and there after various conventions, treaties, protocols and agreements were held by the direct interventions of the United Nations and different agencies for the same purpose. In this part of the present research work, some of those conventions, protocols, treaties and agreements are to be discussed below to highlight their significance at international level regarding protection of environment.
3.2.1 Conventions and Protocols

After Stockholm conference, first notable International convention, as held in Paris, from 17th October to 21st November, 1972\textsuperscript{16}, during the Seventh Session of General Conference of the United Nations, Educational, Scientific and cultural organisation, was the convention for the Protection of the World Cultural and Natural Heritage (1972).

In this convention, parties to the agreement decided that state should be obligated to protect their own natural and cultural sites and in this regard, a modest international fund would be available to assist the states protecting the heritage sites. It has been also agreed that effective and active measures are to be taken by the state parties for the protection, conservation and presentation of the cultural and natural heritage situated on its territory.

Convention on international Trade in Endangered Species of Wild Fauna and Flora was held in 1973. In this convention, it has been recognised that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth, which must be protected, not only for the present but also for the generations to come. It has been also recognised there that peoples and states should be the best protectors of their own wild fauna and flora and in this regard international co-operation is essential for the protection of certain species of wild fauna and flora, against over exploitation through international trade practice.

The International convention for the prevention of pollution from ships: Non-Petroleum Pollutants, 1973 is another international convention with increased awareness of the dangers of various other chemical substances discharged from ship into the marine environment, the IMCO became involved more in that area during this period. In 1972 the Maritime Safety Committee of IMCO adopted a resolution recommending Governments to extend the existing voluntary reporting system not only for oil spillages but also for other pollutants discharged from the ships.

Convention for the prevention of Marine Pollution from Land based sources has been held in 1974 in Paris. In this convention, considering the recommendation of the United Nations conference on the human environment, as held in Stockholm in June 1972, aiming at controlling the pollution of the sea from Land-based sources, it has been agreed that all the states shall take all possible steps to prevent pollution of the sea, caused by direct and indirect introduction of substances or energy, having hazardous effect upon the human health, into the Marine environment by man.

Thereafter Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (1974) was held considering the rapid development of human activities at the Baltic Sea Area, since the increase of considerable number of population living within its catchment area, rapid urbanisation and intensive growth of agriculture, it has been proposed in the convention that the protection and enhancement of the marine environment of the Baltic Sea Area are the tasks that can not be effectively accomplished by national efforts only. On the other hand Regional co-operation and appropriate international measures are urgently
needed to fulfill the task of protection and enhancement of the marine environment.

Convention Concerning Prevention and Control of Occupational Hazards, Caused by Carcinogenic Substances is another landmark convention held after Helsinki Convention. Taking into account of the relevant work of other international organisations and in particular of the WHO and the International Agency for Research on cancer, International Labour organisation, an International Institution, as created by the United Nations, has convened this convention. In this convention, it has been suggested that each member, which will ratify this convention, shall periodically determine the carcinogenic substances and agents to which occupational exposure shall be prohibited. They will also give their effort to replace carcinogenic substances and agents by non-carcinogenic substances or agents or by less harmful substances.

Another Convention for the Protection of the Rhine Against Chemical Pollution was held in 1976. Having regard to the agreement of 29 April, 1963 and the Additional Agreement of 3rd December, 1976\(^\text{17}\), concerning the International Commission for the protection of the Rhine against pollution, it has been proposed in this convention that contracting parties shall take the appropriate measures with a view to improving the quality of the waters of the Rhine and to eliminate pollution of the surface water of the Rhine basin by dangerous substances. In this convention, emphasis has been given upon the conservation and development of the different species of flora and fauna and also for the preservation of the self purifying capacity of the water.

\(^{17}\) Ibid at Vol. 3; Page 589; also seen Encyclopaedia of Environmental Law, Sweet & Maxwell, London; further see Garner; Garner's Environmental Law, Butterworths, London.
Thereafter Barcelona convention for the Protection of the Mediterranean Sea against Pollution was held in 1976. Being fully aware of their responsibility in preserving their common economic, social and cultural value regarding marine environments of the Mediterranean Sea Area for the benefit and enjoyment of present and future generations, all the participating Nations had unanimously agreed in this convention to take all appropriate measures to prevent and abate pollution of the Mediterranean Sea area, caused due to dumping from ships and air craft.

For the protection of Mediterranean sea from the pollution in addition to the aforesaid conventions following protocols have been also adopted -

(i) Protocol for the prevention of pollution of the Mediterranean Sea by dumping from the ships and Air Craft.

(ii) Protocol concerning Co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency.

(iii) Protocol for the protection of the Mediterranean Sea against pollution from the Land based sources.

Convention concerning the protection of workers against occupational hazards in the working environment due to air pollution, noise and vibration, was convened in 1st June, 1977, at Geneva, by the General conference of the International Labour organisation in its sixty third session. Considering the recommendation, as made through the protection of workers' Health Recommendation, 1953, the occupational

Health Service Recommendation, 1959, the Radiation protection convention and Recommendation 1963, the Employment injury Benefits convention 1964, The Hygiene (Commerce and Offices) Convention and Recommendation, 1964, the Benzene convention and Recommendation, 1971, and the occupational Cancer convention and Recommendation, 1974, it had been proposed in this convention that measures should be taken for the prevention and control of occupational hazards in the working environment due to air pollution, noise and vibration.

Thereafter Convention on the conservation of Antarctic marine living Resources was held on 1980. Considering the importance of safeguarding the environment and protecting the integrity of the ecosystem of the seas surrounding Antarctica, since the increasing tendency of utilization of these resources, concentrated in that area as a source of protein, this convention had been convened during 1980. In this convention, the contracting parties hereby established and agreed to maintain the commission for the conservation of Antarctic Marine living Resources.

Convention concerning occupational safety and health and the working environment (1981) was convened at Geneva on 3rd June, 1981\(^9\) by the General Conference of the International Labour Organisation. In this convention, it has been proposed that with regard to the safety, health and the working environment, it has been proposed that in the light of national conditions and practice and in consultation with the representative organisation each member shall implement and periodically review a coherent national policy on occupational safety, occupational health and working environment.

\(^{19}\) Ibid at Vol 3 Page 812; see generally Elworthy, S. and J. Holder; Environmental Protection : Text and Materials; Butterworts, London; Edition 1997.
Convention for the protection and development of Marine environment of the wider Caribbean region was held on 1983. Considering the necessities of the protection and maintenance of the environment of the wider Caribbean Region and stressing on the importance of establishing regional co-operation to restore and improve the state of ecosystems, and recognising the necessities of the protection of threatened and endangered species and for the preservation of the cultural heritage and the values of the countries of that region, this convention had been held.

In addition to the above mentioned convention, various other protocols were also adopted at international level for the protection of environment, as stated below.

1. Protocol concerning specially protected areas and wild life to the convention for the protection and development of the marine environment of the wider Caribbean region.


Thereafter Convention on the Regulation of Antarctic mineral Resources Activities was held on 1988. Being convinced that Antarctic Treaty System has proved effective in promoting international harmony in furtherance of the purposes and principles of the charter of the United Nations applied for the protection of the Antarctic environment and in promoting freedom of scientific research in Antarctica, for giving further
support to environment protection movement in Anterctic region, this convention had been convened.

**Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal** was held on 1989. Being aware of the risk of damage to human health and the environment caused due to disposal of hazardous wastes and other wastes and their transboundary movement causing threat to human health, this particular convention was convened. In this convention it was agreed by all the participating nations that parties shall prohibit or shall not permit the export of hazardous wastes to the parties which have prohibited the import of such wastes. Considering the social, technological and economic aspects of such contracting state parties, it was also agreed that each party shall take the appropriate measures to reduce the generation of hazardous wastes and other wastes to minimum.

Along with traditional general environmental matter, including problem of marine pollution, protection of natural resources from disastrous effect of pollution, certain new environmental crisis have become matter of grave concern, like problem of ozone depletion, global worming, etc., at all over the world, since 1980s. Naturally at international level certain measures have been initiated to combat those crisis, as stated below.

**Viena Convention for the protection of the Ozone Layer (1985)** was one of such measures. Being aware of the fact that if the potentially harmful impact on human health and the environment due to change modification of the ‘ozone layer’⁲⁰, this convention was convened at Viena in 1985.

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It has been agreed in this Vienna convention that all the parties to this agreement shall take appropriate measures in accordance with the provisions of that convention to protect human health and the environment against adverse effects resulting from human activities which modify or likely to modify the Ozone layer.

It has been also agreed there that to adopt appropriate legislative or administrative measures, and to co-operate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction which would likely to cause adverse effects resulting from modification of the ozone layer. In this regard parties shall co-operate consistently with their national laws, regulations and practices. Parties to this convention, had also adopted one protocol, namely Montreal protocol on substances that deplete the Ozone layer.

After Montreal protocol, another international effort had come into existence for the protection of Ozone layer. It was London adjustments to the Montreal protocol on substances that deplete the Ozone Layer. The Second meeting of the parties to the Montreal protocol on substances that deplete the Ozone layer decided to adopt adjustments and reductions of production and consumption of the controlled substances of Chloro Fluro Carbon group on the basis of assessments made in pursuant to the protocol.

Along with this adjustment, Amendment to the Montreal protocol on substances that deplete the Ozone layer also came into existence. This Amendment was made aiming at to give much more concrete shape to the Montreal protocol on substances that deplete the Ozone layer for the
3.2.2. Agreements and Guidelines

During that period, i.e. during 1985 for the protection of marine environment, certain guidelines also framed and it is known as Montreal Guidelines on the Protection of the Marine Environment against Pollution from Land-Based Sources (1985). This set of guidelines are addressed to Governments with a view to assisting them in the process of developing appropriate bilateral, regional and multilateral agreements and also in the development of national legislation for the protection of the marine environment against pollution from the land-based sources.

Under this guideline, states should undertake to develop, as far as practicable a comprehensive environmental management programme towards prevention, reduction and control of pollution from land-based sources taking into account the relevant existing programmes at the bilateral, regional or global level.

During this period, another regional agreement at international level had been signed. Member states of the Association of the South East Asian Nations (ASEAN) were the parties to that agreement, namely The ASEAN Agreement on the Conservation of Nature and Natural Resources. Recognising the importance of natural resources for both,

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21. "Controlled substance" means a substance in Annex A or in Annex B to this protocol, whether existing alone or in a mixture. It includes the isomers of any such substance, except as specified in the relevant Annex, but excludes any controlled substance or mixture which is in a manufactured product other than a container used for the transportation or storage of that substance — Sinha P.C. (Dr.) and K. Cherry; International Encyclopaedia of Environmental Laws; Anmol Publication Pvt. Ltd., New Delhi; 1st edition 1996; Vol. 4; Page 1013.
the present and future generations and interdependence between living resources and other natural resources within ecosystems, it was felt necessary for the conservation and management of natural resources as well as of living resources and recognising the necessities of international co-operation to attain this goal, this international agreement has come into existence.

In terms of this agreement, the contracting parties, within the framework of their respective national laws, either singly, or where necessary through concerted action, have undertaken to adopt the measures which are necessary to preserve genetic diversity for maintaining essential ecological process and to ensure the sustainable utilization of harvested natural resources under their jurisdiction in accordance with scientific principles. According to this agreement, these contracting parties shall develop national conservation strategies and shall co-ordinate such strategies within the framework of a conservation strategy for the region to attend the aforesaid goal of this agreement.

In this regard it has been also agreed by and between the contracting parties to this agreement that they shall take all necessary measures within the framework of their respective national Law to ensure that conservation and management of natural resources are to be treated as an integral part of development planning of these countries at all stages and all levels and to that effect, in the formulation of all socio-economic development plans, they shall give full consideration to ecological factors.

Under this agreement, the contracting parties shall co-operate together and with the competent international organisations, with a view to co-ordinating their activities in the field of conservation of nature and
measurement of natural resources and to assisting each other in fulfilling their obligation under this agreement.

3.2.3. Declarations

In addition to these, during this period, few other international activities for legal sanction were also taken place, such as Declaration of Brasilia (1989); Amazon Declaration (1989).


Considering the imperative need to strike a balance between socio-economic development and environmental protection and conservation through the proper management of natural resources, the countries of the Latin America and the Caribbean Island, became parties to this international declaration. It was held in this conference that though each state has sovereign right to administer freely its natural resources, but that did not mean to exclude the need for international co-operation at the subregional, regional and world levels for the protection and preservation of Natural resources. It had been also held that international co-operation for environmental protection should include free access to scientific information and to the non-profit transfer of non-pollutant and environmental conservation technologies to the developing countries, since new environmental technologies can not be the subject matter of pure commercial interest rather it would be for the interest of global environmental protection. Lastly it has been held that global solution for threatened planet

is to be found at the level of co-operation between the industrialized and developing countries.

*Amazon Declaration (1989).*

Reaffirming the sovereign right of each country to manage freely its natural resources and to fulfil the urgent need of the promoting the economic and social development of its people and to make adequate conservation of the environment, this Amazon Declaration has been held in 1989. In this declaration, stress has been given on the protection and conservation of the environment in the Amazon Region as one of the essential objectives of the treaty for Amazonian Co-operation to which each of the nations of this region is firmly committed. Here it was also held that there were an urgent necessities to intensifies the process of consultation and diolague among the countries of the region regarding the development of that region including the process of the integration and solidarity in Latin Ameria and to ensuring future peace, co-operation and prosperity of the Nations of Amazon region.

For the protection of the Ozone layer, another international effort was taken place and that was *Helsinki Declaration on the Protection of the Ozone Layer (1989).* Being well aware of the forecast of the scientists that depletion of the Ozone layer will threaten not only the present but also the future generations unless more stringent control measures are adopted, parties to that agreement agreed there to reduce the production and consumption of some Ozone depleting substances, some of which are powerful greenhouse gases, responsible for global warming. It was also agreed to phase out the production and consumption of CFCs, one
of the Ozone depleting substance, as soon as possible but not later than the year 2000.

In connection with this, above mentioned global environmental problem such as depletion of Ozone layer, another problem has become matter of concerned and that is the problem of global warming. In this regard *Noordwijk Declaration on climate change (1989)* was also held to deal with the problem of global warming. The problem of global warming has been recognised by the inter governmental panel on climate change (IPCC) which was established by UNEP and WHO, and also recognised by *UN General Assembly Resolution 43/53* on Protection of Global Climate for Present and Future Generation of Mankind. In this declaration, emphasis was given on international Co-operation and legal and institutional measures to this global problem.

### 3.2.4 Conferences

Regarding Control of Green House Gas, another international efforts came into existence and that is *European Council Resolution on the Green House Effect and the Community (1989)*. In addition, another international conference was held in Toronto in June, 1989, in London and the Hague in March 1989 and in Nairobi in May 1989 where a very broad consensus opinion has been developed on the need for urgent consideration of measures to reduce of emissions of greenhouse gases. In this regard, *United Nations Governing Council Decision 15/36 on Global Climate Change (1989)* is also another international efforts to

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23. Ibid at page 1245; also see Bell, Stuart & Donald McGillivray; Oxford University Press, Oxford, 6th Ed., 2006; page 87.
resist against global climate change which is the inevitable result of increase of the level of greenhouse gases in this earth.

During 1989, another international conference was held and as a result of such international conference a Declaration, namely Male Declaration on global warming and sea level Rise (1989), had come into existence.

Here they have decided to develop a programme of action within the small states for co-operation and exchange of information on strategies and policies in relation to climate change, global warming and sea level rise. They have also called upon all the states of the world family of nations to take immediate and effective measures according to their capability to control, limit or reduce the emission of greenhouse gases which are responsible for global warming and here, they have also recommended that they would enact legislation to facilitate such measures.

During 1989, United Nations conference on Environment and Development was held. Considering the fact that global character of environment problems, including climate change, depletion of the Ozone Layer, transboundary air and water pollution, the contamination of the oceans and seas and degradation of Land resources, including drought and desertification require actions at all levels, including the global, regional and national levels and it requires the commitement and participation of all countries, for taking necessary steps for the protection and preservation of the environment and also considering that unsustainable pattern of production and consumption are the major causes behind the continuing deterioration of the global environment, this international conference was held aiming at to adopt and to formulate the strategies
at international level for the protection and enhancement of the environment to reduce the current level of imbalances within the relation between the global patterns of production and consumption.

Being deeply concerned in continuing deterioration of the State of environment at all over the world and the serious degradation of global life support systems, and recognising the fact that decisive and urgent global action is very much essential for the protection of ecological balance of the earth to avoid ecological catastrophe, United Nations has decided in this conference to convene United nations conference on Environment and Development. It has been also decided to convene such conference for the continuous duration of two weeks with a hope for highest possible level of participation. Ultimately accepting with high appreciation of the generous offer of the Government of Brazil to host the international conference, United Nations Organisation had made it final to organise the conference at Brazil. So in this way Rio-de Generio of Brazil was all set to stage a global conference on Environment and development.

Ultimately in 1992, at Rio-de Generio, Brazil, a complete new mode of international approach had been germinated. It was an approach of sustainable development which emphasised on incorporating environmental concerns in the economic and social development process. Actually this concept had been germinated in the United Nations conference on Environment and Development, 1989, on the basis of the consideration of the World commission on Environment and Development (1987). From this very juncture, international effort for environmental protection has been no longer a single point agenda where the protection and preservation of human environment are the only considerations. Now
environment protection issue would be dealt with taking into account of the specific needs of development of developing countries including implementation of policies for sustainable and environmentally sound development in the Society.

3.3 Rio-Conference its After Effect and Present Development at International Level.

3.3.1 Rio- Conference

The Earth summit or United Nations Conference on Environment and Development (UNCED) began on and from 3rd June, 1992 at Rio-De-Geneiro, Capital of Brazil. It was the largest international conference, ever organised by the United Nations in the history of International Relations and International Law and it was attended by 178 Nations.24 This international conference has become the major instrument of evolution of new kind of international environmental law and policy with the new approach towards the problem of environmental pollution.

This world conference generated five formal documents, viz. the Rio-Declaration and the action programme; Treaties on biodiversity and climate change; and a statement on forest principle, as discussed below.

3.3.1.1 Rio-Declaration

The Rio-Declaration has emphasised on taking measures by the year 2000 to incorporate appropriate environmental health safeguards as a part of National Development Programme in all the countries due to

increasing health risks from environmental pollution and hazard. Since there has been world-wide expectation regarding the quality of life and the dignity of mankind, the concept of pure and healthy environment has undoubtedly the priority within the framework of international environmental law. All these developments indicate that there is pressing need to safeguard the existence of mankind which can not depend entirely on traditional customary law.

Having met at Rio-de-Janerio from 3 to 14 June, 1992, reaffirming the declaration of the United Nations conference on the Human Environment, adopted at Stockholm on 16th June, 1972, and seeking to build upon it, with a goal of establishing a new and equitable global partnership through the creation of new levels of co-operation among states and to protect the integrity of the global environment and system of development, Rio-Declaration had been framed at that world summit containing 27 principles dealing with general rights and obligations of almost all the countries of global community on environmental protection under the perview of sustainable development in respect of different corresponding relationships as stated below.

*Environment and Development —*

It has been proclaimed in the Earth Summit (1992) under Principle 1 of Rio-Declaration that human beings are at the centre of concerns for sustainable developments and they are entitled to a healthy and productive life in harmony with nature. In accordance with the charter of the United Nations and the principles of international Law, The States have the sovereign right to exploit their own resources in pursuanta to their own

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environmental and developmental policies and they have the responsibility
to ensure that activities within their jurisdiction or control do not cause
damage to the environment of other states or of areas beyond the limits
of National jurisdiction, as proclaimed under Principle 2 of this Declaration.
It has been also proclaimed under Principle 3 of the Declaration that the
right to development must be fulfilled so as to equitably meet
developmental and environmental needs of present and future generation.
It has been also held under Principle 4 there in that in order to achieve
sustainable development, environmental protection shall constitute an
integral part of the development process and can not be considered in
isolation from it.

*Poverty eradication and Development* —

It has been also proclaimed under the principle 5 of this Rio-
Declaration that all states and all people shall co-operate in the essential
tasks of eradicating poverty, as an indispensable requirement for
sustainable development, in order to decrease the disparities in standard
of living and to met the needs of the majority of the people of all over the
world. According to the principle 6 of this Declaration, international actions
in the field of environment and development should also address the
interest and needs of all countries, specially of those who are
environmentally vulnerable.

*Protection of quality of life and Development* —

It has been also held under principle 7 of this Rio-declaration that
states shall co-operate in a spirit of global partnership to conserve, protect
and restore the health and integrity of the Earth's ecosystem and in view
of the different contribution to global environmental degradation, states
have common but differentiated responsibilities. According to Principle 8 of this declaration, to achieve sustainable development and a higher quality of life for all people, states should reduce and eliminate unsustainable pattern of production and consumption. In addition, states shall also co-operate to strengthen indigenous capacity building for sustainable development by improving scientific and technological knowledge, and by enhancing the development, adaptations, diffusions and transfer of technologies, as proclaimed under principle 9 of this declaration. As per the principle 10 of this declaration, States shall facilitate and encourage public awareness and participation in environment protection movement by making informations widely available.

**Principle of Liability and Development —**

Under principle 11 of this Declaration, it has been also proclaimed that state shall enact effective environmental legislation and States shall develop national Law regarding liabilities and compensation for the victims of pollution and other environmental damage in terms of Principle 13 of this declaration. It has been also proclaimed under the principle 13 of this declaration that State shall also co-operate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of Environmental damage caused by the activities within their jurisdiction or control to areas beyond their jurisdiction. In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities, as proclaimed under the principle 15 of this declaration.

**Environment Management and Development —**

Under the principle 22 of this declaration, it has been proclaimed
that indigenous people and their communities and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. It has been also proclaimed that states should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable developments.

**Transboundary relationship and Development** —

According to the principle 18, States shall immediately notify other states of any natural disaster or other emergencies that are likely to produce sudden harmful effects on the environment of those states. In terms of principle 19 of this declaration, States shall provide prior and timely notification and relevant information to potentially affected states regarding activities which may have a significant adverse transboundary environmental effect and shall consult in good faith with those states at an early stage.

It has been held under Principle 25 of this Rio declaration that Peace development and environmental protection are interdependent and indivisible and therefore states shall resolve all their environmental disputes peacefully.

### 3.3.1.b. The Action Programme

Agenda 21\(^{25A}\) covers almost each and every aspect of the issue regarding sustainable development. It contains many useful ideas. This action plan forms the basis for a new global partnership for sustainable development and environmental protection in every where in the contemporary interdependent world. Agenda 21 has provided a

mechanism for mobilising and coordinating various efforts for making and
international system active for maintaining proper balance between
environment protection and development and established a frame work
for other factors to enforce collectively for the same reason.

The Earth summit has finally approved the environment development
agenda as an essential element and in creating conditions for stability and
well-being which are necessary for peaceful and friendly relations among
nations. Agenda 21 represents the political consensus as achieved at
UNCED, providing a blue print for reconciling a sound economy with healthy
and productive life keeping harmony with nature. Agenda 21 attributes
great importance to enhancing the indegenous capacity of all countries,
particularly the developing countries, to take appropriate measures for
sustainable development, within the domain of environmental law.

Since the environmental threat in modern world is grave and it requires
drastic efforts to arrest the fastly deteriorating eco system in this earth, the
earth Summit gave impetus to the development of international institutions
within the perview of environmental law for keeping pace with the world's
ever growing environmenteal crisis during these days.

During the Earth summit, most of the international legal and institutional
proposals had been considered seriously for the change in the system
rather than a fundamental overhaul. A massive document regarding
detailed work plans for sustainable development, which also includes goals,
responsibility and estimates for funding, had been presented through this
Agenda 21. There is no doubt that all the developments of inter national
environmental law in the pre Earth summit era emphasized on the growth
of international environmental protection law aiming at only prevention and
control of environmental pollution, but the Rio-Declaration on environment and development has enunciated in principle that human beings are very much in need of sustainable development without giving up their inherent right to a healthy and productive life in harmony with nature.

The Earth Summit's most visible and important new institutional product is "UN Commission on sustainable Development" which helped to accelerate the integration of environmental protection with economic development and to enhance the quality of life. Agenda 21's conceptional frame work also recognises many ways in which economic, social and environmental forces can interact with each other. It promotes national strategies to give concrete shape to the concept of sustainable development in all the nation states and also presents a structure for organising international policies and programmes relating to environmental issues involving, both regional and global consequence.

3.3.1.c Treaty on Bio-Diversity

Another major achievement of the UNCED is Treaty on Bio-Diversity, as taken place in the convention on Biodiversity held at Rio de Janerio in 1992. The prime objective of the Biodiversity Treaty had been conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of genetic resources, appropriate transfer of relevant technologies and appropriate funding.

This Convention On Biological Diversity (CBD) is a legal instrument which provides obligations on the nations which become contracting parties to that treaty signed in that convention. This convention has provided a frame work for sustainable management and conservation of natural resources. After signing CBD on 5th June 1992, India has ratified it on
18th February, 1994 and brought it into force on 19th May, 1994. It may be mentioned here that the convention on Biological Diversity has been signed by many as 167 countries and ratified by the required minimum of thirty countries and this convention has come into force as part of International Law on 29th December, 1993. The main objectives of this convention are as follows:

(i) Conservation of Biological Diversity;

(ii) Sustainable use of the components of Biological Diversity;

(iii) Fair and equitable sharing of benefits arising out of utilization of genetic resources, where equitable sharing includes appropriate transfer of relevant technologies under confessional and preferential terms to developing countries in accordance with mutually agreed terms.

Actually the aim of this Bio-Diversity convention is to preserve the vast 'gene pool' of flora and fauna and make the developed countries pay for its exploitation. According to the treaty of this convention, the contracting parties are to facilitate access to technologies which are relevant for the conservation and sustainable use of biological diversity or for making use of genetic resources. Ultimately in this convention on Biological Diversity, it has been agreed by and between the contracting parties to give emphasis on the sustainable use of components of biological diversity.

3.3.1.d Convention on Climate Change

Recalling the provisions of General Assembly resolution 44/228 of 22 December, 1989, on the United Nations conference on Environment
and Development and Resolution 43/53 of 6 December, 1988, 44/207 of 22 December, 1989, 45/212 of 21 December, 1990; and 46/169 of 19 December, 1991 on Protection of Global Climate for Present and Future Generations of Mankind; and also recalling the provisions of General Assembly resolution 44/206 of 22 December, 1989, on the possible adverse effects of sea level rise on islands and coastal areas, particularly low-lying coastal areas and the pertinent provisions of General Assembly resolution 44/172 of 19 December, 1989, on the implementation of the Plan of Action to combat Desertification; including resolution of the Vienna convention for the protection of the Ozone layer, 1985, and the Montreal Protocol on substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June, 1990 and lastly recalling the resolution, taken at the Ministerial Declaration of the Second World Climate Conference, adopted on 7th November, 1990; the Frame Work convention on climate change (1992) has been convened and a treaty has been signed in this convention and it has come into force on 21st March, 1994. India being a participating nation signed it on 10th June, 1992 and ratified on 1st November, 1993.

It was agreed in this convention that parties to that convention should protect the climate system for the benefit of the present and future generations of mankind, on the basis of equity and in accordance with their common, but differentiated responsibilities and respective capabilities and accordingly developed countries should take the lead in

30. Ibid.
32. Divan, Shyam and Armin Rosencranz; Environmental Law and Policy in India; Oxford University Press; New Delhi; 1st Edition 2001; Page 582.
33. Ibid.
combating climate change and its adverse effects on the environment. It was also agreed there that parties to the agreement should take precautionary measures to anticipate, prevent or minimize the cause of climate change and mitigate its adverse effects. It has been also agreed that parties should co-operate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all the participating countries, specially in developing countries.

It has been also agreed in this convention that all the State parties, taking into account their common but differentiated responsibilities, including specific national and regional development authorities, shall promote and co-operate in scientific, technological, technical, socio-economic and other research and development matter and they should also promote and co-operate in the development, application and diffusion, including transfer of technologies, practices and processes by which emission of greenhouse gases may be controlled.

Here each of these participating countries had also agreed to co-ordinate, with other such parties, regarding development of relevant economic and administrative instruments to achieve the objective of the convention and to identify and review periodically its own policies and practices which would encourage the activities leading to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur.

It has been also agreed by and between the parties to this convention that they should promote and facilitate the development and implementation of educational and public awareness programmes on
climate change and its effects at the national and as appropriate, subregional and regional levels and in accordance with national laws and regulations and within their respective capacities.

3.3.1.e Statement of Forest Principles (1992)

Another outcome of this Earth Summit is the Statement of Forest Principles, 1992\(^{33A}\), which have been adopted by more than 178 states at Rio-de-Janerio. It had also generated a lot of controversy from the very beginning. While the rich nations wanted to control massaive deforestation through a convention, the developing countries in particular India and Maryland had serious reservations on forest principles, contained in the draft. Ultimately these developing countries succeeded in getting the said provisions changed and ultimately consensus opinion was formed regarding provisions relating to sustainable development of forests. It was recognised there that forests are essential to economic development of any country and the maintenance of all forms of life therein. In committing themselves to the prompt implementation of the principles as agreed, countries decided to keep them under assessment for their adequacy with regard to their further international co-operation on forest issues.

It has been also agreed therein that forests resources and forest lands would be sustainably managed to meet the social, economic, ecological, cultural and spiritual human needs of the present and future generation. It has been also agreed that Governments should promote and provide opportunities for the participation of interested parties, including local communities and indigenous people, industries, labour, non-government organisation and individual forest dwellers and women.

in the development, planning and implementation of national forest policies.

It has been further agreed that national policies and strategies should provide a frame work for increased efforts, including the development and strengthening of institutions and programmes for the management, conservation and sustainable development of forests and forest lands. Here National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities, including the forest dwellers. According to this agreement, National policies and programmes should take into account the relationship between the conservation, management and sustainable development of forests and all other aspects relating to the production, consumption recycling and/or final disposal of forests products.

According to this negotiation, all the countries, notably developed countries, should take positive and transparent action towards deforestation, afforestation and forest conservation, as appropriate and in this regard, specific financial resources should be provided to developing countries. In addition, new and additional financial resources should also be provided to developing countries to enable them to manage sustainably, conserve and develop their forest resources through afforestation, reforestation, including combating the deforestation and land degradation. It has been also agreed there that sustainable forest management should be carried out in accordance with national development policies and priorities and on the basis of environmentally sound national guidelines.

It may be mentioned here that at the beginning of the Earth summit, it was expected that a legally binding convention on forestry could be
negotiated and placed for signature together with agreements on climate change and biodiversity. It may be mentioned here that consultation on a possible international legal agreements on sustainable management of forests had already been initiated by the Food and Agriculture Organisation of the United Nations (FAO) before this Earth summit. In the early stages of the negotiation, the industrialised countries called for an agreement regarding cutting of tropical rainforests where much of the incidents of deforestation had been occurring. Developing countries, in particular Malasia and India had expressed their view in the conference in this way that attempt of industrialised nations in negotiating a binding agreement had been meant for compromising their sovereign right to exploit their own natural resource. Ultimately negotiations produced a set of principles for the sustainable management of global forests which could form the basis for post summit negotiations on an international legal agreement on forestry.

So ultimately through this earth summit, concept of sustainable development had acquired a centre stage in the field of environment protection, because campaign for environment protection had been no more a mere protection of environment from the effect of pollution of a particular country, but it is very much linked with the progress and development of that particular country and as a result, environment protection and development has become inseparable from each other. In this way, earth summit, as held in Rio de Generio, in 1992, has introduced a new Philosophy of sustainable development in the field of environment protection movement.
3.3.2 Post Rio-Development

3.3.2.a General Overview

In terms of the resolution of earth summits, the development of international environmental law is closely linked with the world’s economic policy in order to develop a new thinking with regard to environmental issues aiming at to create environmental sustainability.

Regarding prospect of the Earth summit, there had been certain uncertainty. Before beginning of this summit, chances of the complete success were a far cry, because of rigid attitude of United States of America over Bio-diversity treaty and other issues. But it is not a fact that the earth summit, 1992, ended without achieving any success. Inspite of the continuous opposition of the United States, many countries signed the Bio-diversity treaty. Climate change convention has been also signed by 150 countries. It must be a matter of great satisfaction. Further, the U.S. was almost isolated in the conference because of its rigid uncompromising attitude. A number of developed countries including Britain, Japan, Germany and European community had maintained distance from the stand of United States of America stand and shifted their position on crucial issues and participated in evolving consensus opinion which finally took shape as "earth charter" in Rio-Declaration.

On 22nd December, 1992, the General Assembly of the United Nations approved the creation of a new high level commission consisting of 53 members on sustainable development to look after the implementation process of "Agenda 21" and ultimately on 12th February,
1993, 'the Economic and social council commission' had formally established the 53 member commission on sustainable development to monitor progress in implementing "Agenda 21", the comprehensive action programme, adopted by the U. N. conference on Environment and Development (UNCED) in June, 1992 in Rio De Janerio.35

Thus there is no doubt that the road from Rio has been leading to the hope and aspiration for new sustainable world. Here, both the developed and the developing countries are to ensure the safety and security to the present and future generations from environment point of view. Actually the Rio summit was a significant milestone that set a new agenda for the concept of sustainable development, what has been reflected from various subsequent efforts at International level as discussed below.

3.3.2.b Conventions and Protocols

The convention on desertification was also convened during 1992 Earth summit in Rio De Janerio and the General Assembly has given mandate through its resolution No. 47/188 to complete the convention by June, 1994 and ultimately the convention was concluded at Paris on 18th June 1994.36 More than 100 Governments entered into a negotiation which had been actually a concerted efforts to help over 900 million people around the world fighting life and death battle against desertification. Ultimately this convention had been ratified by 50 countries.37

Since Rio Conference, various other agreements including protocols were also signed aiming at environment protection. Some of them are mentioned here, as follows:-

35. Ibid at page 411.
36. Ibid at Page 405.
37. Ibid.
The 1998 Aarhus Protocol on Heavy Metals -

The executive Body of convention on the Transboundary Effects of Industrial Accidents, 1992, adopted the protocol on Heavy Metals on 24th June, 1998 in Aarhus (Denmark)\textsuperscript{38}. This protocol has laid down certain obligations for the state parties to the protocol. One of the basic obligations is that the parties to the protocol will have to reduce the emissions of the three metals, such as cadmium, lead and mercury, below their levels in 1990 (or an alternative year between 1985 and 1995)\textsuperscript{39}.

The 1998 Aarhus Protocol on Persistent Organic Pollutants (POPs)

The executive Body adopted the protocol on Persistent Organic Pollutants on 24th June, 1998, in Aarhus (Denmark)\textsuperscript{40}. The ultimate objective behind this protocol has been to eliminate any discharges, emissions and losses of Persistent Organic Pollutants (POPs). This protocol has imposed ban entirely on the production and use of some products such as aldrin, chlordane, chlordan, dieldrin, endrin, hexabromobiphenyl, mirex and Toxaphene. Others substances such as DDT, heptachlor, hexachlorobenzene and PCBs are also scheduled in this protocol for elimination at a later stage.

The 1999 Gothenburg protocol to Abate Acidification, Eutrophication and Ground level Ozone.

The Executive Body adopted the protocol to abate Acidification, Eutrophication and Ground-level Ozone in Gothenburg (Sweden) on 30th November, 1999\textsuperscript{41}. This protocol has set 2010 as ceiling year for

\textsuperscript{38} Padma (Dr.); International Environmental Law; Asia Law House, Hyderabad; 1st Edition, 2003; Page 196.
\textsuperscript{39} Ibid.
\textsuperscript{40} Ibid.
\textsuperscript{41} Ibid at Page 195.
emission of four pollutants, such as Sulphur, Nitrogen Oxides, Volatile Organic Compounds (VOCs) and Ammonia. As per this protocol, Parties to the protocol, whose emissions have more severe environmental or health impact and whose emissions are relatively cheap to reduce, will have to make the biggest cuts of those substances as mentioned above. It has agreed there that once the protocol become fully implemented emissions of sulphur, Nitrogen Oxides, VOCs and Ammonia at Europe should be cut by at least 63%, 41%, 40%, and 17% respectively in comparison with 1990 level 42.

3.3.2. Conferences

After Earth summit, another world conference, conference to review the implementation of the decisions taken at Rio-Earth Summit (1992), was held in June 1997 to review the implementation of the decisions as taken at Earth Summit, 1992. Nearly 160 members States 43 had participated in that conference. The conference renewed its commitments and set goals for future. It was reviewed there that major and important part of the recommendations of the Rio-Earth Summit remained unimplemented and one of the main reasons behind it was the persisting differences between developing and developed nations over several matters. Yet another reason for failure in implementation of the such recommendation was the reluctance of the developed nations in providing financial help or giving technological assistance at affordable rates to the developing nations to meet the environment standards fixed for them.

Another summit conference namely, Kyoto Environmental Summit on Global worming was convened by the United Nations in December,

42. Ibid.
1997 at Kyoto, Japan on Global warming. In the Earth Summit of 1992 a convention on climate change was concluded and it was decided there that a review conference would be convened after a period of five years. Therefore, a conference on climatic change was held at Kyoto (Japan) on 1st December, 1997\textsuperscript{44} to review the progress made in five years and to chalk out plans and to fix strategies and objectives for the future. Here more than 150 countries participated in this Kyoto conference.

At the end of the conference, it was decided there that the emissions of green house gases from the 1990 level would be reduced by 8%, 7% and 6% by European Union, America and Japan, respectively\textsuperscript{45}. Similarly, targets of 21 other industrialist countries were fixed for reducing emissions of green house gases and these targets are to be achieved in between 2008 and 2012 AD\textsuperscript{46}. At the very beginning of this conference, America was not prepared to accept the target of more than 5% reduction of green house gases, but due to the pressure of European union and other countries, America had to accept the target of 7%\textsuperscript{47}.

It has been realised during this summit by all the participating nations that if emission of green house gases is not reduced considerably within the period, as fixed in this Kyoto Summit, global warming may increase to such an extent wherein that existence of the planet will be jeopardised. As a result of global warming, level of the saes will increase and it will sweep away the human habitation, including plantation and other living beings on earth. If necessary steps are not taken in time, the planet earth will have to face the consequence.

\textsuperscript{44} Ibid at page 793.
\textsuperscript{45} Ibid.
\textsuperscript{46} Ibid.
\textsuperscript{47} Ibid.
So from this world Environmental Summit, Kyoto conference, world community once again get the message of urgent necessities to take immediate steps for the preservation of this planet in the light of sustainable development, as per the resolution framed in Rio Earth Summit, 1992 and to save it from the imminent environmental catastrophe, otherwise within very short period world community can witness the grave natural calamity.

World Summit on Sustainable Development in Johannesburg

Ultimately in September, 2002, the representatives of the peoples of the world, again assembled in Johannesburg, South Africa, at the world Summit on sustainable development to reaffirm world's commitments for sustainable development and to reassess the present situation of environmental pollution in all over the world.

The World Summit on sustainable Development (WSSD) ended in Johannesburg on the 4th of September, 2002, after being inaugurated on 2nd September, 2002. Representatives from 191 countries attending this world Summit have agreed upon a plan of Action to alleviate poverty and to conserve the earth's natural resources. Here, in this world summit, after making constructive search for a common path leading towards such a world that respects and implements the vision of sustainable development participating nations have unanimously formulated a Declaration, the Johannesburg Declaration on Sustainable Development.

At that world summit it has been also declared by the representatives assembled there from all over the world that they have united in a common
agenda to resolve to make a determined effort to respond positively to the need to produce a practical and visible plan that should bring about poverty eradication and human development. It has been also declared there that this world summit recognizes that poverty eradication, changing consumption and production patterns and protecting and managing the natural resource for economic and social development are overarching objectives of sustainable development.  

In this world Summit, representatives from the Nations all over the world have made a commitment to build a humane, equitable and caring global society for the purpose of securing human dignity for all. The representatives, attending the summit, have insisted upon a collective responsibility through this declaration to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development, economic development, socio-economic development and environmental protection at local, national, regional and global levels.

It has been also recognised in this world summit that sustainable development requires a long term perspective and broad based participation in policy formulation, decision-making and implementation at all levels with effective and vital role of the indigenous people in their respective countries. It was also proposed there that as social partners representing of world nations, they should continue to work for stable partnerships with all major groups. It has been further agreed there that in pursuant to their legitimate activities, the private sector, both large and

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small companies, have a duty to contribute to the evolution of equitable and sustainable communities and societies.

So it is clear that in this Johannesburg World Summit, main emphasis was given upon the necessities of the proper implementation of the concept of sustainable developments in the world at large for the protection and preservation of the human dignity and to meet the necessities of the human being.

Ultimately, it was agreed in this world summit that to achieve the goals of sustainable development, effective democratic and accountable international and multilateral institutions are needed badly. It was also committed to monitor progress at regular intervals towards the achievement of our sustainable development and its goals and objectives. It was further committed by the participating nations to act together being united by a common determination to save this planet and to promote human development. The representatives of the world nations also committed themselves to the Johannesburg plan of implementation and to expedite the achievement of the time bound, socio-economic and environmental targets. Finally, an undertaking was given by the world representatives in this world summit to strengthen and to improve governance at all levels, for the effective implementation of Agenda 21, the Millennium Development Goals and the Johannesburg plan of implementation, specially of the concept of sustainable development.

Thus in this way ultimately in Johannesburg world summit, the concept of sustainable development, which has begun its journey from Rio conference for achieving the goal of balanced relationship between development and progress of human life; and protection and preservation
of human environment, has achieved its real significance in the mission of environment protection at present age. The seed, of which had been shown in the Rio conference, that has been ultimately blossomed with fragrant smell in Johannesburg world summit for keeping the hope alive to eradicate the pollution problems from this planet without disturbing the momentum of human development and progress.

While talking about the prospective success story of the sustainable development in view of the resolution taken at World Summit on Sustainable Development, held at Johannesburg in 2002\(^{48b}\), as an after effect of Rio-declaration, dealing with various prevailing environmental problems, such as global warming, depletion of ozone layer, etc., which are very much linked with the progress and development of human community, it must be assessed that how far success had been achieved after Rio and what can be achieved after Johannesburg regarding those environmental problems.

There is no doubt that for the first time at the Rio-earth summit, the concept of sustainable development has come into prominence. In this earth summit, industrialized and developing countries, even with their different agendas, began to work together to set the goal towards sustainable development. It was presumed that developing countries would participate in multi-lateral environmental agreements, as came into existence in the convention on Biological Diversity and the frame work convention on climate change and in return, developed countries would help in capacity building, transferring technology, removal of trade barriers and action on debt. But in reality, nothing has happened except minimising

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some of the existing pollution problems.

Under these circumstances, Kyoto Environmental Summit on global worming had been convened in Kyoto, Japan, where entire situation had been reviewed regarding implementation of the decisions as taken at Rio Earth Summit (1992). Ultimately the World Summit on Sustainable Development (WSSD) was convened at Johannesburg in September, 2002. In Johansburg Earth Summit on Sustainable Development, it was also mainly discussed that what had been the Lacuna in implementing the Rio commitments and what should be the effective framework for the future policy in environment protection in the light of sustainable development.

In this world summit, it was proposed to strengthen and improve governance at all levels, for the effective implementation of Agenda 21, the Millennium Development goals and the Johannesburg plan of implementation, after making commitment of utilisation of rich biological diversity and diversity of other resources. Finally this world summit emphasised on the collective strength of this planet, for constructive partnership for change in traditional approach towards environment protection and for the achievement of the common goal of sustainable development.

So in this way Johannesburg world summit on sustainable development\textsuperscript{48C} has tried to overcome the short fall of the previous world summits in protecting the environment and to maintain balance with the development and progress of the present age. This world summit has

\textsuperscript{48C} See generally: Pallemarts, Mare; 'International Law and Sustainable Development: Any progress in Johannesburg'; in Review of European Community and International Environmental Law; Vol. 12, No. 1 (2003), page 1-11.
also made commitment to reconstruct our world with a new hope and ambition to keep this earth planet pollution free as far as possible within the sustainable limit minimising the conflict with development and progress of the world community and ultimately it has been all set to be an international legal sanction.

3.4 Judicial Response to Modern International Regime

3.4.1. Response during post-stockholm period

In 1972, at Stockholm, United nations had organised a global conference on the Human Environment to consider wide range of environmental issues going beyond the arena of marine pollution, only for which world community was concerned before the Stockholm Conference, 1972. This conference on Human Environment, held at Stockholm, had approved numerous principles on various environmental issues to guide future international conduct. This conference has contributed a lot for introducing an effective legal approach at international level towards controlling the environmental pollution of different forms by adopting a Declaration on Human Environment, entitled "Declaration of the U.N. Conference on Human Environment".

After Stockholm Conference, environment protection movement had been intensified in a holistic manner, both at national and international levels. Various conventions, Protocols and conferences, had taken place under the guidance of United Nations and also under the supervision of various regional authorities at different levels. In all these conventions, protocols and conferences, different environmental issues had been
considered. As an outcome of such conference and conventions, various declarations had been proclaimed and guidelines had been framed to deal with the environmental issues under large spectrum covering numerous pollution problems and its probable consequences. By those declarations and guidelines, certain measures had been taken at international level to combat pollution problems of different types and its consequences.

Under this modern international regime for during post Stockholm Conference period, Judiciary had been also responding quite effectively and elegantly towards the environmental issues. During this period, Judiciary had played a very significant role in dissolving disputes amongst different state parties over environmental issues and question of rights and liabilities involved therein. After Stockholm conference, Judiciary had responded to the rule of State responsibility with more expanded view than the existing practice which can be expressly found in Trial Smelter Case\textsuperscript{49} and Corfu Channel Case\textsuperscript{50}.

In these two cases, rule regarding states responsibility in injury, caused to the claimant state, had referred only to such injuries caused to legally protected rights of the claimant states and within the limits of the jurisdiction of such states. But subsequently, after Stockholm Conference, judiciary has successfully invoked the rule of states responsibility, as referred by the Stockholm Declaration expanding the scope of the doctrine, 'Sic Utero tuo\textsuperscript{51} where under states may be held responsible for non commital to its

\textsuperscript{50} I.C.J. Reports 1949, page 22.
\textsuperscript{51} 'Sic utero tuo' — means — no state is allowed to alter the natural condition of its territory to the disadvantage of natural conditions of the neighbouring state, adding that a state is not only for bidden to stop or divert the flow of a river which runs from its own to a neighbouring state, but like wise to make such use of water of the river as causes danger to the neighbouring state, or prevent it from making proper use of the flow of the river on its part — Oppenheim; International Law; Universal Law Publishing Comp. Pvt. ltd., Delhi, 8th Edition, 1955; vol. 1; Page 476;
own assurance, as not to cause damage to the environment of other states or of areas 'beyond the limits of national jurisdiction'\(^{52}\) by its own activities within its jurisdiction or control. Actually with this extension of the scope of State Responsibility, obligations of the acting states being said to be 'erga omnes'\(^{53}\) has become very much relevant under this modern International legal regim.

In view of this latest rule of State's responsibility, first of all the acting states should be obligated to exercise due care in conducting or permitting within their jurisdiction any activity having potentially harmful transborder consequences and in case if any harm caused to any Nation State, then offending states are liable to compensate adequately for the damage as sustained by the claimant states, due to such harmful transborder consequences of pollution act. In this regard, one remarkable case as come up for adjudication during post Stockholm Conference period before the International Court of Justice (ICJ) is *Nuclear Test Case*\(^{54}\) (*Australia vs. France*).

In this *Nuclear Test case*\(^{55}\), being concerned with the deposition of radioactive substances on Australia due to French atmospheric nuclear testing in the South Pacific, Govt. of Australia had made a prayer for claim before the International Court of Justice for taking into account non-material injury, since radioactive substances as deposited on Australia had been potentially dangerous to the people of that country and any injury, which might be caused by such substances, would be irreparable. It was also claimed by the Government of Australia before the International Court of

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55. Ibid.
Justice that the Australia and its people in common with other states and their people would be freed from atmospheric nuclear weapon test by any country. Australian Government also prayed relief against the infringements of the freedom of the high seas due to interference with ships and air crafts on the high seas and in the superjacent air space and pollution of the high seas by radio-active fall out. In this Nuclear Test Case\textsuperscript{56}, along with Australia, New Zealand also instituted proceeding in International Court of Justice against France for restraining it from conducting nuclear Tests at Mururoa Atol.

In this Case\textsuperscript{57}, as an interim measures, ICJ directed the French Government to avoid nuclear tests causing radioactive fallout deposited on Australian Territory. Such interim measures had been provided in order to remedy the probable injury caused to the Australia, New Zealand and its citizens instead of providing any damages.

Though this direction, as passed in Nuclear Test Cases, was nothing but an interim order, but it was based on such general rule of International law, as developed during post stockholm period, that no state could use its territory in such a manner which would be injurious to other sovereign states.

Ultimately these Nuclear Test cases had been taken off the Court's list without any final decision on merits regarding the issues of claims, damages and injury caused to the area, beyond the limits of National jurisdiction, and responsibility of the states when France had announced

\textsuperscript{56} Ibid.

\textsuperscript{57} Nuclear Test Case (Australia vs. France), ICJ Reports 1974, page 253; (New Zealand vs. France) ICJ Reports, 1974, page 457.
that it would not conduct further test after 1973. But, in spite of such assurance, France had again started Nuclear Test on 1981.58

In similar manner, interim measures had been also taken by the Judiciary under modern International regime in connection with environmental issues in *Fisheries jurisdiction case*.59 In this case, International Court of Justice provided interim measures of protection by observing that the parties should ensure that no such action would be taken by which dispute, as submitted before the court, might be aggravated or extended and rights of the other party might be prejudiced. In this case, actually parties to the dispute were required to negotiate mutually and in good faith in connection with the equitable distribution of their fishing rights in the coast of Iceland, the main issue as involved in this international dispute case.

Ultimately in this *Fisheries Jurisdiction Case*60, it was held by the International Court of Justice that Iceland and each of the two complainant countries, the United Kingdom and the Federal Republic of Germany, were under mutual obligations to undertake negotiation in good faith for an equitable solution of their differences as to the fisheries in the disputed waters and it had indicated certain of the relevant equitable factors, such as equitable distribution of natural resources and its enjoyment. It may be mentioned here that in adjudicating the *Libya-Malta Continental Shelf Case*61 International Court of Justice had also relied on same equitable criteria based on the Concept of 'Negotiation in good faith'62. In similar

60. Ibid.
way *Tunisia - Libya continental shelf case*\textsuperscript{63} and *Burkina Faso vs. Republic of Mali*\textsuperscript{64} Case had been also adjudicated by the International Court of Justice.

In view of the aforesaid judicial decisions at international level, it may be stated here that what ever may be the basis of its adjudication, the main guiding principle has remained the same for identifying the state’s responsibility and liabilities as not to cause damage to the environment of other states or of areas beyond the limits of national jurisdiction or control as provided in the principle 21 of the Stockholm Declaration, 1972.

### 3.4.2. Response during post-Rio Period

After United Nations' Confernece on the Human Environment (Stockholm, 1972), international community had begun to show their concern towards environmental issues with more effectively and meaningfully in accordance with the change of World Environmental Scenario, as it had taken place due to advent of new factors responsible for pollution. As a result, environment protection movement became intensified under new international legal regime as developed under prevailing environmental scenario, as it appears from the discussion in the present chapter regarding environment protection under modern international regime.

In this regard, judiciary had been also responding towards the environmental issues in a new dimension under new environmental scenario during post Stockholm Confernece period when the rule of the state responsibility in case of injury cuased to the environment of other

\textsuperscript{63} I.C.J. Reports, 1986, page 3.
\textsuperscript{64} I.C.J. Reports, 1986, page 554.
states, had been changed towards the rule as referred to the "areas beyond limits of national jurisdiction"\textsuperscript{65}, as discussed in the earlier section of the present chapter.

But during this period, another remarkable change has taken place within the area of international environmental law due to emergence of the concept of "Sustainable development" and as a result of it, environment protection mechanism has changed its direction under the modern international environmental law regime. In this regard, report of the world commission on Environment and Development (our common Future, 1987 : The 'Brundtland Report')\textsuperscript{66} is considered as pivotal in changing the direction of modern international environmental law during post Rio-Declaration period. This Brundtland commission's 1987 Report, is a landmark one in developing modern outlook towards environmental problems. Actually this report has given prominence to the concept of 'Sustainable development'\textsuperscript{67} and ultimately the United Nations Conference on Environment and Development (Rio, 1992) provided a platform for world wide recognition of the concept of sustainable development by the world community at large and since then, principle of sustainable development has became a part and parcel of the Environmental Law under the Modern International Regime, specially after Post Rio Period.

It may be mentioned here that during this period, Judicial response towards environmental issues has been also greatly influenced by the concept of sustainable development under the modern International regime. Such influence can be well observed during this period in various

\textsuperscript{65} Malviya, R.A.; Environmental pollution and its control under International Law; Chugh Publication, Allahabad, 1st Edition, 1981; page 374


\textsuperscript{67} Ibid at page 62.
judicial decisions which include not only the decisions of the International Court of Justice (ICJ), but also the decisions of various regional bodies (e.g. the European Court of Justice) and National Court, as discussed below.

In this regard, Nuclear Test II Case\textsuperscript{68} is an ideal example where International Court of Justice has referred the principle of sustainable development in dissolving the dispute between two countries namely New Zealand and France, arising out of the issue of Nuclear Tests. This Nuclear Tests II Case\textsuperscript{69} has come up for adjudication before ICJ arising out of a proceeding challenging the right of the France to carry out Nuclear Tests in the South Pacific. In this case, at the time of adjudication, Judge wereanamtry had given his opinion for invoking the 'precautionary principle\textsuperscript{70}, one of the fundamental features of the concept of sustainable development, by the court of Law when there had been insufficient material before it to justify action, even if such action was meant for acting ahead of full Scientific evidence. However, such opinion was a dissent.

Actually this precautionary principle, the formal origin of which can be traced back to Germany in 1970s with the word 'Vorsorgeprinzip\textsuperscript{71}, translated as the 'foresight\textsuperscript{72} principle, is nothing but a philosophical approach involving the concept of good environmental management in taking protective measures against the specific environmental hazards in order to avoid or reduce environmental risks.

Like Nuclear Tests II Case\textsuperscript{73}, in many other cases, this precautionary

\begin{itemize}
  \item \textsuperscript{68} New Zealand vs. France (1995) ICJ Report, Page 288.
  \item \textsuperscript{69} Ibid.
  \item \textsuperscript{70} 'It generally describes an approach to the protection of the environment or human health based around precaution even where there is no clear evidence of harm or risk of harm from an activity or substance (Bell Stuart & Donald McGillvray, page 70). For further detail See Bell Stuart & Donald McGillvray; 'Environmental Law' Oxford University Press; Oxford; 6th Edition, 2006, page 70-78.
  \item \textsuperscript{71} Bell, Stuart & Donald McGillvray; 'Environmental Law' Oxford University Press; Oxford; 6th Edition, 2006, page 70.
  \item \textsuperscript{72} Ibid.
  \item \textsuperscript{73} See the note Supre 20.
\end{itemize}
principle has been invoked successfully during this period. This precautionary principle has been invoked in *Southern Blue fish Tuna Cases*\(^74\) which were developed due to initiation of the proceeding by the Australia and New Zealand against Japan for alleged breach of obligation under the Southern Bluefish Tuna (SBT) Treaty. Australia and New Zealand initiated proceedings before International Tribunal on the Law of The Sea (ITLOS) seeking for provisional measures that the parties to the Treaty should act consistently with the precautionary principle in fishing for the SBT. Ultimately the Tribunal ordered the parties to the treaty to observe fishing quotas and to act with produce and counter to ensure that effective conservation measures are to be taken to prevent serious harm to the Southern Bluefish Tuna Stock. Actually in this case, Tribunal has given emphasise on adopting the precautionary approach in dealing with the environment and ecological issues at this international level.

In another case, known as *Mox Plant Case*\(^75\), arising out of a dispute between Ireland and United Kingdom regarding alleged harm caused to the Ireland due to operation of the Mixed Oxide (MOX) Plant at Sellafield in the U.K., precautionary principle has been taken into consideration by the Tribunal to dissolve the dispute between two countries. But at the time of adjudicating this case\(^76\), precautionary principle has been applied by the Tribunal in a quite different way. The main purport of the decision of this case is that for not being attracted by this principle, it has to be proved that undertaking a risky activity would not result in any harm. In addition, Tribunal had also given opinion for not resolving the dispute by assessing 'Provisional measures' which had been applied earlier in the Southern Bluefish Tuna Case.\(^77\)

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75. Ireland vs. United Kingdom, 41 ILM 405.
76. Ibid.
77. See the note Supra 74.
Regarding Application of the Concept of Sustainable Development in dealing with the environmental issues, another important case, namely, *Gabcikovo - Nagymaros case (Danube Dam)*\(^78\) may be cited here. It is that contested environmental case where International Court of Justice has adjudicated the disputes in connection with the environmental issue even after establishment of environmental chamber of the ICJ in 1993\(^79\).

This particular Case\(^80\) had come up for adjudication before the ICJ in connection with an alleged environmental damage caused to Hungary due to diversion of River Danube in 1992 after making the construction work entirely on Slovak Territory by the Government of Czechoslovak after starting in 1991 violating the treaty containing some very rudimentary provisions to protect the environment, as made by and between Hungary and Czechoslovakia in 1977.

In this case\(^81\), ICJ had observed Czechoslovak action in 1991 was disproportionate violating the principle that shared water course should be utilized 'equitably' and in this regard, ICJ had emphasized the extent to which relations between the two countries continued to be governed primarily on the basis of the terms and conditions as agreed by an between the parties. Ultimately ICJ held in this case that in implementing the treaty, the parties had to give effect to the new norms of international environmental law, not just to new activities but also retrospectively and in the light of sustainable development to 'look afresh' at the environmental consequences of the project with a view to reconciling economic development and environmental protection. So, by this decision ICJ had

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78. 37 ILM (1998) 162.
80. Gabcikovo - Nagymaros Case (Danube Dam), 37 ILM (1998), page 162.
81. Ibid.
given a new outlook in dealing with environmental issues by invoking the concept of sustainable development at international level.

Like International Court of Justice (ICJ), European Court of Justice (ECJ) had also successfully invoked the concept of sustainable development in dealing with various Environmental pollution cases under modern International regime during post Rio period. One of such case is *Commission vs. Hellnic Republic*\(^82\). In this case, European Court of Justice (ECJ) had imposed a daily fine of 2,000 pound against Greece, for the failure to implement management plans for toxic waste in an area of crete and for unlawful disposal of waste. Actually in this case, polluter paying principle, another component of sustainable development, had been applied by the ECJ.

In another case, known as *Spanish Bathing Water Case*\(^83\), European Court of Justice had found that Spain was liable to pay penalty for committing breach of Bathing Water Directives in rotation to the quality of various inshore waters and such penalty had to be determined in proportionate to the seriousness of the breach as committed and in assuming the seriousness of the breach, the ECJ had taken into account not only the objectives of protecting public health and the environment under Bathing Waters Directive, but also the improvements that Spain had made to the various inshore waters. This decision of European Court of Justice is an ideal example, wherein two fundamental features of the concept of sustainable development, i.e. precautionary principle and polluter pay principle had been invoked simultaneously in a same case in a very balancing manner to dissolve the environmental dispute.

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82. (2000) ECR1-3823.
As it has been stated earlier that, the concept of sustainable development has not only influenced the decisions of the International Court of justice and the decisions of various regional bodies, like European Court of Justice in dissolving dispute in connection with the various environmental issues during this post Rio-period, but also influenced the adjudications of environmental issues in different domestic courts in different countries and United Kingdom is one of such domestic arenas where environmental issues had been dealt with in the light of sustainable development.

In a number of domestic cases dealing with environmental issues in U.K., applicability of precautionary principle, one of the basic components of the concept of sustainable development has been discussed elaborately. R. vs. Secretary of State for Trade and Industry exparte Duddridge\textsuperscript{84} is one of such cases, wherein the possibility of application of the precautionary principle has been discussed. In this case\textsuperscript{85}, Court had observed that there was no direct obligation to apply the principle. Actually this observation is based on such consideration that there is no overarching statutory duty to achieve or aspiration to attain the precautionary principle, since 'precautionary principle'\textsuperscript{86} has not been incorporated directly in any domestic legislation of the United Kingdom.

But the scope of indirect application is always there under English law. In another case, R vs. Derbyshire CC ex parte Murray\textsuperscript{87}, which is comparatively recent one, the same view was held by the court of law regarding applicability of precautionary principle in resolving any

\textsuperscript{84} [1995] Env. L.R. 151.
\textsuperscript{85} R. vs. Secretary of State for Trade and Industry exparte Duddridge, [1995] Env. L.R. 151;
\textsuperscript{87} [2001] Env. LR 26.
environmental issues under the perspective of English Domestic law.

Like United Kingdom, the United States Courts have not also favourably supported the application of precautionary principle in resolving the dispute regarding environmental issues in the United States. In this regard, Beanal Vs. Freeport Case[^88] is an ideal example where such view was expressed by the American Court. In this case, court has recognised the precautionary principle as a principle in practice, but doubted about its international acceptance.

But the aforesaid instances of UK and USA regarding mode of application of the precautionary principle in adjudicating environmental issues under their respective domestic perspective are not identical with other domestic perspective and such distinction can be well observed from the following instances.

The Supreme Court of Canada had played a very positive role in implementing the precautionary principle in Canadian perspective. In Canada Ltee vs. Hudson[^89], majority of Judges of the Supreme Court of Canada, had referred to the precautionary principle, as supported by the Canadian environmental policy, to protect the environment under sustainable perspective. Actually in this case[^90], Supreme Court had tried to interpret a Municipal by-law for the protection of the environment from the use of pesticides in the light of 'precautionary principle'.

Like Canada, the 'Precautionary principle' has been also well recognised by the Australian Court. In Leatch vs. National Parks and Wildlife Service[^91], Australian Court had decided the issue whether issuance

[^88]: 197 F. 3d. 161.
[^89]: 2001 SCC. 40.
[^91]: (1993) 81 LGERA 270;
of licences for taking and killing yellow bellied glider and the giant burrowing frog was illegal or not under the National Parks and wildlife Act of 1974. In this case, 'Precautionary principle' had been applied expressly in deciding the issue. In this case, Application of precautionary principle had been considered as most appropriate in a situation of a scarcity of scientific knowledge of species population, habitat and impacts. Under this perspective, it was also observed by the Court that one should not grant license to 'take or kill' the species until much more would be known, so as the issue was related to the state of knowledge. All most similar view was observed in Greenpeace Australia Ltd. vs. Red Bank Power Co. Case.

In India, the precautionary Principle has been given prominence in various judicial pronouncements. In this regard one of the most notable judgements has been delivered by the Supreme Court in Vellor Citizens Welfare Forum Case. In this case, after reviewing various constitutional and statutory provisions regarding environmental issues, it was held by the Supreme Court that there should not be any hesitation to consider the precautionary principle, one of the essential features of the concept of sustainable development, as a part of the environmental law of the country and it can be well applied in dissolving environmental disputes.

It emerges from the foregoing discussion that at international level various measures have been taken place specially after Stockholm Conference to control pollution problems. Ultimately, this effort has undergone immense change regarding its approach. Concept of sustainable development has been accepted at international level as an effective means to carry on the development process without disturbing

the environment in response to the modern social needs and aspirations. In compliance with such change mode of Judicial Response to the Modern International Regime has been also changed, and modified from time to time based on the necessities and due to emergence of new environmental scenario, as stated above. Ultimately in this way, effective legal control for environmental pollution has been developed under modern international regime having its tremendous effect in all over the world, both at national and international level.