

Environmental Awareness Towards Sustainable Development Through the Principle of Transboundary Liability: International Environmental Law Perspectives

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Abstract: Environmental awareness plays important role towards sustainable development. This can be done through the application on the principle of transboundary liability. The used of the principle of transboundary liability to the area of the environmental awareness, largely in response to the need of individuals to protect their rights and interests in property in order to meets the needs of the present without compromising the ability of future generations to meet their own needs. Therefore, this study will examine the used of the principle of transboundary liability in relation environmental awareness in order to achieve sustainable development from the international environmental law perspectives, identify actions and cases which deal with environmental awareness towards sustainable development and also identify the relation between the principle of transboundary liability and Rio Declaration as a means for sustainable development.

Key words: Environmental awareness, sustainable development, the principle of transboundary liability, development, Rio Declaration, Malaysia

INTRODUCTION

The concept of sustainable development has been defined by the World Commission on Environment and Development as development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs. The above-said concept covers two essential scopes, i.e. environment and social aspects. This concept of sustainable development has been highlighted in the 1992 United Nations Conference on Sustainable Development in Rio de Janeiro as the results, Agenda 21 and Rio Declaration has been established.

According to Sands (1995), Agenda 21 emphasises the following matters which include sustainable human settlement, population, consumption pattern, poverty and human health. On the other hand, Mensah (1996) stated that the Rio Declaration addresses on mankind entitlements and rights which include health and productive life.

Basically, this concept of sustainable development has been an element in the international legal framework

since early as 1893. According to the case of United States of America vs. Great Britain in 1893 1 Moore's Int. Arb. Awards 755, well known as Pacific Fur Seals Arbitration where in this case the United States of America has stated that a right to make sure the appropriate and lawful use of seals and to protect them for the benefit of human beings from meaningless destruction.

Sands (1995) indicated which the idea that as members of the present generation, researchers bear the world in trust for future generations is famous to international legal subject having been relied upon since, backed in 1893 in Pacific Fur Seals Arbitration and it is also implicitly and expressly referred to many international environmental treaties. These treaties also have shown that environmental awareness among international community has been developed rapidly.

ENVIRONMENTAL AWARENESS

Environment includes all living and non-living things. As living things who live and co-exist in the same

environment, humans, animals and plants use the same environmental resources like air, land and water to meet their needs. As human beings, researchers have progressed very rapidly and have been using the natural resources to meet the demands and purposes in the name of development. Development also means meeting the needs of the people. While meeting the ever-growing needs, researchers put pressure on the environment. When the pressure exceeds the carrying capacity of the environment to repair or replace itself, environmental problems became a serious issue.

Environmental problems are problems of ecosystems and there is a growing awareness that human behaviour is regarded as an important contributor to these problems such as water pollution, decline of biodiversity and desertification (Gardner and Stern, 2002; Nickerson, 2003). Nevertheless, human behaviour can also be the solution to solve the environmental problems. Solving, handling, managing and dealing with environmental problems are the responsibilities of the whole spectrum of societal actors from the individual citizen to corporations and governments. Environmental problems have become as much political, economical, social and individual as ecological problems. This is due to the fact that environmental problems and issues such as global warming or climate change are not restricted to ecosystems and non-human inhabitants. It also link directly or indirectly to societal environments involving the conducts and behaviours of humans which will also have a direct effect on their lives and health.

The relation between humans and the environment are very much linked and inter-connected. Humans must be aware and conscious of their actions that might leave bad or negative impact to the environment and society (Zakaria, 2011). Humans must be taught the importance of environmental awareness because it includes the understanding of natural environment and will guide humans the manner of treating the relation between human and nature and can resulted in the desire and action for environmental protection. Schultz *et al.* (2004) defined environmental awareness as:

The collection of beliefs, affect and behavioural intentions a person holds regarding environmentally related activities or issues

While Kollmuss and Agyeman (2002) define environmental awareness as knowing about the impact of human behaviour on the environment. Miller (1993) as part of his definition of environmental awareness stated that when human knows and understands the interrelationship between the biophysical and socio-cultural components of the environment, it will make a

person realize and acknowledge the interactions between these components of the environment may give rise to environmental problems. Thus, environmental awareness must include the thinking, the behaviour and the action taken by humans that promotes and supports environmental concerns. These concern can be translated through the principle of transboundary liability.

THE PRINCIPLE OF TRANSBOUNDARY LIABILITY

Rio Declaration has laid down essential obligations which contribute the growth and the development of the environmental management and environmental law (Emrizal and Razman, 2010; Sulaiman and Razman, 2010; Sands, 2003). One of the essential obligations is on the matter that all states in the world are required to ensure not to cause environmental harm to other states. This obligation has been laid down under the Principle 2 of the Rio Declaration which states that:

States have in accordance with the Charter of the United Nations and the principles of the international law, the sovereign right to exploit their own resources pursuant to their own environmental and development policies and 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

The above-said obligation is clearly reflect recognition of the principle of transboundary liability. The principle of transboundary liability is derived and based on the legal maxim of *sic utere tuo, et alienum non laedas* which means one should use his own property in such a manner as not to injure of another (Sands, 1995).

This principle of transboundary liability has been adopted in the case of United States vs. Canada (1941) 3 RIAA 1905, well known as Trail Smelter case. In this case, the principle of transboundary liability was subsequently relied upon and further explained by the Arbitral Tribunal (Emrizal and Razman, 2010; Sulaiman and Razman, 2010; Sands, 1995).

The fact of the case: At a place called Trail situated in Canada which about 10 miles from the border between United States of America and Canada where the Canadian Consolidated Mining and Smelting Company had run activities that concerned about smelting zinc and lead. These activities had caused the emission of fumes. These fumes that contained sulfur dioxide had contributed to the damage to the plantations and land in the territory of the

United States of America. In the year 1931, the United States of America-Canada International Joint Commission which was formed under the Boundary Waters Treaty, 1909 had made decision and required Canada to pay United States of America for the amount US\$ 350,000 as for the compensation. After that the above-mentioned smelting company continued to run the operations and activities as usual. United States of America had made complaints on further damage suffered. Only in the year 1935, the United States of America and Canada agreed to form an arbitral tribunal on the above-mentioned matter. Later, both countries signed up a convention where both countries submitting the above-mentioned dispute to the Arbitral Tribunal. The Arbitral Tribunal held that:

Under the international law no state has the right to use or allow to use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein when the case is of serious consequence and the injury is established by clear and convincing evidence

Therefore, the Arbitral Tribunal gave the decision in favour to the United States of America where the above-mentioned smelter company required ensuring that the company operations and activities shall not cause fumes into the territory of the United States of America.

The above-mentioned decision has made the establishment of the growth of the principle of transboundary liability and environmental protection. The principle of transboundary liability has been re-affirmed by the International Court of Justice in the year 1949. This is based on the case of United Kingdom vs. Albania in 1949 ICJ 4, well known as Corfu Channel case. In this case where the International Court of Justice held that under the international law, the Albania is found guilty and held responsible towards the explosions which caused loss of life and damage.

The said explosions occurred in Albanian waters on October 22, 1946. The above decision is based on the application of the principle of transboundary liability from the case of Trail Smelter case with an additional input where every states is required to inform and notify other states of any harm and danger. If a state failed to notify another state of the said matter, the International Court of Justice shall imposed award to the injured state on the liability for failure to disclose information of the said matter that could have reduced danger and harm toward the other state. Based on the above discussion by the above said cases, it is clearly that the principle of transboundary liability has promoted two important obligations. There are:

- International co-operation and good neighbourliness
- State responsibility not to cause environmental harm and damage

International co-operation and good neighbourliness:

The obligation of international co-operation and good neighbourliness has been laid down based on Article 75 of the United Nation Charter in connection with commercial, social and economic subjects which has been defined into the development and application of rules promoting international environmental protection co-operation (Emrizal and Razman, 2010; Sands, 2003). Therefore, there are many international environmental treaties, other international acts, international agreements and international declarations which reflect the international co-operation and good neighbourliness that derived from the principle of transboundary liability (Emrizal and Razman, 2010; Sands, 1995) such as the Stockholm Declaration, the World Charter for Nature, the ILC Draft Articles on International Liability and the Rio Declaration and the Montreal Protocol (Emrizal and Razman, 2010; Sands, 1995).

State responsibility not to cause environmental harm and damage:

International law does not permit states around the globe to run operations and activities within their jurisdiction without concern for the protection of world environment (Sulaiman and Razman, 2010; Ball and Bell, 1995). International law also requires states to take adequate and reasonable measures to regulate and control sources of serious environmental harm and pollution within their jurisdiction. This obligation has been imposed to all states around the globe to prevent, reduce and control environmental harm and pollution within their jurisdiction. This has been supported and reflected in awards and decisions in arbitral tribunals and also in international courts of justice (Sulaiman and Razman, 2010; Ball and Bell, 1995).

ENVIRONMENTAL AWARENESS TOWARDS SUSTAINABLE DEVELOPMENT THROUGH THE PRINCIPLE OF TRANBOUNDARY LIABILITY

Based on the above discussion, the approach on the principle of transboundary liability would shift the burden of proof and need the project proponent who intends to develop a project to bring evidences which the said project will not cause harm to the environment in order to attain sustainable development (Sands, 1995; Razman *et al.*, 2010c; Sulaiman *et al.*, 2011). Whereas, the traditional approaches indicate that the burden of proof is on the shoulder of the party who oppose a development

project. Later, the oppose party to the said development project is required to bring evidences to proof that the said development project is likely to cause harm to the environment (Sands, 2003; Razman *et al.*, 2010b; Sulaiman *et al.*, 2011).

Clearly that the above-said provision requires the project proponent to bring evidences in the form of a report which indicate that the development project will not cause harm to the environment in order to achieve sustainable development and if the project is likely to harm the environment, the project proponent is required to proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment (Razman and Azlan, 2009; Razman *et al.*, 2010a; Sulaiman *et al.*, 2011).

According to Malaysian experience on environmental impact assessment where it is clearly shown as the state practice to attain sustainable development based on their environmental awareness. The state practice has adopted the principle of transboundary liability approach in order to achieve sustainable development.

Based on Article 38 (1) (b) of the Statute of the International Court of Justice identifies state practice as the international customary law and this international customary law being classified as one of the sources of the international law. Finally, the principle of transboundary liability approach may be considered as one of sources of the international environmental law as the principle position as a general principle of law and also an international customary law in order to attain sustainable development (Sulaiman *et al.*, 2011; Zaina *et al.*, 2011) based on their environmental awareness.

CONCLUSION

This study suggested that environmental awareness can play substantial role towards sustainable development. This can be done through the application on the principle of transboundary liability. The application of the principle of transboundary liability to the area of the environmental awareness, largely in response to the need of individuals to protect their rights and interests in property in order to meets the needs of the present without compromising the ability of future generations to meet their own needs.

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