

The International Law Mechanisms to Protect Human Habitat and Environment: Focusing on the Principle of Transboundary Liability

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Abstract: The principle of transboundary liability as one of the international law mechanisms plays an important role in human habitat and environmental protection. The used of the principle of transboundary liability in human habitat and environmental protection is largely in respond to the inevitability of every human to protect human habitat and environment from being polluted in their surrounding and habitat. Therefore, this study examines the used of the principle of transboundary liability in relation to the human habitat and environmental protection from the international legal approach by identifying actions and cases, which deal with human habitat and environmental protection. This study is also identifying, the relation between the principle of transboundary liability and Rio Declaration as a means to protect human habitat and environment.

Key words: International law mechanisms, human habitat and environment, principle of transboundary liability

INTRODUCTION

Rio Declaration has laid down essential obligations, which contribute the growth and the development of the human habitat and environmental protection (Ball and Bell, 1995; Jamaluddin, 2001). One of the essential obligations is on the matter that all states in the world are required to ensure not to cause human habitat and environmental harm to other states. This obligation has been laid down under the Principle 2 of Rio Declaration, which stated 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 on 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 as one of the international law mechanisms (Sands, 1995). 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 (Norsulfa, 1997). This principle of transboundary liability has been adopted in the case of *United States v 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* (Hughes, 1992).

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\$ 350,000.00

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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 it's 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 as one of the international law mechanisms in relation to human habitat 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 v Albania (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 22nd October 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 IN CONNECTION TO HUMAN HABITAT AND ENVIRONMENTAL PROTECTION

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 (Sands, 1995).

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 (Birnie and Boyle, 1994), such as the Stockholm Declaration, 1972, the World Charter for Nature, 1982, the ILC Draft Articles on International Liability and the Rio Declaration, 1992 (Sands, 1995).

As for the Rio Declaration is concerned, the Declaration has clearly shown an attempt to ensure the international co-operation and good neighbourliness on the matter to protect environment and human habitat against pollution in order to achieve the sustainable development (Ball and Bell, 1995).

The above-mentioned objective is set out in the Principle 27 of the Rio Declaration, which provides that: States and people shall co-operate in good faith and in spirit of partnership in the fulfillment of the principles embodied in this Declaration and in further development of international law in the field of sustainable development.

State practice applying this obligation of international co-operation and good neighbourliness on the matter to protect human habitat and environment against environmental harm and damage is reflected in awards and decisions in arbitral tribunals and also in international courts of justice (Harris, 1991).

An example, in the dispute over the Gabčíkovo Dam and the proposed diversion of the Danube River, where the dispute was between Hungary and Slovakia. In this dispute, clearly, the obligation of international co-operation and good neighbourliness has been the central issue (Sands, 1995). Here, Hungary laid down claimed against Slovakia on the ground that Slovakia implement of principles affecting transboundary resources, which inconsistent with the obligation of international co-operation and good neighbourliness (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 and human habitat (Wolf and White, 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 (Birnie and Boyle, 1994).

In the Trail Smelter Case, the Arbitral Tribunal indicated that 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, which clearly shown that it is of all states' responsibility to prevent, reduce and control environmental harm and pollution within their jurisdiction. In addition, in the Corfu Channel Case support the similar obligation, where the International Court of Justice had concluded every state's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states (Birnie and Boyle, 1994).

Moreover, in the case of Spain v France (1957) 24 I.L.R. 101, well known as Lac Lanoux Case, where in this case, concerned about the proposed diversion of the international river by France. The Arbitral Tribunal certified that a state has an obligation not to exercise its rights to the extent of ignoring the rights of other state (Harris, 1991). The Arbitral Tribunal further explained: France is entitled to exercise her rights; she cannot ignore the Spanish interest. Spain is entitled to demand that her rights be respected and that her interests be taken into consideration.

This second obligation is not only being supported by awards and decisions in arbitral tribunals and also in international courts of justice, which have been discussed as above, but also is being affirmed in virtually by United Nation General Assemblies and global treaties.

TRANSBOUNDARY POLLUTION

There are two major disasters in the middle 1980's, which involved transboundary pollution. One incidence happened in Schweizerhale, Switzerland and the other occurred in Chernobyl, Soviet Union.

The first disaster happened in Chernobyl, Soviet Union, where a nuclear reactor exploded on 26th April 1986. A huge amount of radioactive emitted to the atmosphere especially European atmosphere. A number of people outside Soviet Union were affected by the disaster. Soviet Union authority informed public only after 15 days after the disaster took place. At the time of the notification made by Soviet Union authority, number of people in the European Continent had already affected. Unfortunately, there was no action taken against the Soviet Union. This disaster is known as Chernobyl Explosion (Norsulfa, 1997).

The second incidence and disaster happened, when a company's warehouse that was Sandoz Corporation's warehouse in Schweizerhale, Switzerland caught fire on 1st November 1986. The chemical from the said warehouse had polluted Rhine River by seeping through the Sandoz Corporation's sewer system. This had caused the formation of toxic, which harmful to the living creatures in the Rhine River. Switzerland authority only informed the neighbouring countries, 24 h after the incidence. Immediately, after the notification, France government shut down all the water supply along the said river. As the result of this incidence, Sandoz Corporation had paid a lot of claims privately. Nevertheless, none of the neighbouring countries brought the action against Switzerland. This incidence is known as Sandoz Spill (Norsulfa, 1997).

POST SANDOZ SPILL AND CHERNOBYL EXPLOSION IN RELATION TO PROTECT HUMAN HABITAT AND ENVIRONMENT FROM INTERNATIONAL LAW MECHANISMS: FOCUSING ON THE PRINCIPLE OF TRANSBOUNDARY LIABILITY

Based on the above discussion, both countries, Switzerland and Soviet Union free from the above mentioned liability. There was no action has been taken against these two countries in the year, which the said disasters occurred. This due to insufficiently articulated any international obligations concerning to state obligation in the situation of transboundary environmental disasters.

These two disasters Sandoz Spill and Chernobyl Explosion have caused the growth of the international community awareness on the importance of the principle of transboundary liability on the transboundary environmental disasters. Therefore, there are two well-known international legal documents that try to address the above-mentioned matter:

- Principle 18 and Principle 19 of the Rio Declaration, 1992
- Article 27 and 28 of the International Law Commission's Draft Articles on the Non-Navigational Uses of International Watercourses Law, 1994 (Norsulfa, 1997)

According to the Article 18 of the Rio Declaration, 1992 stated that: States are required to take immediately action to notify other states of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of the other states. As for the Article 19 of the Rio Declaration, 1992 mentioned States shall provide prior and timely notification and relevant information to potentially affected states on activities that may have significant adverse transboundary environmental effect and shall consult with those states at early state and in good faith (Sands, 1995).

In the article 27 of the International Law Commission's Draft Articles on the Non-Navigational Uses of International Watercourses Law, 1994 laid down, States are required to mitigate or prevent conditions of any disasters which might affect any other state. As for the Article 28 of the International Law Commission's Draft Articles on the Non-Navigational Uses of International Watercourses Law, 1994 required States to notify other States of an emergency originating within its jurisdiction, to mitigate, prevent and eliminate any harmful effects of the emergency and to develop contingency plans for responsibility to the emergency (Norsulfa, 1997).

The International Law Commission's Draft Articles on the Non-Navigational Uses of International Watercourses Law, 1994 is the complementing to the Rio Declaration, 1992 (Norsulfa, 1997). These two international legal documents expressly laid down the obligations of all states throughout the globe on transboundary environmental harms and disasters. This clearly shown the growth and the development of the principle of transboundary liability in protecting human habitat and environment.

CONCLUSION

The principle of transboundary liability imposed liability towards a state for the adverse activities and operations within the said state jurisdiction that caused harm to the other state. In dealing with this principle of

transboundary liability in protecting human habitat and environment, however, this principle is still evolving and required of further development and growth.

The opportunity to enhance the growth of this principle of transboundary liability in protecting human habitat and environment, through state practice, following the two-transboundary environmental disasters Sandoz Spill and Chernobyl Explosion, were lost due to the decision by the injured states not to take international legal scientific action for causing environmental pollution, even though the injured states have their right to do so (Sands, 1995).

The support made by the states around the globe on the International Law Commission's Draft Articles on the Non-Navigational Uses of International Watercourses Law, 1994 and the Rio Declaration, 1992 are clearly reflected the acceptance and the growth of this principle of transboundary liability in protecting human habitat and environment (Sands, 1995).

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