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**Development of Environment Law by The UN: Case of
Implementation in Pakistan**

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The UN has been a main contributor to the development and acceptance of environmental legislation at a global level. Since its inception, the United Nations Environment Program has organized numerous conventions and meetings of its members to debate environment-related issues and develop guidelines for its members to follow.

The aim of this thesis was to review the key UNEP initiatives that have created the conventions of environmental legislation present today and to study how have those conventions been implemented at a national level in a country such as Pakistan. The thesis helps in understanding the process of legislation development at the UN level and legislation implementation at a national level within a member state.

The thesis was done with a chronological approach. It started from the earliest steps taken by the UN to discuss environmental issues. Also, the thesis project followed a stepwise approach, starting from acceptance of a legislation by a UN member state and ending at the implementation of that legislation by a UN member state.

The thesis shows that over the years the UN has made a concerted effort to develop environmental legislation. Besides the UN, other organizations have also assisted countries in understanding international environmental legislation. The overall implementation process has been slow because of the lack of infrastructure required for effective implementation. It is recommended that the UNEP continues to support developing countries in implementation of environmental legislation by assisting them in capacity building and infrastructure development.

Keywords	UNEP, UN Structure, UN General Assembly Resolution 2997, Agenda 21, UN Charter, Source of International Law, Environmental Pollution in Pakistan.

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Terms and Definitions

Environment: “Environment can include the aggregate of natural, social and cultural conditions that influence the life of an individual or community,” according to (Shelton and Kiss (2005, pp.4).

International Law: “International law is considered the supreme body of law by international tribunals and in international relations among states,” according to Shelton and Kiss (2005, pp.5). In many cases, international environmental law exists in the form Multilateral Environmental Agreements (MEAs). A nation has the right to set the position of international law as superior, equal, or inferior to its national legislation.

Treaty: Treaties are the main source of international law at present. A treaty is a written agreement between States, and the treaty complies with international law, according to (Treaty Section of the Office of Legal Affairs (2012, pp .71).

The term *treaty* is used both as a general term and a specific term. In the general sense, it is used for protocols, pacts, conventions, agreements, accords, etc. Some examples of treaties are Border Treaties, Peace Treaties, and Cooperation Treaties.

Agreement: The term *agreement* is used both generically and specifically. In a specific sense, the term agreement is normally used for an instrument that is less formal than a *treaty*, according to (Robinson and Kurukulasuriya (2006, pp .3). At present, many of the international environmental instruments exist in the form of agreements.

Convention: In general use, the terms *treaty* and *convention* are synonyms. These days, the term “convention” is usually designated for a formal multilateral treaty that involves a wide range of parties, according to (Robinson and Kurukulasuriya (2006, pp .3). Convention is the commonly used term for instruments handled by the UN.

Charter: A charter is a very formal and solemn instrument, according to (Robinson and Kurukulasuriya (2006, pp .3). An example is the 1945 Charter of the United Nations.

Protocol: Protocols are less formal agreements compared to treaties. However, a protocol has the same legal stature as a treaty or convention. Protocols usually consist of instruments that are subsidiary to treaties, according to (Robinson and Kurukulasuriya (2006, pp .3).

Declaration: Declaration usually refers to an instrument that is not legally binding. In rare cases, the term may refer to a treaty in the general sense with intention of the declaration to be binding for international law.

Amendments and Revisions: Treaties may need to be amended or revised. Normally, the procedure for amending the treaty is given with the original agreement. The amendment procedure normally requires agreement of all the involved parties or a certain amount of the involved parties such as two thirds of the parties. An amendment usually involves amending a specific provision of the treaty. *Revision* usually means a bigger change to the treaty.

Depositary: Depositary is the custodian of a treaty. The chief executive of an international organization is typically selected as the depositary. States communicate their treaty-related actions to the custodian of the treaty. Depositaries have included UN secretary generals, individual states, and different organizations.

1

Introduction

It was the late 1960s, after post-World War II reconstruction, when the environment became one of the major issues in the world as public opinion demanded protection of resources. The United Nations has played a pivotal role in establishing the present principles of environmental protection.

Goal

The goal of this thesis project is to review the development of selected environmental laws and conventions that have been developed under the Division of Environmental Law & Conventions (DELIC) of the United Nations Environment Programme (UNEP), and present an example of implementation of environmental law.

Scope

The scope of this thesis includes UNEP's legislative steps regarding environmental law, UNEP reference documents, UNEP global and regional agreements that relate to environmental pollution, and an example of implementation of environmental law citing a living-environment and water pollution court case that arose in Pakistan.

2 Structure of the United Nations

The UN system consists of six principal organs: General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice, and Secretariat, according to Main Organs, n.d.

2.1 The United Nations System

The principal organs of the UN and the subsidiary bodies each organ manages are as given in Figure 1.

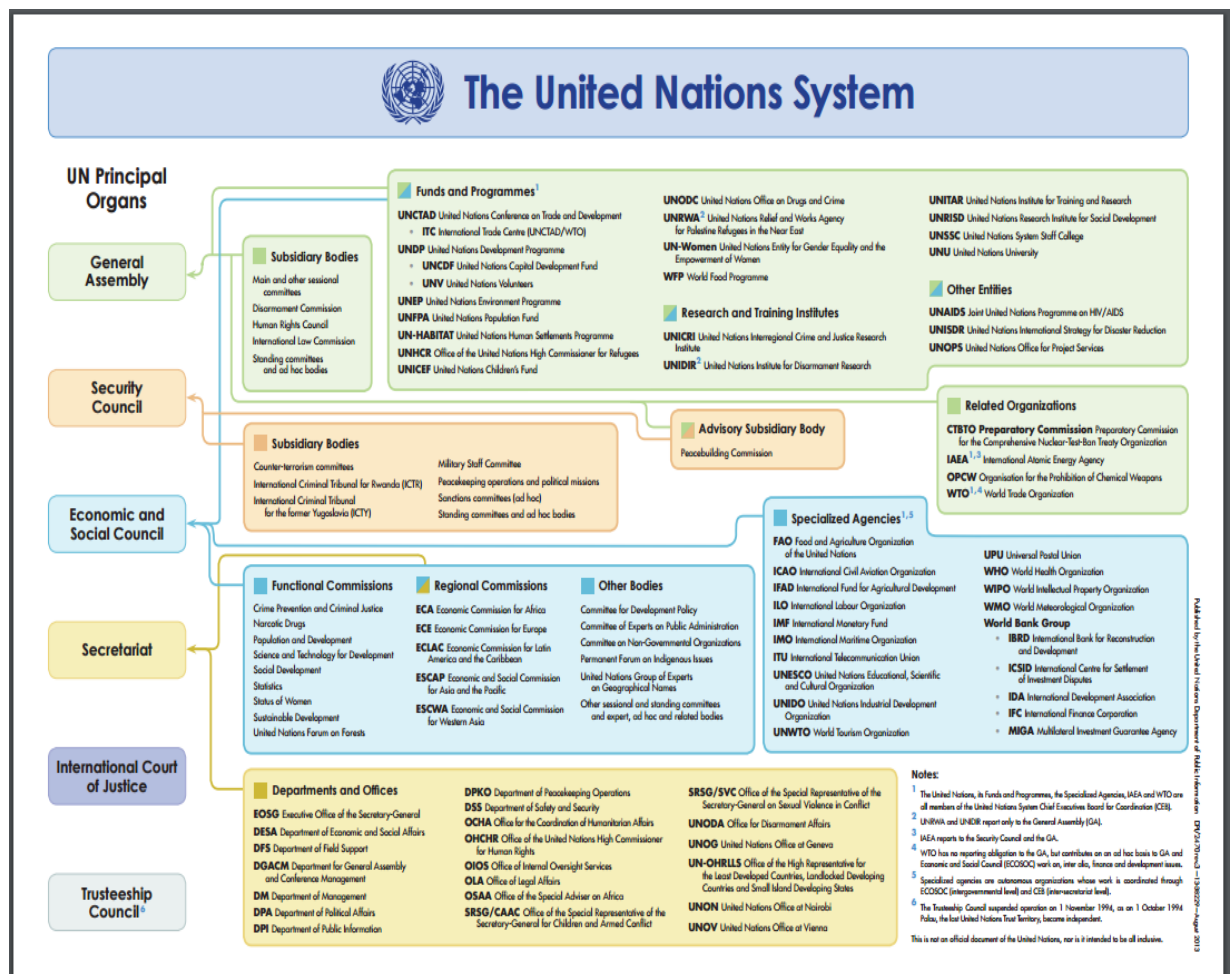


Figure 1. Structure of the UN (United Nations Population Fund (UNFPA), 2013)

2.2 General Assembly

The General Assembly consists of all 193 states that have UN membership. It is the UN's principal body for discussion and decision-making. Decisions on matters that are deemed important require two-thirds majority, while simple majority is enough for other decisions. The annual session of the general assembly is held in September.

2.2.1 Subsidiary Bodies

General Assembly's subsidiary bodies include Humans Rights Council, International Law Commission, Disarmament Commission, Standing committees and hoc bodies, and main and other sessional committees.

2.2.2 Funds and Programmes

The funds and programmes under the General Assembly include UNCTAD (United Nations Conference on Trade and Development), ITC (International Trade Centre), UNDP (United Nations Development Programme), UNCDF (United Nations Capital Development Fund), UNV (United Nations Volunteers), UNEP (United Nations Environment Programme), UNFPA (United Nations Population Fund), UN-HABITAT (United Nations Human Settlements Programme), UNHCR (Office of the United Nations High Commissioner for Refugees), UNICEF (United Nations Children's Fund), UNODC (United Nations Office on Drugs and Crime), UNRWA (United Nations Relief and Works Agency), UN-Women (United Nations Entity for Gender Equality and the Empowerment of Women), and WFP (World Food Programme).

2.2.3 Research and Training Institutes

Research and Training Institutes under the General Assembly include UNICRI (United Nations Interregional Crime and Justice Research Institute), UNIDIR (United Nations Institute for Disarmament Research), UNITAR (United Nations Institute for Training and Research), UNRISD (United Nations Research Institute for Social Development), UNSSC (United Nations System Staff College), and UNU (United Nations University).

2.2.4 Other Entities

Other Entities under The General Assembly include UNAIDS (Joint United Nations Programme on HIV/ AIDS), UNISDR (United Nations International Strategy for Disaster Reduction), and UN-OPS (United Nations Office for Project Services).

2.2.5 Related Organizations

Related organizations of the General Assembly include CTBTO Preparatory Commission (Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization), IAEA (International Atomic Energy Agency), OPCW (Organization for the Prohibition of Chemical Weapons), and WTO (World Trade Organization).

2.3 Security Council

The Security Council is a 15-member body that is responsible for international peace and security. There are five permanent members (China, the US, the UK, Russia, and France) and 10 members selected for two-year terms. The council deliberates on disturbances to peace and aggressive actions.

2.3.1 Subsidiary Bodies

The subsidiary bodies of the Security Council include Counter-terrorism committees, ICTR (International Criminal Tribunal for Rwanda), ICTY (International Criminal Tribunal for the former Yugoslavia), Military Staff Committee, Peacekeeping operations and political missions, Sanctions committees (ad hoc), and Standing committees and ad hoc bodies.

2.3.2 Advisory Body

There is also an Advisory Subsidiary Body known as Peacebuilding Commission that comes under the General Assembly and Security Council).

2.4 Economic and Social Council (ECOSOC)

ECOSOC develops UN policy on economic, environmental, and social subjects, and it sets UN development agenda. It is also UN's main body for discussion on sustainable development. At any time, ECOSOC has 54 member states, each serving a 3-year term.

2.4.1 Functional Commissions

Functional Commissions of the ECOSOC include Crime Prevention and Criminal Justice, Narcotic Drugs, Population and Development, Science and Technology Development, Social Development, Statistics, /status of Women, Sustainable Development, and United Nations Forum on Forests.

2.4.2 Regional Commissions

Regional commissions include ECA (Economic Commission for Africa), ECE (Economic Commission for Europe), ECLAC (Economic Commission for Latin America and the Caribbean), ESCAP (Economic and Social Commission for Asia and the Pacific), and ESCWA (Economic and Social Commission for Western Asia).

2.4.3 Other Bodies

Other bodies of thee ECOSOC include: Committee for Development Policy, Committee of Experts on Public Administration, Committee on Non-Governmental Organizations, Permanent Forum on

Indigenous Issues, United Nations Group of Experts on Geographical Names, Other sessional and standing committees and expert, ad hoc and related bodies.

2.4.4 Funds and Programmes

The funds and programmes mentioned in the subsection 2.2.2 are jointly under the General Assembly and the ECOSOC.

2.5 Trusteeship Council

The purpose of the Trusteeship Council was to oversee 11 trust territories that were being administered by seven UN members. The Council was closed on November 1, 1994, because by then the 11 trust territories had become independent.

2.6 International Court of Justice (ICJ)

International Court of Justice (ICJ) sits in Hague, Netherlands, and it is the main judicial body of the UN. ICJ decides, in accordance with international law, the cases which States bring before it. It also gives advisory opinions on legislation. ICJ has 15 judges, each serving a nine-year term.

ICJ uses four sources of law, as per article 38 (1) of its statutes: international conventions, international custom, general laws accepted by the civilized nations, and teachings and judicial decisions of reputed publicists, subject to Article 59.

2.7 Secretariat

The Secretariat, headed by the Secretary-General, performs the everyday work of the UN. The secretariat staff members are recruited locally and internationally.

2.7.1 Departments and Offices

The departments and offices under the UN secretariat include EOSG (Executive Office of the Secretary-General), DESA (Department of Economic and Social Affairs), DFS (Department of Field Support), DGACM (Department of General Assembly and Conference Management), DM (Department of Management), DPA (Department of Political Affairs), DPI (Department of Public Information), DPKO (Department of Peacekeeping Operations), DSS (Department of Safety and Security), OCHA (Office for the Coordination of Humanitarian Affairs), OHCHR (Office of the United Nations High Commissioner for Human Rights), OIOS (Office of Internal Oversight Services), OLA (Office of Legal Affairs), OSAA (Office of the Special Adviser on Africa), SRSG/CAAC (Office of the Special Representative of the Secretary-General for Children and Armed Conflict), SRSG/ SVC (Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, UNODA (Office of Disarmament Affairs), UNOG (United Nations Office of Geneva),

UN-OHRLLS (Office of the High Representative for Least Developed Countries, Landlocked Developing Countries and Small Island Developing States), UNON (United Nations Office at Nairobi), and UNOV (United Nations Office at Vienna).

2.7.2 Regional Commissions

The regional commissions mentioned in subsection 2.4.2 come under ECOSOC and the Secretariat.

3

UNEP's Legislative Instruments

3.1 Background

The development of environmental law has taken place in a non-structured fashion. Two conventions have been particularly important in the development of International environmental law:

the 1972 Conference on the Human Environment and the 1992 Conference on Environment and Development. The first structured effort from UNEP regarding environmental law was made in 1982, and it is known as the 10-year "Montevideo Programme I."

In 1972, the UN General Assembly held a conference on the human environment, also known as the Stockholm conference. The conference had an action plan of 109 recommendations (Selected Texts of Legal Instruments in International Environmental Law 2005). The Stockholm conference resulted in action on environmental issues at both governmental and non-governmental levels, and environmental law developed considerably during the two decades after the conference.

In 1978, the UNEP recognized Principles of Shared Resources. These principles recognize the right of a state regarding the use of its resources and the responsibility of a state to exploit its resources without harming the environment of another state. In 1982, UN reaffirmed the Stockholm recommendations by adopting the World Charter for Nature.

In 1992, the UN held the United Nations Conference on Environment and Development (UNCED), also known as the Rio conference. Like the Stockholm conference, the Rio conference also produced an action plan for sustainable development known as Agenda 21 (Selected Texts of Legal Instruments in International Environmental Law 2005). The conference also produced a Declaration on Environment and Development. This declaration reiterates the principles presented in the Stockholm Declaration, but its main concept is sustainable development, achieved with combining development with environmental protection.

After the Rio conference, almost all major international conventions included environmental protection as an objective. Laws present before the conference developed in a different manner due to the influence of environmental protection. Consequently, environmental issues are part of almost all categories of international law.

In 2002, 190 countries convened in Johannesburg, South Africa, to reaffirm the Rio Principles and the application of Agenda 21. The countries assumed a collective responsibility to promote sustainable development by adopting the Declaration on Sustainable Development.

3.2 1972 UN General Assembly Resolution 2997 (XXVII)

Resolution 2997 establishes the financial and institutional foundations for environmental cooperation at an international level, according to Shelton and Kiss (2005, pp.2). Here are the salient features of this resolution:

3.2.1 Formation of a Governing Council

A Governing Council of the UNEP will be created. The council will consist of 58 states (16 African, 13 Asian, 13 European, 10 Latin American, and 13 Western European and other states), and these states will be elected for three years at a time). The Governing Council will submit an annual report to the General Assembly. The council will submit its report through the Economic and Social Council, which will review the report and make comments on the report.

The Governing Council will be directed to encourage international environmental co-operation, to provide policy recommendations, to review the reports of UNEP's Executive Director, to review the global environmental situation, encourage professional communities to contribute, to assess the impact of environmental policies on developing nations, and to approve annually how the Environment Fund will be utilized.

3.2.2 Establishment of an Environment Secretariat

A secretariat will be created for effectively managing environmental concerns. UNEP's Executive Director will head the office for four years at a time.

The secretariat will support the Governing Council; coordinate UN environmental Programmes; advise UN intergovernmental authorities on environmental programmes; secure co-operation from professional communities; assist the Governing Council on planning of UN's environment-related projects; etc.

3.2.3 Establishment of an Environment Fund

An environment fund will be created to support new UN environment programmes. The fund will finance programmes selected by the Governing Council, including programmes related to assessment, monitoring, and data collection; environment research; education; assistance for environmental institutions; etc.

3.3 AGENDA 21

AGENDA 21 programme was put forward in the United Nations Conference on Environment and Development in 1992. The programme is based on the General Assembly resolution 44/228 of 1989 (United Nations Conference on Environment & Development, 1992), according to (Shelton and Kiss (2005, pp.6).

AGENDA 21 covers several areas of environmental law, including legal and regulatory framework, international institutional arrangements, and international legal instruments and mechanisms. The following paragraphs describe these aspects of AGENDA 21.

3.3.1 Legal and Regulatory Framework

This aspect focuses on providing information about legal and regulatory innovations, such as compliance incentives, so that member countries can include these innovations in their national and sub-national legal framework. Besides providing information, another objective is to help countries looking to improve their legal system to achieve sustainable development goals. The program also aims to assist with local initiatives related to compliance.

3.3.1.1 Actions to be Taken

To implement the objectives of AGENDA 21, the Conference called for the following actions to be taken:

- a) Regular assessment of national, state and local laws and regulations as well as related machinery by the relevant government in cooperation with international organizations, if needed.
- b) Establishment of administrative and judicial procedures for legally addressing issues impacting the environment.
- c) Legal support by government and independent bodies for governments in matter of environment law.
- d) In-service training and post-graduate programmes in the fields of development law and environment.
- e) Programmes to ensure that environment and development laws are analyzed and put into practice.

3.3.1.2 Implementation of Objectives

The steps taken to implement the objectives of the legal and regulatory framework included an evaluation of the costs to implement the objectives by the Conference secretariat. The cost was estimated to be around \$6 million annually from 1993 to 2000. The programme was expected to use its present infrastructure for data collection and assessment.

Improving the legal and institutional capacities of countries to deal with environmental issues was an important part of this programme. One way to achieve this goal was to nominate and assist regional centers of excellence with their legal systems.

3.3.2 Institutional Framework

This programme aimed to achieve a number of objectives, including sustainable development through AGENDA 21; increase in UN's role in matters related to the Environment; and improvement in cooperation on environment and development-related matters within the UN. Below is a brief description of the main parts of the institutional structure:

- a) **General Assembly:** The General Assembly was responsible for following up on the Conference and reviewing the progress of AGENDA 21's objectives.
- b) **Economic and Social Council:** The role of the economic and social council was to help the General Assembly with AGENDA 21 and make recommendations.
- c) **Sustainable Development Commission:** A commission of state representatives and observer states' representatives that would improve international cooperation on development and environment matters and follow up on the Conference.

3.3.3 International Legal Instruments and Mechanisms

This programme had a number of objectives, including the following:

- a) Find and remedy the problems that obstruct some member States from implementing agreements.
- b) Determine priorities regarding laws for sustainable development both globally and regionally.
- c) Ensure implementation of legal instruments and help with adjustment in the instruments.
- d) Make mechanisms and institutions more effective for administration of legal instruments.

4 Reference Documents of International Environmental Law

4.1 Charter of the UN

The Charter of the UN is a document that contains items such as the purposes of the UN, the principles that the member states would follow, criteria for UN membership; functions and powers of the UN, and voting procedures. Here are some of the key articles of the UN charter as provided in UNEP (2005).

4.1.1 Purposes and Principles

The Purposes and Principles section of the UN Charter contains Articles 1 and 2 of the Charter and it provides the following information:

- It describes the purposes of the UN. It states that the UN will work on maintaining peace and security at an international level; creating good relations among nations; achieve cooperation in solving international issues and support human rights.
- It describes the principles for the organization and its members. The principles that the member states will adhere to include: equality of all members; fulfilment of obligations according to the present Charter; peaceful settlement of international disputes; refraining from aggression against other member or any other act that violates the Purposes of the UN; assist the UN in actions it takes according to its Charter and avoid assisting a state that the UN is taking action against.
- The UN should ensure that non-UN members follow the Principles outlined in the UN charter to maintain international security and peace. The UN will not intervene in domestic matters of the member states.

4.1.2 Membership

The Membership section of the UN charter contains Articles 3,4,5 and 6. The areas these articles cover include:

- Original Members: The original members of the UN shall be the states that sign the UN Charter and ratify it per Article 110. These states are the participants of the UN conference on internal organization held in San Francisco, USA, or states that signed the UN Declaration of January 1st, 1942.
- Any “peace-loving” state can become a member of the UN as long as it accepts the Charter of the UN and can act on the Charter. The General Assembly of the UN will admit a state into the UN upon recommendation from the Security Council.

- If the Security Council takes action against a member, the General Assembly can suspend the membership of that state.

4.1.3 Organs

The Organs section contains Articles 7 and 8, and it states the main organs of the UN: General Assembly, Secretariat, Security Council, International Court of Justice, and Economic and Social Council.

4.1.4 Descriptions of the Organs of the UN

Articles 9 to 101 provide detailed descriptions of the above-mentioned main organs of the UN. They explain matters such as the composition of an organ, functions and powers of an organ, and procedures related to the organs.

4.1.5 Miscellaneous Provisions and Transitional Security Arrangements

Articles 102 to 105 of the Charter deal with miscellaneous provisions. These articles state that all international agreements and treaties made by a UN member state shall be registered with the Secretariat without unnecessary delay; if there is a conflict between the Charter and any other international agreement, then the Charter will be considered superior; the members will provide the Organization with all the immunities and privileges in their territories that it may need to achieve its targets; etc.

Articles 106 and 107 relate to Transitional Security Arrangements. Article 106 states that parties of the Four-Nation Declaration, held in Moscow, will collaborate with France and, if required, other member states will take collective action in order to maintain international security and peace.

4.1.6 Amendments, Ratification and Signature

Article 108 and 109 concern amendments to the Charter. Article 108 states that an amendment to the Charter will be made if two thirds of the General Assembly approves that amendment and if two thirds of UN members ratify that amendment according to their respective constitutions.

Article 110 and 111 concern ratification and signature. According to Article 110, all the signatory states will ratify the Charter according to their constitution. According to Article 111, the current Charter will remain with the U.S. Government and copies of the Charter will be given to all signatory states.

4.1.6 Statute of the International Court of Justice

The International Court of Justice is the main judicial organ of the U.N. There are 70 Articles concerning the statute of the Court. Article 1 establishes the Court as the main organ and that it shall function according to the current Statute. Article 2 concerns the organization of the Court. It states that the Court will comprise of independent, qualified judges eligible for the highest judicial position, or that have a reputation as an international law expert.

According to Article 3, the court will be comprised of 15 judges, all from different member states. Article 4 specifies that the General Assembly and the Security Council will elect the Court. The national groups in the Permanent Court of Arbitration will be responsible to provide the names of the possible candidates for the Court positions. The Articles cover issues such as competence of the court, procedure of the court, advisory opinions, and amendment.

4.2 Vienna Convention

Vienna Convention on the Law of Treaties was held in 1969 and it came into force on 27th January, 1980, according to a 2005 publication of the UN with the same title the name of the convention. The Vienna convention is comprised of 85 Articles.

4.2.1 Introduction

Article 1 of the Vienna Convention states that convention is applicable to treaties between states. According to Article 2, a *treaty* is a written international agreement between states, covered by international law, and an "international organization" is an intergovernmental organization.

Article 3 covers the international agreements that are beyond the scope of the Vienna Convention. According to the article, the convention will not affect legal enforcement of the agreements which the members will be subject to under international law anyway. The convention will also not affect application of rules in interstate relations covered by other international laws.

4.2.2 Conclusion and Enforcement of Treaties

According to Article 6 of the Convention, every state can conclude treaties. A text of a treaty can be adopted by two-thirds majority. A state can express that its bound by a treaty by signature, approval, ratification, etc. A treaty is applicable to the whole territory of the parties bound by the treaty. The Convention is against parties invoking their international laws to justify not following a treaty.

4.2.3 Observance, Application, and Interpretation of Treaties

Articles 26 to 38 of the convention provide information about observance, application and interpretation of treaties. According to Article 26, a treaty is binding for all involved and it must be carried out in good faith. Regarding the application of a treaty, the convention says the provisions of the treaties will not be binding on its parties before the treaty enters into force. The general rule of interpretation of a treaty is also provided in the convention itself.

According to Article 31, parties should interpret a treaty with ordinary meanings of the terms of the treaty. Regarding third states, Article 34 states that the general rule is that there will be no rights or obligations for a third state in a treaty. However, the provisions of a treaty can create an obligation for a third state if the third state accepts that obligation, according to article 35. Moreover, article 38 says that the rules put forward in a treaty can become binding on a third party if the applicable law is international law.

4.2.4 Amendment and Modification of Treaties

Articles 39 to 41 concern amendment and modification of treaties. A treaty can be amended if the parties to the treaty agree to its amendment, according to Article 39. Article 40 concerns amendment to multilateral treaties. It says that all parties to the treaty need to be notified about the amendment opportunity and the amended treaty is not binding for a state that agreed to the original treaty but not the amended treaty.

4.2.5 Invalidity, Termination, and Suspension of Operation of Treaties

A treaty may be terminated by applying the provisions of the Vienna convention or of that treaty, says Article 42. If a treaty is terminated, invalidated or denounced, the state that was party to the treaty will still have to carry out obligations stated in the treaty if those obligations are a part of international law, says Article 43.

A state may move for invalidation of its consent to abide by a treaty if there is an error in the treaty, provided the error relates to a main reason of the State accepting the treaty, says Article 48. However, according to the same Article, the State cannot invalidate the treaty if the State played a role in that error. A state can also invoke fraud as a reason to no longer be bound by a treaty, if another state has defrauded that State into concluding a treaty, says article 49. A State can also, under certain conditions, invoke corruption and coercion as reasons for no longer abiding by a treaty.

A treaty may be terminated or a party may withdraw from a treaty while conforming to the treaty's provisions and by consent of each other party after consulting other contracting states, according to Article 54. According to Article 56, a party will not be able to withdraw from a treaty

if the treaty does not provide information about its termination, denunciation or withdrawal unless: (a) the involved parties had intention to admit withdrawal or denunciation as possible options, (b) withdrawal or denunciation may be implied from the nature of the agreement.

Article 65 mentions the procedure regarding termination, invalidity, suspension, or withdrawal of the operation of treaty. According to the article, a party is required to notify other parties of its claim regarding the procedure for one of the four possibilities mentioned above. If another party objects to a party's claim, the involved parties shall solve the matter according to Article 33 of the UN Charter. According to Article 67, the notification provided needs to be a written notification.

Article 69 concerns the consequences of the invalidity of a treaty. It states that a treaty is void if it becomes invalid under the present convention. According to Article 70, the termination of a treaty means that the involved parties no longer have to perform the treaty and the treaty has no effect on any obligation, legal situation or right of the parties formed due to performing the treaty, unless the parties otherwise agree or the treaty otherwise states.

4.2.6 Miscellaneous Provisions

Article 73 is one of the articles that concern cases of State succession, responsibility and hostilities. It states that the present Convention will not prejudice any treaty-related question resulting from international responsibility or succession of a State or hostilities starting between States.

4.2.7 Depositaries, Notifications, Registration, and Corrections

Regarding depositaries, Article 76 says that one or more states can become a depositary of a treaty, along with an international organization or the CAO of the organization. The depositary status may be given by the involved states. The depositary is required to be impartial in its performance.

Regarding notifications and communications, the Convention says that any notification to be made by a state should be: provided to the depositary if present, otherwise to the intended states; be considered as made upon its receipt by the depositary or state; and be considered received by intended state when the depositary informs the intended state according to Article 77, paragraph 1(e).

Regarding correction of errors, the Convention says that where the signatory states and contracting states agree on an error in the treaty, the error will be corrected by: correcting the error and getting the correction initialled; performing or exchanging an instrument stating the

correction; or executing a corrected text of the entire treaty following the same procedure as the original text.

Regarding the registration of treaties, Article 80 states that all treaties shall be transmitted to the UN Secretariat for registering or filing and recording and publishing.

4.2.8 Final Provisions

Article 81 concerns the signatories of the Convention. According to the article, all member states of the UN can sign the convention until November 30th 1969 in Austria's Federal Ministry of Foreign Affairs and until April 30th 1970 in New York at the UN Headquarters. The Convention will enter into force on the 13th day after the 35th accession or ratification instrument is deposited, says article 84. The original document of the convention will be submitted to the UN's Secretary-General, says Article 85.

5 Declarations and Agreements

5.1 Declarations

5.1.1 Stockholm Principles

Declaration of the UN conference on the Human Environment is also known as the Stockholm Principles. This declaration was adopted in 1972 and it outlined 26 Principles. According to the declaration, every person has the “fundamental right to freedom, equality and adequate conditions of life” according to (UNEP (2005, pp .79). The declaration also states the need to safeguard the natural resources for present and future generations, and that we need to maintain our ability to produce important renewable resources.

5.1.2 World Charter for Nature

UN General Assembly Resolution 37/7 is the World Charter for Nature. It was adopted in 1982, and it states that “nature shall be respected and its essential processes shall not be impaired,” according to (UNEP (2005, pp .84). The charter says that our needs can be fulfilled only by the natural systems functioning properly. It also states that conservation of natural resources will be recognized as an important part of the planning and implementation of economic and social developments and the Charter shall be incorporated into the law and practice of the member States.

5.1.3 The 4th WTO Ministerial Declaration (DOHA)

The 4th WTO Ministerial Declaration states that the multilateral trading system of the WTO has made a considerable contribution to economic growth and development in the last 50 years, according to (UNEP (2005, pp .95). It also states that international trade can have a great role in encouraging economic growth.

5.2 Global Agreements

5.2.1 Convention on Wetlands of International Importance Especially Waterfowl Habitat

Convention on Wetlands of International Importance Especially Waterfowl Habitat is called Ramsar after the Iranian city of Ramsar where it was adopted in 1971.

Ramsar is the first of the modern intergovernmental environmental agreements. The agreement came into force in 1975. A conference of the contracting parties of the Ramsar agreement is held every three years. A standing committee of the agreement also meets every year. Ramsar invests in wetlands through the Wetlands for the Future program, a Small Grants Fund, and The Swiss Grant Fund for Africa.

The Ramsar Convention Secretariat formed The Wetlands for the Future Initiative in collaboration with The United States Department and the US Fish and Wildlife Service, according to (Rivera, M., Llorens, M. (2010, pp .6). The purpose of the initiative is to promote the “wise use” of Wetlands in the Western Hemisphere.

The three involved parties are running the Wetlands for the Future training programme since 1997. The programme helps in conservation and wise use of wetlands in the Caribbean and Latin America.

The Small Grants Fund

Small Grants Fund (SGF) was established in 1990. SGF helps developing countries in conserving and wisely using their wetlands and sustainably developing communities associated with the wetlands.

The SGF's gives up to 40,000 Swiss Francs. Anyone from a developing country can apply if their project will be completed within one year. The successful applicant also receives administrative and technical support from the Secretariat.

Swiss Grants for Africa

This grant is provided by the Swiss Government to support wetland conservation and application of the conservation in African countries. It is provided in addition to the financial support provided by the convention, according to (Swiss Grant for Africa (2009, pp.2).

5.2.2 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

Informally known as the “London Convention,” this Convention has been in force since 1975, and 87 States have joined. The goal of this Convention is to control marine pollution and sea pollution resulting from wastes disposal and other activities (International Marine Organization, n.d.).

The Convention consists of 24 articles. The Parties to the Convention are required to prohibit the dumping of wastes; assign a body for issuing permits for dumping wastes; apply the Convention to aircrafts and vessels registered in its area; create regional agreements to prevent pollution; support parties that are looking for technical and scientific training; etc.

5.2.3 Convention Concerning Occupational Safety and Health and Working Environment (NO. 155)

The convention took place in Geneva in 1981, and it entered into force in 1983.

5.2.3.1 Scope

The Convention is applicable to all branches of economic activity; however, members ratifying to the Convention have the option to negotiate with concerned parties to exclude branches of economic activity and workers from the application of the Convention, according to the International Labour Organization, (n.d.).

5.2.3.2 Principles of National Policy

Members of the convention will create, implement and review their national policy regarding occupational health, occupational safety and the working environment, according to (Sheldon and Kiss (2005, pp.183) . The policy will be formulated with the goal of preventing accidents and injuries happening in relation to hazards present in the work environment. The policy creation mentioned in article 4 will mention the responsibilities and functions according to occupational safety and health and the work conditions of workers, employers, etc., considering both the complementary nature of these responsibilities and of national conditions and practise.

5.2.3.3 National Action and Action at Level of Undertaking

The members will follow laws or regulations or other methods acceptable at national level and work with representatives of workers and employers to effect article 4. Regarding action at the level of undertaking, Article 16 of the Convention states that employers will have an obligation to make sure that their equipment, machinery, processes, and workplaces are safe and free of health risks.

5.2.3.4 Final Provisions

International Labour Conventions are not revised by this Convention. Members can denounce their ratification 10 years after the enforcement of the Convention.

5.2.4 Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment

The goal of this convention is to ensure that there is appropriate compensation for damage caused by incidents that harm the environment and it also offers a way of damage prevention and reinstatement, according to (Council of Europe (1993, pp.1).

5.2.4.1 Geographical Scope and Exceptions

This Convention is applicable when the activity takes place within a Party's territory. Territories are determined by Article 34 of the Convention. The Convention also applies to incidents happening outside the territory of a Party.

The Convention is not applicable to damage resulting from carriage. However, there are exceptions to the damage during carriage rule. For instance, the Convention applies to carriage through pipeline.

The Convention is also not applicable to damage resulting from an incident involving a nuclear substance if the incident is regulated by 1963 Vienna Convention on civil liability resulting from nuclear damage or the 1960 Paris Convention on nuclear energy-related third party liability, and the protocol added to the Convention on Jan 28th 1964.

5.2.4.2 Liability

As mentioned in article 6 of the convention, in the case of liability regarding organisms, substances, and certain waste sites, the authority operating the dangerous activity stated in subparagraphs a to c of paragraph 1 of Article 2 will have liability of the damages. As mentioned in Article 7, sites used for permanently depositing waste, the site operator will have liability. In both cases, if the damage is discovered after the site is closed, the last operating authority will have liability.

According to Article 11 of the convention, if the damage is caused by events on multiple sites or in multiple installations, all the operating authorities of the sites will be jointly liable. However, if an operator proves that they are responsible for only part of the damage, then that operator will be responsible for only that damage.

6 Implementation of International Environmental Law

Countries use international environmental law to create the national laws they need to implement international environmental agreements. Also, multilateral agreements, such as the Vienna Convention and the Rio Convention, facilitate enforcement of national environment-related legislation. A considerable number of environment laws are included in Multilateral Environmental Agreements (MEAs). To understand the sources of international environmental law, we need to consider the sources of international law.

6.1 Four Sources of International Law

The International Court of Justice (ICJ) is the United Nation's main judicial body. ICJ can hear any case that is referred to it by a party and any matter covered by the UN charter or any treaty or convention. According to (Robinson and Kurukulasuriya (2006, pp. 2), Article (38) of the statute of the ICJ provides the following sources of environmental law. These sources are as follows:

- a) An international convention that the involved parties follow
- b) An international custom
- c) General laws accepted by civilized nations
- d) Judicial decisions and teachings of qualified publicists

Article (38) also provides the order in which the four sources will be followed in cases. First preference will be given to a treaty. If no treaty is available, then international customs will be applied. If no customs are applicable to the dispute, then general laws will be applied. Lastly, any judicial decision or teaching will be considered as a subsidiary for settling the issue.

a) International Treaties

Nowadays, relationships between states are conducted through treaties, and treaties provide the international laws to be followed in disputes between those states. The Vienna Convention on the Law of Treaties held in 1969 is a landmark convention, as several provisions of the convention have become a part of international law. As per the Convention, a treaty is an international written agreement between states that follows international law. Treaty is a broad term used for instruments such as agreement, charter, convention, statute, pact, etc.

b) International Customs

Before the increase in importance of treaties, international law was mainly based on customary international law. Customary international law has evolved from Europe from increase of interaction between European states as well as other regions, and it is legally binding in the same manner as treaties. The basis for identifying the presence of international customary law includes the following two points:

- 1) The custom needs to be in accordance with the “rule of constant and uniform usage.”
- 2) The custom is present because it is a legal requirement to have that custom.

There are two notable terms related to customary international law. One is “soft law” and the other one is “peremptory law.” Soft law normally means an international instrument, except a treaty, that provides standards, principles, and other behavior-related statements. Peremptory law means norms that no authority can overrule. The only possibility for overruling the norm is by a subsequent norm.

c) General Principles of Law

General principles normally include principles of the main legal systems in place in the world and the International legal principles.

e) Judicial Decisions

Judicial decisions and teachings of qualified publicists are the fourth source for international environmental law. Rulings of ICJ and other judicial bodies, as well as qualified writings can be the sources of the laws.

6.2 Basic Principles of International Environmental Law

The principles set forth in the 1972 Stockholm Conference and the 1992 UNCED in Rio de Janeiro are an integral part of international environmental law, according to (Robinson, N. A., and Kurukulasuriya (2006, pp .23). Here are the basic principles of environmental protection:

6.2.1 Prevention

Prevention is considered as a broad environmental goal that leads to the development of a variety of legal instruments, including instruments for pre-assessment of damage, conditions for use of resources, and penalties for violating set instruments.

Utilization of best available techniques (BAT) and standards for emission are prevention applications. “Source reduction” is another concept that is a prevention objective. Source reduction can be achieved by selecting improved techniques and equipment and more environmentally-friendly raw materials.

6.2.2 “Polluter Pays” Principle

The “polluter pays” rule ensures that the enterprises creating any form of environmental pollution should be responsible for the costs of controlling pollution generated by them as per the legal requirements they have. This rule was first put forward by the Organization for Economic Cooperation and Development (OECD). This concept is different from the historical method of allocating pollution costs where the community at large had to bear the costs.

6.2.3 Precaution

Precaution is a concept that does not have a legal status. Precaution is accepted in the form of the idea that scientific uncertainty should not stop authorities from taking environmental protection measures. Also, those entities that are possibly harming the environment should determine the harm their actions may cause to the environment. Furthermore, in environmental damage-related issues a State can apply restrictions without attaining full scientific certainty.

In Principle 15 of the Rio Declaration, it is written that a State will have the duty of taking precautions in environmental matters as per its resources. Also, prevention of serious environmental damage will not be postponed by scientific uncertainty.

6.2.4 Environmental Justice and Public Trust

Generally, the goal of ensuring environmental justice is that scarce resources are allocated and managed fairly. This approach is taken to ensure that the costs and benefits of the resources are appropriately shared among all segments of society, instead of the poor and minority groups bearing the brunt of damages to the environment. For instance, environmental justice can be applied in cases of damage caused by pollution from factories to poorer segments of society.

Public trust refers to the idea that we hold the natural resources of the world in trust for the coming generations. In the form of a legal vehicle, public trust means a government holds natural resources in trust for its citizens, and it has an obligation to use those resources in the public interest.

6.3 Compliance and Enforcement of MEAs

MEAs exist in the form of treaties or non-binding texts created by governments to set standards for environmental action. Governments are bound by MEAs to implement international law in their jurisdictions. The implementation of an MEA by a state starts with the ratification, accession or adherence of the MEA, according to (Robinson and Kurukulasuriya (2006, pp .39). In February 2002, the UNEP adopted guidelines for compliance and enforcement of MEAs.

Compliance: The term compliance refers to the regulated community conforming with obligatory requirements set by the state. Compliance also refers to parties fulfilling their contractual duties under a MEA.

Enforcement: Enforcement refers to the action a state can take to ensure that the members of regulated community that are not complying with the MEA can be made to comply and/or prosecuted.

6.4 Institutional Framework for Compliance

Several institutional systems exist to tackle the issue on non-compliance:

- a) Meeting of the compliant parties to discuss the provisions of the MEA and difficulties faced by parties to fulfill the obligations.
- b) Establishment of a Secretariat to perform duties, such as preparation of COPs and working on behalf of the parties following the MEA.
- c) Establishment of bodies that perform specific functions, such as an advisory panel to advise on scientific matters.
- d) Establishment of reporting channels so that the compliant parties can update the Secretariat on the measures taken by them to implement the MEA.
- e) Establishment of financial systems, such as trust funds, to provide monetary support for the compliance efforts.
- f) Procedures to be followed in the case of non-compliance. For instance, the Montreal Protocol's non-compliance procedure calls for the party to report the issues its having to the Implementation Committee.

6.5 Liability in case of environmental damage

Traditional liability systems generally do not include environmental damage liability. The traditional approach is a result of the environment being conceived as a public entity with no private interests; therefore, there is no possibility of holding someone liable. Moreover, in environmental law, the term environmental damage does not have a single definition that everyone agrees upon.

There is also a difference between “state liability” and “civil liability.” Civil liability concerns national law and it covers cases between persons, while state liability covers international law and it covers cases involving states, according to (Robinson and Kurukulasuriya (2006, pp .51).

6.5.1 State Responsibility and Liability

State Responsibility can be separated into two forms: State responsibility for wrongful acts and state responsibility for damaging consequences of lawful activities.

Responsibility for wrongful action: As per international law, a state cannot allow acts that affect the rights of another state. Furthermore, a state has two important duties regarding environmental damage: controlling, preventing, and reducing environmental damage, and cooperating with others for mitigating environmental risk factors.

Responsibility for lawful actions: In the case of lawful acts resulting in environmental damage, there aren't many agreements that define the responsibilities and liability of a state. This category of responsibility only applies if the legal instrument specifically covers this area.

6.5.2 Civil Liability and Responsibility

Civil liability in case of environmental damage can be divided into three types: fault liability, strict liability, and absolute liability.

Fault Liability: In a fault liability case, the plaintiff has the responsibility to prove that the alleged party had intention to cause environmental harm or the alleged party did not take necessary precautions to avoid environmental damage.

Strict Liability: In a strict liability case, the plaintiff does not have to prove that the alleged party is responsible; just the damage caused is enough to hold the alleged party liable. Strict liability is an application of the polluter pays principle. However, the responsibility of the polluter may vary from system to system. For instance, in some strict liability systems, the polluter can be freed of responsibility if they show compliance with applicable permits.

Absolute Liability: In an absolute liability system, the polluter does not have any defense except an act of God. This category of liability is normally reserved for extremely-hazardous operations.

6.6 Enforcement of Environmental Law

The enforcement of environmental legislation by nations has proven to be much more challenging than committing to multilateral environmental agreements. In the case of countries with developing economies, the development of enforcement instruments has not coincided with capacity building and development of knowledge bases, thus creating a gap between commitment and implementation, according to publication by UNEP and China ASEAN Environmental Cooperation.

6.6.1 Law and Policy Reform – Development of Environmental Courts and Tribunals (ECTs) in Asia and Pacific

One of the initiatives taken at a global level for improving the implementation of environmental law has been the establishment of environmental courts and tribunals (ECTs). Developing countries in the Asia and Pacific region have adopted international environmental laws, but they have not been able to sufficiently implement those laws. The Asian Development Bank (ADB) has conducted a study on ECTs established in Asian countries. Here are some their findings:

6.6.1.1 ECTs in Indonesia

In Indonesia judges trained in environmental law, also known as ‘Green Judges,’ hear environment-related cases. According to a 2010 ADB report, twenty percent of the judiciary in Indonesia is trained in environmental law. Furthermore, the Ministry of Environment and the Supreme Court have agreed on introducing a judicial certification scheme for institutionalizing environmental training. Under the scheme, the Supreme Court will also establish new rules targeted towards handling of environmental cases. With the assistance of ADB, a task force, including the judiciary and Ministry of Environment, was formed in March 2010 to oversee the judicial certification scheme and establishment of rules.

6.6.1.2 ECTs in Philippines

In the Philippines, the supreme court gave 117 courts the status of environmental courts in 2008. The supreme court adopted “rule of procedure” regarding environmental issues in 2010, according to 2010 ADB report. The provisions adopted include, but are not limited to, prevention of strategic law suits regarding public participation, also called “SLAPP” suits, and an Environment Protection Order to direct acts of environmental preservation and protection.

6.6.2 The Asian Judges Network on Environment

The judiciary directly influences enforcement of environmental laws by making decisions on environmental issues, directing lower courts, and creating “green benches.” The judiciary may also influence the interpretation of legal and regulatory frameworks.

The Asian Judges Network AJNE is an informal trans-governmental body that is supported by the ADB. It brings together senior judiciary from member countries of the Association of South-east Asian Nations (ASEAN) and members of the South Asian Association for Regional Cooperation (SAARC) to discuss environmental law.

The idea of networking on environment was put forward by the judges attending the 2010 Asian Judges Symposium. This Symposium was jointly hosted by the ADB and the Chief Justice of Philippines. It was attended by 120 people, including environment law experts. In 2011, the

Common Vision on Environment for ASEAN Judiciaries was adopted at the first ASEAN Chief Justices' Roundtable in Jakarta, Indonesia, according to Asian Judges Network on Environment (n.d.).

6.6.3 Green Benches

Following the 'A Common Vision on Environment for the South Asian Judiciaries' convention held in Bhurban, Pakistan, on March 24 and 25, 2012, Green Benches were established all over Pakistan and Azad Kashmir to hear environment-related cases, according to the (The Express Tribune, 2012).

6.6.4 Reporting of Environmental Issues - 12369 Hotline in China

Sharing of knowledge about environmental issues with relevant authorities is an area where many developing countries struggle. This unavailability of information may be due to unavailability of platforms to share information or lack of coordination between institutions.

However, there are examples that developing countries can follow to solve these issues. One such, example is the 12369 hotline in China. Introduced in 2009, the hotline is managed by the Ministry of Environmental Protection. The collected information is shared with the concerned agencies. Companies have been fined and even shut down from investigations resulting from these complaints. Nearly 2000 complaints were made through the hotline in 2013, and out of these complaints 70% were about air pollution, according to (UNEP and CAEC (n.d., pp .12).

7.1 Location for Case -- Khwera, Jehlum

Khwera is in Pind Dadin Khan Tehsil (sub division) of Jehlum District, Punjab, Pakistan, and it is well-known for having the largest salt mine in Asia and the second largest salt mine in the world. The Khwera salt mine rises from the Indo-Gangetic Plain and it was opened for mining in 1872. The mine produces 325,000 tonnes of salt per year and has a capacity of 6.67 billion tonnes (Atlas Obscura, n.d.). The salt produced from the mine is known as Himalayan salt.

7.2 Khwera Water Catchment Area

The Khwera water catchment area spans 545.09 acres and the main water source in the area is called the ' Mitha Pattan' spring (Tarar and JJ, 1994). Several smaller springs are also present in the area. Water from the smaller springs collects in Mitha Pattan. The spring is the main source of water for residents of Khwera – fulfilling 60% to 70% of their requirements.

7.3 Case Facts

Petitioner: General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khwera, Jehlum

Defendants: Pakistan Mineral Development Corporation (PMDC), Director, Industries and Mineral Development, Government of the Punjab, and leasing beneficiaries Punjab Coal Company (PCC) and A. Majeed & Co.

Supreme Court Adjudicators: Tarar, Muhammad Rafiq and JJ, Saleem Akhtar

7.4 Case Introduction

7.4.1 Case Petition

The issue raised in the petition was that water available for daily use to the residents of Khwera, Jehlum, was being polluted by mining operations authorized by the Director of Industries and Mineral Development, Punjab (Tarar and JJ, 1994). The petition was filed under article 184(3) of the Constitution of Pakistan. Article 184 (3) gives the Supreme court the ability to act in cases where the fundamental rights of people are being violated.

The petition included two main points:

- There was a water catchment area that had been reserved by the Provincial Government of Punjab, but the related authorities, especially the Director, Industries, and Mineral Development, were violating the reservation agreement by leasing the reserved land.

- The leasing of land in the catchment area is illegal and ill intended, therefore, the lease should be cancelled.

7.4.2 Notifications to the Accused

The court evoked Article 183(3) and notified Director, Industries and Mineral Development, PMDC, the leasing authority, and PCC and A. Majeed & Co., the companies who acquired leases. All the notified parties submitted their replies.

7.5 PMDC's Reply

The PMDC responded by acknowledging the importance of the water catchment area and providing documents that outlined the areas in which leases were granted to the accused companies. The PMDC also referred to the findings of a committee made in 1981 to investigate the mining activities near the water catchment area and effects of mining on the preserved water.

7.5.1 Historical Records of the Khewra Catchment Area

The earliest reference to the reservation of the Khewra catchment area is from 1911, when the area was under British rule and coal mining operations were taking place in this area. In the proceedings of the case, the PMDC produced a letter dated 31.01.1911. In this letter the then Financial Secretary of the Indian Civil Service (ICS) Mr. Runt says to Commissioner, N.I, Salt Revenue, that preservation of the Khewra water supply is the basis for reserving the area in the North of the Mayo Salt Mine.

The PMDC also produced a plan for the original water catchment area. Initially, 4161 acres was believed to be the size of the restricted area. At the time of this petition, the size of the catchment area had been reduced to 545.09 acres. Rapid reduction in the reserved area took place after 1950 when multiple leases were granted in the reserved area.

7.5.2 PCC's Mine No. 27 A

Mine 27 A belonging to PCC is the mine that the petitioners were concerned about. The mouth of mine 27 A is less than 50 meters from the boundary of the protected area; therefore, violating the guidelines for mining near a preserved area. The PMDC provided documents that showed the position of mine 27 A. The document also mentions the area leased to the other mining company A. Majeed & Co.

7.5.3 Previous Investigation of Mining in Water Catchment Area

The 545.09 acres for the catchment area was reserved on 22nd February 1981 by a decision made by the "Mines Committee" (Tarar and JJ, 1994). Regarding the preserved area, the

PMDC also produced the findings of a committee that was formed to review the case of a coal mining company called M/s Rasco and Co. that wanted to mine in Nali, Jehlum. Created by the Secretary, Industries and Mineral Development, the committee consisted of the following:

- (1) Director, Industries and Mineral Development, Punjab, Lahore.
- (2) Deputy Commissioner, Jehlum.
- (3) Chief Inspector of Mines, Punjab, Lahore.
- (4) Superintending Engineer, Public Health Engineering, Circle 11, Rawalpindi.
- (5) Representative of Pakistan Mineral Development Corporation.
- (6) Assistant Commissioner, Pind Dadan Khan.

The committee had the authority to add any member to the committee, and it had the mandate to investigate the following issues:

- 1) Is the area where M/s Rasco and Co. wants to conduct their coal mining operations in the catchment area for water supply of Khewra Town and Dandot?
- 2) Do Khwera and Dandot receive water from a natural spring located in the area in question?
- 3) Whether mining would in any way affect or contaminate the water?
- 4) Are there any alternate sources of water available for Khwera?
- 5) What is the opinion of the locals about mining near their area of residence?

7.5.4 Committee Findings

The above-mentioned committee investigated the area and published the following findings and recommendations.

- 1) The area where M/s Rasco and Co. intends to do coal prospecting falls in the area where such activities are forbidden.
- 2) Mitha Pattan is the main spring in the area, with a capacity of 2 lac gallons/day.
- 3) The water requirements of the town of Khwera are fulfilled by three main sources: Mitha Pattan (60 to 70%), municipal supply system (15%) and treated water released by Imperial Chemical Industries (5%).
- 4) The geological structure of the area includes coal rich shale structure called 'Patala Shales' near the springs. Conducting mining operations in the area can result in the water getting polluted from mining-related pollution and the springs becoming dry due to leakage of water.

The committee recommended that the restricted status of the water catchment area should be maintained and the boundaries of areas leased around the restricted area be reviewed to ensure protection of the restricted area.

7.6 PCC's Reply

PCC responded to the petition by stating that it had a 30-year lease that was renewed in 1980 for 20 more years. The mining company also stated that 18 other mining companies were operating next to their allotted area in the same conditions. Moreover, the leased area does not fall into the water catchment area.

Regarding the pollution of the natural spring, PCC stated that both the Mitha Pattan spring and a reservoir that collects water from it are at a higher ground than the mined area, with a large, deep ravine in between them. Therefore, the spring water is safe from mining pollution. Residents of the workers' colony receive water from the above-mentioned reservoir via two pipelines. One of the two pipelines is no longer functional as its operation was stopped by the PMDC.

7.6.1 Conditions for Use of Mine 27-A

In response to an enquiry from the leasing authority, a committee consisting of PMDC, PCC and the Directorate members found that PCC-owned and operated mine 27-A is outside the restricted area, but less than 50 m from border of the leased land. The conditions for use of mine 27-A, as stated by the lessor, are as follows:

- 1) The PCC and PMDC will jointly install a second pipe to take water from the reservoir of the spring to the workers' colony. Both parties will equally divide the installation cost between themselves.
- 2) Size of the reservoir shall be increased.
- 3) PCC will install a retaining wall near the mouth of the mine.

7.6.2 Installation of Retaining Wall

PCC followed the conditions set by the lessor and installed a retaining wall for mine 27-A. The presence of the retaining wall is used as defense of its mining rights by the PCC in this case. However, the salt miners' union argues that the spring water reservoir is being polluted by poisonous water released from the mines.

7.6.3 Use of Article 184(3)

Mr. Munir Piracha, ASC for PCC argued that no action should to be taken against PCC under Article 184(3) of the Constitution of Pakistan (Tarar and JJ, 1994). Mr. Piracha said that the case does not fall into the category of cases of public importance because the petitioner has not given any evidence that shows a fundamental right of the people being violated by the actions of PCC.

7.7 M/s. A. Majeed & Co.'s Reply

In its reply to the salt miners' union, M/s. A. Majeed & Co. also denied that they were polluting the spring water. Like PCC, M/s. A. Majeed & Co. argued that the location of the natural spring as well its reservoir is such that pollution cannot be an issue (Tarar and JJ, 1994). The company also stated that it has invested heavily to ensure proper working of mines and that multiple Government bodies monitor the workers to ensure they are not violating any rules and regulations.

7.8 Court's Ruling

The court considered the statements made by all parties, the records produced during the trial as well as the background of the area under question to reach its decision.

7.8.1 Background

The petitioner and the 35,000 other workers they represent have been receiving water from the Mitha Pattan spring from around a century. Majority of the workers receiving water from the spring earn their livelihood from mining.

Starting from 1911, the water catchment area in question was protected against mining, however, the size of the catchment area shrank over time because of leases granted to miners. In 1981, the water catchment area, 545.09 acres in size, was declared a prohibited area for mining and evidence has been presented that this policy was strictly enforced.

7.8.2 Dangers of Mining in the Catchment Area

According to the investigation Committee, mining in the water catchment area could result in leakage and cracks in rocks and ravines, thus increasing the danger of contamination of the spring water. Mining operations surround the protected area. Fortunately, the area has been safe from a major disaster so far, but the increasing amount of mining also increases the chances of contamination.

7.8.3 Constitutional Basis for the Petition – Article 9

Regarding a constitutional base for the petition, the Constitution of Pakistan states in its Article 9 that no person will be deprived of life. According to the supreme court, here the term 'life' is to include more than just vegetative life or animal life (Tarar and JJ, 1994). In a hilly area where water is not easily accessible, the right to clean water is right to life itself.

7.8.4 Reference Case involving Article 9

To further explain the use of Article 9, the supreme court referenced the case of Shehla Zia and others v. the Water and Power Development Authority (WAPDA) (case: PLD 1994 SC 693).

One of the two judges hearing the present case, Justice Saleem Akhtar JJ, also presided over the above-mentioned case. He observed that the word 'life' in the Constitution does not carry a limited meaning (Tarar and JJ, 1994). Article 9 guarantees people their dignity as well as a right to 'life.' The court argued if a person does not have the bare necessities of life, such as unpolluted environment, will it be possible for them to have the dignity guaranteed under Article 9 of the Constitution?

The court further said that the petitioners are asking for the bare minimum. Water is a necessity for all life and pollution or contamination of water can be dangerous for human life. People facing a situation where water contamination is a threat are entitled to claim that their constitutional and fundamental rights are violated and the court act to protect their rights. The court agrees with the petitioners.

7.8.5 Enforcement of Fundamental Rights by the Supreme Court – Article 184 (3)

The next logical step for the supreme court was to investigate if the mining activity under question can affect the water supply. Article 184(3) of the constitution of Pakistan allows the court to investigate and record facts, appoint a commission, or employ any other legal and reasonable method to understand the issue at hand.

7.8.6 Supreme Court's Observation on Operation of Mine 27 A

The location of mine 27A is not a matter of dispute. It is a fact that the mine is within the area leased to the P.C.C, but 50 m from the boundary of the water catchment area. The plans of the site clearly show the mouth of the mine is on the boundary line of the catchment area.

Retaining Wall: The court argued that if the mine was not a threat to the water source, then why did the authorities order the P.C.C. to build a retaining wall in front of the mine? This requirement of a retaining wall is proof in itself that the location of the mine is a threat to the water source located in the restricted area.

Lease Deed: The standard lease granted to companies is mostly the same. P.C.C. did not submit its lease deed to the court, but M/s. A. Majeed & Co. did provide a deed. It is clear from clause (12) of the deed that no mining can be performed within 50 meters of the boundary of the water catchment area without written permission of the Licensing Authority. Since there is no evidence to prove that relevant authority gave a special permission to P.C.C. to mine in the prohibited area, P.C.C. has no right to carry its operations there.

Location of Reservoir: Mine 27 A is approximately one thousand yards downstream of the water reservoir that collects water from Mitha Patan spring. The reservoir is about 200ft from the stream's bed. P.C.C. contended that due to the distance of the reservoir from the mining area, pollution from mining could not be an issue.

In response to the location argument, the supreme court said that the argument does not take into consideration the existence of another reservoir which lies close to the mine. Built by the PMDC, this open reservoir is 300/400 yards from the mine's mouth, and it receives water from the large reservoir and distributes it to users via a pipeline.

7.8.7 Court's Directions for the Respondents

Considering the facts and arguments of the case, the court gave the following directions to the respondents:

- 1.) The mouth of mine 27 A be moved by PCC so that the stream and reservoir becomes safe from the contaminated water, debris, and carbonized material originating from the mine. The relocation of the mouth of the mine will be overlooked by a five-member commission.
- 2.) PMDC shall provide a second pipeline for transporting water from the large reservoir located upstream from the mine.
- 3.) PMDC shall further increase the capacity of the large reservoir and install a wall for the reservoir. PMDC shall equally share the cost of this wall with PCC.
- 4.) PCC as well as every other mining firm working close to the water catchment area shall satisfy the five-member commission that they have taken steps to stop pollution in the water catchment area.
- 5.) All authorities, including PMDC, that handle mining lease applications shall not: i) lease/permit/license any mining company to operate in the area restricted for mining before 1981 (the 545.09 acres of reserved area); ii) renew or extend without the Court's permission the leases/licenses of mining companies given in the Schedule attached to the ruling.

- 6.) The PCC and PMDC shall be responsible for funding the work of the five-member commission. Both PCC and PMDC shall initially provide Rs. 10,000 as funding.

Conclusion

Findings

The United Nations Environment Programme has been actively involved in the development of international environmental legislation. The UNEP has developed programs and organized global conventions to discuss environmental issues and to establish best practices as well as to create and to review environmental legislations and recommendations.

The 1972 Conference on the Human Environment and the 1992 Conference on Environment and Development have played the most prominent role in the development of international environmental law by the United Nations.

International environmental law can include international conventions, international customs, general laws accepted by civilized nations, and judicial decisions and teachings of qualified publicists. Implementation of international environmental law by developing countries at the national level has been slow due to lack of infrastructure and qualified personal.

In Pakistan environment-related cases are heard by green benches. These benches are present in all provinces of Pakistan. The highest judicial authority in Pakistan, the Supreme Court of Pakistan, has a history of deciding cases of environment pollution and environmental rights.

Recommendations

It is recommended that following the example of China, an initiative such as a hotline for people to report environmental issues be considered for Pakistan. Such initiatives highlight the environmental rights of people and provide them an opportunity to inform authorities of possible violations of their rights.

It is recommended that the UN continue to support developing countries with infrastructure development and training of personal to ensure proper implementation of international environmental law at the national and local levels.

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