INTERNATIONAL ARBITRATION IN TRANS-NATIONAL ENVIRONMENTAL DISPUTES

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ABSTRACT

Environmental law has produced a lot of literature, especially international environmental law. This paper is yet another drop in the ocean, and an attempt to throw light summarily on the judicial approach of tribunals as to environmental disputes. In this paper by discussing different cases I have made an attempt to highlight a timeline of how cases have grown, developed and discovered out of fragmented international law resources and made into coherent one by judges. It also provides a critical analysis of all this cases, the pros and cons of each case and their impact. Author has only touched upon major rulings, and most of them are landmark decisions.

INTRODUCTION

In the age of hi-tech industrialization and globalization, there are innumerable ways by which countries have been destroying the environment without pausing to think for a second about our earth's future, and this has lead to deteriorated natural resources worldwide. Globalization has to some extent made boundaries porous[1], and therefore deterioration in one country can immediately affect a neighboring country. Natural resources do not have man-made borders, and often we see major rivers, forests, mountain ranges are shared among several nations. Due to this reason, there are often environmental disputes among nations which transcend national boundaries and therefore cannot be solved in domestic court of either of the parties. Such disputes see people of different nationalities having competing claims, which also holds true for foreign MNCs which also many a times become aggrieved parties to such disputes. Handling such a dispute is a crucial balance between international politics, international relations and diplomacy. Keeping this in background,

[1] L. Shelley "Transnational organized crimes: a new authoritarianism", in Friman, R. and Andreas, P. (Eds), *Illicit Global Economy & State Power*, Rowman & Little Field Publishers, pp. 25-40 (1998)

international arbitration for environmental disputes, was the most obvious and preferred choice for nations. Since arbitration as a mode in itself is based on party autonomy, and consent of the parties, international arbitration for sensitive issues like environmental degradation has been the best bet so far. States while negotiating treaties have favored inclusion of arbitration clauses, either in form of provisions, protocols or annexure, which gives power to one of the state, to commence arbitration against the other, in case of breach of treaty.[2] Numerous cases have come up before PCA, ICJ, and numerous ad-hoc tribunals also, which have contributed immensely to the literature of international environmental law. Conventionally, there used to be a dispute between states, however, with large privatization in all fields, there are now disputes between corporations and state, which has also given birth to a newer form of dispute resolution which is international investment arbitration, which is nowadays increasingly used for solving environmental issues. International investment arbitration is relevant to environmental disputes in the following words, "Environment-related disputes by their nature involve a tension and, at times, a direct conflict between competing obligations of the State to, on one hand, promote foreign investment and, on the other hand, protect its population and territory from environmental harm while responsibly managing its natural resources. States face the challenge of reconciling these competing demands—a task made even more formidable by its international investment commitments." [3] In this paper, we focus on only international arbitration in general and the law laid down by arbitral tribunals like ICJ, ad-hoc etc.

ARBITRAL AWARDS IN ENVIRONMENTAL DISPUTES

History of environmental disputes in the context of international arbitration starts in 1893, with ***Pacific Fur Seal Arbitration***[4] which was a dispute between USA and UK, (even Canada, but it was still a colony of the British empire, so represented by UK) as to fishing of seals and delimitation of territorial waters.

Facts: USA in 1876 had purchased all territorial rights over Alaska, as well as fishing rights. American industry thrived on seal fishing in Alaskan region; however Canadians also started fishing in those regions, which led to tension between the two states. Even Japanese fishing and pelagic

[2] Phillipe Sands and Jacqueline Peel, "Principles of International Environmental law" Cambridge University Press, pp.169-170 (2012)
[3] Christina L. Beharry & Melinda E. Kurtizky, "Going Green: Managing the Environment Through International Investment Arbitration" American University International Law Journal, Volume 30 Issue 3, pp.387 2015
[4] Award Dated 15th August, 1893, 1 Moore's International Arbitration Awards 755.

hunting of fur seals started which lowered the number of seals significantly and affected monetarily the American fishing industry. In 1886, US captured three British Columbian ships which had ventured in territorial waters of Alaska, under the sovereignty of US, and having failed in diplomatic negotiations where UK pressed for release of those ships, US and UK agreed to submit to arbitration. The major environmental point which US argued was that protection of seals was an international duty, and killing of seals in water, is destroying the ecosystem of the water. One of the questions referred in arbitration was **"Has the United States any right, and, if so, what right, of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit?"** US claimed that as part of their right to self defense they can protect the territorial waters and conservation of fur seals is of utmost importance, and UK argued that waters of Bering Sea are open waters and fishing rights cannot be taken away on the ground of conservation beyond the 3 mile area, which is a natural resource open for all countries equally. Court decided in favor of UK, affirming freedom of high seas, and US cannot mandate preservation beyond 3 mile area, however fur seal need to be protected and some regulations should be brought on it. US law cannot be applied to other countries, with respect to high sea fishing.

Contribution to International Environmental law: After arbitration, there were a round of negotiations and ultimately it led to the **Interim Convention on Northern Pacific Seal Furs** wherein the US, UK, Japan, Russia and Canada were parties. The convention provided that scientific studies be undertaken to preserve the numbers of fur seals which would give maximum harvest for seal fleets in all the concerned countries. It also provided to study the relationship between fur seals and other marine animals, and does exploitation of any other marine creature by any country have an impact on the fur seal population. It further resulted into creation of Northern Pacific Fur Seals Commission, which can give recommendations for conservation. [5]

Critical Analysis: Different authors comment on this case differently, however, one of the most unique aspect is, that now the case is no longer applicable, in current fisheries law. The arbitral tribunal had favored fishing at high seas for all countries, and therefore no exclusive right was given to coastal countries like US or Russia beyond their territorial limit. However with modern equipments, over-exploitation by high-sea fishing affects the environment more than it did when the award was decided. Also coastal states now challenge this high-sea fishing concept, due to declining

[5] For further details see, Douglas M. Johnston, "The International law of Fisheries: A framework of policy oriented inquiries" Martinus Nijhoff Publishers, 1987, pp.268-270

marine environment, and even international efforts have been made to regulate the fishing activities, especially 1995 Fish Stock Agreement. As quoted in a research, though high sea fishing need not be limited, it definitely cannot be an absolute right which hampers the environment, and there is a need for self-regulating by countries by considering interests of other states. [6]

An important principle that emerged was that US law on preservation could not bind other countries, even though the intention as to conservation might be bonafide. Similar point has been held in environmental disputes, which shows a positive aspect being uncovered in consonance with principle of sovereignty of countries under international law. Author would like to diverge here a bit, and introduce certain cases of international trade. In ***Tuna/Dolphin***[7] case between US and Mexico, where US had put a trade embargo on Mexico on its export of Tuna fish caught in Pacific Ocean. **Though the case was settled out of court, but it did put a pertinent question for international community to answer.**

Facts: US had a domestic law called US Marine Mammal Protection Act which protected dolphins in particular, apart from prohibiting killing of other mammals. Dolphins are known to swim above schools of yellow tuna fish, which is a big export industry for Latin American countries to US. It often happens while fishing tunas, dolphins are caught in the net, and are killed in the process, unless they are freed. Exporting countries also need to satisfy the US authorities that they have protected dolphins in the process fishing, and if they are unable to prove, US can put an embargo on that country. Such embargo was put on Mexico, and Mexico approached GATT for a panel in 1991, the basic question was even though there was a serious environmental threat to dolphins, can one country apply its own environmental law to another state.

Ruling: GATT panel ruled even when the question is protect exhaustible resources, even then US cannot expect that there domestic laws are followed by other countries, and it runs counter the entire free trade phenomenon. Article XX of GATT which includes general exceptions as to free trade, was held inapplicable extra-territorially by US. *The Panel reasoned that contracting parties are free under the **GATT** to set their own environmental policies. If the Article XX exceptions were available for extra-jurisdictional measures, the Panel feared, a contracting party could establish trade measures*

[6] Monica Patricia Alfaro, "Do we need marine protected areas in high seas?" Available at http://skemman.is/stream/get/1946/16398/38363/1/monica_martinez-ritger%C3%B0.pdf;jsessionid=AF40EB91828A33F43FC2497D719CE3AD pp.20

[7] Available at https://www.wto.org/english/tratop_e/envir_e/edis04_e.htm (accessed on 30 July 2015)

based upon another party's different environmental policies and, in effect, infringe upon that second country's right to establish its own environmental programs.[8]

Critical Analysis: The case has raised the debate of free trade v. environment protection, which needs serious consideration, due to the fact that it will play a serious role in shaping international and domestic policies. Some countries had taken the GATT ruling too seriously , like Germany who claimed that a Denmark regulation of selling beer only refillable bottles was a restraint of trade, since many countries didn't produce beer in refillable bottles. Some argue that environmental laws have been suppressed due to this ruling, and if it is ever enforced, it will be tough for countries which are seriously conserving environment. It is a common practice and well-established principle in international law, that any treaty or convention needs to be implemented in a country by enacting a domestic law to that effect. Any environmental treaty which is then enacted into legislation, will be potential for litigation and arbitration by countries who suffer losses in trade. Enforcement of environmental laws will suffer a setback. 'There must be coexistence between environmental protection and free trade; economic prosperity cannot take precedence over the perpetuation of life-supporting ecosystems. At the risk of simplifying the issues, a country must be able to act unilaterally when progressive multilateral agreements are simply not viable.'[9] It is a crucial question as to can a country enforce its preservation and conservation laws extra-territorially and is other state bound by it or will sovereignty and free trade need priority while deciding such issues. However, in the author's personal opinion, though trade cannot be done without a thought to our natural resources, but extra-territorial application of domestic laws also will increase the ambit of domestic laws, covering any country which violates the environmental policy of a particular state, almost blurring the distinction between international instruments and domestic instruments. Further it will expand the scope of litigation and dispute resolution, since every country can rely on their domestic policy and put a disguised trade restriction on another country. It will also lead to the problem of increased enforcement costs, since every exporting country will need to keep the importing countries laws in mind, apply them strictly and also comply with their own laws, which will ultimately become onerous burden for exporters. The author further discusses extraterritorial application of US domestic statutes in the next case.

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[8] Thomas Skilton, "GATT and the Environment in Conflict: The Tuna-Dolphin Dispute and the Quest for an International Conservation Strategy," *Cornell International Law Journal*: Vol. 26: Iss. 2, Article 5 p.469 (1993)

[9] Carol J. Beyers, "The U.S./Mexico Tuna Embargo Dispute: a Case Study of the GATT and Environmental Progress", 16 Md. J. Int'l L. 229 (1992) p. 248

The second case, which the author will now discuss, is **Trail-Smelter Arbitration**[10], one of the most important cases, which shaped international environmental law.

Facts: The case concerned polluting the air around the Columbia River, which originated in Canada and ran across America, crossing the international boundary between two nations. On the northern side, in Canada, the river moved across a town called Trail, which had smelter, were zinc and other metal were processed and this led to a lot of metallic waste and effluents, which were thoughtlessly dumped into the river. When the smelter factory owned by a very powerful company, Canadian Pacific Rail road, had started business, it meant employment for locals of Trail, but with time, and with increase in profits, the local farms, rivers etc. around the town suffered deterioration in terms of quality of land, purity of water etc. South of the border, on the American side, was a town called Northport (State of Washington), which was also on the banks of the river. The smelter caused irreversible damage to air around the region also, which was the prime contentions of the case.

The initial litigation was brought by the local farmers of Trail area, who refused the smoke easement of the smelter company in favor of their lands being polluted. However with increase in emission of sulphur, which was 300-350 tons per day in 1930, the company erected stacks (structures) around the area, which would ensure the emissions are diffused in air. However, this resulted in sulphur travelling into the southern part, right into America, and in the State of Washington. Both the governments firstly jointly referred the matter to International Joint Commission, which awarded $3,50,000 indemnity to State of Washington, but since the measures which were recommended were not enforced properly, US referred the matter to arbitration.

Legal Points/Contribution to Environmental law: Arbitral Tribunal looked at international law on state responsibility, and US case laws which were on air pollution. Tribunal quoted as follows,

A. Professor Eagleton, "A state owes at all times a duty to protect other states against injurious acts of individuals from within its jurisdiction".
B. A Swiss case was cited wherein one Canton filed a case against another Canton, to improve the shooting facility in the latter Canton, since the aggrieved canton had difficulties due to it. It was said in this case that not too much precautions need to be taken by defendant canton,

[10] Full text of the award, Available at http://legal.un.org/riaa/cases/vol_III/1905-1982.pdf

and once the shooting facility was made safe, what is required to be seen is whether the plaintiff canton has suffered **any actual encroachment which might prejudice the natural use of territory and free movement of inhabitants.**

C. US cases relating to water pollution were relied upon, and analogy was applied to air pollution. The court came to the conclusion, **no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.**

D. Two principles originated from this award, namely, state has duty to prevent transboundary harm expressed in Latin maxim, *sic utere tuo ut alilenum non laedas* (one should use one's property so as not to injure another) and polluter pays principle was for the first time applied in this case, the state which pollutes has to pay compensation to other state.

This case has been so core to international law on environmental issues, since it is the only case where substantive law has been laid down, and so it forms part of customary law as well.[11]

Critical Analysis: It is rather unfortunate that though the dispute easily falls within the scope of international law, due to lack of any coherent literature on it, and no direct case in any international forum, US law were applied to the dispute, on the ground that laws in US are in line with international principles. There is a strong presumption against extra-territorial applicability of domestic law in environmental disputes[12] However, there is an exception to this which is the **effects doctrine** which focuses on whether the effect of any action has arisen in the state, even though the act is not, then the state where effects have been experienced can apply there law, just like US applied there domestic law to Canadian company, since the effects of pollution were felt there. However, even assuming that effects doctrine was applied herein, which it has not been mentioned in the award, the application of law of the aggrieved state is unfair, since the issue is international in nature. The terms of reference of arbitration in this dispute under Article IV reads as follows "The Tribunal shall apply the law and practice followed in dealing with cognate questions in the United States of America as well as international law…."[13]The clear preference to US laws is depicted, since the words "law of USA"

[11] Austin Parrish, "Trail Smelter Déjà vu: Extraterritoriality, International Environmental law and Search for Solutions to Canada-US Trans-boundary water pollution dispute" Indiana University Maurer School of Law pp/365, 2005

[12] ENVIRONMENTAL LAW INSTITUTE, STRENGTHENING U.S.-MEXICO TRANSBOUNDARY ENVIRONMENTAL ENFORCEMENT: LEGALSTRATEGIES FOR PREVENTING THE USE OF THE BORDER AS A SHIELD AGAINST LIABILITY , pp.37-40 (2002)

[13] *Supra* fn 7 p. 5

comes first and international law is seen as a secondary source of law to be considered. In my opinion, the **application US Case laws are not justified, and terms of arbitration are unfair.**

This case is a precursor to **Principle 21 of Stockholm Declaration** that sovereign states may not allow their territory to be used to cause harm to the environment of other States or the global commons.[14] In a famous ICJ judgment of *Corfu Channel (UK v. Albania)*[15], the principle laid down in Trail-Smelter case were used, and this has now become a strong precedent in international law. Both the cases discussed have been relating to pollution and its trans-national effects. But in environmental law, there are wider issues which need to be dealt with, which are not connected to pollution per se, and one such issue which has been bone of contention for many states is use of shared resources. As mentioned in introduction, natural resources by their very nature are shared between various states. It is often quoted by experts in this field, shared resources can easily fall prey to "tragedy of common" an economic concept which is related to notion of public property. Since resources are natural, and free for use to all those who share it, human tendency will be to use it to maximum use for one's own benefit, without having regard to use by others, which leads to fat depletion of the property in question. Natural resources just like public property are non-excludable, which means it is very difficult to exclude certain people from using it and is exhaustible, which means use by one person, will automatically diminish the use by others. [16] On this basis, **Lake Lanoux case**[17] was decided which was arbitration between France and Spain, as to use of waters of Lake Lanoux, which originated in France and flowed into Spanish Territory.

Facts: This lake is fed by French river Carol's streams, and this river then flows into Spanish territory at Puigcerda, and then meets River Ebro in Spain. The water of the lake was initially used by both the countries; however on September 21, 1950, Electricite de France applied to French Ministry for Industry for a scheme which diverted the water of the Lake back into River Carol, through a tunnel, just above Puigcerda Canal. French Government approved the scheme and stated that only the waters which were required for the use of Spanish users will be allowed to flow, and only that quantum will be returned. Spain opposed this scheme, their contention being that it violated Treaty of Bayonne,

[14] Tseming Yang, "Relationship Between Domestic and International Environmental Law" Santa Clara Law Digital Commons p. 8, 2013
[15] Decision 9 April 1949, ICJ Reports 1949, p.22
[16] For more see, Victor Ponce," Hardin's "Tragedy of Commons" Revisited or We are all in the same boat" Available at http://tragedy.sdsu.edu/ (accessed on 30 July 2015)
[17] France v. Spain, 16 November 1957, 24 I.LR 101;(1957) 12 R.I.A.A. 281; full text available http://www.ecolex.org/server2.php/libcat/docs/COU/Full/En/COU-143747E.pdf (accessed on 30 July,2015)

which marked the territories of France and Spain and also the Additional Act passed along with the treaty, which expressly provided for sharing of waters between two countries. Article 11 of the Treaty, specifically provided that in case there is any construction work on the area of boundary on any water body, and it is likely to decrease the volume of water or flow into adjoining territory then the other state's administrative authority should be sent a prior notice. Spanish side highlighted a very important principle of co-existence of shared resources, that without the consent of co-riparians, no substantial change can be brought by other riparians. French argued that consent of other state is not required to carry out works in its own territory, and they assured that there scheme will guarantee that Spanish interests are not compromised.

Decision/Legal Points: The approach taken by the Tribunal is more participatory in nature, which focused states resolving their disputes by negotiations, and mutual concessions and well-deliberated agreements. The exact passage has been quoted from the award of the tribunal which is as follows, "*France must succeed. "In carrying out, without previous agreement between the two Governments, works for the utilization of the waters of Lake Lanoux under the conditions set forth in the [Electricité de France] scheme . . . the French Government would not be committing a breach of the provisions of the Treaty of Bayonne of May 26, 1866, and the Additional Act of the same date." Nor did the French action contravenes any rule of international law. These two instruments comprised inroads on the principle of territorial sovereignty, which must yield to such and other limitations of international law. The conflicting interests aroused by the industrial use of international rivers must be reconciled by mutual concessions embodied in comprehensive agreements. States have a duty to seek to enter into such agreements."*[18] It was further held that there cannot be a custom or general principle of law, that states may utilize hydraulic power of international watercourses with the consent of all interested states. The Treaties only lay down a framework of territorial division of waters, and does not talk about entering into a prior agreement by either of the state before starting any work, nor talks of consent. The **most important finding** was on international negotiations between states in working co-operatively with each other. The tribunal cites as follows, *"international practice prefers to resort to less extreme solutions by confining itself to obliging the States to seek, by preliminary negotiations, terms for an agreement, without subordinating the exercise of their competences to the conclusion of such an agreement. Thus, one speaks, although often inaccurately, of the obligation of negotiating an agreement".*[19]

[18] *Ibid* p.15
[19] *Ibid* p. 23

Contribution to International Environmental Law: This case helped in building up a consensus on how shared resources should be used, and it helped in developing the international environmental law jurisprudence, and now principle to negotiate forms part of all international relations.[20] The line of thought taken by the tribunal is quite realistic and it lays down an advice for countries for negotiation to turn out fruitful. Though they can only be classified as obiter dictum, but they are useful in guiding nations, and it is expressed in following terms, *" in order for negotiations to proceed in favorable climate, the parties must consent to suspend the full exercise of their rights during the negotiations."*[21] This is itself lays down a strong environmental law principle that for cases of natural resources there can never be an absolute unilateral right, but always consensus among interested parties. **All the principles laid down in this case, have served as a strong base for United Nations Convention on Watercourses, which have included principles of technological assessments, negotiations etc. in Article 12, and Article 5-7.** [22]

A comparatively recent case of Gabčíkovo–Nagymaros Dams[23] between Slovakia and Hungary, is an authoritative decision by ICJ, which raised many points on international law, and was not strictly related to any pollution dispute.

Facts: In 1977, Hungary and Czechoslovakia entered into a treaty for construction of Gabčíkovo–Nagymaros Barrage system on River Danube, whose main purposes were improvement of irrigation, navigation and other economic purposes. In 1993, with division of Czechoslovakia, the new state formed which was Slovakia, inherited the duty to continue the construction of the dam. However the situation changed drastically in Hungary, since the environmental impact of the project was seen to harm the quality of water of the river. In 1989, Hungary stopped the work of the dam on its side, owing to domestic pressure. For Czechoslovakia it was a source of tension with its neighboring state, since no amount of negotiation made Hungary start the work again. In the end, Czechoslovakia started the work on it's on by what is called as "Variant C" which allowed unilateral division of water to Czech side. This made Hungary repudiate the 1977 treaty, and ultimately the matter went to the

[20] Federal Republic of Germany v. Federal republic of Denmark and Federal Republic of Germany v. Netherlands 1969 ICJ 2,47 (1969)
[21] *Supra fn 14* p. 28
[22] For more see, Attila Tanzi, "The Economic Commission for Europe Water Convention and United Nations Convention on Watercourses, An analysis of their harmonized contribution to international water law" Available at http://www.unece.org/fileadmin/DAM/env/water/publications/WAT_Comparing_two_UN_Conventions/ece_mp.wat_402_eng_web.pdf (accessed on 30 July 2015)
[23] (1997) ICJ Reports 3, 27, 29-31 (September 25)

doorsteps of ICJ. One of the issue, to which Hungary raised the defense of environmental degradation was, could Hungary repudiate the 1997 treaty unilaterally , even though it was also partially responsible for the works of the dam. For the first time, a country argued that environmental impact on the wildlife around the river and quality of the river was a "state of necessity" and this ecological reason was enough for a country to repudiate or terminate the treaty. Now focusing on the concept of "state of necessity", it is given under Article 25 of ILC Draft on State Responsibility, which in crux states that a state cannot invoke state of necessity for exempting itself from any wrongful unless the state of necessity is the only way of safeguarding an essential interest against a grave and imminent peril and does not impair an essential interest of state towards which the international obligation is owed, or international community at large.[24] The plain reading of the text might give a notion that state of necessity cannot be invoked since it impairs the interest toward which international obligation was owed, herein Hungary owed to Czechoslovakia. Further the words used between these two conditions of Article 25(a) an (b) is 'and' which shows both conditions need to be fulfilled together.

Held/ Legal Points: Court was convinced that ecological balance is necessary for our world, and ecological degradation does constitute a "state of necessity". Slovakia argued on different studies conducted and stated that ecological problems could occur, but Hungary was taking a very pessimistic attitude. Further ecological reasons do not constitute a ground for terminating a treaty under Vienna Convention of Law of treaties. Court ruled that conduct of Hungary has been such that the construction of dam in question which is described by the treaty as "single and indivisible work" was rendered impossible. They do alleviate ecological reasons to the level of state of necessity but in the particular facts of this case, Hungary does not fulfill the essentials of state of necessity. Court cited the Commentary of ILC, in order to give correct interpretation to the words "state of necessity" which is as follows, "the situation of a State whose sole means of safeguarding an essential interest threatened by a grave and imminent peril is to adopt
conduct not in conformity with what is required of it by an international obligation to another State"[25]. Also state of necessity is a ground for excluding wrongful act by a state and this has been a rule of customary international law.

- Ecological balance is an essential interest within the terms of Article 33 of ILC Draft in state responsibility.

[24] For full text of the Draft see, Draft Articles on Responsibility of state for internationally wrongful acts, adopted by ILC in 52nd Session, Available at http://www.refworld.org/pdfid/3ddb8f804.pdf (accessed 3rd August 2015)
[25] *Yearbook of the International Laiv Commission*, 1980, Vol. II, Part 2, p. 34, para 1

- In Legality of Threat or Use of Nuclear Weapons Case[26] decided by ICJ it was held as follows with respect to environmental balance, “"the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."
- In this case, Hungary was “uncertain” about the ecological impact due to which it conducted different scientific studies, however the word used in Article 33 is “peril” and it connotes actual peril at the relevant time and not any apprehension or future uncertainty. “Extremely grave and imminent” meant threat to the interest at the actual time.
- Main decision: **The Court concludes from the foregoing that, with respect to both Nagymaros and GabCikovo, the perils invoked by Hungary, without prejudging their possible gravity, were not sufficiently established in 1989, nor were they "imminent"; and that Hungary had available to it at that time means of responding to these perceived perils other than the suspension and abandonment of works with which it had been entrusted.**[27] Therefore termination of treaty was **wrongful and could not be done by Hungary.**

Critical Analysis: This judgment in the view of the author restricts the use of international environmental law as weapon to be used by the state to the prejudice of another state. It lays down an important point on the issue of an ecological preservation and balance is an essential interest of state, and it has bolstered the environmental issues of the state like never before. In a separate judgment, Judge Weeramantry, stated that right to development and right to environmental protection are part and parcel of international law and can conflict each other and role of sustainable development is to reconcile them.[28] This shows the correct position of law, and the idea of sustainable development has been highlighted in the judgment at various places, which gives a new life to this concept and a legal backing for future case. In that way, the judgment is a strong precedent to argue in favor of the environmental protection through sustainable development.

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[26] *I. C. J. Reports 1996*, pp. 241 -242, para.29

[27] Text of the Judgment at para 57 Available at http://www.icj-cij.org/docket/files/92/7375.pdf (accessed on 3rd August 2015)

[28] Duncan French, Matthew Saul, Nigel White, “International law and Dispute Settlement: New Problems and Techniques” Bloomsbury Publication 2010 p. 41

CONCLUSION

In the end, the author would like to give due recognition to the contribution international law has made to environmental law, and they have worked hand in hand as we can see from these cases. The development of international environmental law and arbitration disputes has only been chalked out with respect to the last century, which created the fundamentals of international environmental law. Author has given a panoramic view of all the relevant cases, and an analysis to give a complete picture of the type of disputes that arise and how environmental law is applied at an international level. It becomes more interesting since there is no specific act on transboundary environmental issues, and a number of conventions need to be seen to resolve disputes.