

State Right over Natural Resources and Environmental Law: Striking the Balance for Sustainable Development

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Abstract Under international economic law, states have right to exploit their natural resources without external interference. However, Stockholm Declaration reconciled this right with the need to protect environment. This spirit was endorsed by the Charter of Economic Rights and Duties of States, the World Charter for Nature and the United Nations Convention on the Law of the Sea, inter alia, to maintain the momentum within international environmental law to exploit natural resources in sustainable manner. Sustainable exploitation of natural resources and effective implementation of environmental law can contribute to sustainable development. Conversely, states tend to overexploit their natural resources by disregarding environmental principles thereby impeding sustainable development. Therefore, in exploitation of their natural resources, states should consider environmental principles whose failure thwarts sustainable development. This paper suggest that states should exploit their natural resources by effectively implementing international environmental law for effective sustainable development.

1 INTRODUCTION

Economy of a country depends upon various factors including, but not limited to, natural resources. Exploitation of natural resources is mainly regulated by both economic and environmental law. Domestically, economic law regulates economic relations between the government, its economic administrative agencies and economic organizations and citizens (Mbembe, 2015). At planetary level, it encompasses the conduct of sovereign states in international economic relations and the conduct of private parties involved in cross-border economic and business transactions (Legal Information Institute, n.d.).

On the other hand, international environmental law is a body of international law concerned with protecting the environment through bilateral and multilateral international agreements (Hyder, n.d.). International environmental law regulates the behaviour of states and international organizations with respect to the environment (Legal Information Institute, n.d.).

States have right to exploit their natural wealth and resources in the interest of their national development (Permanent Sovereignty over Natural

Resources, 1962). Nevertheless, the right of states to exploit their natural resources was reconciled with the need for environmental protection notwithstanding the interest of national development (Stockholm Declaration, 1972). The spirit of Stockholm Declaration was endorsed to maintain the momentum within international environmental law to limit the right to exploit natural resources (The Charter of Economic Rights and Duties of States 1974, article 30). This research assesses the right of states to exploit their natural resources under international laws pertaining to environment and sustainable development and the challenges of implementing environmental law.

2 RIGHT OF EXPLOITATION OF NATURAL RESOURCES VIS À VIS ENVIRONMENTAL LAW

The right of states to exploit and enjoy their natural resources without interference is in light with right of state to economic development (Declaration on Right to Development 1986, article 1). However, the awareness of the needful environmental protection has prompted the need for cooperation between

economic and environment laws over natural resources as evidenced by environmental instruments which restrict over-exploitation.

It is a responsibility for all states to preserve and enhance the environment for the present and future generations (the Charter of Economic Rights and Duties of States, article 30). The activities within their jurisdiction must not cause damage to the environment of other States as reflected in principle of "Sic utere tuo ut Alienum non Laedas" i.e. 'Use your own property in such a way that it does not harm others' (Collins Dictionary of Law, 2006). Furthermore, states should endeavour to conserve their natural resources as contemplated in Stockholm Declaration principle 2.

The need to conserve natural resources also figured prominently in 1982 with the urgency to maintain stability and quality of nature and to conserve natural resources (World Charter for Nature 1982, preamble). In the same year, the Law of the Sea recognized right of states to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment (UN Convention on the Law of the Sea 1982, article 193). Obviously, from 1980s the idea of right of states to freely dispose of their wealth and natural resources was subject to the concepts of: the preservation of the environment; conservation of natural resources and the sustainable use and development of such resources.

The popularized phrase 'sustainable development' embodied both states' right to economic development and their obligation to pay particular attention to environmental degradation (Brundtland Commission Report, 1987). This phrase was coined to express the balance needed between the right of states to exploit their natural resources with duty to preserve the environment. It denotes a 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (UN Commission on Sustainable Development, 2007, P.1).

Unlike the Stockholm Conference which was on the human environment, the Rio Conference considered both environment and development (Rio Declaration 1992, principle 1). In principle 2, it sought to harmonize the right of states to exploit their own natural resources with duty to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction as discussed earlier under the principle of 'Sic utere tuo ut Alienum non Laedas'.

The UN Convention on Biological Diversity did not lag behind. It reaffirmed the sovereign rights of states over their biological resources but stressed that states must conserve their biological diversity and use their biological resources in sustainable manner according to their particular conditions and capabilities (UN Convention on Biological Diversity, 1992, article 6).

3 IMPLEMENTATION OF ENVIRONMENTAL LAW FOR SUSTAINABLE DEVELOPMENT

Sustainable development is renowned phrase that bridged economic right of states over their natural resources and environmental law. It holds that, the development must meet the present needs without compromising future generations to meet their own needs (UN Commission on Sustainable Development, 2007). The rationale of sustainable development is equated with the principle of "intergenerational equity" whereby every generation holds the earth in common with members of the present generation and with other generations, past and future and there must be fairness among generations in the use and conservation of the environment and its natural resources (Oxford Public International Law, n.d.).

It is safe to submit that economic development that undermines environment is not sustainable development. Thus, sustainable development rests on commitment to equity with future generations with responsibility to "protect and improve" the environment for both present and future generations (Weiss, n.d.)

Rio Declaration incorporated sustainable development dimension into international economic law issues and highlighted the importance of international economic law principles for the effective operation of the rules of international environmental law (Rio Declaration, Principle 12). Although sustainable development has gained remarkable impetus in harmonizing right of exploitation of natural resources with environmental protection, there are still challenges equated with lack of fair and equitable implementation of environmental law

4 CHALLENGES OF IMPLEMENTATION OF ENVIRONMENTAL LAW

The ubiquity of environmental laws in most countries, if not all, does not imply that they are adequately implemented. Despite tremendous development of environmental law particularly at planetary level, some environmental instruments are not legally binding. Thus, this makes environmental law less implemented. Furthermore, national administrations, especially in developing economies, lack the capacity to effectively implement regulations, policies, measures taken to meet obligations towards environment (Rose, 2011).

The protection of some environmental items is technical. There is lack of competency, expertise and equipment required to ensure compliance with environmental obligations. In addition to that, some of the measures taken involve costs and require ability and willingness to invest resources to facilitate its implementation (Nicholas, 2006). Rose (2011) put that 'Environmental treaties often articulate specific obligations that are negotiated without a clear plan for their national implementation. According to Rose, the difficulty of making concrete assessments of the financial, human, technical and social requirements of implementation is another challenge.

Turamwishimiye (2014) highlighted the operational, procedural and technical problems in the prosecution of environmental crimes. She added that the lack of the required quality; technical knowledge and financial resources constitutes obstacle in fighting against environmental crimes. It was also argued that lack of political will in implementation of policies, treaties and laws on environmental conservation thwarts them to materialize (Mwinzi, 2017).

Moreover, since the Rio declaration refers to national and international law in matters concerning environmental liability and compensation, states prefer to establish private law regimes which focus on private actors' liability, while excluding consideration of states' accountability (Handl, n.d.). Therefore, this room for states to cherry pick between international and national law impedes effective implementation.

5 CONCLUSION

Although state have economic right to exploit their natural resources, environmental related laws restrict

this right for the sake of sustainable development. Environmental law principles such as sustainable development, inter alia, prohibit exploitation of natural resources which undermines sustainable development. It is argued that economic development, social development and environmental protection are "interdependent and mutually reinforcing pillars" as three components of sustainable development (Johannesburg Plan of Action, para.5).

Despite its incontrovertible importance in sustainable development, environmental law is not effectively implemented. States pay much attention at exploitation of their natural resources at the detriment of environment. Countries, especially developing countries, tend to concentrate on economic development by exploiting their natural resources but tend to ignore environmental rules.

This paper suggests that environmental dimension should be integrated into the poverty reduction strategy. As enshrined in article 3 and 4 of the United Nations Framework Convention on Climate Change, states should cooperate for better scientific understanding of the problems. Moreover, state should share knowledge and technologies to achieve the sustainability by implementing principle of international economic and environment law (Rio Declaration 1992, Principle 12).

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