

International aspect of Corporate Social Responsibility in Trans-Boundary Pollution

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Abstract

In this era of globalization, the world has indeed shrunk, it is more and more apparent that pollution respects no boundaries and no borders. Corporate social responsibility and prevention of cross border pollution is a very emergent issue. The increase in the power of environmental groups, the ease of cross border information flow, and the rising concern of the public with regards to global impact of environmental issues are motivating factors resulting in the need to undermine the lacuna that exists in regulating the transboundary pollution. This paper aims to present the status of the transboundary pollution and seeks to establish and quantify the liability of the corporations in such matters. The prime focus of the paper is on the public international law that puts a mandate on the parent company to indemnify the loss caused by them. The paper analyses the International regime of environmental law and highlights the principle under which the parent company becomes liable. The paper concludes with certain sets of recommendation that can be incorporated to effectively deal with such issues.

Keywords:

Transboundary pollution, CSR, Polluters pay principle, Strict liability, Recommendations.

OBJECTIVE OF THE STUDY

- To study the liability of the corporation and the nation (joint and severe) in matters pertaining to Transboundary pollution.
- To suggest reforms in the International Law regime so that problems pertaining to TNC and Trans boundary pollution can be effectively dealt.

RESEARCH METHODOLOGY

- The methodology that has been followed is a reform oriented one, belongs to the genre of doctrinal research.

REVIEW OF THE LITERATURE

It is an undisputed fact that the term corporate social responsibility is nowhere defined in a perfect manner in any of the lexicons. Few people tried propounding a complete definition however, none succeeded. Till date such a definition has not been coined this clearly depicts every

dimension of this Term. **McWilliams & Siegel** (2001)¹ define CSR as "actions that appear to further some social good, beyond the interests of the firm and that which is required by law²" and similarly **Carroll's** (1991)³ tried propounding a model of 'Pyramid of Corporate Social Responsibility'⁴ taking philanthropic requirements as grounds. The term is often used synonymously for other terms such as Corporate Citizenship and is also linked to the concept of Triple Bottom Line Reporting⁵ (TBL), which is used as a framework for measuring an organisation's performance against economic, social and environmental parameters. The rationale for CSR has been articulated in a number of ways. In essence it is about building sustainable businesses, which need healthy economies, markets and communities⁶. Corporate social responsibility (CSR) has variously been described as a 'motherhood issue' (**Ryan 2002, p. 302**)⁷ 'the hot business issue of the noughties' (**Blyth 2005, p. 30**)⁸ and 'the talk of the town in corporate circles these days'

¹ Abigail McWilliams, Donald Siegel, The Academy of Management Review, Vol. 26, No.1 (Jan., 2001), Academy of management

² Supra fn 3

³ A.B. Carroll, "In Search of the Moral Manager," Business Horizons, March-April 1987, pp. 7-15

⁴ A.B. Carroll, . A Three-Dimensional Conceptual Model of Corporate Social Performance,'Academy of Management Review, 4, 4 (1979): 497-505

⁵ K. Davis, "Can Business Afford to Ignore its Social Responsibilities?" California Management Review. 2. 3 (1960): 70-76

⁶ Sullivan, N.; R. Schiafo (2005). Talking Green, Acting Dirty (Op-Ed). New York Times, June 12, 2005

⁷ Shalini S., Pawan Kumar, Taneja and Rajen K. Gupta, Researches in Corporate Social Responsibility: A Review of Shifting Focus, Paradigms, and Methodologies, journal of Business Ethics

⁸ Supra fn 9

(**Mees & Bonham 2004**)⁹. There seems to be an infinite number of definitions of CSR, ranging from the simplistic to the complex, and a range of associated terms and ideas (some used interchangeably), including 'corporate sustainability, corporate citizenship, corporate social investment, the triple bottom line, socially responsible investment, business sustainability and corporate governance' (Prime Minister's Community Business Partnership). It has been suggested that 'some...researchers...distort the definition of corporate social responsibility or performance so much that the concept becomes morally vacuous, conceptually meaningless, and utterly unrecognizable' (**Orlitzky 2005**)¹⁰; or CSR may be regarded as 'the panacea which will solve the global poverty gap, social exclusion and environmental degradation' (**Van Marrewijk 2003**)¹¹.

According to popular belief there are three key drivers for CSR, they are:

Enlightened self-interest - creating a synergy of ethics, a cohesive society and a sustainable global economy where markets, labour and communities are able to function well together.

Social investment - contributing to physical infrastructure and social capital is

⁹ Mees Adine & Bonham Jamie (2004), Canadian HR Reporter, Vol 17(7)

¹⁰ Kunal Basu, Guido Palazzo, Corporate Social Responsibility: A Process Model of Sensemaking, The Academy of Management Review ARCHIVE, vol. 33, Academy of Management, Dec 2007

¹¹ Marcel Van Marrewijk, Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion, Journal of Business Ethics 44: 95-105, 2003, Kluwer Academic Publisher, Netherlands

increasingly seen as a necessary part of doing business.

Transparency and trust - business has low ratings of trust in public perception. There is increasing expectation that companies will be more open, more accountable and be prepared to report publicly on their performance in social and environmental arenas. Increased public expectations of business - globally companies are expected to do more than merely provide jobs and contribute to the economy through taxes and employment¹².

INTRODUCTION

History is the sole witness to the phenomenon of shift in priorities in Business. There was a sudden lateral shift, wherein the focus drastically shifted from profit maximization to welfare of the society. This in terms of various management Gurus was the era of 'Corporate Social Responsibility.' CSR can be defined as 'bringing corporate behaviour up to a level where it is congruent with the prevailing social norms, values, and expectations of performance.

The Conventional rule of market says that the prime objective of Business is to do Business; i.e. profit maximisation at any cost. Before the last decade the world of business flourished around the globe with only a single responsibility on their shoulder- "responsibility" make money and increase shareholder value. In other words, corporate financial responsibility has been the sole bottom line driving force.

¹² Arcot, Sridhar, Bruno, Valentina and Antoine Faure-Grimaud, "Corporate Governance in the U.K.: is the comply-or-explain working?" (December 2005)

However, with the break of the next decade the companies started flirting with a new concept, a movement defining broader corporate responsibilities— for the environment, for domestic communities, for working conditions, and for ethical practices—has gathered momentum and taken hold. This new driving force is known as corporate social responsibility (CSR). As described by Zynia L. Rionda, CSR is the "triple bottom line"—the totality of the corporation's financial, social, and environmental performance in conducting its business¹³.

The term CSR has not been defined in a proper manner covering all its dimensions however there have been several sincere attempts for the same. Few defined it as 'An obligation, beyond that required by the law and economics, for a firm to pursue long term goals that are good for society', others called it a mode to attain equilibrium between the economic profit and societal obligations¹⁴. The term "corporate social responsibility" came into existence in the late 1960s and early 1970s when several multinational corporations coined the term 'stakeholder', pointing those on whom an organization's conduct have an impact. One of the greatest challenges that man-kind actually faces is to ensure sustainable, just and balanced development. CSR in its wider scope proves to be an effective tool for the purpose¹⁵.

¹³ D Wood, 'Corporate Social Performance Revisited' (1991) 16(4) The Academy of Management Review

¹⁴ Friedman, Milton (1970-09-13). "The Social Responsibility of Business is to Increase its Profits". The New York Times Magazine

¹⁵ Catalyst Consortium (2002). "What is Corporate Social Responsibility?"

CSR, is stretched in four dimensions- Economic, Legal, Ethical and voluntary /philanthropic. The economic obligations pin points to the target of profit maximization¹⁶. The legal responsibility means complying to the demarcation of societal rights and avoiding societal wrong. The Third and the fourth dimensions are fundamentally overlapping. They include promotion of human welfare and acting in a manner which is fair and just.

Corporate social responsibility not only benefits the society but also benefits the firm. It can be seen as a long term investment. Complying to the facet of CSR, a company gathers a good reputation and enhances its intangible assets such as goodwill. This further gives them a positive press coverage and enhances their recruitment cycle as well. It further knits an effective bond between the local authorities and the firm owners which directly helps in functioning such as distribution, promotion of goods etc¹⁷. CSR, improves the internal work environment too. According to Maslow's Theory, Motivation to do good is one of the sine quo non in the business cycle. CSR serves the purpose rightfully. Therefore CSR should be perceived not only as tool for social benefit but as a long term investment that pays off without the involvement of risk.

This paper seeks to highlight the liability of a company in Transboundary pollution. It plays with the nuts and bolts of the

technicalities involved and finally suggests what can be done to solve out the current issue.

CORPORATE SOCIAL RESPONSIBILITY VIS A VIS ENVIRONMENT

THE WAKE UP CALL

The preceding century has witnessed an unmanageable boost in population, placing a tremendous burden on the available natural resources. Mother nature has offered all she had, the earth itself is dog-eared due to disproportionate excessive cultivation, use of harsh chemicals and pesticides and excessive use of ground water. Water resources are badly polluted and discharge of toxic fumes from industry and vehicles has dispossessed us of uncontaminated air. Industrialisation and a growing consumer economy have led to the creation of huge megapolises with their problems of undisposed garbage and uncontrolled sewage. The alarming rate at which the ordeals are increasing, the day is not far when not only India but the whole world would get converted into a desert. The non-biodegradable plastic bag we openly dump, to the fumes generated by our luxurious cars all are unswerving invitation to our most dreadful nightmare. One can observe this destruction in every field. The rapid melting of ice caps, polluted water bodies, epidemics arising due to that unfit water and air are nothing but a 'wake up' call. A notice that the nature would not remain the way it is for long. And for the very first time, we Indians cannot put it as a burden on the shoulders of government as it is not the government who is solely liable for the deteriorating condition, it is also the

¹⁶ Pitts, C. (ed.), M. Kerr, R. Janda, & C. Pitts (2009) Corporate Social Responsibility: A Legal Analysis (Toronto: LexisNexis)

¹⁷ Visser, W., D. Matten, M. Pohl, Nick Tolhurst (eds.) (2008). The A to Z of Corporate Social Responsibility. Wiley. ISBN 978-0-470-72395-1.

common mass who is to be blamed. A final call, if we do not adhere to the principles what is taught to us by the nature, we would face the most antagonistic face of nature; Something which would be synonymous to destruction.

At such a time, the Corporations must understand their responsibility and must not evade the liability that vests on them due to the pollution by their manufacturing or production units.

KEY ISSUES THAT NEEDS TO BE ADDRESSED

- Contribution to greenhouse gas emissions through energy use and other parts of your process
- Use of raw materials, both non renewable resources which by definition are not sustainable in the long term, and as importantly renewable resources which are produced in a fashion which is not currently sustainable.
- Potential for environmental accidents - releases of pollutants into air, water or land.

LIABILITY UNDER INTERNATIONAL LAW FOR POLLUTION

CUSTOMARY INTERNATIONAL LAW

An internationally wrongful act is committed by a State only when a conduct consisting of an action or omission is

attributable to that State¹⁸ under international law and that conduct constitutes a breach of an international obligation of that State. In accordance with the principle of *sic utero tuo, ut alienum non laedas* or , principle of good neighbourliness¹⁹, it is a well established custom of international environmental law that no state has the right to use or permit the use of its territory in such a manner as to cause injury to the territory of another or the properties or person therein Every state is thus under an obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States²⁰; and to ensure that activities within their jurisdiction²¹ and control respect the environment of other states or of areas beyond national control.

UN charter doesn't expressly address environmental issues, but Article 74 of the charter reflects the agreement of the UN members that 'their policy in their

¹⁸ Art. 2, I.L.C. Draft Articles on Responsibility of States for Internationally Wrongful Acts, Report of the 53rd Sess., I.L.C. (2001), G.A.O.R. 56th Sess., Supp. 10. [Hereinafter I.L.C Draft Articles on State Responsibility]; Bodansky & Crook, Introduction and Overview, 96 AJIL 773 (2002); Crawford, Revising the Draft Articles on State Responsibility, 10 Eur.J.Int'l.L. 435 (1999); Allott, State Responsibility and the Unmaking of International Law, 29 Harv.Int'l.L.J. 1 (1988); Combacau & Alland, "Primary" and "Secondary" Rules in the Law of State Responsibility: Categorizing International Obligations, 16 Neth.Y.B.Int'l.L. 81 (1985).

¹⁹ Supra note 2

²⁰ Corfu Channel Case, (U.K. v. Alb.), 1949 I.C.J., 21; Lac Lanoux Arbitration (Fr v. Spain)²⁴ I.L.R (1957) [Hereinafter Lac Lanoux Arbitration].

²¹ Gabcikovo-Nagymoros Project, 1997 I.C.J. at 89.

metropolitan areas must be based on the general principle of good neighbourliness' and must take in account of the 'interest and well being of the rest of the world, in social economic and commercial matters. The case of *Australia v. France*²² pondered well on the aforementioned premises.

In the case of *Lac Lanoux Arbitration*²³, the obligation that is casted on the countries was discussed at length. The dictum in that judgement clarified the proposition that no country can utilise their resource in a manner that would grossly disrupt the environmental framework of another country, and the same dictum was upheld in the *Nauru Case*²⁴ and the *Nuclear test case*²⁵.

This obligation underpins the concept of sustainable development and has been sanctified by wide state practice, and is so recognized in various international instruments and has further been reaffirmed in very many judicial decisions²⁶. The *Asylum case* upheld that

²² (1974) ICJ Reports 253 at 389

²³ *France v. Spain* 24 L.L.R. (1957), Supra note 4

²⁴ Case concerning Certain Phosphate lands in Nauru (*Nauru v. Australia*) (1992) ICJ Reports 240 at 244

²⁵ New Zealand Request, para 98, also CR/95/20, 10-12; and CR/95/20, 91, Also year book of International Environmental Law 531 at 533 (1995); and P. Sands, 'Pleadings and the pursuit of International Law: Nuclear Tests II (*New Zealand v. France*)', in A. Anghie and G. Sturgess (eds.), *legal visions of the 21st century: Essays in Honour of judge Weeramantry* (1998), 601

²⁶ *Trail Smelter*, ; *Lac Lanoux* ; *Handelskwekerij G.J. Bier B.V. v. Mines de Potasse d'Alsace S.A.*, 1976 E.C.R. 1735 (Neth.); *Case Concerning the Barcelona Traction, Light and Power Company Limited, (Belg. v. Spain)*, 1970 I.C.J. 3, 6 (Feb. 5); *Legality of the Threat or Use of Nuclear Weapons*,

a practice that has been accepted uniformly as a practice attains the status of customary law in the International regime and the countries have an implied obligation not to act grossly in contravention to the same. The duty to prevent transboundary harm has even attained the status of customary international law relating to environment.

It is the primary duty of the states to try to prevent harmful activities within their States and as far as the obligation to prevent is concerned there is no doubt that it is conditioned by due diligence²⁷. It is well established that the obligation of a State to prevent transboundary harm is one of due diligence or best effort obligation which requires all States to have taken all reasonable or necessary measures to prevent a given event from occurring.

Due diligence is the standard basis for environmental protection; and is also expounded in the widely supported ILC Draft Articles. In fact, the obligation to observe due diligence in preventing pollution is absolute, and for the breach, the states are liable irrespective of any fault. The *Alabama Arbitration* and the *Geneva Arbitration* are the governing precedents in this regard wherein the court held that every country is under an obligation to make domestic legislations so as to exercise due diligence in matters that can affect the globe at large.

CONVENTIONAL INTERNATIONAL LAW

Advisory Opinion, 1996 I.C.J. 226 (8th July); *Gabčíkovo-Nagymaros Project case*, (Hung. v. Slov.) 1997 I.C.J. 7 (Sept. 25).

²⁷ *Trail Smelter*, Supra note 4

The Convention on Biological Diversity (Hereinafter, CBD) is an international legally binding treaty. The Convention has three main goals: conservation of biological diversity (or biodiversity); sustainable use of its components; and fair and equitable sharing of benefits arising from genetic resources²⁸

Primarily its objective is to develop national strategies for the conservation and sustainable use of biological diversity. It is often seen as the key document regarding sustainable development²⁹.

Ramsar Convention casts a mandatory obligation on the parties to abide by the objectives of the Convention i.e. to ensure their conservation of wetlands and their wise use. Under the Convention there is a general obligation for the Contracting Parties to include wetland conservation considerations in their national land-use planning³⁰. The parties who have ratified the aforementioned convention are bound to encourage international cooperation³¹. Article 5 of the Convention calls upon Contracting Parties to consult with one another in the case of shared wetlands or water systems³². Individual action by States may be insufficient for the

conservation and management of wetlands because of various reasons³³.

Even if a country has not ratified a treaty it must be noted that a signature constitutes the first step to participation in the convention and it would express and proclaim the eventual attitude of the signatory state. Thus, upon signature of a treaty by a State, the international community is entitled to rely on a bona fide belief or expectation that the provisions of the same will be complied through ratification. Therefore state cannot take the plea of non ratification if they are responsible for trans boundary pollution.

TRANSBOUNDARY POLLUTION AND LIABILITY OF THE STATE AND THE CORPORATION OVERVIEW

With the industrial revolution the maxim '*actus non facit reum nisi mens sit rea*', no longer held good for the imposition of criminal liability for many offences.³⁴ The concept of offences, traditionally understood as a harmful act against body and property only extended much beyond into social, economic and political spheres. These offences were very complex in nature, and it was very difficult to identify any person or persons responsible for the same. To overcome the difficulty, the legal fraternity started quantifying the liability

²⁸ Watts, Jonathan (27 October 2010). "[Harrison Ford calls on US to ratify treaty on conservation](#)". The Guardian (London).

²⁹ U.N Convention on Biological Diversity, Preamble, June 5, 1992, 31 I.L.M. 818 [Hereinafter CBD]; Principle 11, World Charter for Nature, UNGA Res. 37/7, 37 U.N. GAOR, Suppl. (No. 51), at 17, U.N.Doc. A/37/51 (Oct. 28, 1982)

³⁰ Art. 3.1 of the Ramsar Convention

³¹ Article 5 of the Ramsar Convention

³² Id.

³³ Id.

³⁴ The words offences, wrong and crime have been used interchangeably.

for these offences on the basis of ‘impact on society’, ‘gravity of act’, ‘impression on minds of people’ and ‘actual harm caused’. The outcome of this was the emergence statutory strict criminal liability.

CORPORATION AS A JURISTIC PERSON

The concept of corporation, as a juristic personality, was recognised by Roman law. Sir Henry Maine asserted that, a sort of corporate responsibility was at the heart of the primitive legal system. English common law, however, didn’t accept such a notion, until the 15th century. Before that, the law recognised the institutions like chapters, monasteries, and the poroughs, and in the latter part, municipalities, guilds, universities, which had juristic personality. These institutions were incorporated by royal charter or the prescription receipt for the same³⁵. In the 15th century, common law accepted the view that corporation had a separate juristic personality other than that of its members.³⁶

RESPONSIBILITY OF STATE

It may be envisaged, first, to impose on the States a responsibility to control corporate actors. The State in which the corporation is domiciled may control its activities even when these are pursued abroad, either directly or through the setting up of a subsidiary corporation (home State responsibility). The ‘receiving’ State where the corporation has its activities also may be said to be under an obligation to

³⁵ Gower, Principles Of Modern Company Law, Sweet And Maxwell, 1992, P. 232

³⁶ Ibid.

protect the human rights of its population (host State responsibility). The Inter-American system of human rights, composed by the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights, has consistently indicated that international responsibility may arise from acts by third parties, that is, from acts of individuals, groups of individuals, and corporations that are not attributable to the State, due to the failure of governments to fulfil their positive obligations under international human rights law³⁷.

OBSTACLES

The recognition of corporate personality gave rise to legal accountability of the corporations; but imposition of sanction through law, or precisely, the infliction of penal sanction on it gave rise to many difficulties. As has been stated: ‘The first obstacle was attributing acts of juristic fiction to the corporation’ 18th century court and legal thinkers approached corporate liability with an obsessive focus on the theories of corporate personality; A more pragmatic approach was not developed until the 20th century. The second obstacle was that the legal thinkers didn’t believe corporation could possess the moral blameworthiness necessary to commit the crimes of intent. The third obstacle was the *ultra vires* doctrine under which courts would not hold corporation not accountable for acts, such as crimes, that would not provided for in the charters. Finally , the fourth obstacle was courts literal understanding of criminal procedure For eg. , judges required the accused to be

³⁷ Ibid.

brought physically before the court , however that was not possible.

THE INTERNATIONAL LEGAL REGIME

The question of *liability* for Trans boundary environmental harm is still only a matter for debate. There was an order to the International Law Commission from the General Assembly in General Comment operative paragraph 3 of resolution 56/82 to continue its consideration of international liability for injurious consequences arising out of acts not prohibited by international law. However, there was general support for the statement that the innocent victim should not be _as far as possible, left to bear the loss resulting from Trans boundary harm arising from hazardous activity³⁸. A very important tool for improving the human rights accountability of corporations is by the direct imposition on corporations of obligations under international law³⁹. This, indeed, is how most commentators have interpreted the initiative of the UN Sub-Commission for the Promotion and Protection of Human Rights when it adopted its Draft set of Norms on the Human Rights Responsibilities of Transnational Corporations and Other Business Enterprises in August 2003. Nothing should prevent TNCs from being seen as subjects of international law.

³⁸ Rustam Singh Thakur, TRANSNATIONAL CORPORATIONS AND ENVIRONMENTAL DAMAGES, 2010

³⁹ Ibid.

The mere existence of international norms applying directly to them allows us to regard them as international legal subjects. There are certain international instruments in different areas that grant TNCs a range of rights, impose directly on TNCs international obligations (for instance, not to interfere with the internal affairs of a host country), address to regulate the behaviour of TNCs on the international level. Hence, the fact that TNCs have international rights and obligations is evidence that TNCs can be considered as subjects of international law, because international subjectivity stems from the fact of enjoying rights asserted and protected under international law and having obligations imposed on by legal instruments. Being a subject of international law TNCs can be directly liable for breach of international law⁴⁰.

After the Second World War, the criminal law of some countries, mainly from the common law system, came to recognize the concept of corporate criminal liability. So, why not recognize such corporate criminal liability under environmental law?

POLLUTER PAYS: THE ONLY 'GOOD' LAW

Polluter pays, as articulated in Principle 16 of the 1992 Rio Declaration, provides that, national authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should in principle, bear the cost of pollution.

⁴⁰ Ibid.

The court in *Gabcikovo-Nagymaros Case*⁴¹ (1997) recognised the importance of environmental protection. And therefore it can be presumed that a state that is liable for committing transboundary pollution cannot be given immunity under the precautionary principle.

The Rio Declaration on Environment and Development states that "National authorities should endeavour to promote the internalization of environmental costs [via] the use of economic instruments..." The "Draft International Covenant of Environment and Development, IUNC, 1995" states, "Parties shall apply the principle that the costs of preventing, controlling, and reducing potential or actual harm to the environment are to be borne by the originator."⁴²

At the global level, there are a number of MEA's which expressly refer to polluter pays⁴³, such as the 1990 international convention on oil pollution preparedness, response and cooperation and 1992 UNECE convention on the transboundary effects of industrial accidents, both pointing to PP as a 'general principle of international environmental law.'

This principle entails four different perspectives:

- i. First, criminal responsibilities may be imposed upon the polluter;

⁴¹ (1996) ICJ Reports, 226. Also *Gabcikovo-Nagymaros Case* (1997) ICJ Reports 7, para 53

⁴² Principle 16 of the Rio declaration

⁴³ Preamble, indent 7

- ii. Secondly, the polluter may be held responsible to make good the harm inflicted by him;
- iii. Thirdly, eco-tax or carbon tax may be imposed upon him;
- iv. Finally, law of the land may compel the polluter to participate in preservation of environment.

The Rio declaration also emphasised upon the incorporation of this principle in municipal laws⁴⁴. The concept of corporation, as a juristic personality, was recognised by Roman law. Sir Henry Maine asserted that, a sort of corporate responsibilities was at the heart of the primitive legal system. These institutions were incorporated by Royal charter or the prescription receipt for the same. In fifteenth century itself, common law accepted the view that corporation had a separate juristic personality other than of its members⁴⁵.

Salmond has observed 'a corporation is a group or series of persons which by legal fiction is regarded and treated as itself a person.'⁴⁶

In *Kiobel v. Royal Dutch Petroleum*⁴⁷, In a 2-1 split decision, the Court ruled that the Alien Torts Statute (ATS) grants U.S. courts jurisdiction over alleged violations of international law by individuals only, not by corporations. This certainly is not a law of the land. The current scenario is completely contrary.

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ PJ Fitzgerald (ed.), *Salmond on Jurisprudence*, Sweet and Maxwell, 1992, p. 308

⁴⁷ (06-4800-cv, 06-4876-cv).

Polluter pays principle is the only good law that exists in this regard and therefore it can be concluded that in the lights of the principle of polluter pays the corporation and the parent nation cannot evade their liability.

RECOMMENDATIONS AND CONCLUSION

The development of state liability provisions in public international law has progressed haltingly. Most multilateral environmental treaties stipulate that signatory parties should act in accordance with the principle of state responsibility for environmental damage, but the nature of liability and compensation provisions are not prescribed and therefore a proper mechanism to quantify the damage is very necessary.

There are no applicable —hard law and little —soft law in relation to transnational corporate accountability. Nearly all the —non-binding —declarations are emerging soft law. —Hard law is to use what the lawyers at a domestic level. There are very less international law regulating corporations. Some of the most overlooked and powerful non-governmental actors in the human rights arena are TNCs and other business enterprises. There is no applicable —hard law and little —soft law pertaining to transnational corporate accountability.

Perhaps what is required is an attempt to build an international regulatory regime that takes into account the political and economical realities of the contemporary world, including the interdependence of the global economy, the global implications of environmental hazards, the

global reach of the activities of TNCs, and the existence of third world countries who need assisted development without the additional cost of environmental damage. Since TNCs can be regarded as subjects of international law in light of existing international positive norms that are directly regulating their behavior, taking into consideration recent developments that are changing the concept of the international human rights protection by including non-State actors' responsibility, customary principle that states individual responsibility for violations of jus cogens norms we can conclude that TNCs have direct responsibility for breaches of environmental law⁴⁸. At this point it is necessary to answer whether all international legal instruments mentioned above are effective tools for comprehensive protection of the environment from illegal activities of TNCs⁴⁹. The answer is not positive. There are several reasons for that but the main one is the absence of obligatory norms of international law. Treaties and other international instruments analyzed above are considered to be so called —soft law which has no binding effect on its subjects. Nevertheless, the recent developments of international law and efforts of international community to impose on TNCs legal responsibility are regarded to be the first steps to ensure that human rights are not just ideals but also a reality.

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⁴⁸ Ibid

⁴⁹ Supra

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