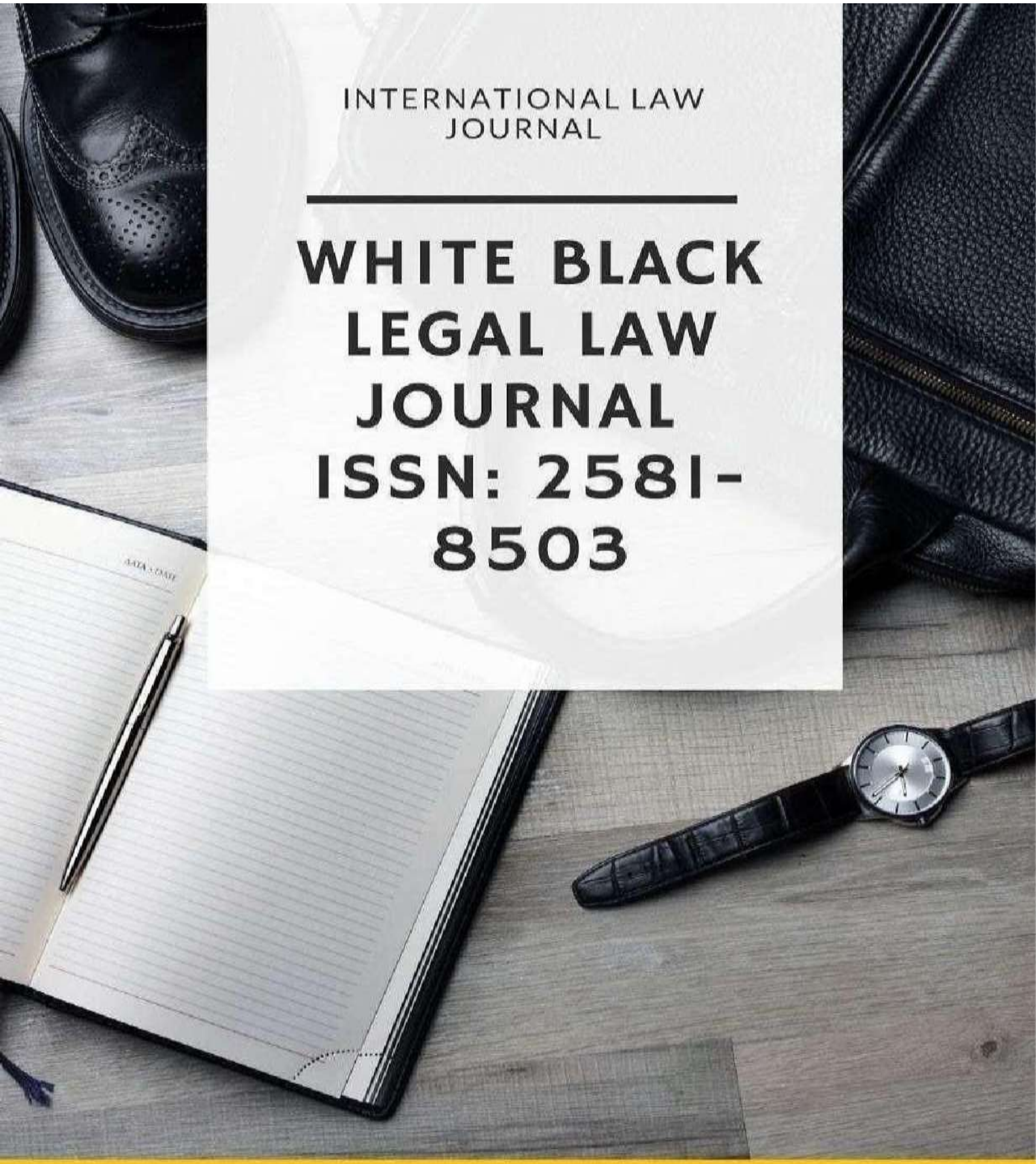

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

DISCLAIMER

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ENVIRONMENTAL LAW AND POLICY: PARIS AGREEMENT AND BEYOND

AUTHORED BY - SNIGDHA SOOD[1]

Abstract

The paper attempts to narrativize an economic approach which can help clarify the causes and consequences of environmental degradation, as well as provide an insight into the governmental policies that are aimed at environmental protection. This holds true for both normative and positive evaluations of the environmental initiatives. Despite its importance, an economic view of environmental law and policy is not the perfect substitute for other legitimate perspectives on environmental law and policy, whether stemming from natural sciences, ethics, or other disciplines. However, an economic perspective, is a vital supplement to such viewpoints. Indeed, as public awareness of environmental issues has expanded in the United States over the last several decades, it has garnered more attention in terms of efficiency, cost-effectiveness, and distributive equity of environmental laws and regulations.

1. Introduction

Environmental law is the broad category which refers to all parts of the law that safeguard the environment.[2] A related but different collection of regulatory regimes focuses on the management of specific natural resources, such as forests, minerals, or fisheries, and is now heavily affected by environmental law ideas. Other aspects of environmental law, such as environmental impact assessment, may not cleanly fit into either category, but they are nonetheless significant.

While there are set restrictions on the scope of coverage in order to be thorough in the process of Environment protection. Firstly, despite the fact that these two areas are intimately related, the focus is generally more on pollution control and as a corollary of that natural resource management takes a backseat.

---

[1]Advocate at the Punjab and Haryana High Court, Chandigarh. LL.M; LL.B. from Panjab University, Chandigarh, India; M.A. (English), B.A.(Hons.) English from University of Delhi, Delhi, India.

[2] Phillipe Sands (2003) Principles of International Environmental Law. 2nd Edition. p. xxi Available at [1] Accessed 19 February 2020

Secondly, the emphasis on federal environmental protection measures in countries such as the United States, rather than state, municipal, or international regulatory activities is rather problematic.

Additionally, it is pertinent to note in this context that, Ronald Coase, a British economist and author demonstrated that any two parties can form socially desirable agreements in a bilateral negotiating environment without transaction costs; and thirdly, that the overall quantity of pollution is independent of the legal procedures (assignment of property rights) used to frame their relationship. For example, if the legal regime prohibited pollution but the harm to the factory was higher than the harm to the laundry in the absence of such an injunction, the parties would engage into a contract in which the laundry will agree not to seek an injunction in exchange for a payment. If, on the other hand, the legal system permits pollution but the consequent harm to the laundry is more than the harm that the injunction would cause the factory, the parties will enter into a contract in which the factory agrees not to pollute in exchange for a payment. Consequently, regardless of the starting legal rule, bargaining will create two outcomes: (1) the same quantity of pollution; and (2) the maximization of societal welfare. Of course, legal restrictions can decide who makes payments and who receives them, that however is a distributional issue rather than an efficiency issue.

2. History

Throughout history, there have been several examples of legal enactments aimed at actively preserving the environment for its own purpose or for human enjoyment. The law of nuisance provided the primary safeguard in common law, but it only permitted for private claims for damages or injunctions if there was harm to land. Hence, odors originating from pigsties,[3] strict accountability for dumping trash,[4] or damage caused by dams bursting.[5]

Private enforcement, on the other hand, was proven to be ineffective in dealing with serious environmental problems, notably threats to common resources. The discharge of wastewater into the River Thames during the "Great Stink" of 1858 became so revolting in the summer heat that

[3] *Aldred's Case* (1610) 9 Co Rep 57b; (1610) 77 ER 816
[4] *R v Stephens* (1866) LR 1 QB 702
[5] *Rylands v Fletcher* [1868] UKHL 1

Parliament had to be evacuated. Ironically, the Metropolitan Commission of Sewers Act of 1848 authorized the Metropolitan Commission for Sewers to close cesspits across the city in an effort to "clean up," but this just led to people polluting the river. Parliament passed a new Act to create the London sewerage system in under 19 days. London, too, was plagued by horrible air pollution, culminating in the "Great Smog" of 1952, which prompted its own governmental response: the Clean Air Act of 1956. The primary regulatory mechanism was to set emission limitations for households and companies (especially coal burning), with an inspectorate enforcing compliance.

3. Principles of Environmental Law

Environmental law has evolved in response to growing public awareness of and concern about global challenges. While laws have evolved in pieces for various causes, some effort has gone into establishing core concepts and guiding principles that apply to all environmental laws.[6] The following principles are not comprehensive and are not universally recognized or accepted. Nonetheless, these are crucial concepts for the global understanding of environmental law.

3.1 Sustainable Development

Sustainable development is defined by the United Nations Environment Programme as "development that meets current needs without jeopardizing future generations' ability to meet their own needs." It can be combined with the concepts of "integration" (development cannot be considered in isolation from sustainability) and "interdependence" (social and economic development, and environmental protection, are interdependent).[7] This principle may be applied to laws that require or encourage environmental impact assessments and development that minimizes environmental impacts.

The modern idea of sustainable development was debated during the United Nations Conference on the Human Environment (Stockholm Conference) in 1972, and it was the driving force behind the World Commission on Environment and Development in 1983. (WCED, or Brundtland Commission). The Rio Declaration, adopted by the United Nations in 1992, states that "the right to development must be realized in order to equally meet the developmental and environmental

[6] For example, the United Nations Environment Programme (UNEP) has identified eleven "Emerging Principles and Concepts" in international environmental law, derived from the 1972 Stockholm Conference, the 1992 Rio Declaration, and more recent developments. UNEP, Training Manual on International Environmental Law (Chapter 3).
[7] UNEP Manual, 12-19.

requirements of present and future generations." Since then, sustainable development has remained a central theme in worldwide environmental debates, including the World Summit on Sustainable Development (Earth Summit 2002) and the United Nations Conference on Sustainable Development (Earth Summit 2012, or Rio+20).

+

3.2 Equity

Environmental equity, as defined by UNEP, includes intergenerational equity – "the right of future generations to enjoy a fair level of the common patrimony" – and intragenerational equity – "the right of all people within the current generation to fair access to the current generation's entitlement to the Earth's natural resources."[8] This principle can be used to evaluate pollution control and resource management legislation.

3.3 Transboundary Responsibility

UNEP views transboundary responsibility at the international level as a potential limitation on the sovereign state's rights, as defined in international law as a commitment to safeguard one's own environment and to prevent damage to surrounding habitats.[9] This approach can be used to evaluate laws imposed at limiting externalities that affect human health and the environment.

3.4 Public Participation and Transparency

Public participation and transparency are described by UNEP as "effective protection of the human right to hold and express opinions and to seek, receive, and impart ideas- a right of access to appropriate, comprehensible, and timely information held by governments and industrial concerns on economic and social policies regarding the sustainability of the environment," as well as "accountable governments,... industrial concerns," and organizations in general. Environmental impact assessments, legislation requiring the publishing and access to important environmental data, and administrative procedures all follow these principles.

3.5 Precautionary Principle

The precautionary principle is one of the most widely encountered and contentious principles of environmental law, as stated in the Rio Declaration:

In order to protect the environment, states should use the precautionary approach to the best of

[8] UNEP Manual, ¶¶ 20-23.
[9] UNEP Manual, ¶¶ 24-28.

their abilities. When there is a risk of catastrophic or irreparable damage, a lack of complete scientific assurance should not be used to justify delaying cost-effective environmental protection measures.

The principle could come up in any discussion about the necessity for environmental legislation.

3.6 Prevention

The concept of prevention... can perhaps be better thought of as an overarching goal that inspires a slew of legal mechanisms, such as prior assessment of environmental harm, licensing or authorization that spells out the terms of operation and the penalties for breaking them, as well as the adoption of strategies and policies. Emission limits and other product or process standards, as well as the use of best available techniques and other similar strategies, are all examples of preventative techniques.[10]

3.7 Polluter pays principle

The polluter pays principle holds that "the environmental costs of economic activity, including the cost of avoiding potential harm, should be internalized rather than imposed on society as a whole."[11] This approach applies to all situations involving environmental remediation costs and compliance with pollution control rules.

4. International Environmental Law

International law is increasingly being used to address global and regional environmental challenges. Environmental debates include key international law issues and have been the topic of numerous international agreements and declarations.

International environmental law is heavily influenced by customary international law. These are the customary norms and rules that all countries adhere to, and they are so widespread that they bind all nations. It is difficult to determine when an idea becomes customary law, and states that do not want to be bound present numerous arguments. The duty to warn other states promptly about environmental icons and environmental damages to which another state or states may be exposed, as well as Principle 21 of the Stockholm Declaration ('good neighbourliness' or sic utere),

[10] UNEP Manual, ¶¶ 58.
[11] Rio Declaration Principle 16; UNEP Manual ¶ 63.

are examples of customary international law relevant to the environment.
Given that customary international law is not static but constantly evolving, as well as the continued increase in air pollution (carbon dioxide) causing climate change, there has been debate about whether basic customary principles of international law, such as the jus cogens (peremptory norms) and erga omnes principles, could be used to enforce international environmental law.[12]

Numerous legally binding international accords cover a wide range of issues, from pollution of the land, sea, and air to the protection of animals and biodiversity. Environmental treaties are usually multilateral (though sometimes bilateral) in nature (a.k.a. convention, agreement, protocol, etc.). Protocols are agreements that are formed on top of a core treaty. They are found in many areas of international law, but they are particularly valuable in the subject of environmental law, where they can be used to regularly incorporate new scientific findings. They also allow countries to agree on a framework that would be problematic if every element was agreed upon ahead of time. The Kyoto Treaty, which arose from the United Nations Framework Convention on Climate Change, is the most well-known protocol in international environmental law.

While the bodies that proposed, debated, agreed on, and eventually adopted existing international agreements differed by agreement, certain conferences, such as the United Nations Conference on the Human Environment in 1972, the World Commission on Environment and Development in 1983, the United Nations Conference on Environment and Development in 1992, and the World Summit on Sustainable Development in 2002, were particularly significant. Multilateral environmental accords frequently establish an International Organisation, Institution, or Body to carry out the agreement's provisions. The International Union for Conservation of Nature (IUCN) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are two major examples (IUCN).

The opinions of international courts and tribunals are also part of international environmental law. Despite the fact that they are few and have limited jurisdiction, their rulings are well regarded by legal analysts and have a significant impact on the evolution of international environmental law. The determination of fair compensation for environmental losses is one of the most difficult difficulties in international decisions.[13] The International Court of Justice (ICJ), the International

[12] Jesper Jarl Fanø (2019). Enforcing International Maritime Legislation on Air Pollution through UNCLOS. Hart Publishing. Part IV (Ch. 16-18)
[13] Hardman Reis, T., *Compensation for Environmental Damages Under International Law*, Kluwer Law

Tribunal for the Law of the Sea (ITLOS), the European Court of Justice, the European Court of Human Rights[14], and other regional treaty tribunals are among those that have jurisdiction.

5. Theory

Environmental law is a source of ongoing debate. Environmental regulation is being debated for its necessity, fairness, and expense, as well as the suitability of regulations vs. market methods to reach even agreed-upon goals.

Scientific ambiguity is a crucial element in arguments over whether to ban specific pesticides and fuels the ongoing debate over greenhouse gas regulation. [15] It is not uncommon to discover firms actively concealing or distorting data, or sowing confusion, even when the science is well-established.[16] Regulated industries frequently use cost as an argument against environmental regulation.[17] Conducting a cost-benefit analysis of environmental challenges is difficult.

Environmental values such as a healthy ecosystem, clean air, and species richness are difficult to assess. Former Senator and originator of Earth Day Gaylord Nelson sums up many environmentalists' response to pitting economy vs. ecology: "The economy is a totally owned subsidiary of the environment, not the other way around."[18] Furthermore, many people believe that environmental challenges have an ethical or moral dimension that transcends financial costs. Nonetheless, certain efforts are being made to assess environmental costs and assets on a systemic level and account for them properly in economic terms.

While affected industries stir debate in their struggle against regulation, many environmentalists and public interest groups believe that current regulations are insufficient and demand for

International, The Hague, 2011, ISBN 978-90-411-3437-0.
[14] "ECtHR case-law factsheet on environment" (PDF). Archived from the original (PDF) on 2012-11-10. Retrieved 2012-11-08.
[15] See, e.g., DDT.
[16] The Christian Science Monitor (22 June 2010). "Merchants of Doubt". *The Christian Science Monitor*.
[17] In the United States, estimates of environmental regulation total costs reach 2% of GDP. See Pizer & Kopp, Calculating the Costs of Environmental Regulation, 1 (2003 Resources for the Future) Archived 2009-03-26 at the Wayback Machine.
[18] Nelson, Gaylord (November 2002). *Beyond Earth Day: Fulfilling the Promise*. Wisconsin Press. ISBN 978-0-299-18040-9. Retrieved 2016-03-14.

additional protection.[19] [20] [21] This is a common theme at environmental law conferences, such as the biennial Public Interest Environmental Law Conference in Eugene, Oregon, which also connects environmental law to issues of class, race, and other concerns.

Another point of contention is whether environmental rules are equitable to all parties affected. For example, scholars Preston Teeter and Jorgen Sandberg point out that environmental restrictions often impose disproportionately higher costs on smaller businesses, which can constitute an additional barrier to entry for new businesses, inhibiting competition and innovation.[22]

6. Paris agreement[23]

The Paris Agreement on climate change is a legally enforceable International Treaty. It was accepted by 196 Parties at the United Nations Conference on Climate Change (COP 21) in Paris on December 12, 2015, and went into effect on November 4, 2016.

Its goal is to keep global warming considerably below 2 degrees Celsius, preferably 1.5, compared to pre-industrial levels.

Countries want to reach global peaking of greenhouse gas emissions as soon as possible to produce a climate-neutral world by mid-century in order to meet this long-term temperature objective.

The Paris Pact is a watershed moment in the international climate change process because it is the first enforceable agreement that binds all nations together in a common cause to fight climate change and adapt to its repercussions.

The Paris Agreement is a watershed moment in worldwide efforts to combat global climate change. For the first time, all of the main polluting countries—and, indeed, the vast majority of the world's countries—have contributed to a global accord to cut greenhouse-gas emissions.

---

[19] "Can the World Really Set Aside Half of the Planet for Wildlife?". *Smithsonian*.
[20] "Climate Coalition Vows 'Peaceful, Escalated' Actions Until 'We Break Free from Fossil Fuels'". *Common Dreams*.
[21] "A Guide to Environmental Non-Profits". *Mother Jones*.
[22] Teeter, Preston; Sandberg, Jorgen (2016). "Constraining or Enabling Green Capability Development? How Policy Uncertainty Affects Organisational Responses to Flexible Environmental Regulations" (PDF). *British Journal of Management*. **28** (4): 649–665. doi:10.1111/1467-8551.12188. S2CID 157986703.
[23] https://www.belfercenter.org/sites/default/files/legacy/files/2016-10_paris-agreement-beyond_v4.pdf

Furthermore, the Agreement has a dynamic component that allows mitigation pledges to be strengthened over time.

While the Agreement lays out an innovative and potentially beneficial policy framework, much work remains to be done to flesh out the agreement—to formulate the many regulations and standards that are required, as well as to specify more exact implementation methods. Governments, other stakeholders, and researchers must also consider the limitations of the Paris Agreement's effectiveness, as well as identify organizations and processes that could supplement the Agreement and the UNFCCC process in general.

7. Compilation of Key Points

a) <u>David G. Victor: Making the Promise of Paris a Reality</u>

- The flexibility of the NDCs is critical to the Paris Agreement's success.
- Improving the quality of NDCs is now a top focus, so they can better reflect what countries are willing and able to accomplish over time.
- Better data on nation preferences can lead to more effective "bottom-up" cooperation, starting with small groups of countries that are likely to form outside of the formal UNFCCC process.
- Enlisting volunteer countries to demonstrate how to enhance NDCs, conduct country evaluations, and execute global stocktaking will be critical.

b) <u>Lavanya Rajamani: Differentiation and Equity in the Post-Paris Negotiations</u>

- In view of varied national conditions, the Paris Agreement is based on justice and the notion of common but differentiated duties and respective capabilities, but the way it operationalizes this principle differs from the FCCC and its Kyoto Protocol.
- Despite the Paris armistice on differentiation, numerous outstanding problems remain, and the devil will be in the details of differentiation's operationalization in the post-Paris negotiations.
- Crosscutting concerns like how to apply the words "developed" and "developing" countries, as well as thematic issues like how to address conditional nationally determined contributions (NDCs) from developing countries and how equality should be operationalized in the global stocktake, remain.

c) <u>Daniel Bodansky: Elaborating the Paris Agreement’s Rules</u>

- The Paris Agreement calls for CMA rulings to elaborate on a variety of topics.
- Unlike the Kyoto Protocol, the Paris Agreement's new institutional arrangements, such as the mitigation and sustainable development mechanism, the enhanced transparency framework, and the implementation and compliance mechanism, will require the CMA to develop additional rules, modalities, procedures, and guidance.
- The CMA may take decisions guiding the conduct of the Parties on a few topics, such as accounting, but they will not be legally obligatory unless the Paris Agreement makes them so.

7.1 Processes and Institutions Complementary to the Paris agreement

Carlo Carraro: Clubs, R&D, and Climate Finance: Incentives for Ambitious GHG Emission Reductions

- Climate clubs, namely subgroups of countries implementing more ambitious and effective climate policies than others, may be the only practical approach to address the lack of incentives to reduce GHG emissions on the part of most, if not all, countries.
- In climate clubs, incentives to undertake ambitious GHG emission reduction efforts may come from adopting R&D and financial policies that provide benefits exclusively to club members.
- R&D and financial policies are useful since they provide innovation to lower the cost of a unit of abated carbon, as well as financial or insurance programmes to lower the cost of mitigation investment. These price cuts could be tailored to just benefit club members.
- Unlike trade-related policies aimed at benefiting club members, R&D and climate-finance policies have no negative "side consequences" for members. They do, in fact, have positive co-benefits in addition to the fundamental environmental benefits—a "double dividend" for club members and a single dividend (reduction in GHG emissions) for the globe.

7.2 Financing Mitigation and Adaptation in the Paris Regime

d) <u>Alexander Thompson: The Future of the Financial Mechanism: Analysis and Proposals</u>

- The climate financing regime's decentralised and complicated nature presents obstacles, but it also has benefits that can be strengthened with minor modifications.

- Setting universal standards among climate finance organisations, particularly the GEF, GCF, and AF, could significantly reduce transaction costs and make data exchange and analysis easier.
- Better coordination across finance mechanisms would result in a more sensible division of labor and sharing of best practices.
- The financial system should be a main emphasis of the Paris Agreement's "global stock take."

e) <u>Geoffrey Heal: Funding Climate Adaptation</u>

- Some climate adaptation efforts should attract private capital.
- Mitigation of country-specific risks will be required, allowing private investors to concentrate on business concerns.
- By employing competent third parties, investment arrangements can be structured to avoid or eliminate country-specific risks.

f) <u>Henry Lee: Investing in Climate Adaptation</u>

- Climate adaptation investments are fraught with risks, including moral hazard, substantial opportunity costs, and significant equity concerns.
- Allocating international money for adaptation will necessitate huge political compromises between developing country and donor interests.
- Demanding strict additionality standards will lead to underinvestment.
  Investing on infrastructure, development, and social needs, on the other hand, should be promoted.

g) **<u>Brian C. Murray: Forests, Finance, and the Paris Agreement</u>**

- The Paris Agreement's Article 5 calls for the protection and enhancement of carbon sinks, such as forests.
- Because forests are often removed for larger yields, these operations require financial incentives.
- Carbon markets were previously the most popular way to establish incentives, but they've run into opposition. Market-based finance may be enabled by the Paris Agreement and distinct international aviation laws, but it will very certainly be supplemented by other techniques and sources of funding.

- Research can help educate decisions about how to organise transactions at the national and local levels to achieve cost-effective savings.

8. Making the Promise of Paris a Reality

What is new in the Paris Agreement?

Last December's remarkable success in reaching universal agreement on a new global climate policy sparked a slew of responses to this question. My concentration is on adaptability. Taking climate change seriously necessitates resolving a complex international negotiating challenge. Nearly 200 countries are participating, all with different interests and capabilities, and the decision-making procedures for agreement necessitate consensus. Part of the solution was to use creative legal terminology to cover up disputes.

The key solution, however, was to give countries much more authority over their own mitigation obligations by allowing them to set their own nationally determined contributions (NDCs)—with the caveat that the NDCs be updated and evaluated on a regular basis. Allowing countries to set their own commitments has significantly decreased the risk of long-standing political differences undermining collective efforts to lay the groundwork for long-term collaboration. A flexible arrangement should last longer.

For diplomats and policymakers striving to fully implement the Paris Agreement, flexibility has two important implications:

First and foremost, the quality of NDCs must be improved—beyond the "intended" NDCs submitted in the run-up to Paris. Obtaining trustworthy information about country preferences and capabilities is one of the most difficult issues in developing truly deep and effective international cooperation. The NDCs can assist in solving this problem since they allow countries to express their desires as well as their willingness and ability to achieve them.

Many bargaining theorists will be surprised by this, because we have tended to think of climate change as a problem that will necessitate tight monitoring and enforcement methods. According to this viewpoint, such procedures are required because governments will not adopt costly mitigation programmes unless their economic competitors do so as well. That insight may hold true in the future as the screws on emissions are tightened further, but for the time being, flexibility is making it easier for countries to make promises concerning national policies. And those

assurances alone are kicking off the process of developing more serious and demanding international collaboration.

I believe that, for the next few NDC-updating periods—perhaps a decade or more—the issue of cooperation will be less about developing rigorous incentives and enforcement methods. What matters most is receiving a trustworthy supply of information regarding the costs of mitigation and the actual activities that countries are taking. The genius of the Paris system is that it has the potential to dramatically boost the availability of this information.

An effective information regime will lower the transaction costs of crafting collective agreements among small groups of countries—"clubs"; will make it easier for countries to negotiate the side-payments required to entice other countries to join and honour cooperative agreements; and will lay the groundwork for a much more serious surveillance system, making it easier to verify compliance and learn from policy experiments in different countries over time. All of these effects of an effective information policy could lead to deeper and more effective international cooperation in the future—long before tight monitoring and enforcement systems are in place.

Over the next three years, the major objective will be to locate countries willing to demonstrate how to enhance their NDCs. Volunteers will also be needed to assist with the worldwide stocktaking required by the Paris Agreement, which will take place in 2018 and again in 2023. Of course, formal protocols for NDC review and stocktaking exist, and the Paris Agreement lays out the steps for implementing them. However, I suspect that the formal UN-led approach will yield significant results in this area. The rules for national review and global stocktaking will be difficult to agree on. Countries will be hesitant to provide information that could be used in UN audits. That is why it is critical to urge volunteer countries to make additional efforts that are congruent with the UN-based approach's spirit while remaining formally separate and different from the UN process.

Analysts may also help by articulating some criteria and methods so that future NDCs can contain information on how countries will make their NDCs reviewable, in addition to policies and emissions. We have tended to focus on what governments can and should do in all debates about "beyond Paris." Equally crucial will be the development of NGO and analytic capacity, so that they can work alongside and in support of the more official intergovernmental national assessments and global stocktaking. It's also crucial not to focus too much on things that will

become distracting during the NDC evaluations and global stocktake. The focus on whether the world as a whole is on pace to stop warming at 1.5 or 2 degrees over pre-industrial levels is at the top of my list of distractions. Pretending that these temperature goals are attainable was (and continues to be) critical to the diplomatic process of keeping the Paris Agreement coalition together. Because no single country was responsible for delivering, it was politically feasible to agree on such ambitious, aspirational collective goals—even if they are mainly unattainable. The diplomatic community will soon have to accept the fact that new, more attainable, and more helpful long-term goals are required. For the time being, however, it is critical not to let the focus on temperature goals distract from the most important functions of improving nationally pledged NDCs and stocktaking—to elicit more useful information about what countries are doing to reduce emissions, which policies are working, and how much their abatement efforts are actually costing.

Second, taking flexibility seriously necessitates a greater focus on how collaboration will arise. The Paris Agreement was created to allow cooperation in a variety of settings, including small organizations and forums not affiliated with the Framework Convention. Many people believe that "clubs" are the ideal method to begin genuine collaboration. The Asia Pacific Partnership, the MEF, the G20, the Climate and Clean Air Coalition, the palm oil producers' club, and the Norway-led forest preservation funding mechanism are all examples of such organisations. So far, the evidence suggests that these clubs are ineffective. With some significant good exceptions, such as palm oil and Norway's funding of policy reforms in the Amazon, my impression is that there is still a lot of talking in clubs and not a lot of doing. These are encouraging beginnings. Based on the underlying logic of international cooperation, I am convinced that genuine collaboration will most likely arise "bottom up" from clubs rather than through global agreements, as it has frequently been done in trade through plurilateral agreements. Negotiating among a large number of countries on difficult issues has high transaction costs; working in smaller groups is easier.

Incentives and techniques for creating global cooperation through bottom-up clubs must be given considerably greater attention in order for cooperation to emerge through tiny organizations. What are the most important incentives? Some experts have emphasized the importance of international trade and market access, as well as border policies that penalise nations who refuse to join clubs. Others consider the impact of conditional commitments. Analysts and diplomats must start formulating answers to these questions immediately.

Bottom-up collaboration, in my opinion, will be easier to catalyze than widely assumed, because

the first steps have already been taken—the NDCs demonstrate that governments are already willing to do a lot without any reciprocal measures or incentives from other countries. However, once cooperation begins, border controls will be critical in encouraging small groupings to spread. And, if correctly framed, conditional promises can provide powerful positive incentives for countries to enhance cooperation.

To sum up, I have been skeptical for much of my career that formal intergovernmental collaboration on climate change would achieve much. Kyoto and Copenhagen's failures were predicted and observed by me. Failure was easy to predict because multilateral diplomacy had been built to fail until recently. There was far too much emphasis on rigid formulas and categorising countries. Expectations for global forums to achieve significant progress were unrealistic; despite nearly 25 years of diplomatic efforts, there is no indication that they have had a significant impact on global emissions.

Paris is unique in that its design is more adaptable, allowing it to be more effective. Despite this confidence, we in the analytic community should begin to consider what could go wrong. Analysts may assist explain risks and discover possibilities to avoid them in three ways, these are as under: -

a) **Incentives for ambition.** Paris worked in part because countries were given a clear deadline and there were no accountability procedures in place. Governments were able to make pledges with near-infinite flexibility, allowing their leaders to appear in Paris without appearing to be a spoiler in the eyes of the international community. But, now that Paris is finished, what are the incentives for governments to do more?
   I predict a significant slowing in the ratcheting up of ambition when those in charge of putting the Agreement into action get down to the grind of detail and process—all without facing many credible, costly deadlines. It is critical to expect this pause and not let it derail the process of developing and implementing the Paris Agreement's promising components.

b) **The role of non-UNFCCC institutions.** There has been substantial study over the last decade documenting the expansion of international climate change institutions and demonstrating that much of the success has occurred outside of the UNFCCC. Outside of the UNFCCC, recent efforts to address industrial gases in the Montreal Protocol are a good example of progress. The Paris Agreement (particularly Article 6) was supposed to

facilitate this proliferation, but I am not convinced that the Agreement's signatories really comprehended the implications of collaboration spreading beyond the venues they control. Policymakers must keep the course here, recognizing how the expansion of institutions, on balance, provides value rather than detracts from the UNFCCC and Paris Agreement's goals.

c) **Preserving global consensus.** The Paris Agreement is likely to be unstable in many ways. It illustrates diplomats' valiant efforts at a time when the different interests of nearly 200 countries could be bonded together using a deft blend of language and severe timelines. It's almost certain that some of that agreement will fall apart. There are complex yet vague agreements between developed and developing countries in finance, perhaps most notably; terms, as well as the exact roles of the many institutions involved, the amounts of funds to be delivered, and the purposes to which these funds will be put, have all been left conspicuously undefined. One of the most difficult problems for the diplomatic community will be to maintain this consensus—by concentrating on the Paris framework's long-term benefits, even as countries recognize that their preferences are sometimes extremely varied in the short term.

What's new and fascinating about the Paris Agreement is that it establishes a method for governments and other stakeholders to learn about what's going on with emissions management. By itself, Paris does not reflect much genuine cooperation—the majority of countries are promising and acting in their own national interests. (Some parties, such as the EU, are outliers.) To put it another way, what has been established in Paris is an experimental regime, based on the assumption that many countries have decided to adopt measures and begin cooperating. They must, however, discover what works.

The objective now is to concentrate on making this promising start a success. To accomplish this, focus on the areas where real diplomatic, policy, and analytical attention will bring the most value. That, in my judgement, involves concentrating on two things: (1) how to make the pledge process reveal important information, and (2) how to use that information to accelerate "bottom-up" cooperation, both through small groups of countries and through complementary initiatives by other organizations. There is much to be done. I don't see how the formal UN-based system can deliver on its own, but I believe that with the aid of countries that want this process to succeed, as well as NGOs and analysts who have established much of the requisite ability, some of the critical

gaps can be filled.

9. How are we tracking progress?[24]

Countries adopted a more transparent framework with the Paris Agreement (ETF). Countries shall report honestly on actions taken and progress in climate change mitigation, adaptation measures, and funding offered or received under the ETF beginning in 2024. It also establishes worldwide protocols for the examination of reports.

The ETF's data will be fed into the Global Stocktake, which will analyse how far we've come toward achieving our long-term climate goals.

10. What have we achieved so far?

Although huge increases in climate change action are required to meet the Paris Agreement's goals, the years since its implementation have already spawned low-carbon solutions and new markets. Carbon neutrality targets are being set by an increasing number of countries, regions, cities, and businesses. Zero-carbon solutions are becoming more competitive in industries that account for 25% of all emissions. This trend is particularly visible in the power and transportation industries, and it has opened up a slew of new commercial prospects for early adopters.

By 2030, zero-carbon solutions may be competitive in industries that account for more than 70% of global emissions.

11. Conclusion

Given the rising emphasis that the international community places on environmental preservation, a robust legal framework will be required to support any prospective growth or change. This, of course, necessitates the formation of more environmental agreements, legislation, and standards.[25]

[24] https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement last visited on 12 may 2022
[25] https://guides.ll.georgetown.edu/c.php?g=273374&p=1824812

To meet this demand, we will need additional lawyers who are familiar with the complexities of environmental law and the different norms and principles upon which it is based. As a result, environmental law will be a useful topic for up-and-coming lawyers to investigate, particularly in countries like ours where traditional specialties are rapidly filling up. [26]

[26]https://www.ukela.org/UKELA/Networks/Students/Careers-in-environmental-Law/UKELA/Networks/Students/Careers-in-environmental-law.aspx?hkey=478f2911-e639-4a2d-a8fc-32a303f8eff4