The European Proceedings of
Social & Behavioural Sciences
EpSBS

ISSN: 2357-1330

https://doi.org/10.15405/epsbs.2019.10.12

ICLES 2018
International Conference on Law, Environment and Society

SAVING THE ENVIRONMENT AND THE DILEMMA OF FINDING THE RIGHT SOLUTION

Salawati Mat Basir (a)*, Kho Feng Ming (b)
* Corresponding Author

(a) National University of Malaysia (UKM), Faculty of Law, Selangor, Malaysia, salawati@ukm.edu.my
(b) National University of Malaysia (UKM), Faculty of Law, Selangor, Malaysia, winkhomedic@yahoo.com.my

Abstract

Despite attempts in recent decades to tackle environmental problems, our Mother Earth is currently facing a plethora of concerns. Issues such as pollution, land degradation and global warming still persist, due to the exploitation of earth at an alarming rate. It appears that in dealing with environmental issues, legal frameworks do exist at global and bilateral level, ranging from holding states responsible for their breaches of international obligations, to cooperating internationally among states and to swapping debts of a nation for undertaking environmental friendly projects. Yet the overall health of the earth has not been satisfactory, and instead, is deteriorating. Our actions have been not favored protecting this planet, and we have experienced an increasing recurrence of natural disasters. This paper intends to discuss the traditional concept of how states are held responsible for breaching their international obligations towards the environment, and how international cooperation plays a role in protecting the environment to date. The discussions will further highlight the use of the new formula and approach known as 'debt-for-nature swap' which can be an effective way of sustaining the environment. As environmental problems are piling up around us and the earth is on the brink of a planetary emergency, this paper further intends to identify the ultimate key to solve this global problem.

Keywords: Environmental degradation, state liability, debt-for-nature swap solution.

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

1. Introduction

International environmental law (hereinafter as "IEL") is one of the more recent developments and a new offshoot in Public International Law. Despite being the "late boomers" compared to the other branches of Public International Law, IEL plays a significant role in protecting our Mother Earth to ensure that it continues to exist for the future generations. To date, in spite of numerous notable efforts in the international platform among States to deal with environmental issues, our Earth still remains on the verge of a dreadful environmental crisis, and the health of our planet is undeniably deteriorating threatening to reverse the recent progress in human development. It must be noted that all these has occurred even with the existence of IEL.

Topics such as how to ensure an effective enforcement of environmental rules and regulations; how to ensure the responsible State(s) remedy the impairment for breaching their international environmental obligations; what are the relevant methods of assessing environmental damages and so on still remain unresolved global issues. It is an indisputable fact that unlike other domains of international law, it is not wrong to remark that the growth and maturity of IEL is indeed painstakingly slow (Birnie & Boyle, 2002). The reasons are numerous, *inter alia* (Abass, 2012):

(i) the complex nature of environmental regulation;
(ii) the problems associated with detecting environmental violations and impacts;
(iii) the appropriate remedy if states breach their respective international obligations; or
(iv) the consequences of environmental breaches may not immediately be known.

The problems above are non-exhaustive. The complication which may include environmental adulteration emanating from an individual state will frequently generate a grave repercussion on another states, and at times, it is, to a certain extent, unfeasible to trace the initial sources of the environmental pollution. Besides, states cannot act individually to resolve environmental problems, and the proof of liability is frequently difficult to establish. Even when solutions are available, solving it by means of international mechanisms such as resorting to the International Court of Justice (ICJ), or recourse to either arbitration or diplomatic action is never easy (Shaw, 2008). Nevertheless, bestowing kudos to such development, at last there is an appreciable growth and awareness among the public community on the necessity to protect the earth; an invaluable consciousness among human race with regard to the responsibility of preserving and conserving the environment. It is a significant rise in the maturity and degree of apprehension on the perils the environment is facing which has become the serious subject of international concern (Ranjeva, 1994, p. 433). Concepts such as sustainable development have hence emerged so as to ensure the environment has the prospect to survive and continue to exist for future generations. Given that the environmental affairs develop rapidly, the international regulations often fail to rival all these challenges; hence, rules formulated by institutions are important mechanisms for coping with environmental exigencies (Carwardine, 1990). As Contini and Sand observed (1972):

> "… Environmental problems characteristically require expeditious and flexible solutions, subject to current up-dating and amendments: to meet rapidly changing situations and scientific

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

technological progress. In contrast, the classical procedures of multilateral treaty making, treaty acceptance and treaty amendment are notoriously slow and cumbersome. If international standards for environmental quality are to be set by diplomatic negotiations, the technical components of those standards may well be outdated by the time agreement is reached, and even more so by the time the agreement entered into force… (p. 38)"

In other words, it is the conceptual complexity of the international legal system that has caused environmental law regulation to become complicated, cumbersome and outdated by the time the treaty is ratified by the States and entered into force. Under such circumstances, when a state breaches its international obligations, it is difficult to hold it responsible for its conduct, and sometimes locating the main source of pollution is also extremely difficult to deal with, due to the outdated rules and enforcement mechanisms. The state-oriented nature of discipline and state as the dominant subject in the international legal system has rendered global regulations on the environment reliant on the idea of state responsibility. However, when the protection of environment became a global problem, a paradigm shift took place, transforming the concept of state responsibility to the establishment of international cooperation (D'Amato, 1990, p 190). It truly becomes a common and shared responsibility (Nollkaemper, Plakokefalos, & Schechinger, 2017).

2. Problem Statement

Despite attempts in recent decades to tackle environmental problems, our earth is currently facing a plethora of concerns. The persistence of pollution illustrates the alarming rate of environmental exploitation and degradation.

3. Research Questions

3.1. How do these concepts of state responsibility and international cooperation operate?
3.2. Is the 'debt-for-nature swap' approach effective?
3.3. What is the ultimate key to solve this global problem?

4. Purpose of the Study

This paper discusses the traditional concept of how states are held responsible for their breaches of international environmental obligations, and how international cooperation aspires to protect the environment. 'Debt-for-nature swap' approach will be highlighted, and simultaneously strive to single out the ultimate key to solve this global problem.

5. Research Methods

This paper adopted doctrinal and socio-legal research approaches. First, the theoretical approach will be used to discuss the state responsibility, international cooperation and 'debt-for-nature' swaps ideas. Second, the practical applications of these concepts will be critically discussed using content

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

analysis methodology of research. Third, the paper attempts to ascertain the ultimate key to solve this global problem.

6. Findings

It appears that in dealing with environmental issues, legal frameworks do exist at global and bilateral level, ranging from state responsibility, to cooperating internationally and to swapping debts of states for undertaking environmental friendly projects. However, despite all the laws favoring the protection of the earth, excessive pollution and non-sustainable activities have exacerbated environmental degradation leading to increasing frequency of natural disasters. Our actions have favoured not the protection of this planet, but its destruction.

6.1. The Classic Concept of State Responsibility in International Environmental law

State responsibility is the cornerstone of jurisprudence in international law. Such an approach is founded upon states where they shall be held responsible for breaching their international obligations. In a similar manner, when dealing with environmental issues, states are responsible for the damage caused in the international legal sense, especially when the damage resulting from its own unlawful activity can be clearly demonstrated (Lane, 2018; Goldie, 1973). In other words, states are answerable for their violation of international environmental obligations, and such transgression enable the injured state to maintain a claim antagonistic towards the violating state (Reichwein et al., 2015; Shaw, 2008).

Under this concept, states have the basic duty to avoid acting in a manner that injure the rights of other states (McIntyre, 2018; Parichay, 1995). The notion that states have absolute territorial sovereignty has long been discredited. Hence, states are prohibited to act as they wish irrespective of the consequences upon other states. For instance, Article 192 and 194 *Law of the Sea Convention 1982 (UNCLOS III)* provides that states owe a duty to preserve and safeguard the marine environment, including those at high seas and deep seabed. Activities conducted under their respective jurisdiction shall not cause detriment by pollution to another states (Boyle, 1989). Similarly, Principle 21 *Stockholm Declaration 1972* (it was later formulated similarly in Principle 2 *Rio Declaration 1992*) provides states have the duty to ensure all activities within their control or jurisdiction not to cause damage to the environment of other states. Other notable examples are, *inter alia*, the *Island of Palmas* case (1928) 2 United Nations International Arbitral Awards 829 whereby the territorial sovereignty theory in environmental law incorporates a responsibility to safeguard the rights of another states. In *Trail Smelter* arbitration (1941) 3 United Nations International Arbitral Awards 1905, it was further reaffirmed that using the territory in a fashion so as to result in environmental injury to the territory of others is not permissible. In the *International Commission on the River Oder* case (1929) Series A No. 23, this approach was reinforced:

> "… this community of interest in a navigable river becomes the basis of a common legal right, the essential features of which are the perfect equity of all riparian states in the use of the whole course of the river and the exclusion of any preferential privileges of any riparian state in relation to others…"

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

Similarly, in the *Corfu Channel* case (1949) ICJ Reports, the court emphasised that every state has a duty to prohibit its territory being knowingly used for conducts which will contravene the rights of other states. Therefore, states have the universal responsibility to respect the environment of other states, ensuring that those activities which are within their jurisdiction do not venture beyond national control (*Gabcikovo-Nagymaros Project* case (1997) International Court of Justice Report 7). This concept pertaining to the environment is currently a segment of the corpus of international law.

The adoption of state responsibility approach means that there is a requirement to demonstrate a particular damage has been caused to one state as a consequence of actions of another state. It appears that international law does not recognise strict liability concept as the appropriate standard to assess the conduct of states in international environmental law. Most treaties in fact required the exercise of diligent control on the sources of harm (Handl, 1980). Elements such as due diligence, remoteness of damage and foreseeability are accepted generally as the appropriate test (Oppenheim, 1955; Rubin, 1971, p 259). States are evaluated in a case by case basis, taking into account flexibility in the equation. However, several issues arise, as Shaw (2008) opined:

> "… (i) Whether any damage must actually have been caused before international responsibility becomes relevant. Can there be liability for risk of damage and is the proof of actual damage is unnecessary?… (ii) Whether a certain threshold of damage must have been caused is it mandatory for the injuring state to prove that the pollution resulted in deleterious effects of such a nature as to endanger human health?… (iii) What happens if the environmental injury is caused not by the state itself but by a private party?… (pp 855-858)"

Therefore, the principle of state responsibility in international environmental law dictates that states have the basic duty of care not to act in a manner injuring the right of another states. They will be held accountable for breaching their international obligations, and there is a requirement to make reparation for such breaches.

6.2. International Cooperation: An Upgrade from the Classic Principle

In dealing with environmental issues, the classic approach of state responsibility is proven to be an inadequate framework. The proof of liability and damage is difficult, and on occasion, it is impossible to determine the source of environmental pollution. Accordingly, international community has advanced towards the approach of cooperation across the globe, moving away from the traditional regime. Globally, states begin to acknowledge the reality that focus on bilateral resolution cannot indeed conclude to terms of settlement. The preservation and conservation of the environment is genuinely a universal dilemma, a predicament that is impossible to be solved in a whimsical or piecemeal fashion, and hence demanding a worldwide response (Hassan, 2017). Shaw (2008) opined:

> "… The need to demonstrate that particular damage has been caused to one state by the actions of another state means that this model [state responsibility approach] can only with difficulty be applied to more than a small proportion of environmental problems. In many cases it is simply

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

> impossible to prove that particular damage has been caused by one particular source… (pp. 845, 862)"

International cooperation means that states are required to cooperate in dealing with transboundary pollution issues (Lefeber, 2018). There are numerous instances illustrating international cooperation, among those are the establishment of *Inter-Agency Committee on Sustainable Development* in 1992 which functions to improve cooperation between various United Nations (UN) bodies concerning international environmental law.

Under this developing concept of international environmental law, states shall observe certain international obligations in dealing with issues relating to health of the Earth, *inter alia* (Shaw, 2008):

(i) cooperate with each other;
(ii) obligation to notify other states on environmental hazards when it is known; and
(iii) obligation to conduct an environmental impact assessment.

With regard to the first obligation, Principle 24 *Stockholm Declaration 1972* provides that there should be a spirit of cooperation among the states when it touches on the protection of the environment. In a similar fashion, Principle 7 *Rio Declaration 1992* noted that conserving, protecting and restoring the health of the Earth shall be done in a spirit of global collaboration. This Declaration continued to emphasize in Principle 13:

> "… States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction…"

With regard to the obligations to notify other states on environmental hazards when it is known, the *Organisation for Economic Co-operation and Development* (OECD) provides that advance notifications and details should be communicated to states on the existence of a risk of significant transfrontier pollution before the commencement of works which might generate pollution (Title E, para 6). In cases of accidents, states have the obligations to interchange emergency plans and to dispatch instantaneous alert and notice to the affected states, especially if the accident poses an impending menace. Principle 18 *Rio Declaration 1992* similarly provides in circumstances where any catastrophe or other calamity which might result in sudden deleterious consequences on the environment of the other states, states shall instantly alert those states.

In other words, the state of origin has the duty to effectuate prompt notification to the state likely to be affected when an assessment demonstrates a risk of causing environmental damage (Article 8 of the ILC's Draft Articles on Prevention of Transboundary Harm from Hazardous Activities 2001). States shall notify other states likely to be affected as expeditiously as possible, (Article 5 of International Law

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

Association Montreal Rules) and consultations shall be held upon request (*North Sea Continental Shelf* case (1969) 41 ILR).

With regard to the third obligation, *viz* obligations to conduct an environmental impact assessment, such a requirement had, in fact, been incorporated into various international instruments (Shaw, 2008). For example, in the *Convention on Environmental Impact Assessment in a Transboundary Context 1991*, after an environmental impact evaluation is conducted, states have the mandatory duty to ensure that notification to the affected party is carried out, informing it of significant transboundary pollution as a result of the proposed activity. Likewise, the *EEC Council Directive 85/337* provides states shall conduct an assessment with regard to the consequences of projects affecting the environment.

It is notable that by virtue of international cooperation, apart from the obligations discussed above, several principles emerged and were recognised among states in dealing with environmental protection, *inter alia*:

(i) states have common but differentiated responsibilities (McIntyre, 2016)
(ii) states shall take precautionary approach according to their capabilities (Bowman, & Redgwell, 1995)
(iii) The polluter shall bear the costs of pollution *a.k.a.* polluter pay principle (Francioni & Scovazzi et al., 1991).

The recognition of the concept 'states have common but differentiated responsibilities' emerged in the domain of environmental protection. In light of this, Principle 7 *Rio Declaration* explained:

> "… Such a proposition signifies that the developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of pressures therein societies place on the global environment and of the technologies and financial resources they command. It means states should act to protect the climate system on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. The developed countries would indeed take the lead in combating climate change…"

Besides, the notion 'states shall take precautionary approach according to their capabilities' speak for itself. It signifies that deficiency of scientific assurance cannot be an excuse for delaying cost-effective measures to avert environmental damage especially when the risk of grave and irreparable harm are imminent. As such, policies on national growth and development shall adopt the precautionary principle as its foundation, and environmental measures shall consists of foreseeing, fending off and eliminating the sources of environmental degradation (Bergen Ministerial Declaration on Sustainable Development 1990). With regard to the notion 'polluter should bear the costs of pollution' (polluter pay principle), it means without manipulating international trade, finance and investment, the polluter shall bear the costs of pollution.

In addition to these progressive improvements worldwide, the international community further argued that the human race has a right to a clean environment. Apart from those conventionally advocated rights such as right to life, right to live a life with dignity, right to health, right to access to justice and so

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

on, the right to a clean environment even exist. For instance, the *Stockholm Declaration of the United Nations Conference on the Human Environment 1972* provides that:

"… environment is essential to the enjoyment of basic human rights…"

Article 11 *Additional Protocol to the American Convention on Human Rights 1988* similarly promotes the right to a clean environment, and similarly, Article 24 of the *African Charter of Human and Peoples' Rights 1981* provides that mankind shall possess the right to be afforded with a satisfactory environment favourable to their progress and advancement. The human race is entitled to own a healthy and productive life (Johnson, 1993). States shall further provide assurance that its people have the right to deal with environmental matters, such as access to information and justice, and afford public participation in the decision making process (Loucaides, 2004).

Therefore, it is evident that the international cooperation approach, in spite of the fact that it has the character of deviating from the traditional idea of 'state responsibility' in international law, does play a significant role in dealing with issues relating to the environment. It unites states globally, acknowledging the urgency to prevent further environmental deterioration. Numerous international obligations have emerged and become obligations to be observed by the states; various principles are recognised and practiced; all of which underscore the premise that the human race does owns a right to a clean environment.

6.3. Debt-for-nature swaps: A New Solution?

From the discussions so far, the maturity and growth of international environmental law is undeniable. At the infancy of its development, the concept of state responsibility was applied. States have the basic duty not to act in a manner injuring the right of other states, and in breaching their international obligations, they will be held accountable and will be required to make reparation for such breaches. Eventually, states began to realise that the shared environment is suffering from environmental degradation on a grave scale. This issue became a worldwide dilemma, truly requiring a worldwide solution. The paradigm shift from the concept of state responsibility to international cooperation came into being, with numerous principles manifested and recognised among states in dealing with environmental protection. Such cooperation, as illustrated, offers promising insights and reflects the level of commitment and efforts expended by the international community in solving this problem.

However, international cooperation is accompanied by weaknesses (Chimni, 2017). The connection between the requirements to safeguard the ecosystem with the demand for economic advancement is a factor underpinning the development of international environmental law (Shaw, 2008). The level of dedication of states in protecting the environment is questionable to a great degree when states attempt to industrialise their countries. They face the predicament that industrialisation in an environmental friendly manner is extremely costly and there is a short supply of resources that can be dedicated to this area (Shaw, 2008). Undoubtedly, through international cooperation, it appears that the declarations and treaties did not wilfully avoid the discussion of this difficulty. In addressing this issue, Principle 2 and 3 of *Rio Declaration* provides the right to development of states must equitably meet the

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

environmental needs of present and future generations. In another instance, Article 19 *Energy Charter Treaty* provides states shall undertake to take action in an economically efficient manner and to take precautionary measures to prevent and minimise environmental degradation (Subedi, 1999). In spite of that, the main challenge remains unanswered; what is the precise equilibrium between state building project and environmental protection? The reflection of the competing interests between state sovereignty and the need for international cooperation remains persistent. The commonly cited reasons for industrialisation of a state shall take precedence over environmental protection plan are, *inter alia* national blueprints for developing countries have different policies compared to those for developed nations; resources available to execute environmental friendly projects are insufficient for developing countries and so on. Hence, political, cultural and economic barriers became prevalent, which denotes that industrialisation continues to be a state priority at the expense of the good health of environment.

Accordingly, it is suggested the innovative method of 'debt-for-nature swaps' (hereinafter as "DNS") may play a significant role to equipoise the agenda of economic advancement and environmental protection. Such an arrangement operates in a manner whereby the sum of money owed aboard can be transformed into a duty on the debtor state to execute local environmental projects to pay out the amount of the debt, such as protecting national parks, establishing environmental education programs or training people in natural resource conservation and management (Gil, 2013). Through this mechanism, the external debt of a country is exchanged for local currency instruments used to support a specific environmental project in the country (Minujin, 1991). It is a significant method of financing solutions for sustainable development as 'everyone benefits' (Occhiolini, 1990). The *United Nations Development Programme* (UNDP, 2017) explains DNS as an:

> "… Agreement that reduces a developing country's debt stock or service in exchange for a commitment to protect nature from the debtor-government. It is a voluntary transaction whereby the donor(s) cancels the debt owned by a developing country's government. The savings from the reduced debt service are invested in conservation projects…"

Putting it another way, such an arrangementis an effective way of sustaining the environment, as it helps lessen the burden of debts of developing countries, and in return, assists in mobilising resources for protecting nature. Under such circumstances, the debtor-government, in exchange for debt forgiveness, furnishes the commitment to provide the accrued savings in conservation for climate-related expenditures (Minujin, 1991). The mechanism of DNS involves three parties, *viz* an international environmental group, the debtor country, and a creditor bank. Firstly, the international environmental group utilises its own or donated resources to financially acquire the external debt of the debtor. The debts are purchased at a steep discount from the face value in the secondary market. Secondly, the environmental group exchanges with the country the debt purchased at a price after negotiation with the latter (i.e. the redemption price). The value of the redemption price is at least equal or superior to the price paid for the debt in the secondary market. Consequently, the debtor country issues local currency financial instruments in an amount equivalent to the debt negotiated with the environmental group. The local currency financial instruments

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

shall be utilised for financing environmental projects in the country (Minujin, 1991). Occhiolini (1990, p32) explained that the scope of benefit of DNS may even be wider.

> "… Under such an arrangement, DNS may effectively result in restructuring and reducing the debt in ways that are favourable to the borrowing country, and may further provides an interesting potential for the participation of civil society, increasing awareness about environmental issues… They can also be extended to cover debt for indigenous territory swaps in which national governments agree to restore and protect indigenous land rights, and indigenous groups agree to protect such lands, in return for debt reductions. The funds which initially destined to pay the original debt can be now directed to finance other priority sectors, such as environment, education or the health system…" (See also Duit, Feindt, & Meadowcroft, 2016).

6.4. The Tail of a Fairytale

The level of commitment and dedication among states in sustaining the environment can be regarded as a fairytale without a happy ending. After all, at the tail of this discussion, it can be said that implementing solutions with real impact is always difficult. Bringing polluters to task to make reparation for breaches is an arduous task and upholding those principles as enunciated in international cooperation is a sweet promise as well. Even the "debt for nature swaps" method may not be as effective as it sounds, as the UNDP (17th January 2017) itself admitted

> "… DNS has only resulted in relatively small amounts of debt relief, limiting their impact in reducing developing countries' debt burden… Transaction costs might be high compared to other financing instruments; negotiations can be time-consuming, spanning several years and might result in limited debt reduction or discount rates. Besides, the length of the design and negotiation phase of a DNS can span one to three years, mostly depending on the willingness of the parties and the complexity of the deal…"

Therefore, it can be perceived that as states proceed with prioritising industrialisation, economic development is gained at the expense of environment. The various mechanisms established with the vision of protecting the environment have failed its mission. Instead, it is noticeable that the problem of climate change continues to be a dilemma looming large worldwide, and the health of the earth remains a destructive and deleterious state of affairs (Biermann, 2017).

The growth of the human race creates complexity, but indeed, requires simplicity to solve problems. The problems related to the environment are not as complex as they seem. It is our egotism which lead us to sniff out unnecessarily intricate answers to elementary issues. Isaac Newton once quoted 'truth is ever to be found in simplicity and not in the multiplicity and confusion of things'. It is the simple which creates the marvellous. In the words of Steve Jobs (D'Onfro, 2016)

> "... That's been one of my mantras-focus and simplicity. Simple can be harder than complex: You have to work hard to get your thinking clean to make it simple. But it's worth it in the end..."

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

Similarly, Maeda (2006) opined:

"... Simplicity is about subtracting the obvious and adding the meaningful... (p. 89)"

Therefore, the solution to the global problem on environmental protection is to keep it simple. The choice is simple: come together or fail. The secret is to have "fewer secrets and more collaboration" among states (Adade, 2018). Solutions, when implemented at scale, seems like an insuperable challenge. In spite of that, collaboration across borders and open innovation in the public and private sectors are the definitely imperative if we desire to 'scale up solutions with real impact' (Adade, 2018). When global leaders choose to act more openly, it offers them huge economic opportunities. Working across borders can lead the way to innovation of higher quality and better business outcomes, which will eventually benefit the society (Kolk, 2016). Research propounds that the stumbling blocks that fend off cross-cultural collaboration and open innovation among various parties around the world are multiple gatekeepers, skepticism regarding anything "not invented here" (Deichmann, Rozentale & Barnhoorn, 2017; Antons & Piller, 2015, p. 197). Hence, we are required to cultivate and sustain an atmosphere of flexibility and trust as well as layered networks to get around these hurdles, where Adade (2018) opined:

"… The complexity of the global issues is far too big for any party to tackle alone. These large-scale problems require new kinds of partnership, cross-border collaboration and open innovation among the public and private sectors, NGOs, academia and other stakeholders. In fact, it's easier than ever to share ideas and work together with people around the world… (para. 10)"

Recently, a BBC news report dated 6th August 2018 reported "Climate change: 'Hothouse Earth' risks even if CO2 emissions slashed", where scientists have issued a stern warning (McGrath, 2018)

"… if polar ice continues to melt, forests are slashed and greenhouse gases rise to new highs (as they currently do each year), the earth will pass a tipping point…"

The news report further provides:

"… the tipping point could come once the earth warms to 2 degree Celsius over preindustrial times. The planet has already warmed 1 degree Celsius over preindustrial times, and is heating up at a rate of 0.17 degree Celsius per decade. If we do not act together in tackling this issue immediately, places on earth will become uninhabitable, and 'hothouse earth' becomes the reality…" (McGrath, 2018)

This means that soon, we will pass threshold leading to boiling temperatures on earth. Currently, 'hothouse earth' has become very likely to be uncontrollable, and could be only decades ahead (McGrath, 2018). By then, this phenomena will transform the earth's natural forces, which are currently playing the role of protecting us, into our enemies. As such, the earth needs an urgent transition to a green economy,

https://doi.org/10.15405/epsbs.2019.10.12
Corresponding Author: Salawati Mat Basir
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

by prioritising the health of the environment while reaping economic benefits. Otherwise, the current rates of degradation will further propel our earth into an everlasting vicious 'hothouse' state. Collaborating quickly with fewer secrets may be the last opportunity to save the earth.

7. Conclusion

In conclusion, our earth is without doubt, on the verge of a dreadful environmental crisis. The health of our earth is deteriorating, and certainly, we are experiencing the negative effects all around us. We are now vulnerable to current environmental disasters, and such occurrence remain very likely to go from bad to worse in the near future. What this signifies is that we, the global citizens of this planet, are in a state of planetary emergency, and unless we address the various issues prudently and seriously, we are all, surely doomed. Regardless of whether we chose to embrace the state responsibility concept, or to adopt the international cooperation approach, or to resort to the "debt for nature swaps" regime, by hook or by crook, we need to act quickly. It is important for people to unite and to stand together now to solve this global problem. The resolution of global environmental issues ultimately depends on international relations and cooperation. A healthy planet depends on all of us.

References

Abass, A. (2012). *International Law: Text, Cases and Materials.* 2nd edition. United Kingdom: Oxford University Press.

Adade, M. (2018, march 14). The Secret to Solving Global Issues? Fewer Secrets, More Collaboration, *World Economic Forum on Latin America.* Retrieved from https://www.weforum.org/agenda/2018/03/the-secret-to-solving-global-issues-fewer-secrets-more-collaboration/ (Access date: 1st October 2018).

Antons, D., & Piller, F. T. (2015). Opening the Black Box of "Not Invented Here": Attitudes, Decision Biases and Behavioural Consequences. *The Academy of Management Perspective, 29*(2), 193-217.

Biermann, F. (2017). *A World Environment Organisation: Solution or Threat for Effective International Environmental Governance?* London: Routledge.

Birnie, P., & Boyle, A. (2002). *International law and the Environment* (2nd edition). Oxford: Oxford University Press.

Bowman, M., & Redgwell, C. (Eds.). (1995). *International Law and the Conservation of Biological Diversity*. Netherlands: Dordrecht.

Boyle, A. (1989). Nuclear Energy and International Law: An Environmental Perspective. *British Yearbook of International Law 60*, 257.

Carwardine, M. (1990). *The WWF Environment Handbook*. London: MacDonald Optima.

Chimni, B. S. (2017). International Institutions Today: An Imperial Global State in the Making, in Kwakwa, E. (Ed.). *Globalisation and International Organisations*. London: Routledge Cavendish.

Contini, P., & Sand, P. H. (1972). Methods to Expedite Environment Protection: International Eco-standards. *American Journal of International Law 66*, 37-59.

D'Amato, A. (1990). Do We Owe a Duty of Care to Future Generations to Preserve the Global Environment? *American Journal of International Law 84*(1), 190-198.

D'Onfro, J. (2016, February 24). 15 Steve Jobs quotes that will leave you feeling Inspired. *Business Insider.* Retrieved from: https://amp.businessinsider.com/best-steve-jobs-quotes-2016-2 (Access date: 1st October 2018).

Deichmann, D., Rozentale, I., & Barnhoorn, R. (2017, December 20). Open Innovation Generates Great Ideas, So Why Aren't Companies Adopting Them? *Harvard Business Review.*

Doeker, G., & Gehring, T. (1990). Private or International Liability for Transnational Environmental Damage-The Precedent of Conventional Liability Regimes. *Journal of Environmental Law, 2*(1), 1.

Duit, A., Feindt, P. H., & Meadowcroft, J. (2016). Greening Leviathan: The Rise of the Environmental State? *Environmental Politics, 25*(1), 1-23.

Gil, S. F. (2013). *Debt-for-nature swaps*. University of the Balearic Island.

Goldie, L. F. E. (1973). *A General View of International Environmental Law-A Survey of Capabilities, Trends and Limits*. Leiden: Hague Colloque.

Handl, G. (1980). State Liability for Accidental Transnational Environmental Damage by Private Persons. *American Journal of International Law, 74*, 525-565.

Hassan, D. (2017). *Protecting the Marine Environment from Land-based Sources of Pollution: Towards Effective International Cooperation*. London: Routledge.

Johnson, S. P. (1993). *The Earth Summit*. Netherlands: Dordrecht.

Kolk, A. (2016). The Social Responsibility of International Business: From Ethics and the Environment to CSR and Sustainable Development. *Journal of World Business, 51*(1), 23-34.

Lane, L. M. (2018). Corporate Social Responsibility in Marine Plastic Debris Governance. *Marine Pollution Bulletin, 127*, 310-319.

Lefeber, R. (2018). Responsibility not to Cause Transboundary Environmental Harm, In Faure, M. (ed.). *Elgar Encyclopaedia of Environmental Law*. United Kingdom: Edward Elgar.

Loucaides, C. A. (2004). Environmental Protection through the Jurisprudence of the European Convention on Human Rights. *British Yearbook of International Law, 75*, 249.

Maeda, J. (2006). *The Laws of Simplicity: Design, Technology, Business, Life.* United States: The MIT Press.

McGrath, M. (Ed.). (2018, August 6). Climate change: 'Hothouse Earth' risks even if CO2 emissions slashed. Retrieved from https://www.bbc.com/news/amp/science-environment-45084144

McIntyre, O. (2016). *Environmental Protection of International Watercourses under International Law*. London: Routledge.

McIntyre, O. (2018). Responsibility and Liability in International Law for Damage to Transboundary Fresh Water Resources. In M. Tignino, & C. Brethaut (Eds.), *Research Handbook on Freshwater Law and International Relations*. United Kingdom: Edward Elgar.

Minujin, F. G. (1991). Debt-for-Nature Swops: A Financial Mechanism to Reduce Debt and Preserve the Environment. *Environmental Policy and Law 21*, 146.

Nollkaemper, A., Plakokefalos, I., & Schechinger, J. (2017). *The Practice of Shared Responsibility in International Law*. Cambridge: Cambridge University Press.

Occhiolini, M. (1990). *Debt-for-Nature Swaps Working Papers*. Debt and International Finance Division, International Economics Department, World Bank.

Oppenheim, L. (1955). *International Law*. (8th edition, Volume 1). London: Longman.

Parichay, V. N. (1995). *International Environmental Law and Policy.* New York, NY: Martinus Nijhoff.

Ranjeva, R. (1994). L'Environnement, La Cour Internationale de Justice et La Chambre Speciale pour les Questions d'Environmen. *Annuaire Francais De Droit International, 40*, 433-441.

Reichwein, D., Hubert, A. M., Irvine, P. J., Benduhn, F., & Lawrence, M. G. (2015). State Responsibility for Environmental Harm from Climate Engineering. *Climate Law5*(2-4), 142.

Rubin, M. (1971). Pollution by Analogy: The Trial Smelter Arbitration. *Oregon Law Review, 50*, 272.

Shaw, M. (2008). *International Law*. 6th edition. Cambridge: Cambridge University Press.

Subedi, M. (1999). Balancing International Trade with Environmental Protection. *Brooklyn Journal of International Law, 25*, 373.

The United Nations Development Programme (2017). Retrieved from https://annualreport.undp.org/2017/