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THE LEGAL STATUS OF THE EMERGING PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW

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Over the last few decades, international community has adopted a good number of environmental principles under various international legal instruments to address major global environmental problems. These principles have significant impact on the development of international environmental regulatory regimes. They form the basis of legal responsibilities formulated under various environmental regimes. Indeed, there is a discerning trend both at the national and international levels to adopt and recognise legal principles especially to meet the normative needs of environmental regulatory system. Although these principles have originated from various sources of national and international law, it is often difficult to define the parameters or precise legal status of these emerging principles.[1] The frequency with which the environmental principles are being endorsed by various national and international organisations suggests the need to enquire into the nature and extent of their present legal status.

Principles are different from rules. Rules may impose obligation dictating what exactly is required. Unlike rules, principles generally provide guidance with reference to a course of action. A rule may be based on a guiding principle even though the former is legally enforceable and the latter is not. It is observed, a 'rule..is essentially practical and, moreover, binding...;there are rules of art as there are rules of government'[2],

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1. See, Ian Brownlie, Principles of Public International Law, Clarendon Press, Oxford, 4th ed., 1990.p.19.

2. D. Bodansky, The United Nations Framework Convention on Climate Change: A Commentary, 18 Yale Journal of International Law, p.501.

while a principle 'expresses a general truth, which guides our action serves as a theoretical basis for the various acts of our life, and the application of which to reality produces a given consequence[3].' It is also observed that principles 'embody legal standards, but the standards they contain are more general than commitments and do not specify particular actions, unlike rules'.[4]

The legal effect of a particular principle depends upon the consideration of a number of factors like its source, its textual context, the specificity of its drafting, and the circumstances in which it is being relied upon including its frequent use in international legal instruments and reliance by international tribunals and state practice. Although principles are found in various materials, Philippe Sands is of the view that principles which are found in a treaty will have a firmer international legal quality than those set out in non-binding instruments. Moreover, a distinction should be drawn between those principles elaborated in the preamble of treaties and other international acts, and those elaborated in the operational parts.[5] Some of these principles reflect rules of customary law; others reflect emerging rules; and yet others reflect ideas or concepts of even less well developed legal status specially when they are intended to be inspirational in effect or reflect future intent. Principles can have three main legal consequences. First, principles can assist in interpreting rules of obligations the meaning of which might not be clear. Secondly, they can provide a basis for the negotiation and elaboration of future international legal obligations. Third in certain areas, they

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3. Id.

4. Id.

5. Philippe Sands, International Law in the Field of Sustainable Development : Emerging Legal Principles, in Winfried Lang (ed), Sustainable Development and International Law, Graham & Trotman / Martinus Nijhoff, London, 1995, p.57. He comments, the 1992 Rio Declaration 'represents the culmination of recent efforts by the international community to define a comprehensive set of principles on international environmental law and policy to achieve sustainable development.' p.57.

can provide specific guidance as rules of customary international law.

This article traces out the legal development of major international environmental principles enshrined in various international environmental legal instruments. It intends to examine the nature and extent of their application in the context of relevant environmental problems. The article especially embarks on an investigation as to the present legal status of a few selected emerging environmental principles. These are (1) Principle of Sustainable Development (2) Principle of Harm Prevention (3) Principle of Common but Differentiated Responsibility (4) Precautionary Principle and (5) Principle of Intergenerational Equity. These principles have been selected because they have played an important role in the recent development of international environmental law especially in the formation of successful environmental regimes.

Principle of Sustainable Development

The principle of Sustainable Development attempts to resolve the conflict between development needs and the protection of environment. The term 'Sustainable Development' came into use following the report of the World Commission on Environment and Development widely known as Brundtland Commission Report, in 1987. It defined sustainable development as, 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.' It contains within it two concepts: (a) the concept of 'needs' in particular the essential needs of the world's poor, to which overriding priority should be given; and (b) the idea of limitations imposed by the state of technology and social organisation on the environment's ability to meet present and future needs.[6]

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6. World Commission on Environment and Development, Our Common Future (Oxford University Press, 1987), p.43.

The World Conservation Union (IUCN) and their partners, in their report 'Caring for the Earth: a strategy for sustainable living' defined sustainable development as, 'improving the quality of human life while living within the carrying capacity of supporting ecosystems'.[7] The Australian national strategy defines Ecologically Sustainable Development (ESD) to be, 'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.[8]

The Expert Group Meeting on Identification of Principles of International Law for Sustainable Development, has identified 17 such principles and concepts which include:

-Principle of interrelationship and integration

-Right to development

-Right to a healthy environment

-Eradication of poverty

-Equity

-Sovereignty over natural resources and responsibility not to cause damage to the environment of other States or to areas beyond national jurisdiction

-Precautionary principle

-Duty to co-operate in the spirit of global partnership

-Common heritage of humankind

-Public participation

-Access to information

-Environmental impact assessment and informed decision-making

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7. IUCN,UNEP,WWF, Caring For the Earth: A Strategy For Sustainable Living, Switzerland,1991, p.10.

8. See, Australian National Strategy.

-Peaceful settlement of disputes in the field of environment and development

-Equal, expanded and defective access to judicial and administrative proceeding

-National implementation of international commitments

-Monitoring of compliance with international commitments.[9]

These aforementioned principles represent features of a legal framework supportive for sustainable development. Although the term sustainable development has been widely used in international environmental instruments, there is no generally accepted international legal definition of sustainable development[10]. The recent UNCED (United Nations Conference on Environment and Development) instruments also refer to the principle of sustainable development. Principle 1 of the Rio Declaration, 1992 declares that 'Human beings are at the centre of concerns for sustainable development. They are entitled to a health and productive life in harmony with nature'[11]. Similarly, Principle 4 of the Declaration requires that 'in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it'[12]. The Framework Convention on Climate Change, 1992 also refers to the sustainable development principle in the preamble by recognising that 'all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development'.[13]

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9. The meeting was held in Geneva in September 1995. The Report was prepared for the Fourth Session of the Commission on Sustainable Development, April-May 1996, Department for Policy Co-ordination and Sustainable Development, New York.

10. Id.

11. See, Principle 1, Rio Declaration, 1992.

12. See, Principle 4, Rio Declaration, 1992.

13. See, Preamble, Framework Convention on Climate Change, 1992.

Brinie and Boyle have opined that the Icelandic Fisheries case, and the existing fisheries treaties support that there is a customary obligation to co-operate in the conservation and sustainable development of the common property resources of the high seas. The provisions of a growing body of global and regional treaties on international water courses, wildlife conservation, habitat protection, endangered species, protected marine areas, cultural and natural heritage suggest that conservation and sustainable development have acquired a wider legal significance beyond that implied in the Icelandic Fisheries cases. However, in their view, it is difficult to treat these treaty regimes or the limited indication of customary rules derived from case law, as an endorsement of an obligation of conservation and sustainable development of all natural resources in international law. They have refused to assume that comparable obligations apply to areas which fall under national sovereignty such as tropical forests[14].

They observe that there is a lack of consensus on the meaning of sustainable development, or as to how to give it concrete effect in individual cases. In their opinion, the international instruments that adopt the concept do not identify what constitutes sustainable development in any particular context even though they point to the emerging legal status of sustainable development as a principle of international law and the changing status of natural resources and ecosystems which can no longer be regarded as property to be freely exploited. They conclude that 'international law now requires a standard of sustainable development to be met is not untenable; it simply lacks adequate articulation at present for confident generalisations to be made'[15].

In view of the present writer, sustainable development in the

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14. Patricia W. Birnie and Alan E. Boyle, International Law & the Environment, Clarendon Press, Oxford. First Edition, 1992, reprint, 1994, p.122

15. Ibid, p.124. See, also, Handl, 1 Y.I.E.L, 1990, pp. 24-28.

sense that development activities should take place with due consideration of environmental concerns is widely approved by the national and international instruments. Environmental impact assessment (EIA) as a tool of ensuring sustainable development is now recognised by almost all the legal systems of the world. Environmental laws of almost all states require some form of EIA to ensure that development projects do not have any adverse impacts on the surrounding environment. In this regard it should be pointed out that Bangladesh Environment Conservation Rules, 1997 requires such environmental assessment of certain types of projects and industries having significant impact on the environment[16]. EIA is also widely recognised under international instruments. Thus, in view of the present writer, legal recognition coupled with state practices strongly supports the fact that sustainable development has emerged as a rule of customary international law.

Principle of harm prevention

Under this principle states are required to take adequate steps to control, prevent and regulate sources of serious global environmental pollution or transboundary harm arising within their territory or subject to their jurisdiction. Under the customary international law, this principle of harm prevention is also a basis for reparation after the harm has taken place. Support for such an obligation can be found in arbitral and judicial decisions as well as in widely accepted international legal instruments, which establishes a compelling basis for the view that it now reflects a general rule of customary international law.[17] Thus, the well known Trial Smelter arbitration held that, 'no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another.'[18] Similarly, the

16. Rules 7 of the (Bangladesh) Environment Protection Rules, 1997.

17. Philippe Sands, supra, p.62.

18. Trial Smelter Case, (1938-1941) 3 R.I.A.A. 1905.

Court in the Corfu Channel case indicated that it was 'every state's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states.'[19]

The Principle of harm prevention has also been recognised by international environmental instruments along with the Principle of state sovereignty over natural resources. Thus, Principle 21 of the 1972 Stockholm Declaration while affirming that states have sovereign rights to exploit their own resources pursuant to their own environmental policies, recognises that states have responsibility 'to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or to areas beyond the limits of national jurisdiction'. Similarly Principle 2 of 1992 Rio Declaration reiterates the Principle of state sovereignty over natural resources as well as the obligation not to cause harm to the environment beyond the limits of national jurisdiction. These two principles taken together ensure that the rights of the states over their natural resources in the exercise of permanent sovereignty are not unlimited.[20]

A number of UN resolutions have also recognised the Principle of harm prevention[21]. In addition, many multilateral environmental treaties have adopted these principles of state sovereignty and harm prevention. For example, Principle 21 of the Stockholm Declaration is fully incorporated into the Biodiversity Convention, and Principle 2 of the Rio Declaration is incorporated into the Preamble of the Climate Change Convention and in the preamble of the Ozone Convention. The normative character of the Principle 21 has also been recognised in Articles 192,193, and 194 of the 1982 UN Convention on the Law of Seas (UNCLOS).[22]

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19. ICJ Rep.1949, 22. See also, Nuclear Tests Case (Australia v. France) ICJ Rep. 1974. 388.; Lac Lanoux arbitration, 24 ILR, 1957,101,123.

20. Philippe Sands, supra, p.63

21. UNGA Res.2849 XXVI,1971; 2995 XXVII,1972;2996 XXVII,1972;3281 XXIX,1974;34/186,1979.

22. Birnie and Boyle, supra, p.91

Although the principle of harm prevention generally deals with transboundary harm between states, Birnie and Boyle hold that many recent international instruments require states to protect global common areas, including Antarctica and those areas beyond the limits of national jurisdiction, such as the high seas, deep sea-bed, and outer space.[23]

The main importance of the Principle of harm prevention is that it requires states to take suitable preventive measure which is more than making reparation for environmental damages. The 'due diligence standard' of conduct that is generally used in such situations does not make the state an absolute guarantor of the prevention of harm. It simply considers the effectiveness of the control measures adopted if any, the amount of resources available to the state in question and the nature of the activity that requires control etc, before determining the liability of a state. To mitigate the open-textured nature of the obligation under the due diligence rule, resort can be had to the internationally agreed minimum standards set out in treaties or in the resolutions and decisions of international bodies. Alternatively 'standard of diligence' can be developed by reference to the use of 'best available technology' or similar formulations, such as 'best practicable means.'[24] Thus, Birnie and Boyle are of the view that whether or not they are found in legally binding instruments, it is now often possible to point to specific standards of diligent conduct which in turn can be monitored by international supervisory institutions or employed by international tribunals to settle disputes.[25]

Indeed, almost all scholars agree that the Principle of harm prevention has become a customary rule of international environmental law.

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23. Ibid., p. 191
24. Ibid, pp.93-94. See also, Articles 210 and 211,1982 UCLOS.
25. Ibid., p.94.

Principle of Common but differentiated Responsibility

The Principle of common but differentiated responsibility, in the context of global environmental problems, addresses the equity issue between the developed and developing countries. Rooted in international economic law, the principle was initially applied in the context of GATT rules and latter adopted by environmental legal instruments.

Although the principle acknowledges the common responsibility of states for the protection of the environment, it considers each state's contribution to the creation of a particular problem and its capacity to respond to such problem in determining its qualitative and quantitative obligations under a particular treaty[26].

The implications of the principle are : first, it requires all concerned states to participate in international response measures. Second, it allocates different levels of obligations between and among different states. Thirdly it obliges the developed countries to provide financial and technological support to the developing countries in order to help them comply with the treaty obligations. The principle has been adopted, among others, by the Rio Declaration[27], the Climate Change Convention[28], the Biodiversity Convention[29], and the Montreal Protocol[30]. Thus, in accordance with this Principle, both the Montreal Protocol and the Kyoto Protocol have adopted different sets of obligations for developing countries[31]. They have also established mechanisms for financial and technical support for the developing countries. These

26. Philippe Sands, supra, p.64.
27. Principle 7, Rio Declaration, 1992.
28. Article 3 (1), Framework Convention on Climate Change, 1992.
29. Preamble, Biodiversity Convention, 1992.
30. Preamble, Article 2, Montreal Protocol, 1987.
31. See, Article 2 of the Montreal Protocol, 1987 and Article 4 of the Climate Change Convention, 1992.

mechanisms make the compliance by developing countries conditional upon the compliance by developed countries to perform their obligation to provide financial and technological support under these treaties.

However, in the view of the present writer, the principle of common but differentiated responsibility has not attained the status of a customary rule of international environmental law for a number of reasons. First, the principle has been recognised only in the context of a few specific global environmental problems. Second, even the negotiating developed countries have constantly refused to make it a precedent.

Precautionary principle

Precautionary principle generally implies that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.[32] Although various formulation have been used to express this principle in different international instruments, scholars have identified a number of common elements which could be found in virtually all the instruments which endorsed the precautionary principle. These are:

-the vulnerability of the environment;

-the limitations of science to predict accurately threats to the environment and the measures required to prevent such threats;

-the availability of practical alternatives (both methods of production and products) which enable the termination or

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32. Principle 15, Rio Declaration,192; Alexandre Kiss describes this principle as the most generally acceptable approach. See, Alexandre Kiss, The Rights and Interests of Future Generations and the Precautionary Principle, in David Freestone, and Ellen Hey (eds), The Precautionary Principle and International Law : The Challenge of Implementation, The Hague, The Netherlands,1996,p.27.

minimisation of inputs into the environment; and

-the need for long term holistic economic considerations, which internalise, among other things, the real cost of environmental degradation and the costs of waste treatment.[33]

Precautionary Principle differs from the Principle of harm prevention in that in the latter case the certainty of the environmental damage that would result from a particular action is clearly established, whereas in the former there is a lack of scientific certainty about cause and effect relationship or the extent of possible environmental harm which does not legitimate delaying the imposition of some kind of regulatory mechanism over the activity in question. The Precautionary Principle rejects the so-called assimilative capacity approach to environmental policy and emphasises the use of clean methods of production as well as environmental impact assessment. Thus, there is a shift of focus away from trying to determine the level of pollution which the environment can assimilate to technologies which will eliminate or at least reduce the pollution to the environment.[34]

It requires positive action to protect the environment even before the scientific proof of harm can be made available. The emphasis is on the timing of, rather than the need for, remedial action. From the legal perspective it implies that once a prima facie case is made that a risk exists, then scientific uncertainty works against the potential polluter rather than in his or her

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33. David Freestone and Ellen Hey, Implementing the Precautionary Principle: Challenges and Opportunities, in David Freestone, and Ellen Hey, (eds), Ibid. p. 258. See also, Ellen Hey, The Precautionary Concept in Environmental Law and Policy: Institutionalising Caution,' 4 Georgetown International Environmental Law Review, pp. 303-318, 1992.

34. David Freestone, and Ellen Hey, Origins and Development of the Precautionary Principle, in David Freestone and Ellen Hey (ed). The Precautionary Principle and International Law: The Challenge of Implementation, The Hague, The Nathelands, 1996.

favour.[35] According to Freestone and Hey the Precautionary principle assumes that the cost of remedial clean-up measures may be prohibitive, or that essential biological life-supporting services may already be irreplaceable if action to protect the environment is taken only when scientific certainty is available. It also argues that current economic accounting methods do not adequately recognise the true costs of resource depletion, frequently underestimating the future environmental costs of substituting man-made systems for damaged natural ones and overemphasising short term economic costs of remedial measures[36]. Since its first explicit formulation at the international level in late 1990 in the Declaration of the Second International North Sea Conference on the Protection of the North Sea,[37] the principle has been adopted by many binding and non-binding international legal instruments including the UNCED instruments. Thus, Rio Declaration,[38] Agenda 21,[39] Climate Change Convention,[40] London Amendments to the Montreal Protocol,[41] Convention on Biological

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35. David Freestone and Ellen Hey, ibid, p.13

36. David Freeston and Ellen Hey, Implementing the Precautionary Principle: Challenges and Opportunities in David Freestone and Ellen Hey (eds) ibid, p.258.

37. David Freestone and Ellen Hey, Origins and Development of Precautionary Principle in David Freestone and Ellen Hey (eds) supra, p.5 observe, 'The first explicit formulation of the precautionary concept at the international level was contained in the Declaration of the Second International North Sea Conference on the Protection of the North Sea (London Declaration), Paragraph VII, London Declaration, London, November 25,1987.

38. Principle 15, Rio Declaration, 1992.

39. Chapter 17, paragraph 17.21.; also chapter 22, para 22.5 (c), Agenda 21.

40. Article 3 (3), Climate Change Convention, 1992.

41. Preamble, paragraph 6 of the Montreal Protocol on Substances that Deplete the Ozone Layer, as amended at the Second Meeting of the Patties to the Montreal Protocol, London 27-29 June 1990, Doc.l UNEP/Os.L.Pro2/ 3,Annex II,p 25. Text in the Y.I.E.L.,1990,vol, 1, pp.591-657.

Diversity,[42] the Second Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution[43] etc. have adopted this principle.

The issue whether the Precautionary Principle has become a rule of customary international law is disputed. Birnie and Boyle observe, 'Despite its attractions, the great variety of interpretations given to the precautionary principle, and the novel and far-reaching effects of some applications suggest that it is not yet a principle of international law. Difficult questions concerning the point at which it becomes applicable to any given activity remain unanswered and seriously undermine its normative character and practical utility, although support for it does indicate a policy of greater prudence on the part of those states willing to accept it'.[44] Similarly Handl noting the various definitional ambiguities of the concept, states that 'at present, the precautionary principle is not a term of art'.[45] However, Cameron and Abouchar observe, 'We argue that the precautionary principle in environmental regulation is now a general principle of international law with sufficient state practice evident to make a good argument that the principle has emerged as a principle of customary international law'.[46]

In view of the present writer, the Precautionary Principle has emerged as a customary rule of international environmental law for a number of reasons. First, although different formulations have been used in defining precautionary principle in various

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42. Preamble, Biodiversity Convention, 1992.

43. Preamble, Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions, 1994 United Nations Doc GE.94.31969.

44. Birnie and Boyle, supra, p.98.

45. Gunther Handl, Environmental Security and Global Change: the Challenge to International Law' in Gunther Handl (ed),Yearbook of International Environmental Law, 1990, p.23.

46. Cameron and Abouchar, The Status of the Precautionary Principle in International Law, in David Freesonte, and Ellen Hey (ed), supra, p.30.

international instruments, we can identify some common elements from all of them such as, threat of non-negligible harm due to regulatory inaction, lack of scientific certainty on the cause and effect relationship, and non-justification of regulatory inaction under such circumstances. These common elements sufficiently defy any allegation of vagueness of the precautionary principle. Second, increasing recognition of the precautionary principle both at the national and international levels supports the view that precautionary principle has emerged as a customary rule of international environmental law. In R v. Secretary of State for Trade and Industry ex parte Duddridge, a UK court accepted that the precautionary principle exists[47]. Similarly, Indian courts have also applied the precautionary principle in recent environmental cases. In Vellore Citizens Welfare Forum v. Union of India & Others, the Supreme Court of India accepted the Precautionary principle as an essential feature of sustainable development. In the Court's view, the Precautionary principle, in the context of the municipal law, means (i) environmental measures--by the State Government and the statutory authorities—They must anticipate, prevent and attack the causes of environmental degradation, (ii) where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures of prevent environmental degradation, and (iii) the 'onus of proof' is on the actor of the developer-industrialist to show that his action is environmentally benign[48]. All these evidences strongly favour the view that precautionary principle is now a customary rule of international law.

Principle of Intergenerational Equity

The Principle of intergenerational equity proposes that the

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47. See, R v. Secretary of State for Trade and Industry ex parte Duddridge et al (unreported case) October 3 1994.

48. In Vellore Citizens Welfare Forum v. Union of India & Others, AIR.1996 VI AD S.C. 577.

members of the present generation hold the earth in trust for future generations and as such they have a duty to utilise and conserve natural resources in such a way that the rights of future generations are not compromised. It requires that the needs of the future generation are to be taken into account by the present generation in their current activities.

Edith Brown Weiss is one of the proponents of this Principle. Her theory focuses on the inherent relationship that each generation has to other generations, past and future, in using the common patrimony of natural and cultural resources of the planet. Each generation is both a custodian and a user of the common natural and cultural patrimony. As custodians of this planet, we have certain moral obligations to future generations which can be transformed into legally enforceable norms. Our ancestors had such obligations to us. As beneficiaries of the legacy of past generations, we inherit certain rights to enjoy the patrimony. This can be viewed as intergenerational planetary rights and obligations.[49]

While identifying three kinds of equity problems between generations such as depletion of resources, degradation in quality of resources and discriminatory access to the use of and benefit from the resources received form past generations, the theory emphasises that for the proper allocation of burdens and fruits between generations, intergenerational equity must extend to the intergenerational context.[50]

The theory of intergenerational equity asserts that all peoples also have a set of intragenerational planetary rights and obligations

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49. Edith Brown Weiss, In Fairness to Future Generations: International Law, Common Patrimony and Intergeneration Equity, United Nations University, Tokyo, 1989, p.21

50. Intergenerational refers to relationships between present and future generation, while intragenerational refers to relationships among members of the present generation.

designed to implement justice between generations.[51] As beneficiaries of the planetary legacy, all members of the present generation are entitled to equitable access to the legacy. In the intragenerational context, intergenerational equity requires wealthier countries to assist impoverished countries in realising such access.[52]

According to Edith Brown Weiss four criteria should guide the development of principles of intergenerational equity. First, the principles should encourage equality among generations, neither authorising the present generation to exploit resources to the exclusion of future generations, nor imposing unreasonable burdens on the present generation to meet indeterminate future needs. Second, they should not require one generation to predict the values of future generations. They must give future generations flexibility to achieve their goals according to their own values. Third, they should be reasonably clear in application to foreseeable situations. Fourth, they must be generally shared by different cultural traditions and be generally acceptable to different economic and political systems[53].

She proposes three basic principles of intergenerational equity. First, each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should be entitled to diversity comparable to that of previous generation. This principle may be called 'conservation of options.' Second, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than the present generation received it, and should be entitled to a quality of the planet comparable to the one enjoyed by previous generations.

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51. Id.
52. Ibid, pp. 27-28
53. Ibid, p.38.

This is the principle of 'conservation of quality'. Third, each generation should provide its members with equitable rights of access to the legacy from past generations and should conserve this access for future generations. This is the principle of 'conservation of access.'[54]

Over the last few decades, increasing number of binding and non-binding international instruments[55] have adopted this principle. International treaties that have adopted this principle include 1946 international Whaling Convention,[56] 1972 World Heritage Convention,[57] 1992 Biodiversity Convention,[58] 1992 Climate Change Convention.[59] It seems that the principle has not yet developed as a rule of customary international law. There are two reasons for this. First, limited recognition of the principle both at the national and international levels. Second, lack of legal modalities to accomodate various interests of future gerenations.

Although reliance on this principle by judicial institutions is

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54. Id.

55. See. Principle 1, Stockholm Declaration,1972; UN General Assembly Resolution 35/8 on Historical Responsibility of States for the Preservation of Nature for Present and Future Generations,' 30 October,1980; Preamble, World Charter for Nature, 1982; Principle 3, Rio Declaration; Principle 2(b),Forest Principles,1992; Agenda 21.(para 8.7).

56. The preamble recognises that the 'interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks'.

57 Under Article 4 the parties agree to protect, conserve, present and transmit cultural and natural heritage to 'future generations.'

58. See, the preamble expresses a determination 'to conserve and sustainably use biological diversity for the benefit of present and future generations,' Biodiversity Convention,1992

59. Preamble expresses a determination 'to protect the climate system for..future generations.' Also, Article 3(1), Climate Change Convention,1992.

not yet significant,[60] many scholars have suggested for various actions including the reformations of the UN system in order to develop appropriate mechanism for the implementation of this principle.

Maxwell Bruce, drawing upon the Maltese proposal to the UNCED preparatory committee, proposes the establishment of an 'office of Guardian for Future Generations.' The guardian would represent future generations at hearings of any agency or tribunal within the jurisdiction of a state, maintain relations with states, specialised agencies and international tribunals, file briefs and other materials, recommend actions and take other appropriate steps.[61]

Dr Emmanuel Agius suggests that the role of the guardian would be not to decide, but to promote enlightened decisions with power of advocacy to plead for future generations.[62] Professor Christopher Stone suggests for a number of distinct guardians for distinct objects such as tropical forests, oceans, whales, etc.[63]

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60. See, Decision of the Supreme Court of the Philippines, Minors Oposa v. Secretary of the Department of Environment and Natural Resources (DENR), 33 ILM 173,1994. In that case, 44 minors and the Philippine Ecological Network, representing their generations as well as future generations, brought an action calling on the defendant to cancel all logging permits in the country on the basis of surveys claming that only 850,000 hectares of virgin old growth rainforest were left in the country which is about 2.8 percent of the entire land mass of the Philippines archipelago. The court stated, 'We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue on behalf of the succeeding generations can only be based on the concept of intergenerational responsibility in so far as the right to a balanced and healthful ecology is concerned'.

61. M. Bruce, 'Draft Instrument Establishing the Role of a Guardian,' in E. Agius, S. Busuttli, et al (eds), Future Generations & International Law, Earthscan, London,1998, pp.163-165.

62. E. Agius, 'Obligation of Justice Towards Future Generations: a Revolution in Social and Legal Thought, Ibid., pp. 3-12

63. C.D. Stone, Safeguarding Future Generations. ibid, pp.65-79.

However Philippe Sands is of the view that 'these important efforts to establish a guardianship function should concentrate on enhancing the contribution of non-governmental actors to the development and application of international laws and standards.' In the line of the UNCED instruments, he suggests for strengthening the role of non-governmental actors including citizen's action at national level for the purpose of implementing the principle of intergenerational equity.[64]

Conclusion

From the above discussion it becomes clear that the Principles of international environmental law enshrined in the multilateral environmental treaties are now at different stages of their formation. A few of them have already become rules of customary international law, while the others are only emerging as such. It is also evident that the scholars maintain contradictory views about their legal status. However, their increasing use by the international community in recent international legal instruments reflects its political commitment to give effect to these principles. States are also using these principles at various forums of their decision making process. In a number of recent conventions and protocols, these principles have been used as a basis of framing out detailed obligations for the parties. An appreciation of the legal status of these principles can be a useful means to examine and understand the obligations of developing countries under various multilateral environmental treaties. No court in Bangladesh has yet relied on these principles in reaching its decision. In FAP-20[65], the Supreme Court of Bangladesh has referred to the Rio Declaration, 1992 which contains a number of these environmental principles. However, it is expected that in near future, once the environmental courts come into operation,[66] these principles will provide to these courts important guidance in the administration of environmental justice in Bangladesh.

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64. Philippe Sands, 'Protecting Future Generations: Precedents and Practicalities,' *ibid.*, pp. 89-90.

65. Dr. Mohiuddin Farooque v. Bangladesh 17 BLD (AD)(1997).

66. See, the (Bangladesh) Environmental Courts Act, 2000.