

UNITED NATIONS DECADE OF INTERNATIONAL LAW SYMPOSIUM ON DEVELOPING COUNTRIES AND INTERNATIONAL ENVIRONMENTAL LAW

Beijin, China, August 12-14, 1991

FINAL REPORT

Introduction

A Symposium on Developing Countries and International Environmental Law was sponsored by the Chinese Government in Beijing China, on August 12-14, 1991, which was organized by the Chinese Ministry of Foreign Affairs with the cooperation of the United Nations, the United Nations Environment Programme, the Ford Foundation, China's National Environmental Protection Administration, the Chinese Society of International Law and the Environmental Law Institute of Wuhan University.

The Symposium was attended by experts from both developing countries and developed countries and from relevant international organizations. H.E. Dr. Mostafa Tolba, Executive Director of the United Nations Environment Programme (UNEP), the Honorable Mr. Ni Zhengyu, Judge of the International Court of Justice (ICJ), Dr. F. Njenga, Secretary General of the Asia-African Legal Consultative Committee (AALCC) and Mr. Wang Tieya, Vice-Chairman of the Chinese Society of International Law (CSIL) also participated in the Symposium as special invitees.

Opening Addresses

In his opening address, Mr. Qian Qichen, State Councillor and Minister of Foreign Affairs, stressed the importance of international Environmental Law. He said that international environmental law is growing into

an important field of progressive development and codification of international law. During its development process, many new concepts and new ideas have emerged which call for in-depth study and discussions by jurists of various countries. He also said that the key issue here is whether or not the developed countries will truly understand the special conditions and needs of the developing countries, and give their sincere accommodation to such conditions and needs, and will translate such understanding and accommodation into the international instruments in the form of corresponding-obligations (see Appendix 2).

In his statement entitled "Our Boundless Creativity", Dr. M. Tolba, Executive Director of UNEP, elaborated profoundly on the various important aspects of the development of international environmental law. He said that writing laws to save our planet constitutes an entirely new challenge in the long tradition of law. An international treaty to deal with global environmental problems without clear provisions for technology transfer, and for assistance in the development or revival of indigenous techniques and technologies, is not worth its weight in paper. International environmental laws need to build regimes which ensure additional financial resources, are available to enable developing countries to acquire cleaner technologies. The only guarantee that international environmental law will continue to develop into a comprehensive body of working legal instruments so badly needed is to ensure that we anticipate new environmental problems and prevent them and correct the existing damage (see Appendix 3).

Mr. Qu Geping, Director of China's National Environmental Protection Administration, said in his speech that China has attached great importance to the environmental protection and that China has always held a positive and prudent attitude towards the law-making activities of international environmental law.

On behalf of Mr. K. Fletschauer, Under-Secretary-General, the legal counsel of the United Nations, Mr. Andronico Adede congratulated the convocation of this symposium and conveyed his conviction that the Symposium will indeed make a tangible contribution to the implementation of the programmes of the United Nations Decade of International Law.

In the afternoon, H.E. Mr. Li Peng, Premier of the State Council of the People's Republic of China, received all the participants in Zhongnanhai.

Summary of Proceedings

In the first session of the symposium, the participants elected Professor Sun Lin, Director of the Treaty and Law Department of China's Foreign Ministry, Chairman of the symposium, Professor Antonio Cançado Trindade from Brazil and Mr. Ajai Malhotra from India were elected Rapporteurs. Mr. Liu Daqun from the Treaty and Law Department of the Chinese Foreign Ministry was appointed as the Secretary.

In his introductory remarks, Professor Sun Lin, Chairman of the Symposium, said that the purpose of the Symposium is to strengthen the common understanding of international community, in particular the developed and developing countries to enhance the development of international environmental law and to narrow down their differences, he also said that he has been in the hope that this Symposium could serve as a starting point of a long process with a view to having some preliminary results.

A summary report, following a wide-ranging exchange of views in which on some aspects differing perceptions were put forward in a constructive spirit, follows:

Common Concern of Mankind

It was felt that the recently emerged concept of common concern of mankind was sufficiently flexible to warrant its general acceptance as providing a broad basis for the consideration of global environmental issues. It was this flexibility which made the concept readily acceptable, and to attempt to provide it with specific attributes or legal connotations at this stage would perhaps not serve the interests of its further development. Acknowledging that protection of the environment and development were indivisible and could not be considered in isolation from each other, it was felt that the concept of common concern of mankind should relate both to environment and to development.

Sharing of Burdens

It was emphasized that underlying the concept of "common concern" was the requirement to forge a global partnership on the international plane which would simultaneously seek to protect the environment while addressing the developmental needs of the developing countries. Accordingly, the developed countries, being primarily responsible for the historic and current emission of pollutants into the envi-

ronment, bore the main responsibility for cleaning up the environment. This widely accepted "main responsibility" principle must provide the basis for action in the environmental field. Moreover, if one were to consider the financial, economic, scientific and technological capabilities for undertaking such corrective action relating to the environment, it becomes quite clear that it is the developed countries which must shoulder most of the burden. Equally, the developing countries must participate in efforts to clean up the environment, taking into account their own specific capabilities and their national plans, programmes and priorities relating to development and the environment.

Sovereign Rights

International cooperation in the field of the environment and development must fully respect the sovereign rights of states. Its role should be to support and supplement, not to supplant, national efforts.

Funding and Technology Transfer

It was agreed that adequate, new and additional funding would be required by developing countries to enable them to join in international cooperative efforts to protect the environment. It was stressed that transfer of environmentally sound technologies to the developing countries should be made available on a preferential and noncommercial basis. Such technologies should not become simply another source of excessive commercial profit for the developed world. It was stressed that the multilateral rang set up under the Montreal Protocol and the system of its management and control provided an excellent example to be emulated as and when other funding mechanisms were established under international legal instruments presently being negotiated. While reference was made to the global environmental facility, it was, however, felt that in its present form the GEF was quite inadequate in addressing the pressing environmental concerns of the developing countries. There was also a consensus that the incorporation of environmental concerns and considerations in development planning and policies should not be used to introduce new forms of conditionality in aid or in development financing.

Special Needs of Developing Countries

It was felt that unless widespread and abject poverty in the developing countries was tackled head on, the international community would be avoiding, at its own peril, facing up to a major contributor to environmental degradation in the developing world. The environ-

mental problems of developing countries were often a reflection of the inadequacy of development. Addressing these environmental problems in their totality and in a balanced manner would require that full cooperation be extended to the developing countries in their efforts to break the vicious circle linking poverty, underdevelopment and environmental degradation. Special attention would have to be given to the particular needs and concerns of the least developed countries. Solution of global environmental problems would have to be accompanied by solution of the problem of global poverty.

The concept of "sustainable development" included the fostering of economic growth, the meeting of basic domestic needs (including in areas such as health, nutrition, education and housing) and the eradication of poverty so as to provide to all a life of dignity in a clean, safe and healthy environment. While considering the concept of "sustainable development", it was important to remember that its major focus had to be on the "development" aspect of the concept.

Environmental Protection and Human Rights

There was general consensus that there were linkages between the domains of environmental protection and of human rights, provided mainly by the focus on certain fundamental rights (inter alia, the right to life and the right to health). It was further indicated that the emergence of the right to a healthy environment and the right to development was meant to enhance rather than to restrict, other rights, given their indivisibility and interrelatedness, it was generally felt that environmental protection also amounted ultimately to a quest for survival and the protection of human health.

Settlement of Disputes

Several mechanisms of dispute-settlement appropriate for environmental protection were surveyed: particular emphasis was laid on dispute-avoidance by means, e.g., of information or consultation. It was felt that any new legal instruments which may be negotiated should contain in-built mechanisms for settlement of dispute; reference was, in this context, made to the mechanism for dispute settlement contained in the 1985 Vienna Convention on the Protection of the Ozone Layer as a good model to be followed.

Recommendations

During the discussions, the following areas were identified as requiring further consideration for the progressive development of international

environmental law in the context of the UN Decade of International Law, 1990-1999.

- (a) Study the need for possible instruments to address the environmental issues such as desertification, floods and droughts, worsening quality and supply of fresh water resources, soil loss, and vegetation degradation;
- (b) Progressive refinement of the concept of the right to development;
- (c) Development of the evolving concept of the right of all to a life of dignity and adequate standard of living in a clean, safe and healthy environment, life of quality, dignity and wellbeing;
- (d) Equitable sharing of burdens as a legal basis for transfer of adequate, new and additional financial resources to developing countries;
- (e) A legal basis for transfer of environmentally sound technologies to developing countries of preferential and non-commercial terms.
- (f) Progressive and timely refinement of the "common concern of mankind" concept with reference to its implications for both environment and development.
- (g) Elaboration of measures directed to ensuring that the transnational corporations operating in developing countries carry out their special responsibility for environmental protection and sustainable development in those countries.
- (h) The sovereign rights of states over their natural resources.

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SYMPOSIUM, BEIJING

AUGUST 12th - 14th

Participants from the developing countries:

Bangladesh	Mr. Toufiq Ali
Brasil	Prof. Antonio A. Cançado Trindade
China	Mr. Sun Lin
	Prof. Han Depei
	Ms. Song Li
Chile	H.E. Mr. Oscar Pinochet de la Barra
Egypt	Dr. Abdallah Hassan Al Ashal
Ghana	Mr. Larsey Mensah
India	Mr. Ajai Malhotra
Indonesia	Mr. Moestadji
Malaysia	Mr. Amdan Bin Mat Din
Mexico	Ms. Diana L. Ponce-Nava
Senegal	Mr. Bakary Kante
Yugoslavia	Dr. Budislav Vukas

Participants from the developed countries and organizations

Australia	Mr. Michael Smith
Germany	Mr. Arsgar O. Vogel
U.K.	Dr. Glen Plant
U.S.A.	Prof. Stephen McCaffrey
UN	Mr. Adronico Adede
	Mr. Roy S. Lee
UNEP	Dr. Iwona Rummel-Bulska

Special Invitees

UNEP	H.E. Dr. Mostafa K. Tolba
The Ford Foundation	Mr. Peter Harris
	Mr. Johnathan Hecht
International Court of Justice	Judge Ni Zhengyu
Iran US Claims Tribunal	Mr. C.W. Pinto
Consultative Committee (AALCC)	Mr. Frank X. Njenga
International Council of Environmental Law (ICEL)	Mr. Erkki Hollo
Chinese Society of International Law	Prof. Wang Tieya