EDUCATIONAL PERSPECTIVES ON THE DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW BY THE INTERNATIONAL COURT OF JUSTICE

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Abstract

Over the past eighteen years, environmental issues have been addressed by a growing number of International Courts and Tribunals, including the International Court of Justice. The most part of the recent decisions of the aforementioned court have confirmed the truism that the global rules can play a significant role in the protection of shared environmental resources. This paper seeks to look into creation of the International Court of Justice, examining its developmental strides towards the improvement of International Environmental Law.

Keywords: Environment, International Environmental Law, International Court of Justice.

Introduction

The concept of environmental law as a distinct sphere of law is a 19th century development (Ladan, 2007). There has been an increasing concern and awareness about the need to protect our environment, both domestically and internationally (Shaw, 2003). The need to protect our environment cannot be unconnected to the various environmental problems created by the activities of man. These include oil pollution, global warming, coastal water erosion, ozone layer depletion, electronic waste, air pollution, improper use of pesticides and chemicals, the dangers of nuclear and other hazardous substances, etc. Basically, parts of the ways of putting this concern into action are through the mechanisms of law being a means of structure and conditioned behaviors. Although, International law concerning the environment is still of a growing concern, but there are many treaties, declarations and state practices which have helped to tackle some of these environmental problems to a minimal level (Lazarus, 2004).

Conversely, almost two decades now, environmental issues have been addressed by a growing number of international courts and tribunals including the International Courts of Justice, adding to the jurisprudence of the historically significant arbitral awards in the Trail Smelter and Lac Lanouxcases of 1939 and 1957 respectively (Sand, 2008). Furthermore, the most part of the recent decisions have played important roles in enhancing the legitimacy of international environmental concerns (Sand, 2008).

International court of justice and other international courts and tribunals have also acted to clarify the meaning and effect of treaty norms, to identify the existence of customary norms of general application, and to establish a more central role for environmental considerations in the international legal order (Sand, 2008).This paper attempts to look at the concept of environment vis-a-vis international environmental law; the international court of justice and the role/contribution of the international court of justice in the development of international environmental law.

The Concept of Environment and International Environmental Law

The 'environment' is an amorphous term that has far proved incapable of precise legal definition except in particular contexts. To a layman, environment is nothing but the physical surrounding which he could see with his eyes. The concept of environment can be described as the "totality of physical, economic, aesthetic and social circumstances and factors which surround and affect the desirability and value of the property and which also affects the quality of people's lives" (Ijaya, 2009).

When attempting to determine the boundaries of international environmental law, no clear definition can be applied. Like many other branches of international law, International Environmental Law is interdisciplinary, intersecting and overlapping with numerous other areas of research, including economics, political science, ecology, human rights and navigation/admiralty (Alexandre and Dinah, 2007).

Thus, International Environmental Law can be described as a collective term describing international treaties, conventions, statutes, regulations, and common law/national legislation [where applicable] that operate to regulate the interaction of humanity and the natural environment toward the purpose of reducing the impact of human activities on the environment (Raji, 2013). International Environmental Law is based on the principles of international law which embodies the need to balance development with environmental protection (Greenwood, 2011). Indeed the protection of the global community from various environmental problems is the purview of international environmental law (Greenwood, 2011). As it were, the specter of global interdependency has made the deterioration of the environment to hold grave consequences for the international economy, the security and health of human being and the stability of habitation patterns.

Consequently, a purely domestic focus on environmental solution seems to be untenable in modern time. The solution to the environmental woes now confronting human beings must be found in collective international efforts. International matters surrounding protection of the environment must be handled in a spirit of cooperation between nations regardless of size and wealth. Indeed, the latter half of the 19th century rapidly embraced the notion of the international solutions to environmental problems. Therefore, it can be rightly submitted that international environmental law is a dimensional mode of response to international environmental problems which also play a key role in the important effort to protect and preserve the environment globally.

The International Court of Justice

International Court of Justice [ICJ] was established under Chapter XIV of the United Nations Charter of 1945 and began work in 1946. It replaced the Permanent Court of Justice, which existed under the UN's predecessor, the League of Nations. The ICJ is the only major UN body whose headquarters is not in New York City; the Court sits in the Hague, Netherlands. The Court is the principal judicial organ of the UN, and all members of the UN are *ipsofacto* parties to the Statute of the ICJ (Wikipedia, 2016).

The primary purpose of the ICJ is to render opinions on international legal disputes between States. Cases may only be submitted by States that have accepted the jurisdiction of the ICJ. Another purpose of the ICJ is to clarify significant international legal questions brought to it by the UN General Assembly and the Security Council (Wikipedia, 2016).

The International Court of Justice acts as a world court. The Court has a dual jurisdiction: it decides, in accordance with international law, disputes of a legal nature that are submitted to it by States [jurisdiction in contentious cases]; and it gives advisory opinions on legal

questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request [advisory jurisdiction] (ICJ Report, 2015).

Interestingly, Article 38 of the Statute of the ICJ establishes the sources of law to be applied by the Court in resolving disputes in accordance with international law:

1. International Conventions and treaties
2. International Custom, as evidence of a general practice accepted as law; and
3. General Principles of Law recognized by civilized States (ICJ Report, 2015).

Since 1945, the Court has rendered a number of decisions and advisory opinions. Since the Court has no binding enforcement mechanism, not all of the disputing parties have complied with its decisions. Despite this condition, the Court's rulings are typically considered as authoritative interpretations of law and have a strong moral and persuasive effect on the international legal community (ICJ Report 2013).

However, in spite of its non enforceability capacity, the court has contributed immensely to the development of international environmental law either through confirmation of previous case laws on trans-boundary disputes or through the introduction of the concept of obligations, potentially applicable to some environmental norms and through separate or dissenting advisory opinions which is important in consolidating the previous achievement. The court in performing its functions has pointed to a number of interconnections between international environmental law and the other sub-fields of international law like boundary delimitation and international humanitarian law to mention a few .

Brief Account of Some Notable Environmental Law Cases By The International Court Of Justice

In our discourse of the development of international environmental law by the international court of justice, this paper considers some cases which were relevant and informative on the contributions made by the court to the development of international environmental law. The ear1iest cases which represent the initial contribution to the development of international environmental law were presided over by various Arbitral tribunals, they are:

i. United States of America v. Canada (Trail Smelter Case, 2006)

In this case, the Consolidated Mining and Smelting Company Limited of Canada operated a zinc and lead smelter along the Colombian River at trail, British Columbia about 10 miles north of the international boundary within the state of Washington. In the period between 1925 and 1935, the US Government objected to the Canadian Government mainly because sulfur dioxide emissions from the operation were causing damage to the Columbian River valley in an area 30 miles stretch from the international boundary to kettle Falls, Washington. The main concern of the United States was that the Smelter's sulfur dioxide emissions were harming the land and trees of the Columbia River valley which were used for logging, farming and cattle grazing. The two governments resorted twice to legal Arbitration, one from 1928 to 1938 and again from 1935 to 1941 wherein the United States claimed for damages caused by trans-border air pollution.

In its judgment, the Arbitral Tribunal thus enunciated a doctrine which came to be regarded as the classical principle of international environmental law in its decision of March 11, 1941- "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 or the property of person therein, wherein the case is of serious consequence and the injury is established by clear and convincing evidence (Trail Smelter Case, 2006)

ii. France v. Spain (Lake Lanoux Arbitration, 1957)

The arbitration was concerned with the use of the waters of Lake Lanoux, in the Pyrenees. The French government proposed to carry out certain works for the utilization of the waters of the lake and the Spanish government feared that these works would adversely affect Spanish rights and interests, contrary to the treaty of Bayonne of May 26, 1886 between France and Spain and the Additional Acts of the same dates. In any event, it was claimed that under the treaty, such works could not be undertaken without the previous agreement of both parties.

The tribunal examined the treaty of Bayonne of May 26, 1886 and the Additional Acts as well as the arguments brought forward by both governments. Regarding the question whether France has taken Spanish interests into sufficient consideration, the Tribunal stressed that in determining the manner in which a scheme has taken into consideration the interest involved, the way in which negotiations had developed, the total number of the interest which had been presented, the price which each party had been ready to pay to have those interest safeguarded, were all essential factors in establishing, with regards to the obligations set out in Article 11 of the Additional Act, as the merit of that scheme.

The tribunal was of opinion that the French scheme complied with the obligations of Article 11 of the additional Act. The tribunal decided that in carrying out the project, without agreements between the two governments, works for the utilization of the waters of Lake Lanoux in the conditions mentioned in the scheme for the utilization of the waters of Lake Lanoux, the French government did not commit a breach of the provisions of the treaty of Bayonne of May, 26, 1886 and the Additional Acts of the same date.

iii. United Kingdom v. Albania (Carful Channel Case, 1949)

This case without mincing words is the first case to be presided over by the International Court of Justice after it succeeded the erstwhile Permanent Court of Justice in 1945. The tussle was between the United Kingdom V. Albania. On May 15, 1946, two British ships passed through Albania's North Corfu Channel where they were fired at by an Albanian battery. Following this incident, the United Kingdom [plaintiff] and Albania [defendant] entered into diplomatic discussions about the right of British ships to pass peacefully through Albanian waters. Albania maintained that the ships should not pass through without providing prior notification to the Albanian government. However, the United Kingdom maintained it had a right under international law to innocently pass through the straits. Between May 15, 1946 and October 22, 1946, the Albanian government allegedly placed mines in the Corfu Channel in Albanian territorial waters. Albania was at war with Greece, and the mines were allegedly part of its defense. On October 22nd, British warships attempted to again pass through the straits, but were destroyed by the mines, with loss of human life. The United Kingdom brought suit in the International Court of Justice (ICJ) on the ground that Albania had a duty to warn the approaching British ships of the mines. It sought damages from Albania. However, Albania argued that its territorial rights had previously been violated by the British ships passing through its straits on May 15, 1946, and that it was entitled to a satisfaction.

The decision of the ICJ in the Corfu Channel case came as a confirmation of this narrow view, stated in more general terms. It is noteworthy, however, that the Corfu Channelcase was not concerned with any environmental issue. Its relevance for International Environmental Law [IEL] stems from the fact that it provided a factual background allowing for the principle initially asserted in the *Trail Smelter* case, to be confirmed and linked to general international law. Indeed,

the Court grounded the obligations breached by the Albanian authorities not on any specific treaty or convention but on general international law. The court held among others things that:

The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based, not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States(Corful Channel Case, 1949).

iv. Australia v. France (Nuclear Tests Case 1973a)

The issue before the court in this case was the complaint made by the Solicitor-General of Australia against France of violation of its sovereignty by introducing harmful substances into its territory without permission. Hence, the court was to determine whether or not there exist emerging rules of customary international law prohibiting nuclear tests by reference to principle 21 of the Stockholm Declaration.

The decision of the court is that if a customary norm exists, it would be limited to trans-boundary pollution and to the protection of the environment to the extent that such protection is necessary to avoid damage to a state.

v. New Zealand v. France (Nuclear Test Case 1973b)

This case was brought to the International Court of Justice on 9 May 1973 when New Zealand instituted proceedings against France in terms of a dispute concerning the legality of atmospheric nuclear tests conducted by France in the South Pacific region. The government of New Zealand asked the Court to declare that the nuclear tests run by the French government in the South Pacific which lead to radioactive fallout were a violation of New Zealand's rights under international law. When the case was heard in 1974, France had issued numerous public statements within that year that it planned to hold no further nuclear tests in the South Pacific. New Zealand, the plaintiff, claimed that its rights under international law were violated by the French government's nuclear testing in the South Pacific. France, the defendant, contended that it no longer had plans to continue testing in the South Pacific and therefore, no further ruling on the claims of the plaintiff could take place.

Thus the Court faces a situation in which the objective of the Applicant has in effect been accomplished, inasmuch as the Court finds that France has undertaken the obligation to hold no further nuclear tests in the atmosphere in the South Pacific. The Applicant has sought an assurance from France that the tests would cease and France, on its own initiative, has made a series of statements to the effect that they will cease.

The Court concludes that France has assumed an obligation as to conduct, concerning the effective cessation of the tests, and the fact that the Applicant has not exercised its right to discontinue the proceedings does not prevent the Court from making its own independent finding on the subject. As a court of law, it is called upon to resolve existing disputes between States: these disputes must continue to exist at the time when the Court makes its decision. In the present case, the dispute having disappeared, the claim no longer has any object and there is nothing on which to give judgment.

The Court held further that once the court has found that a State has entered into a commitment concerning its future conduct; it is not the Court's function to contemplate that it will not comply with it.

vi. Nauru v. Australia (Phosphate Land Case 1992)

Nauru filed an application in the International Court of Justice [ICJ] instituting proceedings against Australia on 19 May 1989. The case was based on the conclusions of the "Independent Commission of Inquiry into International Responsibility for Phosphate Mining on Nauru" appointed by the Government of Nauru on 3 December 1986. The Commission found that the interests of the British Phosphate Commissioners, as agents of the partner governments, had been of paramount importance and had taken precedence over the financial and political interests of the Nauruan. Drawing on this conclusion, Nauru argued that during the period of joint trusteeship, Australia had violated several of its international legal obligations, including the Mandate and Trusteeship Agreement for Nauru and the principle of self-determination pursuant to Article 76 of the UN Charter.

Nauru also contended that Australia had violated general principles of environmental law and principles of equity and fairness. Specifically mentioned was Australia's violation of the Nauruan right of permanent sovereignty over their natural wealth and resources. Along these lines Nauru claimed compensation based on two interrelated facts: firstly, Australia had mined out the most valuable economic resource of Nauru, phosphate, and secondly, Australia had failed to compensate the Nauruan both in the initial sale price and by failing to rehabilitate the depleted territory. Nauru accordingly sought a declaration from the Court that Australia was bound to make restitution or reparation for the damage and prejudice it suffered as a direct consequence of Australian administration(Phosphate Land Case 1992).

The ICJ ruled that it had jurisdiction to hear the case known as Certain Phosphate Lands in Nauru, on 26 June 1992. This acceptance in itself remains of acute significance given that the Court had never considered a case involving trusteeship obligations in the merits phase. Nauru had previously attempted to reach a satisfactory settlement with Australia through extensive bilateral negotiations. However, Australia remained intransigent rejecting any responsibility and preventing an agreement from ever being reached. Thus, with the help of the Commission's findings, Nauru was able to compile a convincing legal case. Australia was subsequently compelled to lodge a counter-memorial arguing that the UN Trusteeship Council and General Assembly had exclusive jurisdiction, and not the ICJ. Australia also claimed the following; Nauru had already agreed to another method of dispute resolution, Nauru had waived its claims to rehabilitation in 1967, Nauru had delayed formally raising the matter of rehabilitation and had thus exceeded any reasonable limitation period by pressing its claim so late after independence, and that the UN General Assembly had terminated the trusteeship without any reservations.

Australia's indictment of its own stewardship did not work in its favour when it came to the ICJ case. With the overall conditions set against it, Australia quickly agreed to pursue external negotiations with Nauru. The involvement of the ICJ ostensibly served to redress the power imbalance in the dispute and forced Australia to take action to appease the Nauruans. On 10 August 1993, a settlement termed the "Compact of Settlement" was reached and Australia agreed to award $107 million to Nauru over twenty years as compensation for environmental damage. In addition, Nauru waived the right to make any further claim to issues arising from either the past administration of the island or phosphate mining itself. In effect, the settlement satisfied Nauru's main claim for compensation of the costs associated with rehabilitating the lands mined out prior

to independence. On 9 September 1993, Nauru and Australia filed a letter to the registry of the ICJ discontinuing proceedings.

vii. HungaryV Czechoslovakia (Gabcikovo-Nagymaros Project, 1997)

The Gabcikovo *Case* arose out of a Treaty signed in 1977 between Hungary and Czechoslovakia. This Treaty concerned the construction of a 'System of Locks' on the Danube River, to be operated jointly by the parties and designed for the production of hydroelectricity, improved navigation and protection from flooding. Construction began in 1978. In the face of growing domestic ecological concern and criticism, the Hungarian Government suspended works on its part of the Project in 1989, ultimately terminating the Treaty in 1992. It argued that the ecological risks of the Project, including reduction in water flows, damage to water quality, and the consequential loss of 'fluvial fauna and flora', were unacceptable. Czechoslovakia subsequently initiated a 'unilateral diversion of the Danube' on its territory known as Variant C as an alternative to the original Project. This resulted in a major reduction in the flow of the Danube downstream into Hungary.

The Court was asked to decide first, whether Hungary was entitled to abandon the Project; secondly, whether Czechoslovakia was then entitled to proceed with Variant C and thirdly, whether Hungary was entitled to terminate the Treaty.

In relation to the first claim, the Court held that Hungary had breached the Treaty by abandoning works on the Project and that it could not rely on an argued 'state of ecological necessity' justifying that breach. Secondly, Czechoslovakia was found to have acted unlawfully in depriving Hungary of its rightful 'equitable and reasonable share' of the Danube by putting Variant C into operation. Finally, the Court determined that Hungary's purported termination of the Treaty was invalid. Various treaty-based arguments on the part of Hungary, including that new norm of international environmental law precluded Treaty performance, were rejected.

viii. Argentina v. Uruguay (The Pulp Mills Case, 2010)

After twenty years of forest industry development, in October 2003, the Spanish company, ENCE received permission from the Uruguayan government to build a pulp mill in Fray Bentos, on the Uruguay River [which forms the natural border North between Brazil and Argentina and the South between Uruguay and Argentina]. Argentineans, residing mainly in Gualeguaychu , Entre Rios, about 35km from Fray Bentos, had been claiming that ENCE's pulp mill would pollute the river. Also, some demonstrations had been organized against ENCE. After ENCE received its permit, another company, the Finnish Botnia, made public their intention to consider the same area for another pulp mill. Botnia received the environmental organization to build a mill in February, 2005. The Uruguayan river is shared by two countries and it is protected by a treaty, which requires both parties to inform the other of any project that might affect the river. Beside the issue of pollution, Argentina claimed that the Uruguayan government had not asked for permission to build the mills. Uruguayan authorities counter that the treaty does require that permission be obtained, but merely that the other party be appropriately informed, and that conversation had indeed be held and filled, without objections from the Argentina's part. In addition, they claim that the technology used in the mills would avoid polluting the river to the extent claimed by the Argentineans.

The court rejected Argentina's request for a preliminary injunction, stating that Uruguay intended to and could still comply with international obligations. As a result, protesters in Argentina blocked roads to prevent construction. When Argentina appealed to the court a second time, Uruguay also sought relief from Argentina's protests. The court rejected both requests because neither state presented risks of prejudice to their rights under the treaty. On 20thApril,

2010, the court concluded that while Uruguay breached its international procedural obligations to notify and consult with Argentina before authorizing and commencing construction on the pulp mills, the court's declaration of Uruguay's breach constituted a sufficient remedy for Argentina's Claim. Thus, no damage was awarded as claimed by the Argentina.

ix. Ecuador v. Columbia (Aerial Herbicide Spraying, 2013)

On 31 March 2008, Ecuador filed an Application instituting proceedings against Colombia in respect of a dispute concerning the alleged "aerial spraying [by Colombia] of toxic herbicides at locations near, at and across its border with Ecuador". Ecuador maintains that "the spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time". It further contends that it has made "repeatedand sustained efforts to negotiate an end to the fumigations" but that "these negotiations have proved unsuccessful", (Aerial Herbicide Spraying, 2013). Ecuador accordingly requests the Court: "to adjudge and declare that:

[a] Colombia has violated its obligations under international law by causing or allowing the deposit on the territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment.

[b] Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides, including by aerial dispersion. It is saddened however that the International Court of justice could not hear the matter on its merit because the republic of Ecuador notified the court through a letter dated 9th September, 2013 to discontinue the suit against Columbia having agreed not to continue the aerial spraying outside its zone and made promises not allow its herbicide to drift into Ecuador.

In consequence, the President of the Court on the 13th September, 2013, made an order recording the discontinuance by Ecuador of the proceedings and directing the removal of the case from the court's list.

The Contribution of International Court Of Justice To The Development On International Environmental Law

This paper had discussed some important cases which are relevant and informative on the contributions made by International Court of Justice in the development of international environmental law. It can safely be submitted thus, that from what we have discussed, the role the International Court of Justice played in the field of international environmental law has been growing especially in recent years, parallel with the rapidly expanding fields of international law, where international environmental law has come to occupy a significant place. It is my belief that the role of the Court in international environmental law would seem to be increasingly significant in the following dimensions.

Firstly, it is fair to say that the International Court of justice, through the process of settling a bilateral dispute involving environmental issues between States, has contributed to identifying and confirming the points of law that pertain to international environmental law as an important component of the public order of the international community. 1n fact, it can even be said that one of the important functions of the ICJ lies precisely in this "dual role" that the Court plays in settling a concrete dispute between the parties inter se and, in so doing, enunciating the general principles involved and thus contributing to the development and elaboration of the law. The court has propounded through its judgments that it is imperative on all states an obligation to ensure that their activities within their jurisdiction and control, respect the environment of other States as well as the environment of areas beyond national control. This particular norm is now

well grounded in customary international law. A suitable example can be seen in the Corfu Channel case, where the Court pronounced a principle which was applicable not just to the dispute at issue, which had nothing to do with environmental issues, but more broadly to issues of environmental law in general, when it stated that "every State [has an] obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States". This is an obligation which has acquired particular relevance in environmental matters.

Secondly, in the case between Hungary V. Slovakia; the court has indeed contributed immensely to the development of international environmental law by acknowledging for the first time the concepts of sustainable development, precautionary principle and importantly, the environmental impact assessment.

The court recognized the principle of sustainable development as a useful tool in balancing environmental protection and economic development.Another development brought to bear on international environmental law by the international court of justice is the introduction of the precautionary principle as mentioned above. Judge Weeramantry noted in the case of Hungary V. Slovakia (Gabcikovo-Nagymaros Project, 1997), that precaution was one of the emerging environmental norms argued by Hungary to evidence the lawfulness of its treaty termination. It relied on the precautionary principle essentially in its traditionally articulated form arguing that international law require states to keep precautionary measure to anticipate, prevent or minimize damage to their trans-boundary resources and mitigate adverse effect where there are threat of serious irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measure for protection.

Similarly in the same Gabcikovo- Nagymaros case (Gabcikovo-Nagymaros Project, 1997), the issue of Environmental Impact Assessment (EIA) was addressed by the International Court of Justice. This also has a positive impact on the development of international environmental law due to the fact that environmental effect of projects must be considered either negatively or positively before such projects are commenced. The court made a point in its judgment that the treaty of 1977 between the two countries [Hungary and Slovakia] had already contained provisions for steps to be taken to avoid environmental degradation. It was stressed further that environmental law in its current state of development read through treaties which may reasonably be considered to have a significant impact upon the environment, a duty of environmental impact assessment. This emerging trend has reflected virtually in most of the countries governmental policy, the practice of international organizations, etc.

Thirdly, in its bid to further strengthening its capacity, the court created in ICJ, a special environmental chamber with a view to presiding over disputes specifically relating to international environmental law, but the chamber could not see the light of the day because, throughout its 16 years of existence, no states has yet asked for a case to be heard by this chamber. This is not however, unconnected to the fact that parties to environmental disputes prefer to have their case heard by the Plenary Bench rather than by a Chamber and that given the growing importance of environmental issues coming before the Court, the Court has tried in addressing disputes involving environmental matters in full Court rather than in a special Chamber.

Fourthly, the international court of justice although does not have a genuinely compulsory jurisdiction on any states except the states that have submitted themselves to it, so it will be worthy of mention that the court had greatly served as an impartial means of dispute adjudication even though it is rarely resulted to but same has effect on decision making. For instance, the Nuclear Tests Cases brought by Australia and New Zealand against France in 1973 but it did not ignore them. On the contrary, the proceedings seem to 'have played a part in France to the decision that it would put an end to atmospheric Nuclear testing, albeit not as early has the applicant state had wished. 52 Similar thing

happened in the case of Nauru V. Australia where the respondent Australia, agreed to award $107 million to Nauru over twenty years as compensation for environmental damage. Consequently, Nauru waived the right to make any further claim to issues arising from either the past administration of the island or the phosphate mining.

Lastly, notwithstanding the relative lack of machinery for the enforcement of judgments of the court, in practice some of its orders had been complied with. Of note, is the judgment in the Pulp Mills case between Argentina and Uruguay; where the court held that Uruguay had breached its procedural but not its substantive obligations regarding environmental protection of the river. Afterwards, the two governments concluded an agreement regarding co-operation in monitoring the relevant pulp mill.

Conclusion

The cases discussed above have influenced the developmental contribution of the International Court of Justice to International Environmental Law. It has been shown that the first two cases discussed in this paper were the decisions of arbitral tribunals while others were directly presided over by the international court of justice. It should be noted that the earliest decisions of the court and that of the arbitral tribunals borders on the consequences of trans- boundary environmental harm rather than the idea of the environment as an international common good to be preserved by all states. The tune has subsequently changed to protecting not only the trans-boundary environmental harm but also reconciles and balanced the economic development with protection of the environment.

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