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Identification of the Normative Status of General Principles of International Environmental Law

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ABSTRACT

This paper conducts a thorough analysis of the normative significance of general principles in international environmental law (IEL), specifically referencing Article 38(1)(c) of the Statute of the International Court of Justice (ICJ). It emphasizes four core principles – namely, the precautionary principle, the principle of prevention, sustainable development, and inter-generational equity – and assesses their role as sources of international law within current legal discussions. The examination is based on a doctrinal review of the separate opinions of Judge Cançado Trindade in the Pulp Mills on the River Uruguay and Whaling in the Antarctic cases, which offer a jurisprudential framework for comprehending the evolving significance of general principles in IEL. The paper posits that, despite the ICJ's careful and often implicit interaction with these principles, they demonstrate an emerging normative power that contests their conventional categorization as merely 'soft law.' Rather, they increasingly serve as independent legal standards that influence treaty interpretation, direct state behavior, and aid in the development of opinio juris. Their normative importance is further bolstered by their inherent connection to human rights protection, environmental sustainability, and the overarching notion of the common concern of humankind.

KEYWORDS

Environmental Law, Human Rights, International Court of Justice, UNEP.

INTRODUCTION

The general principles play a vital role in shaping the development of

international environmental law (IEL). As UNEP agreed, it is difficult to establish the legal status of principles of IEL even though the development of these principles has the effect on the development of international law.¹ In line, the International Court of Justice (ICJ) had a major contribution to the development of sources and contents of IEL. Dr. Jorge E. Vinuales pointed an expectation on ICJ in the Pulp Mills case² to make it as an opportunity for assessment of the contents of IEL and their enforceability.³ But it unfortunately unperformed the legal reasoning on the principles of IEL and its application as a source of international law, according to Article 38(1) (c) of the ICJ Statute.⁴ The main objective of this paper is to find the formation of the principles of IEL and the identification of its sources in contemporary international law. But which is restricted only to the precautionary principle, the principle of prevention, sustainable development, and principle of Inter-generational equity. The study made through the review of Separate opinions of Judge Cancado Trindade in the *Pulp mills* and *Whaling in the Antarctic* Judgment. The outcome contributes towards the understanding of the normative status of principles of IEL through the legacy of ICJ. It begins with the issue of whether an international tribunal like the ICJ should have recourse to principles of environmental law, under Article 38(1)(c)? – adopted by justice Trindade as a key to the settlement of cases like pulp mills.

GENERAL PRINCIPLES AS A FORMAL SOURCE OF INTERNATIONAL LAW

It is reiterated that the general principles of law are independent sources distinct and should not equate with the conventional and customary international law, as indicated by article 38(1)(c) of ICJ statute.⁵ The general principles of law used referred to in the various settlement of cases by the PCIJ and ICJ. In this separate opinion, he had cited the express reference to the principles by the judgments of PCIJ: *Oscar Chinn case*, *Charzow factory case*.⁶ And by ICJ in *Corfu*

¹ UNEP Training Manual on International environmental law, *Principles and concepts of international environmental law*,

https://wedocs.unep.org/bitstream/handle/20.500.11822/20599/UNEP_Training_Manual_Int_Env_Law.pdf?sequence=1&isAllowed=y (assessed on 25th December, 2025).

² *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* Judgment [2010] ICJ Rep P.14. (SEP. OP. CANCADO TRINDADE) 135.

³ Dr. Jorge E. Vinuales, “The contribution of the International Court of justice to the Development of international environmental law: a contemporary assessment” [2008] 32 FILJ 232, 255.

⁴ Article 38 (1) (c) states that the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply the general principles of law recognized by civilized nations

⁵ *Ibid.* para.18, whether the general principles of law is expressly invoked or not in the treaties and international practice, it is the autonomous source of international law.

⁶ *Ibid.* para. 20

Channel case, Advisory opinion on Reservation to the Convention against Genocide asserting the general principles of international law binding on the states even without the obligation from the Conventions. He also highlighted the interchange in the expressions: principles of international law and the general principle of law in the *Gabcikovo-Nagymaros Project*.⁷ The General principles of law applied by ICJ encompassed both substantial and procedural law.

The separate opinion had tried to clarify whether the General Principles identified with Domestic or International law. Justice Trindade had contended the dual view of identification of general principle in Article 38: as it is principles i) which recognized in domestic law and ii) recognized in international law. He opines that recourse to the general principles of law as recognized in domestic as well as international law. The basis of this argument is that there can be a legal system without the general principles, and the international law contains the general principles having its sources from the treaties, customs, and also from state practice.⁸ He also recalls doctrinal developments on general principles of law manifested in the times of PCIJ and ICJ by reviewing the doctrinal writings. The findings of the review are:

PCIJ - Earlier in the PCIJ judgments, the recourse to general principles of law subscribed as it recognized in domestic law. But there also prevailed a view that general principles of law recognized by civilian nations also sought in international law. Ensuring the objective justice, these approaches opposed the positivist view by sustaining the autonomy of principles. The principle oriented with legal norms and rules prevailing in international law as a manifestation of the judicial conscience of the peoples.⁹

ICJ - The General principles of law are guiding at a superior level the norms or rules of positive international law, and its pre-eminent character emanates from the natural law. It is the expression of the idea of justice having the universal scope and expressing the juridical conscience of humankind, which benefits the international community as a whole. And it is indispensable for the co-existence of man in an organized society. Article 2 of the United Nations Charter and 1970 Friendly Declaration retain the principles of international law guiding the state behavior ensures both the substantive and procedural content constituting it as a pillar of the International legal system. The general principle of law guides the interpretation and application of its rules and having the universal dimension; it breaks

⁷ Ibid. para.23

⁸ Ibid. p.146

⁹ Ibid. p.149

the demarcation line between those recognized in the domestic law and those in international law.¹⁰

It is provided a view that the ICJ has to resort to and elaborate on the principle which plays an essential role in settlement of the dispute at issue and pertains to the development of international law.

GENERAL PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW

The principles of IEL emanate and have an assertion from the consciousness of the need to secure the protection of the environment. And expects that if the ICJ in the pulp mills case applies the principles of IEL, it would have contributed to the progressive development of international law protecting the environment.

Principle of Prevention: Along with the frameworks ensured this principle, highlights articulation concerning damage, and it exercised in distinct ways according to the nature of the source of pollution. The awareness concerning this is the need to secure harmony between man and nature. It was acknowledged to avoid the environmental harm in general and to prohibit the Transfrontier environmental harm in particular, which enshrined in the Stockholm and Rio declaration and other conventions.¹¹

Precautionary principle: it emerges as a result of the development of conscience of aware of persisting risk faced by the environment and insufficiency of scientific certainty. Justice Trindade proved the emergence of this principle in the form of invocations of it by contenting parties in the *Nuclear Test* case as revealing the importance of conscience as to the need for precautionary than the prevention.¹² While in the *Gabcikovo-Nagymaros Project* case and *Pulp Mills*, the ICJ refrained from invocation and elaboration on its legal implications. Justice Trindade regretted the court's non-invocation of these principles when related to humans and the environment, and even they expressed in contemporary IEL. But this non-invocation by the ICJ does not mean any denial of its existence.

He also analyzed the elements of this principle:

- 1) Risk – this principle envisages the uncertain risk assuming it could objectively assess to avoid damage. These risks cannot assess by cost-benefit techniques only. He detected aspects related to risk are: growing awareness of the vulnerability of humans and

¹⁰ Ibid.p. 155

¹¹ Ibid. p.159

¹² Ibid. para. 65

environment and recognition of the need to take precautionary action prompted the probability of irreversible environmental harm.

- 2) Scientific uncertainty – after reference to many writings, found the limitation of uncertainty surrounding human beings. Judge Trindade showed the cycle of progress as limited to material and economic growth to progress encompassed with ethics and values. Then progress falls back to a lack of ethics, and man is a threat to himself and the environment. The specialized knowledge expected to be a path of human safety, but it results in environmental damage.

He widely mentioned the expression of the principle of precaution and prevention together in various international conventions¹³ as linkages to increase environmental protection.

APPLICATION OF PRINCIPLES OF IEL IN PULP MILLS

Both contentious parties, in this case, had invoked the above-mentioned general principles of IEL. Consideration of it is significant to the 1975 Statute of the River Uruguay under the general rule of interpretation by Article 31(3) of the Vienna Convention on the law of treaties applying the relevant rules of international law applicable between the parties.

The Arguments of the parties based on general principles of IEL-

1. Principle of Prevention: Uruguay argued that the obligation of this principle is on conduct rather than result by referring to the UN convention on watercourse.¹⁴ Whereas Argentina put forth that it is to assess in light of the 'regime for overall protection.'
2. Precautionary principle: Argentina argued that the 1975 Statute should interpret and applied with the precautionary principle as a rule of international law. Uruguay rejected the view that a precautionary principle is a 'soft law' principle and contented that Argentina failed to identify any significant risk. Argentina points out that this principle applies as the scientific uncertainty as to the environmental impact of the Botnia plant, and there is a corresponding irreversible and significant harm. It claims that obligation under this principle in the 1975 Statute

¹³ Ibid. para. 93

¹⁴ Article 7(1) of the United Nations convention on International Watercourses, which provides that states shall take all appropriate measures to prevent the causing of significant harm to other watercourse States.

means the 'further studies, complete assessments.' Whereas, Uruguay raised that the real issue is not whether the environmental risk had eliminated. Still, it is whether it has been adequately managed and minimized to the fullest extent possible using cost-effective measures.

It is a unique occasion for their consolidation in international law but which was not utilized by the ICJ.

INTER-GENERATIONAL EQUITY

A long-term temporal dimension articulated the intergenerational equity, a concern for the conservation integrating the humans with nature and for future generation accommodated in the various international conventions.¹⁵ Judge Trindade highlights the 'Goa guidelines on intergenerational equity' adopted by the advisory committee of United Nations University promoting this principle and also proposed the strategies to implement this principle rights and obligations. This principle applied in the pulp mills case by the parties as it has a connection with the principle of Sustainable development. The Judgment is looked upon because the importance of this principle, founded as awareness of living in harmony with the environment, is absolute necessary for living. And it upheld that the collective property of the indigenous community is not a matter of possession, where they enjoy the material and spiritual element preserving their cultural legacy and transmit it to the future generation.¹⁶ The same was adopted in *Whaling in the Antarctic case*, in a separate opinion emphasizing the acknowledgment of the inter-generational equity pioneered in the 1946 ICRW developed as the international legal doctrine. By reference to the CITES Convention 1973 and CBD Convention 1992, the presence of this principle marked asserting the common concern of Humankind.¹⁷ He also opens wide the constitutive elements of Common concern of Humankind.

SUSTAINABLE DEVELOPMENT

Sustainable development bears the satisfaction of current and future needs of protection, which discloses the temporal dimension, bringing in the present and future generations together. Along with the international instruments encompassing this principle, the UNESCO Declaration singled out the need to act based on a spirit of intra-generational and inter-generational solidarity for the

¹⁵ Ibid. para.118. in Gabčíkovo-Nagymaros project (Hungary/Slovakia) the ICJ acknowledged this long-term temporal dimension.

¹⁶ *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, I.C.J. Reports 2014, p. 226.

¹⁷ *Supra* note 2 at para. 137.

perpetuation of Humankind.¹⁸ The outcome of pulp mills regarding this principle is that there is non-reliance on social impacts in pulp mills and insufficient attention on the part of the court and absence of express acknowledgment of the guiding role of general principles of IEL.

NORMATIVE ASPECTS OF THE PRINCIPLES OF IEL

Importantly, the relation between human rights protection and environmental protection was highlighted in this separate opinion. The principles reflect opinion juris as the basis formation of law and an expression of an objective of 'idea of justice'. The principles considered superior to the will or consent of the individual subjects of law because they are indispensable and form the substratum of the legal order. It asserted international law as no longer the state-centric, and it reiterated to Humankind. The international instruments are pointing towards Humankind pursuing the preservation of the environment and sustainable benefit of present and future generations.¹⁹ And stressed the warning that technical and economic progress alone without ethics will result in obscurity.

The general principles of law present in the origins of law itself and disclose the legitimate ends to seek the common good, a realization of justice, and the preservation of peace.²⁰ Also, identified that the basic principles accompanied by the emergence and consolidation of all domains of international law and all its branches. However, specialization of any one of the domains, the basic principle, assures the cohesion and unity of law. He ensures that there is no fragmentation, and it is an expansion of international law. The principles are operating the legal norms ruling the relations between human and public power.

The positive law has elevated principles because of its constant reaffirmation and pursuance of evolving natural law thinking. He assured that attempt to find the general principles within the domestic law makes it impossible to advance towards a universal international law. The applicability of principles of IEL reinforced response to the environmental concerns where there is detection in the previous uses and customs linked to the environmental practices. Also warned that injustice would be committed if the general principles overlooked. Additionally, it appraised that it is a historical process of humanization of contemporary international law.

¹⁸ Ibid. para. 160.

¹⁹ Ibid. para. 203.

CONCLUSION

The analysis reveals that the fundamental principles of international environmental law play a complex yet essential role within the framework of modern international law. Although Article 38(1)(c) of the ICJ Statute formally identifies general principles as a source of law, their normative significance in environmental matters remains ambiguous and debated. Through the dissenting opinions of Judge Cançado Trindade, especially in the Pulp Mills and Whaling in the Antarctic cases, it becomes clear that these principles—such as prevention, precaution, sustainable development, and inter-generational equity—surpass their classification as mere "soft law" and increasingly embody core values of the international legal system.

The hesitation of the ICJ to directly reference and implement these principles, despite their citation by parties and their incorporation into international agreements, underscores an ongoing transitional period sees these principles gradually influencing *opinio juris* and state behavior. In the end, the research confirms that general principles of International Environmental Law (IEL) function not only as tools for interpretation but also as independent sources that direct the evolution of international law toward a framework that prioritizes human well-being and ecological awareness.

Their inherent connection to human rights, ethical values, and the notion of common concern for humanity underscores their prominent normative status. As global environmental issues become more pressing, it will be essential for international tribunals to increasingly recognize and apply these principles to maintain coherence, fairness, and sustainability within the legal framework on a global scale.