

## LEGAL INTEGRATION AND COMPLIANCE OF INTERNATIONAL ENVIRONMENTAL REGIMES WITH SPECIAL REFERENCE TO THE NATIONAL GREEN TRIBUNAL

<sup>1</sup>Arun Prabhu M S, <sup>2</sup>A. Assis Stanly Silvester, <sup>3</sup>M N Kaushika

<sup>1</sup>Assistant Professor, Mugil College of Law, Kanyakumari.

<sup>2</sup>Assistant Professor, The Tamil Nadu Dr. Ambedkar Law University.

<sup>3</sup>Assistant Professor, SRM School of Law.

### ABSTRACT

Ratifying a number of international accords aimed at environmental preservation has seen notable progress in India. Furthermore, the nation has successfully incorporated these norms into its internal structure through a number of programs. At the domestic level, the National Green Tribunal integrates the principles of international environmental law to ensure environmental justice and sustainability, with a focus on timely disposal of cases. Environmental Justice and Sustainability thus depends on the effective integration and compliance of the International Environmental Principles.

**Keywords:** Environmental Justice, Environmental Sustainability, Constitutional Eco-Protection Mechanisms, Precautionary Principle, Polluters Pay Principle and Sustainable Institutional Mechanisms.

### INTRODUCTION

Numerous international environmental law rules, which are essential in this area, do not express a sufficiently explicit duty under international law to hold states accountable for violations. These ideas are seldom fully included into the treaties actual text, instead they are typically referenced in their preambular sections. Even when they incorporate the text's substantive content, their language is frequently softened and does not produce a legally enforceable duty. The fact that some standards of international environmental law are still pending complete universal recognition is another important consideration.

Since the 1972 Stockholm Conference, the number of international environmental treaties has been quickly increasing.<sup>1</sup> Three distinct issues are presented by the global environmental problems: establishing the laws, keeping an eye on and confirming compliance, and offering a reliable and legally-binding process for resolving conflicts. There is a sovereignty shift required by the idea.<sup>2</sup>

With very few exceptions, India has signed numerous multilateral agreements pertaining to environmental protection and actively participates in international forums centered on the subject. However, there is still a great deal of work that needs to be done

<sup>1</sup> Cathrin Zengerling, *ENGOS, Environmental Problems, International Law, and Politics, Greening International Jurisprudence, Environmental NGOs before International Courts, Tribunals, and Compliance Committees*, Brill. (2013)

<sup>2</sup> Geoffrey Palmer, *Ways to Make International Environmental Law*, *The American Journal of International Law*, Cambridge University Press, Apr., 1992, Vol. 86, No. 2 (Apr., 1992), pp. 259-283.

domestically in order to effectively implement these agreements. The main issue that India is facing is how to protect its environment while also meeting the increasing needs of its growing people in a limited amount of territory.

Ratifying a number of international agreements pertaining to environmental conservation has seen notable advancements in India. Furthermore, the nation has carried out a number of attempts to successfully integrate these conventions into its internal structure. The International Environmental Law Principles to some extent have been successfully implemented and enforced by the National Green Tribunal.

### **SIGNIFICANT LEGAL PRINCIPLES IN INTERNATIONAL ENVIRONMENTAL TREATY BASED REGIMES**

Many universal concepts and principles regulate international environmental law. These ideas are widely acknowledged and have been applied numerous times in different levels of international jurisprudence. Sovereignty, precautionary principle, good neighbour and international cooperation principle, preventive action principle, duty to compensate for harm, common but differentiated responsibility principle, principles of sustainable development, polluter pay principle, and public trust doctrine are among the fundamental principles. These are all cornerstone ideas in the development of environmental law.

The Trail Smelter case<sup>3</sup> established that, when a case is of grave consequence and the harm is proven by clear and convincing evidence, no state has the right to use or permit the use of territory in a way that causes harm by fumes in or to the territory of another of the properties or persons therein.

The international environmental law principle known as Sovereignty of States and Their Responsibility was born out of two seemingly incompatible ideas, governments have sovereign rights over their natural resources and they cannot negatively impact the environment.<sup>4</sup> Principle 15 of the Rio Declaration, which states that States should widely apply the precautionary approach in accordance with their capacities in order to protect the environment, was the first worldwide codification of the precautionary method. Lack of complete scientific knowledge shall not be used as an excuse for delaying cost-effective actions to avoid environmental deterioration where there are threats of serious or irreparable damage.<sup>5</sup>

Divergent expansion routes and the need to share the cost of ecological deprivation may mean that certain nations must shoulder a greater proportion of the conservation burden than others. According to justice, their distinct but common responsibilities, and their varied capacities, countries ought to uphold their international environmental commitments.<sup>6</sup>

It is widely acknowledged that the globe is faced with a number of issues that can only be handled through international cooperation. Global issues are being debated, including the destruction of biodiversity, ozone depletion, and the spread of hazardous wastes. Environmental regulations are heavily influenced by these ideas. Although these ideas have their roots in a variety of national and international legal frameworks, it might be difficult to define the standards for these new legal conceptions. The aforementioned principles legal

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<sup>3</sup> Trail Smelter Arbitration (*United States v. Canada*) Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)

<sup>4</sup> Principle 2, Rio Declaration on Environment and Development (1992).

<sup>5</sup> Principle 15, Rio Declaration on Environment and Development (1992).

<sup>6</sup> Principle 7, Rio Declaration on Environment and Development (1992).

ramifications and implications remain uncertain. A few ideas have developed quickly and in a variety of settings; governmental rules are also changing. Since there is no legal agreement over the legal implications of these rules and some of the guidelines are unclear, persuading the world community to protect the environment is challenging. However, the importance of international litigation cannot be undervalued; decisions rendered by international courts, such as the International Court of Justice and the European Court of Justice, on environmental matters would contribute to the cause's advancement.

## **COMPLIANCE OF INTERNATIONAL ENVIRONMENTAL REGIMES TO ENSURE ENVIRONMENTAL SUSTAINABILITY**

In the Trail Smelter arbitration, the concept of accountability under international environmental law first surfaced. The outcome of this arbitration between the United States and Canada established the fundamental idea that a State is typically held accountable for environmental harm caused by actions that occurred within its borders.<sup>7</sup>

Strangely, very few instances pertaining to transboundary environment consequences that environmental professionals can trust have been brought before international courts or arbitral tribunals since the judgment.<sup>8</sup> However, this very principle is found in Principle 2 of the Rio Declaration on Environment and Development 1992,<sup>9</sup> which is typically cited as the fundamental assertion of States' obligations to prevent harm to the environment outside of their borders. States are responsible for making sure that activities within their control or jurisdiction do not harm other States' environments or areas outside of their national borders in accordance with international law and the United Nations Charter. States also have the sovereign right to exploit their own resources in accordance with their own environmental and developmental policies. It articulates the same idea that was previously stated in Principle 21 of the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment.<sup>10</sup>

In the context of environmental law, both principles are a reflection of general customary law principles recognized by the International Court of Justice, which hold that states have an obligation to prevent their territory from being utilized for activities that infringe against the rights of other states.<sup>11</sup> For three centuries, international law has prevailed in its current form without the need for domestic enforcement agencies. States and other international players do, however, largely abide with international law, particularly international environmental law. However, more effective enforcement strategies can be created in the increasingly complex field of environmental law. Domestic courts will have the advantage of control over people and assets as environmental regulations become more specific and increasingly target the actions of individuals and companies. As a result, domestic courts are able to uphold the higher success of environmental regulations going forward and enforce them efficiently.<sup>12</sup>

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<sup>7</sup> Trail Smelter Case (*United States v. Canada*), Arbitral Tribunal, Washington, 11 March 1941, in International Environmental Law Reports, No. 1

<sup>8</sup> See *Chorzów Factory*, *Corfu Channel*, *Lac Lanoux* cases

<sup>9</sup> Principle 2, Rio Declaration on Environment and Development 1992.

<sup>10</sup> Principle 21, The Stockholm Declaration on the Human Environment, 1972.

<sup>11</sup> *Corfu Channel Case (United Kingdom v. Albania)*, ICJ Reports (1949) 22.

<sup>12</sup> Mary E. O'Connell, Enforcement and the Success of International Environmental Law, 3 Ind. J. Global Legal Stud. 47 (1995-1996).

## CONSTITUTIONAL ECO-PROTECTION MECHANISMS

Our constitution's preamble guarantees both human dignity and a socialist social structure. This comes with a decent level of living and a clean environment. The environment is defined as water, air, and land as well as the relationship that exists among and between air, water, and land and human beings, other living creatures, plants, microorganisms, and property in the Environment (Protection) Act, 1986.<sup>13</sup>

Every citizen of India is obligated to conserve the environment, as stated in the Indian Constitution's chapter on fundamental obligations. According to Article 51-A (g), it is the responsibility of every Indian citizen to preserve and enhance the natural environment, which includes forests, lakes, rivers, and wildlife, as well as to show compassion for all living things.<sup>14</sup>

The Indian Constitution's Directive Principles are geared at the creation of welfare states. Another component of the welfare state is a healthy environment. According to Article 47, the State's main responsibilities include improving public health, boosting the standard of living for its citizens, and improving nutrition.<sup>15</sup> Since public health cannot be guaranteed without environmental protection and improvement, environmental improvement is also a part of improving public health. The organization of agriculture and animal husbandry is covered in Article 48 of the Indian Constitution.<sup>16</sup>

Part III of the Indian Constitution provides fundamental rights, which are necessary for each person's growth and to which each and every human being is naturally entitled. The right to an environment is also a right that is necessary for an individual's development and full potential realization. This part's articles 21, 14, and 19 have been applied to environmental protection.<sup>17</sup>

Article 21 of the Constitution guarantees the right to live in a healthy environment. This right was initially acknowledged in the Dehradun Quarrying Case, also known as *Rural Litigation and Entitlement Kendra v. State*, AIR 1988 SC 2187.<sup>18</sup> This is the first case of its kind in India, where the Supreme Court issued an order to halt illicit mining excavation in accordance with the ecosystem (Protection) Act of 1986, citing concerns about the ecosystem and ecological balance. The Supreme Court interpreted the right to live in a pollution-free environment as a basic right to life under Article 21 of the Constitution in *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.<sup>19</sup>

An upsurge in environmental litigation was the outcome of public interest litigation brought about by Article 32 and 226 of the Indian Constitution. The closure of limestone quarries in the Dehradun area is one of the most important environmental issues that the Supreme Court has resolved. It was part of the *Rural Litigation and Entitlement Kendra & Others v. State of U.P. and Others* case. AIR 1985 SC 652<sup>20</sup>, safeguards being installed at a Delhi-based chlorine facility in the *M.C. Mehta v. Union of India* case (AIR 1988 SC 1037)<sup>21</sup>

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<sup>13</sup> Section 2(a), Environment (Protection) Act, 1986.

<sup>14</sup> Article 51 (A)(g), The Constitution of India, 1950.

<sup>15</sup> Article 47, The Constitution of India, 1950.

<sup>16</sup> Article 48, The Constitution of India, 1950.

<sup>17</sup> Part III, The Constitution of India, 1950.

<sup>18</sup> *Rural Litigation and Entitlement Kendra vs. State*, AIR 1988 SC 2187

<sup>19</sup> *M.C. Mehta vs. Union of India*, AIR 1987 SC 1086

<sup>20</sup> *Rural Litigation and Entitlement Kendra & Others vs State of U.P and others* AIR 1985 SC 652

<sup>21</sup> *M.C. Mehta V. Union of India*, AIR 1988 SC 1037

etc. In *Vellore Citizens Welfare Forum vs. Union of India* (1996) 5 SCC 647,<sup>22</sup> The Court noted that two fundamental tenets of sustainable development are the polluter pays and the precautionary principle.<sup>23</sup>

## **LEGAL INTEGRATION AND COMPLIANCE OF INTERNATIONAL ENVIRONMENTAL REGIME BY THE NATIONAL GREEN TRIBUNAL**

The 186th Law Commission report included a strong recommendation as an effective step to protect the human environment and to provide an effective judicial and administrative proceeding, as well as to establish environment laws regarding liability and compensation for the victims of pollution, environment degradation, and people affected by developmental projects.<sup>24</sup> On October 18, 2010, the National Green Tribunal was established by enacting under the National Green Tribunal Act 2010, by the Central Government in accordance with the obligations of the Stockholm Declaration, 1972, and Rio Declaration, 1992, in which India participated.<sup>25</sup>

In accordance with Section 20 of the Act, the Tribunal must incorporate international environmental concepts, such as the polluter pays and sustainable principles, into its rulings.<sup>26</sup> Orders issued by the Tribunal may be appealed to the Supreme Court under Section 22 of the Act. Therefore, the Supreme Court has the final say over appeals and is the first appellate to rule on matters presented before the Tribunal.<sup>27</sup>

Mankind faces an existential threat from environmental degradation. It is undeniable that the Act and the Tribunal are essential for efficiently resolving environmental disputes. To make sure that serious environmental concerns as opposed to unimportant ones are taken care of, a review of the Act's provisions and its application may be required. As the Tribunal considers the cases presented to it, it is its responsibility to make sure that the Sustainable Development Principle is applied correctly, both in word and spirit. The Act places a heavy burden on the Tribunal to make sure that we leave behind a healthy and safe environment for future generations. In order to fulfil this duty, the Tribunal must interpret and apply the Act's provisions to guarantee that justice is served to the environment without causing injustice to others, harmonize the environment and development through the concept of sustainable development, and guard against the abuse of the legal system.<sup>28</sup>

The NGT, a judicial authority with supervisory power over all environmental concerns, has frequently called for action from the Pollution Control Board and pushed the pollution control authorities. It has been dictating the terms of the game and supporting its decisions with the weight of monetary damages and enforcement. In every way, the NGT is protecting Indian citizens' rights to the environment and preserving the environment by taking strong

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<sup>22</sup> *Vellore Citizens Welfare Forum vs. Union of India* (1996) 5 SCC 647

<sup>23</sup> Asst. Director (Media & Comm.) PIB Indore, Environment Protection under Constitutional Framework of India, Press Information Bureau Government of India, Special Service and Features, 04-June-2014

<sup>24</sup> 186<sup>th</sup> Report on Proposal to Constitute Environmental Courts, DO No.6(3) 84/2003-LC(LS) September 23, 2003.

<sup>25</sup> See, The National Green Tribunal Act, 2010.

<sup>26</sup> Section 20, The National Green Tribunal Act, 2010.

<sup>27</sup> Section 22, The National Green Tribunal Act, 2010.

<sup>28</sup> The Mechanisms of the National Green Tribunal, T.N. Subramaniam, Rubin Vakil, National Law School of India Review, Volume 30, Issue I.

preventative action. It has issued a number of directives that have an impact on the entire nation, maintained its public focus on a range of environmental problems, and imposed harsh penalties upon those found to have harmed the environment.<sup>29</sup>

### ENVIRONMENTAL JUSTICE BY THE NATIONAL GREEN TRIBUNAL TO ENSURE SUSTAINABILITY

Since its establishment, the National Green Tribunal has rendered a number of significant rulings that have successfully incorporated the principles of international environmental law into the Environmental Dispute Settlement Mechanisms.

In *Samir Mehta vs. Union of India and Ors*<sup>30</sup> the Court upheld the Polluter Pays Principle and the Precautionary Principle. It also recognized the Right to a Clean Environment as a Fundamental right under Article 21 of the Indian Constitution, which guarantees the security of life and individual freedom. In *Save Mon Region Federation and Ors. vs. Union of India and Ors*<sup>31</sup> the Environmental Clearance for the Project was deliberately suspended by the Tribunal. The Ministry of Environment and Forest was asked to conduct a separate assessment of the safety of the designated endangered bird, which is endangered as a result of the dam construction project, and the Tribunal was instructed to make a new evaluation of the idea for environmental clearance application. *Srinagar Bandh Aapda Sangharsh Samiti & Anr. v. Alaknanda hydro Power Co. Ltd. & Ors.*<sup>32</sup> is one of these rulings where the NGT has challenged a body of environmental jurisprudence by simultaneously accepting the idea that polluter pays and finding a private business liable for repayment.

In *Almitra H. Patel & Ors. vs. Union of India and Ors.*<sup>33</sup> The Tribunal issued more than 25 directives after assessing each aspect of this matter. The Solid Waste Management Rules, 2016 must be implemented by each country and UT, and the plan must be implemented gradually over the course of four weeks, according to the Tribunal's directive. In addition, the Tribunal ordered all citizens, local governments, state governments, and the federal government to promptly perform their various roles as outlined in the Rules. For garbage that contains strong vegetation, absolute segregation has been mandated. Landfills are the most efficient place to store inert waste that poses a threat to bio-stabilization within six months. The Tribunal ruled that open burning of rubbish on any area, including landfills, is prohibited. In *Ms. Betty C. Alvares vs. The State of Goa and Ors*<sup>34</sup> The Tribunal noted that the terms man and woman should be interpreted broadly to include every individual, regardless of whether they are a national or non-citizen of India. The Court stated that it is not necessary to go into Betty's nationality details.

### CONCLUSION AND SUGGESTIONS

<sup>29</sup> Ruchi Singh, National Green Tribunal: A Road to Environmental Justice, International Journal of Research in Humanities & Soc. Sciences, Vol. 4, Issue: 5, July:2016.

<sup>30</sup> *Samir Mehta vs. Union of India and Ors* MANU/GT/0104/2016

<sup>31</sup> *Save Mon Region Federation and Ors. vs. Union of India and Ors* M.A. No. 104 of 2012

<sup>32</sup> *Srinagar Bandh Aapda Sangharsh Samiti & Anr. v. Alaknanda hydro Power Co. Ltd. & Ors* Civil Appeal No(s). 9411/2016

<sup>33</sup> *Almitra H. Patel & Ors. vs. Union of India and Ors* Original Application No. 199 of 2014.

<sup>34</sup> *Ms. Betty C. Alvares vs. The State of Goa and Ors* Misc Application No. 32/2014(WZ)

The increased emphasis on conformance has led to the creation of new environmental measures that supplement those already in place that are based on general international law. The International Court of Justice's (ICJ) creation of an Environmental Chamber is another indication of how important it is to have appropriate dispute resolution procedures in order to maximize the effectiveness of the growing body of guidelines and regulations in this field. It ought to be obvious that international procedures intended to enforce adherence to environmental commitments have inherent limits. The underlying political, economic, and social issues causing non-compliance cannot be adequately addressed by depending just on developments in international law. Nonetheless, it is critical to recognize that institutions, procedures, and laws may have an effect.

Recent developments suggest that changes in the global community's focus on following rules are a sign of how the traditional international legal system is developing. Notable developments over the past ten years include the development and fortification of non-compliance mechanisms in various multilateral environmental accords, the enactment of new rules by the Permanent Court of Arbitration pertaining to environmental dispute arbitration, and the incorporation of environmental justice provisions in the 1998 Aarhus Convention,<sup>35</sup> and the International Court of Justice's (ICJ) development of a sizable body of environmental jurisprudence,<sup>36</sup> the International Tribunal for the Law of the Sea (ITLOS)<sup>37</sup>, and the World Trade Organization (WTO)<sup>38</sup> Appellate Body establishing a complete strategy combining the creation of regulations and institutional frameworks at three crucial levels implementation, enforcement, and conflict resolution is required to effectively ensure compliance. Regarding the application of international environmental law, it is important to note that the provision of technical, financial, and other types of assistance to states, particularly those classified as developing nations signifies the growing integration of domestic application and international legal processes. This is a recognition that the goals of international environmental law cannot be achieved without taking into account the need for and the means by which improving the enforcement of international environmental responsibilities in national contexts must be taken into account. By incorporating the International Environmental Law Principles to ensure Environmental Justice and Sustainability, the National Green Tribunal operates domestically with a focus on swiftly resolving disputes.

## REFERENCES

### PRIMARY SOURCES

#### STATUTES

1. Rio Declaration on Environment and Development (1992).
2. The Stockholm Declaration on the Human Environment, 1972.
3. The Aarhus Convention 1998.
4. The Statute of International Court of Justice 1945.
5. The International Tribunal for the Law of the Sea.
6. The World Trade Organization, 1995.

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<sup>35</sup> See, 1998 Aarhus Convention.

<sup>36</sup> See, The Statute of International Court of Justice, 1945.

<sup>37</sup> See, The International Tribunal for the Law of the Sea.

<sup>38</sup> See, The World Trade Organization, 1995.

7. The Constitution of India, 1950.
8. Environment (Protection) Act, 1986.
9. 186<sup>th</sup> Report on Proposal to Constitute Environmental Courts, DO No.6(3) 84/2003-LC(LS) September 23, 2003.
10. The National Green Tribunal Act, 2010

### CASE LAWS

1. Trial Smelter Arbitration (United States v. Canada) Arbitral Trib.. 3 U.N. Rep. Int'l Arb. Awards 1905 (1941).
2. *Corfu Channel Case (United Kingdom v. Albania)*, ICJ Reports (1949) 22.
3. *Rural Litigation and Entitlement Kendra vs. State*, AIR 1988 SC 2187
4. *M.C. Mehta vs. Union of India*, AIR 1987 SC 1086
5. *Rural Litigation and Entitlement Kendra & Others vs State of U.P and others* AIR 1985 SC 652
6. *M.C. Mehta V. Union of India*, AIR 1988 SC 1037
7. *Vellore Citizens Welfare Forum vs. Union of India* (1996) 5 SCC 647
8. ***Samir Mehta vs. Union of India and Ors*** MANU/GT/0104/2016
9. ***Save Mon Region Federation and Ors. vs. Union of India and Ors*** M.A. No. 104 of 2012
10. ***Srinagar Bandh Aapda Sangharsh Samiti & Anr. v. Alaknanda hydro Power Co. Ltd. & Ors*** Civil Appeal No(s).
11. ***Almitra H. Patel & Ors. vs. Union of India and Ors*** Original Application No. 199 of 2014.
12. ***Ms. Betty C. Alvares vs. The State of Goa and Ors*** Misc Application No. 32/2014(WZ)

### SECONDARY SOURCE

#### ARTICLES

1. Cathrin Zengerling, ENGOs, Environmental Problems, International Law, and Politics, Greening International Jurisprudence, Environmental NGOs before International Courts, Tribunals, and Compliance Committees, Brill. (2013)
2. Geoffrey Palmer, Ways to Make International Environmental Law, The American Journal of International Law, Cambridge University Press, Apr., 1992, Vol. 86, No. 2 (Apr., 1992), pp. 259-283.
3. Mary E. O'Connell, Enforcement and the Success of International Environmental Law, 3 Ind. J. Global Legal Stud. 47 (1995-1996).
4. Asst. Director (Media & Comm.) PIB Indore, Environment Protection under Constitutional Framework of India, Press Information Bureau Government of India, Special Service and Features, 04-June-2014
5. The Mechanisms of the National Green Tribunal, T.N. Subramaniam, Rubin Vakil, National Law School of India Review, Volume 30, Issue I.
6. Ruchi Singh, National Green Tribunal: A Road to Environmental Justice, International Journal of Research in Humanities & Soc. Sciences, Vol. 4, Issue: 5, July:2016.
7. Ananaya Khare, Fundamental Principles Governing International Environmental Law, 4 INT'L J.L. MGMT. & HUMAN. 1874 (2021).

8. Nicholas A. Robinson, Fundamental Principles of Law for the Anthropocene?, 44 ENVTL. POL'y & L. 13 (2014).
9. Anthony Whelan, Fundamental Principles of E.U. Environmental Law, 8 Irish J. EUROPEAN L. 37 (1999).
10. Mate Julesz, Limit Values and the Polluter Pays Principle, 2016 JURA: A PECSI TUDOMANYEGYETEM ALLAM- ES JOGTUDOMANYI KARANAK tudomanyos LAPJA 223 (2016).
11. Shyel Trehan & Shuva Mandal, The Polluter Pays Principle, 10 Student ADVOC. 67 (1998).
12. Itamar da Silva Santos Filho & Paulo Rangel Araujo Ferreira, Fundamental Principles of Environmental Taxation, 14 Veredas DO DIREITO 125 (2017).
13. Carl Brunch, Wole Coker & Chris VanArsdale, Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa, 26 COLUM. J. ENVTL. L. 131 (2001).
14. Anisia-Teodora Doniga, The Polluter Pays Principle, 2016 LAW Annals TITU MAIORESCU U. 79 (2016).
15. V. Isakova, Fundamental Principles of International Environmental Law, 2018 LAW REV. KYIV U.L. 236 (2018).
16. Nestor A. Cafferatta, Precautionary Principle, 2007 LEX 219 (2007).