

INTERNATIONAL CONVENTIONS: EMERGING ENVIRONMENTAL LAW

Rishi khemani¹

INTRODUCTION

This paper will mainly focus on the Various international conventions related to the environmental law and various convention which has been dealing at International level with the collaborating India. Various International Conventions have been formulated as the Nations have realized the need to protect the environment. These conventions are not compatible with the Indian laws. It all began with the United Nations Conference on Human Environment in 1972 when the need was felt to create a set up for saving environment from climate change and global warming. The major International Conventions that have been dealt in detail in this chapter are as follows:

1. DECLARATION OF THE UNITED NATIONS CONFERENCE ON HUMAN ENVIRONMENT (STOCKHOLM DECLARATION) 1972
2. VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER, 1985
3. MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER, 1987.
4. UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE 1992.

These Conventions require a nation to ratify it in order to incorporate it into its domestic legislation. Mere signing of a Convention does not force it to implement that Convention only when it is ratified by that nation, it becomes binding on it. Various other instruments such as Bilateral Agreements and Memorandum of Understanding exist between the nations, which are limited to the State parties in the Agreement.

With the changing times the number of Conventions related to Environment are also increasing because the need of the hour is to safeguard the environment for the future generation as the

¹University of Petroleum and Energy Studies, Dehradun, Uttarakhand

deleterious effects of global warming and climate change are alarming. Nation States have been focusing on limiting their carbon footprint by sharing information and advanced technology for limiting the use of CFCs and other harmful pollutants. Nation States have recognised the need of conservation of forests and wildlife as they are at the verge of extinction. India is member of almost all major Multilateral Agreements (MEAs). There are over 500 active agreements/MOUs etc. to which India is signatory.²

**DECLARATION OF THE UNITED NATIONS CONFERENCE ON HUMAN
ENVIRONMENT (STOCKHOLM DECLARATION), 1972**

In December 1968, the UN General Assembly adopted Resolution 2398 (XXIII) entitled “Problems of the Human Environment” and convening a “United Nations Conference on the Human Environment”. This conference, which was held from 5 to 16 June 1972 in Stockholm (Sweden), is generally seen as the foundational moment of modern international environmental law. The Stockholm Conference was attended by delegations from more than a hundred States as well as by representatives of major intergovernmental organizations and of over 400 NGOs. The negotiations resulted in three main outcomes, namely a “Declaration on the Human Environment”³, also known as the “Stockholm Declaration”, an action Plan for the Human Environment⁴ and soon after the establishment of the United Nations Environment Programme or UNEP. The UN General Assembly adopted Resolution 2997 (XXVII) establishing the United Nations.

Environment Programme (UNEP).⁵ The impact of the Stockholm Conference was considerable, and it can be assessed at three levels.⁶ At the domestic level, the conference generated momentum for the creation, in several States, of ministerial structures devoted to environmental

2 INDIA AND MULTILATERAL AGREEMENTS (MEAs): A SUMMARY, <http://www.moef.nic.in/downloads/public-information/2010-08-28Note%20on%20India%20and%20MEAs.pdf>.²⁰

„Problems of the Human Environment”, 3 December 1968, UN Doc. 2398 (XXIII).

3 „Declaration of the United Nations Conference on the Human Environment”, Stockholm, 16 June 1972, UN Doc. A/CONF 48/14/Rev.1, pp. 2ff (Stockholm Declaration”).

4 „Action Plan for the Human Environment”, 16 June 1972, UN Doc. A/CONF 48/14, pp.10-62.²³ „Institutional and Financial Arrangements for International Environmental Cooperation”, 15 December 1972, UN Doc. A/RES/2997/XXVII („Resolution 2997”).

5 *Ibid.*

6 P. Galizzi, „From Stockholm to New York, via Rio and Johannesburg: Has the Environment Lost its Way on the Global Agenda? ” (2005/2006) 29 *Fordham International Law Journal*, 952, at 966-7.

problems.⁷ At the regional level, it was also at this time that the European Community began to pass environmental legislation. At the international level, the Stockholm Conference not only brought environmental problems within the purview of the United Nations⁸ but it also added momentum for the conclusion of many agreements,⁹ covering areas such as the protection of habitats and sites,¹⁰ trade in endangered species marine pollution or the protection of migratory species.¹² These developments were followed by other instruments in the 1980s, such as Resolution 37/7 (World Charter for Nature) adopted by the UN General Assembly on 28 October 1982 and, most importantly, the adoption of the UN Convention on the Law of the Sea, of 10 December 1982, which devotes an entire part (Part XII) as well as several other provisions to the protection and preservation of the marine environment. Significantly, starting in the 1980s, environmental treaty-making moved from visible („first generation“) environmental problems, such as pollution and species protection, to more complex ones. Major illustrations of this trend include the adoption of the Vienna Convention on the Protection of the Ozone Layer (1985)¹³ and its Montreal Protocol 1987, as well as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes (1989).¹⁴

The Stockholm Declaration of 1972 has been depicted as the "Magna-Carta of our environment". Without a doubt in the wake of the Stockholm Declaration in 1972, to the extent India is concerned, Constitution was amended in 1976 which incorporated provisions to protect the environment.¹⁵

7 H. Selin and B.-O. Linner, „The Quest for Global Sustainability: International Efforts on Linking Environment and Development“, *CID Graduate Student and Postdoctoral Fellow Working Paper* No. 5, January 2005, at p. 35.

8 Paragraphs 2-3 of Resolution 2997 (XXVII) express the following recognition: „Recognizing that responsibility for action to protect and enhance the environment rests primarily with Governments and, in the first instance, can be exercised more effectively at the national and regional levels, [r]ecognizing further that environmental problems of broad international significance fall within the competence of the United Nations system“. R. Gardner, „Can the UN Lead the Environmental Parade?“ (1970) 64 *American Journal of International Law* 211.

9 A. O. Adede, „The Treaty System from Stockholm (1972) to Rio de Janeiro (1992)“ (1995) 13 *Pace Environmental Law Review* 33.

10 Convention on Wetlands of International Importance especially as Waterfowl Habitat, 2 February 1971,

11 UNTS 245 („Ramsar Convention“); Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972, 1037 UNTS 151 („WHC“).

12 Convention on the Conservation of Migratory Species of Wild Animals, 23 June 1979, 1651 UNTS 333. ³³ World Charter for Nature, 28 October 1982, UN Doc. A/RES/37/7 („World Charter for Nature“). ³⁴ United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 396 („UNCLOS“).

13

14 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 22 March 1989, 1673 UNTS 57 („Basel Convention“).

15 *Essar Oil Ltd. v. Halar Utkarsh Samiti*, (2004) 1 SLT 603; (2004) 2 SCC 392.

Article 48-A of the Constitution of India provides that “the State is to endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.”¹⁶ According to Article 51-A(g) of the Constitution of India, “it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife.”¹⁷ Two entries 17A and 17B – Protection to wild animals and birds were added to the concurrent list.¹⁸

The hole in the ozone layer, the warming of the air, the dissolving of the icy masses has stirred the International Community to make strides for protecting the environment. The UN Conference on Human Environment and Development at Stockholm can be said to be a good start on this issue. This meeting brought about a Declaration known as Stockholm Declaration on Human Environment. It observes seven universal truths and contains 26 principles.

The Stockholm Declaration underscored the profound cooperation between the human rights and ecological assurance. Principle 1 provides that “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”¹⁹ A satisfactory environment is considered an essential condition for the enjoyment of human rights following the Stockholm Declaration.²⁰

In Principles 1 and 2, the Stockholm Declaration refers to inter-generational equity. In this unique circumstance, the earth is seen essential for the survival of the present and future generations.

“*Principle 1*- Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.

16Art. 48-A, the Constitution of India.

17Art. 51-A(g), the Constitution of India.

18Schedule VII, the Constitution of India.

19 „Declaration of the United Nations Conference on the Human Environment“, Stockholm, 16 June 1972, UN Doc. A/CONF 48/14/Rev.1, pp.2ff („Stockholm Declaration“). L. Sohn, „The Stockholm Declaration on the Human Environment“ (1972) 14 *Harvard International Law Journal* 423, 451-5.

20 OHCHR Analytical Study, Office of the High Commissioner for Human Rights (OHCHR), Analytical Study on the Relationship between Human Rights and the Environment, 16 December 2011, UN Doc. A/HRC/19/34.

Principle 2- “The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management as appropriate.”²¹

The United Nations Conference on Human Environment held in Stockholm amid June 1972 brought into center a few disturbing circumstances and highlighted the quick need to find a way to control the threat of contamination to the Mother Earth, air and space, failing which the Conference forewarned the humankind, it ought to be prepared to confront the appalling outcomes. The proposals noted in this Conference were reaffirmed in the Earth Summit held at Rio de Janeiro (Brazil) in 1992.

Several international conventions and treaties have recognized the above principles and, in fact, several imaginative proposals have been submitted including the *locus standi* of individuals or groups to take out actions as representatives of future generations, or appointing an Ombudsman to take care of the rights of the future against the present.²²

VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER, 1985

India became party to Vienna Convention on 18th March 1991. The first contribution of the Vienna Convention is to formulate the problem of ozone depletion in terms that highlight its global character and distinguish it from a local or regional problem such as transboundary pollution (notably the issue of ground level ozone).

The most important quality of ozone layer is that it protects life from short-wave, ultra violet-B solar radiation, as most of the Ultra-violet-B is absorbed by ozone. But the proportion which does not reach the ground is responsible for causing sun-burn and skin cancer in fair skin people. Excessive ultra-violet-B also causes eye cataracts. The most harmful consequence of increased ultra-violet-B, solar radiation, will have an impact upon food production and eco-system. The effect on marine life will also be equally severe.

Industries release numerous compounds containing chlorine into the atmosphere. Ozone layer would be gradually eroded by chlorofluorocarbon (CFCs). The CFCs do not break down easily.

²¹*Supra*, n. 41.

²²*A.P. Pollution Control Board v. Prof. M. V. Nayudu*, (1999) 2 SCC 718: AIR 1999 SC 812.

The stability of the stratosphere, the layer of the atmosphere up to 15 km from the surface of the earth means that over the period of years CFCs drift up to stratosphere and at that place they are broken down by ultra-violet light into free chlorine atoms and other compounds containing chlorine. Under normal conditions most of the chlorine in the stratosphere is bound to other molecule and this does not damage ozone. During the Antarctic winter, the winds of the polar vortex, swirling around the South Pole, create unusual cold conditions, ice crystals from clouds of the stratosphere providing a surface on which the chlorine-containing compounds begin to break down. With the coming of the spring and warmer weather, the damaging chlorine atoms are released as the ice crystals melt. The chlorine is then free to attack the ozone.

Ozone layer covers the whole earth and protects human life from the harmful radiation of Sun. Due to use of Chlorofluorocarbon in different sectors of refrigeration and air conditioning, firefighting, foams, aerosol etc. a hole is formed in the Ozone layer due to leakage of this chemical in the atmosphere. As a result of that, harmful radiation of sun comes to the earth and causes cancer, skin diseases and other harmful diseases to the human being. The problem threatens not only human life but other plants and animal life also.

In respect to obligations of the State parties, the Convention provides on the one hand, parties must take appropriate measures (vertical obligations)²³ and on the other hand, it encourages States to co-operate among themselves and with competent international bodies (horizontal obligations) in the pursuit of further research on ozone depletion,²⁴ in order to harmonize their internal policies²⁵ and develop the international regime, notably by means of protocols to the Convention.²⁶ For present purposes, it is the system for joint research and for cooperation that merits attention.

As other environmental agreements (MEAs), the Vienna Convention created a permanent institutional framework to spell out the obligations of co-operation and regime development. The COP established by Article 6 performs, *inter alia*, the function of analyzing scientific information on the state of the ozone layer, initiating research programmes, maintaining links with international research bodies (including the Global Atmospheric Watch Programme

23 Vienna Convention, *supra* n. 34, Arts. 2(1), 2(2)(b), 3 (authorization to adopt more stringent national measures) and 5 (communication of information).

24 *Ibid.*, Arts. 2(2)(a), 3, 4 and Annex II.

25 *Ibid.*, Arts. 2(2)(b) and 4.

26 *Ibid.*, Arts. 2(2)(c) -(d) and 8.

(“GAW”) of the WMO),²⁷ as well as examining and adopting protocols to the Convention.²⁸ In this context, the COP launched, in late 1986, the negotiations that led to the adoption of the Montreal Protocol. The Secretariat of the Convention²⁹ is located in Nairobi, Kenya, and is hosted by UNEP. It performs a coordination function and has, in practice, significant influence.

MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER, 1987

India became party to Montreal Protocol on 19th June 1992. In the chronicled setting of International Environmental Law, the Montreal Protocol remains as a win.³⁰

The commitments of the parties comprise of a different set of commitments set out in the Protocol text and particulars presented in the annexes. The center of the framework can be bound to four primary segments: (i) the kind of controlled substance e.g. CFCs, halons, HCFCs, and so forth³¹ (ii) the type of party (developing countries have more flexible obligations³²) (iii) the object of regulation (i.e. the level of consumption and production³³ calculated in a way characterized by the Protocol³⁴) and (iv) the structure of the reduction obligations (a timetable scheduling first a production/consumption freeze and subsequently reduction targets of a certain percentage with respect to a base year to be reached within a given period³⁵).

The trade in controlled substances, items containing such substances, and innovations and instruments for their manufacture with non-Parties is regulated by the Protocol under Article 4.³⁶ This arrangement was vital to prevent these substances from being imported from third countries and to control the generation/utilization of such substances outside the administration built up by

²⁷*Ibid.*, Art. 6(4)(b), (d) and (j).

²⁸*Ibid.*, Art. 6(4)(h).

²⁹ Vienna Convention, *supra* n. 34, Art. 7.

³⁰ D.S. Bryk, „The Montreal Protocol and Recent Development to Protect the Ozone Layer“,15 *Harvard Environmental Law Review* 275(1991).

³¹ Montreal Protocol, *supra* n. 35, Art. 1(4) and Annexes A, B, C and E. The Ozone Secretariat, *Stratospheric Ozone Protection: Progress Report 1987-2012*, available at: www.ozone.unep.org (last visited on 1 January 2017), Art. 3.

³²*Ibid.*, Art. 5(1).

³³*Ibid.*, Art. 1(5) (production) and 1(6) (consumption).

³⁴*Ibid.*, Art. 1(7) and 3 (calculated levels).

³⁵*Ibid.*, Arts. 2 to 21 and Annexes A, B, C and E.

³⁶*Ibid.*, Art. 4, paras. (1), (2), (3), (5) and (6). This provision also contemplates trade in products that do not contain such substances but which are produced with them (Art. 4(4), but the parties agreed in 1993 that it was not possible to restrict trade in these products, Decisions V/17, 19 November 1993, Doc.

UNEP/OzL.Pro.5/12.

the Protocol by lessening demand (the phenomenon known as leakage).³⁷ Hence, sections (1) and (2) of Article 4 deny the export and import by States of substances from or to third States. Article 4(3) denies the imports of specific items containing controlled substances from third nations. At last, paragraphs (5) and (6) discourage the export of technologies and tools for the manufacture of controlled substances (or related items) to third nations. These restrictions were initially connected to substances in Annex A (CFCs and halons) and were hence stretched out to different substances.³⁸ The objectives of controlling the multiplication of these substances and of urging third States to join the Protocol have been comprehensively accomplished. It was considered important to add different incentives to guarantee the participation of nations like China and India.

To implement its commitments, Montreal Protocol has been furnished with instruments to encourage compliance, maximize interest, and manage non-compliance in a similarly eager way. Four instruments merit consideration, (i) the regulation of trade, (ii) the advantages offered to developing nations, (iii) the flexibility mechanisms and (iv) the method for overseeing non-compliance.

There is a clear direct link between environmental lead contamination and brain damage especially in children. Even low level of blood lead can cause reduced memory and behavioral disturbances.

The per capita consumption of ozone in India is hardly 10 gms as against 300 gms permitted under the Montreal Protocol. As per Montreal Protocol by 2010 all the countries of the World have to switch over to non-ozone depleting substances. India is a developing country and as per the protocol the small-scale units are supposed to get financial benefits from the multilateral fund under the auspices of Montreal Protocol for changing of equipment and machinery for implementation of non-ozone depleting substances.

The Multilateral Fund established within the Montreal Protocol is the first fund of the second generation, i.e. a fund large enough (more than US\$ 400 million for each period³⁹) to finance

37 Twum-Barima and L. B. Campbell, *Protecting the Ozone Layers Through Trade Measures: Reconciling the Trade Provisions of the Montreal Protocol and the Rules of the GATT* (Geneva: UNEP, 1994), pp. 51ff.

38 Montreal Protocol, *supra*.35, Art. 1*bis*-1*sex* and 3*bis*-3*ter*.

39 The periods were as follows: 1991-3, 1994-6, 1997-9, 2000-2, 2003-5, 2006-8, 2009-11, 2012-14.

⁶⁷Montreal Protocol, *supra* n. 35,Art. 10(5) -(6).

agreed incremental costs incurred by developing countries as a result of the conversion of their infrastructure to comply with an environmental treaty.

The composition of its governing body, the Executive Committee, which consists of seven developing countries and seven developed countries (despite the fact that only the developed countries contribute funds), is an expression of the principle of common but differentiated responsibilities.

Created by an amendment to the Montreal Protocol in June 1990, the Fund was established in 1991 and made permanent in 1992 in order to cover the agreed incremental costs (as designed under Article 10(1) of the Protocol).⁴⁰ These include costs arising from the conversion or the premature decommissioning of facilities producing controlled substances, the establishment of new facilities producing substitutes, the import of such substitutes, or the use of relevant patents and designs, to name a few categories.⁴¹ Decisions regarding funding are made by the Committee by consensus, in case that fails then by the two third majority of members present and voting.⁴² In practice, the Committee has always acted by consensus.

The implementation of this system of financial assistance is managed by implementing agencies, in particular UNEP, UNDP, the World Bank⁴³ and UNIDO. An example may be useful to understand how this mechanism operates. In 2011, the Executive committee approved an amount of US\$ 265 million to reduce the use of hydrochlorofluorocarbons (“HCFCs”) pursuant to Article 2E of the Montreal Protocol.⁴⁴ These substances are also potent greenhouse gases. The financial assistance is to be used for the conversion of hundreds of assembly lines that currently use HCFCs. As part of this project, which should freeze first and then reduce the consumption of HCFCs, China will be assisted by UNDP, UNEP, UNIDO, the World Bank and the German and Japanese governments.⁴⁵

⁴⁰*Ibid.*, Art. 10(1).

⁴¹ Indicative List of Agreed Incremental Costs, 25 November 1992, UNEP/OzL.Pro.4/15, Annex VIII.

⁴² Montreal Protocol, *supra* n. 35, Art. 10(9).

⁴³ Terms of Reference for the Multilateral Fund, 25 November 1992, UNEP/OzL.Pro.4/15, Annex IX („Terms of Reference for the Multilateral Fund”), para. 2-7.

⁴⁴ Montreal Protocol, *supra* n.35, Art. 2F and Annex C (Group I).

⁴⁵ “China Commits to Landmark Agreement on Dual Ozone and Climate Benefits”, 29 July 2011, available at: www.multilateralfund.org (last visited on 15 January 2017).

All in all, the multilateral Fund can be characterized by reference to three key features: coverage of agreed incremental costs brought about by developing countries to comply with the treaty basic leadership by a Committee with equivalent involvement of developed and developing countries; the implementation of assistance by implementing agencies.

The Montreal Protocol was amended in 1990 to attract some developing States. The London Amendment created the Multilateral Fund, but it also introduced a provision (Article 10A) on the transfer of technology. Montreal Protocol was amended (London Amendment) in such a manner as to incorporate certain major powers of the World including India and China. These Nation States have undertaken certain obligations under Article 5(1) of the Protocol to eliminate the production and consumption of controlled substances, which are broadly similar to the obligations of developed countries (the main difference is the time-scale applicable to each group). In return for this dedication, developed Nation States consented to cover the 'agreed incremental costs caused by developing Nation States in conforming to their commitments.'⁴⁶ But the deal was not a mere question of finance.

The commitment to no longer produce/use certain substances, important from an industrial standpoint, is not a realistic option for States that did not have substitutes, unless (i) sufficient time was granted to gradually convert their industrial infrastructure, (ii) financial assistance was given to them, and (iii) intellectual property rights (IPRs) and know-how relating to substitutes was transferred under reasonable conditions. These three considerations are important to understand the contents of the technology transfer provision (Article 10A) introduced by the London Amendment:

Accordingly, each Party should make each practicable stride, which must be in consistence with the programmes bolstered by the financial mechanism to guarantee:

- (a) That the best available, environmentally safe substitutes and related technologies are expeditiously transferred to Parties operating under paragraph 1 of Article 5; and
- (b) That the transfers laid down in subparagraph (a) happen under reasonable and most ideal conditions.

⁴⁶ Indicative List of Agreed Incremental Costs, 25 November 1992, UNEP/OzL.Pro.4/15, Annex VIII.

⁴⁷ Montreal Protocol, *supra* n. 35.

In other words, unlike capacity building, the transfer of technology poses in practice important issues of IPRs and know-how protection and thereby of international competitiveness. These questions concern not only the financing of transfers but more fundamentally the provision of technologies. The holders of IPRs may restrict access to certain technologies (refusing to grant a license) to prevent other companies (actual or potential) from developing competing products. This question effectively arose in connection with industries in India and Korea, which were denied licenses (even against payment) to produce substitutes for substances regulated by the Montreal Protocol.⁴⁸ Such refusal meant that substitute products had to be purchased from the holder of the patent.

The Multilateral Fund can cover the costs of importing substitutes but this is not a satisfactory solution to the problem because such assistance depends on the availability of sufficient funds. Moreover, there is a question of circularity to the extent that financial assistance is being used to pay for the products of companies based in donor countries. This case illustrates some of the specific problems raised by technology transfer.

While developed countries tend to favor lower tariffs applicable to such environmental products⁴⁹ (i.e. the export of substitution products) developing countries emphasize the need for genuine technology transfer including the associated know-how in favorable terms.

There are several possibilities, ranging from the issuing of compulsory licenses to use IPRs⁵⁰ to the implementation of specific mechanisms for the development⁵¹ or sharing of technologies in particular through the creation of markets of IPRs.⁵²

A 'non-compliance' strategy was adopted and handed over to an Implementation Committee, made out of ten representatives of the Parties.⁵³ The point is not principally to punish non-

48 UNDP, *Rapport sur le développement humain 2001* (Brussels: DeBoeck Universite, 2001), p. 109.

49 OECD, *Policy Brief: Opening Markets for Environmental Goods and Services* (Paris: OECD, 2005).

50 C. Correa, „Innovation and Technology Transfer of Environmentally Sound Technologies: The Need to Engage in a Substantive Debate“ 22 *Review of European, Comparative and International Environmental Law* 54, at 60, (2013).

51 L. Diaz Anodon, „Missions-oriented RD&D Institutions in Energy Between 2000 and 2010: A Comparative Analysis of China, the United Kingdom, and the United States“ 41 *Research Policy* 1742, (2012).

52 A. H.B. Monk, „The Emerging Market for Intellectual Property: Drivers, Restrainers, and Implications“ 9 *Journal of Economic Geography* 469, (2009).

53 Decision II/5, 29 June 1990, Doc. UNEP/OzL.Pro.2/3; Decision IV/5 and Annexes IV and V, 25 November 1992, Doc. UNEP/OzL.Pro.4/15 („Annex IV“ and „Annex V“); Decision X/10 and Annex II, 3 December 1998, Doc. UNEP/OzL.Pro.10/9 („Annex II“).

compliance⁵⁴ but rather to manage it, including through technical and financial assistance to enhance the level of compliance of States⁸³ which can be activated by the State party (including the State in non-compliance)⁵⁵ or the Secretariat.⁸⁵ Since its inception, the Committee has managed many cases.⁵⁶ The Montreal Protocol has been and remains the primary instrument as far as adequacy – in the battle against environmental change is concerned.

The Ministry of Environment, Forests and Climate Change (MOEFCC) has been empowered with the work of protecting the ozone layer and implementing the Montreal Protocol by the Government of India. The MOEFCC has set up an Ozone Cell as a national unit to care for and to render vital services to execute the Protocol and its ODS phaseout program in India.⁵⁷

The MOEFCC has likewise settled an Empowered Steering Committee, which is bolstered by four Standing Committees, specifically the Technology and Finance Standing Committee, Standing Committee for Small Scale, Tiny and Unorganized enterprises, Standing Committee on Implementation of ODS phaseout activities and Monitoring and Evaluation Committee. The Empowered Steering Committee is in charge of implementation of the Montreal Protocol.

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, 1992

The United Nations Framework Convention on Climate Change (UNFCCC or FCCC) is a major international environmental convention that was opened for signature at the United Nations Conference on Environment and Development (UNCED) in 1992. It is casually known as the Earth Summit, held in Rio de Janeiro from 3 to 14 June 1992. The goal of the settlement is to balance out greenhouse gas emissions and its concentration in the environment at a level that

⁵⁴ Annex V, *supra* n. 35, paras. B (warning) and C (suspension of rights and privileges under the Protocol). ⁸³ Annex V, *supra* n. 35, para. A (technical assistance, technology transfer, financial assistance, training, etc.).

⁵⁵ Annex II, *supra* n. 35, paras. 1 and 4. ⁸⁵*Ibid.*, para. 3.

⁵⁶ D.G. Victor, *The Early Operation and Effectiveness of the Montreal Protocol's Non-Compliance Procedure* (Laxenburg: IIASA, 1996).

⁵⁷ "Institutional Framework" Ministry of Environment, Forest and Climate Change: Ozone Cell, 14 March 2017, available at <http://www.ozonecell.com/viewsection.jsp?lang=0&id=0,163>. ⁸⁸ *Supra* n. 86.

would avert hazardous anthropogenic obstruction with the atmosphere framework. The arrangement itself sets no obligatory cutoff points on greenhouse gas discharge for individual nations. It contains no authorization instruments. It contains no enforcement mechanisms. The treaty is legally non-binding. The treaty provides for updates. These are called “protocols” which would set mandatory emission limits. The principal update is the Kyoto Protocol.⁵⁸

“On June 12, 1992, 154 countries signed the UNFCCC, that upon confirmation submitted signatories' administrations to a willful non-binding aim to decrease air groupings of nursery gasses with the objective of counteracting risky anthropogenic impedance with earth's atmosphere framework.”⁵⁹

The following steps need to be taken under the Convention by the State Parties:

- (i) Upgrades in the technology being used by the Nation States and increased investment is necessary to be undertaken by the parties;
- (ii) R and D (Research and Development) is very essential to advance in this aspect and make it available to the market forces at decreased rates i.e. to commercialize innovative technology such as separation and sequestration of CO₂, fuel cells, advanced cell, solar panels, other equipment and technology essential to reduce carbon footprint;
- (iii) It is very essential that the Nation States must work to achieve immensely in the field of greenhouse gas (GHG) reduction targets from the original technology that is being used in the Nation by moving onto newer and better technology;
- (iv) Active involvement of the Nation States in developing Renewable Energy in the Nation by including the private players that are interested in working for this business and basically commercializing it; and Participation in outflows exchanging plans to look for cost effective reductions crosswise over various operations.

CONCLUSION

India being a developing Country has incorporated the provisions of various International Conventions in its domestic legislation. It can be seen that at International Level Climate Change

⁵⁸*Supra* n. 15, p. 305.

⁵⁹ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107 („UNFCCC“).⁹¹ *Ibid.*

and Global Warming is reality and need of the hour is to protect and foster the environment for the future generation. It is not enough simply to enact laws and regulations. They must also be effectively implemented, administered, and enforced. However, compliance sometimes turns out to be politically, technically, administratively, or financially impossible, even if a government remains committed to the regime. The scientific complexity of environmental issues can challenge the capacity of government bureaucracies to understand the problem or implement proper solutions. A reason for inadequate compliance is insufficient state capacity to implement, administer, or enforce the relevant domestic policies and regulations. Weak legislative and bureaucratic infrastructures or a lack of expertise on the issue can also prevent compliance. Public Interest Litigation by individual enthusiasts and the NGOs has helped to a great extent in protection of the environment. It is a comparatively new concept and every innovation takes time to get into proper shape. The International Environmental Conventions were framed so that the entire world can come together on a platform to preserve the environment. Many Nation States have incorporated these provisions in their domestic legislations. Now it is upon the individual Nations to implement and enforce these provisions effectively so that the goal of implementing the Conventions can be fulfilled. This paper will lead to clear cut idea of the International conventions with compatible to Indian Laws. Any program, policy or vision or overall development must evolve a systematic approach so as to balance economic development and environmental protection.