

ENFORCEMENT OF ENVIRONMENTAL LAW AND INTERNATIONAL LAW*

We are living in the age of science and technology. In his well known

book 'The Future Shock', Alvin Toffler Says – 'Modern scientific and technological progress is proceeding at a pace which has no parallel in history'. In a recent arrival, in the book market, 'Re-imagine', the author Tom Peters calls the times in which we are living as 'the disruptive age'. Whatever be the field of human activity – business or industry, economics or education, military or civic life, dramatic changes are taking place. The rule of stone age – 'survival of the fittest' seems to have assumed relevance once again to keep pace with the rapid changes of the times and adapting to such changes is the biggest challenge before the individuals and institutions, professionals and organizations. Man is planning of developing colonies on Moon and Mars. It is difficult to understand whether it is shortage of space on earth which is persuading him to do so or it is because of his finding difficulty of protecting against the ill effects of technological, economic and social advances that he proposes to find recluses somewhere else in the universe other than the Earth. It cannot be denied that the entry into the new millennium has given a new look to everything, inherited from the preceding millennium. We have new belief in new values; new technology with new markets and new opportunities with new challenges – each one having a totally new dimension. Old and conventional methods are becoming outdated and certainly they will not be able to take care of the new demands on human order. There is a need for a new dimension of thought process for us, if we have to survive.

In this backdrop, I feel delighted to have been associated with this Annual Seminar organised by International Law Association (Regional Branch, New Delhi) on topics of timely significance as 'Transnational Enforcement of Environment Law' and 'International Law on Foreign Investment'. Environment and investment, apparently appear to be two topics with no similarity; but if there is anything in common in them, it is that both have international dimensions. Both need thinking in global terms. If SARS spreads in China or a bomb explodes in Iran or an earthquake occurs in Japan, we are as much concerned as the people of those countries are.

Progress and advancements contribute to materialistic growth of the society but they do take their toll in terms of emergence of dangerous trends of inequality, poverty and cut-throat competition. Wealth is generated but not equally distributed. The hiatus, between the haves and have-nots, the urban and the rural population, widens. Human beings, armed with technology, ruthlessly parade on tender grass of nature. A thinker beautifully said it – "Materialistic achievements have the effect of converting man from gentleman into superman". Learning the lessons from the past, we have to set down the agenda for the future.

This Annual Seminar is devoted to laws, referable to environment and foreign investment. In the recent past, a world-wide trend of emerging laws against the ill effects of technological and economic advancement of environment and economy is noticeable. Environmental protection laws are surcharged with concern for nature to protect against probable injury to life, not only of men but also of animals and vegetation. Externalities of environmental degradation like ozone

depletion do not recognize national boundaries and do assume global dimensions. Such problems raise issues such as one of the topics, chosen today for this seminar that is Transnational Enforcement of Environmental Law (both national and international) through National Legal Systems. Some of the issues which would need to be addressed, as they occur to my mind, are:

- (1) strengthening the jurisdiction and efficacy of judicial forums at national and international levels dealing with issues of global dimensions such as transborder environmental damage and risk;
- (2) choice of law and forum shopping in environmental litigation keeping in view the rule of forum convenience;
- (3) transboundary access to justice and public interest litigation in environmental cases;
- (4) suits in national courts by foreign plaintiffs seeking redress against multinational companies and the question of locus.

The second topic of the Seminar is equally interesting, which is International Law on Foreign Investment. Since the end of the Second World War, the world has witnessed an enormous and continuing increase in cross-border capital flows. International law, however has failed to keep pace with the changing needs of states. The result has been conflict between developed and developing states with respect to the state of customary law.

The concern of national governments, juxtaposed with the international considerations, assumes conflict. The foreign investments, originating from developed nations and bubbling with thrust for entry into undeveloped and underdeveloped nations cannot be prevented except at the cost of national development. There is demand, with justification, that the states must provide a national treatment to foreign investments. At the same time there is general agreement that the right of states to exercise regulatory control over the entry of foreign investments cannot be taken away. These concepts have given rise to debatable issues, centering around equality of treatment to national and foreign investors. Not surprising that the Committee of International Monetary Law of I.L.A. has been engrossed into finding solution of the problems like: (i) laying down new substantive International Financial Standards (I.F.S.), (ii) international harmonization of regulatory and supervisory frameworks, (iii) examining in-depth the effects of European Monetary Union on monetary laws, (iv) impact of electronic money and finance on monetary law, and (v) the serious issue of terrorist finance.

In this regard, some of the problems which need to be addressed are:

- (1) Problems affecting access to justice and remedies, including equality of access, multiparty litigation, public bodies as plaintiffs, and NGO access;
- (2) Problems relating to multinational corporations, including: liability of parent companies for their subsidiaries; the international regulation of corporate activities; and enforcement processes, both judicial and semi-judicial;
- (3) Problems concerned with prevention of transboundary harm, access to administrative procedures and information coupled with demand of equality in access, the effect of foreign administrative authorizations and injunctions.

Ladies and gentlemen! There are three reasons why I am here today. Firstly, International Law Association to my knowledge, if not the only, yet certainly, is the most well-organised global organization of legal fraternity. Its continued activism is sure to make a wholesome contribution in achieving global development and securing peace and order internationally.

I recall what His Excellency, Shri K.R. Narayanan, the President of India, said in his message to the 70th Biennial Conference of the I.L.A., held in April 2002. He said, and I quote: "A landmark institution in the history of international law, this Association has significantly contributed to the evolution and growth of international jurisprudence by providing a major forum for exchange of ideas and experiences and by interpreting and promoting international law for its application to varying and challenging circumstances in the world. Its history, spanning more than 125 years, is a testimony to its outstanding achievements, which have deepened the field of international law and enriched our understanding by focusing on emerging areas such as women's rights, ecological conservation and elimination of poverty and hunger in large parts of our planet." The I.L.A. has the needed convergence of wishes, intentions and actions on the part of its members. We have high hopes from I.L.A.. And I am here to give assurance of my whole-hearted support to its activities.

Secondly, a compilation of papers which is going to be presented in this Seminar has just come to my hands. The compilation has the touch of PHP excellence. I am deeply impressed by the quality of papers which are going to be presented in this Seminar as also the expertise of the panelists, learning of the participants, and the contribution which is going to be made by sister Justice Ruma Pal and brother Justice Ashok Bhan who have agreed to preside over the two sessions.

And, last but not the least, the presence of brother Justice Y.K. Sabharwal who is presiding over this inaugural session has literally pulled me here today. He is one who believes in dynamism and taking bold decisions. He has been the Secretary of Indian Regional Branch of I.L.A. and the only judge from Supreme Court of India to be a Member of the Executive. It will not be an exaggeration to say that he is the moving Indian force behind I.L.A. and the I.L.A. banks upon him just as I depend on him in times of need. It is always a pleasure to be in association with him and I do not miss any such opportunity, if available.



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