



# THERE IS GREENERY BEYOND GROWTH

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### 1.0 Introduction

When the guns fell silent finally in the year 2009, after a 30-year long civil strife, it heralded a new era of peace and prosperity to the island nation, once known as the “Pearl of the Indian Ocean.” Despite the prolonged disturbances which caused a heavy toll on the national economy, Sri Lanka, being a very resilient nation managed to record acceptable levels of growth throughout this period, barring very marginal exceptions.

In a traditional democracy, it is generally accepted that the role of a government is to set a proper policy framework in place and support it with building the necessary infrastructure thus propelling economic activity for the engine of growth which is the private sector, to take charge of the rest. In the recent past, in an attempt to benefit from the much sought after peace-dividend, the Government of Sri Lanka (**GOSL**) has opted to base its economic strategy in making the country a five-pronged hub i.e. in the spheres of aviation, naval, commercial, energy and knowledge. To that extent, **GOSL** appears to have played its pivotal role of developing the necessary infrastructure in making Sri Lanka a centre for International Trade, Foreign Direct Investments (**FDI**), a Logistics Hub, a Preferred Tourist Destination etc, right.

In the years running upto 2012, Sri Lanka managed to record an impressive per capita income of USD 2,923, whole-mark of which is the higher growth trajectory observed in last few years.<sup>1</sup>Country has now been reckoned as a Middle Income Country and is well on course to achieving most of the Millennium Development Goals (**MDG**) as promulgated in “United Nations Millennium Declaration “consequent to the “Millennium Summit” of the United Nations General Assembly held in September 2000 where 189 nations pledged to support achieve eight **MDGs** before 2015.<sup>2</sup>Sri Lanka’s impressive achievement much ahead of the targeted dates with regard to “*eradicating extreme poverty and hunger, achieving universal primary education, reducing child mortality rates*”<sup>3</sup> deserves special mention and high commendation.

Whilst the country is seemingly well en-route to achieving these stated **MDGs**, **GOSL** has also set for itself another ambitious yet highly achievable target of USD 4,000 per capita income by 2016.

One of the important **MDGs** promulgated is the “*ensuring of environmental sustainability.*” According United Nations Development Program (**UNDP**) sources, “*Global greenhouse gas*



*emissions resume their upward path, confirming the need for bold action. Forests are a safety net for the poor, but they continue to disappear at an alarming rate”<sup>4</sup>*

This short article attempts to focus on Sri Lanka’s endeavour to realise its great economic potential in an environment friendly manner. It is probably the most daunting task ahead of the authorities and all influential stakeholders, in the island nation’s fully pledged commitment to MDGs.

## **2.0 International Environment Law in a Nutshell**

Protection of Environment has long been identified as being essential for the sustenance of human life. Human being has to live in harmony with its environment and thereby with Mother Nature otherwise she unleashes her fury on all the living organisms including the humans. Our ancestors were well aware of the importance of their environment and the need for conservation. Much prior to the advent of more formalized religions such as Hinduism, Buddhism, Christianity, Muslim faith etc, our forefathers world over used to hold environmental icons such as Sun, Moon and the Stars along with rivers, forests, mountains etc, in high esteem and their very veneration of such objects shows their commitment to environment protection. Though Environmentalism is often thought of as a modern day western concept, analysis of chronological history of Ceylon (as Sri Lanka was then known), reveals that our ancestors, particularly the rulers of those ancient times, were much concerned about the preservation of the ecological balance of the planet earth. In ancient Ceylon, great kings such as King Vasamba, King Parakremabahu the Great, King Devanampiyatissa, King Nissanka Malla etc played a lead role in conserving water resources by the construction of large reservoirs (“wewa”) in large numbers and also by declaring natural forest reserves such as “Mahamewuna Uyana” for protection. Similar patterns could be observed in contemporary Indian history, with the construction of numerous of reservoirs.

In fact, there is ample evidence in the form of manuscripts, publications and historical archives of a longstanding concern for environmental issues. Accordingly, in the west, too, natives were more concerned about the need for environmental protection, as the following American proverb shows.

*“Only when the last tree has been cut down; Only when the last river has been poisoned; Only when the last fish has been caught; Only then will you find that money cannot be eaten”<sup>5</sup>*

In his book entitled “Principles of International Environmental Law,” Professor Philippe Sands states “...by the mid-eighteenth century, the relationship between deforestation and drying up of water basins was widely observed”. Citing an example from the Island of Ascension, an isolated volcanic island in the equatorial waters of the South Atlantic, he pointed out that the people of the time were made to realize that indiscriminate felling of trees would lead to disastrous consequences.<sup>6</sup>



Towards the early part of the twentieth century, there was ad hoc adoption of international conventions which mostly concerned themselves with sharing of territorial waters with common borders, fisheries conservation, against over-exploitation of resources etc, Sands reckons.

Environment Protection, Sustainable Development, Renewable Resources, “Going Green” are some of the buzz words in today’s world and assume greater acceptance in the international plane. As the world becomes increasingly aware of and concerned about the environment in which human beings live, the importance of such concepts cannot be underscored.

Perhaps, due credit for diverting and focusing the attention of the modern world to this aspect should go to Rachel Carson who authored the book “*Silent Spring*” in a lonely woman’s battle against the powerful chemical industry giants of the United States of America, at the time. She posed some probing questions on our impact on Mother Nature which was deservedly recognized as an “eye opener.”

*“...Although their role will probably always be less celebrated than... it is books that have at times most powerfully influenced social change in American life...Rachel Carson’s *Silent Spring*, which in 1962 exposed the hazards of the pesticide DDT, eloquently questioned humanity’s faith in technological progress and helped set the stage for the environmental movement...”<sup>7</sup>*

What Carson spoke of almost 50 years ago, perhaps, is now being experienced in countries such as Sri Lanka, El Salvador, India etc compelling the Health Authorities in these countries to take extreme measures such as prohibition of use of certain popular chemical based pesticides in agriculture as they are widely suspected as being the cause of terminal sicknesses such as Kidney disease.

Her pioneering effort never went unnoticed as it was given a huge boost almost a decade later when the “United Nations Conference on the Human Environment” was held in Stockholm, Sweden from 5-16 June 1972. This was the zenith of environmental campaigning and is considered, the beginning of the modern environmental movement.<sup>8</sup>

John McCormick in his book “*Reclaiming Paradise*” refers to the “*Summit as undoubtedly the landmark event in the growth of international environmentalism.*”<sup>9</sup> He adds that “*It was the first occasion on which the political, social and economic problems of the global environment were discussed at an intergovernmental forum with a view to actually taking corrective action. (p.88)Before Stockholm, many environmentalists had questioned – and rejected – the growth ethic. For them, economic growth was suspect and inimical to sound and rational environmental management. There was little room for compromise. A decade after Stockholm, attitudes were more conciliatory. (p. 149)*<sup>10</sup>

The conference was attended by 113 countries, 19 inter-governmental agencies and over 400 intergovernmental and non-governmental organizations. It resulted in the “Declaration of the



United Nations Conference on the Human Environment” consisting of Seven Proclamations, Twenty Six Principles and an Action Plan containing 109 recommendations. Some of the more significant Proclamations and Principles are:

*Proclamation I: Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights and the right to life itself.*

*Principle 1: 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated*

*Principle 2: The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate*

*Principle 3: The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved*

*Principle 11: The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures*

*Principle 12: Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose*

*Principle 19 : Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminates information of an educational nature on the need to project and*



*improve the environment in order to enable man to develop in every respect*

*Principle 21: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*

*Principle 22: States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction <sup>11</sup>*

Other important Principles in a nutshell are as follows;

1. *Wildlife must be safeguarded*
2. Non-renewable resources must be shared and not exhausted
3. Pollution must not exceed the environment's capacity to clean itself
4. Damaging oceanic pollution must be prevented
5. Development is needed to improve the environment
6. Developing countries therefore need assistance
7. Developing countries need reasonable prices for exports to carry out environmental management
8. Integrated development planning is needed
9. Rational planning should resolve conflicts between environment and development
10. Human settlements must be planned to eliminate environmental problems
11. Governments should plan their own appropriate population policies
12. National institutions must plan development of states' natural resources
13. Science and technology must be used to improve the environment
14. Environmental research must be promoted, particularly in developing countries
15. Each nation must establish its own standards
16. There must be cooperation on international issues
17. International organizations should help to improve the environment
18. *Weapons of mass destruction must be eliminated <sup>12</sup>*

The Action Plan comprised of the following:

1. Planning and management of human settlements for environmental quality
2. Environmental aspects of natural resources management
3. Identification and control of pollutants and nuisances of broad international significance.
4. Educational, informational, social and cultural aspects of environmental issues.
5. Development and environment; and
6. *International organizational implications of action proposals<sup>13</sup>*



Though the Conference lacked any legally binding force on the member countries of the United Nations at the time for it was only a “Declaration” and not a “Treaty” or a “Convention” with legal force behind the instrument, it served as a base for forming the modern International Environmental Law and most of the Proclamations and Principles were either incorporated or transformed into the respective national environment related statutes of member countries over the years in some form or the other. For instance, Sri Lanka’s own statute titled “National Environmental Act No 47 of 1980” (as amended)<sup>14</sup> incorporate some of the Principles.

Most importantly, the Conference acted as a trailblazer which led to other important Conferences during the latter part of the twentieth century. “*The Stockholm Conference set the scene for international activities at the regional and global level and influenced legal and institutional developments up to and beyond **UNCED** (United Nations Conference on Environment and Development)*”<sup>15</sup>

Consequent to United Nations General Assembly (**UNGA**) resolution in 1983, a separate body independent of the United Nations (**UN**) called World Commission on Environment and Development (**WCED**) was set up under the auspices of Javier Pérez de Cuéllar, the then Secretary General of the United Nations. This was the culmination of the strong opinion that has germinated in the minds of the world leaders following the Stockholm Declaration that there should be an independent body capable of raising awareness of the need for sustainable development.

*“The Commission was established ...,linked to UN, but outside the control of it... It had three objectives: to re-examine critical environment and development issues and formulate realistic proposals for dealing with them.; to propose new forms of international cooperation on these issues that would influence policies and events in the direction of needed changes; and to raise levels of understanding and commitment to action of individuals, voluntary organizations, businesses, institutions and governments.”*<sup>16</sup>

**WCED** was headed by Gro Harlem Brundtland, who was the Prime Minister of Norway at the time, at the invitation of de Cuéllar, thus being often referred to as “The Brundtland Commission.” Their report “Our Common Future” gave way to the organization namely “Center for Our Common Future” in April 1988 to take the place of the Commission. <sup>17</sup>Commission’s work facilitated the expansionary role of sustainable development and made relevant programs on the subject matter to the **UN**.

How do we define this all important aspect of sustainability?

*“...Sustainability means to sustain, to hold up under difficult circumstances...”* <sup>18</sup>*“Sustainability is the capacity to endure. As Scotts (2009) describes, for humans, sustainability is the long term maintenance of responsibility, which has environmental economic and social dimensions, and encompasses the concept of stewardship, the responsible management of resource use.”* <sup>19</sup>

As against the above definitions, perhaps a more popular definition of “Sustainability” in the context of development could be traced to the Brundtland Commission’s report namely “Our



Common Future."It is, thus, defined as "*meeting the needs of the present without compromising the ability of our future generations*"<sup>20</sup>

Accordingly, world has come to accept that there should be a reasonable compromise between development and protection of the environment. This Principle will be further elaborated in para 3 on various Principles and Concepts of Environment Law.

Though Environment Protection and Sustainable Development have, by now, assumed greater importance in the world order, it took another twenty years till 1992 for the next important congregation of world leaders on issues pertaining to environment. That was the United Nations Conference on Environment and Development (**UNCED**) which was held from 03 June to 14 June 1992 in Rio de Janeiro which prompted it to be called "the Rio Summit," and "the Rio Conference." It is also popularly known as "the Earth Summit."

With 178 governments taking part, of which 118 were represented by their respective Heads of State, it was, by far, the largest international conference upto that time. As environmental concerns have taken a back seat at that time, the conference mainly attempted to focus on the much desired balance between environmental protection and economic development. Issues addressed at the conference included the following as well.

- *systematic scrutiny of patterns of production – particularly the production of toxic components, such as lead in gasoline, or poisonous waste including radioactive chemicals*
- *alternative sources of energy to replace the use of fossil fuels which are linked to global climate change*
- *new reliance on public transportation systems in order to reduce vehicle emissions, congestion in cities and the health problems caused by polluted air and smoke*
- *the growing scarcity of water*<sup>21</sup>

Major achievements of the "Earth Summit" could, thus, be summarized as follows, though according to some critics that conference was a failure to the extent of not addressing the focal issues such as poverty alleviation and environment cleaning.

- *Convention on Biological Diversity*
- *Framework Convention on Climate Change (UNFCCC)*
- *United Nations Convention to Combat Desertification*
- *The "Rio Declaration" containing 27 Principles on rights and responsibilities of countries on issues pertaining to economic development and environment*
- *Agenda 21 – an Action Plan for the international community relating to environment and sustainable development for the 21<sup>st</sup> century. In four chapters divided in to an equal number of segments, it covers areas ranging from Social and Economic dimensions, conservation and management of resources, strengthening of the role of major groups, and lastly means of implementation.*<sup>22</sup>



Critics also argue that the non-binding nature of the declaration is a major drawback. However, it may be noted that Conventions on Biological Diversity, Climatic Change and Deforestation which were opened for signature almost simultaneously are of legally binding nature. Some of the more critical Principles of the Rio Declaration are highlighted below whilst other three conventions would be dealt with briefly subsequently.

*Principle 1: Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.*

*Principle 2: States have, in accordance with the **Charter of the United Nations** and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

*Principle 3: The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.*

*Principle 4: In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.*

*Principle 7: States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.*

*Principle 11: States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.*

*Principle 15: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.*

*Principle 16 : National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment<sup>23</sup>*



An environmental organization namely “Green Cross International” was founded under the guidance of former Soviet Union leader Mikhail Gorbachev in 1993, building upon the work initiated by this conference. Based in Geneva, Switzerland, its mission is to “*help ensure a just, sustainable and secure future for all by responding to the combined challenges of security, poverty and environmental degradation.*”<sup>24</sup>

One of the key derivatives of the Rio Summit was the Convention on Biological Diversity, objective of which is to develop national strategies for the conservation and sustainable use of biological diversity. This could be considered a vital document relating to sustainable development. Quite aptly, its objective given in Article I states ; “*The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding*”<sup>25</sup>

United Nation’s Framework Convention on Climate Change (**UNFCCC**) is another important milestone of the conference. With 195 parties ratifying this treaty upto now which provides for certain protocols of legally binding nature, it attempts to “*stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system which is of major concern to the human beings.*”<sup>26</sup> Parties to the treaty have met at regular intervals which finally paved the way for the “Kyoto Protocol” which recognized that developed nations contribute mostly to carbon dioxide emissions and as such should assume greater responsibility for controlling and reducing same. It was also noted that though the developing countries assume no binding responsibility under the treaty, they are still required to help reduce emissions.

United Nations Convention to Combat Desertification was aimed at controlling mass scale destruction of forests world over which is beginning to have its undesirable effect on the global environment. Again with 195 parties being signatories to this treaty, of which 167 are affected by the said issue of deforestation, the convention could be hailed as an instrument that would make a substantial contribution to achieving of sustainable development and poverty alleviation.

Culmination of concerted efforts by varying stakeholders resulted in another international conference, this time in Johannesburg, South Africa under the title “The World Summit on Sustainable Development” (**WSSD**). It is also referred to as “the Earth Summit” and comically as “Rio+10” for this summit appears to take-off from where the world leaders left behind 10 years before in Rio-de-Janeiro. Critics, nevertheless, argued that sustainable development lost its appeal and is being used only with a rhetoric connotation despite its political convergence. Kofi Annan, the then UN Secretary-General, outlined five topic areas which were to be the key points of discussion at the summit: (1) Water and sanitation, (2) Energy, (3) Human health, (4) Agricultural productivity, and (5) Biodiversity and ecosystem management.<sup>27</sup> Cross cutting issues such as International Trade, Corporate Responsibility and Accountability as well as Disaster Preparedness were also taken up for deliberation.



Most critical outcome of the Conference was its political declaration known as the Johannesburg Political Declaration, some key articles of which are reproduced below.

11. *We recognize that poverty eradication, changing consumption and production patterns and protecting and managing the natural resource base for economic and social development are overarching objectives of an essential requirement for sustainable development*
12. *The deep fault line that divides human society between the rich and the poor and the ever-increasing gap between the developed and developing worlds pose a major threat to global prosperity, security and stability*
13. *The global environment continues to suffer. Loss of biodiversity continues, fish stocks continue to be depleted, desertification claims more and more fertile land, the adverse effects of climate change are already evident, natural disasters are more frequent and more devastating, and developing countries more vulnerable, and air, water and marine pollution continue to rob millions of a decent life*
14. *Globalization has added a new dimension to these challenges. The rapid integration of markets, mobility of capital and significant increases in investment flows around the world have opened new challenges and opportunities for the pursuit of sustainable development. But the benefits and costs of globalization are unevenly distributed, with developing countries facing special difficulties in meeting this challenge*
20. *We are committed to ensuring that women's empowerment, emancipation and gender equality are integrated in all the activities encompassed within Agenda 21, the Millennium development goals and the Plan of Implementation of the Summit*
24. *We shall continue to pay special attention to the developmental needs of Small Island developing States and the least developed countries*
25. *We reaffirm the vital role of the indigenous peoples in sustainable development*
26. *We recognize that sustainable development requires a long-term perspective and broad-based participation in policy formulation, decision-making and implementation at all levels. As social partners, we will continue to work for stable partnerships with all major groups, respecting the independent, important roles of each of them*
27. *We agree that in pursuit of its legitimate activities the private sector, including both large and small companies, has a duty to contribute to the evolution of equitable and sustainable communities and societies*



29. *We agree that there is a need for private sector corporations to enforce corporate accountability, which should take place within a transparent and stable regulatory environment*
32. *We reaffirm our commitment to the principles and purposes of the **Charter of the United Nations** and international law, as well as to the strengthening of multilateralism. We support the leadership role of the United Nations as the most universal and representative organization in the world, which is best placed to promote sustainable development<sup>28</sup>*

Ten years later, world stage returned to Rio-de Janeiro for another conference that took place from 13 to 22 June 2012, this time tagged as United Nations Conference on Sustainable Development (UNCS D) also as Rio+20 or simply Rio 2012. Third such UN sponsored conference on sustainable development within thirty years; it was targeted for arriving at reconciliation between economic and environmental goals that the international community has to grapple with. Three day main conference drew the attendance of 192 member states, of which there were 57 Heads of States. *Absence of a few key global leaders caused much concern amidst furore in downtown Rio-de-Janeiro over the presence of some leaders with dictatorial political regimes. Most of the Group of Twenty (G20) leaders did not attend the conference and blamed their absence on the ongoing European sovereign-debt crisis. Their collective absence was seen as a reflection of their administrations' failure to prioritize sustainability issues.*<sup>29</sup>

End result of the conference was the major outcome document namely "The Future We Want" which the incumbent UN Secretary General Ban Ki moon described as "providing a firm foundation for social, economic and environmental well being"

The document calls for a wide range of actions, among many other points, including:

- *launching a process to establish sustainable development goals;*
- *detailing how the green economy can be used as a tool to achieve sustainable development;*
- *strengthening the UN Environment Programme and establishing a new forum for sustainable development;*
- *promoting corporate sustainability reporting measures;*
- *taking steps to go beyond GDP to assess the well being of a country;*
- *developing a strategy for sustainable development financing;*
- *adopting a framework for tackling sustainable consumption and production;*
- *focusing on improving gender equality;*
- *stressing the need to engage civil society and incorporate science into policy; and*
- *recognizing the importance of voluntary commitments on sustainable development.*<sup>30</sup>



### 3.0 General Principles and Concepts of Environment Protection

Having studied in depth about some of the relevant and current areas of International Environmental Law, let's now focus on some of the world renowned Principles of Environmental Protection which incidentally emanated from various laws that we discussed hitherto.

#### 3.1 Principle of Sustainable Development

This, in essence, talks of striking a right balance between the need for economy related development and all important need to protect the environment in which we live. (Pl. refer Para 2.0 for definitions given) First recognized in 1987 in the report of Brundtland Commission<sup>31</sup>, it then found its way into Principle 4 of the Rio Declaration.<sup>32</sup> UN Framework Convention on Climate Change (**UNFCCC**) under Article (3) 4 recognizes the importance of sustainable development.<sup>33</sup> Later in 2002, at the World Summit on Sustainable Development,<sup>34</sup> this need was again appreciated. Article 11 of the Summit dealt with this whilst Article 12 concentrated on the ever increasing gap between developed and developing countries. Need to pay special attention to development needs of small island developing countries were spoken of in Article 24.<sup>35</sup> In one of the internationally reputed environment law cases, "*Hungary vs Slovakia*",<sup>36</sup> Sri Lankan born Australian domiciled Justice C.G. Weeramanthy, one of the Vice Presidents of the International Court of Justice (**ICJ**) stressed on the need for sustainable development. This was a case that was argued before the (**ICJ**) concerning the implementation of an irrigation project in the river Danube borders of which were shared by the two countries.

#### 3.2 Precautionary Principle

Precautionary Principle hinges on the age old adage that "*prevention is better than cure.*" First identified in Principle 15 of Rio Declaration<sup>37</sup> in 1992 and then again in Article 3 (3) of **UNFCCC**<sup>38</sup> in the same year, this principle stresses on the fact that non availability of scientific or technical knowledge should not be a deterrent to the prevention of feasible future destruction of environment.

In one of the two dissenting judgments of "*New Zealand vs. France*,"<sup>39</sup> a case of international repute that was raised before the **ICJ**, again Weeramanthy J. pointed out the value of this principle and the need for the offenders to come forward with available evidence in recognition of true spirit of humanity. In this case where New Zealand challenged the decision of the French government to carry out under-ground nuclear tests in an island in the Pacific Ocean over which France had jurisdiction, it was alleged that France was in possession of more evidence regarding the plausible damage.

Uncertainty of the final potential damage poses a great challenge to the environmentalist world over. On the one hand, no commercially motivated person/entity would be interested in the logic of the principle and on the other hand, if and when a substantial damage is caused, damage recovery itself could be fairly costly for which there will not be many owners being held



responsible and willing to pay for the restoration work. In that regard, Kiss and Shelton argue.

*“...the precautionary principle may assume that prevention is required, until activities and products are proven safe, based on the knowledge that many environmental processes and changes can be irreversible. In this regard there is the danger that the measures taken ultimately could prove to be significantly more costly than the dangers averted...”<sup>40</sup>*

In other words, this principle could, in certain instances, unfairly inhibit the development activities.

### **3.3 Principles of Intergenerational Equity**

People who live today should consume the scarce resources of the planet earth in such a manner that it would facilitate the survival of future generations. In other words present generation holds the earth in trust for the future generations whilst they themselves benefit from it. Those concepts which were recognized by our own ancestors in hind-sight with folk stories telling us about an old man who planted a mango seed for the benefit of future generations was indeed recognized worldwide in Principles 1, 2, 3 and 5 of Stockholm Declaration<sup>41</sup> followed by Principle (3) of Rio Declaration.<sup>42</sup> UNFCCC Article (3) (1),<sup>43</sup> also, emphasized on this.

*Juan Antonio Oposa vs. Hon. Fulgencio S. Factoran*<sup>44</sup> is probably the most important case to date in this connection, where a Filipino group of minors with Philippine Ecological Network Incorporated brought an action on their own behalf and also, on behalf of generations yet unborn, through their respective parents together, successfully sought justice against mass destruction of virgin forests in Philippines. In Re. *“New Zealand vs. France,”*<sup>45</sup> the importance of this principle was highlighted while closer to home, in India, in *“the Tanneries Case,”*<sup>46</sup> Indian Supreme Court observed the need to be mindful of future generations.

### **3.4 Polluter Pays Principle**

Economic development and industrialization essentially meant that there would be some form of environmental damage or the other. This could be either in the form of water, soil, air, sea pollution or any combination of these factors. Historically public at large and governments paid an un-estimated cost for such creations of pollution. It could be by way of an abandoned paddy field, a polluted river with murky waters such as Chao Praya River in Bangkok, Thailand or Pasig River in Manila, Philippines or similar to our own Beira Lake where restoration has cost millions and millions of Rupees of tax-payers (both direct and indirect) money.

However, by early 1970s, world came to the firm belief that those who pollute the environment and the ultimate consumers who are the beneficiaries of such environment polluting industries and services should bear the cost of recovery and prevention of such pollution, by paying extra taxes or penalties for their destructive activities. For example, Turkish Law established an environment prevention fund based on taxes levied on motor vehicle emission inspections,



ship owners, air line ticket purchases etc.<sup>47</sup> Incidentally, Sri Lanka also enacted a similar law through which mobile phone users are expected pay for the conservation of environment. According to certain provisions of Environmental Conservation Levy Act No 26 of 2008 :(a) specified item owned by a consumer (b) specified items imported into/manufactured in Sri Lanka; (c) specified services provided within Sri Lanka, could attract a levy for environment protection.

According to Kiss and Shelton, this principle was first recognized at an international level in 1972 by OECD<sup>48</sup> member countries when it was accepted that there should not be any subsidies granted for pollution control. Instead the pollutants should bear such costs which would be invariably passed down to their ultimate end-users namely the consumers.<sup>49</sup>

In the same year, Stockholm Declaration indirectly recognized this fact in its Principle 22<sup>50</sup> whereas Rio Declaration Principle 15<sup>51</sup> was more focused on this aspect. In the case of *“Indian Council for Enviro. Legal Action vs. UoI,*<sup>52</sup> Court referred to this principle as of international recognition. In *“Vellore Citizens Welfare Forum vs. UoI,”*<sup>53</sup> Indian Supreme Court reckoned that economic benefit should compensate for the pollution created. In *“M.C.Metha vs. Kamal Nath,”*<sup>54</sup> a miscreant hotel company which diverted the natural flow of a river for its sole benefit, was ordered to defray the cost of restoration of the natural course of the affected river. In another famous case, *“Union Carbide vs. Union of India”*<sup>55</sup> the company was required to pay compensation for the damage caused.

### **3.5 The Principle of Common but Differentiated Responsibility**

As the name itself suggests, this speaks of sharing responsibility for environmental degradation amongst all nations alike but with varying degrees of responsibility mainly depending on the economic affluence and the level of damage caused by each country. This was recognized in Rio Declaration under Principle 7. (pl see Para 2) It is a well known fact that with the level of consumption patterns in the economically developed, highly industrialized countries, they account for a bigger share of the environmental harm caused than the developing countries, thus, requiring the former to bear a major burden of sharing the cost of environment protection. *“This Principle has developed from the application of equity in general International Law, and the recognition that the special needs of the developing countries must be taken into account...”*<sup>56</sup>

### **3.6 The Public Trust Doctrine**

*“The public trust doctrine is the principle that certain resources are preserved for public use, and that the government is required to maintain them for the public’s reasonable use”*<sup>57</sup> It is superfluous to state that this principle is naturally inter-wound with the Principle of Intergenerational Equity. Origins of this principle could be traced back to the days of Roman Emperor Justinian and later to the English Common Law.

Subsequently, several leading American cases upheld the position of the Public Trust Doctrine. *“Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892)”* is one such case where the issue raised



was “Whether the legislature was competent to thus deprive the State of its ownership of the submerged lands in the harbor of Chicago, and of the consequent control of its waters...”<sup>58</sup>In its decision the Supreme Court of USA ruled that”... It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over it, and have liberty of fishing therein with freedom from the obstruction or interference of private parties...”<sup>59</sup>

More recently, in 1983, in the “Mono Lake Case,” (*National Audubon Society v. Superior Court (Supreme Court of California, 1983)*) the Supreme Court of California held that “...the public trust...is an affirmation of the duty of the state to protect the people’s common heritage of streams, lakes, marshlands and tidelands...”<sup>60</sup> thus giving a new impetus to this doctrine, the world over.

#### **4.0 How We Sri Lankans Affect the Environment**

Sri Lanka is taking gradual steps in the right direction towards achieving the magical USD 4,000/= per capita income by 2016 which will be a reality unless she gets entangled in the so called Middle-income Trap. Though we are now in the envious bracket of low carbon emitting countries, our thrust towards more economic emancipation and better life styles could easily lead us to, perhaps, unwittingly, be a destroyer of the environment in which we live. This is a task that lies ahead of us demanding the attention not only of the authorities but also the entire general public at large.

Let’s, therefore, examine some of the more apparent major issues that we confront today in terms of environment protection. Readers need to be mindful that the list discussed below is neither exhaustive/conclusive nor is it discussed in any particular hierarchical order.

#### **4.1 Water Pollution**

Take a walk down your memory lane to may be late 1980’s or early nineties and realize that there was no bottled water available in Sri Lanka, at that time. Country was devoid of any major issues with regard to drinking water as we experience even in the outskirts of the Western Province, today. Kidney disease was not even heard of whereas today the authorities have the compelling need to ban certain top-selling highly effective pesticides for fear of causing the disease. This suggests that over the last two decades or so, we have lavishly contributed to water pollution in the country.

Professor Sands reckons that “probably one of the greatest environmental challenges the human being is confronted with today is the management of fresh water. Nonetheless, there are no globally authoritative sources dealing with this, he laments”.<sup>61</sup>

We, as Sri Lankans, need to be cognizant with this situation and individually and collectively should take the necessary measures to prevent further degradation of quality of our water which is so critical to our very existence.



## 4.2 Garbage Collection and Disposition

Urbanization is an unavoidable consequence of modern day living and particularly of economic development. Sri Lanka is no exception and this causes major nightmares for local government authorities whose duty it is to ensure smooth collection and disposal of all forms of waste created by the city dwellers. Mini mountains that we witness in areas such as Mattakkuliya, Kolonnawa etc are not only an eye-sore but also serve as a grim reminder of what we give to Mother Nature, courtesy our comfortable life styles. It is time we extended our fullest co-operation to the authorities in their efforts to find meaningful solutions to this kind of nagging problem. Concepts such as the three R (i.e. reduce, re-use, recycle) should be our “*manthra*” in protecting our own neighborhood.

## 4.3 Deforestation

Deforestation is now said to be responsible for 20% of human carbon dioxide emission which is known as the “green house effect” which will further augment the global warming, finally leading to unpredictable and unnatural disasters.<sup>62</sup> Intensive scale of agriculture in the name of development is another issue. Despite the presence of a plethora of statutes such as the Forest Ordinance, The Fauna and Flora Ordinance etc, unwarranted and unauthorized felling of forests and jungles of the country goes on unabated citing developmental needs as an excuse. It is time that the authorities took some bold steps in the preservation of the available forest cover of this beautiful island.

## 4.4 Squander of Resources: Food in Particular

Despite imminent threat of our water ways being polluted in double quick time, upto now, most of us have been privileged with access to safe drinking water which is a rarity and a luxury in some parts of the world. However, have we been seriously concerned with reasonable use of our water resources? How many of us have ever taken the trouble of notifying the relevant authorities when we come across a damaged street pipe which leads to squander of water? How many of us have ever indulged in activities such as rain water harvesting? Despite soaring electricity prices, have we ever taken any action with regard to burning street lights that we notice, sometimes, in broad day light? These are some of the questions that we need to ask ourselves.

Perhaps, one of the biggest aspects of waste is in food consumption, even in our country. According to sources, one third of all food produced fails to make it from farm to the table, thus subjecting over 870 million people to hunger and malnutrition.<sup>63</sup> We, Sri Lankans are also possibly responsible for this waste though not of the same quantity, especially in the context where we are yet to hear of any deaths in this country due to starvation. It is time we embraced the theme of this year’s World Environment Day “**Think. Eat. Save. Reduce Your Foodprint.**” by indulging in more responsible less wasteful food consumption.<sup>64</sup>



#### 4.5 Human Elephant Conflict

Human Elephant Conflict (**HEC**) is possibly another environmental problem that rural folks are now confronted with. According to research reports, unplanned development activities with callous disregard for environmental concerns, particularly those projects that disturb the natural habitats of wild animals cause dire economic consequences in terms of lives lost not only of human beings but also of wild beasts. <sup>65</sup>Sri Lanka needs to appreciate the existence of wild animals in their natural habitats and to that end should plan their activities with due care for those animals.

#### 4.6 Industrial Development

Sri Lanka could boast of over 80 statutes concerning environment protection, at the apex of which stands the National Environment Act No 47 of 1980(as amended). Despite the presence of such legislation, especially the provisions of the aforesaid Act with regard Environment Impact Assessment Reports (**EIA**), Environment Protection Licenses (**EPL**) etc, business and industries are often found violating such provisions, thereby causing irreparable and irretrievable damage to environment.As Rohantha Athukorala points out *“Sri Lanka too, going in to this new phase of industrial development, needs to place strong emphasis on strengthening the green credentials of her industrial base. Our industrial policies should be aligned with the global imperative on reducing per-capita emission levels and advocate obtaining certificate such as Forest Stewardship Council (FSC)’s certificate to ensure the forest resources are managed to meet ecological needs, as well as encouraging more industrial undertakings to obtain UNFCC certification in order to credibly trade on the carbon credits market”*<sup>66</sup>

#### 5.0 Conclusion

Global Warming has become an important concern throughout the world. As we are aware, it is Carbon Dioxide (CO<sub>2</sub>) which is the root cause of this problem due to its inherent heat retention properties as against Nitrogen and Oxygen, the two gases which account for over 99 % of our atmosphere. At the same time, carbon is essential to human life as it is at the very base of any food chain for it only supports trees with initial food production through photosynthesis. In essence, that means whilst living with the aid of CO<sub>2</sub>, it is also necessary to learn to do so without causing much global warming through emissions of this gas.

Whilst accepting that we need to develop the country which would bring in more prosperity, we need carry out our development activities in the best possible environmentally friendly manner.

It is the responsibility of not only the politicians, not only the bureaucrats but also all of us, as proud Sri Lankans, to live upto that challenge. In that context, we need to guard ourselves against some of the commonly known myths against environment protection, viz:



- The myth that environmentalism is just an hysterical reaction to science and technology;
- The myth that environmentalism is a passing fad with no serious ideas to offer;
- The myth that environmentalism is a substitute for religion.

These myths call to us like sirens, falsely assuring us that environmental concerns can be safely ignored. Nothing could be further from the truth.<sup>67</sup> The modern global environmental crisis requires a total commitment from over 7.0 Billion people living on the planet Earth.

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