



HUMAN AWARENESS TO ENVIRONMENTAL PROTECTION IN SMALL ISLANDS DEVELOPING STATES (SIDS): THE MAURITIAN CASE STUDY

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Abstract

This contextualised paper deals with environmental protection to enhance socio-economic development in SIDS with particular reference to the small Republic of Mauritius. With the relevant legal and regulatory framework it investigates environmental protection in SIDS with particular attention drawn to the small Republic of Mauritius and its huge Exclusive Economic Zone (EEZ) in the Indian Ocean, and its blue economy would generate trillion of dollars provided the EEZ is not over-exploited otherwise mankind would pay it in a very costly way. The Republic of Mauritius is also a very interesting case study because the Mauritius and its legal system inherited both French Civil Law (1715-1810) and English Common Law (1810-1968) during its two successive colonisation with a written Constitution 1968 which has no provision on the right to protection of the environment and the Mauritian legislator has neither reacted promptly to implement same in the Constitution 1968 compared to other Small Island Developing States (Maldives, Seychelles) albeit there is a plethora of legislations and regulations to protect the environment in a country where there is room for improvement in various key sectors for its socio-economic development and to protect the island against nature's wrath, droughts, food and water insecurity. However, with the exploitation of petrol and oil for exploitation, activists and human rights fighters found that there might be an impact both in its green and blue economy provoking nature's wrath with tsunamis, volcanoes or cyclones which are becoming more frequent in the Indian Ocean. It is time to react fast and promptly and this paper might enlighten a little more of human's irresponsibility.

Keywords: Environment, Socio-economic development, Small Islands Developing States (SIDS), legal and institutional framework

Introduction

Pollution in all its forms (air pollution, water pollution, illegal mining activities, noise pollution, climate change, depletion of the ozone layer, wildlife: their protection and protection of endangered species, nuclear radiation, weapons of massive destruction, chemical products, hazardous products and hazardous waste have awakened the international community to better cater for our natural resources, protection of the wildlife and the welfare of all individuals where there is, *inter alia*, sea rise, rise in temperature, regular and more frequent cyclones, typhoons, earthquakes, tsunamis, deforestation, leakage of petrol in the sea and in lagoons, illegal exploitation of mines without a license, glaciers are melting and breaking down apart that it is time to react and to react fast before it is too late as the situation is becoming more and more alarming. International law is assessed as 'soft law'.

The Earth is plagued with earthquakes, floods and droughts, famine and tsunamis. It is clear that nature is not always in harmony with humanity but the action-reaction is reciprocal. In addition, human intervention (atomic explosions, nuclear weapons, the explosion which occurred at the Chernobyl nuclear station, pollution, mines and remnants of war, military race on land, sea and in space, chemical weapons, bacteriological weapons, nuclear tests) may only destroy the environment (destruction of the wild life, coral reefs, climate change and global warming with an increase in temperature provoking the shrinkage of glaciers, unpredictable rainfall, desertification, famine in most part of Africa). Other consequences are water scarcity, contaminated water; people are easy preys to diseases (cholera, typhoid, malaria, dengue fever, diarrhoea,

chikungunya, HIV-AIDS) and massive movement of refugees from one zone to another. There are remedies in the form of international legal instruments but the same persisting flaw: States do not abide to their obligations and there is no proper international legislature to punish for grave violations of international environment law. What are these conventions and how do they protect the environment? This article deals with State's responsibility and the consequences humanity has to face.

Public International Law (PIL) through its conventions and treaties allows States to solve their disputes by international arbitration, provided they have exhausted all available remedies first, and to settle the dispute(s) by reparation and restitution as all States have a legal interest in their protection; they are obligations *erga omnes* as explained in the case of *Barcelona Traction Light and Power Co. Ltd in the matter Belgium v Spain, Second Phase, ICJ Rep 1970, 3*. International law is also soft law but it is also *jus cogens* which are peremptory norms or fundamental norms of such an importance that their applicability to some States cannot be avoided by means of special agreements. In Mauritius, for historical reasons, where the small island was under French colonisation during the period 1715-1810 the French Code Napoléon was applicable on the island and was retained by the British when the French and the British agreed on the *Capitulation Treaty 1810* where according to Article 10 stipulates that all legislations in force would be maintained on the island explaining the survival of the Code Napoléon, the French Code de Commerce and the French Penal Code in Mauritius.

Problem Statement

In human's awareness to protect the environment it is never too late to react prompt to human irresponsibility

towards the nature and its destruction coupled with pollution and weapons of massive destruction and to which humans are to be blamed. The problem of human irresponsibility and awareness to warn of the danger of nature's wrath is crucial to preserve the environment for the future generations to come. Degradation of the environment is a universal concern otherwise if we do not react promptly there would be, *inter alia*, more Green House Gases (GHGs), depletion of the ozone layer, destruction of the wildlife, the fauna and the flora and their habitats, corals bleaching, food and water scarcity and the destruction of humanity if we do not react promptly to avoid climate change, deforestation and when the nature has been destroyed we will have no power to stop nature's wrath. This can be achieved at least by human

awareness in order to manage our environment properly. Therefore, the purpose of this paper is to enlighten to what extent there is State responsibility and human awareness to react against nature's wrath to send a strong signal to the international community with relevant laws, conventions and regulations before it is too late to save the planet, its green and blue economy. In a contextualised approach, this paper invites to human awareness and to react promptly against human irresponsibility. And what shall come out of this paper would probably sensitize the international community of nature's wrath, food and water scarcity, poverty and infringements to the 17 Sustainable Development Goals (SDGs) and the Millennium Sustainable Goals.



Fig. 1

Literature review

The globalisation of markets, the internationalization of investment, production and distribution is thought to hold the key to economic dynamism and growth, competitiveness and wealth (Weiss F., Denters E. and de Waart P. 1998). The goal of sustainability involves the international community as whole and individual countries of every current stage of development, not merely those classified as developing (Ginther K, Denters E. and de Waart (1995)). The ocean territory contributes significantly to the wealth of Mauritius. The GDP share has been estimated at 10.8 per cent in 2012, with a value

addition of MUR 32.5 billion, of which over 90 per cent currently comes from three established sectors – coastal tourism and marine leisure, seaport-related activities and seafood-related activities where significant scope for future growth exists within an economic growth of 3.5% in 2014. In the coastal tourism cluster, business opportunities in the currently under-developed marine leisure activities could quadruple the segment's GDP contribution to MUR 5.2 billion by 2025. Priority area is the mapping and stock-taking of our seabed for a better understanding of both the living organisms and the potential hydrocarbon and mineral resources in our waters (Bhagooli).

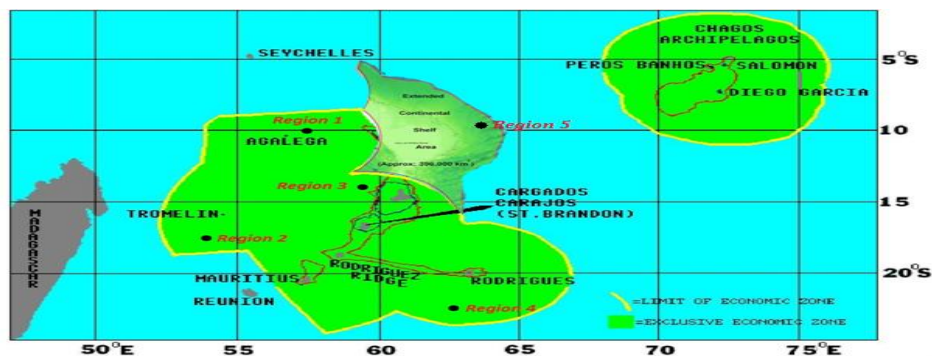


Fig. 2.

Research Methodology

This contextualised paper would rely on secondary data coupled with relevant legislations, regulations, international and regional covenants, Declarations coupled with some relevant landmark cases to illustrate to what extent the environment is at stake, how to preserve and manage it properly, and that we may still find some remedies to environment degradations with, *inter alia*, the appropriate and relevant laws and legislations.

Legal Norms for Implementation

There is a hierarchy of norms ranging with the Constitution as the supreme law of the land. Mauritius inherited a written Constitution dated 1968, based on the British Westminster model with a strong executive power in the hands of a Prime Minister, when the British Empire decided to give independence to Mauritius on the 12th March 1968.

Since then Parliament has started to pass legislations and regulations in a country where there is a strong separation of powers such that the legislative power makes law and the judiciary interpret them. However, despite its independence and that Mauritius is a sovereign State it continues to inspire English legislations and regulations, and second there is still a right of appeal to their Law Lords sitting in the judicial Committee of the Privy Council in London, England. Therefore, the

Constitution 1968, legislations and regulations, the common law on negligence, jurisprudence, doctrine and some customs and usages are sources of law in Mauritius coupled with French codes such as the French Civil Code (Code Civil Mauricien), the French Penal Code and the French Code de Commerce are also sources of law in Mauritius but English inspired law prevails over French law.

Today, the environment plays an important role because its impact, which is now greater than years ago, has a direct bearing on the worst calamity of all time: poverty. Gases (GHG) and CO₂ destroy the Ozone (O₃) layer and as a consequence the temperature climbs some few centigrades to provoke global warming and climate change but enough to cause much havoc to the Antarctic region: the sea level rises continuously and most regions of Africa are even more dryer. Water is also more and more scarce and poverty eradication seems difficult to achieve. This is the reality at the dawn of this new century but there is a glimpse of hope with the Kyoto Protocol (1997) and the Montreal Protocol (1987) which phases out the production of a certain number of substances believed to be responsible for ozone depletion. Collaboration and friendly relations between States may contribute to overcome a planet doomed with wars, nature's wrath and regions plagued with the horrors of civil wars, famine, terror and disease. It is time to react and to react promptly for securing international peace.

Table 1

ACTS	AIMS & OBJECTIVES OF THE LEGISLATIONS PASSED BY THE MAURITIAN PARLIAMENT
Local Government Act 2011	Section 59. Waste management 60. Storage, collection, transfer and disposal of waste 61. Sanitation and abatement of nuisance
Fisheries and Marine Resources Act 2007	To amend and consolidate the law relating to the management, conservation, protection of fisheries and marine resources and protection of the marine ecosystems Section 4 Marine Protected Areas Section 5. Marine Protected Area Fund
Tourism Authority Act 2006	To amend, repeal and replace the laws relating to tourist enterprises, pleasure crafts and skippers
Maritime Zones Act 2005	To provide for the United Nations Convention on the Law of the Sea to have force of law in Mauritius
Tourism Act 2004	To make better provision for the regulation of the tourism industry with a view to promoting its development in a sustainable manner
The Planning and Development Act 2004	An Act to modernise town and country planning and make comprehensive provision with respect to land use planning and development in Mauritius.
The Dangerous Chemicals Control Act 2004	To provide for the prevention of damage to health and to the environment caused by dangerous chemicals and for better protection of the workers, members of the public and the environment against dangerous chemicals
Genetically Modified Organisms Act 2004	To provide for measures to regulate the responsible planning, development, production, use, marketing and application of genetically modified organisms
Environment Protection Act 2002	To provide for the protection and management of the environmental assets of Mauritius so that their capacity to sustain the society and its development remains unimpaired and to foster harmony between quality of life, environmental protection and sustainable development for the present and future generations; more specifically to provide for the legal framework and the mechanism to protect the natural environment, to plan for environmental management and to coordinate the inter-relations of environmental issues, and to ensure the proper implementation of governmental policies and enforcement provisions necessary for the protection of human health and the environment of Mauritius
Beach Authority Act 2002	To establish a Beach Authority and to provide for a legal Framework for the management and control of public beaches in Mauritius and Rodrigues.
Wastewater Management Authority Act 2000	To provide for the establishment of the Wastewater Management Authority and a legal framework for the wastewater sector.
Wildlife and National Parks Act 1993	This Act provides for the protection of fauna and flora in Mauritius and related matters such as administration of wildlife resources and the creation of nature reserves.
Forests and Reserve Act 1986	[S. 14 amended by Act 1 of 1986; s. 4 of Act 7 of 2003.] (1) Any person who commits an offence for which no penalty is otherwise expressly provided shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 24 months.
Pas Géométriques Act 1982	The reserved lands along the sea coast commonly called the 'Pas Géométriques' and referred to in the Arrêté of Général Decaen of 5 May 1807, shall form part of the 'domaine public' and be inalienable and imprescriptible

Building Control Act 2013	Every building shall be designed, constructed and maintained in such a way as to guarantee people's safety, society's well-being, the protection of the environment, and aesthetic value,
Board of Agriculture Natural resources Environment Act 1977	This Act deals with all matters of general policy relating to agriculture, forestry and the utilization and preservation of natural resources and the environment in Mauritius.
Central Water Authority Act 1971	Irrigation, land drainage, the reclamation of land, flood control, the development of fisheries, the protection of wild life, afforestation and the control of soil erosion the disposal of industrial waste; the abatement and prevention of pollution of water.
The Rivers and Canals Act 1863	Jurisdiction of the Supreme Court.

The Code Civil Mauricien (CCM), dated 1804, just like the French Civil Cod provides for *une obligation de moyens* and *une obligation de résultats*. Therefore, the Law of contracts and the Law of Torts (articles 1382-1384 CCM) are borrowed and inspired from French Civil Law, and the Courts would follow jurisprudence from French *Cour de cassation*. There are also scattered pieces of legislations and regulations on consumer protection (*Consumer Protection Act 1991*, *Animal Diseases Act 1925*, *Meat Act 1974*, *Food Act 1998*, *Pesticides Control Act 1970*, or the *Inflammable liquids and Substances Act 1952*) which provide for the protection of all individuals in Mauritius.

Environmental Law is not an isolated branch of the law which deals with the environment *per se*. It also deals with the protection of the health, security and well-being and welfare of all individuals in Mauritius, and based on the public trust doctrine (*infra*), the State has a responsibility as a trustee in the preservation of the environment and keeping the ecological balance unaffected notwithstanding that all individuals have also an obligation to keep around them a sane environment and to keep it clean and tidy so that everybody is kept safe. In other words, the State and all responsible authorities and institutions including the *Police de l'Environnement* must, *inter alia*, inspect, control, and regulate public markets, fairs, beaches, street vendors and food to keep them healthy with the required hygienic standard. In the case of *Gainda Ram v MCD 2010 10 SCC 715*, the Indian Supreme Court declared that the right of hawking for carrying on business on the streets cannot be denied if they are properly regulated. The streets on India are vested in the municipality and they have to be used by the municipalities as trustees.

In the overall, Mauritian legal system is still old colonial law and English common law, as mentioned, is still an important source of law. The old Constitution 1968 is also colonial law and there is no provision on right to environment and the right to socio-economic development as fundamental rights and it is high time for the legislator to think twice upon it. In case of violation and infringements to the environment the judiciary is still relying on Section 4 of the Mauritian Constitution 1968 on right to life as the right to environment is also the welfare of all individuals in a democratic State. The importance of right to environment as a fundamental right has been highlighted in many important and relevant cases on the environment protection especially in many countries (Kenya, India, Seychelles, Maldives just to name a few) where right to environment is a constitutional right. Justice Chinnappa Reddy in the case of *Sachidanand Pandey v State of W.B 1987 2 SCC 295: AIR 1987 SC 1109* stated that:

“Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Articles 48-A and 51-A(g) of the Indian constitution which proclaims it to be a fundamental duty of every citizen of India “to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures’. When the Court is called upon to give effect to the Directive Principles and Fundamental Duties, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority”.

In the case of *T.N. Godavarman Thirumalpad v Union of India 2002 10 SCC 606: AIR 2003 SC 724* Justice Arijit Pasayat of the Indian Supreme Court found that by destroying the natural environment, man is also committing matricide, having in a way killed Mother Earth and went on to say that, and to which he is perfectly right, :

“Our legal system based on English common law includes the public trust doctrine as a part of its jurisprudence. The State of India is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the seashore, running water, air, forests and ecologically fragile land. The State as trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. The aesthetic use and the pristine glory cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary in good faith, for public good and in public interest to encroach upon the said resource”.

It is high time to amend the Constitution 1968 to implement the right to environment and/or the right to social-economic development to all individuals in Mauritius as fundamental rights as *per* Chapter II of the Constitution 1968. Most of these legislations and regulations have been enunciated in this manual in various tables to explain clearly their aim and objectives.

International Legal Norms

The United Nations have been very active inviting State Parties to sign and ratify international and regional covenants which aim to provide the environment, its natural resources and the wildlife. These international sources of law are treaties and conventions, protocols, declarations, resolutions of the United Nations General Assembly, precedents from international courts like the International Court of Justice or the International Criminal Court, general principles of law, and customary international law but this list is not exhaustive.

Table 2

CONVENTION
• The Convention on Fishing and Conservation of the Living Resources of the High Seas
• The African Convention on the Conservation of Nature and Natural Resources 1968
• Convention on International Trade in Endangered Species of Wild Flora and Fauna 1973
• The Ramsar Convention on Wetlands and the Agreement for the Convention of Migratory Waterfowls within the African-Eurasian Region
• Convention on Biological Diversity
• Convention concerning the Protection of the World Cultural and Natural Heritage
• Convention on the Protection of the Underwater Cultural Heritage
• Convention for the Protection, Management and the Development of the Marine and Coastal Environment of the Eastern African Region
• International Convention for the Prevention of Pollution from Ships

There are also equity, *opinio juris* and practice of the court (*proceipe, de benne esse* examination, *tierce opposition*, Supreme Court Rules; District, Intermediate and Industrial Court Rules or DICC Rules; or judicial review as *per* UK Order 53). One of the most important procedures in courts is in the protection of the environment takes the form of Public Interest Litigation because it is also in the public interest to have, *inter alia*, a clean and safety environment. The Indian Supreme Court in the case of *Centre for Public Interest Litigation v union of India 2012 3 SCC 1: AIR 2012 SC 3725*, also known as the *Spectrum Case*, where one of the legal issues was whether airwaves, frequencies are natural resources? The Court responded in the affirmative and Justice G.S. Singhvi after referring to some cases (*M.C. Mehta v Kamal Nath 1997 1 SCC 388; Ministry of Information & Broadcasting, Govt. of India v Cricket Association of Bengal 1995 2 SCC 161: AIR 1995 SC 1236* and the case of *Reliance Natural Resources Ltd v Reliance Industries Ltd 2010 7 SCC 1* among others) observed that:

“Natural resources belong to the people but the state legally owns them on behalf of its people and from that point of view natural resources are considered as national assets, more so because the State benefit immensely from their value...the State is empowered to distribute natural resources. However as they constitute public property/national asset, while distributing natural resources the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources.

And as far as feasible and practical relevant cases have been implemented in this manual to better understand Public Interest Litigation (PIL) and how the plaintiff-claimant or petitioner is protected against violators of the environment, and the different civil sanctions which are available notwithstanding that there are criminal penalties as well and judicial review of administrative and judicial decisions provided they are biased, completely unreasonable and against the rules of natural justice. In the overall, what shall come out of these judgments is how the Court gives orders to protect the environment, the wildlife, hazardous materials in strict compliance of the law, common law and various doctrine such as the public trust doctrine (*infra*) which the defendants, provided he has been found guilty and liable

by a court of law, shall comply by way of damages otherwise it would be a contempt of court (*infra*). It is trite law in Mauritius that, as *per* section 163 *Courts Act 1945*, the English law of evidence shall prevail in Mauritius as explained in the leading case of *Jhundoo v Jhurry* unless it is made statutory. However, the State government is responsible in maintaining and preserving the environment.

Development of International Environmental Law and State Responsibility

International Environmental Law can be traced back to Roman Law with the public trust doctrine which had its origin in Justinian institute (530 AD) but even prior to this in India during the Vedic time sages, saints and great teachers and scholars expressed their doctrine in the form of *Vedas, Upanishads, Smritis and Dharmas, Puranas, Ramayana, Mahabharata, Gita*, mythological literature including moral codes and political rules which emanate from rulers of Indian followed by holy scriptures from the Holy Bible and the Holy Quran (*infra*) and they stipulate for the protection of the natural environment and its wildlife.

There were various conferences when the United Nations were created advocating for an international disarmament, prohibition of weapons of massive destruction and its proliferation, various treaties to protect the continent such as, *inter alia*, the *Pelindaba Treaty* to protect the African continent against nuclear weapons, the *Tlatelolco Treaty* or the *Roratonga Treaty* to protect the South American continent and the pacific regions respectively. Various international and regional covenants were proposed and discussed at the United Nations General Assembly (UNGA), were amended by its State Members and most of them were finally signed and ratified by most of its Member States including the small Republic of Mauritius.

Various international and regional conferences took place across the globe to inform States of environmental degradation in all its forms and it is time to propose declarations resolutions and to sign and ratify treaties and covenants in order for all its Contracting Member States to abide to their obligations for a better environment and for their welfare of all individuals against natural disasters, pollution in all its forms with a constant degradation of, *inter alia*, the environment, sea rise in temperature and sea rise in level, tsunamis, earthquakes, regular and more and more powerful cyclones and typhoons, pandemic diseases, floods and droughts otherwise the planet and its inhabitants will pay it in a very costly way with poverty, environmental refugees

and other calamities of all sorts. Since then, the International Court of Justice (ICJ) had also contributed in the development of Public International Law (PIL) and in most particular in the sphere of International Environmental Law (IEL) by landmark cases. Over and above all the State has a responsibility to protect the environment to protect the environment and its citizens. In the absence of any concrete judgment on this legal issue of State responsibility (Unit 10, *infra*) to the protection of the environment, in the case of *T.Damodar Rao v Municipal Corporation of Hyderabad* AIR 1987 AP 171 the court made it clear that; “protection of the environment is not only the duty of the citizen but it is the obligation of the State and all other State organs including courts”.

The legislator must also make it clear in its legislations and regulations that any exploitation in the form of construction of hotels, their renovations and/or any activity must also be national policy-making with the relevant communiqué, the relevant Environment Impact Assessment (EIA) and clearance from the relevant authorities otherwise relevant associations for the protection for the environment has also a duty to voice out their fear of any illegal construction which may have a very negative impact on the environment, the wildlife and specially for people who live in the vicinity of any illegal activity.

An illustration is found in the case of *Association for Environment Protection v State of Kerala* 2013 7 SCC 226: AIR 2013 SC 2500 where the association found that the renovation and beautification to a hotel, which was constructed on reclaimed land of a river, did not receive and clearance from the Environmental Planning and Coordination Committee which was mandatory under the *Government Order of 1978*. The Indian Supreme Court found that the State should have issued orders after the clearance or scrutiny of the committee adding that clearance from the committee was *sine qua non*, and held that the violation of mandatory condition amounts to violation of the fundamental right to life guaranteed to the people of the area under Article 21 of the Indian Constitution. In *Amarnath Shrine, re* 2013 3 SCC 247, the court held that there is a bounden duty of the State to discharge its constitutional obligation and law also casts a duty upon the State to ensure the protection to the forests and environment of the county. In the Mauritian legal system and the common law countries, it is trite law that the onus of proof lies on the plaintiff-claimant and he/she has to prove his/her case on a balance of probabilities, and the defendant may rebut the allegations which are retained on him/her unless he/she may enjoy his right to silence under section 10(7) of the Mauritian Constitution 1968.

In the recent case of *Belles Des Iles Ltée v Municipal Council of Quatre Bornes*, The applicant, Belles des Iles Ltée, applied for a development permit to make an extension of their Hotel/Guest House. The application was turned down by the Municipal Council of Quatre Bornes, the respondent in the case, on the grounds that the proposed developments would be detrimental to the amenities of the residential area and that the neighbours had strong objections to the development. The applicant meant that the rejection was arbitrary, unreasonable, took into consideration extraneous reasons and/or justifications and was in violation of the law. The applicant also asserted that there was in reality only one objector, a neighbouring couple, and that the complaints were not related to the proposed extensions. The complaints regarded noise levels and spotlights lit all night. The respondent claimed that the applicant had started an extension without a permit. This fact was however not mentioned in the rejection of the development permit. According to the court, the respondent had not given any indication that the extension would have an adverse impact on the environment contrary to any rules laid down by the Ministry of Environment or the Ministry of Health. Thus, the Court meant that the respondent had not given the application the required consideration before rejecting it. The permit was therefore granted. **Parliament may implement international and regional covenants in its domestic law.**

Implementation of the law as domestic law

Though most countries have signed and ratified international and regional covenants on the protection of the environment and its wildlife even that the Republic of Mauritius has also its own specificities compared to other countries with its wide Exclusive Economic Zone (EEZ, *infra*), its blue lagoons (*Beach Authority Act 2002*), its wildlife (*Wildlife And National Parks Act 1993*), its range of mountains, lakes, ponds, cascades such that they made the small island (*Environment Protection Act 1991*) very attractive for the tourism sector but pollution as a civil wrong would cause a public nuisance to one and all.

The tourism sector, just like many other emerging sectors, is a key sector in the socio-economic development of Mauritius and the State government needs money to create jobs and employment capable of attracting Foreign Direct Investments (FDIs) worldwide otherwise the country would fail in its economic and financial development provoking a high unemployment rate especially when as a Welfare State it provides for free transport, free public hospitals and free education to most of its people and individuals with relevant courts having the necessary jurisdiction, competence and power to impose fines, imprisonment and damages (*Environment Appeal Tribunal*) promptly not withstanding that in Mauritius civil matters may be heard at a preliminary stage before a Judge in Chambers.

Therefore, there are key sectors which may boost the economy of the Republic of Mauritius but these sectors must be protected and the Mauritian legislator has been very active in promulgating relevant legislation and regulations to protect the environment among hotels, workers, the beach and its natural resources such as the range of mountains, seashore, running water, air, forests, public lands, lakes, rivers, ponds and the wildlife in general. Relevant legislations and regulations have been passed in most of these key sectors as explained in this manual to protect the environment and its natural resources.

And as explained the State has a responsibility to protect the environment. Citizens of the small Republic of Mauritius, just like any other citizen of the world, also have a duty to protect the environment. This right to protect the environment by any citizen is also made statutory in various constitutions. As an illustration, Article 51-A of the Indian Constitution enacts that: "51-A Indian Constitution. Fundamental Duties.-It shall be the duty of every citizen of India-(g) to protect and improve the natural resources including forests, lakes, rivers and wildlife and to have compassion for living creatures."

In the case of *Rural Litigation & Entitlement Kendra v State of UP* 1985 3 SCC 614; AIT 1985 SC 1259, the Supreme Court stated that: "Preservation of the environment and keeping the ecological balance unaffected is a task which is not only governments but also every citizen must undertake. It is a social obligation and let us remind every citizen that it is his fundamental duty as enshrined in Article 51-A (g) of the Constitution". One of the multi-branches of International Environment Law is that pollution is a tort in itself.

The Law of Tort

Most actions entered by the plaintiff-claimant before the relevant court within its relevant jurisdiction cover claims for damages against the defendants for pollution in all its forms (noise pollution, air pollution, or water pollution just to name a few and this list is not exhaustive) and is punishable under the law and he had to pay a compensation for damages in the form of exemplary damages or monetary damages before the relevant courts; which is the most common remedy asked for in addition to abatement and injunctions (*infra*) before the relevant court (Judge in Chambers, Environment Appeal Tribunal or the Supreme Court as the Appellate Court)

Where is the law? Apart from relevant articles from the Code civil Mauricien there are relevant legislations (*Environment Protection Act 1991, Factories Act, Noise Prevention Act*) and regulations (*Loud-Speakers and Amplifiers (Restriction of Use) Quatre Bornes Regulations 1955, Environment Protection (Environmental Standards for Noise) Regulations 1997 [GN No. 17 of 1997], Noise Prevention (Quatre Bornes) Regulations 1939 [GN No. 26 of 1939]*) to punish the defendants against environmental pollution as a tort in the form of public nuisance, such as noise pollution, for which the defendant has a duty of reasonable care but failed to do so because of his negligence under common law and has to pay damages if he found guilty. As an

illustration, in the *Snail's Case*, the court found the manufacturer liable when he negligently left snails in a bottle of beer which was opaque and decaying snails cause harm to consumers who drunk it.

Trespass is another form of nuisance and plaintiffs occasionally raised the legal issue of trespass when the defendant invade intentionally the plaintiff's land but there is no need to show any substantial injury by the plaintiff but suffice that there is an intentional unprivileged physical entry by a person or object on land possessed by another. As an illustration, in the case of *Fairview Fams Inc. v Reynolds Metals Co.* 176 F Supp 178 (1959) where the court found that airborne liquids and solids deposited upon Fairview's land constituted trespass and allowed damages for a six-year period applying the statute of limitations. The common law of negligence is often available in case of negligence of the defendant and/or contributory negligence is both plaintiff and defendant are responsible for the damage. In the case of *Hagy v Allied Chemical and Dye Corporation* 1954 122 Cal App 2d 361, the appellant, Mrs. Hagy suffered injury to her larynx when her husband drove through smog which contained injurious sulphuric acid components negligently emitted from the defendant's plant. The court allowed damages for negligence of the Allied Chemical and Dye Corporation. The plaintiff cannot escape liability in case of strict liability that is a liability without fault on the part of the defendant, a principle that has been laid down in the case of *Rylands v Fletcher* 1867 HL 330 where Justice Blackburn held that:

"The person who for his own purpose brings on his land and collects and keeps there anything likely to do a mischief if it escapes, must keep it at his peril, and if he does not do so, is *prima facie* answerable for all the damage, which is the natural consequence of its escape"

Is environmental pollution a civil tort? In the absence of any clear and appropriate definition in the Mauritian context and by Mauritian Courts reference may be made to the case of *M.C. Mehta v Kamal Nath* 2000 6 SCC 213; AIR 2000 SC 1997 where Justice Saghir Ahmed of the Indian Supreme Court enlightened the law when he said that:

"Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner".

The Law of Contract

The professional seller compared to a seller *non professionnel* (who may escape liability if proves that he was of good faith- Cass.3e civ., 16 nov. 1988, D., 1988, IR 288) is always of bad faith under French Civil Law as he is supposed to know all hidden defects in a thing he is selling.

This is the approach undertaken by the French *Cour de cassation* Cass.1re civ., 24 nov. 1954, JCP, 1955, II.8565 which, in its quality as *jurisprudence protectrice*, bends in favour of the buyer-victim. In addition, a buyer-victim may take benefit of his insurance policy which guarantees a thing sold to him within a certain number of years (*clause extensive*) and/or *le contrat de service après-vente* for maintenance and reparation (cars, computers, photocopy machines or electronic goods) against payment only as it does not over hidden defects, which is a different issue.

In the overall, there are therefore an abundant architecture of legislations and provisions of the Civil Code to protect the consumer in Mauritius but it has never been the intention of the Mauritian legislator to follow *European Directives* (Directive 25 May 1999) as it is applicable in France because Mauritian consumer law is deeply rooted in its common law-civil law and European Directives are not sources of law *per se*. Between French and English law, our courts are following the French Civil Law on *Droit de Vente* which is exactly the same in France save, however, to some few exceptions (*infra*), so that in the final run the buyer-victim may claim *dommages-intérêts* following an *action rédhitoire* or an *action estimatoire* based on article 1644 CCM.

Indeed, *a fortiori* under French Civil Law the buyer-victim must obtain reparations irrespective the seller is good or of bad faith because the seller is presumed (irrefragable presumption) to know all hidden defects in the thing under sale and to pay damages as per article 1645 CCM. The seller can escape liability and there are three options which are open to him: in case of good faith, *en cas de force majeure* or he may enjoy his right to a *subrogation légale* entering therefore an action (*action récursoire*) against *le fabricant de la chose*.

There is one important issue under French Civil Law whenever there is *une responsabilité du fait des choses* is that there is exclusion *de la présomption de faute*. Therefore, how can *le gardien de la chose* be exempted from liability? With regard to burden of proof, the onus of proof is generally on the victim *du fait actif de la chose* and *du lien de causalité* but which is not necessarily true because according to French precedents, which are dominant actually, the burden is on the seller that the thing was perfectly normal when the damage(s) occurred. It is sufficient for a person-*gardien de la chose*-to prove that he has lost '*l'usage, la direction et le contrôle de la chose*' to be exempted from liability which is important in consumer protection law.

International environmental Law is a very wide subject and is not restricted to pollution only but, in fact, the impact it may have on the health sector

State responsibility

There is little support from international instruments, which make a particular State liable for damages caused to another State. In fact, it is not easy to furnish proof and evidence at international level. Up to now international courts have been able, in most circumstances, to bring individuals to be prosecuted for grave violations of international humanitarian law. Because of State's

sovereignty little punishment can be imposed on a particular State and it is also very difficult at international level which country is responsible for causing harm to the environment. For example, which country is depleting the ozone layer remains doubtful! It has also been proved that there is no international court, which can impose its authority at international level. How to punish States for grave breaches of their international obligations? When does a State commit a wrongful act in terms of international instruments?

Parties to a treaty seldom respect their obligations. Worst, some international rules, which provide protection for the environment, are in the form of mere declarations, are not binding obligations. But without binding obligations States are free to violate international rules and regulations. These declarations are very soft: the Stockholm Declaration (1972) in its article 12 and the Rio Declaration (1992) in its article 2 both declare that:

"Man has the fundamental right to freedom and 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" and where "States have 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".

The International Law Commission has prepared a legal framework for State's responsibility. The Draft Articles only provide for a State international wrongful act (harm or injury) and it is entitled to obtain full reparation in the form of restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition-The *Smelter Arbitration 1938-1941 3 RIAA 1905* where fumes (SO₂) from a smelter in Canada were damaging crops found in the USA and the Arbitration Tribunal stated that it constituted "*injury by fumes which is of serious consequence is established by clear and convincing evidence*".

Environment and war

The outcomes of war, civil wars, national and international armed conflicts may affect the environment. Methods of warfare are more dangerous and deadly: atomic explosions, nuclear tests, chemical and bacteriological weapons are very harmful to the environment, cause unpardonable damages to ecology, contaminate the air and atmosphere and prevent to secure an ecological sustainable development.

Both the United Nations and the International Committee of the Red Cross have united to fight against the use of weapons of massive destruction as damages caused to the environment is irreparable and the future generation won't enjoy any more species of the fauna and flora which were once living species on this planet. The international community has counter-reacted by proclaiming some treaties related to disarmament, to prevent further havoc to the environment, such as:

- Comprehensive Test Ban Treaty (1996)

- Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water
- Antarctic Treaty

One of the most important related to environment and international disarmament is The Convention on the prohibition of military or any hostile use of environmental modification techniques, which is an instrument of international disarmament law specifically intended to protect the environment in the event of armed conflict. This convention prohibits hostile use of the environment as a means of warfare. Nuclear weapons are not only expensive but they are very dangerous weapons when they fall in the hands of terrorists or other irresponsible States such that on the 'Legality of the threat or use of nuclear weapons' the Advisory Opinion of the International Court of Justice declares that: "The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment".

Environment to Health and Security

How the small Republic of Mauritius (1.3 million inhabitants) reacted to the impact of the pandemic disease and to combat its eradication and to reduce casualties with an impact on all dimensions since the sudden outbreak of the pandemic disease which shake the world by surprise taken a toll of human life in an unprecedented magnitude across the globe provoking a wave of terror? No country in the world was spared or prepared to combat the Covid-19 pandemic disease despite efforts from developed countries to provide the necessary dose for vaccination to stop the virus to spread. Meanwhile, its presence in the Republic of Mauritius, just like elsewhere, creates chaos, disorder and frictions in many sectors of the socio-economic development of the country provoking a lot of disruption on the workplace: people are kept in quarantine (*Quarantine Act 2020* and *Quarantine (Covid-19) Amendment Regulations 2021*) with impact on their fundamental rights, circulation is restricted unless Mauritians have access to their workplace with their Work Access Permit (WAP) as per the *Covid-19 (Miscellaneous Provisions) Act 2020* and the *Prevention and Mitigation of Infectious Disease Coronavirus Regulations 2020*, restrictions to movements, assembly and to freedom of speech as per Chapter II of the Constitution 1968 on fundamental rights, vaccination became compulsory and imperative for one and all despite protest from people suffering from allergies (the *Public Health Act 1925* and the *Occupational Health and Safety Act 2005*, Work From Home (WFH) when the *Work from Home Regulations 2020* came into force, and gender inequalities where discrimination and unfair remuneration were also detected, unemployment rate increases due to lockdown of the whole island due to lockdown and closure of most public and private sectors, students have to attend examinations which have been prepared by foreign tertiary universities, health officers and policemen were the front liners and are still working in strenuous conditions with poor protective equipment. Therefore,

this study provides a suitable platform as it enables to understand the Mauritian legislative efforts when an arsenal of legislations and regulations were passed but not to the satisfaction of all individuals residing in Mauritius. What shall come out of this empirical research (data, research methodology and findings) may provide some answers to pre-empt the possible emergence of other future pandemics to protect ourselves.

Environment and international co-operation

There are numerous international legal instruments but very few international co-operations. States are invited to take their responsibilities at international level and to ensure that activities under their jurisdiction do not escape their control or to cause damages to other States. Unfortunately, either States are irresponsible or accidents, which occur too occasionally at sea provoking the leakage of oil spoiling the marine life. Environment and international trade are closely linked: with the development of space and maritime law there is a great risk of environment degradation. Heavy carriers may sink near the coasts pouring their oil on the beach. Fishermen may fish in the restricted zones of other States and have their marine resources dilapidated. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973) establishes appendices listing endangered species. In Mexico huge seine nets are used to catch tuna fish but prevent dolphins to escape. In the *US Tuna Ban case 1991 30 ILM 1594* the United States prohibited tuna products imported from Mexico. A panel was set up under the auspice of the GATT but the panel stated that the ban was illegal because different countries have different environment policies. Similarly in the *Shrimp Turtle Case 1999 38 ILM 118* the ban was found to be illegal: in facts the USA ban to import shrimps from countries where turtles are not protected but the GATT, now WTO, considered that the import ban was unjustified because it has been applied in an arbitrary and discriminatory manner though members of the WTO must adopt protective measures to protect endangered species and sea turtles are one of them.

Super powers have installed military bases in the Indian Ocean and some other regions of the world but any nuclear accident will destroy the lives of the fauna and flora of all the States in the vicinity. On the military base of Diego Garcia Americans also experienced new types of weapons as well as new prototypes to be commercialised. Autochthones are also not well at ease with military bases installed near human habitat but once they were deported from Agalega Islands to England the British High Court considered that the deportation was illegal and the refugees have to be sent back home. The Convention on Nuclear Safety (1994) is an important treaty as it emphasizes that the responsibility for nuclear safety and precautions rests on that State and the International Atomic Energy Agency (*Agence International de l'Energie Atomique AIEA*) may send inspectors to control nuclear reactors and its report is based mainly on suspected States which are producing

uranium and other radioactive products for trade (to make nuclear weapons).

Since most industrialized nations are engaged in trade the Kyoto Protocol (1997) warns States to reduce their greenhouse gas (GHG) as well as their carbon dioxide (CO₂) in the atmosphere supported by the Montreal Protocol (1987) which aim is to reduce chemical products such as chlorofluorocarbons, which caused ozone (O₃) depletion. The Vienna Convention (1985) also encourages the establishment of protocols, which aim to reduce greenhouse gas. When the ozone layer is depleted an excessive ultraviolet radiations penetrate through the Antarctic region causing global warming and climate change. Today, the United Nations Framework Convention on Climate Change (UNFCCC 1992) targets the emission of greenhouse gas, its prohibition in order not to endanger ecosystems and that food production is not threatened.

Because of State's sovereignty little punishment can be imposed on a particular State and it is also very difficult at international level which country is responsible for causing harm to the environment. For example, which country is depleting the ozone layer remains doubtful! It has also been proved that there is no international court, which can impose its authority at international level. How to punish States for grave breaches of their international obligations? When does a State commit a wrongful act in terms of international instruments?

If the environment is destroyed the Millennium Goal can be achieved. Global warming causes deserts to expand and water either causes flood or drought. The sea level is rising and Bangladesh and Holland are just below sea level. In some regions there is no water at all and in others, too much. Farmers and cattle need water to survive. Industrialized nations pump water from rivers and cattle to fuel their machines and dynamos. In return, river and seawater is polluted with chemicals and other by-products.

Nature's wrath nurtures poverty: a climate change is catastrophic to humanity, the fauna and the flora but most developed countries will suffer most than others but "Every human being has the inherent right to life and this right shall be protected by law" (article 6(1) of The International Covenant on Civil and Political Rights - ICCPR) 1966). When nature strikes or when earthquakes trigger a series of tsunamis it is implied that no State is at stake and even the most powerful nations have to kneel down since Hurricane Katrina, for example. All States must respect and collaborate mutually in the event of nature's wrath irrespective that States are belligerent to another State. This collaboration is in the form of friendly relations in order to avoid casualties and countless victims. It has been noted that most States provide help, medical assistance and material need in the events of havocs, famine and natural calamities. Indeed, The Declaration on Principle of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (1970) reveals that "*States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international economic stability and progress, the general welfare of nations and international co-*

operation free from discrimination based on such differences". There are additional pieces of principles, declarations and treaties, which may help to build a stronger, enforceable piece of legislation, which comprise human rights and dignity in post disasters. These may include:

- The *Universal Declaration of Human Rights 1948* (UDHR) is an important declaration. It declares that everyone has the right to life, liberty and the security of person (article 3 UNDR). It further adds that people who are struck by a natural disaster are entitled to certain rights in relation to their standard of living and that: "*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to secure in the event of circumstances beyond his control*".
- The *International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966* also contain some useful measure to protect people but it seems that most rights are available for a post disaster. According to article 2(1) of the ICESCR: "*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources*". And article 11(1) also proclaims that "*Everyone must have an adequate standard of living for himself and his family, adequate food, clothing and housing*".
- The *Rio Declaration on Environment and Development (1992)* is not a binding legal instrument *per se* but nonetheless it is an important piece of declaration since it provides certain provisions, which deal both with the environment and poverty issues. For instance it provides that "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature". The declaration further adds: "The most special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actors in the field of environment and development should also address the interests and needs of all countries".

The London Convention 1990, The Biodiversity Convention 1993, The Climate Convention 1994), protocols (Kyoto Protocol 1997), and which have been endorsed in various reports (Brundtland Report) by the two most important declarations (Rio Declaration 1992, Stockholm Declaration) related to climate change, sustainable development, preservation of the environment (beaches, fauna and flora) and liability and compensation by States to cooperate for victims of pollution avoid

unnecessary chaos and disorders to the natural environment and environmental refugees.

Conclusion

Today, the environment plays an important role because its impact, which is now greater than years ago, has a direct bearing on the worst calamity of all time: poverty. Gases (GHG) and CO₂ destroy the Ozone (O₃) layer and as a consequence the temperature climbs some few centigrades to provoke global warming and climate change but enough to cause much havoc to the Antarctic region: the sea level rises continuously and most regions of Africa are even more dryer. Water is also more and more scarce and poverty eradication seems difficult to achieve. This is the reality at the dawn of this new century but there is a glimpse of hope with the *Kyoto Protocol (1997)* and the *Montreal Protocol (1987)* which phase out the production of a certain number of substances believed to be responsible for ozone depletion. Collaboration and friendly relations between States may contribute to overcome a planet doomed with wars, nature's wrath and regions plagued with the horrors of civil wars, famine, terror and disease. It is time to react and to react promptly for securing international peace. International Environmental Law is a very wide subject but it covers so many branches of the law that it is difficult, but not impossible, to protect jungles and forests which cover thousands of hectares, large and overcrowded slums, endangered species, to stop poaching of living and rare creatures (endangered species), to prevent people to commit illegal dumping or to pollute the sea, rivers, deforestation and to prevent oil leakage from a wrecked ship. However, there are hope and expectations as it is not too late to save the planet with regular conferences, conventions and declarations so that the world is aware of the importance of environment protection otherwise we will all pay it in a very costly way. With population growth and development fossil energy would become rare. Mankind would soon have to rely on sea, solar and wind energy. They are free without any harm to the natural environment and they would probably preserve the planet from pollution and it is a guarantee for the well-being of the next generations to come. Mauritius is not disaster proof and we shall be prepared for the worst without being pessimist. With support from neighbouring countries regular experiments shall be done both on land and the sea coupled with tsunami warnings and regular laboratory experiments shall be done provided funds are available to ensure that our seas and lands are protected from pollution, diseases and free from natural calamities to promote sustainable development.

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RECEIVED: 08 September 2023

ACCEPTED: 13 September 2023

PUBLISHED: 06 October 2023

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