

Biodiversity Protection, Farmers and Breeders Right

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Lecture 07 : Overview of International Framework

Welcome to another lecture on Biodiversity Protection Farmers Rights and Breeders Rights. Today, we will be discussing about an overview of the international framework related to biodiversity protection. Today, we will be covering the multilateral environmental agreements, the convention on biological diversity, the multilateral biodiversity agreements which are pre-CBD and which are post-CBD. And then we will also cover the international framework for genetic resources and specifically we will also be discussing about CBD and Agave protocol. If you look at the world biodiversity, we can generally classify this into three different types of areas. So, some of the areas are under national jurisdiction.

So, those comes under specifically under the territory of a nation and some are beyond national jurisdiction and some of the areas are specifically governed by different treaty regimes. For example, Arctic and Antarctic. So, if you look at the areas which are governed by national jurisdiction, so they fall under the territory of a nation. So, if you take the example of India, the territory which is falling under the government of India can be classified as area which is falling under the national jurisdiction of India.

So, CBD for example, the convention on biological diversity had recognized that countries have sovereign right over their biological resources. But the operation of CBD is limited to areas which are falling within the national jurisdiction. But there are areas which are part of the earth which is falling beyond the national jurisdiction. For example, the high seas. So, high seas are governed by another treaty regime.

For example, UNCLOS is there and there are several other treaties bilateral agreements multilateral agreements as well. So, and then there is the third type that is areas which are governed by specific treaty regimes. So, for example, Arctic and Antarctic have different treaty regime. So, similar to that there are several islands which are governed by bilateral or multilateral agreements which are entered into between the neighboring territories. So, if you look at the world biodiversity areas generally these three classifications applies.

So, the governing and the regulation of biodiversity which is falling in these three areas are also regulated under several treaty regimes. So, global biodiversity governance is specifically dealing about the large scale environmental problems like the laws of biodiversity which is arising whether which is arising in the territory of a country and

sometimes it is also having transnational or global consequences. So, even though the pollution or the environmental degradation is originating from one state sometimes it cross over the border and trespasses into areas of other countries. So, it is having transnational or even global consequences. So, it requires efforts that these problems requires international responses which may result in the formulation of international rules.

So, even though these environmental degradation issues or biodiversity degradation issues is originating from the territory of one country as it as there are chances of trespassing into other jurisdictions there is a need for international environmental rules. So, such rules shall be based on scientific data and which identifies the problem set the base lines, monitor changes and in some cases monitoring compliance is also required. So, environmental concerns are actually not limited to earth. So, sometimes because of the scientific growth space explorations has been possible and these space explorations has resulted in human beings landing on the moon and several other space missions have also happened. So, there are also environmental changes happening in the neighbouring planets.

So, this also causes serious concern for the mankind. So, biodiversity laws requires immediate global action. So, despite the progress in policies and actions in support of biodiversity. So, the world's biodiversity is declining at an unprecedented pace and none of the 20 Aichi biodiversity targets set in 2010 could be completely achieved. So, this means that there is a need for immediate global attention into the environmental action.

So, as I said earlier there are several environmental agreements which govern the different areas which fall into the areas which are falling under national jurisdiction areas which are falling outside national jurisdiction and the specifically treaty governed areas. But it is all the objectives of these treaties or international governance framework is yet to become fully achievable. So, there are several environmental agreements at international level. Some are of bilateral nature, some are of multilateral nature. So, there are several environmental treaties and there are also agreements related to other aspects for example, trade which is also having provisions related to environment.

So, environment has become a major concern or the degradation of environment or biodiversity laws has become a major concern that it has attracted international attention. So, accordingly it has become a important concern in agreements related to other aspects as well. So, there are lot of developments happening at international level. So, one of the most recent development is the adoption of Kunming Montreal global biodiversity framework which was adopted in the last COP 15 which was concluded in December 2022. So, this is considered as one of the important steps that has happened in the recent

times.

So, if you look at the major agreements related to environmental governance or biodiversity governance we can consider CBD as one of the main agreements. So, the conventional biological diversity which was adopted in 1992 is considered as one of the comprehensive environmental agreement which has been concluded so far. So, but it does not mean that before CBD there was no multilateral environmental agreement. So, before CBD itself there has been several multilateral environmental agreements. So, we can now we can consider the different environmental agreements may be in a pre CBD and a post CBD scenario.

So, at pre CBD level there were several environmental agreements even during the 1900s also there were several multilateral and bilateral agreements. The biodiversity knows no borders so that means, international environmental cooperation is very much important. So, before the world second even after the first world war the country started realizing that there is a need for international cooperation in the field of environmental governance. So, the concept of conservation of wildlife flora and fauna was recognized even in the early 20th century and you can see that the international convention on protection of birds of 1950s and the international plant protection convention of 1951 and the agreed measures for conservation of Antarctic fauna and fauna in 1964 were some of the important international agreements which were concluded before the CBD came into force. So, this period this 1950s and 1960s marked the beginning of growing awareness about the environmental concerns and this was further this received further under unprecedented progress after the second world war because of the progress of science and technology.

So, this drew a parallel attention to the concern of international community about the exploitation of nature and its resources and the seemed accompanying technological progress. The first international legal instrument to have noted the importance of environmental conservation and which are still widely regarded as the beginning of international environmental jurisprudence were the United Nations conference on human environment which was held in 1972 and the Ramsar convention on wetlands which was adopted in 1971. So, as I said the United Nations conference on human environment was considered as one of the significant milestone in the history of global environmental jurisprudence. So, all this started with a 1968 resolution by the UN general assembly where the UN general assembly resolved to convene in 1972 a United Nations conference on human environment. So, accordingly in 1972 the United Nations conference on human environment was concluded and this resulted in the Stockholm declaration which is famous for its 26 principles concerning the environment and led to also the creation of United Nations environment program.

So, this also resulted in the adoption of United Nations environment program which is a specific UN body for addressing environmental issues and it is headquartered in Nairobi, Kenya. And this subsequently led in 1983 to another UN resolution for the creation of world commission on environment and development which is famously known as Brundtland commission. The Brundtland commission submitted its report our common future in 1987 and it is considered or it is given the credit for many of the environmental principles which we even discussed today. Even the definition of sustainable development the comprehensive one can also be traced back to the report submitted by Brundtland commission the our common future. The sustainable development was defined as development that meets the need of present without compromising the ability of future generations to meet their own needs.

So, overall if you see if you trace if you try to trace back the origin of many of the environmental principles which are even valid today can be seen in the Brundtland commission report. And before the coming into force of CPD another international environmental agreement is the 1973 CITES. CITES is convention on international trade on endangered species of wild flora and fauna this was adopted in 1973. The international trade of wild flora and fauna is an important concern at the global level. So, there is trade of a wild animal species or even parts of wild animals is being traded at international level.

So, many of the countries have already had already prohibited these through their national legislation, but as it is international trade that is happening it required international cooperation and also a governance framework at international level. So, the purpose of CITES was to fulfill this need. Several mechanism were established to promote greater cooperation in the implementation of CITES and CPD at international level. So, CITES and CPD has some common objectives. So, in order to fulfill that a comprehensive and coherent action is required by the secretariats or the bodies of both these conventions.

So, this realization finally, led to the adoption of an agreement of a memorandum of understanding between the two convention secretariats. So, there is a good parking relationship between the CITES and the CPD secretariat and subsequently CITES has also adopted a specific resolution devoted to cooperation and synergy with the CBD. So, post CBD also there are several multilateral environmental agreements which has been concluded. So, some of the important agreements are United Nations framework for the Convention on Climate Change, UNFCCC which was adopted in 1992 in Rio de Janeiro. It aims to keeps the concentration of greenhouse gases in our atmosphere on a level which is not risky to our climate system.

So, within the framework of the convention the Kyoto Protocol and the rules for establishment of REED were also developed. Another important convention is the United Nations Convention to Combat Desertification which was signed in 1994. This convention is another binding agreement for the encouragement of sustainable use of natural ground resources in dry areas to prevent its degradation. So, India is one of the important countries which has been actively participating in these negotiations. So, this also shows that even after CBD there has been several developments which has been happening at international level for the conservation of environment.

So, if you look at the global environmental governance it is not limited to convention on biological diversity, but it is actually a mixture of several multilateral and bilateral agreements which has been concluded before the CBD and even after the CBD. So, in 1992 an international development happened was the Earth Summit. The United Nations Conference on Environment and Development also known as Earth Summit was held in Rio de Janeiro, Brazil from 3 to 14 June 1992. The Rio conference highlighted how different social, economic and environmental factors are interdependent and evolve together and how success in one sector requires action in other sectors to be sustained over time. So, Earth Summit is considered as one of the significant developments after the Stockholm conference.

The Earth Summit concluded that the concept of sustainable development was an attainable goal for all the people of the world regardless of whether they were at local, national, regional or international level. It also recognized that integrating and balancing economic, social and environmental concerns in meeting our needs is vital for sustaining human life on the planet and that such an integrated approach is possible. So, after the Stockholm declaration the Earth Summit made a significant improvement with regard to the international legal landscape for biodiversity governance. So, the Earth Summit resulted in adoption of Rio declaration on environment and development which defines the right of people to be involved in the development of their economies and the responsibilities of human beings to safeguard the common environment. The declaration builds upon the basic ideas concerning the attitudes of individuals and nations towards the environment and development and it was first identified at the United Nations conference on human environment 1972.

The Rio declaration states that long term economic progress is only ensured if it is linked with the protection of the environment. If this is to be achieved then nations must establish a new global partnership involving governments, their people and the sectors of society. The Rio summit also resulted in the adoption of Agenda 21. One of the major results was a daring program of action calling for new strategies to invest in the future to

achieve overall sustainable development in the 21st century. Its recommendations range from new methods of education to new ways of preserving natural resources and new ways of participating in a sustainable economy.

Another significant development that happened in the Rio summit was the adoption of conventional and biological diversity in the year 1992. So, CBD is considered as an internationally legally binding treaty. So, the conventional biological diversity will be discussed elaborately in the next lecture, but the conventional biological diversity should be understood as a complete transition from the principle of common heritage of mankind to common concern of mankind. The common heritage of mankind was a well established legal principle in international law which provided for general framework of universal responsibility for sustainable legal and environmental protection. One of the important propounders of this legal doctrine was the Maltese ambassador Arvid Padro who said that the structural relationship between rich and poor countries amounts to a revolution not merely in the law of the sea, but also in the international relations with regard to the doctrine of common heritage of mankind.

In the year 1970, the United Nations General Assembly passed a resolution which declared that seabed in areas beyond national jurisdiction and resources resting on it to be the common heritage of mankind. So, the concept of common heritage of mankind means that the environmental resources or certain types of resources are considered as the common heritage of entire human beings. So, it is not subject to private property ownership, but it is considered as part of commons over which all the human beings over the earth have a right. So, the areas which are considered as beyond national jurisdiction for example, areas like seabed or unclaimed islands or other areas were considered as common heritage of mankind from the early days itself under the law of the sea. Similar to that environmental agreements also started adopting this principle of common heritage of mankind to show that environmental concerns are to be seen at a global level and all the human beings over the earth have a right to make a statement with regard to environmental aspects.

So, the common heritage of mankind principle was adopted in several environmental agreements at the initial stage. Similar to environmental agreements, the major international agreement which considered the principle of common heritage of mankind is the United Nations Convention on Law of the Sea. The UNCLOS III which deals with the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction had an article 136 which declared the area and its resources as common heritage of mankind. This means that the area and its resources cannot be appropriated or claimed or owned by state or any person and it was subject to the jurisdiction of seabed authority. The international seabed authority must ensure the equitable sharing of

financial and other benefits arising from the activities in the area taking into particular account the needs and interest of developing states and others.

Similar to the UNCLOS, the Moon Treaty of 1979 also had this principle. Article 11-1 stated that the moon and its resources are part of common heritage of mankind. The disputes concerning the details of an international system for resource exploitation including provision for equitable benefit sharing were resolved by differing the details of management regime for the future. So, the UNCLOS and the Moon Treaty considered these areas as subject of common heritage of mankind. So, that means that these areas are not open for appropriation or privatization by any state or any individual.

But, subsequently after the adoption of conventional biological diversity this principle at international level paved way for the common concern of mankind. The common concern of mankind provides a framework for approaching global problems. The common heritage of mankind required that the areas which are falling within that doctrine to be treated as part of commons and thus the entire world has a say in decision making regarding these areas. But common concern of mankind is more appropriate to areas which are falling within the national jurisdiction or private ownership, but the issues which are evolving from these areas is falling within the common concern of entire human beings. So, the common concept of mankind is related to, but distinct from the principle of common heritage of mankind.

The concept of common heritage of mankind generally applies to geographic areas or resources whereas common concern of mankind applies to specific issues. So, this can be considered as an issue specific doctrine which is applicable even to areas which are falling within national jurisdiction or private ownership. And after the adoption of CBD the principle of common concern of mankind has reappeared in several other international agreements. The preamble of CBD affirmed that the conservation of biological diversity is a common concern of mankind. Subsequently, the United Nations framework conventional climate change which was also adopted in 1992 in its preamble acknowledged that the change in earths climate and its adverse effects are a common concern of mankind.

The Paris agreement which was adopted in 2015 in its introductory text also used the word common concern of mankind. So, subsequent to the adoption of CBD this principle has reappeared in several bilateral and multilateral agreements. All these discussion regarding the common heritage of mankind or the other doctrine common concern of mankind arise from the issue with regard to ownership of genetic resources. So, during the negotiation of the convention on biological diversity one of the key contested issues was the ownership over the genetic resources. Over a period of time

due to the technological developments it was possible that the biological resources could be scientifically utilized in food industry, drug industry, medicinal industry etcetera.

The technological and scientific development allowed the developed countries to utilize the genetic resources and develop advanced medicines and drugs and cosmetics. So, this resulted in increased utilization of genetic resources whereas, the countries who are actually providing the resources which are the developing countries who are rich in biodiversity were not getting any advantage from these technological developments. So, this resulted in a divide between the global south and the global north. So, this was based on the issue as to who owns the genetic resources. So, the developing countries or the countries who are rich in biodiversity were asserting that they are the owners of genetic resources, but this was contested by the developed countries who have been actively using these genetic resources for developing new uses or new medicines or new cosmetics.

This became one of the key contested issues during the CBD negotiations. So, finally, the CBD affirmed that countries have sovereign right over their genetic resources. So, this means that the biodiversity rich countries have sovereign right over their genetic resources. So, this was reasserted in the preamble as well as in article 15 which provided the countries the right to determine access to and regulate the use of genetic resources which are taken from their jurisdiction. So, this required the provider the required the users of biodiversity to get the prior informed consent and approval from the providers of genetic resources.

So, this asserted that the countries have sovereign right over their biological resources which has a flavor of ownership. The convention on biological diversity is thus an internationally legally binding treaty covering biodiversity at all levels ecosystems species and genetic resources. The convention recognized that biodiversity is about more than plants animals and micro organisms and their ecosystems it is also about people and their needs for food security medicines fresh air water shelter and clean and healthy environment. The convention was open for signature during the earth summit in 1992 and subsequently it entered into force in 1993. The objectives the three objectives of the convention were the conservation on biological diversity, sustainable use of biodiversity, fair and equitable sharing of benefits arising from the use of genetic resources.

The convention on biological diversity has two protocols one is Cartagena protocol on bio safety it was adopted in 2000 and it entered into force in 2003. The Cartagena protocol aims to ensure the safe handling transport and use of living modified organisms resulting from modern biotechnology that may have adverse effects on biological diversity. It establish a procedure of prior informed agreement to ensure countries have the necessary

information to make decisions about the importing of living modified organisms into their territory. So, Cartagena protocol is a comprehensive agreement which deals with the bio safety issues related to living modified organisms. India is a party of Cartagena protocol and has ratified it in 2003.

The ministry of environment forest and climate change is a nodal agency in the country for the implementation of protocol. India has already issued series of guidelines for the risk assessment and risk management of genetically modified organisms. Another protocol under the convention on biological diversity is the Nagoya protocol on access and benefit sharing. The protocol was adopted in Nagoya Japan in 2010 and it came into effect in 2014. The Nagoya protocol is significant in terms of conservation of biodiversity and for having an equitable sharing of benefits arising from the utilization of genetic resources.

The protocol aims at bringing clarity and it aims to help the users and owners of biodiversity by creating better legal certainty and transparency with regard to utilization of genetic resources. India is a signatory to Nagoya protocol and has ratified it in 2012. The domestic legislation for implementation of convention on biological diversity and the Nagoya protocol in India is the biological diversity act 2002 which will be discussed in detail in the subsequent lectures. The conservation of biodiversity is considered as a key component for the administration of natural assets. Biodiversity is an all encompassing concept that describes the magnitude of ecological diversity.

Biodiversity is the wide range of life associated with different types of frameworks of biodiversity. The multilateral environmental agreements are international agreements that are intended to promote international cooperation to address the environmental issues like the laws of biodiversity, climate change, pollution and waste management etc. They are based on the understanding that the causes and the consequences of environmental issues are global in nature and so the solutions must also be addressed at a global level. C B D is one of the first comprehensive agreements to cover all aspects of biodiversity at the global level. It goes beyond the contents of earlier instruments and it goes beyond the contents of earlier instrument and marks the beginning of a new era on international biodiversity governance.

This lecture gives an introduction into the global landscape of environmental governance. The coming lectures will be discussing in detail the aspects of the different aspects of CBD, Nagoya protocol and other specific environmental agreements. I hope you enjoyed the lecture. The references for this session are as follows. Thank you.