

## ROLE OF SECURITY COUNCIL IN CLIMATE CHANGE: A SOUTH ASIAN DILEMMA

*Mafruz Sultana*

South Asian University, New Delhi

*The global challenge of climate change is incising, combatting security council seeking involvement as if, it is a threat to international peace and security. Its acknowledged that present legal regime for climate change is not sufficient as no hard binding law is there whereas soft environment law is facing various problems such as who will pay the 100 billion cost for climate change agreed in Paris. 22 COP's negotiations were held but what's is the result, it is only a debate of developing vs developed and who is responsible on the basis of economic realities or in light of national circumstance under CBDR principle. If climate change increase dangerously it will draw ever-deeper lines of division and conflict in international relations ,so it is not so far will be seen numerous conflicts between and within countries over the distribution of resources especially water and land, over the management of migration, or overcompensation payments between the countries mainly responsible for climate change and those countries most affected by its destructive effects .So to seek the solution involvement of security council is also debated, but legally climate change can be possible to define under threat to peace and security but due to benefit and loss of climate change and challenges is not same how security council will ensure justice rather its political fear to developing countries. South Asian countries in a dilemma as they are in dangers both side, one hand climate vulnerability on the other political fear of involvement of Security Council. The main problem of Security Council use of force, there is no legal barrier to prevent the use of force if Security Council interferes. So writer view is the constitution of socialized agencies for climate change under UN Charter chapter IX from socio-economic perspective to regulate climate change regime.*

### INTRODUCTION

Climate means average weather in a place; it can vary time and place and includes patterns of temperature, precipitation (rain or snow), humidity, wind and seasons. Climate patterns play a fundamental role in shaping natural ecosystems, and the human economies and cultures that depend on them. But the climate we've come to expect is not what it used to be because the past is no longer a reliable predictor of the future.<sup>1</sup> Our climate is rapidly changing with disruptive impacts, and that change is progressing faster than any seen in

<sup>1</sup> Shannon O'Lear, Environmental Politics (05 June 2012) pp 27-54

the last 2,000 years.<sup>2</sup> During the twentieth century, the temperature rose by approximately 1 °C.<sup>3</sup> Climate change is rising levels of carbon dioxide,<sup>4</sup> Causes include the link between fossil fuels and greenhouse gases that blanket the earth, the role of other gases such as methane and hydrofluorocarbons in warming the atmosphere, and the impact that is changing land use patterns have on the carbon cycle and, consequently, on climate change.<sup>5</sup>

South Asian countries are highly populated and depend on mostly agriculture for their livelihood. The socioeconomic environment of South Asian countries is characterized by relatively low rates of economic growth and depends on nature. Surface water and groundwater resources in South Asian countries play vital roles in forestry, agriculture, Fisheries, livestock production, and industrial activity. The water and agriculture sectors are likely to be most sensitive to climate change-induced impacts in South Asia. For climate change rainfall during the summer monsoon is increased the flood-prone areas in south Asian region. Global warming is causing the melting of glaciers in the Himalayas. In the short term, this means an increased risk of flooding, erosion, mudslides and GLOF in Nepal, Bangladesh, Pakistan, and north India during the wet season. Because the melting of snow coincides with the summer monsoon season, any intensification of the monsoon and increase in melting is likely to contribute to flood disasters in Himalayan catchments.<sup>6</sup> Throughout Asia, one billion people could face water shortage leading to drought and land degradation by the 2050s. The trade and business will be affected by the impact of climate change.

---

## STEPS TAKEN BY THE WORLD COMMUNITY

---

In 1972, The United Nations Conference on Human Environment, called Stockholm declaration didn't discuss on Climate change.<sup>7</sup> In 1975 US scientist Wallace Broecker' First talk into the public domain in his scientific paper on Climate change.<sup>8</sup> In By the end of the 1980s, the threat of climate change had entered the policy arena. The basic scientific conclusions about the causes and dimensions of the potential human impact on the climate were sufficient to bring pressure to bear to take action at the international level. WMO and UNEP established the IPCC in 1988, in the first assessment report it saying “

---

<sup>2</sup> Climate change ,Department of Ecology ,University of Washonton, <<http://www.ecy.wa.gov/climatechange/whatis.htm>>Last accessed on 12 May 2017

<sup>3</sup> T.H. Sparks, C.D. Preston, D.B. Roy, *Silent Summer*, ( Cambridge University Press,05 August 2012), pp 9-21

<sup>4</sup> Climate change ,Department of Ecology ,University of Washonton, <http://www.ecy.wa.gov/climatechange/whatis.htm> >Last accessed on 11 May 2017

<sup>5</sup> Supra Note 1

<sup>6</sup> Philippe Rekacewicz, UNEP/GRID-Arendal, 'Climate change: processes, characteristics and threats, UNEP/GRID-Arendal Maps and Graphics Library, 2005

<sup>7</sup> Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972

<sup>8</sup> Wallace S. Broecker, “Climatic Change: Are We on the Brink of a Pronounced Global Warming?”, American Association for the Advancement of Science, Vol. 189, No. 4201 (Aug. 8, 1975), pp. 460-463

emissions resulting from human activity are substantially increasing the atmospheric concentrations of greenhouse gases”, and it concluded that temperature has risen by 0.3 - 0.6 C over the last century because of human activity.<sup>9</sup> UN General Assembly established the INC, tasked with negotiating the Convention, which done five formal sessions, where more than 150 states discussed binding commitments targets and timetables for emissions reduction, financial mechanism technology transfer under CBDR principle for developed and developing countries. The great initiative has taken by UN by adopted IPCC, Where parties meet annually at the COP to negotiate a multilateral response to climate change.

In COP1 parties agreed that commitments in the convention were inadequate for meeting Convention objective, so that Berlin mandate establishes a process to negotiate strengthened commitments for developed countries thus laying ground for the Kyoto Protocol as of result in December, the third conference of the parties achieves a historical millstone with adoption of the Kyoto protocol, which is the world first greenhouse gas emission reduction treaty. A breakthrough is achieved at the second part of the sixth conference of the parties meeting in Bonn, where governments are reaching broad political agreements on the operational rulebook for the 1997 Kyoto protocol.<sup>10</sup> The 7<sup>th</sup> conference of the parties results in the Marrakesh Accords setting the stage for ratification of the Kyoto protocol, formalize an agreement on operational rules for International emissions trading, CDM, Joint implementation along with a compliance regime accounting procedures. As of a result, 16 February 2005 came into force, but without the United States, the world's biggest historical polluter and January 2006 CDM is opened for business. After twelve conferences at Nairobi, the thirteenth conference of the parties adopts the Bail roadmap, action plan .charting the course for a new negotiating process to address climate change. January 2008 under joint implementation allows a country with an emission reduction units from an emission-reduction or emission removal project in another country with similar commitments, where the fourteenth conference of the parties steps toward assisting developing countries including the launch of the Adaption Fund under the Kyoto protocol and Poznan strategic programme on technology transfer.

The fifteenth COP was failed due to rejection of developing countries,<sup>11</sup> but sixteen meeting come up with comprehensive package by governments to assist developing nations in dealing with climate change the green climate fund, the technology mechanism and the Cancun adaptation framework are established and ninety-nine countries accounting for 83 percent of the emissions made pledges to cut down mission ,parties also agreed for curbing global warming within 2 degrees C. December 2011 seventeen conferences of the parties governments commit to a new universal climate change agreement by 2015 for the period beyond .As a result of seventeen meeting in eighteen meeting parties agree to speedily work toward a universal climate change agreement by 2015 and to find ways to scale up efforts

---

<sup>9</sup> IPCC Reports ,<[https://www.ipcc.ch/organization/organization\\_history.shtml](https://www.ipcc.ch/organization/organization_history.shtml) >Last accessed on 11 May 2017

<sup>10</sup> UNFCCC report< <http://unfccc.int/documentation/decisions/items/2964.php> > Last accessed on 10 May 2017

<sup>11</sup> UNFCCC ,<http://unfccc.int/meetings/items/6240.php>

before 2020 beyond existing pledges to curb emissions they also adopt the Doha amendment, lurching second commitment period of the Kyoto protocol of all Annex 1 parties but only the European Union agreed to the second commitment period. From nineteen meeting outcome is the 'Warsaw' including a rulebook for reducing emissions from deforestation and forest degradation and a mechanism to address loss and damage caused by long-term climate change impact. Lima call for climate action in 2014 at the twentieth meeting, where UNFCCC<sup>12</sup> agreed on a loose arrangement for bringing forward their intended nationally determined contributions or pledges to reduce CO<sub>2</sub> emissions to the Paris agreement. Then COP 21 comes with Paris agreement aimed to, holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change; and Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.<sup>13</sup>

---

### CRITICISM OF THE PRESENT LEGAL REGIME OF CLIMATE CHANGE

---

According to UNFCC proved disappointing to many given the Author. Its efforts to include binding stabilization targets, not to mention reductions, were watered down, leaving the Convention only with vague commitments concerning stabilization. Other shortcomings mentioned included a failure to include an insurance fund and technology transfer mechanism sought by the developing countries, the absence of market mechanisms such as emissions credits, and the limited-obligations imposed on developing countries. If we analysis the above discussion three-term should be taken into consideration, UNFCC, Paris agreement, Kyoto protocol has significant. But it has more lacking to prevent climate change. If we consider Kyoto protocol which introduced Kyoto mechanism as joint implementation, clean development mechanism, carbon trading .in this only CDM project consider the interest of developing countries which also practically exploit developing countries carbon emission trading itself influence emission in different way to the Writer, where environment can be traded, its create a market of cheap carbon emission. So who have money, can emit carbon by buying carbon unit. In 21 COP meeting of UNFCC where 195 countries participate so we can say universal as of nature, but in the absence of binging nature, just commitment has no effective result. Moreover, the criticism environment as a soft law having no legally binding effect, so there is no expectation of law as binding nature to protect the climate. Apart from this if we come to the main part of enforcement part of Climate regime, basically its depend on Common but differential

---

<sup>12</sup> United Nations Convention on Climate Change conference ,Article 2, adopted on May 9, 1992 and entered into force on 21 March 1994.

<sup>13</sup> [21st Conference of the Parties of the UNFCCC](#) in [Paris](#) Article 2,(adopted by consensus on 12 December 2015)

responsibility and respective capabilities. UNFCCC to Paris agreement with only this principle climate change regime tries to the reduction of GHG emission. In UNFCCC Annex I country who have non - a binding obligation for carbon emission and Annex II also obliged to provide technological and financial assistance, but there is no commitment from developing countries. Latter in Kyoto protocol this CBDR/RC come into strict scene comparatively UNFCCC but where is a forum or to whom developed country are responsible if they not fulfil the commitment level. Paris agreement put this principle but in a diluted form, from UNFCCC & Kyoto. In Durban platform<sup>14</sup> negotiation process towards for Paris agreement contained no principle of CBDR/RC, where developed countries argued that contemporary economic realities must qualify CBDR, so if it included it indicate who are present emitter they have responsibility rather historical emitter. But in Lima, this from again diluted and qualifying word “national circumstance” added here.<sup>15</sup> The greatest emitter China and India in as not developing country but they are pollutions more today, if we measure total emission but the emission measure per capita so India and China do not qualify for obligation,<sup>16</sup> but the main point is that India China is not developed country .in the same voice developing country and lest developing county argue for responsibility for that country should be included in developed country as per economic concern, In Kyoto the US use justification not to ratify because china more emitter having no obligation.<sup>17</sup> So the only weapon CBDR in climate change has no great significance if have another question is not binding in the whole environmental regime, though many authors interpret Article 2 UNFCCC as containing the duty of preventing dangerous interference with the climate system by current scientific and legal standards of protection. Moreover, Article 4.2 (a) UNFCCC can be interpreted as entailing a concrete obligation for Annex I – industrialized – Parties to reduce their greenhouse gas emissions, which complements the objective. According to Article 4.2 If an Annex I Party has increased its emissions continually since its ratification of the UNFCCC, this could amount to a breach of an international environmental obligation of ‘essential importance.’<sup>18</sup> But to the writer whole climate change regime law having no binding obligation, but if it global concern, a threat to the global peace harder binding law should come.

---

<sup>14</sup> [United Nations Climate Change Conference](#) (COP17) was held in [Durban](#), South Africa, from 28 November to 11 December 2011

<sup>15</sup> Lavanya Rajmoni, “Ambition and differentiation in the 2015 paris agreement :Interpretative possibilities and underlying politics”, *International and Comparative Law Quarterly*(2016),pp-1-25

<sup>16</sup> Rishika Khare, “The principle of common but differentiated responsibility and the challenges posed by it in the context of international climate governance”, *International journal of law and legal jurisprudence studies* ,vol.3 issue 2,p98

<sup>17</sup> Mary J. Bortscheller “,Equitable but ineffective :how the principle of common but differentiated responsibility hobbles the global fight against climate change”, *Sustainable Development Law & Policy*, Volume 10 Issue 2 Winter (2010) ,pp65-68.g

<sup>18</sup> Voigt,C. “State Responsibility for Climate Change Damages”, *Nordic Journal of International Law*,vol. 77 (2008) 1- 22

---

## SECURITY COUNCIL AS A SOLUTION TO CLIMATE CHANGE?

---

From the above discussion we have many commitment from negotiation climate change still likely to exceed many societies adoptive capacity to internal and stress and resulted destabilization and violence, jeopardizing national and international security to a new and unknown degree but still is a window of opportunity for avoiding dangerous anthropogenic climate change by adopting a dynamic and coordinated global climate policy .<sup>19</sup>If climate change increase dangerously it will draw ever-deeper lines of division and conflict in international relations. It is not so far will be seen numerous conflicts between and within countries over the distribution of resources especially water and land, over the management of migration, or overcompensation payments between the countries mainly responsible for climate change and those countries most affected by its destructive effects. If we recall first-ever debate of security council on the impact of climate change on international peace and security.<sup>20</sup> Though it was not for concrete action or decision but the main achievement was perhaps that of global awareness raising of the consequences of climate change, and Prior and during the debate there had been strong opposition from some countries against the Security Council play a role in the international response to climate change but recall urgency of decisive action to address climate change . The risks posed by climate change are real, and impacts are already tangible, so IPCC demonstrated in its Fourth Assessment Report that to avoid a temperature rise of 2°C above pre-industrial global mean temperature concentrations of CO<sub>2</sub>-equivalents in the atmosphere need to be stabilized. Such stabilization requires global greenhouse gas (GHG) emissions to be reduced by up to 85 percent, peaking between now and 2015.<sup>21</sup> If this temperature threshold is crossed, every aspect of life will be changed significantly ,it will increase conflict .conflicts over resources based on reduction of arable land, widespread shortage of water, diminishing food and fish stocks, increased flooding and prolonged droughts, conflicts over loss of territory and border disputes, situations of fragility and increasing instability in weak or failing states, and tension over energy supply will defiantly threat to security. Moreover, it environmental refugee will be the first and prominent issue, in present world as per UN report, refuge and water are the global challenges both of this might be due to Climate change. UN estimates that there will be millions of environmental migrants by 2020 with climate change as one of the major drivers of this phenomenon.<sup>22</sup>Some of the vulnerable countries already start to face this.

---

<sup>19</sup> German Advisory Council on Global Change (WGBU), Climate Change as a Security Risk 11 May 2007, < <http://www.wbgu.de/en/>Last> accessed on 12 May 2017

<sup>20</sup> UN Department of Public Information, News and Media Division, Security Council Holds First-ever Debate on Impact of Climate Change on Peace and Security, UN Doc. SC/9000, 17 APRIL 2007

<sup>21</sup>B. Metz, O.R. Davidson, P.R. Bosch, R. Dave, L.A. Meyer, IPCC Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate ,Summary for Policymakers. In: Climate Change 2007: Mitigation.

<sup>22</sup> David Adam “50 m environmental refugees by end of decade UN warns”, The Guardian, (12 October 2005)

Impacts of climate change may also be a threat to international governance and impacts will fuel the politics of resentment between those most responsible for climate change and those most affected by it. Impacts of climate mitigation policies or policy failures will thus drive political tension nationally and internationally. The potential rift not only divides North and South but there will also be a South-South dimension particularly as the Chinese and Indian share of global emissions rises so that the burden international security will be increasing pressure.<sup>23</sup> UNDP, Human Development Report says in the broader concept of human security, which focuses effects on the individual, in the absence of scientific certainty about social and political impacts it can be considered as a human security threat. If we consider climate change as a security threat next point comes to mind the normative concept of 'peace and security'. Whether this threat can be considered a threat to the international peace and security or not? The impact of climate change is not same in all area of global, where some country will also be benefited, where some low lying island states saw the risk of inundation of their lands by rising sea levels as an immediate security threat that can be linked to climate change. Papua New Guinea's representative said that 'the impact of climate change on small islands was no less threatening than the dangers guns and bombs posed to large nations.'<sup>24</sup> On the other hand developing economies, such as China and India, who considered climate change development issue, rather than a security threat. This kind of argument raised by developing countries be a fear that developed countries might use the Security Council as a tool to influence the development strategy and therefore impact on state sovereignty of developing nations.<sup>25</sup> So that most of the developing countries suggest to climate change issue be dealt with either by more general or more specialized UN bodies, such as the UN General Assembly, the UN Economic and Social Council, or the UN Commission on Sustainable Development. Here developing countries are accepting climate change seems to be a security threat but they are not ready to accept to the role of the security council. It is true that political landscape is divided as to North-South division, developed –developing and the difference is justified, as all place off-world impact of climate change will not be negative. The nature of impact also differs though have a negative impact. If we see North has historically emphasized environmental problems of global concern such as ozone depletion and species extinction, whereas the South has generally prioritized poverty alleviation and environmental problems with more direct impacts on vulnerable local populations such as desertification, food security, the hazardous waste trade, and access to safe drinking water, sanitation, and energy. Southern countries have demanded that the North assume responsibility for its immense contribution to major environmental problems of climate change, but the North has only grudgingly accepted the principle of CBDR on the basis of its superior technical

---

<sup>23</sup> EN S113/08 14 March 2008 ,climate change and international security,Paper from the High Representative and the European Commission to the European Council.<

[www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/)> Last accessed on 13 May 2017

<sup>24</sup> Security council resolution no.900, Statement of Papua New Guinea on behalf of the Pacific Island Forum.

<sup>25</sup> SC/900. Statements who addressed this fear included those of Qatar, Pakistan, Egypt, China, India and Brazil.

and financial resources while disavowing responsibility on the basis of its historical contributions to these crises, this position clear in Kyoto protocol where lastly it came into force without the US. Northern states are always ready for collective action to protect the environment and the South's demand for social and economic justice.<sup>26</sup> If climate change considered as a threat to the peace and security, it will be a too easy way to protect the environment but development demand of southern threat. Apart from North-South divide within the South China and India more liable for climate change, so South-South tensions are also there, and US and EU also clashed over climate policy.<sup>27</sup> If considered in this North-South or inter conflict it will vanish under security council collective measure where all countries will be in the same position as prescribed by Security Council. But the basic problem is a conflict of interest, where North country has power in the security council and South having no power politically as well as legally, so in the interest of Ozone deplete the south basic need to food security might be in danger. If we want climate change to be considered a threat to international peace and security council its need to redefine "peace and security" not just now already one decade over intention to re-defining this term, in 1992 president of UNSC says that "The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security". This kind of argument also justified in the scenario of Gulf war where the term Environmental terrorism come into the concept of terrorism, and every concept of terrorism is undoubtedly threat to peace and security. The liability of Iraq for environmental damage also corroborate as the environment is the threat to peace and security, where climate change is the most significant dangers issue of environmental degradation.<sup>28</sup> But the defining environment as security is itself risky operation. Where the use of force is the threaded tools in view to the protection of the environment, it might come to threat by the militarization of environmental politics than to the de-militarization of security politics. So that in the name of environmental protection it can be a risk to world stability.

---

### POSSIBLE LEGALITY OF INVOLVEMENT OF SECURITY COUNCIL

---

The Security Council's primary responsibility is the maintenance of international peace and security,<sup>29</sup> where drafter of charter might not intend to non –military activities but specifically it also not exclude, so that possibility to non –military activities also can be included as peace and security. If we considered another way undoubted terrorism security threat, the environmental terrorism already in the picture in the absence of universally

---

<sup>26</sup> Gonzalez Carmen, "Bridging the North-South Divide: International Environmental Law in the Anthropocene", vol. 32 Pace Env'tl. L. Review. 407 (2015)

<sup>27</sup> David Adelman, "A Cautiously Pessimistic Appraisal of Trends in Toxics Regulation", 32 WASH. U. J.L. & POL'Y (2010), 377, 377-79

<sup>28</sup> Knight, "Global Environmental Threats: Can the Security Council Protect our Earth?", New York University Law Review (2005) pp- 1565-1566

<sup>29</sup> UN Charter, 1945, Article 24(1)



agreed the definition of terrorism, and some of the authors raise food security might be a tool of terrorism. The powers of Security Council to take coercive, binding action to maintain or restore international peace and security against a threat whether military or non-military are defined in Chapter VII of the UN Charter. Whether the Security Council can take such action is contingent upon a “threat to the peace, breach of the peace, or act of aggression.”<sup>30</sup> Here ‘threat to the peace’ does not necessarily mean a threat to use force; it is the Security Council has discretion to a wide interpretation of determining whether an environmental threat amounts to a threat to peace or not. If it falls under Article 39 of UN charter Security council can take measure under Article 42,42 of Un charter, where the list of measure is not exhaustive. It could further be argued that environmental protection lies within the implied powers of the UN. Article 1.1 states as one purpose of the UN the maintenance of international peace and security and calls for taking effective collective measures for the prevention and removal of a threat to peace, while Article 1.1 requires international cooperation in solving international problems an economic, social, cultural or humanitarian character. It can be argued that the protection of the environment and prevention of environmental threats can be essential elements in solving international problems of economic or social character. If we recall the impact of climate change as it threatens to international instability easily, it can be considered as a security threat and under the implied power Security council can take preventive measure. Apart from the primary responsibility of Security Council to maintain peace and security, General assemble at the same time similar obligation to maintain peace and security council.<sup>31</sup>Where principle international organization in environmental law is the UN, and as the responsibility of UN General Assembly some resolution to pertaining Environmental matters and also concern about Climate change impact but it’s not effective. General assembly resolution is not binding to the state parties where security council resolution binding for the member as well as non –member state.<sup>32</sup> And members of UN given consent to the UN at the time of signing UN charter. So that binding and effective solution possible by the security council.

---

## HOPE TO TAKE INTO TAKING INTO CONSIDERATION BY ANOTHER BODY

---

Another argument from human rights side, UN is committed to the promotion of universal respect for Human rights and fundamental freedoms,<sup>33</sup> the climate change, directly and indirectly, can affect the most fundamental human rights. The direct impacts of global warming include higher temperatures, sea-level rise, melting of sea Iceland glaciers, increased precipitation in some areas and drought in others. Indirect social, environmental,

---

<sup>30</sup> UN Charter ,1945, Article 39

<sup>31</sup> Wall case, GA R/377(V) ,1950

<sup>32</sup> **Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),also see UN Charter 1945,Article 25**

<sup>33</sup> United Nations Charter ,1945,Article 55 (c)

economic and health impacts will follow, including increased death and serious illness in poor Arctic communities, decreased crop yields, heat stress in livestock and wildlife, and damage to coastal ecosystems, forests, drinking water, fisheries, buildings and other resources needed for subsistence. If global warming continues unchecked, it threatens to destroy the culture of Arctic peoples, to render their land uninhabitable, and to deprive them of their means of subsistence. The harm caused to their way of life has already been claimed serious enough to violate some fundamental internationally recognized human rights.<sup>34</sup> Right to life, right to movement and others Fundamental rights will be affected by the negative impact of Climate change there is no confusion. So linking between climate change and human rights could trigger more active role of the security council. SC Resolution 1373/2001 on terrorism and Resolution 1540/2004 on weapons of mass destruction identified threats to peace and required all states to take or not to take certain actions, by this two resolution security council came into legislative phase and passed legislation for the world. Thought it is subject to criticism, but as it is not possible to prove *ultra-various* it is binding for all state. Is the same manner is Security Council pass any legislation that can give a significant prevention in climate change.

So it is clear that Security Council can interfere in climate change matter but this emerging interest of Security Council once positive from the legally binding side more than it is a problem of politics and diplomacy and legitimacy of the use of force. This interest is emerging involvement of Security Council more or less a failure of GA and ICJ. The question of the environment was raised before a tribunal in *Trail Smelter case*<sup>35</sup> where environment takes into consideration under trans-boundary pollution but environment considered with damage in monetary compensating. Not only this ICJ in some case raises the environmental issue, but most of the case judgment didn't come under environmental aspect. Though in majority judgment not focus on the environment dissenting opinion has great influence. *Gabcikovo –Nagyamaros case*<sup>36</sup> Justice Weeramonty through dissenting argued for sustainable development as a principle of international law. , it has a great impact on the protection of the environment through development is there its liable for climate change. More specifically in *Pulp mill case*<sup>37</sup> we see the more significant involvement of ICJ by giving status EIA, Transboundary pollution, Precautionary principal. So that we can't say ICJ are not performing any duty regarding environment apart from ICJ another body as WTO, UNCLOS also contributing in environmental aspect, from this prospect here we can see an aspect in climate change also that body will be the right forum. Many Scholars tries to argue for Climate litigation court, but in the absence of hard binding law, it not possible to liable any country by establishing climate court.

---

## CONCLUSION

---

---

<sup>34</sup> Arctic Council and the International Arctic Science Committee, Arctic Climate Impact Assessment (ACIA), 2004

<sup>35</sup> Trail Smelter Arbitration (United States vs Canada) ,1937

<sup>36</sup> Gabcikovo-Nagyamaros project case (Hungary v.Slovakia) 1993 – ICJ reports 1997,p.7

<sup>37</sup> Pulp Mill on the river Uroguya(Argentina v Uruguya ),ICJ GL No. 135 .2006

From the above discussion present climate regime is not sufficient as its threat to the global peace and climate change is justified in falling on the definition of peace and security. So legally can say the involvement of Security Council is possible, but politically it's not desirable. Yes, the non-binding, the debut of CBDR will be solved if Security Council is involved, it will be overall participation obliged by Security Council. But what will be the fate of developing country who extremely need development, the basic need of food, poverty eradication? If Security council involve in climate change regime, it can pass world legislation for mitigation carbon emission, can oblige the states to pass domestic legislation to combated climate change, as passed for combating terrorism, thought it debuted but in the absence of proper authority to declare void it's valid.<sup>38</sup>The problem who will pay 100 \$ billion might solve, but whatever the involvement South Asia in more vulnerable in both side, Its dilemma of South Asian countries.

To solve this and climate change, the writer suggested that, apart from the Security Council involvement UN should take initiate by specialized agencies under Chapter IX as the climate change is socio-economic as well as security threat of global peace. The committee should be established to monitor the implementation climate change laws; at this moment, policy agencies can oblige the developed country to develop assistance technology and finance as they are historically liable. And where ICJ can take solve the problem if occur a new climate change court rather. UN is the body to maintain global peace should perform its duty by any organ upon decentralized power and function. But whatever the legal regime, South Asia is in DILEMMA!

---

<sup>38</sup> Security Council Resolution 1373/2001