LEGAL STUDIES

GEP Essay

GEP encompasses a multitude of legal and non-legal mechanisms that aim to promote ESD, in order to ensure IGE and the protection of the natural environment. GEP requires a multilateral and holistic approach through the compliance of the international community in order to mitigate the adverse effects of climate change, resource depletion, species extinction and pollution.

GEP has becoming increasingly important, as nation-states begin to recognise the need for a multilateral approach to combat the adversities of environmental issues. Environmental disasters that have highlighted the importance of cooperation by nation states, include, the Exxon Valdez oil spill in the Prince William Sound in 1989, Fukushima nuclear reactors in 2011 and the explosion of an oil rig in the Gulf of Mexico in 2010. Thus, environmental concerns promoted grassroots initiatives to be established in 1970s and 80s, which was further compounded by the evolutionary book Silent Spring, by Rachel Carson. Furthermore, a landmark case recognising the transboundary nature of environmental issues, was the Train Smelter Case – US v Canada 1941 ICJ, in which Canada's sulphur dioxide fumes damaged US environment. Thus, the international community recognised the importance of GEP and has moved to a more proactive, preventative approach.

 The development of soft law principles has had varying degrees of effectiveness in regards to GEP. The recognition of the most effective method in achieving GEP through a global and holistic approach based on ESD is evident in the Rio Conference 1992, in which subsequent agreements were established including, Agenda 21, which devises an action plan for cooperation by all levels of govt to achieve ESD. Furthermore, this conference developed the central principles of ESD, including the precautionary principle, IGE and intragenerational equity, as reflected in the Convention on Biological Diversity 1993, which act as the basis for future environmental agreements in both domestic and international law. However, the development of frameworks from international conferences highlights the inherent difficulty in enforcing int law when environmental issues are addressed broadly and not in relative isolation, due to the greater potential for fragmentation on issues by nation states.

In comparison, hard law initiatives have the potential to create GEP due to their ability to ensure compliance through enforcement mechanisms. This is illustrated through the holistic approach taken by the international community to repair the hole to the ozone layer, as reflected in the Vienna Convention for the Protection of the Ozone Layer, which came into force in 1989 and set out legally binding reductions targets for nation states in phasing out CFCs through the accompanying Montreal Protocol. The success of atmospheric protection is evident as in Sept 2006 the ozone hole reached its largest size of 27.4 mn km2, but by Sept 2009 it had contracted to 25 mn km2 and is expected to be eradicated by 2050, as illustrated in the SMH in 2009 by Rodger Dargaville who recognised it as the, "…world's most successful treaty." In turn, this international instrument has enabled a reduction in the amount of GHG contributing to the ozone hole and climate change, with which 75% of anthropogenic GHG come from the burning of fossil fuels.

However, compliance in hard law environmental protection can be limited due to the operation of state sovereignty and the weakness of political will to forgo the short term consequences on economic output, for long term environmental protection. This is illustrated through the UN Framework Convention on CC 1992 and the additional Kyoto Protocol, as numerous states signed the convention due to its limited ability to enforce compliance, however, when enforceable targets were established with the Kyoto Protocol, many countries delayed ratification including Aust and the US as they believed the opportunity cost for LT EP was too high due to the ST economic costs, as shown in the SMH article in 2011 "Kyoto loses the four big nations." This belief was furthered by the "Common But Differentiated Responsibilities" as developed nations were forced to take a heavier burden than that of developing, in turn, resulting in developing nations gaining a competitive

advantage due to looser environmental and safety regulations. The limited effectiveness of Kyoto continued into the Copenhagen Conference in 2009 as nation- states generally accepted the need to keep global temp rise under 2' C, however, weak political will resulted in no numerical targets being set, as recognised in the Heritage Foundation's article "The Copenhagen Conference A Setback for Bad Climate Policy in 2010," as the author states that, "the final accord contains no tough binding new targets – or even weak ones." Thus, a key barrier to achieving GEP is resolving the tension between the need for coordinated action and a nation's protection of their own economic interests, in turn, resulting in enforcement mechanisms becoming decreasingly effective.

State sovereignty can act as either an imposition or accelerant to GEP. Aust has been relatively proactive in terms of enforcing environmental protection domestically and ratifying international agreements. For example, the eventual ratification of the Kyoto Protocol resulted in the agreement to cut at least 25% of GHG emissions by 2020, and has established a carbon pricing mechanism which is now transitioning to an 'cap and trade' ETS scheme with the EU. Furthermore, Aust has complied with the UN Convention on Int Trade in Endangered Species of Wild Fauna and Flora 1975 (CITES) through the implementation of Environment Protection and Biodiversity Conservation Act 1999 (Cth). However, this instrument has 175 parties and applies to more than 30 000 species, and yet the trade of endangered species is still highly prominent due to the difficulties of enforcing this treaty, as the indiv who engage in illegal trade are mainly from developing nations, thus limiting the effectiveness of GEP due to the barrier of SS. This is further illustrated through the Convention for the Conservation of the Southern Bluefin Tuna 1994 between Australia and Japan, as despite this bilateral agreement Japan has been non-compliant catching 350% over the quota established, in turn, resulting in only 3% of the breeding stock remaining and the species becoming critically endangered.

Additionally, non-legal mechanisms influence the degree of effectiveness in GEP. NGOs participate in raising awareness of environmental issues and promoting action by govt and multinational corporations. This can be achieved through 'envirostunts' such as, Greenpeace in 1995 occupying an oil rig to prevent its contents being dumped at sea, which in turn, resulted in the boycott of Shell service stations by individuals due to the media coverage of the event. Thus, successfully ending with Shell agreeing to recycle the oil on land. However, non-legal responses to the imposition of environmental policies can limit the effectiveness of overall GEP, for example, the fed govts implementation of a carbon pricing mechanism in 2012, received significant adverse media campaigns as a result of mining and agricultural sector opposition, which in turn, resulted in the Senate blocking the establishment of an ETS in late 2009. Thus, highlighting GEP can be restricted due to political constraints of maintaining popularity with the community.

GEP requires the cooperation of nation-states with both legal and non-legal mechanisms, in order to ensure the principles of ESD and IGE are addressed. GEP faces significant barriers of SS and economic constraints, however, as the international community begins to recognise the long term environmental consequences of their actions, political accord will strengthen, thus, establishing compliance in order to achieve GEP.

- Fed budget 12/13 Reef Rescue – 200 mn to protect GBR, increase quality of water entering reef farmers assistance to implement sustainable farming practices – reduced sediment and nutrient run-off. Reduce effects of resource related develop e.g. Gladstone Harbour

- Murray Darling Basin Plan – 3.5 bn restore health of rivers, support regional communities and sust food production.

- Clean Energy Act 2012 – ETS and carbon pricing mechansism

The need for GEP

- Environmental impact of consumption and development – glbn, free trade, countries with less oversight of envrio and safety standards, have competitive advantage over countries with increased regulation

- Interdependence and cooperation

- ESD – biodiversity, IGE, intragenerational equity, precautionary principle, tragedy of the commons

- Past catastrophes and future enviro problems

Past essay questions on GEP

- Discuss whether the law reflects the values and ethical standards in the protection of the global environment.

- To what extent does the achievement of GEP depend upon the level of cooperation between nation states?

- Evaluate the effectiveness of legal and non-legal responses in protecting the environment and achieving justice.

- 'Compliance with the law is an essential element in achieving justice for the individual and society.' Discuss this statement in relation to promoting and achieving environmental protection.

- Why is there a need for an international legal response to GEP?

- To what extent is the protection of the global environment a reflection of moral and ethical standards?

- Assess the impact of SS on international cooperation and the resolution of conflict with regard to GEP.

- Evaluate the role of law reform in protecting the global environment.

- Evaluate the effectiveness of the legal system in ensuring compliance with laws regarding GEP by nation states.