FOREWORD: PRESIDENT OF ALSA INTERNATIONAL

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The Asian Law Students’ Association or ALSA in short is a student led organization that is spread out through out 14 different countries in Asia. We hoist over 12,000 members whom of which are dedicated to become internationally minded, legally skilled, academically committed and socially responsible.

This journal is made with the hopes that Asia can benefit from the information spread out through out this document. I’d like to thank the contributors of this journal, for without them this journal would not have been possible.

Hopefully this journal will become beneficial for you and ALSA, Always be One!

Jelorie F. Gallego
- President
ALSA International Board 2014-2015
Assalammualaikum wr wb,

Alhamduillah, The Asian Journal of legal studies has reached its second volume with the contribution from scholars across Asia. This publication is an enrichment of knowledge both for our member and the society.

This journal is hoped to be the leading student based journal in Asia with he dream of captivating the different legal instruments among Asian Countries with the view of different scholars in Asia. But most of all, this journal is hoped to be beneficial for the society.

Thank you,

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Fellow Scholars and Agents of Change,

It is with great pleasure to denote that the Asian Journal of Legal Studies has been published for its second volume. This year we have contributors that provided us detailed insights regarding their topics of choice.

Our main goal is to partake in the development of law since article 38(1)(d) of the ICJ Statute said that writings from a highly established scholar could become a subsidiary source of international law. That is our milestone.

For all the readers out there, I’d like to thank thee beforehand for your interest in our Journal. Surely the existence of this law review is not one-off, so until next year (our next law review) scholars and agents of change.

Haryo Ahmad Viditaris Sasongko
Director of Academic Publication
ALSA International 2014-2015
Assessing the Needs For a Global Treaty on State Responsibility to Prevent Transboundary Harm and its Obligation towards the Occurring Damages.

(Ario Putra Pramungkas S.H.)
ABSTRACT

International law prescribes that States have the jurisdiction to use and the rights to the exploration, development and disposition of their natural wealth and resources. However this right is limited by their obligation to preserve the nature and to not harm another States interest. There has been many mutual understanding by States recognizing the principle of sustainable development in using the environment. The purpose is to ensure that every action taken is with consideration of the nature preservation. However, there are still some aspects that are not yet regulated thoroughly. One of which is the transboundary activity. Transboundary activity plays an important role in this global era. Many countries expand their activities beyond their national jurisdiction and beyond their single capacity. Joint forces and remote exploration is now a common thing. This action is a disruptive if taken without fair consideration, which is not available under international law.

This study aims to answer the question on why international law needs a global treaty on this issue and why the precautionary principle and the polluter pays principle holds a big role in this creation of a treaty. This study is also purposed to help generating the idea on the establishment of a mutual understanding in activity with a transboundary nature.
On the very first basis, pollution is the introduction of contaminants into the natural environment that causes adverse change. When this introduction caused by one State and affects another States, we call it transboundary pollution. Transboundary pollution will then create the transboundary harm which will be the focus in this study. Under customary international law, States should refrain from causing harm to another state. This framework of customary international law is also recognized under general principles of law as *Sic utere tuo ut alienum non laedas* or the Good Neighborliness. If such harm occurs, State might have failed in performing its obligation under international law.

A well-known classic international environmental case, the *Trail Smelter arbitration*, holds this most important ground of environmental law principles. The *Trail Smelter arbitration* case was about a dispute between the USA and Canada over the damage to the US territory by toxic emission from a smelting plant in Canada.\(^1\) The emergence of Good Neighborliness in this case has been further elaborated within legal framework of international environmental law. For example, it has led to the precautionary principle,\(^2\) as well as the responsibility not to cause damage to the environment of another States or to areas beyond national jurisdiction and the obligation of harm prevention.\(^3\) After over 50 years from *Trail Smelter arbitration* case another environmental case occurred in 2010, the *Pulp Mills*. This dispute is between Argentina and Uruguay over the damages in the Uruguay River caused by the construction of pulp mills. This case has once again shows the importance of the Good Neighborliness principle and display the lack of international environmental law regulation on transboundary harm. This case brought up the importance of the precautionary principle and the fact that international laws have not yet possess a strong and established framework towards it.

Five years after *Pulp Mills*, international environmental law has clearly shown positive progress. Recently the urgency of environment protection has drawn lots of countries attention. However, the development with regards to transboundary harm regulatory framework has not yet been solved even after the 2010 case. There’s still no international uniformity on the

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\(^1\) *Trail Smelter Arbitration (United States/Canada)*, Award (1941) Arbitration Tribunal, 3 R.I.A.A 1905 at 1907 [Trail Smelter].


standard protection of transboundary harm, there is no regulation that has been established with regards to States obligation in transboundary harm situation and to top it off there has not been any global framework on the States responsibility towards the occurring damages from the harm. The Pulp Mills case should have been the turning point for States and the international community to realize that such formity urgently need to be made. By not having this regulatory framework, States will stay in the condition of not knowing how far should they go in the case of transboundary damages, this is the major issue because in transboundary case it is clear that there are more than one State involved, which makes this a concurrent jurisdiction. Thus, it is important to know the role of each State for the purpose of affectivity and maintaining peace between them. The Land Reclamations case in 2003 shows that in the case of concurrent jurisdiction a ground rule is important to be made in order to know the scope and limitation of each States obligation.

International law does not explicitly illustrate and regulates the regulatory framework of transboundary harm prevention. This regulation can be found in principles of international environmental law, customary international law, and decisions of international court. From the writers’ perspective, it is required to establish a legal formity of this regulatory framework in form of international treaty which should be globally acknowledged by States. As this will indicates the acceptance of States to adopt such regulation into a more formal level. Establishing a treaty-based regulation will not only confirm and strengthen the binding force of this matter but will also enhance the awareness and importance of transboundary harm prevention to be adopted by all States. Having customary international law as the source and supported by judicial decision is not to be questioned as a valid and binding sources. However, by adopting this into a treaty-based source of international law it will display a uniformity of States in preventing and protecting the environment from transboundary harm.

The uniformity is in fact not only important for the prevention of transboundary harm; it is also required to clarify the responsibility with regards to the occurring damages. As mentioned earlier, States are responsible to ensure that activities carried out within their jurisdiction or control does not cause damage to the environment or areas beyond their national jurisdiction. Failed to perform as such the State is bound to stop the wrongful conduct and re-establish the condition prior to the wrongful conduct. As stated above, up until now there is still difficulty in distinguishing the responsibility of States in transboundary condition as there’s an absence of
uniformity. Thus, it impacted to the difficulty in answering the question whom should be responsible to the damages caused by the transboundary harm. Is it purely the responsibility of the initiating State? Or is it joint responsibility for all States involved? If so, how should we distinguish each responsibility?

The key to understand why such uniformity should be made is by understanding the legal issue behind it. International environmental law is a growing part of international law, rapidly growing. Started with the 1962 GA Resolutions on Permanent Sovereignty over Natural Resources, the international community keeps on reforming the understanding and the importance of environmental protection. Stockholm Declaration 1972 marks the introduction of fundamental principle of environmental law, one of which is the preventive approach.\(^4\) Rio Declaration 1992 has again show that the understanding of environmental protection is still growing rapidly, one of the focus introduced on Rio Declaration 1992 is the principle of sustainable development.\(^5\) Rio Declaration 1992 also emphasizes the use of precautionary approach.\(^6\) After Rio Declaration 1992, the discussion continues to the World Summit on Sustainable Development in Johannesburg 2002. This summit elaborates topics such as the challenge faced by States in applying sustainable development, the preservation of natural resources in line with the demand which does not stop increasing from one year to another, etc. From the elaboration, we could summarize that the key to nature preservation is located within the pre-activity phase, or we can say it is a preventive steps/precautionary approach. This precautionary approach is known also as the precautionary principle holds the main key towards the protection and preservation of the environment as this principle holds the answer on how and what a State should perform with regards to transboundary activities.

This study is aimed to help answering the question on how should a State perform in the matters of transboundary activities knowing that international law does not specify a minimum standard. Also with hopes to answer the question on how the reparation should be made under international law.

This study shows that under international law, even though there’s still no uniformity in the regulatory framework of transboundary damages prevention, the responsibility of States is clearly drawn. State is obliged to establish such ‘working condition’ with another States involved within the transboundary activity. Such working condition should follow the rules of customary international law and general principles of law. After the establishment of the working condition, the responsibility of the involving State will be clear and such standard will be made. Regarding the responsibility of the occurring damages, as the responsibility of each State is established, the portion of reparation if any damages occurs will be made as well. This issue is in fact related with one another. Precautionary principles establish a limitation of States responsibility in activities with transboundary nature. Surely the obligation of the initiating States and the involved States is not the same, as well as their obligation regarding the reparation. By establishing uniformity with precautionary principle basis, the problems will be easier to be tackled; cases such as the Pulp Mills, Land Reclamation or the Gabcikovo-Nagymaros might also be settled in an easier way. Following this conclusion, this study still recommends that a global uniformity should be made regardless the customary international law and general principles of law have already answered the question. Then why such uniformity still required? Because when it comes to the protection of the environment, all States should have the same standard. It is widely accepted that the principle of sustainable development holds the key towards a better future for all of us, but still the standards of environment protection is nowhere to be found. The understanding of States and their actual movement is not reciprocal.

International law elaborates that States have the jurisdiction to use and the rights to the exploration, development and disposition of their natural wealth and resources. 7 This right entails the obligation of State to ensure that all of its activities carried out within their territory does not cause any harm to the environment or areas beyond their national jurisdiction. 8 International law recognizes many form of approach to ensure this obligation is carried out correctly, one of which is by performing due diligence. The importance of due diligence in transboundary activity is well settled, 9 this action of due diligence is also known as a

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7 GA 1803 (XVII) 14 December 1962.
8 P.W. Birnie and A.E. Boyle, supra n.3.
precautionary approach reflecting the ways that ensure the preservations of the environment is performed, the ways of precautionary principle. As a fundamental principle in international environmental law, precautionary principle defines the duty of States to take all necessary precautions to evade possible damages suffered from environmental activities.11

Precautionary principle entails three obligations, (a) the duty to notify, (b) the duty to cooperate, (c) the duty to conduct environmental impact assessment (“EIA”).12 Firstly, the duty to notify; introduced by the International Court of Justice (“ICJ”) in the Gabcikovo-Nagymaros Project case.13 ICJ promulgated the need to give notification by the initiating States to other States regarding any activities with possibilities of transboundary environmental concerns. This obligation is based on the understanding that States must protect the environment and must not give harm to other States. Secondly, the duty to cooperate; emerged from State practices; this duty is now accepted as law by numerous international fora.14 This obligation was also emphasized by the ICJ in the Pulp Mills case. This cooperation is the next step after the initiating State give out the notification. The cooperation between the involving States is aimed to create ground rules or standing on how each State should perform and how far the other State is involved. The Land Reclamation case adjudged by the International Tribunal for the Law of the Sea (“ITLOS”) gives out the example of cooperation by States in transboundary matters. ITLOS explained that Singapore has wrongfully performed its reclamation since it has failed to involve Malaysia within the pre-activity assessment. One of the important issues from the ITLOS judgment was that the requirement to involve the other State is not a question. Singapore is under obligation to involve Malaysia if they want to proceed the reclamation, failed

11 Supra n.6.
to do so Singapore does not have the right to proceed its activity. Thirdly, the duty to conduct EIA; as one of the most important phases in every activity, EIA in transboundary nature holds even more important role. With more States involved means more concerns and interests, hence the EIA holds more role than before. EIA is an obligation of conduct, not an obligation of result.\textsuperscript{15} International law does not classify how an EIA should be conducted; hence, it leaves room for States to determine measures that are necessary, appropriate, and feasible within their optimum capacity.\textsuperscript{16} With the absence of international standard, the importance of notification-cooperation-EIA is now clearer. With more kinds of concerns and interests the EIA itself will be conducted in a different way. This is how the precautionary principle elaborates each States responsibility in transboundary activity. By understanding each concern and interest, every involving States will have the capacity to decide their parts in preserving and protecting the nature from possible damages. International prescribes that when a State fails to conduct an adequate EIA and resulting violation towards another State’s right, the State is liable for omission.\textsuperscript{17} From the aforementioned theory we know that one State is responsible for the damage created by its action, thus, by knowing each State responsibility using the precautionary principle, the possibility of finding the who should be responsible in an activity with transboundary nature is feasible.

International law prescribes that every State’s acts and omissions which constitute as an internationally wrongful act entails the responsibility of the State to make reparations.\textsuperscript{18} Under customary international law, restitution is the primary form of reparation.\textsuperscript{19} Yet in cases of environmental damages, it is materially impossible to make restitution, therefore the reparation shall be given in a form of compensation, as the Court adjudged in \textit{Gabcikovo-Nagymaros}.\textsuperscript{20} It is difficult to determine the exact amount of compensation if every involving State does not

\textsuperscript{16} Xue Hanqin, \textit{Transboundary Damage in International Law} (Cambridge: Cambridge University Press, 2003), at 164.
\textsuperscript{17} \textit{Pulp Mills Case (Argentina v. Uruguay)}, Judgement [2010] International Court of Justice, ¶101.
\textsuperscript{19} ARSIWA, \textit{supra} n.18, Art. 38.
\textsuperscript{20} Gabcikovo-Nagymaros, \textit{supra} n.13, at 81,¶152.
have basic criterion. This will not be a problem if the case is one State harming another State. But what happen if it’s more than one State harming another State or more?

As mentioned above, one of the purposes of precautionary principle is to determine each responsibility of States within a transboundary activity. Understanding a State involvement will then determine how far or how much is their portion when it comes to pay compensation. This again shows how the application of precautionary principle is able to solve the problem that has become a long discussion in transboundary activity. This sort of understanding supports the definition of the polluter pays principle, part of customary international law in determining the responsibility from pollution.\(^\text{21}\)

The polluter pays principle reflects a principle that the costs of the pollution should be borne by the person responsible for causing the pollution. Out of several environmental principles, the polluter pays principle is one of the most widely acknowledged general environmental principles. The principle was first promoted by the Organization for Economic Co-operation and Development (OECD).\(^\text{22}\) International tribunals applied this principle in the settlement of *Lac Lanoux*,\(^\text{23}\) and *Gut Dam* cases.\(^\text{24}\) This principle has also been applied by many countries under their national laws.\(^\text{25}\) Polluter pays principle is proven to be able to solve compensation problems in environmental cases, this principle is not only applicable but also suitable for transboundary damages case. However, up until now there are no global frameworks confirming polluter pays principle as a standard principle in determining transboundary responsibility.


\(^{23}\) *Lake Lanoux Arbitration, (France/Spain)*, Award (1957), Arbitral Tribunal, 12 R.I.A.A. at 101.


As one of the purposes of international peace, protecting and preserving the environment should be taken more serious than ever. The growing of human demands from the nature sometimes makes people do actions without considering the sustainable future for the next generation. International law regulates in many of its sources that State’s rights towards the use of nature exploitation is limited by its responsibility to protect it and to ensure that it does not damage other States’ interests. Sustainable development is decided as the core of environmental preservation by States under various legal instruments, but some aspects have not fulfilled the requirement as a sustainable action. Transboundary activity happens all the time, it is unavoidable and undeniable. The understanding between States in transboundary activity is even more required as part of the environmental protection. However, there are no global regulatory frameworks regulating this matter. Many cases have shown that international law is lack on transboundary activity regulation, in instance the Pulp Mills and Land Reclamation case. Both cases show that the lacks of international law in transboundary activity generate problems that should’ve been resolved even before the activity takes place. Those cases are the reflection that international law requires uniformity in understanding the separation of responsibility from the activity itself to the occurring damages. Precautionary principle prescribes the obligation of States before they could carry out an action. This principle is widely accepted and widely known as dependable. Precautionary principle allows State to determine their responsibility beforehand; this principle is also introduced by the international Courts as a solution, yet there are no global treaties harnessing this principle as mandatory. With regards to the responsibility towards the damages, international environmental laws recognize the polluter pays principle. This principle has been used for many years in many levels of cases. The reason why this principle is widely used and accepted is because this principle solves the problem in a very simple way. Those who disperse pollution are solely responsible for its action. This principle is not only used by international Courts, it was also used by the ILC in the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities. This acceptance of polluter pays principle does not followed by its global harnessing. Similar as the precautionary principle, the polluter pays principle remains quiescent.

Conclusively, this study would like to initiate or support the idea of a global treaty with regards to the protection of the environment from transboundary activity. It is with various reasons that the global community should’ve created this treaty many years ago. In addition to
that, this study also generates the idea that the global treaty should be based in two basic environmental principles acknowledged by international, the precautionary principle and the polluter pays principle. Those two principles hold the key to the problem solving in transboundary issue. Thus it is without hesitation that this study recommends such idea. This study has provided the reason why those principles matters the most. As a general framework, those principle sets out the rights and obligations of States in transboundary activity. The international environmental law is a complex system, and as this study has found, it is a growing and a very dynamic aspects of international law. The lack of well-defined primary obligations and generally applicable rules on transboundary activity seem to be a deficiency that might reduce the value of the environment itself.
Extension of Arbitration Clause to Non Signatories: An Analysis of its Status in India

(Kumudini Chattopadhyay)
INTRODUCTION

The theory of extension of arbitration clause to non-signatories in India continues to be dynamic and indeed ever evolving. To begin with, the legal system in India demonstrated a rather rigid approach and core reluctance to the inclusion of non-signatories in the course of both arbitration and civil proceedings. However, with growing facets of legal jurisprudence and global acceptance, India has only recently begun to acknowledge via precedents the principle in its limited scope. However in the past, in the absence of any provision that enabled the tribunal to enjoin as a third party to arbitration proceedings, there has been no absolute statutory restriction by way of which an arbitration between a signatory party and a third party could not be initiated. The past has been a witness that echoes that the Indian courts have recognised the status of third parties. In the case of SBI v. Economic Trading Co. and SSA,26 the court granted an interim injunction restraining third party non-signatory banks from taking any action, their status being recognized as either that of a guarantor or a beneficiary to a guarantee.

The present article is an effort to reflect upon how India assented to the development of the concept of ‘non-signatories’ and recognized the rights and liabilities of such parties in light of the international standing of the same, via a selective chronological case study of significant arbitration and civil matters.

UNCITRAL MODEL LAW

The classical version of the model law as issued in 1958 suggested that an arbitration agreement be in writing. Even when the provision did not categorically state that the award pronounced would be invalid or set aside in the absence of a written agreement, the language of the model law summarized so. However, by the end of 2006 the new model evolved and with regards to the form of the agreement, the model law drew inspiration from the New York Convention.

“Recognizes a record of the “contents” of the agreement “in any form” as equivalent to traditional “writing”. The agreement to arbitrate may be entered into in any form (e.g. including orally) as long as the content of the agreement is recorded. This new rule is significant in that it no longer requires signatures of the parties or an exchange of messages between the parties.”27

26 See AIR 1975 Cal 145
Hence, the modern approach welcomed more than one ways of consent to arbitration which could be in any form. The format now emphasized on mere consent of the parties to submit to arbitration which did not demand either a written agreement or written evidence thereof. Therefore, while technically analyzing the situation of a non-signatory who did not sign the agreement in light of the current provision, have room to be perceived as a party to the arbitration by way of extension of the arbitration clause or agreement.


The Arbitration Act refers to “party” as a party to the arbitration agreement and an “arbitration agreement” is one which is signed by the parties. Further, an ‘arbitration agreement’ is an agreement by the parties to submit to arbitration that clearly reflects party autonomy. This suggests that there is indeed a very limited possibility of the inclusion of a party who is not a signatory to the agreement even if it has been closely involved in the negotiation, performance, conclusion or termination of the contract.

The following chronological list of cases cognizes the Indian approach towards the recognition of the status of non-signatories in arbitration and civil proceedings.

**The ICC case number 7626 of 1995**

The court applied Indian law to adjudge that the right to use the corporate structure so as to ensure that the liabilities of a future category of activities will fall on another company of the group is inherent in its corporate law. Therefore, the power to exercise ‘lifting of corporate veil’ in such circumstances shall be pervasive of the enforceable law.

**Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya**

The instant matter was submitted under Section 8 of the Arbitration Act wherein the court was of the view that bifurcation or splitting of the dispute between parties that are signatories to the agreement and the others would mean laying down completely new avenues and procedures of law that are perhaps not envisaged under the Arbitration Act. Further, if the subject of dispute was outside the scope of arbitration agreement and that the parties involved in the dispute include parties that are not signatories to the arbitration agreement, section 8 shall not apply. The Court discussed that if at all the intention of the legislature was to foresee a division or splitting of course of action or parties, the same would have been reflected in the language of statute. Hence, clearly such division or categorization amongst the subject matter and the parties is not permitted.
The Supreme Court pronounced that clearly that there was no power conferred on itself to add parties in the arbitration proceedings who were not parties to the agreement. The Indian Law sought its inspiration from common law that did not recognize rights of third parties.28

**Indowind Energy Ltd. v. Wescare (I) Ltd. & Anr.**

The Supreme Court adjudged that a signatory party and non-signatory party does not become a single entity on grounds that it had common shareholders or common boards of directors. Further, a company is not bound by the act of another company on grounds that it has a common board of directors or shareholders. The court pronounced that only signatory parties to the agreement are bound by the same and therefore refused the extension of the arbitration clause and agreement to the other entity.29

**Sumitomo Corporation v. CDS Financial Services**

The Supreme Court adjudged on similar grounds mentioning that parties in the judicial proceedings being referred to arbitration must be only parties that have entered the arbitration agreement as per section 2(1)(h) of the Act. Therefore, only a party to the arbitration agreement/clause could apply for an interim measure to the court. However, the interesting thing to note here is that it is silent on against whom the relief could be claimed. The power of the court to grant or not grant an interim measure originates from the Act and not from the arbitration agreement entered between parties.30

**Value Advisory Services v. ZTE Corporation and Ors.**

The Delhi High Court pronounced that there is no general principle of application with regards to interim measures being passed and awarded against a third party or party that is not signatory to the original contract or arbitration agreement. It shall vary from case to case depending on its facts. For instance, under section 9(1) of the Act, a guardian may be a third party or even goods may be required to be kept in the custody of or sold to third parties.31

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28 See (2003) 5 SCC 531  
29 See (2010) 5 Supreme Court Cases 306  
30 See A.I.R 2008 SC 1594  
31 See 2009 (3) ArbLR 315 (Delhi)
Chloro Controls v. Severn Trent Water Purification

This was a path breaking judgment that has channeled an internationally acceptable analysis of the principle of extension of arbitration cause to non-signatories. The Hon’ble Supreme Court discussed in reference to the scope of section 45 of the Arbitration Act wherein it pronounced that a non-signatory may also be bound by an arbitration agreement in cases of inter related contracts or groups of companies doctrine. The broad arbitration clause in the principal joint venture agreement extended to the parties to the ancillary agreements concluded to implement the same composite transaction. This was in view of section 45 of the Arbitration Act that states that a person may apply to a judicial authority through or under a party to refer the matter to arbitration, unless such agreement is null and void or incapable of being performed. Section 54 of the Act is in furtherance of section 45 prescribing the power of the judicial authority to refer the matter to arbitration when such a person may apply for the same through or under a party. The Court applied the Group of Companies doctrine, according to which an arbitration agreement entered into by a company within a group can bind its non-signatory affiliates or sister or parent concerns. Further, incorporation by reference was conceivable under the New York Convention, as the “in writing” requirement must be construed liberally. The court's finding as to the validity of the arbitration agreement was sought final and not be revisited by the arbitrators. If the agreement is valid, operative and capable of being performed, stay of proceedings and referral to arbitration is mandatory.  

Rakesh S. Kathoria &Anr. vs. Milton Global Ltd. and Ors. at the Bombay High Court dated 02.07.2014

This is perhaps one of the most current cases that discusses with an insight on the matter of extension to non-signatories. Respondent 1, a joint venture, was formed by the Petitioners and Respondent 2 to 15, amongst which Respondent 5 to 9 were signatories in the agreement and relatives of the Respondents. The parties to the joint venture agreement are Petitioner 1, Respondent 4, 5-9 and Respondent 1. Petitioner 2, Respondent 2 and 3, 1-15 were not parties to the joint venture agreement. The primary allegations of the petition were against Respondent 2 and 3 who were clearly not signatories to the agreement. The Petitioner sought to enforce the arbitration agreement under the JVA and also, restrain Respondent no. 2 from the manufacture and marketing of products falling under the definition of “Goods” as mentioned in the JVA.

32 See (2013) 1 SCC 641
The court pronounced that Respondents 2 and 4 are separate entities. Further, the fact that they have common directors does not make them both into a single entity or one entity being bound by the acts of the other. Also, if for an instance it is to be assumed that Respondent 2 is promoted by the promoters of 4, even then the Respondent was never a party to the JVA. The court deduced precedents from cases such as Manish Estates Pvt. Ltd. vs. Official Assignee\textsuperscript{33} that emphasized that only an entity which is party to an arbitration agreement may make an application for interim measure and the arbitrator is empowered to make orders only against an entity that is a party to the agreement and the arbitration clause therein. An entity or body cannot be deemed to be a party to the arbitration agreement. Further, the court sought support of the case law of Girish Mulchand Mehta vs. Mahesh S. Mehta\textsuperscript{34} that pronounced that it is correct that the scope of the court is not limited to jurisdiction only against parties that have signed the arbitration agreement but may also invoke orders against a third party, under circumstances wherein he claims that he is a party to the agreement and is likely to be affected by the interim measures. Also, the instance of an umbrella agreement containing an arbitration clause and the existence of separate agreements have been discussed by this court. The fact that a party did not sign one of the separate agreements in a series of them did not deny the possibility that an arbitration could be initiated against such a party. The court discussed another significant judgment passed by the Delhi High Court in the case of HIs Asia Ltd. vs. Geopetrol International Inc.\textsuperscript{35} wherein it agreed that a third party claiming to be or being sued directly as being affected through a party involved in the arbitration agreement, such third party being a signatory only to the subsidiary agreement and not the principle agreement that consists of the arbitration clause, it is completely a matter of discretion of the court to refer such a party to arbitration depending on the facts of the case. In the instant matter, the Bombay High Court concluded that since nine of the Respondents 2 and 3 and 10-14 had consented to the arbitral tribunal, the same cannot be hurled upon or forced on to them.

**Conclusion**

It can thus be deduced that the Indian courts have still kept their decisions mostly still being open to ‘facts of the case.’ A non-signatory for an arbitration proceeding is recognized depending much on the role that it has played in the negotiation, during and execution of the agreement. However, the defining action depends on the intention of the parties to enjoin any other third party and the willingness of such other third parties in

\textsuperscript{33} See AIR 2010 SC 1793
\textsuperscript{34} See 2010 (2) Mh.L.J. 657
\textsuperscript{35} See http://lobis.nic.in/dhc/SMD/judgement/26-11-2012/SMD22112012OMP8012012.pdf last seen on 25/10/2014
the matter of the arbitration. Landmark international decisions are also closely followed to understand the significant similarities that assist in deducing conclusions depending on the facts of the case. The ostensible recognition and existence of the principle might as well be cemented via inclusion of the same in express statutory provision and precedents. It is remarkable to note that the Supreme Court itself recognized that in India, the approach on non-signatories is still unpredictable. While one of the approach is pro arbitration that encourages the participation of non-signatory parties depending on justified facts, the other approach is rather narrow and strict. It encourages the traditional path of arbitration only amongst parties to the agreement for disputes agreed to be submitted to arbitration. The different approaches sought to dig irresolute and vacillating methodologies that intrude in the dynamic developments and acceptability of modern advancement of law, thereby only consolidating a more stunted approach.