

New development in international environmental law

With emphasis on the Convention on the Rights of the using international waterways for non- shipping intentions 1997

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Abstract

Ratification of the 1997 Convention on the rights of non-shipping uses of international waterways is considered as a major and important step in development of international Contemporary environmental law. This Development more than anything else, is indebted to new rules and legal principles. In this convention, many of the legal principles of international environmental law such as " Exploitation and rational and equitable use of resources", the principle " prohibiting damage on the territory of another country" and " The principle of international cooperation" is presented and codified. By studying of legal rules and principles, we can observe course of development of contemporary international law, although, it is obvious that the international environmental law has a long way to reach its proper place.

Keywords: International Environmental Law, 1997 Convention on the rights of non-shipping uses of international waterways, Exploitation and rational and equitable use of resources, prohibiting damage on the territory of another country, The principle of international cooperation, International waterways and lakes.

General

1. Using and exploitation of resources in international waterways and lakes, pollution and Environmental protection of it, is one of the important issues of contemporary international law. Due to the legal nature, International waterways and lakes have common Political borders which enjoy the sovereignty of two or more states, and this issue, prove the issues of Cosmopolitanism of lakes and waterways. Cosmopolitanism of lakes and international waterways poses issues such as Sharing environmental and vital resources, Water pollution,

shipping uses and etc. On the other hand, the present scarcity of water resources is potential crisis in international relations that international law is intended to provide the appropriate legal response.

2. Birth and development of international environmental law that began in the 1970s and continues to this day, include different areas such as air, soil, forests and water and ratification of different Conventions in this field indicates the attention of contemporary international law to this important issue.

3. Although formulated law for non-shipping use of international Lakes and waterways reach to the second half of the twentieth century, but Ratification of the 1997 Convention on the rights of non-shipping uses of international waterways is considered a turning point in this law. Though this Convention is not yet entered into force, But its legal value, which is the product of a number of United Nations activities, is worthy of study.

Part 1- Development of International Environmental Law for lakes and International waterways.

4. Traditionally, the international waterways and the lakes was used for shipping intentions and shipping issue was basically the main theme of international and regional cooperation. So in this case, for many years, some of legal and political instruments such as declaration of the executive council of the French Revolution in 1792 or congress of Vienna in 1815 have emphasized on the freedom of navigation in international rivers. On the other hand we can refer to legal mechanisms and regional conventions on the rights of navigation in international waterways. Meanwhile, the Central Commission for Rhine and Danube European commission have a special place in the second half of the nineteenth century.

5- environmental international law for Lakes and waterways of international, by preparing resolutions " Institute of International Law" in 1961 Salzburg, on the use of international waterways in for non- shipping intentions, took the first step. More than anything, this resolution have emphasized on principle of "using without loss and damage of land" and principle of rational use' of International waterways. The resolution also have emphasized on principle of "equity" dispute in joint exploitation of resources in international waterways.

6. The next step in the development of international environmental law for international lakes and waterways by formulating the rules of Helsinki by" Society of International Law" was taken in 1966. According to Article 10 of the Rules, The government by respect the principle

of equitable utilization, each government by respecting the principle of equitable utilization, should not provide damage to other states. Also this set of rules have emphasized on reducing pollution of international waterways and committed government that by applying the required mechanisms to prevent the emergence of new infectious and even reduce existing pollution.

7. Development of international environmental law for international lakes and waterways, along with other trends in international environmental law in the 1970s, was followed by Institute of International Law. The agency issued a resolution at a meeting in Athens on September 12, 1979 as "Pollution of rivers and lakes, and international law" and by emphasizing on the former legal principles, clarified the principle on "prohibiting damage on other state lands.

The resolution put forward a new legal rule, then after that has been always a reference for the international conventions and agreements. Based on this rule, the right of states has a right to apply their sovereignty to use their own resources in the region and they can utilize and extract their resources according to their environmental policies, provided that states adopt arrangements that their activities or actions taken under their dominion or activities under their control do not cause cross-border damage to the lakes and international waterways.

8- In addition to international efforts to establish the rights of non- shipping use of international waterways, some legal texts at the regional levels are seeking to establish legal rules in this regard. The most obvious efforts is ratification of Helsinki Convention on the Protection and Use of Trans-boundary waterways and lakes in 1992.

This Convention, which was developed by the United Nations Economic Commission for Europe, is a typical example of regional activities for the protection of lakes and waterways internationally. This Convention is a series of legal requirements for the prevention, management and reduction of environmental pollution in the cross-border area of lakes and international waterways. This legal text also emphasized on the principle of reasonable and equitable use of trans- boundary waterways. One of the basic characteristics of this Convention in relation to the previous legal texts is creating institutional mechanisms for the protection of the environment which is important in its place. The Convention, presents a series of constant institutional and organizational provisions for permanent protection of the trans-boundary lakes and waterway's environment.

9- One of the outstanding features of the Helsinki Convention application is a term "the Best available technology" that the state should apply it for exploitation of Joint mineral and environmental resources. According to annex 1 Helsinki Convention "the Best available technology" is The final stage of the development of methods, tools, facilities and utilization of resources that their applications can limit damaging effects of environment or to prevent its destruction.

10- Looking at the developments in international environmental Law for lakes and international waterways in decade the 1960 to 1990, we find that this major law, as in other fields of international environmental law, enjoys special effort. A unique formulation of legal rules and principles of international environmental law is one of the characteristics of the historical period. However, environmental degradation and pollution of international waterways and lakes are deeper by of Industrial technology development and legal mechanisms have failed to recover the deep and fundamental gap of this phenomenon. Especially some of these legal mechanisms have applicability only in regional level and may not generalize to other geographic areas.

11. for responding to this Legal Issues, the UN General Assembly, command "International Law Commission" to formulate right of non-shipping use of international lakes and waterways. The Commission, after years of efforts and activities on assigned topic, finally, declared his report to the aforementioned General assembly and the assembly in 1997 ratified the convention as " Convention on the Rights of the exploitation of international waterways for purposes non-shipping".

Part 2- New York Convention on the rights of exploitation of international waterways for non-shipping intentions.

13. In general, the legal provisions of the Convention, as the only comprehensive international convention on International Environmental Law of lakes and waterways can be divided into two categories: General principles of law and the rules relating to the protection, preservation and management of international waterways.

A- General principles of law

13. In this convention, many of the legal principles of international environmental law, such as " Exploitation and rational and equitable use of resources", and principle of "prohibiting

damage on the territory of another country" and principle of "International cooperation" is formulated, which its provisions are briefly discussed.

14. One of the major principles of contemporary international environmental law is principle of "Exploitation and rational and equitable use of resources". According to Article 5 of the Convention, lakes coastal states and the international waterways should use Resources located within its territorial jurisdiction in a logical and fair way. Article 6 in order to apply these legal principles, provide several methods and strategies. According to this article, lakes coastal states and international waterways, With respect to the characteristics and natural features, economic and social needs and considering the different effects of using shared resources with other countries, should protect environmental sources of international waterways and lakes. Also in Article 7, clarify the principle of "prohibiting damage on the territory of another country" and, as noted above, this principle is one of the basic principles of international law.

15. Many legal expert, proposed different view, about the relationship between these two principles. Some believe that, the principle of "rational and equitable use of resources" is a new legal principle and can be independently executed and beside that, the principle of "prohibiting damage on the territory of another country" is a traditional and classic principle in international law and there is no relationship between these two principles. In contrast, some other lawyers such as " Kaflysh" believe that, rational and equitable use of resources is a complete form of the principle : prohibiting damage on the territory of another country". So there is no contradiction or dichotomy between these two principles. The second theory seems to be more appropriate to Legal reality environment. Because, "No damage to the territory of another State" is indebted to rational and equitable use of shared resources. It means that, if a state uses its mineral and environment recourses in a logical and fair way, consequently the second principle will be realized.

16. International Court of Justice, in a verdict that issued about Dispute between Hungary and Slovakia on September 25, 1997, with this understanding of the relationship between the two principles, emphasize on the principles of " Rational and equitable use of resources" Without reference to the principles of "prohibiting damage on the territory of another country".

17- Another important principle which is proposed inthe New York Convention, is principle of "International cooperation. This principle basically happen with observing Sovereign

equality among state, Territorial integrity and mutual exploitation of existing capacities in coastal states or common international lakes and waterways. To realize this principle in a shared space, exchange of information and data on weather conditions, hydrology and Lake Environment or common international waterways, has a major role. It is noteworthy that the Convention is a direct reference to the Important legal principles which is mentioned in international environmental law, except, the principle of "precaution" that seems this principle is a principle in the creation and development of international environmental law. We should wait for further development of this legal disposition.

B. The rules relating to the protection, preservation and management of international waters.

18. According to The first article of the New York Convention, its administrative territory is consisting of Non-shipping use of international waterways such as protection, preservation and management. Therefore, the main aim of the Convention is environmental protection of lakes and rivers and international waterways. In addition, non-Shipping use, is consist of Industrial logging, agriculture, fishing and mining of mineral resources which is associated with environmental issues.

In determining the scope of the Convention implementing, International Law Commission has attempted to create balance about the relationship between coastal states, different uses of international waterways and sovereignty of coastal states.

19. Basically, the issues of environmental protection of international waters has been proposed in articles 20 to 26 of this Convention. For example, in Article 21, pollution of an international waterway include any damaging changes to the composition or quality of the waters located at an international waterway, that is directly or indirectly caused by human activities. Therefore, the governments are required to avoid create any pollution of international waterways. Article 23 also requires that states must provide protection and maintenance of fisheries in international waters.

20. Theoretical framework of articles 22 and 23 of the Convention is created based on "Prohibition against the infliction of damage on the territory of another country". In this case, Article 22 requires the coastal states to do Required prediction and prevention to protect shared water resources and thereby do not cause losses to other countries. Carefully and more explicitly, Article 23 is essentially allocated to a question of marine conservation and protection of international waterways. In this context, the general role of governments in

protecting aquatic and marine organisms has been considered as a legal requirement in modern international law. Within the same legal logic, Article 192 of the 1982 International Convention on the Law of the Sea stipulates that the governments should protect the aquatic and marine organisms.

21. We can see another legal innovation of the New York Convention in Article 24. In this article, it has been emphasized on the exploitation and rational and logical use of international waterways as the best way to protect the environment from these resources. States, not only have the legal obligation of no harmful use of common water resources, but they are required to exploit their water resources in a rational and logical way.

22. It should be noted that the scope of this Convention is exploitation of international waterways and water for purposes other than shipping. It is evident that the use of the waterways for shipping purposes is not in the scope of this Convention. In this regard, Article 10 states that, in the absence of agreement or custom to the contrary, no benefit from the international waterway has priority to other operations. If there is a conflict between the possible exploitation of an international waterway, this dichotomy with respect to Articles 5 to 7 of this Convention will be settled, with special attention to the fundamental needs of human life.

Part 3- Environmental characteristics of contemporary international law

23. However, in general, we can find in public law, the aspect of the protection of the environment, but the emergence of international environmental law is a branch of this relatively new field. The first sparks of the legal branch started in 1972 Stockholm Conference with the adoption of the Declaration. Although this statement is not legally binding, it expresses important principles which are nowadays, the infrastructure of international environmental law.

24. One of the characteristics of international environmental law is that it was established on the basis of the Law on Rights. It is the right which is based on statements, declarations, administrative principles and ... and strong legal enforcement is not warranted. However, international environmental law gradually has gone into hard law and now we can find part of it in international law.

25. Accordingly, "responsibility" in international environmental law is formed based on soft responsibility. However, traditionally, we can see many legal texts about strict liability in

international environmental law, which we can refer to cross-border pollution of international responsibility, but international environmental law is trying to recognize a civil liability which is based on Redress. The liability is recognized as a liability due to error not a liability of "Act or omission" which is introduced by the criminal element.

26. Legal techniques used in the field of law is one of the unique features of international law. On the one hand, international environmental law is established based on very general principles of law that has been accepted in the statements and declarations and on the other hand is set by using legal techniques "convention- protocol" and a detailed, precise and clear to protect the environment or particular part. Legal techniques "convention- protocol" is a technique that is specific to a particular sector or region and less transferable to other sectors or regions.

27. With respect to the characteristics of soft law and soft liability, soft actors are emerging in international environment law. Government in a classical and traditional sense, is not the only actor in the international arena, so always as important actors, has maintained their roles in the formation and implementation of international environmental law, But NGOs have been able gradually to be effective in forming, developing, implementing and monitoring environmental law. However non-governmental organizations in other branches of international law such as international economic law, international criminal law and ... played their role, but the role and statue situation of these groups is important and prominent in international environmental law. Participation in international conferences, including conferences in Stockholm, Rio and admission as an observer to the International Convention Indicating the role of NGOs as actors in international relations. It is evident that the important tool NGOs is "World public opinion' which is considered today, as one of the new phenomenon of communication.

28. As "Mac Cafri" stated" international environmental law is expanding in various aspects. In this frame, Environmental protection of international waterways instead of Traditional protection of surface water network, adoption of in line management and development policies rather than cross-sectional approaches to solving problems, Protection of fish (aquaculture) instead of protecting the fishery (fishing), Recognition of the principle " equitable and reasonable utilization of land" instead of principle " no harm to the common sources of international, is considered as a new Approaches to contemporary international environmental law.

Conclusion

29. Development of international environmental law in the past decade, more than anything, is based on human needs and environmental requirements. Economic growth and increasing technological advancements in the contemporary period has caused major damage to environment. In response to the needs and necessities, international law tried that by codifying the international rules and regulations to committed governments to protecting the environment. So we can consider "globalization of environment protection" as new approaches in contemporary international law. In this approach, based on the two basic international organizations on one hand and international rule and regulation on the other hand, governments attempt to identify the issue of environmental protection as a common value of humanity. Within this international context, 1997 Convention on the Rights of the non-shipping use of international waterways try to take step in order to protect Lakes and international waterways by designing and development of new regulations.

30. However, one of the major obstacles to the development of international environmental law is the unwillingness of governments to delegate authority or losing it to interest international environmental organizations. Political structure of the government has always a tendency to centrality and does not show interest to delegate it to other political organizations. On the other hand, Confrontation and conflict between traditional actors in international law (states) of the Environmental Protection is one of the major obstacles in the development of international law. This conflict of interest could include interests in political, economic, and commercial. Therefore, four factors such as development, peace, Liberty and the Environment protection should also be considered altogether and these factors have close relation to ensure the right to live in a healthy environment.

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