

# **Study the developments of international responsibility arising from environmental damage**

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## Abstract

Given the increasing importance of the environmental debate and the conservation and its conservation, the Issue of international Governments responsibility, is also very important in this issues. Since about the environment in different dimension and levels, many of the actions should not be performed, and some of the deeds and actions required to be done. (Criminal activity and non activity about environment). Surely this actions and non actions will be effective when will be accompanied with enforcement. There is doubt that we should know the introduction and enforcement of any provision by accepting International responsibility for related country. Of course this may seem so obvious and widespread that there is no need for talk and discussion about necessity of its existence. But it is important to remember that unfortunately, according to various causes, international responsibility arising from environmental damage Similar to other environmental issues, entered the realm of international law are rules by passing over a very long time and many ups and downs. In this way, we cannot still mention that topics of international responsibility in the field of environment is created completely and efficiently and will be used. Meanwhile, in recent years, many changes have occurred in different field and in the field of international responsibility arising from environmental damage, that we can have a lot of discussion about it and for making more efficient about this responsibility system in the field of environment, this developments and innovations must be known and used. In this paper we try to summarize the latest achievements in the field of international law with brief look at the past and more emphasis and attention to recent developments about international responsibility arising from environmental damage and based on the Basel Convention on pollution caused by transportation and excretion of hazardous waste.

Keywords: International Environmental Responsibility, Environmental Damage, Error Theory and risk of Basel Convention.

## 1) International responsibility arising from environmental damage

Since the early 1970s, following the increasing destruction of the environment and human awareness to need it for survival and survival, the issues of international responsibility of States for environmental damage was proposed. The main principles governing the subject of International responsibility of States due to environmental damage is the same as traditional principles of public international law, which mostly change it to a non-functioning responsibility regime. Of course existence of some features among environmental damage is one of the most important cases of damage caused by cross-border pollutions. Responsibility to determine the extent of contamination due to the issues such as origin of the pollution, amount of contamination and the most important, the authority and rights of the sovereign country of origin, is not a simple work.

In this case, first, the international community established the responsibility to protect the environment through customary international law.

But in recent decades, there have been many attempts for development of contractual rights in this field. Among these attempts, United Nations Environment/Environmental Program (UNEP) was very impressive. In many international documents, there has been attention to international responsibility arising from environmental damage. Such as Stockholm Declaration, Rio Declaration, Charter of Economic Rights and Duties of countries, as well as in a number of treaties and protocols such as Basel Convention and its annex Protocols.

## 2) Based liability arising from environmental damage

Basically, Responsibility is based on one of two factor errors or risk.

International responsibility based on error is a commitment which a state has due to lack of its international obligations for other states for Compensation of damages. In other words, liability rules are related to occurrence of illegal acts and effect of exercising of these rights.

Of course it is necessary to remind that usually international obligations are based on actions or certain acts and lack of action i.e. having committed certain acts or practices.

But, international responsibility based on risk, is state responsibility and liability for losses resulting from acts which does not prohibit their international right. The basis of the distinction between responsibilities resulting from criminal act and responsibilities resulting

from non prohibited action in that first responsibility require action that violate international law, and the second kind, is related to Losses resulting from activities that Per se does not violate international law.

Basically, In traditional international law, State responsibility was only based on the error i.e. action and non action inconsistent with international obligations. But gradually with the development and of technology, governments do things that basically these actions are not forbidden, so do not cause many damage to other countries. To compensate damages resulting from such actions, gradually risk-based responsibility was accepted. In the regulation about pollution prevention and environmental protection, Primary risk-based responsibility was accepted.

For example, the Helsinki Rules dated to 1996, put the responsibility of preventing the new form of water pollution or any increasing in current levels of pollution that cause substantial losses of shared waters of the state, to the member states.

Also this kind of responsibility in article 2 " plan related to marine pollution Materials result from European country" for 1972 is seen.

In article 3 "Montreal rules of international law relating to the enforcement of cross-border pollution" risk- based responsibility is accepted. Basel Convention also put basis of responsibility on the basis on risk theory. According to paragraph three of the article four, any transfer of contaminated waste was banned and is crime.

3) Commitments made to the international responsibility arising from environmental damage.

Now, we cannot say about change and development in the field of international responsibility arising from environmental damage, so main points and major principal of this process are listed below and it is briefly explained and described.

A. As previously mentioned, in traditional international law, international responsibility was mainly based on the error. Environmental Law from the beginning which follow tha same rule and principle of traditional international law, accepted international responsibility arising from environmental damage only based on error theory. So, gradually, inadequacy and accountability this theory revealed in the field of environmental issues. Because. many environmental damages caused by action was not primarily prohibited actions and countries are not faced with any prohibition set and if responsibility definition is possible based on action which is accompanied by violations of international law, such environmental damage

should remain without response and compensation. So, range of international responsibility in the area of environment is expanded and is consist of prohibited Acts, and non-prohibited Acts which caused damage to the environment.

International Law Commission put this issue on its agenda in 1978, and concentrates most of his work on such responsibilities in the field of damage to environment. In 2001, international Law Commission, in his 53 session approved the draft about prevention of cross-border damages arising from dangerous activities. These activities that latter articles can be applied about them are those that are not banned by international law but possible significant transboundary damage are hidden in them.

Article 21 of the Stockholm Declaration explicitly accepted that the risk-based responsibility.

One of the areas where the risk-based responsibility theory is used is discussion of cross-border pollution. In all international and regional conventions related to of cross-border pollution, basis of this responsibility is on this theory.

Of course, It is necessary to remind that, the evolution are not positive by view of some analysts and the consequences can be unpleasant.

This absolute right to compensation is very interesting and attractive for the victims of pollution and will make many industrialized countries distrust to this structure. In addition, such right ignores specific geographic location in some countries. For example about Unilateral pollution of an international river, The country which is located in the upstream will have to continuously pay compensation for exclusive benefit of the country which is in downstream.

B. Attempts to institutionalize international responsibility arising from environmental damage

Another development in the area of international responsibility arising from environmental damage is an attempt to institutionalize this kind of international responsibility. Perhaps we can say that a few years ago, the main sources of international environmental law was customary rules, but in recent year, international community attempt in codifying rules and regulation about this branches of law with different goal such as, making efficient environmental protection rules and compensating damages. Perhaps we can say that, the most important factor which is used in this process is the frame of protocol- agreement. So today we see a large number of environmental treaties and protocols.

Of course in this case that to what extent, international community attempt for codifying rule and regulation of environment was successful or if finally cause more protection of environment and provide requirement for more countries to meet their commitments about environment, there is disagreements among lawyers. Some lawyers believe that In addition to the problems that exist primarily on the international development and conclusion, due to the specific characteristics of environmental issues, formation of an environmental agreement will be faced with more obstacles and difficulties, For example" Part of environmental policy is designed in order to preserve the environment for future generations" which special attention has been paid to the environmental documents.

While concluding treaties that can consider and provides this main and important issue desirability, is a very hard and time consuming task. Also, in most cases, because of the environmental issues associated with the characteristics of political, scientific and technical, conclusion of agreement about them is difficult and sometimes it takes several years.

Another obstacle in the development of environmental regulations, In particular, issues of international responsibility, is unwillingness of governments to limit and their appeals to accepting a pre-determined and mandatory responsibility regime. Therefore, in most cases, regulations about international responsibility arising from environmental damage are codified in the frame of optional Protocol. For example, we can name the optional Protocol to the Basel Convention which was codified in 1999.

Another problem in this area is economic problems and issues related to free trader which although there may be in many multilateral treaties, But there is usually more in environmental treaties, and are serious obstacles in the formation and implementation of these treaties. Among other obstacles are implementation of these treaties, given that environmental treaties often not only give any concessions to members but also impose costs to members and Countries willing to join them and sometimes their cooperation to to implement the treaties is much less than other treaties. Despite all the weaknesses, we should consider the process of developing and institutionalizing environmental regulations a positive change in the environment, especially topic of international liability.

Developing the range of international responsibility arising from environmental damage is assigned to private sector and under traditional international law; usually international responsibility arising from environmental damage is taken by countries. Because some of the

environmental damage arising from private sector activity, limiting international responsibility arising from environmental damage to government, cause lack of responding to many cases of environmental damage. So, one of the positive developments which we can define in the area of international responsibility arising from environmental damage is extending the range of this responsibility to private sector. For example, in the matter of responsibility arising from cross-border pollution, international law attributes the activities of legal entities to the government.

In much environmental convention, the activities of legal entities are clearly accepted. For example, in Basel convention which is about Control of transboundary movement of hazardous wastes and ways for dumping them, it is followed by a responsible regime for private entity both natural and legal. Also International precedent with many votes has endorsed this matter. In judging "Trail Smelter" The court in its final vote recognize this important principle of international law. Under which each State is entitled to protect other states against activity of harmful agents which occurs within the realm of their protected areas. Today, it is accepted that if the government had done the necessary precautions, but private entities located within the jurisdiction, imposed major environmental damage in another country, The origin state of the losses should take all necessary steps to discipline offenders, otherwise, the government may be blamed. It should not be forgotten that because ensuring and grantee the private sector responsibility are primarily based on national legal systems and national legal systems according to various causes refuses implementation of The liability regime, So, actually the responsibility of the private sector is not very real, and usually provisions in this regard are faced with many obstacles. For example, While the Basel Convention forecasts fairly comprehensive rules on liability of people, but there are numerous challenges and difficulties for the implementation of the provisions of the Convention. Which the most important of them are:

First, accepting responsibility to the private sector about transportation of waste pollution requires the involvement of national legal systems In order to guarantee the obligations arising from the Convention for private sector. Based on paragraph 4 article 4 of convention, member States are obliged to do all measures necessary to prevent violations of law provisions by means of private sector and consider penalties for violators of the law.

While it can be seen that, Countries due to various reasons such as social and economic issues, refuse to do this commitment and even in some cases which theoretically the laws have been enacted, refuse to do it practically.

Second, litigation before national courts face with problem such as high cost, lack of performing fast, thorough and impartial hearing process, and specially problems related to implementation of verdict. Which, in most cases, cause useless of case in this authority?

Therefore, trader of the contaminated waste are faced with prohibition of warranty and this matter cause that they continue their business normally with a few Secrecy and in fact, convention provision for them is with no executive powers.

C. Basically international responsibility two types, International legal responsibility and International Criminal Responsibility. Civil or legal responsibility is in fact response to the violation of the pledges that cause harm or damage to the country of promise or in another word, which enjoy typical importance while Criminal Responsibility is a response to violation of the pledges which enjoy high degree of credibility and importance which the violations are non-negligible and has criminal aspects.

Until the mid-twentieth century, there was no difference between kinds of breach of the obligation. In fact, any kind of violation of the obligation was seen the same.

From this time onwards, international community distinct between types of violations committed and some of the defects that lead to criminal liability for defective. One of the most important of these areas is discussion of force and breach of peace and international security. Gradually it was added to the scope of criminal responsibility. One of the key matters of this expansion is environmental violations and defects. In some of international documents, it is referred to the International Criminal Responsibility and non-compliance with environmental regulations cause criminal responsibility for violators. But basically, environmental conventions Contains very low and limited criminal provisions. Among different conventions which consist of criminal regulation, we can name Basel convention. Also In 1993, The Security Council on the basis of resolution 540, consider pollution of Persian Gulf because of attacks on oil tankers and other ships in of water of this area as a factors threatening international peace and security and consider it as simulated crime of threats and breach of international peace and security that is that is International Criminal responsibility.

In the case of nuclear test which was brought by Australia against France. Australia to justify the issue, refer to international law related to breach. (Which has criminal aspect)? For example, dumping of radioactive materials in Australian Territories was considered as a violation of Australian sovereignty.

#### D) Development of preventive measures rather than remedial measures

One of the positive developments that occur in the field of international responsibility arising from environmental damage is attention of the international community preventive measures.

This matter with traditional attitude upon which liability is attributable to government that cause losses, is different. In recent year, setting international regulations concerning the environment increases significantly and new preventive approach is reflected in many arrangement in international and regional level.

Many conventions have been developed with this approach.

The new international law thinker believe that applying theory of state responsibility after occurring damage, at first, cause growing conflicts, Undermine cooperation, and failure to prevent losses. International law experts argue that performing administrative measures enable states that through the mutual cooperative system "prevention of conflict" to face with transboundary pollution problems.

In terms of preventive measures, one of the most important responsibilities of government is their responsibility for giving accurate and complete information. This is explicitly stated in the twentieth Stockholm Declaration.

#### E) Attempt in the field of expanded enforcement and its development to national justice system.

Another positive development in the area of international responsibility arising from environmental damage is expanding range of enforcement related to violations of environment. In this regard, two important issues should be discussed and mentioned. First, Regimes of liability and compensation practices is set by different reason such as considerations of sovereignty in the frame of optional Protocol, which is certainly desirable in one hand but in other way, raising very serious and fundamental problems in the way of protecting and guarantee the environment. The utility of this approach is largely base on this principle that countries due to these optional protocols, without any compulsion or obligation



and with their willing join them with their desire. As a result with more willing and desire implement the obligations and duties, but optional liability regime will be followed by negative consequences that, countries, in some cases do not accept it, and their interests , therefore, do not involved and therefore environmental protection and liability arising from breach of this obligation based on countries interest will be a matter of incidental and ancillary.

Second, since there is no efficient and effective system for the implementation of the international responsibility and compensation in international system, and nowadays, responsibility of the private sector form a major part of the responsibility regime arising from environmental damage, practically, domestic law system is involved in performing international responsibility.

Of course, it is necessary to remind that, performing responsibility via the national systems is faced with many obstacles and difficulties, and in many case, responsibility and compensation Discussion and remains inconclusive. On the other hand we cannot limit the issue for implementation of the international responsibility and its guarantee to international system, because the most important mechanism in this case is appeal to the Court of Justice, The Hague and it is possible just for countries to refer to it and organizations and people who are important players of environmental area, can not refer to this authority.

Here as a practical sample, a brief reference is made to the Basel Convention Protocol. The goal of concluding this annexed protocol is creating a liability regime for dangers damage arising from waste pollutions and compensate damages adequately. Among different features and issues, four categories are significant: first there is a loop-hole for some violators in convention liability regime and annexed protocol. In this liability regime, despite the dual responsibility for exporting and importing countries, no responsibility is predicted for transportations. Second, the liability regime which is predicted for annexed protocol has optional aspect and the protocol try to lead them to the obligations by encouraging member states of Convention. Of course this characteristic is among serious obstacles to the effective implementation of the principles embodied in the Basel Convention. Third, the predicted liability regime in annexed protocol is consist of involved private sector in discussion about waste pollution and this characteristic is among positive point of this protocol and there is many obstacles and difficulties for implementation and practical realization.

Fourth, the predicted liability regime in annexed protocol engaged domestic law systems according to realized predicted responsibility and in many sections; implementing liability regime is on national authorities that previously it was discussed that there is serious obstacles and difficulties.

Another issue that must be considered here is that one of the reason for success of the Basel Convention is lack of a centralized supranational structures which must be responsible for enforcing provisions and guarantee the enforcement, which in the future will be a serious obstacle in full realization of the provisions of the Convention and is true for other environment conventions. Although some lawyers believe that existence of an external centralized structure not only leads to better implementation of environmental provisions but will make countries more reluctant to carry out their obligation, because countries are primarily interested in preserving their sovereignty and refuse to accept any commitment that would deprived or restrict their sovereignty or brought their behavior and performance under the control and supervision and Therefore encouraging countries to comply with their obligations is better than forcing them.

But without doubt, it must be admitted that At least the private sector, the absence of a centralized infrastructure and transnational is an Important and effective factors in running away from commitment and in the future increases in transportation and illegal trade in waste pollution where it is not far from the fact that if we say, efforts of the international community only lead to establish a banned system on transport and trade of waste pollution without any effective control on it.

Of course, the convention has created a Secretariat, but the problem is that, such Secretariat has no executive power. Secretariat is only one element of Intelligence. Therefore, while the Secretariat may be informed of illegal transportation of waste pollution, but cannot perform any measure except providing report. Of course this report can help to perform some action by the government, but it is not enough. This problem exists in other environmental issues and sometimes it is even worse.

## **Conclusion**

It can be concluded from a forementioned corpus that process of international responsibility arising from environmental damage by passing time and many ups and downs lead to rather positive development. However, these changes are very slow and time consuming, so it is not far from the fact that if we say, the process of change and development in this area is much slower than other area of international law. The reason should be sought on various topics, such as issues related to Sovereignty of states and their reluctance to lose it, non-exchangeable environmental commitments, being optional liability regime arising from environmental damage, lack of effective enforcement in both level international and national law system.

But about the most important development that happen in international liability regime arising from environmental damage, we can name following case: accepting risk-based responsibility, extending responsibility of private sector, accepting criminal responsibility for some environmental violations, expanding enforcements.

At last we give some suggestions: Given that fact that, the main audience of environmental regulations is people of countries, it is better that, to ensure the implementation of this regulation and provide better environmental protection, an international mechanism will be set apart from national legal systems or at least beside them.

Second, liability regime must gradually keep distance from optional, incentive, advice mode, and lead to the imposition and mandatory mode, and for providing appropriate bases to this cycle, we should use concept such as Common heritage of mankind and Peremptory regulations.

Third, one of the problems of international environmental law and also liability regime is Lack of a particular and independent organ or agents. Although different organizations and some UN bodies know themselves in various forms as an operator, but the fact is that, such field of international law needs a strong and independent operator in the world.

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