

## New Development of International Environmental Law with Emphasis on the Law of The Sea

Mohammad Ali Kafaefar<sup>1</sup>, Professor Evgeny Martynenko<sup>2</sup>

<sup>1</sup>PhD Student, Department of International Law, Faculty of Law, People's Friendship University of Russia

<sup>2</sup> Supervisor, Department of International Law, Faculty of Law, People's Friendship University of Russia

---

### 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 the 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 are 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, Principle of International Cooperation, International Waterways and Lakes

---

### INTRODUCTION

Using and exploitation of resources in international waterways and lakes, pollution and Environmental protection is one of the important issues of contemporary international law. Due to legal nature, International waterways and lakes have common political borders, which enjoy the sovereignty of two or more states, and this issue, proves 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 etc. On the other hand, the present scarcity of water resources causes potential crisis in international relations, and international law intends to provide the appropriate legal response.

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.

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 in force, but its legal value, which is the product of a number of United Nations activities, is worthy of study [1].

### Development of International Environmental Law for lakes and International Waterways

Traditionally, international waterways and lakes were 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 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.

Environmental International Law for International Lakes and Waterways, took the first step in this regard by preparing the "Institute of International Law" resolution in Salzburg (1961), on the use of international waterways in for non-shipping intentions. More than anything, this resolution has emphasized on principles of "using without loss and damage of land" and principles of rational use of international waterways. The resolution also emphasizes on principles of "equity" dispute in joint exploitation of resources in international waterways [2].

The next step in the development of international environmental law for international lakes and waterways is by formulating the rules of Helsinki by the Society of International Law in 1966. According to article 10 of the rules, governments by respecting the principle of equitable utilization, should not impose damage on other states. In addition, this set of rules have emphasized on reducing pollution of international waterways and committed governments by applying the required mechanisms to prevent emergence of new pollutions and even reduce existing pollution.

---

\*Corresponding Author: Mohammad Ali Kafaefar, PhD student, Department of International law, faculty of law, people's friendship university of Russia. [Mohammad\\_kafaefar20@yahoo.com](mailto:Mohammad_kafaefar20@yahoo.com)

Development of international environmental law for international lakes and waterways, along with other trends in international environmental law in the 1970s, was followed by the Institute of International Law. The agency issued a resolution at a meeting in Athens on September 12, 1979 [3] as “Pollution of rivers and lakes, and international law”, and by emphasizing on the former legal principles, clarified the principle on prohibiting damage on lands of other states.

The resolution put forward a new legal rule that after that has always been a reference for international conventions and agreements. Based on this rule, states have a right to apply their sovereignty to use their own resources in the region, and they can utilize and exploit 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 lakes and international waterways.

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 effort in this context is ratification of Helsinki Convention on the Protection and Use of Trans-boundary waterways and lakes in 1992 [4].

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 emphasizes on the principle of reasonable and equitable use of trans-boundary waterways. One of the basic characteristics of this Convention in relation to 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.

One of the outstanding features of the Helsinki Convention application is the term “the best available technology” that the state should apply for exploitation of joint mineral and environmental resources. According to Annex 1 of the Helsinki Convention, “the best available technology” is the final stage of the development of methods, tools, facilities, and utilization of resources that their application can limit damaging effects of environment, or to prevent its destruction [5].

Looking at the developments in international environmental law for lakes and international waterways in between 1960s to 1990s, 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 this historical period. However, environmental degradation and pollution of international waterways and lakes are deepened by 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 levels and may not be generalized to other geographic areas.

In order to respond to these legal issues, the UN General Assembly assigned the “International Law Commission” to formulate the rights of non-shipping use of international lakes and waterways. The Commission, after years of efforts and activities on the assigned topic, finally, declared his report to the aforementioned assembly, and the assembly in 1997, ratified the convention as “Convention on the Rights of the exploitation of international waterways for non-shipping purposes”.

### **The New York Convention on the Rights of Exploitation of International Waterways for Non-shipping Intentions**

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 protection, preservation, and management of international waterways.

#### **A- General Principles of Law**

In this convention, many of the legal principles of international environmental law, such as “exploitation and rational and equitable use of resources”, principle of “prohibiting damage on the territory of another country”, and principle of “international cooperation” are formulated, which its provisions are briefly discussed.

One of the major principles of contemporary international environmental law is the principle of “exploitation and rational and equitable use of resources”. According to Article 5 of the Convention, coastal states of lakes and the international waterways should use resources located within its territorial jurisdiction in a logical and fair way. Article 6 provides several methods and strategies in order to apply these legal principles. According to this article, coastal states of lakes 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. In addition, Article 7, clarifies 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 [6].

Many legal experts proposed different views 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”. Therefore, 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 resources in a logical and fair way, the second principle will consequently be realized [7].

The International Court of Justice, in a verdict issued about dispute between Hungary and Slovakia on September 25, 1997, with this understanding of the relationship between the two principles, emphasized on the principles of “rational and equitable use of resources” Without reference to the principles of “prohibiting damage on the territory of another country”.

Another important principle, which is proposed in the New York Convention, is the principle of International Cooperation. This principle happens 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 environments, or common international waterways, has a major role. It is noteworthy that the Convention is a direct reference to the important legal principles mentioned in the international environmental law, except, the principle of “precaution” that seems 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**

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 comprises industrial logging, agriculture, fishing, and mining of mineral resources, which is associated with environmental issues.

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

The issues of environmental protection of international waters have 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 in an international waterway, that is directly or indirectly caused by human activities. Therefore, governments are required to avoid creating any pollution in international waterways. Article 23 also requires that states must provide protection and maintenance for fisheries in international waters.

The 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 carry out required early warning measures and preventions 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 Monte Gvbh stipulates 1982 International Convention on the law of the seas, and stresses that governments must protect the aquatic and marine organisms [8].

We can see another legal innovation of the New York Convention in Article 24. In this article, it has been emphasized on 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 shared water resources, but they are required to exploit their water resources in a rational and logical way.

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 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 against the agreement, no benefit from the international waterway has any 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.

## **Environmental Characteristics of Contemporary International Law**

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

One of the characteristics of international environmental law is that it was established based on the Law on Rights. It is the right, which is based on statements, declarations, administrative principles etc., and strong legal

enforcement is not warranted. However, international environmental law gradually has gone into hard law, and now we can find parts of it in international law.

Accordingly, “responsibility” in international environmental law is formed based on soft responsibility. However, traditionally, we can see many legal texts about hard responsibility in international environmental law, which we can refer to cross-border pollution of international responsibility, but international environmental law is trying to recognize civil responsibility, which is based on Redress. The liability is recognized as a responsibility due to error, not a responsibility of “act or omission”, which is introduced by the criminal element.

Legal techniques used in the field of law are 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 are accepted in 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 [9].

With respect to the characteristics of soft law and soft responsibility, soft actors are emerging in international environment law. Government in a classical and traditional sense is not the only actor in the international arena. Therefore, governments as important actors always have maintained their roles in the formation and implementation of international environmental law; however, NGOs have been able to be gradually 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 of NGOs is “World public opinion”, which is considered today, as one of the new phenomena in communication.

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 networks, adoption of inline 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 the principle of “no harm to cshared international sources”, is considered as a new approache to contemporary international environmental law [10].

## Conclusion

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 imposed major damage on the environment. In response to needs and necessities, international law tried to by codifying the international rules and regulations to commit governments to protect the environment. Therefore, we can consider “globalization of environmental protection” as a new approache 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, the 1997 Convention on the rights of the non-shipping use of international waterways tries to take step in order to protect lakes and international waterways by designing and development of new regulations.

However, one of the major obstacles for the development of international environmental law is the unwillingness of governments to delegate authority or losing it to interest international environmental organizations. The 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) for environmental protection is one of the major obstacles in the development of international law. This conflict of interest could include political, economic, and commercial interests. 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.

## REFERENCES

- [1] Institut de droit international

- [2] Annuaire de l'Institut de droit international, 1961, vol. 49-II, p. 381.
- [3] La Résolution d'Athènes du 12 septembre 1979 de l'Institut de droit international sur "La pollution des fleuves et des lacs et le droit international".
- [4] La Convention d'Helsinki de 1992 sur la protection et l'utilisation des cours d'eau transfrontières et des lacs internationaux.
- [5] L. Boisson de Chazournes, R. Desgagné et C. Romano, *Protection internationale de l'environnement, Recueil d'instruments juridiques*, Paris, Pedone, 1998, p. 53 et s.
- [6] P.-M. Dupuy, *Les grands textes de droit international public*, 2e édition, Paris, Dalloz, 2000, p. 630.
- [7] L. Caflisch, « La Convention du 21 mai 1997 sur l'utilisations des cours d'eau internationaux à des fins autres que la navigation », *AFDI*, 1997, p. 757.
- [8] L'article 192 de la Convention des Nations Unies de 1982 de Montego Bay sur le droit de la mer, reproduit in: L. Boisson de Chazournes, R. Desgagné et C. Romano, *Protection internationale de l'environnement, Recueil d'instruments juridiques*, op.cit., p. 359
- [9] A. Kiss, « Les traités-cadres : une technique juridique caractéristique du droit international de l'environnement », *AFDI*, 1993, p. 793.
- [10] Stephen C. McCaffrey, "The Evolution of the Law of International Watercourses" , *Austrian Journal of Public and International Law*, N 45, Springer-Verlag, 1993, p. 87-111.