

INTERNATIONAL RESPONSIBILITY OF STATES FOR ENVIRONMENTAL DAMAGES DURING TIMES OF PEACE

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ABSTRACT

Government's commitment to the international community to benefit from the rights of any state in the relevant obligations; as far as all states have an interest in protecting the legal rights and obligations for all states, and this is invoked. Today, environmental issues and the importance of issues of concern to the international community are present. Because the risk of environmental damage can cause a violation of the fundamental rights of communities to current and future generations. So this makes the international law of state responsibility and the environment, comply with the law, according to double. To the extent that governments are required to make in respect to the human rights issues. Environmental degradation and pollution, unsustainable in many of its forms, is irreversible and non-recyclable, types of pollution of water, soil, air, noise, chemical, nuclear, marine. Etc., are harmful to humans and the environment, so that in recent years has become a major crisis and the alarm has sounded human. The purpose of this study demonstrate the importance of environmental damage, prevent and eliminate environmental pollution and extensive review of international responsibility of States in connection with deliberate pollution and environmental destruction in peacetime. According to the research, the research methods to the study of literature and the Persian and English sources (books, magazines, papers, magazines and conventions) and the Internet.

Keywords: *Environment – Commitment - Responsibility of States – Peace*

INTRODUCTION

International responsibility of states for environmental damages has been regarded as one of the issues which have been drawn into attention by most of international entities, for which most of international conventions and treaties have been developed to handle this issue. Issues pertaining to environment, damages to environment and protection from environment have been found with a high importance that such issues have been considered as the most important international and national issues so that they influence all the international political relations. Nowadays, few conferences, political meetings and bilateral or multilateral meetings are held to discuss on environmental issues. Due to importance of environmental issue, this issue at international levels from a special issue pertaining to affiliated organizations has improved to an issue at national level, recognized as one of the most important international issues pertaining to security, peace and international laws at international levels. Environmental destruction and pollution in many irreversible, intolerable and irreparable forms can be reconstructed. A variety of water, soil, air, noise, chemical, nuclear and offshore pollutions have adverse effects on human and environment, so that such pollutions have appeared as a big crisis in recent years and warned human. With regard to increasing importance of environmental issues and protection from environment, international responsibility of states for environmental damages has been found with double importance. Scientific studies have shown that various components of the environment, seas, rivers, air, soil, animals and plants have been affiliated to each other, so that under such integration and unity, any pollution can disturb the balance between the aforementioned elements. Hence, to protect from nature and environment, the notion to set world rules and regulations was gradually developed and international organizations and conferences were developed as well. Since most of actions must be prohibited in line with environment at different dimensions and levels and instead some actions must be considered, definitely these do's and don'ts come beneficial in case performance bond has been considered for them;

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without doubt acceptance of international responsibility for any country must be considered as the precondition for any performance bond. Yet, performance bond must not seem obvious to neglect further discussion and discourse on talking about it.

First Discourse: Responsibility of States in Compliance with Environmental Commitments

The right to use healthy environment has been considered as one of the fundamental rights of the man, that responsibility of states in compliance with environmental commitments comes to realize at two arenas including territory of a country and global commonalities, that such commitments are considered as follows:

First Discourse: Within Territory of a Country

Important feature of environmental issues in recent decades has been introduced as increasing its importance and sensitivity, so that this resulted in finding international dimension in the issues pertaining to environment. Intensity of environmental issues goes beyond results in stimulation of people's attention to such issues. The government's commitment to protect from environment has two positive and negative aspects. Negative aspect implies that the states are committed to avoid damaging to environment. Positive aspect implies that the states are committed to protect from environment. Compliance with this obligation is mandatory for the states under their jurisdiction by themselves and their nationals; further respect to this obligation in the regions out of national jurisdiction of countries and in the regions such as South Pole and high sea concerning environment of other countries is mandatory (Biermann, 2000). According to International Law Commission, any improper international action of a state will be followed by international responsibility of that state. This commission believes that an international action will be called improper if it causes breach of an international commitment, appointed to the state due to the nature of international law. In this regards, the contributing elements in this definition include: improvement action and appointment of improper action to state. Under generalization of the definition for international responsibility to international laws of environment, it must state that:

1-destruction of environment inside borders of a country under no trans- border effects will not be followed by any responsibility for that country.

2-according to International Environmental Law, just error at international responsibility is not considered as a determinant. In other words, commission of separate but dangerous acts provides the responsibility for international responsibility of states.

Therefore, it can deduce that damage due to occurrence of an event or as the result of ordinary operations of a factory or even as the result of breach of obligation requires for the responsibility by the party who has damaged. In other words, states regardless of the reason for the damage entered to the environment of other countries are responsible for the damages (Brearly, 1999).

Second Discourse: Global Commonalities

Protection from environment has appeared as a common concern, because the number of treaties existing at this new area goes beyond, mentioned that there are over 300 multilateral treaties pertaining to this issue. Most of treaties elaborate the people's concern rather than direct benefits of one or several states. These treaties are targeted in benefits of human beings, that it can achieve this through international collaboration by all the states, even they reach no benefit. Convention on Climate Change in the first paragraph of the introduction in this convention states that changes in climate and adverse effects from climate have appeared as a major concern for human beings. Further, the Convention on Biological Diversity (CBD) in the introduction section announces the major concern about environment as follows: member states with awareness from intrinsic value of biodiversity and ecological, genetic, social, economic, educational and cultural values and awareness from importance of biodiversity for protection from environment have put an emphasis on protection from biodiversity as an issue for human beings. According to introduction section in Environmental Protocol or Madrid Protocol (1991) at the area of protection from environment at South Pole, it can perceive that creation of a comprehensive method for protection for environment at South Pole associated ecosystems pertain to the benefit of human beings. These samples indicate the global commonalities have a comprehensive concept that are not grounded on specific rules and regulations but are a general basis for concern of society. Acceptance of right and duty

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of international society as a whole for resolving regional and global environmental problems requires building balance between common benefits of global society and national sovereignty, i.e. such elements must not be handled separately under jurisdiction of state officials due to importance of globalization and results of potential qualitative decline or destruction of environment. Hence, the states that have such elements in line with protection from environment under their jurisdiction must adhere to the rules and regulations of environmental protection (Chassis, 2007).

Second Discourse: Dimensions and Evaluation of International Environmental Responsibility

International environmental responsibility of states implies discussion on important aspects of international law. When breach of norms and fundamental rules of international law threaten security and future of man, international responsibility will find a special place, finding a different aspect in relation to breach of environmental rules (Guruswamy and Palmer, 1997). Since the early 1970s under increasing increase of destruction process of environment and man's awareness from his need for survival, issue of international responsibility of states for environmental damages appeared as the traditional principle in international law, transforming it to an inefficient regime at environment (Reisi, 2008). Hence, to achieve this aim, principles, rules and methods are required to develop necessary stimulants to achieve these principles.

First Discourse: Responsibility due to Breach of Rules of International Law

State responsibility has been introduced as one of the fundamental principles of international law which arises from nature of system of international law and the doctrine of state sovereignty and equality of states. Importance and position of responsibility in international community goes beyond national community, because international community refers to an environment that countries decide freely based on their sovereignty, and this exposes to equal freedom with other countries. International responsibility has been regarded as systematic, fundamental and necessary mechanism for mutual relationship between states (Malcolm, 1998). International responsibility of state implies that if a state commits an action that is assumed improper by international community, whether the state can be known responsible for that action and whether the state can be known as the offender, undergone prosecution and punishment. In international law, since the period of Hugo Grotius at 17th century AD, offense has been accepted as a basis for responsibility of state.

International referees and judges at 19th century and at the early 20th century have constantly striven to find the cause of offense so as to issue the decree for state responsibility. International referees decided to exempt the state which has been responsible for offense under no proof of fault of the defendant states by the victim (Honey). Industrial revolution has considered human communities at a modern stage of intellectual growth and evolution and production instruments; more specifically, at age of atom, international communications and use of atomic energy, industrial revolution extended the risks due to these elements from personal to public state and from domestic to international state, under which all the people felt themselves exposed to these great risks. Therefore, new necessities in communities mentioned theory of risk as a basis for justified responsibility so as to support from the victim. Great industrial company's especially multinational companies benefit from their activities due the risks which they raise for others, deducing that social justice informs the states to think about the risks due to these activities and compensate the damages, regardless of any need for proof of their risk. In this regards, altogether with their collaboration can provide the economic security at community. To sum up, international jurists at the end of 19th century grounded theory of state responsibility without any risk. Terri paul has been the first jurist who invoked to The Grotian Theory Of The Atonement (Resenstocj, 1995). Without doubt, under existing conditions from structural perspective and the executive mechanism, there are numerous defects at international level. It has been stated about state responsibility that: it cannot mention state responsibility properly due to the reasons below:

- a- There is no real possibility for the use of criminal sanctions about an independent state, that war has been mentioned as the only criminal sanction.
- b- An action is made to enforce punishments under reaching to victory at war, whereby it is announced that criminal sanction will be a revenge considered by the conquerors at war.

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c- Punishment by offender state might annihilate the responsibility by natural persons who have taken step by the name of state.

In this regards, an executive approach for state responsibility must be predicted, that such approaches include:

a- Use of sanctions and prohibitions

b- Issuance of license for use of force

c- Development of Peacekeeping Forces (Report of Canadian Commission)

Hence, special feature of international responsibility due to environmental damages is one of the important legal concepts which organize the relationship between states, mentioned with principle of sovereignty. According to this principle, states are free in use of their natural resources in their territory so far as this principle does not intervene in the similar laws of other states at this area. Therefore, sovereignty principle of states assures the right for exploitation from existing natural resources and the right for opposition to territory of others. As a result, state activity resulting in transborder environmental damages raises risk and damage, whereby the state will be responsible for the damage. Anyhow, international responsibility of states has been considered at arenas of international law, mentioned with huge complexity and ambiguity based on Garcia Amador' viewpoint. Nonetheless, international responsibility of states is considered as a development which develops the pillar at international system, that lack of respect for rules of international responsibility of states cause undermining international law and instability and security at international environment (Ticehurst, 2002).

Second Discourse: International Responsibility due to Unprohibited Actions

According to responsibility theory for unprohibited actions, compensation of damage has been an early commitment, not attributed to realization of an international offense. In other words, with regard to this theory, damage by a country to another country is sufficed to build responsibility, however an action which has been made had been allowed in sake of international law. Importance of this issue has caused the international law commission considers issue of "international responsibility due to wastes from the activities which have not been prohibited based on international law" in its agenda. Ultimately, the commission issued the articles about avoidance from transborder damages arising from dangerous activities in 2001. Commission has targeted in providing a compensation for the activities which have adverse effects, although they are totally useful from social perspective (Ticehurst, 2002).

Third Discourse: Pillars of International Responsibility of State

a- It can be appointed to state due to international law

Regardless of the basis for conflict, the causal relationship between an offender's action and the damage must be confirmed, that the damage must not be far from mind. At this area, pollution proposes special issues due to several reasons; firstly separation of distance of source from damage area might be several meters or hundred miles. There is doubt about the cause of relation, even where it can specify the pollutant activities; secondly, adverse effects of a pollutant might not be felt for years or decades after the pollution. For instance, consequences of leakage of radioactive might be due to increase of the materials such as cancer, differing from occurrence time of pollution. This issue has been clear in Chernobyl disaster in 1986, in which 29 individuals were died, yet this disaster caused prevalence of cancer among individuals in long term. Complexity of this situation with involving factors might raise damages; thirdly some of the damages occur when the pollution continues (Shelton, 2002). For instance, this comes true in deterioration of buildings and monuments or in rise of adverse effects on growth of plants. Appointment of responsibility to a source more than other sources is much more difficult (Rosenlock, 2002). Ultimately, the pollutant due an important role under natural conditions does not cause the same effects. Therefore, depletion of pollutants in a river does not cause the same damage in short term or long term.

Under the same conditions, wind or lack of it, fog and sunlight might change effect of air pollution or its nature. For instance, fog is a harmful compound from the pollutants that intensifies the temperature inversion and avoids resolving air pollutants. This arises from different sources including industry, domestic heating devices and motor vehicles. Under such status, it seems that appointment of damage to a cause can be impossible (Rosenlock, 2002).

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b- Breach of international responsibility for a state

With regard to old theory of international responsibility of state, any illegal international action of a state cause's international responsibility, that is, a state is responsible for a damage arising from pollution, for which it must be a certain amount for compensation (Rosenlock). Principle 13 of the Rio Declaration at the area of development of internal law puts an emphasis on responsibility and compensation of damages from pollution and other environmental damages to victims. Using a more systematic mechanism, states collaborate with each other for development of international law about responsibility and compensation of loss due to harmful effects of environmental damages arising from the activities which go beyond jurisdiction of states. Currently, Space Treaty Revisited: "International Responsibility" has been mentioned as one of the several institutes which have taken step for compensation of damage, that such compensation of loss turns back to support from environment by the person, that the person can complain about his environmental status, even no damage has entered to him (Article 12 of **Space Treaty Revisited: "International Responsibility"**).

c- Arrival of damage

Occurrence of damage has been assumed as one of the necessary pillars for realization of responsibility. When any defect is raised in properties or any benefit is lost or any damage is entered to the person, it can say damage has occurred.

Environmental damages include:

- damage to properties: damage to agriculture products arising from dust particles, acidic rains, damage to animals and abrasion of buildings

- damage to health: Respiratory and cardiovascular diseases and responsibilities of the job

- loss of benefit: lack of possibility for optimal use of agriculture products and reduction of horticultural products due to damage to leaves

The polluter's responsibility is due to entering damage, that it can take step for lawsuit in line with the responsibility against the polluter of air in case it can witness illegitimate action by him resulting in damage.

Fourth Discourse: Performance Bond and Compensation of Damage

There are numerous environmental agreements included of the rules with positive incentive motivations that pave the way for performance bond. These implications include financial cooperation, technology transfer and flexible implementation of commitments. Positive implications and assistance for compensation of additional costs pertaining to implementation have been mentioned as the barriers that will avoid acceptance of them with compliance with international commitments. The methods for lack of implementation of commitment have been considered as a part of international environmental agreements, continuing in this way. This method was developed based on Montreal Protocol mentioned as a successful method and used as a pattern for other treaty systems. This method aims to condemn a state due to breach of its responsibility, that vision of these implications is assumed to assure a secure future for treaty system. Implementation of this method relies on collective monitoring by the state members, yet its secondary role puts an emphasis on how to settle dispute (Lloyd and Allan, 2009). So far as the performance bond to punish the ones who negate the international rules does not exist, the states are responsible to adopt necessary legal and judicial implications to observe these rules in their legal system. Article four in The MARPOL Convention was adopted on 2 November 1973 at the area of avoidance from pollution of ships has been regarded as the oldest treaty. With regard to this convention, violation of any of the rules in the convention must be prohibited, that it must take penalty from the ship management for any violation in case the violation was proven based on the rules of this convention. Violation of any rules of this convention under jurisdiction of any member state must be prohibited, that adopted performance bond must be under rules of any member state. Such performance bonds must enjoy sufficient intensity so as to avoid violation of convention, that such intensity must be enforced regardless of the area of violation in a uniform way. Two treaties pertaining to hazardous materials know criminal offenses as the main cause. 1989 Basel Convention has stated at the area of control of transboundary movement of hazardous wastes in paragraph 3 and 4 of article four in this convention that

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illegal movement of hazardous wastes and rest of wastes is an offense. Any member state in the convention must adopt suitable administrative or legal implications to enforce provisions of this convention including the implications to avoid and punish the actions against this convention. Similarly, Bamako Convention at the area of prohibition of entry of hazardous wastes to Africa and control of transboundary movement of hazardous wastes and management of solid waste materials in Africa has stated that importing such wastes is illegal, considered as an offense (Lloyd and Allan, 2009). Any state must made attempt through setting domestic legislation in a special way so as to enforce criminal punishments for the ones who have assisted for illegal importing of wastes; these punishments must be so intense to avoid such behaviors. Due to the priority given to avoidance from conflict, threatening environment resources might be a threat to future through settlement of conflict. The environment law requires more attention to conflict settlement methods so as to avoid conflict and take step through mediating for resolving events. Currently, judicial and quasi-judicial solutions are less likely used, and attempts have failed to accept the required protocol in international agreements. It seems that most of states have not a clear method. Yet realization of thorough right in international law is unconventional, however it seems with a growing process. Although legal action to protect from environment is not satisfactory, it will appear as a solution ultimately and serve as an incentive for both parties' satisfaction, likewise what occurred between two countries of Norway and Australia to determine phosphate lands in Norway. North American Agreement on Environmental Cooperation (NAAEC) and Nordic convention are pioneer in providing people's participation in settlement of conflicts. North American Agreement on Environmental Cooperation (NAAEC) refers to the first environmental agreement which has raised an international procedure through which individuals, environmental organizations and private companies complain about inattention by a government to enforcement of environment law. This agreement develops a trilateral entity entitled the Commission for Environmental Cooperation (CEC) developing from a council, Secretariat and a Public Advisory Committee. The Public Advisory Committee consists of 15 members from 5 state members and provides technical and academic information for the secretariat. This committee can give view on annual plan and budge as well as the issued reports. These members attend in the Regulatory Conference Annual Meeting (Shelton). Mechanism of North American Agreement on Environmental Cooperation (NAAEC) allows the non-governmental individuals and organizations to complain about a member state which has had fault in effective enforcement of environment laws (article 14). This process has not been designed to compensate damage due to individual environmental damage, but it has been developed to assure this fact that the members adhere to their obligations to affiliated environmental rules. Any resident in North America can sue. Identity of assertive should have been specified, and the member state should have been informed of the issues mentioned in the claim. How the order is must be represented to secretariat for handling the complaint. Secretariat detects whether a response is sufficient to five to this lawsuit or not. Then, with regard to the requirements in paragraph two of article 14, the lawsuit is sent to the state which has complained. With regard to article 14, secretariat asks response from the state which has complained that if the complaint pertains to the issues which require for further examination, the member state adheres to give a response which can include response to complaint, referral of issue to judicial authorities affiliated to special reforms. Secretariat can reject the claim based on the response or Secretariat might give order to issuance of what happened and grant the response to the affiliated council. The council must issue this proposal with agreement by majority of members and then allow the Secretariat to take step for registry of events. At international level, inter-governmental approaches can be developed through the Protocols for international agreements. Non-state actors (NSA) have a much more difficult situation, because they face hard rules for the right to attend in most of international courts. For instance, in European council, the permission for public lawsuit has not been given to Non-state actors (NSA) unless they are considered in the defined class, that is, they should have been damaged from the adopted actions. Nevertheless, European council commission has received over 400 complaints about lack of compliance with environmental requirements since 1989. Members of the Antarctic Treaty and Basel Convention have had their activities at the area of control of transboundary movement of hazardous wastes and formulation of responsibility protocols through the

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special negotiation at each treaty. The rules and policies issued at global, regional and national levels affect each other. The innovations which have started at a governance level result in similar approaches which are accepted in other legal systems. Majority of states have had fewer numbers of rules pertaining to advocacy from the wild life, so that arresting, killing and other uses were possible. Further, instruments and techniques for implementation of environment law indicate a process which is in line with different levels of governance. According to the regional seas agreements which have introduced in article 704 of United Nations convention about laws of seas around the world, this article has been introduced as an article which announces the principle for overview of potential effects of activities which damage to the environment. However Statute of the International Court of Justice is mentioned as secondary source to determine rules of law, judicial decisions and advisory opinions of the International Court of Arbitration are of great importance, most of these decisions are considered as the approval or discovery of customary international rules. International procedure indicates that the documents which fall far from treaty are not obligatory, although they have contributions in development of international environment law. In this regards, states can avoid serious political barriers to issuance of treaty through acceptance of customary rules. Negotiation period about such documents is shorter that can have effect of sustainability as they are not required for issuance, whereby the states feel having fewer obligations for acceptance of rules and aims which are not obligatory. Further, illegal obligatory documents might seem more suitable in sake of obligatory nature to official agreements. The world protection union prepared the first draft of the world nature charter sent to the member states by the general assembly of United Nations so as to apply their comments and then issued and announced officially in 28 October 1982. Non-governmental organizations attended in issuance of this draft. One of the factors affecting compliance with credit is a pillar that the associated documents have been grounded on it. States with membership in South Pole treaty oblige to realization of aims and principles of this treaty (Riley, 1994). The motivations which improve adherence and compliance include technical and financial aid for institutional enhancement for improvement of the infrastructures in developing countries.

CONCLUSION

Regulation of relationship between the states has been introduced as the most traditional dimension in international law. Traditional international laws governing international relations at classical period in the 19th century include the rules based on mutual action or balance in the undertaken requirements. At 19th century and later and after the First World War, we have witnessed creation of a number of international rules which have been separated from the principle of mutual action and have not been based on direct governmental benefits that undertake the international commitment. Benefits of all the countries and international community have been considered.

International responsibility is considered as a legal entity to compensate losses to other members due to actions or omissions of international community. From the very beginning, concept of international law has been proposed and developed in the light of international relation development and increasing correlation of countries to each other, resulting in manifestation of political and criminal aspects. This concept as the unity in international responsibility which has looked into all the international obligations lost its importance based on degree of importance of negated commitments for the members of international society who monitored the crime. In this regards, a state which has committed to international crime, in addition to civil liability of the state to compensate loss, individual criminal responsibility was being developed for the ones who committed crime. On the other hand, all the members of international society had the right to litigate against the state which has committed crime and ask the responsibility. States' obligations at the area of environment law enjoy special position. This rule increases with the rules pertaining to common humanity heritage. It is obvious that the rules encompassing international environment laws are called to those rules which are in favor of common humanity benefits. Rules of international environment laws do not encompass direct benefits for the states. Rules of international environment laws are targeted in protection from sea, air, plant and animal species. Ultimately, these rules are targeted in regulating the relationship between states.

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