

International environmental law in the control of dust under the supervision of The United Nations

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ABSTRACT

In recent years, the dust has become one of the most critical environmental challenges, has disrupted human life and endangered their health and well-being. Dust pollution has a transboundary character, so to deal with it and protect the environment, it is necessary to have laws and regulations that will address environmental issues and problems in international law and resolve their legal matters. Accordingly, the purpose of this study is to investigate the approach of international law against dust with emphasis on the United Nations Environment Program. In this study, a descriptive and analytical manner and reports from environmental and meteorological organizations and the United Nations World Health Organization and library tools reviewed international legal documents and regulations. The study showed that countries' responsibilities have become ambiguous despite the ratification of essential treaties and laws of international law in the protection and development of the environment in numerous conferences and conventions such as the Stockholm Conventions (1972), the Rio Conference (1972-1992), the Universal Charter for Nature (1982), the Johannesburg Summit 2002, the International Agreements (ASEAN) for dust control, the lack of global agreement to stabilize quicksand, combat desertification and drought, and use global capacities and funding to combat dust.

Keywords: International Law, Dust, International Environment, United Nations.

Introduction

In terms of legal documents, adequate measures have not been approved due to the existence of political, social, economic, and cultural issues between the states involved in the dust phenomenon. Of course, the UN General Assembly has adopted resolutions for the participation of countries in this regard. Still, the international community has not succeeded in approving an international document for dust. Because dust has a devastating effect on the natural environment and human health, this unhealthy phenomenon is a violation of a healthy environment. For example, dust storms have a disastrous impact on the natural environment and human health (Habibi, 2003, 138). There are several conventions in the world about dust: the International Convention against Dust by the United Nations in July 2017, the International Convention on Desertification in Paris in 1994, Espoo Convention on Environmental Impact Assessment in 1991.

On the other hand, one of the most critical issues of environmental law is the commitment of countries to cooperate in addressing ecological problems. Article 24 of the 1977 Stockholm Declaration of Sweden states that international matters relating to the protection and improvement of the environment must be dealt with cooperation. Article 7 of the 1992 Rio Declaration also emphasizes that "nations must work together in a spirit of global partnership to protect, safeguard, and restore the health and integrity of the planet's ecosystems." Article 13 of the Rio Declaration refers to both national and international activities in the following text: governments are required to enact federal laws regarding liability and compensation for victims of pollution and other environmental damage. Governments should also work together to develop further international law relating to liability and compensation for the harmful effects of environmental damage caused by activities carried out within their jurisdiction or in areas under their control and outside their jurisdiction. The affected countries and countries with incorrect consumption patterns have more responsibility than other countries regarding the responsibility of governments to deal with the destructive effects of dust and prevent their spread (Abdollahi et al., 2010, 203).

Therefore, environmental protection is a global issue and therefore needs a global response. The approach to dealing with environmental issues has changed from a model of mutual responsibility of countries that cannot lead to appropriate solutions to the establishment and strengthening of international cooperation. Governments that produce dust or facilitate the dust production process have obligations to prevent environmental damage and to make dust. These commitments exist both before and after dust storms. These governments have to fulfill their obligations under international environmental laws and resolutions to prevent transboundary damage caused by dust.

To date, no international or regional agreement or document on dust pollution has been concluded globally. The most famous local document, the ASEAN program in 2002, deals with forest fires in the Southeast Asian region, which polluted the air with thick smoke and dust and spread to other neighboring countries, Malaysia, Singapore, and Thailand. Therefore, this phenomenon should be studied among international treaties and general principles of international law. In this study, a descriptive and analytical manner and reports from environmental and meteorological organizations and the United Nations World Health Organization and library tools reviewed international legal documents and regulations. In general, the purpose of this study is to examine the approach of international law against dust with emphasis on the United Nations Environment Program.

Theoretical foundations of research United Nations Environment Program

The United Nations Environment Program (UNEP) is a subsidiary body of the United Nations General Assembly, which was established after the Stockholm Conference under Resolution 2997 on December 15, 1972, and has three bases¹:

The Board of Governors is composed of 58 representatives of the member states of the program, and the UN General Assembly elects them for 5 years based on geographical divisions. The Board of Governors meets once a year and submits its report to the General Assembly through the Economic and Social Council. Its main task is to promote international cooperation for environmental protection and forecasting and adopting methods for collaboration and coordination in the field of ecological programs.

Secretariat: headed by a Secretary-General, who is elected for four years on the recommendation of the Secretary-General of the United Nations and with the approval of the General Assembly. The Secretary-General is required to submit annual plans of countries in the field of environmental protection to the Board of Governors (the Secretariat also chairs the Environment Program).

Environmental Fund: This fund was also established to fund UNIP and fund the projects and proposals submitted by the Board of Governors. The fund is an excellent source of funding from UNIP, is based on voluntary contributions, and is funded by the United Nations.

¹ <http://www.unep.org>

It should be noted that the Environment Program has been upgraded from a sub-pillar with limited members to a significant and inclusive pillar consisting of all UN member states since December 2012 at the UN General Assembly (United Nations, 2012).

The role of UNIP in combating dust and desertification

In 1974, following the adoption of a formal UN General Assembly resolution, UNIP launched a wide range of activities in four continents: Asia, Africa, Latin America, and Europe, including the design and implementation of desertification and dust control programs and soil and water conservation projects with the help of developed countries. However, subsequent evaluations showed that holding workshops on how to deal with desertification and dust and conducting various regional and international seminars and meetings through UNIP was not in line with the needs of the international community. Therefore, the Rio Conference and its final resolution are devoted to desertification and dust control, and the United Nations is urged to take this global problem seriously.

In this regard, Resolution No. 719/47 was adopted by the 47th Session of the General Assembly by the United Nations, which eventually led to the formation of the "United Nations Convention on Desertification in countries facing serious drought and desertification - especially Africa." In 1994, the text was finalized in Paris.

It can be said that the first agreement that explicitly addressed the issue of dust was the ASEAN Agreement on Dust Control in 1997, which was held at the level of the Ministers of Interior in Kuala Lumpur and its documents were compiled and signed. The objectives of this agreement emphasize the adoption of preventive measures and national coordination and bilateral and multilateral cooperation, and the implementation of appropriate measures and management in emergencies. Another UNIP action is the 1981 FAO Charter, which serves as an objective document for international cooperation and the rational use of soil resources as an essential global environmental issue and the prevention of soil degradation, which was adopted by UN Resolution 8/81 at the 1981 FAO Conference.

In 1982, the Global Soil Policy and Program were developed by UNIP to recognize soil resources and encourage and assist countries in soil management and fertility. In 1991, the Espoo Convention assessed the environmental impact of overseas operations. According to UNIP, the destruction of wetlands by humans has led to the production of dust and sandstorms and environmental catastrophes. Therefore, the Ramsar Convention was established in 1971 with the participation of 18 countries with the aim of sustainable use of nature and wetlands, and the establishment of the oldest international intergovernmental agreement was realized in it.

ASEAN International Agreement on Dust Control

This document is the first agreement that explicitly addresses the issue of dust. This agreement was formulated and signed following the 2002 Johannesburg World Conference at the level of ASEAN Ministers in Kuala Lumpur (Ganjalinejad, 2015, 91). The content of this agreement emphasizes the adoption of preventive measures, precautions, and national coordination measures, bilateral and multilateral cooperation, taking appropriate steps in emergencies, and proper forest management while identifying the harmful effects of dust on humans, living ecosystem resources, and other legitimate uses of the environment. All obligations incumbent upon Members under Article 4 of this agreement include the following:

- A. Participate in the development and implementation of measures to prevent transboundary pollution of dust because of drought and forest fires by controlling fire sources, early detection of fires, development, and monitoring of evaluation of warning systems, exchange information, and technology with each other.
- B. When transboundary pollution originates from within the territory, a request for relevant information or advice should be responded to promptly, and this is to reduce the consequences of transboundary contamination.
- C. Use of administrative and legal measures to implement the obligations contained in this agreement.

United Nations Convention to Combat Desertification and Dust 1994 (Paris)

Africa has a very high rate of severe drought or desertification due to the increase of developing countries among the countries that suffer from these phenomena. The desertification is also a complex interaction of physical, biological, political, social, cultural, and economic factors. According to Article 4 (c) of the Convention, sub-regional, regional, and international cooperation between countries involved in the field of environment is also emphasized, and it is stated that the problem of desertification can only be resolved through regional and international cooperation of member states (Babaei Mehr and Ismail, 2014, 138).

The experiences of countries and international organizations in combating desertification and mitigating the effects of drought, especially in the implementation of the United Nations Desertification Action Plan, were endorsed at the 1977 Desertification Conference, and it has not progressed much and has not been as expected. Therefore, there is a need for a new and practical approach in the context of sustainable development and all level. Consequently, they provide a basis for combating desertification by identifying the validity and relevance of the decisions taken at the UN Conference on Environmental Development, especially Agenda 21 and Chapter 12.

As stated in paragraph 13 of Chapter 33 of Agenda 21, the commitments of developed countries are re-emphasized. Recalling General Assembly Resolution 47/188 for the African continent and emphasizing the Rio Declaration on Environment and Development, governments have the sovereignty following the Charter of the United Nations and the principles of international law to take action to extract their resources in line with their environmental and development policies. They are also responsible for ensuring that internal activities in the jurisdiction or its control do not cause damage to the environment of other states and regions outside the scope of their national jurisdiction (Babaei Mehr and Ismail, 2014, 63).

Improve cooperation and coordination at regional, sub-regional, and international levels under Article 3 (b) of the Convention and focus human, organizational, and technical financial resources where necessary.

By Article 5 of the Convention, raise public awareness and facilitate the participation of local communities with the support of non-governmental organizations in their efforts to combat desertification and mitigate the effects of drought. In line with Article 9 of the Stockholm Declaration on the Environment, it calls on developed countries to make efforts to provide financial resources and the transfer of knowledge and technology by these countries to endangered, developing, or less developed countries. Information and participation of people have been considered. Article 16 of the Convention considers the collection, analysis, exchange of information and related short-term and long-term statistics between members, and members must ensure that the group, research and exchange of information meets the needs of local communities and the needs of decision-makers to address specific issues and that local communities are involved in these activities.

Article 10 of the Convention to Combat Desertification emphasizes some of the essential points in the development of the National Action Plan as follows: (Ganjali Nejad, 2015, pp. 107-108)

- A. The program is accompanied by long-term strategies to combat desertification and mitigate the effects of drought and emphasizes its implementation and integration with national policies for sustainable development.
- B. It has the potential to adapt to changing circumstances and is flexible enough at the national level to adapt to social, economic, biological, and physical conditions.
- C. Prevent degradation in areas that have not yet been degraded or slightly eroded by implementing a follow-up method.
- D. Strengthen national meteorological, hydrological, and climatic capabilities as well as the drought warning system.
- E. Organizational and legal policies and frameworks that promote cooperation and coordination between donor communities and governments to local populations and community groups, and facilitates and enhances local populations' access to appropriate information and technologies.
- F. Arrangements for effective participation at local and regional levels by NGOs and local communities, including men, women, farmers, ranchers, and their representative organizations in policy-making, decision-making, implementation and review of programs.

- G. Continuous review, evaluation, forecasting, and preparation of reports on implementation and necessity and obligation to it.

Besides, in paragraph 3 of the Annex to the implementation of the Convention to Combat Desertification for Asian Countries, the following points were emphasized:

- A. Appropriate organizations and institutions are responsible for preparing, coordinating, and implementing the program.
- B. Local communities and groups should participate in the formulation, coordination, and implementation in various ways, and the priority of the performance of work in the regions should be determined.
- C. Past and present plans to combat desertification should be evaluated with the participation of affected groups, and this evaluation should be the basis for designing and implementing programs.

Agenda 21, Chapter 12 of the Comprehensive Plan for Sustainable Development, 1992 - Rio de Janeiro

The Agenda 21 is a comprehensive plan for sustainable development which was adopted in Rio de Janeiro (1992) by world leaders, who set the appropriate model for economic growth and improving the quality of life of the present generation and not depriving future generations and pays attention to social and environmental issues and offers solutions to them. The participation of local communities, rural organizations, national governments, non-governmental organizations, and international and regional organizations in the fight against desertification and drought is essential. The scope of this program is as follows (Mousavi, 2001, 440):

- A. Dealing with land degradation through various means such as more soil protection, afforestation, and reforestation
- B. Development of comprehensive anti-desertification programs and their inclusion in national development and environmental plans and programs

The Agenda 21 is dynamic programs that will be implemented in different countries by different organizations depending on the conditions of its facilities and other priorities and with full respect for the principles contained in the "Rio Declaration of Environment and Development" and this program will evolve with the circumstances and needs change. This process marks the beginning of a new global partnership for sustainable development.

International legal documents for soil and land resources management

Desertification is a phenomenon that affects one-sixth of the world's population, 70% of dry land to 3.6 billion hectares, and negatively affects a quarter of the world's area. The most apparent effects of desertification are the destruction of 3.3 billion hectares of the world's rangelands, which account for 73% of all rangelands. The reduction of soil fertility is more than 47% of arid areas consisting of rain-fed lands and destruction of irrigated lands, which cover more than 30% of densely populated areas of arid lands and has agricultural potential. It is another manifestation of desertification and dust production.

In the 1970s and 1980s, soft law instruments such as soil and land charters were enacted at the regional and global levels. A specific international legal tool on the conservation and sustainable use of soil and land resources is the 1994 United Nations Convention to Combat Desertification in Countries Seriously Faced with Drought or Desertification, especially in Africa. The UNIP Global Soil Policy and Program was adopted at the Twelfth Session of the Board of Governors in May 1982, which considers the importance of soil resources in the global arena to prevent the destruction of the world's soil. It seeks to reduce soil degradation by encouraging and assisting countries to improve their fertility and soil management. It includes a list of facilities provided by international organizations and all national governments (Lothar Gandling, 2010, 125).

Europe is a leader in the creation of environmental legal documents for specific territories. The Soil Charter was adopted based on 12 principles by the Committee of Ministers in 1972. The purpose of this Charter is to promote and develop soil protection against human or natural damage and their restoration

(Tahoori, Parisa and Parvin, 2016, 153-155). Europe is the only region in the world that has been able to use this non-binding document in the development of regional land laws. In essence, a "soil" charter is well defined. The limited soil resources, requesting farmers and foresters to use methods that maintain soil quality, and the need to protect the soil against erosion and pollution are all special considerations of this Charter for the protection and sustainable use of earth, which is manifested in principles 2, 4, 5, 6, respectively.

The Global Soil Charter and Global Soil Policy are more targeted documents than Agenda 21, presented by the FAO in the early 1980s and used over the past 20 years to support international cooperation for the rational use of soil resources. According to Resolution No. 8/81, the World Soil Charter was approved at the FAO Conference on November 25, 1981 (Ganjali Nejad, 2005, 110-112). The goal of the Global Soil Charter is to strengthen international cooperation for the optimal use and protection of soil. Although the Charter is not technically more comprehensive, it emphasizes the vulnerability of global soil resources and considers soil conservation essential to maintain food production capacity in soil resources. According to the Charter, each state has a responsibility to use the best land-use practices, improve soil fertility, prevent soil loss, and provide technical, organizational, and legal incentives and support. Although achieving the goals of the Charter and the guidelines seemed impossible, but it met the basic needs of a non-binding document suitable for the modern age due to their ecological focus. For this reason, this Charter can be considered as an appropriate framework that can be directly translated into an international environmental legal instrument.

The judgmental procedure of International Environmental Law and Compensation

Judicial procedure is the sum of judicial judgments that the courts follow the same method on one of the legal issues, and if the opinion is repeated, it can be said that whenever those courts face a lawsuit, they will make the same decision (Pourhashemi and Parandeh Motlagh, 2016, 88-89). The principles are recognized in a variety of ways, such as the conduct of states, their inclusion in international law instruments, their inclusion in domestic law, and through the rulings of courts and tribunals. Some principles are specifically stated in regional and global instruments, while others are often based on customary law.

The issue of the environment has been raised directly and indirectly in various international arbitrations and cases. It should be noted that international custom is not a treaty, but according to the second paragraph of Article 38 of the Statute of the International Court of Justice, custom is a proof and evidence of a general procedure and practice that has been accepted as a legal rule (Ganjali Nejad, 2015, 100-101). One of the most important challenges to the jurisprudence for the development of international environmental law is the adoption of a customary approach to the preference of national sovereignty of states over the common interests and heritage of humanity by the International Court of Justice.

In many of its rulings, the Court has not taken advantage of the opportunities created by international environmental law to develop this field of law by adopting a conservative approach. In the 1996 advisory case (threat and use of nuclear weapons), the Court failed to take advantage of this opportunity.

The principle of legal equality of states requires that governments use the natural environment fairly, so that all countries have equal access to it. Under Article 21 of the Stockholm Declaration and Article 2 of the 1992 Rio Declaration on the Environment, states are responsible for ensuring that activities within their competence or oversight do not cause harm to the environment outside their national jurisdiction. However, the commitment not to cause harm to the international environment is substantially well implemented, but the question remains who can be the plaintiff and how to compensate the damages (Shah Hosseini, 2017, 154-157).

In any case, the competence to protect public commonalities against environmental damage should be entrusted to international organizations that act in the interests of the international community. In addition, it can rely on the principle of universal jurisdiction, which is established in the field of criminal law and has a high status.

Expansion of international environmental treaties

One of the features of international environmental law treaties is the extension of treaties that are common to the majority. In fact, these treaties seek to protect the global environment as a common heritage of humanity and do not maintain and develop mutual relations between states. The rationale for the expansion of environmental treaties is based on the principle that the environment has no borders, therefore international cooperation is a condition for its realization, and international environmental law is based on the international cooperation of states.

In fact, environmental treaties seek to establish a permanent legal mechanism to expand cooperation between treaty states. This means that international environmental conventions try to establish permanent and organizational cooperation between governments in environmental protection by creating structures and organizations. Therefore, it is observed that a structure has been considered for the implementation of the Convention in many international environmental treaties (Poor Hashemi and Parandeh Motlagh, 2016, 85-86).

In this regard, environmental treaties have taken steps in two ways for international cooperation between governments to have a permanent legal mechanism. The first is the referral of an environmental treaty to an existing international organization, which can refer to the International Convention on Preparedness, Response and Cooperation against Oil Pollution, London 1990, which has been designated by the International Maritime Organization as the Convention. The second is the environmental treaty that creates an international organization as a permanent legal mechanism. We can mention the International Commission for the Protection of the Rhine against Pollution, which was created by the text of the 1963 Berne Convention for the Protection of the Rhine River.

In addition, international environmental treaties have an enforcement mechanism, and a state alone cannot control and oversee the implementation of the treaty, but governments must provide a specific mechanism for implementing the treaties. The process of revising the treaty is also more prominent in international environmental law treaties.

The existence of guidance mechanism is another feature of environmental treaties. In other words, the members of the treaty are advised to enact national laws between their countries in accordance with the cultural, economic, and political conditions so that the objectives of the convention are properly implemented in the domestic system (Case et al., 2000, 58).

In general, the ratification of the Protocol of environmental law is more visible than international law, and this is because governments are reluctant to accept responsibility at the outset of cooperation. Therefore, Convention is the framework of general agreement. The environmental issues are also a function of time and change over time. The states cannot agree on all aspects of the issue in a single document, and they will deal with the generalities of the issue in the original document (Convention) and agree on the details of the issue in future documents entitled protocols. At present, despite the drafting and ratification of more than 1,000 bilateral or multilateral treaties in international environmental law, the implementation of environmental commitments faces technical and executive difficulties.

The government's reluctance to accept more responsibility in international environmental law is one of the serious problems in this field of law. The failure to approve the 1997 amendment to the Kyoto Protocol is one of the important examples of the existing legal challenge (Pourhashemi and Arzhamand, 2013, 59). In addition, the diversity of international environmental treaties has created conflicting obligations and responsibilities for some member states. In fact, the normative system of international environmental law, as a coherent legal system, has been reduced to a value or moral system, and this has caused problems in defining the scope of international responsibility of states.

International cooperation on global environmental protection

One of the issues in the development of international environmental law is the commitment of countries to cooperate in addressing environmental issues. Article 24 of the Stockholm Declaration states that "international issues concerning the protection and improvement of the environment must be dealt with in a spirit of cooperation". Article 7 of the 1992 Rio Declaration also emphasizes that "States must cooperate with the global community to protect and restore the health and integrity of the planet's ecosystems."

In addition, Article 3 of the same declaration refers to both national and international activities in this field. "Governments are required to enact the necessary national laws regarding the liability and compensation of victims of pollution and other environmental damage. Also, they have a responsibility to work together to further develop international law relating to liability and compensation for the destructive effects of environmental damage resulting from activities that are within their competence or in areas under their control and outside their competence."

The countries are obliged to send warnings to endangered countries in the event of imminent danger while committing to their plans for unforeseen situations (Malkam, 2013, 44-47). In recent years, international environmental law has witnessed the emergence of other principles related to international cooperation (Raeisi, 2008, 83). Article 15 of the Rio Declaration states "Governments take a precautionary approach to environmental issues to the best of their ability."

Conclusion

Today, the surrounding environment has been severely damaged with the excessive use of natural resources and the lack of attention to environmental issues and the lack of proper patterns of progress in the concept of sustainable development. One of these problems is dusts that move from one area to another and cause a lot of environmental damage. Dust is one of the destructive phenomena of climate that have harmful effects and adverse environmental consequences. This phenomenon is one of the most important sources of air pollution that disrupts human life and severely affects their health and property. The dusts have extensive transboundary due to some natural factors such as the occurrence of successive droughts, relative humidity, loss of vegetation in desert areas along with environmental and fabricated factors such as the use of desert water resources, occurrence of wars, the destruction of wetlands and lakes in desert areas and declining vegetation.

Despite the drafting and ratification of important treaties of international law in the protection and development of the environment in numerous conferences and conventions such as the Stockholm Conventions (1972), the Rio Conference (1972-1992), the Universal Charter Nature (1982), Johannesburg Summit (2002), International Agreements (ASEAN) for Dust Control and Numerous United Nations Conventions (UNEP) to Combat Desertification and Dust in Countries severely facing drought and desertification, especially Africa (1994-Paris), the European Soil Charter 1972 and the FAO Soil Global Charter 1981 and Agenda 21, Chapter 12 of the Comprehensive Sustainable Development Plan (Rio 1992) for ecosystem management and the fight against desertification and drought (and dust), which requires all States Parties to fulfill their obligations, unfortunately, countries' responsibilities have become ambiguous due to the lack of a regional or global agreement to stabilize quicksand, combat desertification and drought, and use global capacities and funding to combat dust.

It is proposed that an independent international organization to combat desertification and dust under the auspices of the United Nations be established to help alleviate the crisis based on the long-term interests of the countries involved in the world and to reduce political and economic tensions.

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