COMMON BUT DIFFERENTIATED RESPONSIBILITY IN THE CASE OF UPSTREAM DAM CONSTRUCTION ON INTERNATIONAL WATERWAYS

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ABSTRACT

This article shows that upstream countries have a responsibility to protect the environment and the rights of downstream countries, based on the principle of common but differentiated responsibility in international law. This principle is recognized as an important legal principle for the preservation of the world's water resources. This article aims to examine the legal dimensions of the Southeast Anatolia Project by using an analytical approach and information has been collected in the library form with goal of prompting global peace and security.

Keywords: Environment Law, International Waterways, Upstream Country Law, Dam Construction Law.

INTRODUCTION

The importance of international rivers in the region is due to the fact that the Middle East's share of the world's fresh water is only one percent, which is divided among five percent of the world's population. And two-thirds of them lack any agreement on water sharing. The Middle East has gained strategic importance due to the limited number of rivers, and the crossing of the same few through the territory of one or more international borders. Therefore, the European Union said in 2008: Central Asia's water management is the most important issue, its lack of management is the biggest threat to security (Jafary et al., 2018).

The Tigris and Euphrates rivers originate from the mountains of northern Turkey and flow into the Persian Gulf after passing through several countries. From August 2005, the Turkish Water Affairs Organization started the Southeast Anatolia project in the Tigris and Euphrates international river basin and in the northern Mesopotamia region. From the point of view of international law, on the one hand, countries have control over the natural resources of their country, so they have the right to occupy the source of the river that flows from their country; But on the other hand, over the years, whenever the upstream government seized the international rivers, they were objected to by the downstream governments based on international law.

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The first large structure that was built in this plan was the Atatürk Dam, which was completed in 1992. With the construction of Southeast Anatolia Project (GAP) on the Tigris and Euphrates, 22 dams and 18 hydropower plants have been built, with the production of 7500 megawatts of electricity, an average of 27 billion kilowatt hours of energy is produced annually, and from an economic point of view, 1 million and 58 thousand hectares It irrigates the land. Atatürk Dam is the fifth largest dam in the world in terms of construction volume and the third in the world in terms of hydropower production. Atatürk Dam is the largest dam in Europe and Türkiye.

Many researches have also addressed the legal situation in the possession of upstream waters, but the approach of this research is environment-oriented and does not deal with the laws related to water rights; Or that this issue is discussed from an engineering point of view in some researches (Hamza et al., 2013). There are many studies that have examined the legal status of international waters in other waters; But first of all, the importance of water in the Middle East region due to the current tensions is beyond other regions of the world.

To answer the research questions, they first need to identify the nature of the law (including its role, status, authority and legitimacy, as well as its concepts of "hardness" and "softness") at the local, national, regional and international levels.

The construction of dams in Turkey is a return to the internationally accepted theory, that is, before the Congress of Vienna (1815), when the sovereignty over the rivers was absolute and the interests of other governments were not taken into account. But later, in the Treaty of Versailles in 1919, the term "international rivers" was replaced for the first time by the term "multi-land rivers". In Article 33 of this treaty, a definition of an international river has been given.

International cooperation is a basic global need, especially for solving environmental problems. The international community, in order to take measures to eliminate the aforementioned environmental effects, following the Stockholm Conference, held the United Nations Conference on Environment and Development in 2991 in Rio de Janeiro, Brazil (Druckman et al., 2019). The Rio Conference opened on June 0, 2991 with the presence of the heads of 242 countries and more than a thousand people. This conference ended its work on June 24 with the approval of 0 non-binding texts. In this declaration, several principles such as the principle of prevention, the principle of precaution, the principle of joint but different responsibility of governments in preserving the international environment and other principles have been approved.

THE PRINCIPLE OF COMMON BUT DIFFERENT RESPONSIBILITY OF COUNTRIES

The seventh principle of the mentioned declaration in relation to the principle of joint but different responsibility of the governments stipulates as follows: "Governments must cooperate with each other in order to protect and establish the health and integrity of the earth's ecosystem

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with a spirit of partnership. They are different in the quality of the environment, they have a common but different responsibility (Blackstone, 2011), the developed governments, considering the pressure of their societies on the environment and considering the technology and financial resources they have, the responsibility that the global effort for Achieving sustainable development leads to them, he accepts.

As stated in this principle, environmental protection is the common interest of the international community, but developed countries have a wider and different responsibility than developing countries for the destruction of the global environment. This responsibility is due to the fact that developed countries have overexploited the natural resources of the planet since the industrial revolution due to unsustainable patterns of production and consumption, and this has led to the destruction of the global environment to the detriment of developing countries.

Equality of Governments and Preservation

The principle of equality of countries has always been accepted as a corollary to the principle of sovereignty of states in international law. In fact, sovereignty is the superior power of command or the possibility of exercising a will above other wills, which has been manifested in international law as the supreme and complete power of the country in establishing laws within the borders (Ago, 1991). When the population, land, government and sovereignty come together, a country is formed, and this country, although new and small, has the right to exercise authority and sovereignty like other countries (Fox et al., 2019). It is in the shadow of this sovereignty that the principle of equality of governments makes sense.

Because the imbalance in the international scene will have its effect and the war will inevitably be the product of this imbalance in the international scene. For example, when the League of Nations was formed, this imbalance was ignored. Therefore, the League of Nations was like a union of countries that all had equal veto rights and could leave the League of Nations whenever they wanted. But this legal equality in practice looked like an ideal and could not provide the sweet promises of democracy. In fact, the idea was that equality of rights is not only unreasonable in terms of the theoretical aspect of the case, but also fundamentally and completely contradicts the concept of the community of nations.

In this period, what was more important than loyalty to principles and ideals was preventing the start of another war. Therefore, the maintenance of international peace and security became a hundred times more important in the writing of the Charter, and the countries agreed that the superior powers, having more rights, would have the responsibility of maintaining international peace and security (Kausar, 2017). The great ones have been in power. In the meantime, the General Assembly has been the place of participation of all the member states of the United Nations under the banner of legal equality, but ineffective, and the Security Council has tried to maintain international peace and security with the basis of effective legal inequality.

International Responsibility Regarding Environmental

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On the other hand, the events and environmental incidents that happened during the past years warn the world of humanity that protecting the environment is an international responsibility (Aghaei et al., 2016). For example, in 1984, the toxic gas methyl isocyanate leaked from a factory in Bhopal, India, killing about 2,000 people and injuring almost 200,000 people, the worst such disaster in history, followed by the reactor explosion in 1986 (Ghaeminasab et al., 2024). A little later in the same year, fire hoses caught fire during the extinguishing of a warehouse in Switzerland, causing about 30 tons of chemicals to enter the nearby area (Rhine River), and this incident caused a scandal as the most serious environmental disaster in Europe.

Although environmental issues are not new phenomena in terms of international relations, and even today world leaders have increasingly moved environmental issues from marginal and side sectors to their main political agendas, as a number of international conferences and treaties on global warming and erosion The ozone layer indicates that the world has entered a new century of environmental diplomacy. Most of the concluded international treaties have discussed the issue of responsibility in some fields, such as marine pollution or damages caused by air pollution.

Attribution of Action

First, the "petitioner" is the government, in order to refer to the government's responsibility in terms of cross-border pollution. Then the petitioner must prove three factors, the "respondent" must also prove the harmful act attributed to the other government:

Violation of an international duty: The causal relationship between the action performed and the damage caused-

Existence of material damage and according to international jurisprudence, an act committed by the organs or representatives of a government that violates an international obligation may be attributed to that government. Even actions outside the scope of authority as long as a government body acts with the power and authority of the government, can be attributed to the said government (Sahin et al., 2020).

International law experts have been trying to widen the range of private sector activities that can be attributed to governments, and in doing so, they are sure that governments will resist accepting responsibility for violating an international obligation, because there that the actions and activities of private individuals are discussed, the principles of international judicial procedure oblige governments to make "necessary and appropriate efforts" to prevent those actions and activities, in such a way that if those actions by The said government was doing it, it shows that it has violated its most basic international duty. Therefore, a government has the duty to observe all reasonable and conventional criteria in order to prevent major cross-border pollution. For example, when a government fails to enact necessary environmental regulations, that polluting activity can be attributed to that government, and in fact, the said country has violated its international duties (Wagner, 2017). If a government has taken the necessary precautions, but private individuals located within its jurisdiction or supervision have caused major and fundamental damage to the environment of another country, the government that

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caused the damage must take all necessary steps and measures to punish and punish the offenders. otherwise, the act of pollution may be attributed to that government.

Several treaties also include the responsibility of governments to prevent factors that cause major environmental damage outside the national territory in their jurisdiction, as well as provisions that are claimed to compensate for damages in terms of their negligence in taking the necessary measures. have explicitly specified.

For example, ten years after the Stockholm Conference, the 1982 Convention on the Law of the Sea necessarily repeated the theme declared in Article 22 of the Stockholm Declaration, which was the evolution and further development of international responsibility, but refrained from formulating and presenting any new criteria:
Governments should cooperate in the implementation of existing international law and its further development and evolution in relation to duties and responsibilities to assess and compensate damages and settle related claims (Mogherini, 2017).

Civil Liability for Damage

Environmental issues naturally take on a global aspect with the utmost intensity. Such as cross-border pollution, such as acid rain or common sources such as rivers or lakes; they are the source of transboundary ecological damage caused by industrial accidents. Since 1960s and 1970s, the production, use and transportation of these materials have been the subject of relatively mandatory rules and regulations within the framework of European societies. In addition to that, the need to take quick measures to prevent the situation from becoming worse or irreparable is clear and evident, and this is related to some of the damages that are irreparable, for example; If a country fails to deal with a problem such as the extinction of a species, there will be no second chance to neutralize environmental damage. Of course, after the Chernobyl disaster, two conventions were accepted in an urgent and urgent manner, which were directly inspired by the concern related to environmental protection, but they provided incomplete regulations.

Article 3 of the Rio Declaration requires governments to develop national laws regarding liability and compensation for damages and other environmental damages. They should cooperate with each other quickly and decisively to set international laws by guaranteeing compensation for damages and negative consequences of environmental pollution, and commit to compensation for damages caused by activities that are within their territory or areas under their control beyond their territory (Lin, 2017).

The United Nations Declaration on the Right to Development (1986) and the Rio Declaration on Environment and Development (1992) as a complement to human rights, lead to economic cooperation through social and environmental development, and from an environmental point of view, it can be a global law in order to Prevent countries from building dams in international waterways. These treaties have focused the member countries on the joint use and management of water due to cooperation between rivers. It has even been said that if cooperation is implemented (Chandra et al., 2020), it will lead to more stable and fair results in

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the future. The commission pointed out that most of these basins do not have agreements related to the allocation of their waters, and since the UN convention has not yet been entered into, the commission suggests a basic agreements on joint flow; because the principle of fair and reasonable use commitment not to cause significant damage and need to be notified by the United Nations Convention.

He further pointed out that the European Union also adheres to international agreements in the field of water cooperation, especially the UNECE Convention on the Protection and Use of Transboundary Waterways and International Lakes, as well as the United Nations Convention on the Law of Non-Navigational Uses of Waterways.

CONCLUSION

It makes the country responsible from the point of view of environmental rights and in the light of the rule of common but different responsibility, and the responsibility of the Commonwealth countries that have been investors and supporters of the implementation of these projects is not less than that country itself (joint responsibility); Secondly, this is not the first dam built on the international river in the world, we can see other examples of this dam in other parts of the world. The high number of documents available to condemn this act and the definitive and immediate objection of the downstream countries to such actions have turned these documents into principles that have made the world bound and committed to these norms. On the other hand, in a brief glance at the international documents, water has a vital value, which, due to its scarcity, should be properly and sensibly examined, away from other political tensions, rather than being thrown into the store like a commodity. Political games take place.

On the other hand, from a technical point of view, in any dam construction project, it is necessary to have a group of experts to investigate the hydraulic, hydrological, geographical, environmental, underground water, mapping, urban planning, agriculture, land, along with the civil engineers for the construction of the dam.

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