

Date of expedition: 22/06/2019 Date Acceptance: 22/06/2019

Basic Documents Of International Environmental Law And Recent Developments

النصوص الأساسية والتطورات الرّاهنة للحقوق البيئية الدوليّة

Prof. Mehmet Refik Korkusuz

أ.د محمد رفيق كوركوسوز

rkorkusuz@hotmail.com

المدنية جامعة إسطنبول، تركيا

Law Faculty, Istanbul Medeniyet University, Turkey

ABSTRACT;

The size of the environmental problems, the fact that the environmental problems are not limited to the country they live in, and the inadequacy of international policies have led to the emergence of international environmental law and an ever-changing and expanding field of law. International agreements in the environmental area inevitably create commercial impacts, security concerns and implementation mechanisms among countries.

Similar to other areas of international law, the main sources of international environmental law are international conventions, international customary law, general principles and secondary doctrine. A number of subdivisions may be encountered within the scope of international environmental law including environmental impacts of the population, biodiversity, global climate change, the release of various gases into the air, protection of the Antarctic region, movement of toxic and hazardous substances, pollution of land or ships, protection of the sea, water pollution, desertification and nuclear power plant regulations.

Key words; environmental problems, international policies, pollution, global climate change, hazardous substances.

المخلص

حقوق البيئة الدولية موضوع يتغير ويتسع بشكل مستمر. لا بدّ للاتفاقيات الدولية في المجال البيئي أن تُؤدّ علاقات تجارية ومخاوف أمنية وأساليب تطبيقية بين الدول.

كسائر مجالات الحقوق الدولية فإن المصادر الأساسية للحقوق البيئية الدولية هي الاتفاقيات والمواثيق الدولية، الحقوق العرفية الدولية، المبادئ العامة والأراء القانونية بشكل ثانوي.

يمكننا أن نجد أقسام عدّة للحقوق البيئية الدولية كمؤثرات السكان البيئية، التنوع الحيوي، تغيّر المناخ (الإقليم الحراري)، انبعاث الغازات المختلفة، حماية القارة المتجمّدة الجنوبية، حركة الموادّ السامة والخطرة، تلوث اليابسة، التلوث الناجم عن السفن، جفاف البحار، تلوث المياه، التصحّر، الإجراءات المتعلقة بالمراكز (المفاعلات) النووية.

كما يمكن أن نجد العديد من التنظيمات الدولية المتعلقة بالحفاظ على البيئة في الإطار الدولي ويمكن تقسيم هذه النصوص في فئات معيّنّة:

- 01- المعاهدات المتعلقة بالمُخلفات الخطرة
- 02- المعاهدات المتعلقة بمصادر البحار والمحيطات
- 03- معاهدة فيينا المتعلقة بالحفاظ على طبقة الأوزون
- 04- المعاهدات المتعلقة بالحياة الطبيعية وحماية الأنواع خطة عمل الأمم المتحدة للتنمية المستدامة

05- المعاهدة المتعلقة بالتجارة الدولية للأنواع المهددة بالانقراض في البيئة البرية وكجزء من القانون الدولي العام ، يعد تطوير القوانين والسياسات البيئية الدولية أمراً أساسياً ، ويعزى تطوير هذا المجال بشكل أساسي إلى حقيقة أن الدول تشعر بهذا الالتزام. في الواقع ، فإن التلوث الناجم عن الاستخدام غير الواعي للموارد المتاحة لديه القدرة على التأثير سلباً على الحياة في المستقبل بطرق عديدة. في هذا السياق ، تم إبرام العديد من الاتفاقيات الدولية. ومع ذلك ، فإن نطاق مفهوم حماية البيئة واسع جداً ويتطلب أنظمة قطاعية. ومع ذلك ، من أجل تطوير سياسات وقواعد قانونية مستدامة ، تعد التكاليف القابلة للتحمل عنصراً ضرورياً لأنها تمكن الدول من "الرغبة" في تحقيق مسؤولياتها الناشئة عن القانون الدولي. فيما يتعلق بحماية البيئة ، فإن دور الأمم المتحدة مهم بالإضافة إلى الاتفاقيات الحكومية الدولية. في واقع

الأمر ، تنظم جمعية الأمم المتحدة للبيئة اجتماعات وتنتشر تقارير وتحاول إنشاء الرأي العام بمشاركة ممثلي الدول. يعتبر تقليل استهلاك البلاستيك اليوم أحد أهم بنود جدول الأعمال في جمعية البيئة. البلاستيك هو أحد مشتقات البترول ، ولا يبدو التخلص من استهلاك البلاستيك ممكنا من زوايا مختلفة. للحد من استهلاك البلاستيك ، يجب على الدول أيضا تشجيع الأفراد على استخدام الأدوات المالية. على سبيل المثال ، أصبحت الأكياس البلاستيكية من المتاجر إلزامية لتوفير رسوم في تركيا من بداية عام 2019. سيشجع ذلك الأفراد على استخدام أكياس بلاستيكية أقل ويُنظر إلى أن هذا الحل يناسب كتاب الحكومة. الزراعة الصحية والمستدامة ، كما في السنوات الماضية ، هي أحد بنود جدول الأعمال. خاصة في البلدان النامية ، يؤدي استخدام المواد الكيميائية المختلفة إلى الإضرار بالناس والمناطق الزراعية. من أجل الوقاية ، من المتوقع أن تشجع البلدان الزراعة العضوية. ومع ذلك ، من أجل تحقيق هذا الهدف ، من الضروري خفض تكلفة زيادة المنتجات العضوية. هذا هو تعزيز السياسات الوطنية والإنتاج العضوي ، وبالتالي تسهيل تجارة المنتجات الزراعية. في هذه العملية سيكون من المناسب تمديد استخدام التكنولوجيا والذكاء الاصطناعي.

الكلمات المفتاحية: المشاكل البيئية ، والسياسات الدولية ، والتلوث ، وتغير المناخ العالمي، والمواد الخطرة

The size of the environmental problems, the fact that the environmental problems are not limited to the country they live in, and the inadequacy of international policies have led to the emergence of international environmental law and an ever-changing and expanding field of law. International agreements in the environmental area inevitably create commercial impacts, security concerns and implementation mechanisms among countries.

Similar to other areas of international law, the main sources of international environmental law are international conventions, international customary law, general principles and secondary doctrine.¹ A number of subdivisions may be encountered within

the scope of international environmental law including environmental impacts of the population, biodiversity, global climate change, the release of various gases into the air, protection of the Antarctic region, movement of toxic and hazardous substances, pollution of land or ships, protection of the sea, water pollution, desertification and nuclear power plant regulations.

The most important source of international law as part of international law is international conventions.² There are many international regulations on environmental protection. If these texts are divided into certain categories³;

I- Conventions Regarding Hazardous Waste

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal⁴ (1989)
- Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes (1999)

II- Conventions Regarding Nuclear Waste

- Convention on Nuclear Safety (1994)
- Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (2001)
- Convention on Third Party Liability in the Field of Nuclear Energy [“Paris Convention”]⁵ (1960).

III- Convention on Oceans and Marine Sources

- Agreement for the Establishment of the Indo-Pacific Fisheries Council (1948)
- Agreement Instituting the Latin American Organization for Fisheries Development (OLDEPESCA) (1982)
- Convention for the Prevention of Marine Pollution from Land-Based Sources (1974)
- Convention On The Protection And Use Of Transboundary Watercourses And International Lakes⁶ (1992)
- Convention on the Law of the Non-navigational Uses of International Watercourses (1997)

- Stockholm Convention on Persistent Organic Pollutants (2001)
- International Convention for the Prevention of Pollution from Ships⁷ (1973)
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties⁸ (1969)
- International Convention on Civil Liability for Bunker Oil Pollution Damage (2001)
- United Nations Convention on the Law of the Sea (“UNCLOS”) (1982)

IV- Conventions Regarding the Protection of Ozone and Atmosphere

- Convention for the Protection of the Ozone Layer (1985)
- Geneva Convention on Long-Range Transboundary Air Pollution (1979)
- Montreal Protocol (1987)
- United Nations Framework Convention on Climate Change (1992)
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997)

V- Conventions Regarding Protection of Species and Wildlife

- Programme of Action for Sustainable Development⁹ (1992)
- Cartagena Protocol on Biosafety (2000)
- United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought (1994)
- Convention on the Conservation of Antarctic Marine Living Resources¹⁰ (1980)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)

VI- Conventions Regarding Sustainable Development

- Programme of Action for Sustainable Development (1992)
- Rio Declaration on Environment and Development (1992)

- North American Agreement on Environmental Cooperation (1993)
- World Summit on Sustainable Development (2002).

As is seen from the above-mentioned instruments, the scope of international environmental law is quite wide. However, it also touches many legal areas directly. For example, international regulations on the protection of open seas directly concern maritime law. Energy law, international investment law, military and civil aviation law are also touching on international environmental law. From this point of view, it is possible to say that there are different stages according to the sectors in terms of protecting the environment effectively internationally.

Undoubtedly, the regulations on the protection of the environment create international public pressure and contribute to the increase of people's awareness. However, the regulations on environmental protection are more likely to impose responsibilities on governments at this stage, and national measures on environmental pollution are expected to be taken.¹¹ In this respect, international environmental law instruments mostly act as "soft law."¹² International authorities are established within certain contracts, environmental protection is provided through these authorities, and international texts on environmental protection are being pursued. However, it does not provide effective protection for the pollution of the environment and similar violations that do not directly concern other states¹³ and where adequate national protection cannot be ensured.

In terms of environmental consequences, the international public opinion has focused on the issue of global warming. Some of the international texts on air protection are directly related to this. However, the increase in the number of restrictions prevents some of the industrialized countries from joining the contract. The most popular example on this issue is that the United States does not take part in the Kyoto Protocol to the UN Framework Convention on Climate Change¹⁴ and Canada is ceased to be a member from 15 December 2012. The emission rates of certain greenhouses gases have been determined under the latter

document. This will naturally increase the amount of additional costs in industrialized countries. The countries acted cautiously in the event that the costs would force the states. In fact, the result that can be drawn from this is that one of the most important elements in terms of the applicability of international texts on the protection of the environment which install responsibility on countries is bearable costs. If the costs of the obligations¹⁵ imposed by the states under the contract are found to be high, the states are reluctant to undertake the obligation. This is also the key in determining sustainable targets. In other words, it is essential to take into account the costs required to achieve the objective in order to achieve sustainable goals in the context of environmental protection.

The environmental priority of the 2010s is to reduce the use of plastic as well as to reduce the pollution of emitted gas into the air and prevention of marine pollution. The United Nations Environmental Council has issued several progress reports in recent years for the prevention of plastic pollution.¹⁶ This shows the seriousness of the UN in reducing plastic consumption. As stated in this report, the use of unconscious plastic contaminates soil, water, air and contributes to an unhealthy environment in the community. In the report, it is stated that dialogue and working groups should be continuously formed and cooperation should be increased.

One of the targets for the protection of the environment, which will always be up-to-date, is healthy and sustainable agriculture. In fact, the use of all kinds of chemicals within the hope of getting more products in the short-term damages to agricultural areas as well as people/consumers in the long-term. In order to prevent this, countries are expected to encourage organic agriculture. However, the realization of this goal may be more difficult than expected. As a matter of fact, what the producer looks at first would be the profit he would receive for his labor, and the organic methods would be more costly than they thought.

The use of artificial intelligence becomes one of the current issues in terms of environmental protection as well as in every

field.¹⁷ Particularly with the data obtained previously, it is expected that in the supply chain, finding the processes that will protect the environment and at the same time provide the most efficiency will produce beneficial results in terms of both producer and consumer. However, research and development activities should be carried out by countries as well.

Conclusion and Suggestion

As a part of international public law, the development of international environmental law and policies is essential and the development of the field is mainly due to the fact that states feel this obligation. As a matter of fact, the pollution resulting from the unconscious use of the available resources has the potential to adversely affect future life in many ways. In this context, many international agreements have been concluded. However, the scope of the concept of environmental protection is quite broad and requires sectoral regulations. However, in order to develop sustainable policies and legal rules, bearable costs is a necessary element because it enables the states to be 'willing' in realizing their responsibilities arising from international law.

In terms of protection of environment, the United Nations' role is important in addition to intergovernmental agreements. As a matter of fact, the UN Environment Assembly organizes meetings, publishes reports and tries to create public opinion with the participation of representatives of states. Today reducing plastic consumption is one of the most important agenda items of the Environmental Assembly. Plastic is one of the derivative products of petroleum and the elimination of plastic consumption does not seem possible from various angles. In order to reduce plastic consumption, countries should also encourage individuals to use financial instruments. For example, plastic bags of stores have been made mandatory to provide for a fee in Turkey from the beginning of 2019. This will encourage individuals to use less plastic bags and it is seen that this solution suits the government's book.

Healthy and sustainable agriculture, as in the past years, is one of the agenda items. Especially in developing countries, the use

of various chemicals damage both people and agricultural areas. For the prevention, countries are expected to encourage organic agriculture. However, in order to achieve this goal, it is necessary to reduce the cost of growing organic products. This is to promote the national policies and organic production and thus facilitate the trade of agricultural products. In this process it will be appropriate to extend the use of technology and artificial intelligence.

BIBLIOGRAPHY

Ahmet M. Güneş, Çevre Hukuku (Environmental Law), İstanbul, 2015.

Ahmet M. Güneş, “Uluslararası Çevre Hukuku Üzerine Bir İnceleme” İstanbul Üniversitesi Hukuk Fakültesi Mecmuası, V. LXX, N. 1, 2012, pp. 83 – 114.

Ali Parlar ve Muzaffer Hatipoğlu, Cezai ve Hukuki Sorumluluk Boyutlarıyla Çevre Hukuku, Ankara, 2010.

Anne Burnett, International Environment Law, American Society of International Law, Elektronik Resource Guide, Erişim:

https://www.asil.org/sites/default/files/ERG_ENVIROMENT.pdf

Andrea Lenschow, Environmental Policy Integration Greening Sectoral Policies in Europe, 2012 (eBook).

Daniel Bodansky, The Art and Craft of International Environmental Law, London, 2010.

Etem Karakaya, Küresel Isınma ve Kyoto Protokolü - İklim Değişikliğinin Bilimsel, Ekonomik ve Politik Analizi, İstanbul, Bağlam Yayıncılık, 2008.

Heidi Frostestad Kuehl, A Basic Guide to International Environmental Legal Research, New York University Hauser Global Law School Program, 2017.

The United Nations Environment Programme, <https://www.unenvironment.org/> ve <http://web.unep.org/environmentassembly/sustainable-innovation-expo/panel-discussions>.

The United Nations, Kyoto Protocol to the UN Framework Convention on Climate Change, 2001.

Ulises Cortés, M. Sánchez-Marrè, L. Ceccaroni, I. Roda ve M. Poch, “Artificial Intelligence and Environmental Decision Support Systems” *Applied Intelligence*, V.13, I.1, 2000, pp.77-91.

Ved Nanda ve George Pring, *International Environment Law and Policy for the 21st Century*, 2nd Edition, Leiden, 2013.

1 Ahmet M. Güneş, *Çevre Hukuku*, İstanbul, 2015, p.4.

2 Ahmet M. Güneş, “Uluslararası Çevre Hukuku Üzerine Bir İnceleme” *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, V. LXX, I. 1, 2012, p. 90.

3 For the categorization, please see Heidi Frostestad Kuehl, *A Basic Guide to International Environmental Legal Research*, New York University Hauser Global Law School Program, 2017.

4 Some very important amendments have been done in the convention in 1995.

5 Some very important amendments have been done in the convention in 2004.

6 Some very important amendments have been done in the convention in 2003.

7 There is also a “1978 Protocol” with the same title.

8 There is also a “1973 Protocol” with the same title.

9 In this regard, Rio Declaration (1992) and The Management Principles of Forests have been prepared.

10 There is also an Antarctic Agreement of 1959.

11 Ved Nanda ve George Pring, *International Environment Law and Policy for the 21st Century*, 2nd Edition, Leiden, 2013, p.41.

12 Daniel Bodansky, *The Art and Craft of International Environmental Law*, London, 2010, p.14.

13 The fact that international environmental agreements bind only to the Contracting States or only for certain areas may

reduce the effectiveness of these treaties. See Ahmet M. Güneş, *Uluslararası Çevre Hukuku Üzerine Bir İnceleme*, p.93.

14 The Framework Convention on Climate Change (1992) is equipped with general principles to protect climate and reduce greenhouse gas emissions, but has no binding effect. On the other hand, the binding regulations on emission limitation were realized with the Kyoto Protocol signed in 1997.

15 International environmental law cannot be considered independent of international politics. See Bodansky, p.14.

16 The United Nations Environmental Assembly publishes annual reports as well as subject-based reports. As of the date of this study, the latest 2017 annual report was published in terms of annual reports. To access the report, see

<https://www.unenvironment.org/annualreport/2017/index.php>. In addition to the reports on the consumption of plastics, see here.

https://wedocp.unep.org/bitstream/handle/20.500.11822/25496/singleUsePlastic_sustainability.pdf.

17 For the function of artificial intelligence in terms of environmental protection, please see U. Cortés, M. Sánchez-Marrè, L. Ceccaroni, I. Roda ve M. Poch, “Artificial Intelligence and Environmental Decision Support Systems” *Applied Intelligence*, C.13, P.1, 2000, p.79.