

The Approach of the International Court of the Law of the Sea towards the Principles of Sustainable Development

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Abstract

Today, advances in science and technology have increased human power to change the environment; this situation has endangered human survival. Sustainable development is one of the solutions to solve this challenge. The emphasis of sustainable development is on intergenerational commitment and intergenerational and intergenerational justice, quality of life and participation of individuals in the development process. Since international judicial authorities play an important role in the development of international law, it is important to address the jurisprudence of these courts in the context of sustainable development and its principles. This article analyzes some of the rulings of the International Court of the Law of the Sea and states that in its decisions of the last two decades, the Court has effectively used the principles of sustainable development and revealed the normative element of the concept of sustainable development. The rulings of this court indicate the establishment of the position of these principles in the practice of this institution and its positive approach to the rights of future generations, while defending the interests of the current generation.

Keywords: Sustainable Development, International Court of Maritime Law, Precautionary Principle, Integration Principle, Good Governance.

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Introduction

The idea of sustainable development has little history in international law. For the first time in 1983, the United Nations General Assembly convened the World Commission on Environment and Development, in which an influential document entitled "Our Common Future" was presented by the then Prime Minister of Norway, Gerhallm Brundtland. The report called for sustainable development as the basis of any human economic activity, focusing on serious environmental concerns and linking them to efforts to raise the living standards of the world's poor. (Alan, 2001) Thus, attention to sustainable development from the eighties onwards became one of the main concerns of the international community and after the presentation of the final report of Brundtland in 1987, it became the focus of international attention. Took. (Meeting of the OCED Council at Ministerial Level, 2001) A year after Brundtland's final report, the UN General Assembly passed a resolution calling for a conference on the environment and development at the UN headquarters, and finally, after two years of continuous deliberation and controversial statements, Finally, the conference was held in June 1992 on the twentieth anniversary of the Stockholm Conference on the Environment in Rio de Janeiro. The result of this conference was a redesign and emphasis on the concept of "sustainable development" in the realm of international law. A concept that, although it has been associated with words and hadiths from the beginning, but because it is at the center of the link between economic issues, environmental concerns and the basic principles of human rights, (Shamsaei, 2006) needs serious reflection and law between Contemporary internationality cannot be indifferent to its theoretical foundations or its manifestation in international practice. There are differing views today on the place of the principle of sustainable development in international law; some see sustainable development as a new principle of customary international law and believe it is binding on all. One group sees sustainable development as a common goal of many governments when concluding economic and environmental treaties and therefore considers it as part of international treaty law. Some argue that even if we do not see sustainable development as a core of international law, its demand by governments will help the application of other principles of international law. A noteworthy point in this regard is the prominent role of international judicial authorities in the development of important areas of international law and their impact on the formation and



establishment of the principles and rules of international law. For this reason, explaining the place of the principles of sustainable development in the proceedings of the International Court of the Law of the Sea is of particular importance. In this article, while expressing the concept of sustainable development, we will discuss its place in international documents. Finally, we will examine the principles of sustainable development in the jurisprudence of the Court of the Law of the Sea.

1- Sustainable Development

So far, various definitions and approaches have been considered for development. One of the requirements of sustainable development is to protect the environment and natural resources as the collective heritage of humanity in such a way that in addition to meeting the needs of the present generation, it also has the capacity to meet the needs of future generations. Therefore, we call development sustainable when it is not destructive and enables the conservation of resources for the future. In 2006, the European Union launched a Sustainable Development Strategy that defines a sustainable, interactive view of economic growth, social interest and environmental protection (Qarkhloo and Hosseini, 2007).

Sustainable development is defined by the World Commission on Environment and Development as the Brundtland Commission and the UN Commission on Environment and Development in 1987, which means meeting the needs of the present without compromising the ability of future generations to meet their own needs. Provides. In other words, sustainable development is a comprehensive approach that promotes development in ways that do not harm the environment or waste natural resources, so that they will be available in the future. The report adds that these conditions apply not only to environmental policies, but also to economic and social policies (Dehshiri, 2014). The most complete definition of sustainable development consists of two key concepts: First, the concept of need, especially the basic needs of the world's poor that must be given priority. Second, the idea of the constraints imposed by the state of technology and social organization on the ecosystem's ability to meet current and future needs. While meeting the needs of the present poor is not necessarily compatible with the needs

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of future generations, it is obvious that the countries of the world do not have the same level of energy, clean water, clean air, political freedom and protection of their communities from crime and war. (Pearce, 2007) Thus, sustainable development links the three domains of the environment, including water and waste, society (employment, human rights, gender equality, peace and human security), and the economy (poverty reduction, corporate responsibility, and accountability) (WCED, 1987).

2-Principles of Sustainable Development in the light of the rulings of the International Court of the Law of the Sea

As of January 2017, there were 25 cases before the International Court of the Law of the Sea, of which 23 were forfeiture and two were for advisory opinions. With the exception of two cases of compensation cases, verdicts have been issued for other cases. In the meantime, several advocacy or advisory votes have been related to the issue of sustainable development. In this Court, the request and issuance of an advisory opinion has been made in accordance with Article 21 of the Statute of the International Court of the Law of the Sea. Article 21 of the Statute of the International Court of the Law of the Sea's "Jurisdiction of the International Court of Justice for all disputes and all claims under the Convention on the Law of the Sea and all matters arising from agreements referred to the jurisdiction of the International Court of the Law of the Sea" Refers. The provisions of Article 138 of the Rules of Procedure of the International Court of the Law of the Sea explicitly refer to the jurisdiction of the International Court of the Law of the Sea to issue an advisory opinion on the legal questions of the Member States. Provided that there is an international agreement relating to the objectives of the Convention for the request for an advisory opinion from the International Court of the Law of the Sea. However, in order to exercise the jurisdiction of the Court in accordance with the provisions of Article 138 (1) of the Rules of Procedure of the International Court of the Law of the Sea, it is necessary, first; The need for an advisory theory is clearly justified in the international agreement on the objectives of the convention, and secondly; The request for an advisory opinion is in the form of a legal question.



In the proceedings of the International Court of the Law of the Sea, some rulings have been issued which have dealt with the principles of sustainable development. These include principles such as the precautionary principle, the principle of sustainable use of natural resources, the principle of integrity, and so on. In this part of the discussion, we will express these principles and the opinion of the International Court of the Seas.

1.2. Sustainable Use of Natural Resources

Natural resources are resources that are produced through natural reactions and include the true space of the solid surface of the earth, nutrients, soil minerals and deep layers of the earth, plants, animals, climate, natural decomposing agents of waste and cycle. They are found in nature and are needed by all living things on earth. Natural resources are classified into three categories: sustainable and permanent resources, renewable and non-renewable resources. Accordingly, solar energy, wind and geothermal are among the permanent and permanent sources, soil, water, forest and pasture are among the renewable sources and fossil fuels, gold mines, silver, copper, etc. in the group of non-renewable sources. The process is obvious that natural resources, whatever they may be, will be depleted if they are consumed beyond the ecological potential of the earth, and in some cases may never be renewable or may be slow over centuries (Nouri, 2005). But the most important and valuable role of natural resources and especially vegetation should be considered in creating suitable environmental conditions and ecological balance between humans, water, soil and plants and in fact creating the necessary foundations for sustainable development.

The principle of sustainable use and observance of quotas and protection of reserves in living marine resources, especially "bluefin tuna" is one of the points emphasized in the "Southern bluefin tuna" vote. The vote emphasizes the need for countries to work together through multilateral agreements to manage and protect marine living resources (Marr, 2000).

Also, the Seabed Disputes Branch, in its advisory opinion with special attention to natural resources, has stated that activities in the area focus on a variety of minerals, including polymetallic agglomerates and polymetallic sulfides or

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ferromanganese-rich layers. Cobalt is concentrated and this requires different standards of effort. Stricter standards are required for high-risk activities. The Court emphasizes that the protection of marine living resources is a principle of protection of the marine environment. The parties agree that southern bluefin tuna reserves have fallen sharply to historically low levels, raising serious biological concerns.

2.2. The principle of integration

The principle of integration has emerged as an emerging principle in international environmental law. The principle of integration is also known as one of the foundations of modern environmental policy and law. This principle originates from the principle of sustainable development and the origin of this principle is the conventions of the European Union. According to the International Maritime Court, the negligence of the Protecting Powers could jeopardize the uniform application of the highest standards of marine environmental protection, the safe development of activities in the area and the protection of the common human heritage. In the area of commitment to official assistance, the sponsoring government acts on behalf of the whole of human society, but in making rational and appropriate decisions, the sponsoring government must purposefully consider the relevant options, in a way that is reasonable and It is good for the whole of humanity to act ... The supporting government must act in good faith, especially when its action is likely to have a detrimental effect on the interests of the whole of human society. Among the most important direct commitments of the sponsoring states are the commitment to assist the authority in exercising control over activities in the region, the commitment to take a precautionary approach, the commitment to best environmental practices, and the commitment to guarantee compensation for pollution damage. Commitment is to guide the assessment of environmental impact.

3.2. Principle of precaution

The precautionary principle is one of the principles enshrined in various binding and non-binding international environmental agreements. In the case of Malaysia-



Singapore Land Rehabilitation, the International Court of the Seas points to the precautionary measures that Malaysia should take to prevent potential problems for the region's marine environment. The court noted that caution is needed in view of the potential impact of land reclamation on the marine environment. The International Court of Justice (ICJ) has stated in the case of the southern bluetongue that, in addition to failing to fulfill its obligations under the Convention on the management and protection of the southern bluefin tuna, the requirements of the precautionary principle have been ignored. In the Court's view, the parties must act with caution and caution in this situation to ensure that safeguards are in place to prevent serious damage to the "South Bluffin Tuna" reserve ... although the court has failed to provide scientific evidence provided by the parties. But concluded that immediate action was needed to protect the rights of the parties and to prevent further deterioration of southern bluefin tuna stocks. In fact, despite the scientific uncertainty over the damage to bluefin tuna stocks, the Court, on the basis of the precautionary principle embodied in Article 15 of the Rio Declaration, imposed interim measures, and this was the first time that an international court had made such a move. It did in terms of marine living resources (Marr, 2000).

The Seabed Disputes Division also takes a special approach to the precautionary principle in its 2011 advisory opinion; So that the secularization has implicitly confirmed the precautionary principle. From the branch's point of view, both the supporting government and the government are committed to taking a precautionary approach to activities in the region. The precautionary approach is also an integral part of the commitment to the appropriate efforts of the supporting states. They must take all appropriate measures to prevent damage to the activities of the contractors they support. The Branch concludes that an increasing number of international treaties and other instruments that reflect Article 15 of the Rio Declaration include a precautionary approach and a tendency to regard it as part of international law. The custom has begun.

4.2. Good governance

Achieving sustainable development requires preconditions, and governments have been able to move forward in the sustainable development process by addressing

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these requirements. The World Commission on Environment and Development states that one of the requirements for sustainable development is good governance (Elliott, 1999). In this regard, the United Nations Environment Program emphasizes that all countries should develop sustainable development at the national level in accordance with the requirements of their country by developing clear laws and regulations and the necessary transparent judicial and administrative infrastructure. Provide accountability and impartiality. (United Nations Environment Program, 2004).

In 1983, the United Nations established an international committee to determine strategies for sustainable development and ways to improve the quality of human life without threatening the local and global environment in the long run. The "Our Common Future" report and the "Brundtland Report" are the upstream documents of this strategy. The Brundtland Commission stated that the current use of the environment should be such as not to jeopardize the ability of future generations to meet their own needs. The Rio Summit and Agenda 21, which were formed to increase environmental problems and create a global consensus on environmental issues, emphasized governance and sustainable development based on public participation at the international, regional and sub-regional levels.

At the Rio Summit or the Earth Summit in 1992, the nations of the world realized that sustainable development would not be achieved by governments alone, and that there was a need for social groups, including farmers, employees, businessmen, and students. Students, researchers and university professors should also take an active part in this field. According to this issue and Agenda 21, nine main and important groups were formed, which are: trade and industry, children and youth, farmers, indigenous peoples, local officials, non-governmental organizations, scientific and technological institutions, women, workers. And trade unions. Today, the belief is strongly reinforced that countries and organizations alone cannot achieve sustainable development without local, national, regional and global participation. Regarding the relationship between good governance and sustainable development, it can be said that governance refers to the structures and processes used by the government, public and private sectors to use resources.

In the case of the International Court of Maritime Affairs, the Seabed Disputes Division, in an advisory capacity, considers its function to be good governance of



the region and has in fact accepted the principle that the functions of the branch set out in Section 11 of the Convention are appropriate for good governance. The branch has a high responsibility to ensure the proper implementation of the provisions of Section 11 of the 1994 Convention and the Executive Agreement. Elsewhere in the vote, the element of transparency in decision-making is considered, which an important element of good governance is. The branch believes that "the contractual approach may lead to a lack of transparency. In this case, it is difficult to confirm the fulfillment of the obligations of the supporting government through measures available to the public. "Contractual obligations alone are not an effective substitute for the laws, regulations and administrative measures referred to in the Convention."

Therefore, one of the most important principles of sustainable development from the perspective of the International Court of Maritime Affairs is good governance. The Court considers that good governance requires political, economic, social and cultural transparency, and considers components such as accountability, the rule of law and public trust as other requirements for good governance to achieve and stabilize sustainable development.

5.2. The principle of proper care

Many international instruments related to environmental law recognize that the rationale for a behavior goes back to being able to deal with a particular situation. According to many international jurists, a commitment not to cause any damage to the environment only obliges governments to take appropriate measures to prevent any action in their territory under their jurisdiction that would cause transboundary damage. (Brinie and Boyle, 1992) Such a view is consistent with Article 194 of the Convention on the Law of the Sea (1982); accordingly, governments have a responsibility to control marine pollution from any source within their available territory as much as possible (ILM 21, 1982). Many other documents related to environmental protection have referred to similar concepts; For example, in the European Economic Community resolution of 1980 on environmental pollution caused by sulfur dioxide, the member states of the Community undertook to make

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every effort to limit or, if possible, completely limit any damage. Do cross-border environment.

In the international environmental law literature, as well as in jurisprudence, there is a prevailing approach that the efficiency and reasonableness of scales depends on the capabilities and possibilities available in dealing with any particular situation (Blomeyer, 1992 and Hinggins, 1991). Thus, the Court of Arbitration of Mexico and the United States stated in this regard: "The realm of commitment to protection by the government, both in the general principles of common international law and in specific bilateral agreements. "It only expands as far as it is possible." (Alan, 2002)

In fact, appropriate measures in the field of international environmental law are among the measures that each state is expected to respect and respect in relation to other states in order to protect the international environment. Fulfill its commitment to a healthy environment as a common heritage of humanity. However, it should not be assumed that failure to take appropriate action is precisely the meaning of carelessness or carelessness; Violation of appropriate measures only means that the government has failed to enforce acceptable standards of conduct for a favorable government regarding the environment.

One of the most important rulings of the International Court of Maritime Law on appropriate action was the ruling of the Bluffin tuna between Australia and New Zealand against Japan. In this ruling, the Court ruled that the parties should exercise caution and vigilance to take effective safeguards to prevent severe damage to the bluefin tuna stock. (Affaire du thon à nageoire bleue, 1999)

Some judges of the International Court of the Law of the Sea have supported it in their individual opinions, citing the principle of due diligence. In the opinion of Judge Trois, in order to resort to an appropriate action approach to assess the urgency of measures in this case, we do not need to be convinced that this approach is laid down by a customary rule of customary international law. Rather, this approach can be a logical consequence of the need for care. (Individual Opinion of the Treasury in the Court of Appeals of the Court of Appeals, Ordinance of 27 August 1999,) but the issuance of this order alone cannot constitute the full implementation of the principle of due diligence by this Court. Because there is no fixed international procedure in this regard and no legal belief



has been formed in this area so that we can recognize the principle of due diligence as a customary rule in international law.

Conclusion

Sustainable development is a concept that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. The main axes of sustainable development are economic development with reflection on environmental standards and their observance, taking into account the right of future generations to enjoy natural gifts to meet their needs in the future. Thus, sustainable development is the connecting point between the three areas of human rights, the environment and the economy. What still needs to be explored and evaluated are the themes of sustainable development. Economic development, attention to standards and mechanisms of environmental protection, and finally the relevant human and social rights standards have been among the preconditions for sustainable development from the beginning. Therefore, sustainable development is like a triangle whose three sides require simultaneous attention to the economy, human rights and the environment. What characterizes the connection between these three pillars can be examined from different angles and seems to be one of the obstacles to consensus on a single reading of sustainable development, as well as a multidimensional approach to the issue with one-dimensional preference or neglect. There are other dimensions of the theorem. The International Court of the Law of the Sea has also issued fewer rulings on sustainable development because it has less experience than other international courts and is a specialized tribunal. This is because the International Court of the Law of the Sea began four years after the Rio Declaration and was in fact influenced by the widespread influence of the concept of sustainable development in various fields, including law. At the International Tribunal for the Law of the Sea, the Advisory Opinion of the Seabed Disputes Division in 2011 on the obligations of governments supporting seafront contractors is of particular importance. Analysis of the Maritime Court's rulings shows that the principles of sustainable development, including the principle of sustainable use of natural resources and the principle of precaution, have received special attention. The

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ICRC's approach to sustainable development reflects the ICC's special focus on the rights of future generations and the defense of the interests of the present generation.

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