



COMMON BUT DIFFERENTIATED RESPONSIBILITY IN THE CASE OF UPSTREAM DAM CONSTRUCTION ON INTERNATIONAL WATERWAYS WITH A FOCUS ON THE SOUTHEAST ANATOLIA PROJECT DAM (GAP)

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Abstract:

The passage of international waters through upstream countries has always been an issue of great importance for downstream countries. The construction of dams in upstream countries can have a significant impact and lead to a reduction in water flow and environmental problems in downstream countries. In this article, the principle of common but differentiated responsibility in the case of upstream dam construction on international waterways, with a focus on the Southeast Anatolia Project dam, is examined. 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:

Principle Of Common But Differented Responsibility, 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.

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. According to Turkey's own news, with the completion of the dams under construction of this project, the water stored behind the dam will be seven times the size of the island of Cyprus.† This project was opened in February 2018 and apart from disrupting the ecosystem of the downstream areas, it prevents 56% of water resources from entering the downstream countries. 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.

In terms of managing water resources in the current crisis, the countries of the Middle East region have adopted different approaches to the current crisis. One of these programs to deal with drought is Turkey's move to advance the Southeast Anatolia Project (GAP) along the Tigris and Euphrates international river

* Newell, A. & Skjelkvåle, B. (1997) Acidification Trends in Surface Waters in the International Program on Acidification of Rivers and Lakes. Water, Air, and Soil Pollution.

† Ünal, E., Işık, R., Şen, A., Kuş, E. & Soysal, M. (2021) Evaluation of Genetic Diversity and Structure of Turkish Water Buffalo Population by Using 20 Microsatellite Markers. Animals.



route.[‡] Gap is a construction project based on which the Turkish government plans to irrigate 1.7 million hectares of agricultural land and produce 55 billion kilowatt hours of electricity annually. 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. (Turkey's own report) The amount of water storage in Turkish dams in the Tigris river basin is equivalent to the total annual yield of the Tigris. (17 billion cubic meters) and with the implementation of the Gap Project, the storage of Turkish dams in the Euphrates basin is equivalent to three times the annual yield of the entire river in Turkey (95 billion cubic meters).[§] Iraq on the Euphrates is equivalent to five times the annual yield of the entire Euphrates River. 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.

The main question here is whether the waters that pass through the borders are considered natural resources that are among the internal resources of the government and cannot be shared in them. Or can the upstream countries, according to the regulations and rules of international law, build dams on the arteries that the downstream country has benefited from, regardless of the situation of the downstream countries? Or are international rivers one of the environmental resources that are outside the ownership of the government, and the same is true of domestic rivers and the countries are the only trustees in their exploitation and management? Considering that the water issue has become a global crisis and the Middle East needs policies and management in order to deal with drought due to its geographical location, to what extent this action of Turkey as an upstream country is compatible with international law and existing rules in the field It is international. Is this action worthy of praise in the international news, and as the Turkish news reports, should it be a model for other countries as a huge global project? Or is this action condemned by international law? However, this issue can also be pursued from the point of view of environmental rights due to extensive environmental damage. But our current discussion in this research is to examine the existing rules in the laws governing international rivers.

There are findings in this field, for example, the upstream country as the owner of water has the right and the law gives him the right. His right is based on the right to connect to the soil. But he goes on to say. The flow of water through the land enters the border of another state without interference, and the law gives it the right to manage water jointly, and this is completely natural. Even where it is said by someone who assumes public ownership, the government cannot, by law or order, deprive another government, it is common law that the owner of the river has the right to have the natural and usual flow of water. William Hunt went on to document that courts have consistently held that common water rights are beneficial uses. However, in the absence of bilateral and multilateral agreements, the 1997 Convention seems to be a suitable framework for cooperation between Iran and neighboring countries in the field of protection, management and prevention of pollution of these waters based on the theory of joint management in the framework of the legal approach as one of the requirements in the region.** to be While this convention is binding on its members and cannot be the ruler of any upstream country, including Turkey, which is not willing to limit its sovereignty by becoming a member of a treaty †† .

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

‡ Berglund, E. (2015) Using Agent-Based Modeling for Water Resources Planning and Management. *Journal of Water Resources Planning and Management*.

§ Sahin, M., Aker, S., Sahin, G. & Karabekiroğlu, A. (2020) Prevalence of Depression, Anxiety, Distress and Insomnia and Related Factors in Healthcare Workers During COVID-19 Pandemic in Turkey. *Journal of community health*.

** Chianeh, R., Chiappa, G. & Ghasemi, V. (2018) Cultural and religious tourism development in Iran: prospects and challenges. *Anatolia*.

†† Farzad Pilton and others, the foundations and mechanism of environmental cooperation between Iran and its neighbors in the area of shared river waters.



rights; Or that this issue is discussed from an engineering point of view in some researches. 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. On the other hand, other countries of the world have decided with a convention or treaty about their commitment or non-commitment regarding their status in relation to the seizure of international waterways, but in the country Above the Tigris and Euphrates rivers, there is no convention or treaty according to which Turkey can be condemned or this act can be questioned in this way. That too, in the situation that the only IA treaty in the Middle East between Iraq and Iran has been made regarding Arvand River.

The method of collecting this research was done in a library and the thinking method was done in a descriptive and inferential way.

1. The history of dam construction in the upstream country

A dam is a barrier that stops or restricts the flow of water or underground streams. Reservoirs created by dams, if properly maintained, provide flood suppression as well as water for activities such as irrigation, human consumption, industrial use, aquaculture, and transportation. Hydrogen is often used in conjunction with dams to generate electricity. In general, the main purpose of dams is to conserve water^{##}.

Dam construction in the international waterway has a long history in the world. Before the Southeast Anatolia Dam, Syria had also reduced Iraq's water consumption by building the Al-Thura Dam on the Euphrates River. Iran has been able to access the Persian Gulf and Arvand River due to the reduction of its rights and faced strong protests from Iraq^{##}.

This has also happened in the Indus River, the international Indus River divided its branches between the upper reaches of India and the lower reaches of the capital of Pakistan. The result of dam construction on this river by the upstream country has been an environmental disaster in the downstream. The Indus River is drying up, the coastline is receding, its giant delta is being destroyed, and the salty sea is damaging the fields. Similar to these destructive damages have been caused in the southern part of Mesopotamia for the downstream countries^{###}.

This happened in the region, among the countries of the Persian Gulf, and each of the Persian Gulf countries separately tried to build a dam downstream of the Iraqi government in Ramadi Al-Hindia, but due to the geographical location of Iraq, no problem occurred. But the similar actions of Syria and Turkey have faced serious protests from downstream governments^{###}.

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 theory of internationalization of rivers was created for the first time by Grosius and Wattel, before that all the rivers were considered internal and under the jurisdiction of the countries next to them.^{###} 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. According to this article, an international river is a navigable river that is navigable and connects more than one country to open water. On April

^{##} Wang, L., Wu, C., Gu, X., Liu, H., Mei, G. & Zhang, W. (2020) Probabilistic stability analysis of earth dam slope under transient seepage using multivariate adaptive regression splines. *Bulletin of Engineering Geology and the Environment*.

^{##} Jafary, P., Sarab, A. & Tehrani, N. (2018) Ecosystem Health Assessment Using a Fuzzy Spatial Decision Support System in Taleghan Watershed Before and After Dam Construction. *Environmental Processes*.

^{###} Rizwan, M., Bakhsh, A., Li, X., Anjum, L., Jamal, K. & Hamid, S. (2018) Evaluation of the Impact of Water Management Technologies on Water Savings in the Lower Chenab Canal Command Area, Indus River Basin. *Water*.

^{###} Najafi, A., Moradinasab, M. & Nabipour, I. (2018) First Record of Microbiomes of Sponges Collected From the Persian Gulf, Using Tag Pyrosequencing. *Frontiers in Microbiology*.

^{###} Chandra, A., Paul, J. & Chavan, M. (2020) Internationalization barriers of SMEs from developing countries: a review and research agenda. *International Journal of Entrepreneurial Behaviour & Research*.



20, 1921, an important conference was held in Barcelona. held . This conference was held at the invitation of the League of Nations and within the framework of the Treaty of Versailles. He had a great role in the formulation and expansion of the legal regime of the Rivers.

The Barcelona conference had a protocol and two statutes. According to this system, any river that complies with the criteria and features in the above treaty was called (international river). According to this treaty, an international river is a navigable river that crosses more than one country. Likewise, any river that complies with the criteria and features in the above treaty was called an international river, and included the provisions of the treaty. The Barcelona Treaty uses the term (navigable waterways of international importance) instead of the conventional term (international river). (Barcelona Conference, April 20, 1921) The definition given by (GAREETSON) of the international river also confirms this. He has stated that an international river is a river that passes through the territory of more than one country or it is a river that separates the territory of two countries from each other, and the governments share the sovereignty over these rivers §§§ .

2. Reference to general international principles

Another binding source that raises significant issues about international waterways is general principles. The word original in international documents is not used in the same sense. In an international document that has a legal nature, its meaning finds a legal meaning and meaning, but in an international political document, it will have a political meaning. Even some of the principles mentioned in the preamble of a legal document can have an ideal character rather than a legal and mandatory character. Based on the mentioned concepts, we can simply mention two types of principles in international documents: ideal principles and normative principles****.

The ideal principles are those principles that are not obligatory on the governments (countries) as a legal rule, but the general effort is to strive and strive to achieve them. The world community is based on these ideals and aspirations, and the behavior of the governments must conform to it. These principles can be called moral and political principles. Such as the principle of general welfare for all, the principle of philanthropy, the principle of democracy, the principle of social justice, the principle of good neighborliness (good neighborliness), the principle of rule of law (legality), the principle of peace and security for all (no security for a group of countries and no security for another group). and the like. In the relations between governments, these principles are presented as ideals and wishes for the world community and have high human values. These principles are considered moral and political principles and are not legally binding in the international scene. It is not easy to make it compulsory either, although the ideal of mankind is towards it. It can be said that as the news sources have reflected, the popular protests of Austria, the Netherlands and Germany, which caused these governments to withdraw from investing in the Gap project, were the result of this principle and ideal, But normative principles are binding and have the highest legal force. In his book "International Law Norms in the International Normative System", Professor E. A. Lukashuk writes that the fundamental normative principles (meaning the fundamental principles of international law) have the highest political, moral and legal power.††† These principles are not only politically and morally obligatory, but also legally binding. The fundamental principles of international law are norms that have more general and higher characteristics than other norms and have more legal importance than other norms, and their legal force is also higher than normal norms. For example, the principle of equality of sovereignty of states, the principle of not resorting to force or the threat of it, the principle of peaceful resolution of international disputes, etc. What countries violate in relation to each other; But such principles are not denied in international relations. This is one of the principles arising from universal international documents, which has created a norm in the international arena by observing the majority of countries. So that if someone cannot commit

§§§(Nowrozi, the legal regime governing the Aras border river)

**** Ahmadi, A., Moghadamtousi, S., Abubakar, S. & Zandi, K. (2015) Antiviral Potential of Algae Polysaccharides Isolated from Marine Sources: A Review. BioMed Research International.

†††† Peters, A. (2016) The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization. Public International Law: Courts & Adjudication eJournal.



according to the document or convention that is imposed on the majority of international members, the same rule will be imposed on him in principle.

The principle of fair and rational use of the common waterway is one of the principles arising from international documents about the international protection of transboundary waterways. Due to the fact that every international waterway has special characteristics, it has not been possible to establish a legal system without ambiguity and including general and comprehensive rules.^{###}

The sovereign right of the government over its water^{#####} is exist but the illegality of changing the course of the waterway⁺⁺⁺⁺, the right to public participation^{####}, the right to obtain environmental information^{#####}, the right to participate in environmental decision-making⁺⁺⁺⁺⁺ and the right to compensation⁺⁺⁺⁺⁺ are the other important rights in this respect too. One of the most important principle in this case is the principle of common but different responsibility of governments and this research article wants to examine this incident from the perspective of such principle in international law.

3. The principle of common but different responsibility of governments:

In a general view of the common but different international responsibility, we must say that today the environment as the common heritage of humanity has been more and more attention and its problems have become one of the major global concerns.^{#####} This problem shows itself in the form of treaties such as the United Nations Climate Change Treaty 2, Kyoto Protocol 1 and many other environmental documents. The global economic system threatens the global environment in its own way. Despite the fact that important measures have been taken to reduce industrial pollution. But industrial activities are still destroying the natural environment, accelerating global warming and increasing air pollution. The complications caused by the increase in global trade activities have also made environmental techniques less effective. We humans change the direction of the energy from the sun's radiation and leave it out of the earth's atmosphere, which is considered a danger for the world's environment. The increase in the average temperature of the earth's surface will cause changes in the climatic characteristics of the whole world.

With the destruction of forests, the carbon stored in trees is released, other activities such as livestock breeding and agriculture also cause the release of methane, nitrogen dioxide and other greenhouse gases, and if the situation continues in this way, the amount of carbon dioxide that enters the atmosphere during the 12th century, it will double. Global warming increases every year, which will lead

Fearnside, P. (2015) Amazon dams and waterways: Brazil's Tapajós Basin plans. *Ambio*

§§§§ Bickerton, C., Brack, N., Coman, R. & Crespy, A. (2022) Conflicts of sovereignty in contemporary Europe: a framework of analysis. *Comparative European Politics*

***** Lin, S. (2017) The Evolution of Food Security Governance and Food Sovereignty Movement in China: An Analysis from the World Society Theory. *Journal of Agricultural and Environmental Ethics*.

++++ Fox, A., Addison-Pettit, P., Lee, C. & Stutchbury, K. (2019) Using a Masters Course to Explore the Challenges and Opportunities of Incorporating Sustainability into a Range of Educational Contexts. *Climate Change Management*.

The Rio Declaration and Agenda 21 expand the public's access to information and the possibility of public participation in decision-making to improve the environment. Extensive legal protection of human rights is a means to achieve environmental protection.

§§§§ Geneva Protocol regarding protected areas of the Mediterranean Sea;

- Kingston Protocol on Wildlife Protected Areas of the Caribbean Sea Region Winder Caribbean Region Article 16

- Nairobi Protocol 3 regarding protected areas and wild animals and plants in the East African region, Article 15

- ASEAN Agreement 4 regarding the protection of nature and natural resources, Article 16

- United Nations Framework Convention on Climate Change, Article 4, Paragraph 1

- Convention on Biological Diversity Articles 13 and 17.

***** Smith, H., Southgate, H., Tweddle, D. & Curtin, N. (2020) DNA damage checkpoint kinases in cancer. *Expert Reviews in Molecular Medicine*.

+++++ Agenda 21 of the 1982 World Nature Charter, the 1991 SPO Convention 7, the Desertification Convention 8 and the Convention on Biological Diversity have emphasized public participation

Jensen, J. & Berg, N. (2012) Determinants of Traditional Sustainability Reporting Versus Integrated Reporting. An Institutional Approach. *Business Strategy and The Environment*.

§§§§§§§§§§ Redfield, A. (1960) The biological control of chemical factors in the environment.. *Science in progress*.



to the release of some greenhouse gases.^{*****} A risk whose impact on our lives cannot be predicted. Because climate change is a complex system. A fundamental feature such as the average global temperature can have unpredictable consequences if it changes. The world's population is growing, and this will directly lead to famine and other disasters, and in any case, if the consequences of environmental problems are uncertain, should we ignore the problem? Or does reason dictate that we make a move? Climate change is a threat to mankind. Some of the consequences of climate change are almost obvious now. For example monsoons may change. With the increase in the rate of water evaporation in the world, the amount of rain will also increase. But if the rate of water evaporation becomes faster than a certain limit, it will no longer rain in the rainy season, and this will mean an increase in droughts, especially in poorer countries. On the other hand, droughts can lead to a decrease in drinking water and pose a serious threat to people's health. However, with the poverty of water resources in the world, the strong pressure of population growth and the increase of economic activities, the danger seems clear and obvious. As another example, we can mention the change in agricultural lands and polar regions, which leads to an increase in hot and dry summers, and areas under planting and grain production may witness intermittent hot and dry winds. Also, with the melting of natural glaciers and the increase in the temperature of the sea water, the sea level may rise, and small islands and low-level coastal areas may be threatened. The sea level has risen by 21 cm during the last century and it is expected that this amount will reach 21 cm in 1202 and if the increasing trend of greenhouse gas emissions continues in the same way, this amount is expected to reach 21 cm in 1222. The border reaches 51 cm. The most vulnerable lands from this complication will be coastal areas with dense populations, in fact, the extent of this danger threatens the poorest countries in the world such as Bangladesh and also a small island such as the Maldives. Natural disasters are an alarm, but there is no guarantee that the governments will be able to handle the problems and the costs. Countries like America and Japan want to release greenhouse gases into the atmosphere without limits before the possible consequences are known. In addition, in order to keep the atmosphere healthy, the growth and expansion of industrial activities in developing countries will be prevented. Such countries are under pressure to reduce their coal and oil consumption. They are also encouraged to adapt modern technologies to the environment in a way that will cause less damage to it in the future, and of course, buying such technology will be expensive. Thus, economic development has become a problem. If developing countries agree to reduce the use of fossil fuels, which are useful, low-cost and suitable for industry, they cannot progress in the process of economic development. The United Nations Climate Change Treaty urges developed countries not only to participate in paying the costs but also to provide the necessary technologies to developing countries. This treaty notes that poorer countries also have the right to economic development. Another thing that has a negative impact on the environment is consumerism and people's desire to consume. People's expectations do not end, but increase. The industrialized countries in the north contain only 12% of the world's population, but they consume about 12% of the planet's resources, and they have promoted the same consumerism among the rest of the world's people, but if each person is as much as an American consume, it must be sure that even clean water will not be found for more than half of the people to drink and all the vital resources of the planet will end.

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 1991 in Rio de Janeiro, Brazil. The Rio Conference opened on June 0, 1991 with the presence of the heads of 242 countries and more than a thousand people. drop 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.

^{*****} Heilmayr, R., Carlson, K. & Benedict, J. (2020) Deforestation spillovers from oil palm sustainability certification. *Environmental Research Letters*.



4. The concept of 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 with a spirit of partnership.^{††††††} They are different in the quality of the environment, they have a common but different responsibility, 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.

The principle of equality of governments and preservation of the international environment

The principle of the equality of states, in contrast to the gross inequality of countries in terms of economic, military, development and cultural richness and size, has been considered as one of the fundamental principles of international law.^{‡‡‡‡‡‡}

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. This is the supreme and total power of the country in making laws within the borders of a country, which is inviolable and is included in international law along with other elements of the formation of a country. 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. It is in the shadow of this sovereignty that the principle of equality of governments makes sense. The question that arises here is whether the legal equality of countries means their equality in rights. And isn't the legal equality of countries against the requirements of the international community? To answer this question, it should be noted that although countries have supreme authority within their borders and have sufficient enforcement tools. But these supreme authorities take on a different color in the international community. The reason for this can perhaps be found in the inevitable heterogeneity of the international community, and of course one should always keep in mind that in the international community, the author and the subject are the same, and it is the lack of supreme authority that puts the author and the position on the same side. It is the most important determining factor in the international community. It should not be forgotten that when there is no supreme authority, governments are equal (principle of equality of rights), but in the meantime those who have more power get more rights (inequality of rights) and thus countries according to Different abilities get a different share in the international law system. Therefore, many believe that the principle of equality of countries has been violated more than it is respected in the hard fight of the history of international law.

Professor Robert Taco says: "Not only the cause of natural inequalities between states can be known in terms of the extent of their territory, population, natural resources and geographical location, but this is also the result of their imbalance in development. This issue has not only caused the inequality of

^{††††††} Adomako, S., Amankwah-Amoah, J., Debrah, Y., Khan, Z., Chu, I. & Robinson, C. (2020) Institutional Voids, Economic Adversity and Inter-firm Cooperation in an Emerging Market: The Mediating Role of Government R&D Support. *British Journal of Management*.

^{‡‡‡‡‡‡} Ramos-Vielba, I., Sánchez-Barriluengo, M. & Woolley, R. (2016) Scientific research groups' cooperation with firms and government agencies: motivations and barriers. *The Journal of Technology Transfer*.



creation, Rather, entering the era of civilization and industry and the unevenness of progress in these fields has a significant effect on creating inequality in wealth and power.^{§§§§§§§§}

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. It soon became clear that powerful powers such as France, Italy, Japan, Great Britain, and the United States of America tend to establish a system based on a superior status for themselves in the community of nations. In fact, the world war was a military conflict between two factions, one of which tried to maintain the status quo for its own benefit, and the faction that wanted to break the "status quo" and gain a greater share of the world's spoils. This was the most important reason for marking the end of the League of Nations and the beginning of a new era in the international community. 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.

What the great powers were looking for was in fact the serious support of the growing dependent of the great powers. The end of the two world wars and the confrontation with its devastating effects was actually the beginning of adjusting the principle of equality.^{*****} 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. 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.

In this way, it should be said that although the principle of equality of countries is approved by international law in theory, but in practice, the said principle has not been observed and respected. And the conflicting interests, one with the tactics of power and wealth, and the other with the tool of numerical majority, lined up against each other. Although the process of power hierarchies in the world has still preserved its existence, but in the end, all governments, including the small and large, the strong and the weak, have understood the fact that coexistence and joint efforts are the best possible way to achieve a better result.

The formation of international responsibility regarding environmental issues

Sea level rise, preservation of plant and animal species, ozone layer erosion, effects of industrial activities caused by human actions, forest destruction, water pollution, acid rain, noise pollution and many other issues like that.^{††††††††}

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. 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. The Chernobyl nuclear disaster in the former Soviet Ukraine was the first incident of radioactive death from a nuclear power plant that was released into space as far away as the United States. A little later in the same year, fire hoses caught fire during the extinguishing of a warehouse in

§§§§§§§§ Clark, B., Auerbach, D. & Longo, S. (2018) The bottom line: capital's production of social inequalities and environmental degradation. *Journal of Environmental Studies and Sciences*.

***** Pikalov, A. (2014) Uzbekistan between the great powers: a balancing act or a multi-vectorial approach?. *Central Asian Survey*.

†††††††† Druckman, J. & McGrath, M. (2019) The evidence for motivated reasoning in climate change preference formation. *Nature Climate Change*.



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. These incidents were a warning that countries cannot close their borders to avoid the effects of disasters and environmental events. Facing the greatness and urgency of such problems and international environmental issues, the world needs a serious awakening and companionship.

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 and...

Protection and protection of the environment requires a legal instrument that has a guarantee of solid implementation at the international level. International responsibility is an executive guarantee to prevent damage to the environment with an international comprehensive scope^{#####}, which can be a useful mechanism in the direction of improving international environmental rights. Responsibility is actually a logical consequence of right.

Every legal system requires that the subjects of rights take responsibility if they harm the rights and interests of other rights holders. In the international community, each government decides freely based on its sovereignty and faces equal freedom with other governments, as a result, the international responsibility of governments is manifested as a mechanism to regulate mutual relations between them. If a government violates a rule of customary international law or ignores the obligation resulting from the treaties it has concluded, it has violated it. In general, an "international wrongful act" is a violation, and the so-called violation of any obligation stipulated in international law is responsible. For example, a government is responsible in all of these cases:

When it refuses to respect treaties or violates the territorial sovereignty of another state or damages the territory or property of another state or uses its armed forces against another state (except for the cases stipulated in the United Nations Charter) done).

In fact, international responsibility is: the obligation to compensate the damage (material or moral) inflicted on the subjects of international law (countries and international organizations) resulting from the act or the basis and source of international responsibility. In general, the basis and origin of international responsibility is the subject of two fundamental theories:

One is the theory of error or mental responsibility and the other is the theory of risk or objective responsibility.

4.1. *Theory of error (mental responsibility):*

This theory was first proposed by Grosius (the father of international law), who himself adapted this theory from Roman law. According to this theory, the existence of international responsibility is caused by the wrongful act of a functionary of international law.^{§§§§§§§§} In this way, the act or failure to act against the international regulations alone is not enough to establish the international responsibility, but there must also be an error or negligence in order to realize the responsibility.

International jurisprudence in the 19th and early 20th centuries was strongly influenced by the theory of error, and several judgments were issued on this basis (including the opinion of the International Court of Justice in the case, as well as the arbitration award dated 1912 in the case of Russian compensation. "Corfu Strait, dated 1949 » . Of course, regarding this issue, in terms of existing limitations, arbitration can also be used as one of the important elements in resolving disputes, including

Dyck, I., Lins, K., Roth, L. & Wagner, H. (2017) Do Institutional Investors Drive Corporate Social Responsibility? International Evidence. *Journal of Financial Economics*.

§§§§§§§§ Sohn, L. & Baxter, B. (1961) Draft Convention on the International Responsibility of States for Injuries to Aliens. *American Journal of International Law*.



the methods that can fill the performance guarantee gap caused by the agreement or ADR condition, from the mediation method.*****

4.2. *Theory of risk (objective responsibility)*††††††††

Any current act or omission that is not considered international law. This theory indicates that if it is legitimate, it brings international responsibility to the government or country that act or omission. In other words: something that is done by a government is considered illegitimate internationally when the act is done by him:

- A persistent behavior (action or omission) according to international law, can be attributed to the government.
- This behavior violates one of the international obligations. This definition applies to any subject of international law, and it can be said that the occurrence of international responsibility is possible when the non-compliance with international law is realized and this non-compliance can be attributed to assigned a government.

5. Causes of the realization of international responsibility

Implementation of international responsibility is possible when a rule of international law has been violated, so it is necessary that an illegal act has taken place at the international level. In other words, what leads to the realization of international responsibility is‡‡‡‡‡‡‡‡:

5.1. *Illegal international act, which includes:*

- Violation of a contractual obligation.
- Violation of a customary or unwritten obligation.

5.2. *Leaving a criminal or illegal act may be done in two ways:*

- Illegitimate actions attributed to the government.
- Illegal actions attributed to international institutions.

The government can become internationally responsible due to the illegal behavior attributed to any of its legislative, administrative or legal organs or due to similar actions carried out by any of its political divisions (department, province, region) or state (in organizational of the federal type) to be responsible. In fact, the government can be held responsible for the actions of persons who are legally considered its agents (eg employees) or those who are similar to them. Therefore, according to international law, an international wrongful act is attributed to a country when persons or bodies under its effective authority have performed that act. The perpetrator of the violation may be an individual element, such as: high-ranking statesmen and officials, or a collective element such as:

Government officials who act as collective organs, such as the legislative assembly or the government board or the courts of law, illegal actions attributed to international institutions arise both from the organs of this institution and from their agents.

6. Attribution of action to the government

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§§§§§§§§:

6.1. *Violation of an international duty:*

The causal relationship between the action performed and the damage caused

***** Ghaeminasab, F. "international challenges of international arbitral awards". CIFILE Journal of international law, 2024). 4. (10.30489cifj.2024.420839.1090)

†††††††††† Xu, R., Luo, F., Zhou, F. & Chen, G. (2022) Risk early warning indicators for air traffic controllers' unsafe acts. Human Factors and Ergonomics in Manufacturing & Service Industries

‡‡‡‡‡‡‡‡‡ Cremona, M. (2006) External Relations of the EU and the Member States: Competence, Mixed Agreements, International Responsibility, and Effects of International Law. European Public Law: EU eJournal.

§§§§§§§§§§ Hatzipanayotou, P., Lahiri, S. & Michael, M. (2008) Cross-Border Pollution, Terms of Trade, and Welfare. Environmental and Resource Economics.



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.

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. 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 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.

7. Civil liability for damage to the environment

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; And in most cases^{*****}, 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. But in fact, the Se and Su disaster in 1976, followed by Bhopal and Sandoz (Switzerland) in 1984 and Chernobyl in 1986, were the source of awareness of the lack of international regulations related to industrial accidents and their results on the environment. 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. Following that issue of civil responsibility, firstly, they were taken into consideration regarding damages that had a nuclear origin: four conventions are dedicated to this matter.⁺⁺⁺⁺⁺ Of course, most of the conventions that deal with the issue of responsibility provide similar definitions of civil liability, for example Article 8 of the 1993 Lugano Convention on Civil Liability for Damage Caused by Dangerous Activities for the

***** Plaza, C., Zaccone, C., Sawicka, K., Méndez, A., Tarquis, A., Gascó, G., Heuvelink, G., Schuur, E. & Maestre, F. (2018) Soil resources and element stocks in drylands to face global issues. Scientific Reports.

+++++ (Conventions: Paris, July 29, 1960. Brussels, May 25, 1962. Vienna, May 21, 1963. Brussels, December 17, 1971)



Environment states: The concept of civil liability generally refers to It refers to the loss or damage caused by something or someone, and usually civil lawsuits are initiated by those who have suffered damage to themselves or their property, and their responsibility is often directed to the original owner or manager of a resource, according to the old theory of government responsibility, any act An international illegality committed by a state causes international responsibility. On this basis, the government that suffers through pollution and causes provable damage to the property or persons of another government, is responsible for both cases. In this way, from the past until now, international governing rules have stipulated regulations regarding the government's responsibility to compensate for environmental damage.

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 .

The International Court of Justice stated in 1966 that non-implementation of an obligation that causes transboundary damage to the environment is now a part of general international law^{#####} (the Court's advisory opinion on the legitimacy of the threat or use of nuclear weapons, July 1966). Therefore, governments must immediately notify other governments of any natural or emergency situation that may have harmful and unpredictable effects on the environment (Principle 18 of the Rio Declaration).

8. Available solutions

There are many cultural disputes between the international courtshat role does the But w^{§§§§§§§§§§}. principle of joint but different responsibility of governments play in the development and evolution of international environmental law? The Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948) have been accepted as the basis of this framework of regulations at the world level. 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, it will lead to more stable and fair results in 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.

When differences between government announcements and announcements cannot be resolved through consultation and negotiations, the Commission recommends that an independent panel be established. The Commission stated that the establishment and operation of such a panel is defined in the "1997 United Nations Convention on the Civil Uses of International Waters^{*****}."

We should mention the statement of Federica Mogherini^{††††††††††} that EU members, on the occasion of World Water Day, emphasize our commitment to achieve access and sustainable management of water

^{#####} Ago, R. (1991) "Binding" Advisory Opinions of the International Court of Justice. American Journal of International Law.

^{§§§§§§§§§§} Ghaeminasab, F. others. Investigating global welfare in the Statute of the International Criminal Court. journal of criminal law. 2023.

^{*****} Nakayama, M. (1997) Successes and Failures of International Organizations in Dealing with International Waters. International Journal of Water Resources Development.

^{††††††††††} High Representative of Foreign Affairs and Security Policy and Vice President of the European Union, on the occasion of March 22, 2017, World and European Water Day.



and wastewater for all people, especially vulnerable groups, until the end of the 2030 plan. Our commitment to leaving no one behind means that no one should be denied access to clean water. We also re-emphasise our commitment to the Paris Agreement and Morocco's declaration of action, which affirms the global determination to deal with climate change and help address the effects of climate change in various fields, including water.

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. Water is the source of life, the life that it is our responsibility to preserve in every part of the world. Meanwhile, Turkey signs its entry permit to become part of the European continent, which violates the general policies of the European Union. So either Turkey cannot be a part of the European Union or it is committed and responsible for these actions.

Our approach to environmental issues is very serious. The damage they have done to the environment so far is enough to destroy our lives; But the next generation has the right to live. The fair treatment of countries together is the basic necessity of international law, which makes life easier for the future of mankind, otherwise, the more we move forward, the more our future generation will be involved in the huge tensions and insecurities that we sowed ourselves. This fairness is in line with the principle. However, fairness has a broader and more sublime concept.

However, due to the importance of the issues and conflicting interests of the parties, no agreement will be reached with the complete agreement of all parties, so it seems that the best thing is to enter an international authority^{*****}, and as after the decision of the International Court of Justice In 1994, the issue of the use of nuclear weapons was taken seriously, and after the issuance of the advisory opinion of the International Court of Justice, a new enthusiasm has been created among countries and the United Nations General Assembly, as soon as possible, appropriate international laws in various fields in the form of a treaty. be set internationally.^{§§§§§§§§§§}

Conclusion

It is true that no document can condemn the Turkish government from the point of view of international water and river rights, but due to technical and engineering reasons, damming and drying up such an international river will have very unpleasant consequences for all countries, especially the upstream country. 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.

It seems that the best thing to do in the current situation is for the countries to unite and fight against the drought instead of fighting each other. There is not much hope for cooperation and unity when the future of all countries is tied to water. Therefore, for the survival of the downstream countries, they have no other way than to cooperate and create a joint cooperation panel with Turkey as an upstream country.


***** Ghaeminasab. F. others. Delimitation of boundaries of the Caspian Sea in international law. international journal of environment law. 2024.


§§§§§§§§§§ Ghaeminasab. F. others. Legal analysis of the advisory opinion of the International Court of Justice on the use of nuclear weapons in 1994. journal of constitutional law and jurisprudence. 2024.


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. The science and management and coordination group of this dam must be present, even in some cases it is necessary to issue permission from the relevant internal authorities. First of all, it seems that the creation of an international pillar to monitor and issue licenses for such actions is strongly felt. Apart from the fact that the current international law does not have such a reference, did the mentioned groups really not evaluate the effects of this dam downstream? Negligence and mistake on the part of the Convention on Environmental Diversity, the contracting parties are not only obliged to protect their biodiversity inside the country, but this protection includes external protection as well. The issue of economic, subsistence and environmental dependence of Iraq, Syria and Iran as downstream countries on these two rivers, which is strongly affected by the quantity of these waters in the land area of Iraq and Syria, and the more the volume of their water is reduced, the more severe it will be. Rounds of the region are added. Also, this research can be pursued from the point of view of environmental rights, because the many environmental damages caused by the implementation of the dam in the upstream countries, after access to water, the environmental issue of this case can also be raised, and this requires a separate research. We encourage a specific research in this field. In general, since diplomacy is a political trade-off, if any upstream country wants to take actions that violate international law to the detriment of other countries, it will lose many of its markets at the regional level in the downstream countries and generally it has deprived the capacities of other countries for economic development. For example, Iran, which is the closest way for the transit of Turkish goods to southern countries, can deprive Turkey of this small right.

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