

The Legal Framework for the Protection of the Air under International Conventions

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Abstract: One of the major challenges to protect the environment under international conventions is air pollution as it is a very complicated issue. It has attracted the attention of many specialists in many different fields and communities with their different social and legal rules. Issues related to environmental protection have been considered as welfare issues and thus have not been given much emphasis by the developing countries. Nonetheless, it has now become a major goal sought by all countries in order to protect planet earth from further destruction and decimation. Although the environment is the biosphere in which man and other organisms live, air pollution is a relatively recent human and social problem. Factors that threaten the environment have now become a challenge which man must face because it is the environment in which man lives that offers him food and gives him the opportunity to achieve spiritual, social, moral and development. The rapid scientific development and great competition among the countries to develop their products and weapons have led to various environmental problems. It has caused many harmful social and economic problems, particularly after the many and varied industrial developments and the numerous conflicts and wars, in which many highly destructive weapons and internationally prohibited weapons were used. Furthermore, the international communities' attempt to address the problem of pollution at the formal, informal and international levels have been gradual. Hence, this study, proposes the adoption of the international cooperation that was designed based on the International Convention on Economic, Social and Cultural Rights of 1966 and the United Nations Conference on the Human Environment at Stockholm in 1972 which developed the concept that the right to a healthy and balanced environment is a human right. Additionally, the Vienna Convention 1985 to protect the ozone layer should also be taken into consideration. For this purpose, a qualitative method of research is adopted and primary and secondary sources were consulted.

Key words: Criminal protection, environment, air pollution, international convention

INTRODUCTION

The disadvantages and dangers of air pollution have drawn the attention of the international community to the need to protect the natural environment and preserve the quality of the air by securing better protection for the different elements. In the United Nations Conference on the Human Environment held at Stockholm in 1972, it was confirmed that environmental protection measures are not an obstacle to economic development but it is instead a prerequisite to ensure its achievement. Since then there has been an increasing concern about the environment. Global environmental disasters and their adverse effects on living organisms and the environment have alerted all countries on the seriousness of the pollution problems and they have discovered that it was a failure of the

classical legal system in handling the matter especially if air pollution are caused by accidents. Pollution is one of the biggest problems faced by the modern state. It needs the concerted efforts of every country to address and reduce it. The problem is made worse by man since man himself has played a part in polluting the environment through the various economic and industrial activities he has undertaken and environmental pollution has reached a stage where it has become life threatening. In addition to that there is the impact on other organisms which may change the natural balance of the environment and its various living or non-living components. Air is an important factor in the environment because the oxygen in it supports life but its existence is a mystery to man. Human beings breathe in a very large amount of air and it is estimated to be fourteen thousand liters per day which

is about fifteen to twenty cubic meter of air. In fact, man breathes twenty-two thousand times a day when he is in resting mode and that number rises when he is moving about or exercising. The amount of air that a man breathes in is equivalent to sixteen kilogram per day and this amount is more than a man's daily intake of food and water. The geographical and natural factors are the most important reasons for international cooperation and the use of international means that are absolutely necessary in the scope of protection of the air. The environment is a geographical and natural unit which cannot be separated as the elements that make up the environment are interlinked and interact with each other. The air layers over the territory of a particular country become the atmosphere that may envelope another state and as a result environmental damage is not limited to the place of its occurrence but extends beyond it.

International and regional treaties and conventions for international cooperation as well as recommendations and resolutions of international conferences and organizations have played an important role as an indirect source for national legislation when criminalizing acts of pollution. This study will address the issue in the following sections.

THE RESEARCH DESIGN AND PROCEDURE

This research uses the qualitative approach. The theoretical approach and the analytical examination of the protection of the air from pollution in international conventions were followed and a comparison with some laws related to the environment were also made. In addition, a review of relevant sources and references were also conducted.

THE DEFINITION OF THE ENVIRONMENT

There is no common ground among researchers and scholars on the legal definition of the environment. However, some of them have defined the environment as "a framework in which the human lives and gets the elements of his life and practices relationships with other human beings" (Issa, 2012). In the same context, others describe it as "the hub where human beings are born and raised, and live until the end of their life". The environment includes all natural, biological, social, cultural and economic factors and everything that can affect humans directly or indirectly. This definition divides the environment into two main sections (Sayeh and Awad, 2004).

The natural environment includes everything that surrounds human beings such as living and non-living elements in which human beings do not interfere with

their existence such as water, air, soil and all living organisms. This environment in its functional reality has a self-standing movement and a compromising movement with each other within a certain system called the ecosystem and biological environment-it includes fauna and flora where humans live.

The UN Conference on the Human Environment held in Stockholm in 1972 defines the concept of the environment as the "physical and social resources available at a certain time and at certain place to satisfy human needs and aspirations". The Stockholm Conference tackled the concept of the environment broadly and confirmed that this concept does not only include factors or material resources (such as water, air and soil) but also includes social factors and conditions that are available at a certain time and place to satisfy human needs.

THE ENVIRONMENTAL THREATS-AIR POLLUTION

Some contemporary scholars of jurisprudence believe that environmental pollution is anything that affects all elements of the environment, including flora and fauna (including humans) as well as everything that affects the composition of the natural non-living elements such as air. In the same context, one of the researchers has defined environmental pollution "as the human's introduction of materials without benefit or the introduction of additional energy to the environment directly or indirectly, generating damage to the health or the environment in which his residence is located and everything in it or his work and everything accompanying it and anything related to them, being material or moral" (Fathallah, 1998). Most researchers agree that this definition encompasses most of the aspects that could constitute an assault on the environment, whether these attacks were caused by external, internal or by man-made actions, e.g., the effect of radiation, heat, glare, toxic gases, bad odors as well as noise or vibration or the like which is defined as noise pollution.

The World Health Organization (WHO) defines air pollution as "a case where the air outside the work premises contains material concentrations harmful to humans or their environmental components" (Gawad, 1991). The American Social Medical Association for Industrial Hygiene defines it as the presence of impurities or contaminants in the air, either by nature or man-made, in quantities and for a sufficient duration to breach the comfort of many exposed to this air or damage to public health or the lives of humans, animals, plants and properties.

THE TYPES OF AIR POLLUTION

Polluted air is defined as any substance in the air that can cause harm to humans and the environment, whether in the form of solid particles or liquid droplets or gas molecules. Pollutants belong to two main sources.

Natural pollutants: are pollutants resulting from natural processes such as forest and bush fires, volcanic eruptions, hurricanes, sandstorms and dust storms, the spread of marine water and chemical and biological interactions in the soil and the disintegration of living membranes and micro-organisms after their death.

Human pollutants (abnormal) are pollutants resulting from human activities such as industrial and mining waste in different types and forms, the burning of fuels (oil and coal), the burning of natural fuel "biomass", many agricultural activities and the use of chemical fertilizers and pesticides and home fragrances and various construction operations.

There is another important classification of pollutants and it is immaterial of whether they are natural or human pollutants (abnormal). Primary air pollutants are emitted directly into the air from different sources and they can have direct effect on the air and as precursors of secondary air pollutants whereby the primary air pollutants interact with other natural elements in the air to form compounds that have an impact on the environment. Air pollutants are divided also according to their physical nature.

Gaseous pollutants: where the contamination is caused by gaseous chemicals such as carbon dioxide (CO_2) or the emission of unpleasant odors as a result of the dumping of waste and the decomposition of their constituent materials which may lead to poor health and does not necessarily mean getting injured by these materials. Bad odor does not necessarily mean toxic but it often indicates the presence of air pollutants.

Liquid or solid pollutants: these are liquid or solid particles up to 50 μm in diameter and due to its size it may be suspended in the air and when a large concentration of it is present it may appear as clouds of smoke or fog.

THE PROTECTION OF THE AIR UNDER INTERNATIONAL CONVENTIONS

The right to live in an environment that is pollution-free was reflected in a large number of international conventions on human rights, notably the International Covenant on Economic, Social and Cultural Rights of 1966 as it confirmed the economic, social and cultural rights and highlighted other types of human rights that have been forgotten by the Universal

Declaration of Human Rights for the year 1948. For example, humans have the right to live in a healthy environment as it is ratified in Article 12 which says "the states parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" including the steps that states parties must take in the current covenant in order to achieve completely this right that is necessary to:

- Work to reduce the percentage of deaths in newborns and in child mortality for the healthy development of the child
- Improve the various environmental and health aspects
- Prevent infectious diseases, endemics and occupational diseases
- Create conditions whereby everyone will be provided medical services and medical care in the event of sickness

In addition, the declaration on the progress and development in the social field adopted by the General Assembly of the United Nations on the 11th of December 1969 highlighted the protection of the environment from air pollution. Article 13 thereof stipulates "that social progress and development should target the progressive realization of the main objectives, including the protection and improvement of the human environment, and what makes any social progress mainly pass by the protection of the environment and its elements including natural air as one of its most important elements".

In the same context, the first United Nations Conference on the Environment held at Stockholm in 1972 developed the concept of the right to a healthy and balanced environment as a human right and the first principle of this conference considers that a person has a fundamental right to liberty and equality and favorable conditions of life in an environment that allows him to live in dignity and well-being. It also states that a person has a sacred duty to protect and improve the environment for the present and future generations. The conference concluded with the adoption of a wide range of important recommendations to face and reduce pollution by urging states to commit to take all the necessary measures to prevent air pollution to coordinate and cooperate with organizations active in the field of environmental protection and to establish an international responsibility for those who caused air and other environmental pollution since air pollution occurring in a state can spread to several other countries even though it is not adjacent to it.

The African Charter on Human and Peoples' Rights ("Banjul Charter") 1981 was a pioneer in the field of environmental protection as Article 24 thereof states that "all peoples shall have the right to a general satisfactory environment favorable to their development" and accordingly, it is among the most prominent international agreements at the regional level establishing regional unions and approving the importance of the environment explicitly and making it as one of the objectives to pursue for this regional bloc of African countries.

In Europe, the Scandinavian countries were the most affected by the effects of pollution caused by acid rain and it made them call upon the United Nations Economic Commission for Europe (UNECE) to fight against this type of air pollution. Its efforts ended with the adoption of an agreement on trans-boundary air pollution in Geneva on the thirteenth day of November 1979 which entered into force on the sixteenth day of March 1983 and its scope extended to include even North American countries. This treaty has identified the concept of trans-boundary air pollution as "any air pollution in which the source is wholly or partially created in an area under the jurisdiction of the state which leads to harmful effects in an area under the jurisdiction of another country to an extent pursuant to which it is generally difficult to distinguish the private or public elements of the emission sources." Among the most important results that were derived from this agreement we can make the following statement. This convention is the most important factor that led to the organization of data on air pollution.

It reflected upon the international interest shown in this type of pollution, but the effectiveness of the interest shown remains associated with the serious political will of the respective countries and the need to involve everyone whether individuals or institutions in this endeavor.

This agreement has served as a reference model for subsequent international conventions on the protection of the environment where the maximum allowable percentage of emission that should not to be exceeded is defined as it is in the case with the protocol of Sofia of 1988 as well as the fixing of a given year as a reference for the intended objective of reducing emissions

The agreement gave ratifying states the freedom to take all the necessary actions to reduce emissions, especially the giving of financial rewards that reflect the prevailing approach to fight pollution. Instead of punishing those who do not maintain the environment we reward those who work to preserve it. The ratifying states are obligated not to cause air pollution outside their own territories.

In the same context, the convention on acid rain was followed by several protocols, namely: the Geneva

Protocol of 1984 on the financing of a joint program to measure or assess long-term air pollutants in Europe; the 1985 Helsinki Protocol on the Reduction of Sulfur Emissions or their Trans-Boundary Fluxes and the 1988 Sophia Protocol concerning the Control of Emissions of Nitrogen Oxides or their Trans-boundary Fluxes.

Under the auspices of the United Nations, a committee composed of experts from fifty-three countries and 11 international organizations was formed to prepare a draft for the protection of the ozone layer. The ozone layer serves as a barrier to prevent excessive ultraviolet light from reaching earth. The existence of the ozone hole and its effect on climate change became the focus of attention from states and individuals, especially after the growing awareness of the risks that may arise there from, that is, the spread of diseases and ecological disasters. On the twenty-second day of March 1985 the Vienna Convention for the Protection of the Ozone Layer was held and this convention obliged states who are parties to the convention to take all the necessary measures in order to reduce the harmful effects caused by the depletion of the ozone layer through.

Encouraging the establishment of monitoring systems and to assess the effects of pollutants on the ozone layer with a commitment from the states to cooperate in order to ensure the compilation of data that is collected and ensure their validity and work on sharing them with the competent international centers.

The introduction of internal legal systems in the respective states so as to reduce the use of substances that are harmful to the ozone layer.

Cooperation in all fields such as the exchange of information and to take collective measures and commit states to disclose this information.

Help developing countries to preserve the ozone layer by facilitating the transfer of technology, the provision of scientific data and the training of professionals and staff.

In 1992, the United Nations Conference on Environment and Development held in Rio de Janeiro in Brazil, stated that living in a healthy environment is a human right, as its Principle 1 stipulates that "human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature" principle 2 stipulates that "states have in accordance with the charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the

limits of national jurisdiction". Countries should ensure that there are opportunities for all individuals to benefit to the fullest extent of their potential and they have the right to an appropriate standard of living for themselves and their families, including enough food, clothing, housing, water and sanitation.

International efforts continued to be made in conventions under the auspices of the United Nations to limit climate change and it has been deemed to be the beginning of serious attention being paid to the problems of air pollution. Due to the recognition given by the international communities on climate change, many seminars on the effects of climate change were organized by international organizations such as the International Organization of Meteorology (IOM), the United Nations Environment Program (UNEP) and the International Council for Science (ICSU, after its former name, International Council of Scientific Unions). The attention to climate change was reflected by the huge number of signatories of the climate convention held in Geneva in 1992. One hundred and sixty countries ratified the Convention two years later. The ratification of this Convention by so many countries indicates the recognition by the said countries of the serious consequences that may arise due to air pollution and global warming. The convention clarified that the recognition of the serious effects of climate change are a common interest of humanity and that ratifying states should work on:

- Reducing the concentration of greenhouse gases in the atmosphere to a level that will prevent any serious disturbances to the climate
- Creating a legal system on climate change as a reference to fight air pollution
- Activating the principles contained in the convention, for example, the principle of common liability for all countries to raise awareness on the dangers that may result from the degradation of the environment, the principle of precaution in order to predict, prevent or mitigate air pollution and the principle of protecting the rights of current and future generations
- Creating a multilateral consultative mechanism at the request of the ratifying states and work to resolve disputes arising from the implementation of this Convention

In the same context, Ban Ki-moon, the Secretary General of the United Nations, said in the Climate

Conference held in Paris in 2015 that the progress on the reduction of global warming and air pollution is a critical turning point for a cleaner, healthier and more sustainable future for all the countries of the world, considering that there is a strong effect translated by the participation of more than 186 countries which presented their national action plans for climate change and this is very encouraging. However, this conference did not include any indication on the obligations of the states to take deterrent measures in the penal field to implement its provisions internally. But, it has already formed an important tool which can assist legislative authorities to enact criminal laws in the field of air and environment protection and rules to prevent pollution.

CONCLUSION

International or national interest, on the subject of the protection of the environment or defending it stems mainly from the risk of pollution to which every country is exposed to at all times. Pollution knows no bounds or kind, and is therefore a public danger that threatens the lives of all living organisms and the environment in all countries of the world. This attention to international protection was backed by a number of factors including the serious effects on air quality and other elements of the environment that have arisen, especially after the scientific, industrial and economic progress that the world has witnessed and the survival of the environment for such a long time without the required care and attention and the spread of diseases and epidemics.

In modern times, the protection of the environment in general has become one of the main topics covered in international conventions and national environmental laws to stop the exploitation of the various elements of the environment and to protect them from pollution for the survival of organisms and the protection of human rights.

REFERENCES

- Fathallah, A., 1998. Pollution and the Agricultural Environment. King Saud University for Scientific Research and Publishing, Saudi Arabia.
- Gawad, A.A., 1991. Air Pollution. AL-Arabia for Distribution and Publishing, Cairo, Pages: 23.
- Issa, I., 2012. The Environmental Pollution the Most Significant Issue in the Era: Problem and Solution. Dar Al Kitab Al Hadith, Cairo.
- Sayeh, A.A. and A. Awad, 2004. Environmental Issues from an Islamic Vision. 2nd Edn., The Book Center, Cairo.