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The Arbitrating in the Environmental Disputes

boudellal-fatouma*

Université Djillali Liabès de Sidi Bel Abbès(Algeria),

Lidiaboudlal35@gmail.com

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***Corresponding author**

Abstract :

According to the international law of environmental disputes, environmental disputes ; are qualitative disputes that contains contradictions in their approaches, and include disputes for water resources and natural wealth... these kind of disputes differ from the disputes of international trade contracts, as they are considered a dispute stemming from environmental abuse in one of its elements. Likewise, this act is considered an attack on the components of the environment. Which we must protect it from environmental aggression.

So, do we resort to international means of justice and arbitration, or to national courts to stop the assault on the environment? And what are the legal bases by which we defend the environment? .

Keywords: Arbitration; Environmental disputes;Criminalization of hazardous materials.

Introduction :

The environmental study has attracted the attention of researchers in many fields of science and knowledge, Where the talk about protecting the environment has become a main subject about human safety, whose safety is linked to the safety of his environment.

In addition to that, The continuity of life on Earth has become directly related to providing the straight, healthy and balanced environment, and it is linked to the Safety of the ecosystem which is an integrated environmental unit that includes living organisms and non-living components that interact with each other according to a precise and balanced system to perform its mission in life. So that we can declare that the Legal jurisprudence was not preoccupied with protecting the environment just lately ,after the Stockholm Conference in 1972, It has become a matter that requires rules that regulate and control the behavior of individuals and their relations in dealing with the environment and punishing the perpetrators of environmental(1)violations.

THE FIRST TOPIC : The Basic Concepts of the Environment

The environmental study in all forms is considered one of the recent researches, in which the protection of the environment emerged as a result of competition and conflict between countries over natural resources, which led to pollution of the environment, And when the Third World countries gained their independence, they entered into challenge towards industrialization, seeking to achieve the well-being of their people, without regarding the environmental consequences.

First requirement: The Definition of environment

Etymologicaly, the word environment in the Arabic language is referring to the verb "Boa" which means the place or the house(2) in which the living being survive. And the word "Taboa " means - settled, resided, and "Boa(3) " means also the environment ; the house..... So the environment is the house or environment in which a living being survive, whether it is a human or an animal. As for the French language, the word environment is a translation of the French word "environment", which means in the French dictionary the sum of the natural or artificial elements that determine the framework of human life(4).

In the dictionary le Robert the French, the environment is defined as the sum total of natural physical, chemical, ecological, cultural and social conditions that can

influence living being and human(5) activities. We noticed that There is a convergence between Arabic and French in linguistic meaning of the word environment.

Second requirement: The Terminological Definition of “Environment”

It was agreed on one concept, which is that the environment has two complementary elements, the vital environment; ecology; is defined as the science that studies the conditions for the existence of living being and between the environment and the place in which they live on in the other hand(6).

The term “ecology” is a Greek word compound from parts “ikos”, meaning house, logos, meaning “the science”; the science that is concerned with studying the living being in its home, where it is affected by a group of living, biological, and non-living chemical and physical factors, and the first person used the term ecology is the Western scientist “Rater”.

Ecologists and naturalists scientist had determined a specific scientific term for the concept of the environment: which means the conditions and external factors in which living being survive and affect the vital processes they carry out(7).

Third requirement: The Legal definition of Environmental

The definition of the environment in the legal side differs from one legal system to another, and regarding to the Algerian law system, Law under n^o 03/10 of July 19th, 2003 related to the protection of the environment within the framework of sustainable development, According to Article 4; the legislator clarified that the legal concept of the environment consists of all natural elements and the elements that created by the Human being.

It stipulates that “the environment consists of a biotic and vital natural resources such as air, atmosphere, water, land, subsoil, plants and animals, including the genetic heritage and the forms of interaction between these resources, places, landscapes and natural features. And this definition is the most practical in the various legislations because it provides a large protection that goes beyond the natural elements of the environment to include the human achievements and activities which disserve to be protected and which was created by man in order to avoid difficulties and for his favor(9).

The legal definition agreed by many countries is based on two parts:

The first: is represented in the natural environment consisting of water, air, soil and the energy and mineral resources beneath it, in addition to living being of all kinds.

The second: is the used environment built by human being and the social systems inherited from the previous generations.

Fourth requirement: the Arbitral legal and justification of its existence.

It was necessary to find another way to settle disputes arising from transactions between countries, which represents a parallel path to the state's judiciary, and a way to respond to the needs of merchants, whose importance has become increasing day by day.

Nowdays ,arbitration has become one of the most important means that dealers wish to resort to in the fields of international trade and investment to consolidate their relations , almost all agreements include this contract,and that because of fear of delay in settling the dispute, which may lead to recourse to the judiciary in the national courts due to the fear of one of the parties of tending to the side of his opponent.

The Arbitration of the courts are also characterized by secrecy and non-disclosure of their disputes, so that to preserve their future relations that they want it to be continued(10).

The emergence of Arbitral legal as an alternative means of litigation and by judges of their choice, where the parties choose the members of the arbitral tribunal based on their experience in the areas related to the dispute to facilitate its adjudication and speed in decision-making, as the parties also have the freedom to choose the place of arbitration and the rules applicable to the course of procedures before the court and On the subject of the dispute, one of the reasons for the increasing importance of arbitration in international transactions is to avoid the problems of conflict of laws(11).

the increasing of the necessary laws that impose themselves on the management of the parties of the conflict, in contrast to foreign law, which led to the flourishing of arbitration, that's why the parties of international contracts preferred to resort to it.

THE SECOND TOPIC : The Harmful Substances and Hazardous waste Circulation.

This study directly deals with the important topic in the field of environment, development and human health, which is the circulation of waste and hazardous materials, climate change, protection of the ozone layer, desertification biodiversity, biological biosafety, and hazardous waste was defined in the Environmental Law as “residues of various activities and processes or hazardous materials that have no original or alternative uses such as clinical waste from therapeutic activities and waste resulting from the manufacture of any pharmaceutical preparations, medicines or Organic pesticides or dyes and paints.”

The Environmental Law defines waste disposal as “operations that do not lead to material extraction or reuse, such as burial in the ground, deep injection, surface water discharge, biological treatment, physical-chemical treatment, or permanent storage.” As well as recycling hazardous waste to benefit from it, the Environment Law also defines waste recycling as “the operations that allow the extraction or reuse of materials, such as using them as fuel, extracting minerals and organic materials from them, soil treatment, or refining oils.”

First requirement: The Concept of Hazardous Materials and Waste

The Basel Convention defined hazardous waste as the materials or things that are intended to be disposed of and that need special methods to deal with or to treat them, as they cannot be disposed of in household waste dumping sites due to their dangerous properties and negative effects on the environment and set up laws and National regulations and the methods of disposal.

The Hazardous waste causes corrosion of metals due to its basic characteristics or acidic properties, or toxic because of it threatens the health of a living being. so It is considered as a group of irregularities and wastes resulting from industrial, medical, or agricultural activities, whose quantity, concentration, or chemical, physical, or biological properties cause risks to human health and Its environment during the circulation, storage, transportation and processing, or may release flammable or transmissible gases in contact with water or air, or contain oxidizers of toxic, metallic or corrosive substances capable of producing other substances after disposal.

Second requirement: Criminalizing the production and management of hazardous waste

The Environment Law text of 1994, Article 4, provided for the punishment of anyone who produces or manages hazardous waste or who establishes facilities to treat it without obtaining a license from the competent authority, as well as whoever does not take the necessary precautions not to pollute the environment with these wastes. Three pillars must be provided:

The legal element: means the existence of an illegal character for the act in terms of submitting to a criminalization text in which the law decides a punishment for those who commit it.

The Material pillar: is available when there is a management, production or treatment of hazardous wastes, or no precautions are taken.

The moral pillar: is available when the intentional breach, and negligence is considered as intentional because the law requires that all precautions be taken in order not to allow the occurrence of negligence. The moral pillar, which means criminal intent, requires knowledge and will in order to be achieved.

Third requirement: Agreements dealing with hazardous materials and waste:

*1st: The field of handling hazardous materials and waste, which includes the following agreements:

- Basel Agreement 3/22/1989.
- Rotterdam Agreement 10/9/1998
- Stockholm Agreement 22/5/2001.

*2nd: the field of protection of the ozone layer, which contains the agreement of :

- Vienna Convention for the Protection of the Ozone Layer 3/22/1985,
- Montreal Protocol 16/9/1987, and its amendments.

*3rd - the field of climate change, which includes an agreement:

- Framework Convention on Climate Change 9/5/1992

-the Kyoto Protocol annexed to above The agreement 10/12/1997.

*4th - the field of desertification, which includes the agreement of :

-United Nations Convention on Desertification 17/6/1994 UNCCD.

*5th The field of biological diversity and bio-biological safety, which includes agreements of :

- Ramsar Wetlands Convention; 2/2/1971.

-Ramsar Protocol of 1982, amended in 1987.

- CITES Convention on International Trade in Threatened Species of Wild Fauna and Flora Extinction 3/3/1973.

- CBD Convention on Biological Diversity 6/5/1992.

-Cartagena Protocol on Biosafety 29/1/2000.

First: Hazardous materials and waste handling agreements

The Basel Convention, which was adopted on 3/22/1989 in the city of Basel and the date of its establishment on, 1992, and there is an amendment to the Convention that did not enter into force prohibiting all Hazardous waste export operations with a view to their final disposal in developing countries. The number of countries under this agreement are 173. The available languages are: Spanish - English - Russian - Chinese - Arabic - French. The depositary is the Secretary-General of the United Nations.

The Basel Convention consists of (29) articles, and this agreement has (6) annexes, of which (3) are annexes categories of hazardous waste and other waste are defined and excluded from the scope of this Convention Applied radioactive waste and waste from normal operations of ships, which covers Its expenses are other international instruments.

Categories of waste to be controlled.

***Waste categories that require -special consideration.**

-List of dangerous properties.

-Disposal operations.

-Information to be provided in the notification. in the transport document.

- Arbitration, which includes (10) articles

*** Concepts contained in the agreement**

This agreement came with (21) concepts to clarify the purposes of the agreement, and one of them was one concept

A recent concept is the environmentally sound management of waste.

Take all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner that protects human health and the environment from adverse effects that may result from these wastes.principles were established for these parties.

As for the obligations, each party must, within six months of its accession to the agreement, inform the secretariat of the agreement

wastes other than those included in Annexes I and II of the Convention that are considered or defined as hazardous under its legislation and any (national) requirements relating to

of the applicable transboundary movement procedures for these wastes, informing the Secretariat of any significant changes to the information originally communicated and making the information available

Assigned to the parties from the hundred to its exporters.

The position of the Arab countries:

Many Arab countries took the initiative to accede to this agreement, In accordance with Article 2, Paragraph 9, of the Agreement.

The second declaration attached to the agreement, which was submitted by the Arab Republic of Egypt, includes that it is an act of its sovereign rights and in accordance with Article 4 of hazardous waste or other waste or its disposal within its territory, as an affirmation of Egypt's suspension that the transportation of these waste constitutes a fundamental threat to human health, animals, plants and the environment, and the Egyptian Environmental Law stipulates To prohibit the circulation of hazardous materials and waste without a license from the administrative authority, and the executive regulations of this law specify the procedures and conditions for granting the license.

The law requires that all ministers, within the scope of their competence, in coordination with the Minister of Health and the Environmental Affairs Agency, issue a list of hazardous materials and wastes, and that hazardous waste management be subject to the rules and procedures stipulated in the executive regulations, Articles 25 to 33 of it .

The law also prohibits the import of hazardous waste or allowing its entry or passage into the territory of the Arab Republic of Egypt. It also prohibits, without a permit from the competent administrative authority, allowing the passage of the load of hazardous waste for that, by imprisonment for a period of not less than five years and a fine of not less than 20 thousand pounds and not exceeding 40 thousand pounds with Obliging the violator to re-export the hazardous waste subject of the crime at his own expense.

The third declaration attached to the Basel Convention was submitted by a group of foreign and Arab countries, including Jordan, the United Arab Emirates, Bahrain, the Syrian Arab Republic, Kuwait, Lebanon, Egypt and the Kingdom of Saudi Arabia, and it includes: The determination of these countries

all parties to dispose of waste in the country of origin, and request that all efforts be made to phase out exports and imports of waste for reasons other than the reason for disposal in facilities established within the framework of regional cooperation and not to allow any imports or exports of waste to countries lacking legal, administrative and technical expertise on waste management and disposal in an environmentally sound manner, and emphasizing the importance of assisting in the establishment of appropriate facilities for the final disposal of such waste, effective measures under the Convention to enable the minimization and recycling of waste.

Lebanon's declaration attached to the agreement - in which the delegation of Lebanon declared that Lebanon could not under any.

In any circumstance, he would permit the burial of toxic waste or other waste that illegally entered the areas under its legal jurisdiction in any of these areas, and he had declared in August 1988 a comprehensive ban on the import of all such waste.

Law No. 64/88 dated 12/8/1988 was adopted for this purpose, and Lebanon will cooperate with the concerned countries and other party states as required This treaty. And these declarations attached to the agreement, which were ratified by

the parliaments, and approved by the countries joining the agreement, take the force of the legislation implementing the agreement in the provisions of its texts

-Geneva Amendment 9/22/1995:

The Basel Convention was amended in Geneva on 9/22/1995, and the number of countries with this amendment reached (63).

state, and the Arab countries have been notified of this amendment (9) countries.

-Basel Protocol on 12/10/1999:

A protocol was added to the Basel Convention on 10/12/1999 and that protocol was in Basel, and this amendment reached (21) countries, and only Syria was the only country from.

The Arab countries that signed the amendment, and that was on 10/5/2004, then the State of Yemen approved it on 24/5/2006 by the Presidential decree issuing Law No. (13) of 2006 approving the agreement.

-Rotterdam Convention :

The adoption Date of the Convention: It was on: 10/9/1998 in the city of Rotterdam, and it was the date of entry into force: - 24/2/2004, and a number of countries participated in it, around 133 countries, in several languages. Spanish - English - Russian - Chinese - Arabic - French.

Depositary: - The Secretary-General of the United Nations.

The Rotterdam Convention consists of (30) articles, and the second meeting of the Conference of the Parties to the Rotterdam Convention was held by the Food and Agriculture Organization of the United Nations in Rome from September 27th to 30th 2005, and in accordance with paragraph 3 of Article 19 of the Convention.

The agreement builds interest in chemical safety, especially in the field of international trade.

The development and Prior Approval Procedures for Some Hazardous Chemicals and Pesticides in International Trade PIC in December 1998.

Concepts contained in the agreement

Objective:

Protecting human health by encouraging shared responsibility and cooperative efforts between parties to international trafficking in certain hazardous chemicals;

Its obligations:

This Convention applies to banned or severely restricted chemicals, as well as highly toxic pesticides, but does not apply to narcotic drugs, waste, Chemical weapons and pharmaceuticals, including human and veterinary drugs, and chemicals used as food additives, and it also applies to ironing materials Imported in quantities not likely to affect human health or the environment provided It may be imported for research, analysis, or personal use in reasonable quantities.

Five annexes are attached to the Convention:

-Annex I relates to information required for notification under the Convention and indicates to the properties of environmental toxic chemicals.

-Annex II sets out the criteria for listing banned or severely restricted chemicals in annex III.

-Annex III lists the chemicals subject to the prior approval procedure and its different categories.

-Annex IV sets out the criteria for listing severely hazardous pesticide formulations.

-Annex V specifies the information required for export notifications

The position of the Arab countries

The Environment and Sustainable Development Department of the League Arab States was informed by the Ministry.

Preparing the territory and the environment in the State of Algeria that the approval of the agreement was dated 10/9/1998 and it entered into force on 24/2/2004 and was not signed or ratified by side of the Algerian Republic.

Date and place of adoption of the agreement: 17/5/2004 in Stockholm city And the date of entry into force 183 countries.

Number of countries in the agreement: Spanish - English - Russian - Chinese - Arabic - French.

Depositary: The Secretary-General of the United Nations

The Stockholm Convention consists of (30) articles, and this agreement has (6) annexes from (a) to (f).

- Maybe the most important of them is in the definition attached (A), which specifies the chemicals whose production is prohibited use, Export, Import and Annex B of Restricted Chemicals and Specific Exemptions, and Appendix C which includes the machine pollutants subject to the provisions.

Article 5 of the Convention and this article relates to measures to reduce release from production and elimination .Accordingly, this annex also includes general guidance on best techniques and best practices In this area.

The first meeting of the Conference of the Parties to the Stockholm Convention on Organic Pollutants was held in Punta del Uruguay from 2 to 6 May 2005.

In accordance with Article 20, paragraph 3, of Agreement IV/21, the Governing Council of UNEP shall perform the functions of the Executive Director of UNEP as the secretariat of the Convention.

Concepts contained in the Convention This agreement came with (3) concepts to clarify the purposes of the Convention, the protection of human health and the environment from persistent organic pollutants.

In order to achieve this goal, the Convention aims to take measures to prevent the harmful effects caused by persistent organic pollutants at all stages of their life cycle, to affirm the principle that the polluter must bear the cost of doing so, and to stress the importance of developing and using alternative environmentally sound processes and chemicals.

Commitments:

Each Party shall prohibit or take legal and administrative measures to eliminate the production of and the use of chemicals, import and export, in addition to

limiting its production and its use of such materials, while taking the necessary measures to ensure non-discrimination

SECONDE TOPIC : Liability and the Compensation of Environmental damage.

The law Allows the Authority's employees and the competent authorities to have the capacity of law enforcement officers Judicial jurisdiction in the field of inspection of establishments, places and others to verify its commitment to apply the provisions of this law and the decisions issued for its implementation,

Therefore, any discovering of a violation of its provisions, the violator shall be referred to the competent judicial authorities in accordance with the approved procedures in the country.

The determination of these employees shall be based on the decision issued by the Minister of Justice, Islamic Affairs and Endowments in agreement with the Minister of Health.

And the decision of the law is based on the responsibility of everyone who caused, by his action or negligence, damage to the environment or to others as a result of Violation of the provisions contained in this law or the decisions issued in implementation thereof, while mentioning all costs necessary to remedy or remove such damages.

It also requires compensation that may result from it That include the compensation of environmental damage to the environment itself or reduce use project, whether it is temporary or permanent, or harms its economic and aesthetic value So is the cost of environmental rehabilitation.

The law specified the penalty for each violation in its provisions separately Those crimes shall be decided by the court in the vicinity of which the crime occurred. In addition to that if you fall From any marine means of different nationalities and types within the marine environment of the state, The court shall decide the case expeditiously.

The criminal courts in the capital are competent to adjudicate crimes committed by the marine craft raising the country's flag outside the marine environment and The penalties prescribed for the crimes stipulated in this law shall be doubled in case of recurrence. The law also obligates the owners of existing projects and establishments from the date of its entry into force, which are specified in the

regulations, to submit to the Authority, within a maximum period of one year from the date of implementation of the executive regulations, a statement that includes their suggestions regarding the measures and procedures that must be taken in order for the project and facility operations to comply with the required environmental standards, and the Authority shall within six months.

Report the measures and procedures to be taken by the owner of the project or the establishment. The law is obligatory on existing projects and establishments, and when applying this law, it is in accordance with its conditions, And in accordance with its provisions and the provisions of the executive regulations within a period not exceeding one year from the date of enforcement of the regulations Executive, and the Board of Directors may implement this within the period not exceeding another year, if necessary .The law also subjected any expansions or renovations in existing facilities to the provisions stipulated in this law.

The law provides the Authority, in coordination with the competent authorities, with a system of incentives to be issued by a decision of the Board of Directors for institutions, agencies, establishments and individuals who carry out works or projects that protect the environment. Or all laws determine the fees for activities, procedures and licenses.

Granted in accordance with the provisions of the law to the Council of Ministers based on the approval of the Board of Directors after Coordination with the competent authorities.

First requirement: The Environmental dispute settlement method

The environmental disputes are disputes arising from the assault on the environment. The assault on the components of the environment makes us wonder how can we push back the assault on the environment, which is often associated with investment and trade operations? And how to compensate the individual who suffered damage to his health or property. As a result of acts of aggression on the environment?.

First requirement: The International judiciary and environmental disputes.

It serves as the traditional judicial method in environmental disputes, especially serious ones, such as cross-border pollution. The huge number of international treaties aimed at protecting the environment from pollution, which were the fruit of international conferences held under the auspices of the United Nations, for

example, the 1976 Stockholm Conference on studying the state of the human(12) environment.

It is one of the sources of international environmental law, and it was the beginning of the real birth of the world's interest in the environment, and then conferences and agreements came later, whether at the international level in the United Nations, or at the level of countries and in all its aspects(13).The Earth Summit on Development and the Environment was held in Rio de Janeiro, Brazil in 1992, which explicitly recognized the human right to a clean environment.

second requirement: The National judiciary and environmental disputes.

There are two goals to be achieved with regard to the judiciary in environmental disputes, which are; protecting the environment from pollution and compensating those who were harmed by pollution in person or money, and national judicial rulings are the best example of the development of national judicial(14) thought.

The damage resulting from pollution(15) of the environment and the demolition of its ecosystems does not return in any way to what it was, so it has become necessary to agree between countries to authorize those affected by cross-border pollution to resort directly to national courts to adjudicate disputes that result from this pollution.

Conclusion :

This study in regard to arbitration in environmental disputes revealed that the relationship between freedom of international trade and environmental protection is not a confrontational or contentious relationship, because trade is not an objective in itself, but rather a means to an objective, and that environmentalists have realized that freedom of international trade is essential for economic progress, but it is reflected in the protection of environmental values.

Environmental disputes are often based on tort liability, as they arise from harmful actions, which makes them lose many of the elements of international trade contracts, in which it is permissible to agree on arbitration, such as the contract of exporting hazardous waste across borders.

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