



International Law and Climate Change in the Process of Global Sustainable Development

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Abstract

The paradigm governing international development law in the context of the historical and economic conditions of the 1960s was mainly based on economic development. However, gradually, in the light of international efforts and the issuance of the Brundtland Report, a concept called sustainable development was proposed in the scope of international law. A concept that, in the light of avoiding the mere consideration of economic development in development processes and through the interaction between the three dimensions of economic, social and environmental development, has guided international development law towards international sustainable development law. Despite the progress made in the literature on sustainable development in international law, on the one hand, because the provisions of this concept have mainly been raised in inconsistent law and, in practice, as acknowledged by important documents in this field that prioritize economic development over environmental and social development, sustainable development policies have failed, there is a significant gap in the theoretical and practical approach to sustainable development in international development law, and international sustainable development law is considered an ideal law rather than a real law.

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Introduction

Assessing the trade-off between climate change risks and climate change mitigation as co-benefits requires an integrated scenario approach for sustainable development. It is clear that climate change poses severe threats to the livelihoods of humanity, especially the poor.

Researchers believe that the consequences of climate change include the depletion of soil nutrients, the depletion of water and drinking water resources, floods, erosion, and ultimately food insecurity, negatively affecting the well-being of the world's population, especially in developing regions such as Africa, Asia, and Latin American countries. According to the MDGs¹ report, the world's population is unevenly distributed across the globe. Nearly 80% of them are extremely poor, found in sub-Saharan Africa and South Asia. Agricultural activities, which are the main source of livelihood for rural people, employ more than 60% of the population, and their dependence on the environment makes the agricultural sector particularly vulnerable to climate change. In 2001, the Intergovernmental Panel on Climate Change (IPCC)² defined adaptation as adjustments in natural or human systems in response to expected climate stimuli or their impacts that mitigate harm or take advantage of beneficial opportunities. In fact, the IPCC defines adaptive capacity as the ability to adjust and take advantage of opportunities and cope with consequences. This adaptive capacity is determined by social, political, economic, technological and institutional factors. Today, the livelihoods of the planet are vulnerable to many social, economic, political and environmental stressors and shocks resulting from global transformation processes such as climate change, globalization and demographic processes. Empirical studies show that the current increase in greenhouse gases is causing climate change. These gases control the natural flow of energy by absorbing infrared radiation and changing the climate. Observations have shown that the global temperature has increased by 0.6 °C since the 20th century. Forecasts indicate that the average annual temperature will increase by 1 to 3 degrees

Celsius by the 2060s and by 5 degrees by the 2090s. Thus, the need to reduce greenhouse gases and prevent climate change prompted international institutions to conclude the Climate Change Convention in 1992 and the Kyoto Protocol in 1997 to commit countries to reducing greenhouse gas emissions. In addition to the obligations that this Convention and Protocol set for member countries, especially developed countries, opportunities and resources were also considered under the title of Clean Development Process to help developing countries implement their control programs to reduce greenhouse gas emissions. UNFCCC member countries are required to stabilize greenhouse gas emissions over certain periods of time and then reduce them in the next stage. In this regard, various approaches, including the use of clean development processes, have been considered and financially supported by the Secretariat of the Convention and Protocol, the World Bank, and the Global Environment Facility (GEF).

In the field of environment, three issues are generally introduced as the underlying issues of population growth, consumption patterns, technology and industry. Thus, in 1985, the European Community, through a directive, determined that member states should observe minimum standards for assessing the environmental impacts of hazardous industrial activities as a condition for issuing permits for such activities. Also, the International Court of Justice, in its ruling in the Corfu Channel case, recalled the obligation of states to inform other states of the existence of danger in their territory and declared the basis of such an obligation to be fundamental humanitarian considerations. Currently, various international documents have approved this obligation in their regulations. The Organization for Economic Cooperation and Development has repeatedly referred to the obligation of governments to inform about the possible risk arising from an activity in its documents and correspondence, and has considered it one of the recognized and indisputable international principles. Climate change directly and indirectly affects the internationally guaranteed human rights order. Human rights, which emerged as a legal system in response to some crises in contemporary legal systems, have undergone similar developments over the past two decades, as two fundamental challenges facing the world. Just as the turning point of the human rights project in the international system should be considered the Universal Declaration of Human Rights of 1946, the turning point of the issue of environmental protection should be found in the Stockholm Declaration of 1972. We can hardly imagine an environmental issue that does not have human rights dimensions. Because the inability to have a healthy environment as a third generation of human rights, other rights of other generations of humanity It violates the right to health or the right to food to the same extent, and can even have effects and consequences on children who can no longer benefit from access to education.

Therefore, climate justice requires that the climate action of the international community is consistent with human rights agreements, commitments, principles and standards.

In the World Charter for Nature, which was adopted by the United Nations General Assembly on 28 October 1982 by resolution 7/37, this Charter, which is intended to protect the natural constitution of the Earth, emphasizes that human actions that affect nature must be carried out in accordance with the principles of this Charter. As the preamble to this Charter emphasizes that humanity is part of this nature and that the survival of the economic, social and political structures of civilizations depends entirely on the protection of nature and its resources. Thus, the Rio Declaration, which was the most important document adopted by the United Nations Conference on Environment and Development, was formulated in the field of environmental protection with a concern for sustainable development. This declaration recognized the continuity and inseparability of economic development and environmental protection within the framework of the principle of sustainable development and the inadmissibility of separating the two. Sustainable development as a global call was a slogan seeking to reconcile economic growth with environmental problems, which in 1972 Goldsmith and his colleagues presented a plan called A Plan for the Survival of Sustainable Development and Limited Resources of Non-Renewable Resources such as Minerals. To end poverty and protect the planet, the global Sustainable Development Goals were adopted by the United Nations in 2015, ensuring that all people enjoy peace and prosperity by 2030.

According to the Agenda 21 agenda for sustainable development, the need to control greenhouse gas emissions and other greenhouse gases in the atmosphere should be based on the efficiency of energy

production, transport, distribution and consumption, and in particular on clean, renewable and renewable energy systems such as solar energy. All energy sources should be used in a way that does not harm the atmosphere, human health and the environment. The Sustainable Development Goals are a balance between environmental sustainability, economic sustainability and political and social sustainability. In fact, sustainable development provides a long-term approach to addressing global challenges. It not only refers to the well-being of people, the economic development of countries and a better environment, but also provides the tools needed to address them and how to make these changes. The most important source of discussion on this issue has been the Intergovernmental Panel on Climate Change, which is convened by the United Nations with the serious participation of some international institutions related to global climate issues, such as the World Meteorological Organization and the United Nations Environment Program (UNEP), and regional conventions. The main objective of the Climate Change Treaty, as stated in its Article 2, states that climate change presents decision-makers with a very complex set of issues, including the occurrence of irreversible damage and the lack of knowledge and awareness about many issues over very long time horizons. A better understanding of these issues through empirical and objective analyses requires a long time, in addition to Due to regional variability and change, it is associated with different causes and effects and involves different levels of attention and judgments in terms of social justice, which are raised in relation to costs and benefits and other measures.

According to IPCC reports, in the case of effective deterrent policies and preventive measures related to greenhouse gas control, the global temperature could increase by between one and three and a half degrees Celsius by the year 2100, which will result in serious problems for human health, the spread of diseases, rising sea levels and ecological disappearance.

In this paper, a conceptual framework of multiple goals in general, climate policies, mitigation costs, and the performance of States Parties to the Convention in fulfilling their commitments is presented. This framework is a scenario It is an integrated assessment that includes all challenges to sustainability, which are examined by taking into account all social, economic, political, and cultural factors in the form of a public cooperation process. Because, based on the reports provided by the IPCC, there are still no acceptable results and convincing answers regarding the time course of this framework and its effectiveness. 2- Concepts of international environmental law related to sustainable development

Almost all principles of international environmental law are used to prove the concept of sustainable development. Principles such as: the principle of sovereignty over natural resources, the principle of the obligation to cooperate, inform and assist in times of environmental emergency, the principle of environmental protection and conservation, the principle of the obligation to pay compensation by the polluter of the environment, the principle of prevention and the precautionary principle. Although their degree of bindingness is different, these principles should be viewed as a single set because each principle complements the other principles.

At the same time, the concept of sustainable development is directly and clearly visible among the concepts of international environmental law more than the principles. Therefore, in this part of the research, concepts related to sustainable development in international environmental law have been investigated.

-1-2The concept of sovereignty

The entry of the concept of sovereignty into legal and political literature is closely related to the emergence of the modern state in Europe. State, power, and sovereignty are concepts that are strongly dependent on each other to the extent that state and sovereignty are sometimes used as synonyms. From this perspective, the legitimacy of state actions relies on the supreme authority that is introduced in a political unit (state) under the name of sovereignty. (Molaei: 1384: 13-14) The French thinker Jean Bede (1530-1596) is the first philosopher to discuss and define the term sovereignty. Sovereignty, from the perspective of the body, is the absolute and permanent power of government of a community and the main factor of solidarity and unity of political society. The first attribute of sovereignty is its "permanence" (Taheri: 1379: 266). The only characteristic sign of sovereignty is "the right to make laws". (Alam: 1378: 234) After the body, various theorists argued in defense of the sovereignty of the state and recognized it as one of the essential

components of the national state. For example, Thomas Hobbes was also in favor of the absoluteness of sovereignty. (Alam: 1378: 234) Grotius defines sovereignty as “the highest political power”. (Alam: 1378: 234) The Montevideo Convention also emphasized the discussion of sovereignty. After the body, the term sovereignty acquired a national dimension. Hadley Boley and many other scholars have divided sovereignty into two dimensions: internal and external. “Internal sovereignty means complete superiority over all powers and individuals within the country, and external sovereignty does not mean superiority but independence from external powers.” Indeed, international law is a fundamental condition for achieving formal recognition as an “equal” and “independent” member of a system of states. Internal sovereignty requires the ability to maintain law and order, external sovereignty is the ability to assert “anarchic” competition for power among states. (Qavam, Zargar: 2008: 278-279) Whatever the interpretation and perception of sovereignty at the time of the establishment of the Westphalian state-centered system, today it must be accepted that governments, in addition to sovereignty, are also responsible for the welfare of the nation and their international obligations. However, on the other hand, it must be accepted that all governments cannot fulfill all their responsibilities well due to their weaknesses. In such circumstances, individual and collective security and the need for joint action by all members of the international community to help realize the collective human ideal, including environmental protection, are necessary. In a collective security system, all governments have a common but different responsibility to carry out their duties, and governments must have the necessary capabilities to participate in this collective action. (Hosseini, 2012)

-2-2 Definition of International Environmental Governance

Environmental governance is a concept derived from political ecology or environmental policy related to defining the elements needed to achieve sustainability. All human activities, political, social and economic activities, must be defined, managed and organized within the framework of the environment and ecosystem. In other words, environmental governance includes a wide range of laws, practices, procedures, and institutions related to environmental management in its various forms, such as environmental protection, conservation of natural resources, and its exploitation. At the international level, international environmental governance consists of a set of organizations, political instruments, mechanisms for providing financial resources, laws, procedures, and norms related to global environmental protection processes. (Hosseini, 2012) The global nature of the environment results from the presence of various elements that constitute a system in an integrated manner in forming the system. This means that everyone has the right to benefit from the atmosphere, climate, and biodiversity. This is while the entire planet is affected by the significant consequences of global warming, ozone layer depletion and species extinction, and protecting this planet requires management with a collective approach. The environment is defined as a global common good for all people and this vital necessity should not be under the control and protection of a particular person or government. Therefore, this good good requires management that is neither competitive nor predatory, and also requires economic valuation of resources.

3-2- History of International Environmental Governance

Environmental degradation was not given much attention in past ages due to the limited environmental damage. On the other hand, the population of the planet was in balance with the existing natural capacities. With the occurrence of the Industrial Revolution in Europe, the encroachment on pristine nature to obtain raw materials needed by industries took on an unexpected speed. European governments gained great power and wealth by colonizing other nations, and it was from this era that, in addition to the destruction of the world's environment, the social distances between Western (European) societies and other nations increased sharply, and the starting point of the division of the world into two advanced and backward groups was determined. Population growth, urbanization, the spread of wars, and increased pollution as a result of the exponential rate of environmental degradation are some of the negative consequences of the industrial revolution. In the process of international interactions, environmental issues have become intertwined with concepts such as security, conflict, and the risk of war. The struggle over limited resources such as energy, as well as the potential conflict arising from vulnerabilities and sensitivities of interdependence, all lead to the accumulation of political pressures that lead to major war, and this event may occur long before the destruction of the environment. (Asgarkhani: 23) Intense competition over spheres of influence, in turn, led to the hardening of the international system

and alliances, resulting in two devastating wars (World Wars I and II). The world is still grappling with the issue of resource scarcity and its political and economic dangers. Environmental issues gained a high place on the agenda of international meetings in the late 20th century (1960s), capturing the attention of political leaders, government officials, and scientists, leading to the holding of the First World Conference on the Human Environment in Stockholm in 1972, with the aim of creating an international structure to further coordinate international efforts to control environmental pollution. Some of the principles, institutions, and programs established at the conference have had lasting effects. The conference established the environment as a part of international affairs and established the principle that countries should cooperate with global efforts to manage the global commons and reduce transboundary pollution. The agreements reached were the cornerstone of environmental policies for at least the next 20 years, culminating in the Rio Conference. The Rio Conference (1992), known as the United Nations Conference on Environment and Development and also known as the Earth Summit, was the largest international meeting since the end of the Cold War, and was held in Rio de Janeiro, Brazil, with 175 delegations from different countries. Since then, this major conference has been held every 10 years, guiding the process of global environmental governance and establishing a platform for multilateral environmental agreements, which are managed with the help of a handful of small organizations called the Secretariat. Beyond the actions taken by international institutions, a number of countries have been working to strengthen a wide range of international treaties to address and address some of the threats facing the global environment. After this conference, a fundamental change took place in the management of global environmental issues, especially combating climate change, protecting biodiversity, and combating desertification, with the emergence of related conventions and the obligation of countries to implement these binding international treaties. A type of international environmental governance began to prevail in the world, which has continued to this day with many ups and downs.

3- Components of International Climate Change Governance for Sustainable Development

-1-3States

International law has long been based on the state, with concepts such as sovereignty, interests, etc. at its heart. However, regional and global environmental problems have created concrete problems in the context of accepted ideas about how states should govern and their limits. Moreover, international environmental problems are rarely created by deliberate actions of states, but are largely unintended consequences and side effects of development and the socio-economic process.

It is clear that countries, due to their sovereignty and the establishment of specific laws, have a privileged position in drawing up and implementing international policies to deal with global environmental problems. Therefore, the emergence of environmental problems has called into question the right of countries to govern their own destiny. On the other hand, the way in which these problems are dealt with is in such a way that it increases the scope of countries' powers to be more present in their social arena and the role of environmental governance as an emerging ideal. In other words, their sovereignty¹ has increased, but the fundamental problem in this regard is how governments participate in exercising this type of governance.

The different positions of countries towards the global environmental outlook, including those of the North, which have the ability to influence and direct international budgets and accelerate various processes, is itself a source of concern. For example, the refusal of the United States to ratify major agreements in recent administrations (Clinton and George W. Bush), and as a result of the tensions created with Europe and Japan and the protests of countries of the South, can have a significant impact on the process of international environmental governance. Since these types of countries are the main donors to international institutions and dictate their policies. The refusal of a country like the United States to abide by international environmental commitments has disastrous consequences for the credibility and use of environmental governance policies and policies developed by other countries in the North, and the legitimacy of these countries among the South as recipients of environmental aid is lost due to the lack of cooperation and coordination among donor countries, and there is a risk of institutional incoherence and

the suspension of aid. This is clearly evident in the case of the Convention on Biological Diversity and the Kyoto Protocol, as well as the United Nations Development Program.

-3.2 International Organizations

a) United Nations Environment (UNEP)

The United Nations Environment Programme is clearly the benchmark for global environmental management, but the programme has had its successes. UNEP has been effective in two key areas, as a monitoring and advisory body for the development of environmental agreements and as a way to strengthen the institutional capacities of environment ministries around the world. The programme strives to ensure that all partner organisations appropriately integrate environmental concerns into the supply and delivery of products and services. UNEP's cooperation is more specifically focused on advertising, the financial industry, micro-industries and key players in promoting and promoting sustainable consumption. (Taheri, 1379: 266)

UNEP has not achieved much success in developing coherent and politically coordinated management processes. It has not even succeeded in identifying these processes. However, it has also failed to provide best practices and methods and as an organizational benchmark in the implementation and enforcement of many major environmental conventions. This lack of capacity has led to the continuation of the fragmentation of environmental governance.

b) Global Environment Facility (GEF)

The Global Environment Facility (GEF) is the first global environmental finance institution (37) and a mechanism for developed countries to support environmental projects in developing countries (38) under the conventions established at the Rio Conference in 1991. Its focus on profitable projects such as ozone layer projects has drawn much criticism.

c) World Bank

The World Bank indirectly influences international environmental governance through the Global Environment Facility. The World Bank's mandate in environmental governance is not sufficiently addressed, although it is foreseen in its mandate. However, it allocates 5-10% of its financial resources to It allocates to environmental projects. (Hosseini, 2012) The way this bank acts, with a view to greater profits and investment in profitable environmental sectors, has disrupted the process of environmental governance and has attracted much criticism. However, it seeks its legitimacy and effectiveness.

d) International Monetary Fund

The main mission of the International Monetary Fund and the purpose of its creation is to help countries in order to encourage their growth and development. This fund affects countries through components such as public spending, increasing exports and foreign investment, however, the goals it pursues have raised concerns about the negative impact on the environment. In addition, reducing public spending means reducing the costs related to implementing environmental policies in countries and providing financial resources for protected areas, fighting corruption, developing good governance and creating and defining new environmental projects. Worst of all, the philosophy that governs this institution is the same one that stimulates and encourages growth in the neoliberal model, thus increasing the possibility of the spread of unsustainable growth that is responsible for environmental crises.

e) World Trade Organization

All issues and problems related to trade and the environment are what link the World Trade Organization to the issue of the environment, and since this organization considers trade priorities and tries to implement the principles and rules of the World Trade Organization in its system. This is the same factor that creates conflict. Even if the World Trade Organization recognizes environmental agreements, it is a fact that at least 20 of the environmental agreements are in conflict with the rules and regulations of the World Trade Organization. In addition, some environmental agreements allow a country to prohibit or

restrict trade in certain products in certain cases where it is not interested in establishing and complying with environmental protection requirements.

f) United Nations Commission on Sustainable Development

This international body, established in 1992 at the Earth Summit in Rio, meets twice a year to follow up on the Rio goals. The CSD was created with the aim of controlling the implementation of negative policies of governments on the environment in general and the failure to implement Agenda 21 within countries in particular has been criticized by a report presented by the World Resources Institute. Moreover, it cannot be denied that the mandate of this body to pursue the negotiation and implementation of environmental agreements is in conflict with the mandates of other organizations such as UNEP and other economic development organizations.

g) Agenda 21

Agenda 21 is a very detailed plan of actions taken at the global, national and regional levels by the United Nations, its Member States and human groups, which has been implemented in all regions of the world to examine the impact of human activities on the environment. Agenda 21 is a declaration to use the structure of the Rio Conventions within the framework of sustainable development, introducing sustainable development as a legal principle in the establishment of international environmental law so that sustainable development is incorporated into the structures of international trade and economic development. Its aim is to structure international cooperation by taking into account environmental costs in development projects, together with safeguards for management and budget mechanisms. The Agenda has been accused of recycling neoliberal principles in order to obtain the point of view of civil society. For example, the second chapter of the Agenda, entitled "International Cooperation to Accelerate Sustainable Development in Developing Countries and Related to Domestic Policies," proposes a liberalist solution to the environmental crisis. 4- The common heritage of humanity towards climate change and sustainable development

The common heritage of humanity is a concept that has recently become established and its history dates back to the late 1960s. The concept of the common heritage of humanity has a broader meaning than the meaning of common property. The concept of common property in international law refers to areas outside national territory. Such as the high seas and untouched spaces that cannot be accessed and these belong to all humanity, although the resources available in them can be exploited by anyone. Since the common heritage is related to all humanity, it should be protected by special legal systems. This right has been recognized in certain areas and regions, including: the legal system of the depths of the seabed and subsoil, Antarctica, the moon, celestial bodies, space, as well as historical areas, sites and monuments that are considered as ancient monuments in the section related to cultural affairs as the common heritage of humanity. (Habibi, 2005: 21) These areas cannot be subject to the exclusive sovereignty of states, but they must be protected and exploited in a way that ensures the interests of all humanity (present and future generations) without any discrimination. The concept of the common heritage of humanity includes 5 main concepts: non-allocation, joint international management, sharing of benefits (especially for the benefit of developing countries), the condition of peaceful purposes and protection for mankind. (Malik Mohammad Nouri, 1370: 192) It should be noted that the Convention on the Protection of the World Cultural and Natural Heritage (1972) is one of the important conventions that has applied the concept of common heritage.

The Convention on Biological Diversity also assigns the conservation and sustainable use of the diversity of biological species under the territory of each state to the states party to this convention (Articles 6 to 10). The preamble to the Convention on Biological Diversity states: "The conservation of biological diversity is a concern for all humanity." It also declares: "States Parties to the Convention are responsible for the conservation of their country's biodiversity and the sustainable use of their biological resources... for the benefit of present and future generations." This concept is more logical and acceptable in global environmental issues, especially issues such as ozone layer depletion, deforestation, global warming, etc., because a number of natural resources (such as the Earth's atmosphere) cannot be divided or owned, and

at the same time, they have been and continue to be used by all humanity. (Sadr, 1378: 138) Based on this principle, all states are obliged to protect the environment of the regions under the title of the common heritage of humanity and to refrain from destroying or polluting it so that everyone can benefit from its benefits. 5- The rights of future generations in climate change based on global sustainable development

In international environmental law, the rights of future generations of humanity to enjoy appropriate living conditions on Earth have also been considered and recognized. Accordingly, environmental destruction, given its negative consequences, is considered an infringement on the rights of future generations and should be avoided. Protecting the rights of future generations is one of the basic concepts in many international documents on the environment. It has also been seriously considered in the Stockholm and Rio Declarations.

In providing an acceptable definition for these rights, it can be said that it is a right by which the benefits of one generation in terms of the natural development of the cultural heritage inherited from the previous generation are transferred to the next generation. According to this right, the protection of renewable natural resources as well as the protection of ecosystems and life-sustaining flows, as well as the protection of human knowledge, culture and art, are considered as a necessity and require the avoidance of harmful activities and their irreparable effects on nature and cultural heritage. (Habibi, 2005: 199) The Stockholm Declaration, which is considered the first founder of this principle, states in its first principle: "Man ... has a serious responsibility to preserve and improve the environment for present and future generations." This principle has also been repeated in various treaties and other international documents, especially in Article 3, paragraph 1, within the framework of the Climate Change Convention, which states: "Parties shall protect the climate system for the benefit of present and future generations of mankind on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities." Principle 3 of the Rio Declaration on Environment and Development considers the rights of future generations of mankind to be related to the right to development and therefore states: "The right to development shall be conditional on the needs of the present generation meeting the needs of the present generation." And the future, with regard to development and the environment, should be respected fairly.

-6The right to a healthy environment

The issue of the right of humans to enjoy a healthy environment can be examined from the perspective of philosophical teachings and various debates surrounding the foundations of humans enjoying this right can be analyzed. On this basis, three foundations of "human need", "human benefit", and "human value" can be explored as the philosophical foundations of this right:

-1-6Human need

Based on this theory, human need is considered the basis of human rights. In fact, the theory of need as the basis of rights is influenced by the Marxist principle of "to each according to his needs". (Poulantzas, 1975: 84). Attention to "needs" as one of the foundations of human rights was previously manifested in the form of second-generation rights (economic, social, and cultural rights). Cases such as the right to work, health, etc. are called welfare rights and rights based on needs (Rasikh, 2002: 172). This means that they are based on meeting human economic and social needs. The Rio Declaration was adopted based on the concept of sustainable development. According to the Brundtland Commission, sustainable development is development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs (Foster, 2003: 295). Regarding the right to the environment, it should also be said that human need for the environment is the basis of human right to enjoy the environment. For this reason, the right to the environment, like second-generation rights, is a claimable right. Accordingly, what makes nature the subject of human rights and enjoyment is the need of the human being (Amir Arjomand, 1373: 323). In fact, the idea of the right to the environment has been established in order to maintain this dual position (the position of the needy human and the position of the responsive nature). That is, the human being becomes the owner of the right to the environment due to his position of need. On the other hand, the nature around him (the environment) becomes the subject of the right due to its position of responsiveness. The need for the environment gives the human being the right to enjoy it

(Poulanzes, 1354: 98). The natural dual situation resulting from the state of need has a natural or objective state. On the one hand, nature needs man, and on the other hand, other parts of nature (objects) that are the source of providing the need. 2-6- Benefit Theory: The Basis of the Right to a Healthy Environment

According to the benefit theory, a right is a guaranteed benefit. Based on this view, a right is raised in order to protect and defend a benefit or interest. Since benefit is not necessarily exclusive to humans and animals and plants also have interests, in this situation the realm of right holders goes beyond humans. In such a way that we can talk about animal rights and plant rights. The philosophical genealogy of the benefit theory goes back to the school of utility or utilitarianism. According to this idea, the moral value of an action is determined solely by its utility in maximizing pleasure and minimizing pain or suffering, as assessed among all sentient beings. (Shaw, 1999, P 31-35) Utilitarianism can be examined from two perspectives, considering the beneficial being as the owner of the right to the environment: one is anthropocentric utilitarianism; and two are utilitarianisms based on animal rights.

-1-2-6Anthropocentric Utilitarianism

The signs of anthropocentric utilitarianism can be identified in the works of the two great philosophers of the utilitarian school, namely Jeremy Bentham and John Stuart Mill. From Bentham's point of view in the book *Principles of Ethics and Legislation*, utilitarianism is summarized in the principle of maximum utility. In his opinion, all laws should be enacted to achieve the greatest benefit for the greatest number of people and the least suffering for the fewest. There are also certain rules that each person should do in each situation that will be beneficial to the greatest number of people. Hedonic calculation is something that Bentham believed that all people should do before deciding on the benefit of an action. This calculation depends on the certainty or uncertainty, the remoteness or proximity of the pleasure or pain of the action, and the number of people affected by it. For John Stuart Mill, empiricism as an epistemological theory is linked to utilitarianism in the evaluative epistemological action of man with nature. Mill linked the existence of things to the possibility of their perception by man. (Novak, 1384: 70).

Mill, unlike Rousseau, has a negative attitude towards nature without human intervention and also towards human following of pure nature (Berry, 1380: 93). In a way that he does not consider the design of nature in its entirety to be for the benefit of man, as an intelligent being. In this approach, nature without human influence and intervention is worthless. Because it does not bring any good to man. Therefore, following pure nature is irrational and immoral for an intelligent being called man (Berry, 1380: 93).

From Mill's perspective, the value of nature is not in itself and in its essence, but rather it is dependent on and in the service of benefiting and having good or benefit for man. In this situation, the concept of benefit or profit implies a kind of duality and dual position based on utility:

.1The position of man as the only being capable of perceiving pleasure and pain; 2. The position of nature or the environment as a useful and beneficial object for man.

The idea of the right to a healthy environment has been proposed to support and preserve this dual position. The position of man as the recipient of benefit (pleasure and pain) and the owner of the right to the environment, and the position of nature as a useful object and the subject of the right to the environment. Signs of the utilitarian approach can also be seen in environmental value statements.

According to the second principle of the Stockholm Declaration, natural resources, including water, air, soil, plants and flowers, and especially specific examples of natural ecosystems, should be protected for the use of present and future generations through careful planning and appropriate management (Environmental Regulation Collection, 2004: 96). Also, in paragraphs 1 and 3 of the preamble of the Declaration and principles 7, 6, 5 and 9, it emphasizes avoiding what is harmful to humans, in a way that this point of view can be considered consistent with the utilitarian approach of least suffering for the fewest individuals (Environmental Regulation Collection, 2004: 96). The preamble to the Rio Declaration refers to the need to respect the interests of all, and Article 23 also refers to the right to limited exploitation of the environment and natural resources, which in a way reflects a utilitarian approach as the basis for the right to enjoy the environment. In simpler terms, human efforts to continuously improve the environment in a desirable and

beneficial way and to protect it, to design the concept of sustainable development to ensure the continued usefulness of the environment for future generations, and to reform consumption and production patterns as concepts based on the economic principle of cost-benefit can be considered the positive aspect of human-centered utilitarianism (the greatest benefit for the greatest number of people). On the other hand, combating losses and damages caused by pollution, destruction of natural resources, and depletion of non-renewable resources can be considered in harmony with the negative aspect of human-centered utilitarianism (the least suffering for the fewest people). 2-2-6- Animal-centered Utilitarianism

In the framework of animal rights utilitarianism, all animals have rights to the environment because they have senses and the ability to perceive pleasure and pain (benefit, whether positive or negative). Peter Singer⁵ argues that the well-being or welfare of all sentient beings should be seriously recognized and considered. (Singer, 1989, 5) In his view, rights are granted based on the level of self-awareness of beings, regardless of their type or species.

The moral value of a single-celled organism, like some multicellular organisms and natural entities such as rivers, lies solely in the benefit they provide to sentient beings. An approach that conflicts with the philosophy of deep ecology, which believes in the equality of all forms of life and nature. In short, this theory, like anthropocentric utilitarianism, believes in the duality between the different components of nature and the existence of a dual position based on benefit:

.1The position of animals as the only beings with senses and the power to perceive pleasure (positive benefit) and pain (negative benefit), which, due to having this feature, are separated from other elements of nature and can exploit the surrounding environment in accordance with their own pleasure or avoidance of pain.

.2The position of other elements of nature around animals as beneficial subjects or useful objects that are used in accordance with the pleasures and pains of animals. The idea of the right to the environment has been proposed from the perspective of utilitarianism based on animal rights to support and preserve this dual situation.

-3-2-6 Human value, the basis of the right to a healthy environment

In the framework of value theory, the idea of a right means assigning unconditional value to the existence of each person without considering the value of individuals based on their power or wealth in relation to each other (Rasikh, 2002: 198). The issue of human value as the basis of a right was first proposed in the framework of the first generation of human rights (civil and political rights). The focus on the dignity and intrinsic value of man in the Universal Declaration of Human Rights and the attention to the “inherent dignity of man” as the basis of a right in the preamble to the Covenant on Civil and Political Rights indicate the value of man, especially its intrinsic aspect, as the foundation of first generation rights (Mohaved, 2002: 586). Regarding the right to a healthy environment, the fifth paragraph of the preamble of the Stockholm Declaration considers humans as the most valuable being and considers the environment (both natural and artificial) to belong to humans (Environmental Laws Collection, 2004:5). Accordingly, it can be said that humans are recognized as the only beings with the right to the environment due to their value and ability to create value. At the same time, within the framework of analyzing the foundations of the right to a healthy environment, the three theories of need, benefit, and value include a human-centered approach to the relationship between humans and the environment around them. In all three theories, humans, as the only needy, beneficial, valuable and valuable being, are separated from the nature (environment) around them, dominate it and have rights over it, and in return, their environment, as the subject of rights, responds to human needs, interests and values. In the two theories of benefit and value, there is a secondary approach according to which animals (including humans), due to their sensory perception and ability to understand pleasure and pain, are recognized as the only biological species with benefits and value, and are separated from other elements of nature and have rights over it (including the right to enjoy a healthy environment). Ultimately, it is the theory of the value of nature that, relying on the nature-centric approach, extends the rights of the owners of the environment to other living beings and even the planet.

However, from the perspective of law, and especially international law, with regard to the value declarations of Stockholm, Rio, Johannesburg and other environmental treaties, the concept of right (including the right to the environment), like other moral concepts such as justice, goodness, is the product of the experience of social, economic and cultural life of humans in human societies. Therefore, it cannot be extended to members of other societies. Another point is that being a right holder requires self-awareness and the ability to claim the right on the part of the right holder. While other living beings are not aware of their existence and therefore it is not possible to claim rights from them. Other living beings, as part of non-human nature, do not have the conditions for membership in the moral community of humans due to their lack of free will and self-awareness and the inability to claim rights. Therefore, they cannot be considered to have the right to a healthy environment. Accordingly, the right to the environment from the perspective of international law is a completely human right. Because it is mostly a product of responding to the critical economic and social conditions of human societies (both developed and developing), the way they value, exploit and the quality of human domination over the nature around them. Unbridled domination, the continuation of which leads to the destruction of nature, including humans themselves.

7- Environmental Democracy In general, the decision-making system and the concept of environmental protection in the international arena are related to each other in two ways. First, decisions that are made at the national level, but their scope of effect, whether desired or not, extends beyond domestic borders and acquires an international and global aspect, and second, decisions that are made directly at the international level and affect actors in the international arena. These two forms correspond to two aspects of international democracy. First, governments' adherence to principles and treaties that oblige them to respect environmental democracy for their citizens and to implement it through the enactment of domestic laws and regulations. Principle 10 of the Rio Declaration has identified the pillars of environmental democracy in this sense. Principle 10 of the Rio Declaration is about public participation, access to information and access to justice in environmental matters and according to it: Environmental issues will be addressed in the best possible way with the participation of all citizens concerned, at the appropriate level. At the national level, everyone should have appropriate access to information relating to the environment held by public authorities. This includes information on hazardous substances and activities in the communities concerned, and the chance to participate in decision-making processes. Governments should facilitate and encourage public participation and awareness by providing information on a wide scale. Effective access to judicial and administrative procedures, including redress and compensation, should also be provided (JAM, 2009: 15).

Although compliance with such international obligations generally promotes the concept of democracy at the global level, the main purpose of such rules is to establish or promote democracy at the national level. Treaties such as the Aarhus Convention deal with this type more.

Second, democracy is in the process of international policy-making or law-making, including the signing of treaties or the creation of international custom, which aims to regulate the international community and its subjects. Of course, in relation to the concept of environmental democracy, it must be acknowledged that the elements of Principle 10 of the Rio Declaration, which constitute the concept of environmental democracy, cannot be completely separated from the second concept of environmental democracy, because with the exception of the concept of access to justice, which is almost impossible to access in the international context, as stated in Principle 10 of the Rio Declaration, the other elements of this principle, namely access to information and public participation, are not only well conceivable in the second concept of environmental democracy in the international arena, but their existence is absolutely necessary for the realization of environmental democracy at the international level. Therefore, when talking about environmental democracy, it is possible to take international environmental democracy in both forms, with some tolerance, as almost the same concept, and avoid complicating a subject that is already sufficiently complex and difficult. In the following, the main and accompanying concept of environmental democracy, namely public participation and access to information, is examined (ibid., 16).

-7.1 Global Principles

In August 2002, the Johannesburg Principles on the Role of Law and Sustainable Development were adopted at the World Symposium of Judges. The acquisition and dissemination of information, participation in decision-making, and access to justice are central elements of these principles.

The United Nations Environment Programme, in accordance with Governing Council decision 17/22, is also taking steps in its work programme to better implement Principle 10 of the Rio Declaration, which requires the Executive Director of UNEP to further develop policies and advisory services in key areas of capacity-building on the three elements of Principle 10 of the Rio Declaration at the local, national and international levels. The decision also calls on the Executive Director of UNEP to assess the possibility of promoting the implementation of Principle 10 of the Rio Declaration at the national and international levels, and, if necessary, to initiate an intergovernmental process to develop global guidelines for the implementation of Principle 10 of the Rio Declaration.

The provision of Principle 10 of the Rio Declaration is not a new idea. The concepts of access to information, public participation in decision-making and access to justice in environmental matters can be found in a large number of international legal instruments adopted before the 1992 Rio Conference. Some of these instruments date back to the 1972 Stockholm Conference on Environment and Humanity and even earlier. The large number of regional environmental treaties and even more non-binding instruments attest to the existence of the rights enshrined in Article 10 of the Rio Declaration before 1992 and the development of these concepts over recent decades. In the following sections, examples of global and regional conventions and non-binding international instruments in this area will be examined.

Conclusion

As mentioned, the impact of climate change on human rights is generally reminiscent of these well-known examples of the first and second categories of human rights, such as the right to life and the right to health. This cannot negate the negative and destructive impact of this phenomenon on what we call the examples of the third category. Among the examples of the third category, the right to development, the right to peace, and the right to a healthy environment have the greatest potential impact.

As the United Nations Development Program has identified this issue, climate change is defined as a human development issue of the present generation that threatens human freedoms and limits choices.

Climate change has the potential to threaten the nature of human existence: Threat to agricultural production and food security, which are also related to the right to life and the right to health; Threat to water security and the right to water; Reduction of land in the world through rising sea levels; Climate disasters such as floods, famines, and storms, which are also considered threats to the right to life and health; Threat to human health through the spread of diseases, among these cases. As can be seen, the adverse effects of climate change can be seen as a loop linking the human rights categories here. The connection between the right to life, the right to health, and the right to housing in these examples, if they are not potential, is evident with the right to development.

In this case, developing countries are in a much worse position due to their capacity to adapt to adverse effects, and their efforts to succeed in realizing the right to development are severely weakened. The right to development is not in a favorable position today in underdeveloped or developing countries in Africa, for example, and these countries normally face many difficulties in achieving it. Now, it is very disappointing to imagine how difficult the adverse effects of climate change can make this situation.

This limitation and the possibility of weakening developing countries in dealing with climate change for various reasons have been mentioned in various cases in the field of development and the right to development. As we mentioned in this section, the study of the relationship and impact of climate change on the right to development should be sought from the impact of this right on other rights, especially the well-known rights of the first and second categories, such as the right to life, the right to health, the right to food, the right to housing, the right to property, and even examples of the third category, such as the right to the environment.

The existence of a relationship between environmental protection and human rights has also been accepted in the study of the concept of common concern of humanity by the group of legal experts of the United Nations Development Program. In particular, these experts have had a great desire to identify the relationship of this issue with the right to life and health.

Perhaps this issue of being developing and the low capacity of developing countries to deal with and adapt to this phenomenon has caused the Convention to identify the framework of this issue. Attention to the need of developing countries for development and consideration of the principle of common but differentiated responsibilities, given the urgent need of developing countries for economic and social development, in the preamble to the structural convention is evidence of this issue. The preamble repeatedly refers to the special situation of developing countries and their need for development. In the final paragraph of the introduction, sustainable development is mentioned, especially for developing countries.

Such a reference to the status of developing countries in the Framework Convention and the division of countries into two separate lists of each convention and the exclusion of developing countries from the list of special obligations indicates that despite the reluctance of developed countries, the right to development for developing countries has been considered at least in relation to climate change, and on the other hand, this issue means identifying and confirming the weakness of developing countries in dealing with and adapting to climate change. Today, although the principles of sustainable development are the key to solving most climate change issues and can be called one of the most fundamental issues of modern international environmental law, sustainable development was the intellectual foundation of the Earth Summit programs, which showed the breadth of matters at the national and international levels well. With sustainable development solutions at the international, regional and national levels, the adverse effects of this phenomenon can be reduced to some extent by reducing greenhouse gas emissions, although today's desire for economic development has made adherence to these principles somewhat difficult.

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