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Principles of international environment law in the light of the international court of justice

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Abstract
Principles of international environmental law are generally enshrined in international environmental law through peaceful international relations and international jurisprudence.
One of the international legal authorities that plays an important role in the formulation and development of these principles is the International Court of Justice. This international judicial body, in line with its main function in resolving disputes and answering the questions of authorized institutions, develops and interprets the principles of international environmental law by discovering and interpreting the legal rules governing an international environmental dispute. Among the most important environmental principles arising from international disputes are the identification and declaration of the principles of harmless land use, prevention, sustainable development, the need for environmental protection, precaution, assessment, information and payment of pollutants. These principles play an important role in regulating relationships and preventing conflicts. Perhaps if it were not for countries referring to this international tribunal to settle their disputes, these principles would not exist in the field of international environmental law today.

Keywords: principles of international environmental law, international court of justice, advocacy, amicable settlement of disputes, international judicial procedure

Introduction
International law, which initially dealt with relations between nations, now addresses a wide range of aspects of human life. one of these issues is the principle of international environmental law.
Therefore, in recent years, the principles of international environmental law have come to the fore as part of the public order of the international community.
It has also increasingly and prominently linked to the performance of the International Court of Justice with the introduction of access to a healthy environment as a human right, this issue became particularly important. Also, issues related to environmental pollution, the obligations and responsibilities of countries, the perception of the environment as a common ground, and issues such as these, led countries, as the main rulers of international law, to take effective steps to regulate behavior of countries in this area, hence the title "Principles of International Environmental Law".
Scientific advances and the emergence of new technologies have made the environment more vulnerable. Therefore, the issue of the environment was discussed more seriously and was not limited to a specific time. In the field of the law of armed hostilities, efforts were made to protect the environment in the event of such hostilities, and countries were prohibited from harming the natural environment. Environmental issues have been considered not only in the case of countries, but also in the field of the International Court of Justice.
In a variety of cases, both directly and indirectly, environmental issues have come to the attention of the International Court of Justice as a key judicial element of the United Nations.

Background on the Topics
Since 1993, the International Court of Justice has taken environmental issues seriously and in this regard has set up a special branch for the environment.
The World Health Organization and the United Nations General Assembly, in 1993 and 1996, respectively, requested the Court to rule on issues related to the principles of international environmental law regarding the threat posed by the use of nuclear weapons.
Despite these potential opportunities for the Court, the judiciary has not been able to make good use of this opportunity due to subsequent developments, which, of course, ignores the Court's role in formulating and explaining the principles of international environmental law in the 1990s. Admittedly, the Court's main role should be considered in the July 8, 1999 Advisory Theory on the Legitimacy of the Threat or Use of Nuclear Weapons, as well as in some theories or declarations of members of the Court in recent years. (Nejandi Manesh, 2014:143) [8]
In recent years, the Court has had the opportunity to clarify some important principles of international environmental law through two adversarial cases. The first case was filed on May 6, 2009, with Argentina v. Uruguay alleging the construction of a mill on the banks of the Uruguay River in front of the Argentine city of Gualeguaychú. (Pulp Mills) Argentina claims the mills are damaging the environment of the Uruguay River

and the surrounding area, and it affects a large part of the local population who are concerned about the risks of river pollution, deteriorating biodiversity, detrimental effects on health and damage to fisheries resources, and it has serious consequences for tourism and other economic benefits.

The second case was raised on April, 2008 by Ecuador. The issue was raised over aerial spraying of toxic herbicides by Colombia on the border with Ecuador. Ecuador claims that such an action would cause damage to people, crops, animals and the natural environment on the Ecuadorian border and cause more damage over time. Therefore, these two cases also provide a good opportunity for the Court to contribute to the development of international environmental law (Samds, 2017: 131).

It seems that the role of the Court in relation to the formulation of the principles of international environmental law should be reconsidered. In this regard, the previous judicial procedure of the Court as well as the cases raised in its presence should be examined. This study emphasizes issues related to the principles of international environmental law as seen in the policy of the International Court of Justice and the role of the Court in this area. Among the principles that are examined and analyzed are: Principle of non-harmful use of land, Principle of sustainable development, Principle of necessity of environmental protection, Principle of prevention, Principle of precaution, Principle of evaluation, Principle of information, Principle of payment of polluter.

Speech 1: Principles of International Environmental Law Taken from the Court's Rulings

A- The principle of non-harmful use of land

This principle first entered the field of international environmental law in the dispute between the United States and Canada over the Trail smelter.

The trail smelter was located on the Columbia River, which originated in Canada and continued in the United States, 10 miles north of the two countries' international border.

As a result of metal smelting and mining activities since 1927, a large volume of sulfur was released in Washington state, which in the form of acid rain on agricultural land and the human and urban environment, had a devastating effect. (Mousavi, 2006:572) [6]

Following these events and the damage caused, disputes between the two countries escalated and from 1928 to 1935 the United States filed lawsuits against Canada and the issue after negotiation and with the agreement of the parties led to the creation of a commission with the membership of experts from both countries.

As pollution continued and more damage was done to the British Columbia River in 1933, relations between the two countries escalated to the point where the United States once again protested environmental pollution by the Trail Smelter plant in Canada. During these protests and tensions in relations, a convention called the "Transient Border Publishing Convention" was formed and they agreed to establish and refer the dispute to a joint arbitral tribunal based on the above convention (Dadiyar, 2010: 136). Thus, the first achievement of the peaceful settlement of environmental disputes between the two countries on the international stage occurred with the agreement to form an arbitral tribunal.

In the same vein, the Arbitral Tribunal, after extensive deliberations and reference to the US legal system, has stated: "According to the principles of international law, as well as the rules of the United States, no government has the right to use its territory in any way or to allow it to cause damage by that country to another country." As a result, Canada was held liable for the damage caused to the United States due to environmental degradation. (Woolley, 2000:17)

It is clear that the vote is the first in international disputes to recognize a principle of environmental law, and in fact, its greatest importance is due to the exceptional nature of this principle compared to the principle of national sovereignty over the resources of countries. One of the most important points is the nature and position of this principle. Because, as stated in the Court's view, the principle under consideration is derived from the principles and rules of US law, and in fact from the legal system of an international function, and is recognized in accordance with international principles and brought to the international arena in particular and a chapter of expertise has entered into international relations, and due to the lack of a specific source and its regulations, nature, special and new, it has easily been realized and credited by international judges. (Ramezani Ghavamabadi,2007:27)

One of the points of interest in the judgment of the judgment, which has definitely influenced the relations of the countries, the Canadian government's homework is to ensure the activity of the factory in accordance with its obligations based on international law and votes; It is bad that this commitment to accurately execute the principle of "unplanned use of land" is tied up and pay attention, and its result is nothing but the growing attention of international authorities on environmental dilemmas, as well as preventing the incidence and outbreak of these differences in international relations; therefore, this commitment is a continuous and solid commitment and will continue until the activities of the Canadian soil exist. This is well reiterated in the votes and judgments of international environmental arbitration. (Dadiyar, 2010: 39)

In a disagreement between England - Albania in 1946, known as the Corfu Channel, which has been the difference between the two countries around the passage of England ships from the channel, which led to three deadly incidents in 1946, and its roots were the Allied mines in this channel in World War II and Albanian Sustainability. (Ramezani Ghavamabadi 2007:83) In the event of a dispute between the two countries, the matter was first reported to the Security Council by the United Kingdom, and the Council recommended that the dispute be referred to the International Court of Justice, which was referred to the Court with the consent of the parties. (Ibid:85)

In a part of the judgment issued by the Court, the authority in question has noted that Albania's principle of non-harmful use of its territory and, in fact, after Smelter's case, he first acknowledged this principle in an international dispute over the United Nations judiciary. (Mousavi, 2001:64) [5]

Also the principle examined in the second international environmental dispute in a arbitration tribunal called the "Lake Lanoux" case between Spain and France in 1957, based on the construction and diversion of water from Lake Carol by France

and the entry of environmental hazards into Spain and Especially the volume of water in finding this country was considered. The significance of this opinion is that it is the second opinion on an international environmental dispute that was resolved between the two countries on the basis of this principle. (Mousavi Mousavifar, 2014:31)

In addition, the above principle was reiterated in a recent environmental ruling on border mills and pulp mills (2010) on the Argentina-Uruguay river border and confirmed in principle primarily in accordance with international custom. All the issues raised express the special and sensitive position of the international environment in international relations and the future of humanity.

B- The principle of sustainable development

According to the World Commission on Development and Environment in 1987, sustainable development is "meeting the needs of the present generation without compromising the capabilities of future generations so that the needs of the present generation are not endangered". (Molaei, *2009:410*) [7]

The spiritual pillar is the need to pay attention to one layer of the biosphere as a whole, and in the material element, it indicates the identification of the consequences of environmental degradation in the long run and according to it, the protection of the environment depends on its preservation for the next generation of humanity. (Case Alexander,1992: 101)

Most of the issues related to sustainable development are addressed in the Rio 1992 Declaration, which sets out the constituent elements of sustainable development, and addresses a task with the same difficulty as the core issues of precaution in the international environment.

This principle came into being in the international environment with the so-called Gabčíkovo-Nagymaros, the dispute between Hungary and Slovakia.

In the dispute, also known as the "dam" case, the International Court of Justice has emphasized that sustainable development is a compromise concept between economic development and environmental protection.

In fact, the most important and explicit opinion on the principle studied in international environmental law, which, of course, has played a compromising role in the relations and peaceful settlement of disputes between the two countries, is this opinion. (Yousefi, 2001: 91)

The construction of the dam project on the Danube River as well as the implementation of the "Variant C" project were carried out unilaterally by Slovakia. Hungary initially participated in the project, but for environmental reasons and the change of its political system from a communist country to a country aligned with the West, it stopped working. Slovakia, which was heavily pursuing its own economic development, insisted on completing the project, destroying the region's wetlands, polluting water resources, and drying up pastures and forests. In this way, after many disputes arose and this issue became a national issue for the two countries, the dispute was sent to the International Court of Justice for a ruling (Mousavi, 2006: 430).

In this regard, Slovakia's argument is the need for development and use of national and sovereign resources, which the Court has emphasized after the reference of the dispute by the parties, the principle of sustainable development. of course, the principle of sustainable development is an accepted principle and is complementary to international environmental law. The Court has been able to resolve the dispute between Hungary and Slovakia in two disputes called "Gabčíkovo-Nagymaros » "between Hungary and Slovakia and the" pulp mill "between Argentina and Uruguay, and to prevent seizures and conflicts in international relations. These two cases are so far the only environmental lawsuits that have led to the ruling of the International Court of Justice.

Sustainable development has a high status in the eyes of even the greatest contemporary jurists.

In a separate case, Judge Trinidade in the case of the pulp mill noted that sustainable development is a tradition rooted in the Latin unit and as an international legal idea, overseeing the quiet role of the general principles of law (Trinidade, 28-30: 2010) and also in the separate opinion of Judge Weeramantry regarding Gabčíkovo-Nagymaros, it has been stated that sustainable development is in fact one of the customary principles of international law. Accordingly, the Court cannot ignore this principle in international environmental law today.

C- The principle of the necessity of environmental protection

The need for environmental protection began in the late 1960s. The 1972 Stockholm Declaration marked a turning point in the proclamation of the fundamental principles of international environmental law, and it is natural that one of the most important and vital principles in international environmental law, which countries invoke in defense of their actionor inaction in international relations, is the principle of necessity. (Rüdiger, 2002:21)

The environmental dispute in this principle, for the first time in the international arena between Hungary and Slovakia, and in the same case of "Gabčíkovo-Nagymaros", was considered by an international judicial authority, the International Court of Justice, and in the field of international environment. (Ibid., 23)

The reason for the above principle in the lawsuit was the dispute between the two countries for the construction of a dam on the Danube River, which Hungary, citing the principle to prevent the destruction of the region's environment and, of course, public pressure terminated the contract with Slovakia and in the case, it was sued by Slovakia. However, the Court is very careful about this principle and pays attention to its exceptional aspect, as it states that the necessity must be based on very precise and numerous conditions which the State concerned alone cannot discern, has strongly emphasized on mental theories based on the concept of necessity and has taken the implementation of treaties out of the control of national interests (Philip, 2002: 190)

Also, in the Court's view, in order for a State action to be justifiably justifiable, that State action must be the only means of protecting the fundamental interest of the State (Hungary) against imminent and severe danger, and nor should the actions of that government be the cause of that danger, and this action should not seriously harm the interests of another state (Dadiyar, 2010:136).

Accordingly, the court found the Hungarian government guilty of creating a danger in the dam case. Of course, despite accepting the principle of necessity in environmental issues and recognizing it as customary, the Court considers the position of this principle as a limited and exceptional position and does not consider its existence as a reason for violating other obligations.

D- Principle of prevention

This principle, for the first time in the form of a logical implication of the "principle of non-harmful use of land" in the well-known dispute between the United States and Canada, which was discussed in detail, is presented in international jurisprudence as a significant dispute in international relations.

Canada was informed that it must at all times refrain from causing smoke damage to the territory of Washington, and in this regard, foresaw a continuing commitment. (Makhdoom, 2012:134) [9]

The principle of deterrence obliges governments to manage the activities of the private sector under their jurisdiction on the basis of "fair action" and in the interests of public order, so as not to harm the environment. (Case Alexander, 1992:101)

This principle is an absolute duty, but governments are required to comply with these prohibitions when that activity causes severe damage to the environment.

However, the realization of the principle of non-harmful use of precaution requires preventive measures (Ramezani Ghavamabadi, 2007:83)

In the case of the dam, the Court has made the principle of prevention a mandatory principle due to its non-compensatory nature and the damage to the international environment (ICJ 140: 1997, 140) [19]. However, the Court's attention to the principle of prevention in the pulp mill case indicates the importance of this principle in international relations and the international environment.

This is because the Court specifically seeks to emphasize this principle, which stems from the legal practice and belief created in international opinions, such as the Court's ruling in the Corfu Canal and Dam case. But the very important point is that the Court has mentioned the realization and achievement of this principle in an absolute way in the case of the pulp mill. Because to support the principle of prevention and its guarantee, prevention alone through the commission is not enough and emphasizes the commitment of governments in the adoption and implementation of national laws in line with this principle. (ICJ, 2010: 190) [21]

It is clear that the Court's decision in this regard was not only based on the statute between the parties, but also confirmed its importance by recognizing this principle as a custom of international environmental law rooted in treaties.

Judge Trinidad's separate opinion on the pulp mill case seems to stem from the same international belief that has been created, as he states: "International environmental law today can hardly prevent the principle of "Ignore caution and sustainable development." (Trinidade, 2010: 2)

E- The principle of precaution

According to the text of Article 15 of the Rio Convention, the precautionary principle is defined as follows: "In order to protect the environment, governments need to take broad precautionary measures commensurate with their capabilities. In the event of the risk of severe or irreparable damage, the lack of conclusive scientific evidence should not be an excuse to delay the adoption of effective measures to prevent damage to the environment ". (Mousavi,2001:374) [5]

The precautionary principle in both environmental disputes referred to the International Court of Justice has been taken into account in the claims of the parties and in the final judgment, but because of its nature, it has never been as credible as the principle of prevention. (Zamani, 2012: 36)

This principle, which has been proposed in line with the principle of prevention, seeks to express a precautionary commitment. A commitment that Birnie and Boyle express in the form of active protection and control. The consequence of accepting this principle, as a legal rule, is a shift in the burden of proof, which means that in any suspicious action in relation to the environment, the perpetrator must prove in any way that his action is not dangerous to the environment. (Molaei, 2009:426) [7]

The validity of this principle is highly questionable as to whether it is a customary rule or not, and this is probably why the Court has been very conservative in recognizing this principle as a customary rule. What is certain is that this principle has moved from domestic law to international law and is in fact considered a general international principle, and this is the turning point that exists between this customary principle and the principle of prevention. (Sands & Peel, 2012: 220)

Although this principle has been enshrined in both environmental cases before the International Court of Justice, namely the Gabčíkovo-Nagymaros ruling and the pulp mill, it can be said that it has been somewhat neglected and silenced because of its existential cause. This principle is based on the existence of a danger, which cannot be scientifically conclusively proven. (Makhdoom, 2012:108) [9]

F- The principle of evaluation

A prior assessment of potentially hazardous activities is a commitment that stems from the concept of prevention, and since negligence in trying to avoid overseas hazards can lead to international liability, it is also worth considering that accurate environmental impact assessment can serve as a standard for determining the degree of attention and accuracy in risk prevention. (Kuro Cola Soria, Lal and Nikolas, Robinson, 2011:118) [4]

These preventive actions can include monitoring, issuing warnings and announcements, and exchanging information, which are among the obligations set out in various environmental documents. It should be emphasized that not every proposed activity is subject to evaluation, and only those activities that are at a certain level of environmental damage and with such probability go to those projects. (Shelton and Case Alexander, 2010:10) [2]

One of the manifestations of the relationship between international environmental law and investment law is seen in the principle of environmental assessment (Ibid: 106).

This principle was first raised by the Court of Arbitration in the case of Lake Lanoux between Spain and France for the

identification of consequences and the prevention of environmental damage, but the Court emphasized and elaborated and regulated it. (Ibid, 19)

This principle came to the fore in the so-called "Pulp mill" case in the Argentina- Uruguay border dispute between the two countries bordering the Uruguay River, which is deteriorating day by day. (182: 2015 Dinstein) [26] According to the Court; Uruguay was required to provide the Commission with sufficient and complete information on the environmental assessments of the project and to submit a final opinion to the authority.

This commitment was also required of the Government of Uruguay at a time when the contractor (or related company) had referred to the competent authority of that country for authorized action. The Court of First Instance has considered environmental impact assessment as a sub-principle and with binding conditions. (Zamani, 2012: 28)

As we have mentioned in the previous articles, the Court has not yet ruled on the nature and nature of the violation of this principle, whether its substantive violation occurred through the lack of notification and the transfer of evaluations to the Commission or not. However, the Court, while recognizing and applying the customary nature of this principle, did not consider the violated obligation to be fundamental and emphasized the violation of Uruguay's formal obligation. As a result, this decision seems to be rooted in not mentioning the scope and content of this principle in general international law.

This principle was realized only in the mentioned decision, ie the Pulp mill, which was ruled by the court, and was declared customary. (Afshar Urmia, 2009:81)

G- The principle of notification (Informing)

This principle is in international jurisprudence with the dispute between the Spanish and French countries in the so-called "Lake Lanoux" case for the construction of industrial and hydroelectric facilities by France on the border river between the two countries and in the hearings and rulings agreed by the parties in Formed in Geneva in 1956, it came to the fore.

This dispute and the issued verdict is a valuable record in consolidating the principle of non-harmful use of the land and the principle of information, and its value is due to the fact that it is basically the second international opinion issued in international environmental law after the Trail Smelter, which has regulated the relations between the two countries in the international arena and resolved their differences, and has prevented the occurrence of catastrophic events. (Makhdoom, 2012:147) [9]

In the case of Lanoux lake, the Arbitral Tribunal was obliged to recognize France in order to inform its neighbor (Spain) of its actions and plans related to the lake and the habitat of the two countries (Lanoux border lake) (Dadiyar, 2010: 136)

But the most important origin was the attention to the principle of information in the dispute between Argentina and Uruguay, and the parties, by concluding a statute on the preservation of the ecological balance of the border river, the Uruguay River in 1975 and the subsequent formation of a joint commission, were committed to the beneficial use and information to the other side. According to the Court, Uruguay has not fulfilled its duty of informing the other party (Argentina) through a joint commission to build two mills and a pulp mill on the river that was being completed.

However, there are serious criticisms of this ruling due to the second explicit vote in the field of international environment and the lack of previous regulations and procedures, but it has made a valuable contribution to the development and development of international environmental law, on the one hand, and the peaceful resolution of international disputes and the prevention of regional conflicts.

H- The principle of payment of the polluter

The issue of the international obligation of governments and their responsibility for damage to the environment is one of the new issues that has occupied the global institutions and forums. As more and more environmental damage is reflected globally, the issue of enforcement also becomes more prominent.

In the meantime, the role of the "principle of payment by the polluter" as one of the fundamental principles of international environmental law in the development of the issue of international obligation of governments should not be ignored. According to this requirement, the cost of removing environmental pollution must be paid by the polluter. This principle, on the one hand, recognizes the right of others to enjoy a healthy environment. On the other hand, it is a kind of preventive action to prevent the destruction of the environment and the offending member is required to compensate the damage done to the international community. (Zaheri, 2014: 18)

In other words, the basic requirement of the sovereignty of states is the obligation to observe the rule of no harm, and if the state inflicts harm on another member or members, it will be obliged to compensate it. According to the definition provided by the European Union on November 7, 1974: "A polluter is someone who directly or indirectly harms the environment or is the one who causes the greatest damage to the environment."

Article 16 of the Rio 1992 [18] Declaration also states that, in principle, the polluter of the environment must pay the price and calls on States to take this matter into account.

The obligation of governments to pay for pollution-related activities is enshrined in the numerous sources of international environmental law, including the following: Article 6 of the 1969 Brussels International Convention on Intervention in the High Seas in the Event of Oil Pollution states: Any Member which has committed any act contrary to the provisions of this Convention which has caused damage to others shall be liable to compensation, and the amount of compensation depends on the amount of damage.

The 1984 and 1992 Protocols to the 1969 Brussels Convention, which amended the Convention on Civil Liability for Damage Caused by Hydrocarbon Pollution, refer to the payment by the polluter.

Article 10 of the 1972 London Convention also stipulates that members undertake, in accordance with international principles, with regard to the liability of States for damage to the environment of other countries or to any other environmental area as a result of the disposal of waste and Other materials of any kind, in the field of expanding methods

of determining responsibility and resolving disputes related to the disposal of waste materials.

The principle of contaminant payment is also enshrined in the Protocol of November 7, 1996, to the Convention, which entered into force on March 24, 2006. The protocol states that the contaminant must pay for the contamination. Article 12 of the International Convention for the Prevention of Pollution from Ships from 1973 to 1978 states that each administrative authority undertakes to conduct investigations into the damage to any of its ships in accordance with the provisions of this Convention if such damage has caused significant damage to the marine environment.

Article 174 of the Maastricht treaty of 1992 also makes the principle of payment of pollutants one of the foundations of the policy of our society in the field of environment. Finally, Article 5 of the Convention on the Framework for the Protection of the Environment of the Caspian Sea, in Tehran in 2003, provides that according to the principle of payment by the polluter, the polluter must bear the costs of pollution, including: prevention, control and reduction.

Second Speech: Assessing the Role of the International Court of Justice in Formulating and Developing the principles of International Environmental Law

The International Court of Justice is the main judicial body of the United Nations, whose main function is to resolve disputes and answer questions from authorized bodies seeking advice, and this court does not lay down the rules directly and develops those rules by discovering and interpreting the legal rules supervising the phenomenon. In this regard, the International Court of Justice has taken important steps, directly and indirectly, in the development of the principles of international environmental law, in various interlocutory and consultative cases. (Saed Vakil, 2009:125)[10] of course, regarding the role of the Court in the development of the principles of international environmental law, it should be borne in mind that the Court is essentially a court with non-criminal jurisdiction whose first task is to resolve disputes between countries. In short, the resolution in its basic dimension is always in the direction of resolving the real and tangible differences between the parties. Thus, in many of the cases before the Court, the issue of the direct application of international environmental law has never been discussed. (Yousefi, 2001: 64)

In dealing with environmental claims, the Court has recognized some principles of international environmental law and has taken steps to develop them. For example, the principle of "non-harmful use of territory" which the Court declared in the case of the Corfu Canal: "Every country has an obligation not to allow its territory to be used for actions contrary to the rights of other countries. The above principle has also been applied in nuclear test cases.

It is certain that the Court's main role in the Advisory Opinion of 8 July 1996 on the Legitimacy of the Threat or Use of Nuclear Weapons, as well as in some theories and declarations of members of the Court in this case, and in particular the Statement of Judge Weeramantry, Observed.

The Court has taken a consultative vote to formulate and develop the principles of international environmental law. Accordingly, the World Health Organization registered with the Court on 14 May 1993 a request for an advisory opinion on the "legitimacy of the use of nuclear weapons in armed conflict".

The petition explicitly addresses the environmental implications of the use of nuclear weapons. (Dinstein, 2015: 151–152)[26] of course, regarding the role of the Court in the development of the principles of international environmental law, it should be borne in mind that the Court is essentially a court with non-criminal jurisdiction whose first task is to resolve disputes between countries. In short, the resolution in its basic dimension is always in the direction of resolving the real and tangible differences between the parties. Thus, in many of the cases before the Court, the issue of the direct application of international environmental law has never been discussed. (Yousefi, 2001: 64) of course, regarding the role of the Court in the development of the principles of international environmental law, it should be borne in mind that the Court is essentially a court with non-criminal jurisdiction whose first task is to resolve disputes between countries. In short, the resolution in its basic dimension is always in the direction of resolving the real and tangible differences between the parties. Thus, in many of the cases before the Court, the issue of the direct application of international environmental law has never been discussed. (Yousefi, 2001: 64)

The Court, while examining the request of the World Health Organization, found that: "Referring to the health and environmental effects in the question raised by the Court is not an issue that is within the scope of the World Health Organization's employment."

Thus, the case did not reach the stage where the Court was to examine the "environmental implications of the use of nuclear weapons" in the manner requested by the World Health Organization. It also requested an advisory opinion from the General Assembly, which, in accordance with Article 96, paragraph 1, of the Charter of the United Nations, adopted Resolution 49/75 of 6 June 1995, requesting the Court to submit its advisory opinion on the matter: "Is the threat or use of nuclear weapons in any situation permissible under international law?" (Sands, 2017: 274) [13]

At this time, there was no explicit reference to the impact of the use of nuclear weapons on the environment. During the proceedings, however, reference was made to some international treaties or instruments, including the 1977 Additional Protocol and the 1949 Geneva Conventions, and they argued that the use of nuclear weapons under these documents would be illegal in terms of their focus on protecting and protecting the environment. (Zamani, 2012: 27)

The Court explicitly referred in its theory to the three legal instruments in question for these countries:

1. Paragraph 2 of Article 35 of the Protocol to the Geneva Conventions, 1949, which prohibits the use of methods or means of warfare which are intended to cause serious, long-term and serious harm to the environment.
2. Article 1 of the Convention on the Prohibition of Any Military Use or Other Use of Environmental Change Techniques of May 1977, which prohibits the use of weapons that have far-reaching, lasting or severe effects on the environment.

3. Article 21 of the Stockholm Declaration of 1972 and Article 2 of the Rio Declaration, which express the common views of the countries concerned. This view is based on the fact that they have a duty to "ensure that the activities under their jurisdiction or control do not cause harm to the environment of other countries or to countries outside the boundaries of local jurisdiction." (Woolley, 2000: 197)

During the investigation, some countries considered these documents binding at all times, while others questioned the binding effect of these documents.

In this regard, the Court, while stating the environmental threats of nuclear weapons, stated: The existence of general obligations by governments to ensure that activities under their authority or control respect the environment of other states or areas beyond their national control is now part of international environmental law. (Rüdiger, 2002:121)

The Court also discusses the right to self-defense, and declares that the exercise of this right does not negate the protection of the environment and allows the exercise of this right under international law, which may also include the principles of international environmental law, the Court states: "Governments must take into account environmental considerations when assessing what is necessary and appropriate in pursuit of legitimate military objectives." "Respect for the principles of international environmental law is one of the elements to be assessed in order to determine whether an action conforms to the principles of necessity and proportionality." (Woolley, 2000: 177)

The final conclusion reached by the Court in this regard, which also implicitly refers to the principles of environmental law, is as follows:

A. Neither in customary international law nor in treaty international law is there any specific authorization to threaten or use nuclear weapons.
B. Neither in customary international law nor in treaty international law is there a comprehensive or universal prohibition against the threat or use of nuclear weapons.
C. C) The threat of force with nuclear weapons, which is contrary to paragraph 4 of Article 2 of the UN Charter and all the conditions that are not in Article 51, is illegal. (Saed Vakil, 2009: 209) [10]

Conclusion

Undoubtedly, the International Court of Justice is neither a legislative body nor is it expected to legislate. But it can undoubtedly help to develop the principles of international environmental law by discovering legal rules and interpreting and explaining them.

of course, it should also be noted that the Court's decision can be considered as a law between the two parties to the dispute.

We know that several lawsuits have been filed with the International Court of Justice to date, directly or indirectly addressing issues related to the principles of international environmental law. There are also lawsuits before the Court that relate directly to issues of the principles of international environmental law.

It is expected that the Court will be able to make good use of the opportunity to discover and explain the unknown or ambiguous dimensions or gaps of the environmental legal system. An examination of the Court's case-law suggests that the role that the International Court of Justice has played and can play in the field of international environmental law principles has clearly grown in recent years. In this regard, international environmental law has gained an important position. The role of the International Court of Justice in developing the principles of international environmental law in three areas seems to have been growing:

First, the International Court of Justice, through the process of resolving a bilateral dispute involving environmental issues between countries, can recognize and ratify issues of jurisprudence related to the principles of international environmental law as an important part of the public order of this society. In fact, it can even be said that one of the important functions of the International Court of Justice is that the Court can play a role in resolving a real dispute between countries. In this regard, it can express the relevant general principles and thus help to develop the principles of international environmental law.

However, the Court, as a tribunal tasked with resolving genuine bilateral disputes between countries, must consider issues related to the principles of international environmental law.

Second, the less important function of the Court in developing the principles of international environmental law is the jurisdiction of the Court to present opinions that are publicly enforceable as a declaration of the principles of international environmental law.

Which will be applicable to matters of international environmental law.

In this regard, it is of particular importance that the Court be empowered, pursuant to Article 99 of the Charter of the United Nations and Article 65 of the Statute of the Court, at the request of the General Assembly and the United Nations Security Council on any legal matter arising out of Issue an advisory opinion under their authority. Even in the absence of real disputes between countries, the Court can act as a quasi-administrative court through these consultative proceedings.

In this way, the Court can play an important role in strengthening the public order of the international community in the field of international law and the principles governing it by expressing legal principles.

It is true that the function of the court in this field has not been developed in theory in general and has not been fully realized in the practical stage.

Nevertheless, there seems to be fertile ground for future cultivation of the development of the principles of international environmental law.

Third, the Court, aware of the importance of the environment in the international arena and the potential services it can provide to the development of law in this area, should strengthen its capacity to hear cases relating to international environmental law. It can also be said that the contemporary assessment of the role of the Court in the development of the principles of international environmental law has essentially led to the following achievements: the existence of a general obligation for states to ensure that the activities under their

authority and control respect the environment of other countries as well as the environment of areas outside their national control is now rooted in customary international law. As a result, it is necessary to consider environmental considerations in other areas of international law, such as assessing the need and appropriateness of pursuing legitimate military objectives.

Third, the jurisprudence of the International Court of Justice, as well as some theories, especially the views of Judge Weeramantry, have raised important issues in the field of environment and customary international environmental law. Such as the existence of customary tasks based on the assessment and reporting of the environmental impact of large projects, description of environmental rights as human rights, restrictions on the right to economic development and, most importantly, relationships between contractual and customary law in the field of environment. As a final point, I quote Judge Gilbert Guillaume: "Law and justice have made considerable progress in the last century. New trends in international law emerged and specialized international courts emerged. These developments have coincided with the changes that have taken place in society in general and in international relations. In this new scenario, the International Court of Justice, the main judicial body of the United Nations, plays a key role. The Court alone can address all areas of international law... The Court's case law on human rights and environmental law is, in my view, somewhat indicative of this goal."

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