



Abstract:

The environment is an integrated system with interlaced, multiple, and complex components. The perversion of the environment from pollution requires working on its causes and strengthening means of protection to the same. If the causes remain, the opportunities to enjoy a healthy environment free of pollution are increased.

The increase in oil production in Iraq has led to an increase in combusted gases accompanying production operations, which in turn, affects the environment by increasing its pollutants. The lack of use of devices for calculating environmental pollutants, especially advanced ones, as well as the lack of programs for monitoring sources of pollution, the most important of which are those associated with oil production, which can through it, finding real solutions to avoid the spread of pollution or reduce the same, all of this and other factors that help the spread of pollution, however, on the other hand, legislating deterrent laws for violators of environmental safety systems, as well as taking responsibility, each according to its specialty, leads to preserving the environment, in addition to focusing on the role of International Law in providing this protection for the environment from pollution.

This research will consist of two sections, the first one deals with the international law frameworks for protecting the environment from pollution, and in the second, the damage to the Iraqi environment as a result of successive wars will be discussed.

Keywords: Environment, pollution of environment, environmental pollution.

Introduction

The international community has always exerted the necessary care to protect the environment from pollution in times of peace and war alike, starting with holding international conferences and ending with concluding international agreements under the sponsorship of the United Nations and its affiliated bodies, in addition to bilateral agreements. This importance began with officially protecting the environment since 1972 in Stockholm for the human environment as a result of the emergence of environmental



problems in a striking manner, and the increasing manifestations of environmental pollution, in addition to the hole in the ozone layer, the emission of harmful gases to the environment, successive climate changes, and many others, therefore, there has been an actual and urgent need to intensify efforts at all levels to confront this phenomenon and work to preserve the environment from pollution, in addition to the adoption of this topic of protection by governmental and non-governmental organizations, as well as the interest of countries at the internal level in combating the manifestations of environmental pollution through legislating internal laws and forming ministries concerned with them.

First – Importance of the Study:

1. The legal importance of this research stems from its presentation of international agreements related to protecting the environment - from pollution, to reveal the extent of their effectiveness in protecting the environment during this period, and to examine the possibility of developing them - or concluding international agreements related to protecting the environment - to keep pace with the developments witnessed by the industry of modern combat means and methods.
2. The study has national importance represented by the large number of severe and grand damages that our Iraqi environment has suffered, and continues to suffer, as a result of wars and military occupation, its repeated targeting with internationally prohibited weapons, and the destruction of its facilities containing dangerous forces, in addition to the pollution resulting from the deadly legacy of those wars.

Second: Research Problem

The research problem is to study the role of international law in protecting the environment from pollution, and the adequacy of these texts to protect this environment. The problem is represented in the following questions:

1. What is the legal basis for protecting the environment from pollution?
2. What are the local legal mechanisms to protect the Iraqi environment from pollution?
3. What is the damage to the Iraqi environment as a result of the wars?

Third: Study Approach



In this study, the researcher has investigated the analytical approach, which includes analyzing the legal texts in international agreements according to the standards that are applied in armed conflicts that are characterized as humanitarian, as well as studying what was applied in Iraq, as follows.

Fourth: Research Framework

This research was divided into two sections. In the first, the researcher addressed the international legal frameworks for protection from pollution, and in the second section, the researcher explained the role of the Iraqi government in protecting the Iraqi environment from pollution, as follows:

Part One

International Legal Frameworks to Protect the Environment from Pollution

Firstly, prior to delving into explaining the legal basis for protecting the environment from pollution, it is necessary to define the concept of environmental pollution, explain its types, and then define the legal basis for protecting the environment from pollution. This is what the researcher will discuss in some detail in this section in two basic requirements, the first of which is devoted to explaining the concept of environmental pollution and its types, and the second requirement, the researcher will discuss the legal basis for protecting the environment from pollution.

Chapter One

The Concept of Environmental Pollution and Its Types

Many causes of pollution are existed. These causes may be natural, resulting from an increase above the normal limit of natural materials in the environment, or due to other industrial materials that play a negative role on them. This is what the researcher will study in this requirement in the following two sections:



Section One

Definition of Environmental Pollution

Environmental pollution is the change in the natural environment in a negative way as a result of the introduction of pollutants into it, regardless of the type of these pollutants, which may be, as we mentioned previously, due to the incorrect use of chemicals, or the result of industrial materials used, or in the form of energy (such as light, heat, radioactive activity, and many other pollutants), and this is what the researcher will study in this chapter.

Section Two

Types Environmental of Pollution

Environmental pollution has different types and categories¹, which will be studied successively:

First - Air pollution: The effects of this type of pollution on humans are many, and it represents one of the most dangerous types. Air pollution's causes are many, which in turn may lead to great harm to humans and bring serious respiratory diseases² to them, which in turn will lead to many health risks to human lives, as well as one of its risks is a decrease in the average lifespan of humans on Earth, according to the latest scientific studies³.

The air is infected as a result of radioactive materials, resulting in radioactive pollution, which is the most dangerous type of pollution currently known, and its causes are many, such as nuclear power plants, pharmaceutical industries¹, and others. The air may become infected with biological pollution as a result of known natural phenomena, such as volcanoes, due to the smoke and fire they emit, and the presence of bacteria and some other living organisms, which cause water pollution and are a cause of disease outbreaks².

Second - Soil pollution³: Soil pollution means the pollution that affects the soil, and its causes are many, the most prominent of which is the use of chemical pesticides in



agricultural crops, which leads to pollution of the soil and agricultural crops alike, in addition to their health and economic damage⁴.

Third - Water pollution⁵: Among its most prominent causes is diverting sewage water into rivers and throwing factory waste into them, in addition to the spread of bacteria in the water and the spread of viruses, which leads to many health risks to the human body⁶. Chemical pollution is considered one of the most dangerous types of pollution at all. What is meant by chemical pollution is the pollution that results from chemicals such as cleaning chemicals, machine oils, and industrial waste, which are often thrown into running rivers for disposal. This pollution is a major cause of the occurrence of malignant cancerous tumors that kill in large numbers of people every year⁷.

Finally, before concluding our research on the types of pollution, the researcher finds that each type has an impact on the human environment and living organisms. Therefore, it is necessary to look at the issue of pollution as a single unit in terms of its impact on life and try to limit its negative effects without giving priority to one type over the rest.

Chapter Two

The Legal Basis for Protecting the Environment from Pollution

In this chapter, the researcher will study the international conferences of the United Nations concerned with protecting the environment from pollution in the first section, and in the second section the researcher will address the international agreements on protecting the environment from pollution, and the researcher will explain in the third section the role of international organizations in protecting the environment from pollution.

Section One

United Nations International Conferences Concerned with Protecting the Environment from Pollution

Conferences on a worldwide scale examined the issue of pollution. Following the United Nations Conference on the Human Environment in Stockholm, Sweden in 1972, there were regional, international, and global conferences organized with the goal of safeguarding the environment from the damaging effects of pollution. The International Conference on



Environmental Education, which took place in the Soviet Union's fallen city of Leblis in 1977 AD, serves as an illustration of this¹.

The international bodies and entities are established for protecting the environment, most notably the United Nations Environment Programme, which was created as a mechanism for the UN to encourage global collaboration in environmental protection after the Stockholm Conference, including departments and branches that many international organizations have allocated to caring for the environment.

These organizations carry out studies, keep an eye on contaminants, share knowledge and insights, organize schemes and initiatives, and draft agreements and recommendations concerning environmental preservation—even in regions like the high seas and the polar regions that are not under national sovereignty¹.

In the area of environmental protection, the UN collaborates with numerous other organizations. The International Green Cross was founded in Geneva in 1993 with the goal of collaborating with the UN to safeguard the environment against pollution and natural disasters. Mikhail Gorbachev, the final president of the Soviet Union, served as its first president².

The Earth Summit, also known as the "Environment and Development" meeting, took place in Rio de Janeiro, Brazil, during the first part of June 1992. With over a hundred heads of state and government in attendance and representatives from 179 countries, it was the greatest global summit in history. It sought to save the Earth, its resources, and its climate in addition to creating a strategy for world growth and the eradication of poverty while protecting the environment³.

Observed two minutes of quiet at the start of the conference to honor the problems facing our ailing planet. The UN Secretary-General then gave the opening address of the conference, reiterating that everyone is affected, including those in the wealthy North and the impoverished South, and that the planet is afflicted by both progress and regression. He also stated that the richest nations bear the greatest portion of the blame for environmental pollution. He went on to say that progress should not come at the expense of the ecology because the land is their shared home. It will need a concerted international effort and



coordinated global cooperation from all members of the human race to save the Earth for future generations⁴.

The conference concluded with the release of the "Rio Declaration," which was endorsed by every UN member state. It contains 27 guiding principles that must be followed in the management of Earth as the "home of humanity" in order to protect the environment while advancing humankind. The second principle, which states that nations must make sure their actions do not harm other nations' environments despite having the sovereign right to utilize their resources, is one of the most crucial of these. The eighth principle calls for nations to support suitable demographic strategies and give up unsustainable modes of production and consumption that interfere with attaining long-term growth and enhancing the standard of living for all peoples¹.

Principle No. (16), which stipulates that "national administrative structures must strive to internationalize environmental costs and force those causing pollution to pay." Principle No. (25) stipulates that "peace, development and environmental protection are interrelated issues that depend on each other"².

Attached to the declaration was a detailed action plan known as the "Agenda for the Twenty-First Century," a document consisting of 800 pages, which includes principles of development compatible with the requirements of the environment, that is, "sustainable development in all fields of economic activity"³.

The Earth Summit, however, fell short of expectations and neglected to address many significant environmental issues, including the issue of the contribution of developing nations to development aid and the role of fossil fuels in global warming, in addition to the Rio Declaration, the Twenty-First Century Agenda, and the two agreements. Texts about biodiversity and climate change are all vague and merely marginally non-binding⁴.

The United Nations' next Earth Summit, which took place in New York in late June 1997, ended without a final environmental protection statement that contained new steps to counteract rising global temperatures. The head of the conference declared that governments lack the motivation to address the intricate environmental issues they encounter, such The majority of the 170 delegates representing the participating nations



developed countries to take the initiative to provide them with assistance in confronting environmental issues.

Second - Results of the agreement:

The efforts of developing countries to include the United Nations Framework Convention on Climate Change in setting clear goals through which they seek to reduce the emission of greenhouse gases did not succeed, and the agreement was devoid of any timetables for practical implementation.

Section Three

The Role of International Organizations in Protecting the Environment from Pollution

Regarding the regional organizations concerned with environmental affairs, they are many, and it is not the place here to list them, but we will limit ourselves to only two examples in our Arab region due to proximity and greater knowledge of them than others. In fact, the first serious attempt in the Arabian Gulf region to combat pollution was in 1979 AD, when the organization was established in Kuwait. Regional marine environment protection. Which includes Iran, Iraq, Saudi Arabia, the United Arab Emirates, Bahrain, Kuwait, Oman, and Qatar. The Secretariat of this organization has been putting various measures in place to prevent contamination of the marine environment since 1982. Additionally, it has arranged seminars, workshops, and group training sessions for member states in an effort to improve the scientific and technological capacities of the local populace¹. In 1982, the organization established the Marine Emergency Assistance Center in Bahrain, which implements protocols for the international transportation of personnel, gear, and supplies needed for marine emergencies. It also supports pollution control training initiatives. Additionally, the Center compiles lists of bodies, supplies, vessels, aircraft, and other specialist equipment that may be required in maritime emergencies².

As for the mechanisms of international organizations in protecting the environment from pollution: The International Committee of the Red Cross is at the forefront of humanitarian



Stockholm Convention, an international multilateral environmental agreement on persistent organic pollutants

(POPS), the Kuwait Regional Convention for the Protection of the Marine Environment from Pollution of 1978 and the protocols thereto (ROPME), the United Nations Framework Convention to Combat Desertification, the Convention on Biological Diversity, the Convention on Use Storing and transporting anti-personnel mines (Ottawa), the Convention on Cluster Munitions (Oslo), the Arab Strategy for Disaster Risk Reduction 2020, the Vienna Convention and the Montreal Protocol on the Elimination of Substances that Deplete the Ozone Layer, the Carthage Protocol, and others.

Section One

Convention on the Prohibition of the Use of Environmental Modification Techniques for Military or Other Hostile Purposes of 1976

The aim of this agreement is to strengthen international peace, stop arming, disarmament under effective international control, and save humanity from the danger of using lethal methods and means in wars.

Despite the awareness of the parties participating in this agreement that technical and scientific progress has an impact on the environment for peaceful purposes, in terms of providing new possibilities, it may have positive contributions to the environment and in a way that serves future generations. However, on the other hand, this progress in technology may lead to, if used for military or hostile purposes, severe harm to humans, and to achieve this goal, this agreement has been enacted.

This agreement prohibits the use of environmental modification techniques that have widespread, long-lasting, or severe effects for military purposes or for any other hostile purposes as a means of causing destruction, loss, or damage to any other state party. The agreement also assigned the Security Council a role within the scope of monitoring the states parties' compliance with its provisions. It allowed the state affected by the failure of another state party to the agreement to submit a complaint to the Security Council, which has the authority to investigate the complaint submitted¹.



Some of them argue that the prohibition applies whether the use of environmental modification techniques is for the purposes of attack or defense. Others support that the prohibition of use contained in the agreement includes the case of self-defense or is authorized based on the concept of collective security¹.

The researcher concludes from the above that the ban includes any change of a hostile nature in the environment that could cause harm to any state party to the agreement. In the sense of violation, the use of the technologies referred to in Article Two of the agreement, if for peaceful purposes, falls outside the scope of the ban stipulated. For example: dispersal Fog in order to facilitate aircraft take-offs or landings, using environmental modification techniques to alleviate drought.

Section Two

Additional Protocol I Of 1977 Annexed to The Four Geneva Conventions Of 1949²

The First Additional Protocol included two articles that explicitly address the issue of protecting the environment during the period of international armed conflict, namely Articles (35 and 55). Article (35/3) of the First Additional Protocol of 1977 stipulates: "It is prohibited to use means or methods of combat intended to or is expected to cause severe, widespread, and long-term damage to the natural environment. Article 55 of the above protocol stipulates: (1. During fighting, care must be taken to protect the natural environment from severe, widespread, and long-term damage. This protection includes prohibiting the use of methods or means. Combat operations that are intended or expected to cause such damage to the natural environment and thus harm the health or survival of the population. 2. Deterrence attacks launched against the natural environment are prohibited)³.

Chapter Two

Iraqi Legislation to Protect the Environment from Pollution

In the Iraqi Constitution of 2005, there was an explicit reference for the first time to the right to the environment, meaning that the most prominent constitutional development occurred in Article 33 "First - Every individual has the right to live in sound environmental

and the latter in turn is divided into political decentralized bodies (regions) and administrative decentralization that includes governorates that are not organized into a region. It is the responsibility of the federal authorities to formulate an environmental policy to ensure that the environment is protected from pollution and its cleanliness, in cooperation with the region and the governorates that are not organized into a region, as it is among their shared jurisdictions¹.

Conclusion

After completing studying the role of international law in protecting the environment from pollution - Iraq as a model, the researcher reached a set of conclusions and proposals as follows:

First: Conclusions

1. There are numerous international humanitarian agreements that would constitute a legal basis for protecting the environment during armed conflicts, and they are classified into two categories: a category that protects the environment directly, which are modern texts that explicitly and directly address the use of the term environment, and a category that protects the environment indirectly. These are the majority of humanitarian convention texts that protect various elements of the environment, implicitly, before the term (environment) crystallizes as a known legal term.
2. International humanitarian law has prohibited the invocation of military necessity to remove protection from elements of the natural environment and attack them, because the military advantage achieved by attacking the natural environment is completely inconsistent with the legitimate goal of war, which is merely to weaken the military power of the opponent.
3. The supervisory protection mechanisms, through the Protecting Powers, the International Committee of the Red Cross and the International Fact-Finding Commission, do not contribute effectively to protecting the environment during armed conflicts. In addition to the fact that the Convention texts that established such protection did not include an explicit reference to monitoring the

implementation of environmental protection rules by the parties to the conflict during the course of hostilities, these mechanisms are of an optional nature, as the protecting states do not exercise their supervisory role to take care of the interests of the parties to the conflict, except with the approval of the parties to the conflict. The same applies to international humanitarian organizations, such as the International Committee of the Red Cross. As for the Fact-Finding Committee, despite the development that has occurred in its oversight work, in accordance with Article (90) of the First Protocol of 1977 AD, which enabled it to exercise its oversight role by investigating any serious violation According to the rules of international humanitarian law, regardless of the consent of the parties to the conflict, this committee remains restricted to the consent of these parties in the case of ordinary violations.

4. The recent period has witnessed an increase in the Iraqi legislator's interest in the environment and its protection through the enactment of specialized environmental legislation, which is the Environmental Protection and Improvement Law No. (27) of 2009 with the establishment of an independent ministry concerned with the environment and its protection, after the Iraqi environment suffered a lot of neglect and its use as a weapon in armed conflicts, which represents this by planting land mines, draining the marshes, and finally burning trenches filled with oil.

Second: Suggestions

1. We call for amending the texts of Articles (35/paragraph 3) and (55) of the First Additional Protocol of 1977 attached to the four Geneva Conventions of 1949 that directly protect the environment, as follows:
 - a) These texts stipulate that, in order for the parties to the conflict to be responsible for damage to the environment, it must be severe, widespread, and long-term damage. This leads to providing protection for the environment in unconventional armed conflicts, in which unconventional means of combat are used. Chemical, biological or nuclear, because they are the only ones that can cause such damage. As for the environment in conventional armed conflicts, in which conventional weapons are used, these texts do not provide the required legal protection due to the difficulty of achieving these damages. Therefore, we suggest amending these texts, and



confronting it after it occurs, and this goal can be achieved by activating Article (36) of the Protocol. The first, which calls for monitoring the production and circulation of new weapons before using them, so that their production and use are prohibited if their negative impact on the environment is proven, and this goal is also achieved by activating Article (82) of the First Protocol, in a way that obligates all countries that have ratified this Protocol, by appointing legal advisors in its armed forces, to alert and warn of the dangers facing the environment during armed conflicts and before they actually occur.

4. Calling on the Iraqi legislator to expedite the ratification or accession to the rest of the international agreements that provide protection for the environment during armed conflicts, in addition to taking effective measures to fulfill its international obligations resulting from its accession to the international agreements concerned with protecting the environment during armed conflicts, most notably the removal of mines, as well as singling out a legal article A special waste removal machine Explosive war and other war remnants that cause environmental pollution in the Environmental Protection and Improvement Law, with a statement of the competent authority thereof.
5. Given the Iraqi legislator's adoption of the broad concept of the environment in Law (Ministry of Environment No. 38 of 2008 and Protection and Improvement of the Iraqi Environment No. 27 of 2009), we propose amending the legal article related to environmental elements since it is limited to elements of the natural environment only.



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