



THE COMMITMENTS OF EGYPT TOWARDS MULTILATERAL, ENVIRONMENT PROTECTION AGREEMENTS

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PREAMBLE:

Considering its social, economic, political and cultural dimensions,^[1] the environmental law is distinguished for its multi source, national and international nature^[14] The national sources can be divided into formal and explicatory^[15].

Under the first category comes, the legislations and the traditions.

Under the second, comes jurisdiction and understanding. The environmental protection law has its own character which comes from its serious importance and unique nature, It is also considered of a technical, international and organizational traits^[11].

Overall these characters, it can be cartegorized as a universal law as it deals, not only, with Local societies but also with the whole world^[19].

As the environmental pollution is a vast subject to discuss, and an important field to look into, the international concerns about it are growing. This dictates on the Egyptian Legislator to be more knowledgeable about the international legislations and penal acts that classify the crimes committed against the environment^[2].

The second paragraph article 151 of 1971 Egyptian constitution^[9] is considered that all the

international agreements are treated as a part of the Egyptian legislations once signed ratified and published in the official Gazette without the need for a separate law to be Issued.

The Giant industrial development in today would makes it very important to find effective ways to deal with the problems of pollution, and environment protection to keep the earth suitable place for ourselves and for the coming generations^[3].

The Importance of the Issue :

This study aims to recognize the legal position of Egypt concerning the regional and international agreements and protocols in the field of Environmental protection, and the legal status given in each case (participation–signing–approval..), how are its commitments fulfilled.

All the laws, Legislations (regional/international) related to the environment protection till 2004^[4] were collected and classified into two sections:

- Legislations that Egypt Joined and signed.
- Legislations that Egypt approved, ratified and published in the official gazette.

The number of the international/regional agreements reached in the field of environment protection reached 152 by the end of 1991 as

recorded in the environmental records,^[18] excluding:

The bilateral agreement in 1869 between Germany and Switzerland for mentioning the waters of the Co-owned Lakes. and the agreement signed in 1909 between U.S.A. and Canada to maintain and properly use the Co-owned water bodies between them, it was followed by another agreement in 1972 concerning the use the water of the great lakes^[10].

In this context we can add the NILE BASIN agreements. Although the river runs through many countries, no agreements were signed to regulate the maintenance of its waters and its environment from pollution, there is actually an agreement to distribute its water but this agreement doesn't have anything to do with the required environmental protection^[12].

The new trends of the international law identify the right of the human being to live in a clean environment which is not going to be guaranteed by signing treaties and agreements only, but by translating them into actions and behaviour to be followed and by finding the proper mechanism to do that.(ie, administrative, Legislative, organizational)^[17].

Within the frame of the information offered, we can shed some light on the relation between the environment law and the international agreements and treaties as follows :

First: The International trends aim at making (agreements: conventions, treaties, and protocols) to concentrate the efforts of the world on handling an Issue of public interest. Egypt is like the other countries participates and follow the procedures:

- 1-Signing, approving with ratification.
- 2- Applying and acting.
- 3- Follow up.

The ministry of foreign affairs is playing the leading role in the preliminary stages, then the responsibility goes to the governmental bodies concerned during the stages of implementation and follow up^[20].

Second: Some of the international legislative tools related to the environment, go back to the beginning of the 20th century.

-The first agreement signed by Egypt was the one of preserving the natural plants and animals on 14-1-1936 (not published in the Egyptian official gazette), during that time, the ministry of agriculture was responsible for the follow-up. Since then, the legislations came one after another, including the ones related to sea pollution, in which the authority of sea ports and maritime transportation was in charge.

-In the field of protecting manpower against the radio-active pollution, the ministry of manpower is responsible.

Third: The organization of Environment affairs was established in Egypt by the republican decree No 618 in 1982 and its amendments, and by the environment law No 4 in 1994^[8]. It became the higher central organization in charge of supervising, Co-ordinating, follow up. The implementation of Egypt's commitments in the International agreements which are considered like a national law inside the country according to the Egyptian constitution (Article 151)^[5].

Said organization has a role with the ministry of foreign affairs during the stages of negotiations about the International agreements and their complimentary protocols.

Fourth: (Article 2 of environment Law No 4 in 1994)^[8].

States that the responsibility of the environment affairs organization concerning the agreements and treaties are:

- 1-Follow up the implementation of the regional and international agreements related to the environment.
- 2-Co-ordination with the ministry of international co-operation, to ensure that the projects funded by the donor organizations, countries comply with the safety of the environment.
- 3-Participating in planning for securing Egypt from the hazardous wastes and the materials polluting the environment.
- 4- Participating in preparation of the national Integrated plan for the management of the coastal regions of the Red and Mediterranean seas, co-ordinating with the concerned ministries and authorities.

Fifth: The conventions and protocols signed and ratified can be divided into four categories:

- 1-Related to the biological resources and natural environments.
- 2-Related to the Marine environments.
- 3-Related to the environmental pollution as a whole.
- 4-Related to the environment and the social economic developments.

Said conventions were signed, ratified and published in the (Egyptian official gazette) since 1953 Till 10-1-2004^[13].

The total number of conventions are 46, beside one decree issued by the ministry of environmental affairs. (refer to Anmex No.(1) the table of signed Ratified conventions) for the legal obligatory sides to be completed and for the convention to take the force of law, the following procedures should be followed:

- 1-The approval of the president, and the Issue of a republican decree.

- 2-The approval of people's assembly on the convention.

- 3-A decree by the ministry of foreign affairs indicating the date that the convention come into force.

- 4-Publishing it in the Egyptian official Gazette.

Sixth: The structure of the convention implementation administration: (The national mechanism of implementation).

- 1-Environment affairs agency (EAA) is the focal point responsible for following up the implementation of all International agreement, conventions and the national Legislations related to the environment. It also includes providing us of the available resources available according to these agreements.

- 2-(EAA) is covering its responsibility co-ordinating with (the environment administration - ministry of foreign affairs). It was noticed that some of the national institutes, agencies and ministries perform parts of the environment's affairs without informing or co-ordinating with (EAA), which dictates the necessity of establishing a national mechanism to follow up the implementation of the agreements and make use of the international resources available.

- 3-Co-ordinating with the other departments in the ministry of environment, the general administration of the environmental Inspection make the necessary follow up the implementation of the conventions (hazard as materials department, bio-diversity department, Ozon Layer protection department..).

Seventh: In the light of the environment law No 4 (1994)^[8].

The general administration of the environmental Inspection has implemented several approved agreements (co-ordinating with the concerned departments)^[7].

1-Co-ordinating with Hazardous materials department, the inspection administration revises the obligations of Egypt in the agreements related to the hazardous materials.

a-STOCKHOLM Convention "pops": Prohibits the use of some organic materials polluting the environment, and affecting the public health.

The inspection administration check the hazardous materials used by some foundations as rough materials, making sure the safety measures that are should be taken (handling - storing - using these materials) Egypt signed the convention in 17-5-2002, ratified it on 2-7-2003^[13](not published in the official gazette).

b-Basel convention: Concerning the Transportation control of the hazardous materials, getting -rid of-it 1989.

The Inspection administration checks the hazardous residuals produced by the activities of the different installations, and the way they gettrid of-it^[7]. The Egyptian obligations are checked according to the environment law No. 4 (1994) and its executive regulation^[8].

Egypt ratified it, and came into force 8-7-93 (for details, refer to the table of the International Conventions No. 1).

2-Co-ordinating with the department of managing:

The coastal areas, the Inspection administration checks Egypt's abligations towards the implementation of the International agreements related to the water/marine environment.

The inspection and the follow up are performed according to the environment Law

No 4/(1994) and its executive regulation no 338/(1995)^[8] and the other International legislations in the field of protecting the marine environment, ratified by Egypt as follows:

a-Barcelona Convention 1996: For protection the Mediterranean sea from pollution. It was ratified by Egypt, came into force by a republican decree No. 319/(1978)^[13]. (refer to the appendix No 1 of the international conventions).

b-Athens Protocol for protecting the Mediterranean from pollution coming from Land. (signed in 1980). The protocol was ratified by Egypt and came into force by a republican decree No. 45/1983^[8] (refer to the table No to of the International agreements).

The Last Two Conventions aim at taking the necessary measures to protect the region of the Mediterranean from the drainage water coming of the coastal establishments. The Inspection administration checks^[7]. The way the coastal installations get-rid-of their drainage and sewage water, and if it comply with Law No. 4/1994^[8] or not, also checks the environmental conditions for every installation (The distance of the coast line..) in addition to the harbours and anchorages and how they comply with the Law.

c-The regional agreement for the maintenance of the marine and the coastal areas environment (in the Red sea and the gulf of Eden 1982) and the attached protocol the agreement was ratified and came into force by a republican decree No 198/1990. It aims at protecting the marine environment from the human activities (on Land/sea).

The Inspection administration check how the coastal installations avoid of their waste to be sure it is in a safe and Legal way. It also checks the conditions that should be applied^[7].

In the field of protecting the marine environment there are twelve agreements in addition to the three ratified by Egypt^[13] (refer to the appendix 1 of the agreements).

d-The Initiative of Nilebasin Countries (Tanzania) (1999):

- Aims at protecting the water of the Nile from pollution.
- Maintaining cleared environment of the Nile river.

The inspection administration checks the liquid material drainage of the installations on the banks of the Nile, makes sure it complies with the levels stated in the law No. 48/1982^[13] about protecting the Nile and the water streams from pollution. It Also, checks the environmental conditions of the installations on both sides of the Nile^[7].

3-Co-ordinating with the national committee For (Ozon):

The environmental inspection administration checks the obligations of Egypt towards the international agreements in the field of protecting Ozon Layer as follows^[7].

- a-Vienna agreement for protecting the Ozon Layer on 22-3-1985. It came into force by the republican decree 32 in 1988^[13] (agreements appendix).
- b-Montreal Protocol about the materials depleting the Ozon Layer (In Montreal 1987). Came into force by a republican decree No 313/1992^[13].
- c-The amendments on Montreal protocol about the Ozon Layer (London 1990).
- d-The amendments on Montreal protocol about the materials depleting the Ozon Layer (Copennagen) 1992, came into force on 20-12-1994 by a republican decree No 80/1994^[13]. This agreement aims at controlling the human

activities that affect negatively the Ozon Layer or Ozon depletion.

The Inspection administration checks the concentrations of gas pollutions emitted from the different Installations, (Nitrogen oxides - Co₂- CO - bromide oxides chlorine oxides), and which cause the deterioration of the Ozon Layer. It ensure that these emissions don't exceed the allowed limits^[7].

To ensure fulfilling Egypt's obligations against the provisions of protecting the Ozon Layer, some local legislations were issued to comply with said obligations^[13].

The decision No 977/1989 by the ministry of Industry. The decision No 77/1994 by the minister of environmental affairs. The decision No 632/1994 by the minister of economy. The decision No 77/2000 by the minister of external trade.

4-Co-ordinating with the ministries of manpower and health, (the departments of health, occupational and Industrial safety), the environmental Inspection administration checks Egypt's obligations towards the implementation of the International agreements related to work environment and the protection of manpower against the occupational hazards, safety, health dangers, as follows :

The follow up and Inspection of the implementation of Egypt's obligations according to the environment Law No. 4/1994^[8], its executive regulations, and the other Legislations issued in this relations).

i.e.:

- The recent and new Labor Laws No. 12 issued 2003^[13].
- The international agreement's provisions related to work environment, and protecting manpower against the occupational & environmental hazards.

- a-The agreement No 139 for controlling and protection of the cancerous elements which came into force on 17-6-1982 by the republican decree No. 84/1982^[13].
- b-Agreement (Geneva 1977) of protecting workers from the occupational hazards caused by air/noise pollution in the work environment. Came into force in 3-11-1988 by the republican decree No 35/1988^[13].
- c-The Arab agreement No 13 about work environment signed in BEN-GHAZI (from 7 to 17/3/1981). Came into force on 29-10-1992 by the presidential decree No 541 in 1990^[13].

Such these agreements aim at Limiting the occupational hazards caused by air/noise pollution in work environments and protecting workers against these hazards.

The Inspection administration checks (the Limits of noise-the concentration of air pollution - to what extent workers are exposed to the hazardous elements - how they deal with them and how do they adheres to the safety precautions)^[7].

5-Co-ordinating with, the bio-diversity unit:

The coast guard-water streams police and the other related authorities, The Inspection administration checks the implementation of the Egyptian obligations related to the bio-diversity agreements as follows^[7]:

- a-Rome agreement signed on 6-2-51: Concerning with plant protection which came into force on 22/7/53 by the presidential decree No 85/1997^[13].
- b-The African agreement for nature preservation and protecting natural resources and its attachment, approved by the African Summit on 28-9-1968. It came into force on 1/6/78, by the presidential decree 2975/1981^[13] (refer to appendix 1 for the international agreements).

- c-The agreement of the wetlands of the International importance as a settlement for water birds (RAMSA).
- d-The amendment protocol of the agreement of the waterbirds settlements on 3/12/1982. Came into force on 8-12-1988 by the presidential decree No. 197/1985^[13].
- The agreement and the attached protocol aim at protecting the wetland areas, recognizing their ecological functions and their economic, cultural, scientific and recreational importance.
- Bardawil Lake Zaraniq and (Burulus Lake) were announced as protected area by the decree No 1444/and the decree No. 3379/1996/1998.
- It is targeted to announce other forty protected areas (cover 19% of the area of Egypt) till the year 2017, within the frame of the national bio-diversity strategy and action plan (Nbsap)^[16].
- e-The convention of the International trade of endangered species (CITES).
- f-The amendment of (CITES). Came into force on 19/2/1981 by the presidential decree 495/1980^[13].
- These conventions aim at protecting some endangered species from extinction threats caused by over hunting.
- One of the tools used is the control of granting import/export licenses.
- The inspection administration in (EEAA) Co-ordinating with ministry of defense/ministry of interior ministry of agriculture and ministry of irrigation) prohibited hunting of wild animals and birds without a license from (EEAA), according to the Lists of the endangered species due to the environment Law No. 4 in 1994 and its executive edict. No. 338/1995^[7].

g- Convention of migratory species (GMS).

h-The Convention of the bio-diversity, signed in Rio-di-janeiro (BRZIL) on 5-6-1992 between Egypt and the united nations environment program. It came into force on 8-9-1994 by the presidential decree No. 54/1994^[13]. The convention aims at maintaining the bio-diversity in terms ecological, social, economic, educational, cultural and aesthetic values the bio-diversity has its elements and it should be wisely used to enhance its sustainability.

The Inspection administration co-ordinating with the bio-diversity unit and the protected areas department preserve bio-diversity elements according to the local legislations (environment Law No. 4/1994)^[8]. (Law No 102/1982 of the protected areas)^[13]. Egypt is considered as a pioneer country, in the field of bio-diversity.

i-The African-Eurasian, Megratory Water Bird Agreement. Signed in (La Haye) on 20-8-1998, came into force on 17-8-2000 by the presidential decree No 412/1998^[13].

j-Special protected areas & Bio-diversity in the Mediterranean region, protocol signed in (BARCELONA on 10-6-95. Came into force on 27/4/2000 by the presidential decree No. 413/in 1999^[13].

6-The obstacles that encounter face the Egyptian experience in the field of the implementation:

On Legislation LEVEL:

-A lot of local Laws, Legislations and regulations don't comply with the obligations imposed on Egypt in the international agreements in the field of environment protection.

b-There is no complete data base for either local or international obligations, so they can be screened against each other, Identify the

responsibilities. As well as lack of training the people in charge.

***Concerning the application:**

The need for national mechanism to follow up the execution and implementation of the international and Local agreements and regulations for supporting the efficiency and co-ordination between the different agencies in charge.

Concerning Legislation:

Suggestions for improvement:

- Preparing a record that include the Egyptian obligations against the ratified environmental conventions in the light of the guide-lines of the U.N environment program (UNEP).
- Making an overall revision to the law No 4/1994 and all the other regulations and Legislations related to the environment, make sure the comply with said record.

First: application level (suggestions):

- Establishing implementation mechanisms for following up the agreements & conventions.
- Planning a training program for all the individuals working in the field of environment in the different ministries, concerned agencies, and the executives.

There are four units:

- 1-The unit of the biological resources and the natural environments.
- 2-The unit of the water/marine environments.
- 3-The unit of pollution and environmental hazards.
- 4-The unit of sustainable development and the follow up of the international conventions^[6].

Each one of the four units should include:

- 1-The chairman of the committee. (from the side responsible for the action required).

- 2-The technical secretary (from the environment affairs agency (EAA).
- 3-Scientific consultant, and Legal consultant from outside the agency.
- 4-A member from the ministry of foreign affairs.
- 5-Two members in charge to be responsible of following up the agreements.
- 6-A General co-ordinator, assisted by a unit representing the data bank which include all the stored data required for implementation.

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الالتزامات المصرية تجاه الاتفاقيات الدولية

سحر مصطفى حافظ

خبير أول (أستاذ مساعد) بالمركز القومي للبحوث الاجتماعية والجنائية بالقاهرة

القانون البيئي ظاهرة مجتمعية بكل أبعاده الاقتصادية والاجتماعية والسياسية والثقافية، وهو يتميز عن غيره من القوانين بمصادره المتعددة، التي منها المصادر الداخلية والأخرى الدولية، وتتنوع هذه المصادر الداخلية إلى نوعين مصادر رسمية أو أصلية، ومصادر تفسيرية أو احتياطية، والطائفة الأولى يندرج فيها: التشريع والعرف، بينما الطائفة الثانية يندرج تحتها : كل من القضاء والفقهاء .

وعن طبيعته القانونية ومكانته بين سائر فروع القانون، فقد ذهب الفقهاء القانونيون إلى اتجاهين للتعرف على طبيعته القانونية، الأول : اعتبار قانون حماية البيئة هو أحد فروع القانون العام، وبالتالي يسرى عليه المناهج الفنية المعروفة في تلك الفروع، أما الثاني: اعتبار قانون حماية البيئة هو فرع مستقل وأصيل من فروع علم القانون .

والتلوث البيئي لا يعرف الحدود ، فهناك أوجاعاً عالمية مشتركة بدأت تظهر على الصعيد الدولي، تبلور عنها وجود وعى عالمي، مما استلزم على المشرع المصري ضرورة إلمامه بالأوضاع التشريعية الدولية ، وما يتبع من مناهج تشريعية وعقابية لتحديد وتصنيف الجرائم ضد البيئة .

والدراسة تهدف للتعرف على الوضع القانوني لمصر في إطار الاتفاقيات والمعاهدات والبروتوكولات الدولية والإقليمية في مجال حماية البيئة (وتشمل التشريعات الدولية والإقليمية للبيئة) وفقاً للأوضاع القانونية بين الانضمام والتوقيع والمصادقة ، ومدى تطبيق التزام مصر في هذا الشأن وفقاً للفقرة الثانية من المادة ١٥١ من الدستور المصري ، وقد تم إعداد حصر كامل لجميع التشريعات الدولية والإقليمية بشأن حماية البيئة حتى عام ٢٠٠٠ وفقاً لسجل المعاهدات والاتفاقيات لبرنامج الأمم المتحدة وتم تصنيف هذه التشريعات إلى قسمين : تشريعات انضمت إليها مصر ووقعت عليها ، وأخرى صدقت عليها ونشرت بالجريدة الرسمية.

ومن الحصر الكامل لهذه الاتفاقيات والمعاهدات الدولية وجد أنها وصلت إلى (١٥٢) اتفاقية حتى عام ١٩٩١م وفقاً لسجل المعاهدات والاتفاقيات في ميدان البيئة . هذا عدا الاتفاقيات الدولية الثنائية التي يرجع تاريخ إبرامها إلى عام ١٨٦٩ .