

## **Energy law and environmental law in oil and gas contracts with an emphasis on the MENA region**

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### **Abstract**

Today, economic growth and the increasing use of fossil fuels have led to major damage to the global environment. To respond to these environmental challenges and problems, international law seeks to provide legal solutions to the problem by establishing appropriate rules and regulations and formulating appropriate legal principles. In this context, one of the legal issues of “interaction” and in some cases “conflict” between energy law and environmental law is raised. However, for years, the relationship between energy use and environmental protection in international forums has been ignored. Because energy law is based on access to affordable energy resources and environmental law based on environmental and nature protection, interactions between energy, environment, and economy, which have been proposed in sustainable development, can

be one way to deal with potential conflict. In this context, the present study, using a descriptive-analytical method, examines the legal principles governing energy law and environmental law on the one hand and identifies the interactions and conflicts between them on the other hand.

**Keywords:** Energy Law, Environmental Law, Contract Law, Sustainable Development

### **Introduction**

The way of human life and its interaction with the environment before the Industrial Revolution and the economic growth of societies was such that there was not much pressure on ecological potential and natural resources.<sup>1</sup> After the Industrial Revolution, more access to natural resources, especially fossil fuels, became more important. In the twentieth century, after World War II[1], policymakers and planners turned their attention to the fact that any economic growth would inevitably be due to the availability of natural resources. It is relevant, and in all these years, no one thought that these resources are limited and finite and are one of the most important causes of environmental degradation. Thus the obvious link between energy use and the rights of nature was ignored for years.<sup>2</sup> The focus of energy law was on providing energy resources at affordable prices, while environmental law focused on environmental protection. In general, the emergence of energy

<sup>1</sup> Abbas Maleki, 1992, Energy Policy, Sharif University of Technology.

<sup>2</sup> Amy J. Wildermuth, the Next Step: The Integration of Energy Law and Environmental Law, UTAH Environmental Law Review, 31 (2), 2011.

law and environmental protection law in the international community has not happened all at once but has gradually formed and evolved.<sup>1</sup> For years, the obvious link between energy production and consumption rights and environmental protection has been largely ignored, and the main focus of energy law has been to ensure affordable energy supply and focus on environmental law, nature protection, and a clear demarcation between energy law and environmental law was also not enforced. The first link between energy law and environmental law was indirect to reduce energy consumption and increase energy efficiency, which led to the oil shock of the year 1971, followed by 1973 and 1977[2], when oil prices rose sharply due to events in the Middle East. Since then, many oil and its derivatives consumers have changed their minds, examining the possibility of alternative sources of fossil fuels and ways to reduce energy consumption.<sup>2</sup> <sup>3</sup> Thus, energy law was implicitly and indirectly related to environmental law. Increasing energy demand, declining fossil fuel resources, and the negative effects of different energy levels on the environment are important issues in the modern world.<sup>4</sup> Therefore, national and international laws and regulations should be geared towards integrating energy law, environmental law, and issues[3]. Economics tended to protect all components of the environment, including air, water, and soil, from the negative effects of different energy levels from exploration and extraction, transmission to consumption. In other words, energy efficiency and environmental policies separately Invincibility are related. Because energy production and consumption have environmental effects and this issue connects the challenges of energy production and consumption, sustainable energy sources, and the protection of the natural environment[4].

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<sup>1</sup> The Next Step: The Integration of Energy Law and Environmental Law, Amy J. Wildermuth, Vol 31, No 2(2011), UTAH Environmental Law Review, [epubs.utah.edu/index.php/jlrel/issue/view/44/Show\\_Toc](http://epubs.utah.edu/index.php/jlrel/issue/view/44/Show_Toc)  
<sup>2</sup> Hot, Flat and Crowded: Why we need a green revolution- and How it can renew America, Thomas L. Friedman, publisher: Farrar, Stratus and Giroux, 2008.

## **The Conflict Between Energy law and Environmental law**

International energy law is based on the principles of governance, contracts based on mutual interests, reciprocity, and acceptance of states as key actors, which is a distance from international environmental law, which is based on the rules of international obligations of states, international rules and the role of non-state actors. It has a lot. In this regard, the following is a review and analysis of general legal principles and laws and regulations regarding energy and the environment to identify conflicts between energy law and environmental law<sup>5</sup>.

One of these differences is the difference in legal sources. Since international energy law and international environmental law are both branches of public international law, both of these fields of law are based on the sources in Article 38 of the Statute of the International Court of Justice. However, due to the novelty of international environmental law and these sources, there are other sources such as international rules of procedure, international obligations of governments, and resolutions of international organizations and UN Security Council resolutions. And it can be argued that they do not necessarily have much application in energy law. Therefore, the requirements and requirements of these two disciplines are different[2].

On the other hand, international energy law is binding resources and bilateral or multilateral agreements that guarantee its implementation. But in international environmental law, the role of non-binding sources is more important than binding sources and greatly impacts the development of this field of law. The legal effects of the non-binding Stockholm Declaration 1972, the 1982 Universal Declaration of Nature, the 1992 Rio

<sup>3</sup> A Brief history of energy law in United States law schools: An introduction to the symposium, Fred Bosselman, Illinois Institute of Technology, Chicago-Kent college of law, 86 Chicago-Kent law review 3(2011).

<sup>4</sup> I. Dincer, Environmental impacts of energy, energy policy, 1999.

<sup>5</sup> Seyed Abbas Pourhashemi, Bahareh Arghand, International Environmental Law, Dadgostar Publishing, 1993.

Declaration, and the Johannesburg Universal Declaration 2002 were far more than many binding documents, such as international conventions[5].

Another difference between international energy law and international environmental law is the issue of actors. In international energy law, governments are the main actors and their subjects. In contrast, in international environmental law, the role of non-governmental actors (international non-governmental organizations, world public opinion, non-governmental groups, etc.) is recognized, and They attach great importance to the development of legal rules, protection, management, and environmental monitoring. For example, the ratification of the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Courts on Environmental Issues reflects the tendency of international environmental law to recognize the role of soft actors in the development of the legal field<sup>1</sup>.

In terms of international cooperation, the difference between these two legal disciplines is serious. In fact, the principle of cooperation is a common international obligation and one of the basic principles of the Charter of the United Nations and is a feature of contemporary international law. The principle of cooperation under the UN Charter is a binding principle. In the field of international law, whenever we talk about energy law, we mainly consider the legal aspects of production, transfer, sale, rights, and obligations of investors and consumers in the field of energy, energy security. Therefore, the principle of cooperation in international law Energy is formed in the direction of mutual economic benefits for the parties or around it. In addition, the Energy Charter Treaty (ECT) is the first multilateral treaty in the world to address the issue of energy[6]. This treaty has many innovations in various fields, from issues related to investment and energy trade to transit and increasing energy efficiency and environmental protection with respect to the

principle of sovereignty of governments and the concept of sustainable development, intergenerational justice, the principle of prevention refers to the principle of cooperation and the principle of payment by the polluter. Also, the nature of environmental issues is cross-border, and its solution is beyond the power of one country, and since the environment does not know the territory, so protecting the environment and combating environmental hazards is beyond the capacity of one or more countries, so the international community needs cooperation. International measures to control, prevent and reduce negative environmental effects. Therefore, the principle of cooperation can play an important role in international environmental law. Also, the basis of the principle of cooperation in international environmental law is the rule of Argamens.

Therefore, the basis of international environmental law, unlike energy law, which is based on mutual interests, is the rule of Argamens. Participate in international conferences and, ultimately, cooperate in critical situations by concluding treaties, conventions, and protocols. The principle of joint but different liability is also one of the basic concepts and principles in international environmental law in the field of cooperation in combating environmental challenges[7].

The issue of international responsibility of states is also another point of contention in these two fields of law. The international responsibility of states in international energy law is based on subjective and objective responsibility because, in this type of law, mutual interests are considered by the parties. Whereas the new trend in international environmental law has shifted to pure liability, under which no damages are left without compensation; Therefore, a new perspective has opened up in the international responsibility law of states. The establishment of environmental insurance, formation of joint national and international funds, environmental

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<sup>1</sup> United Nations Conference on the Man & Environment (Stockholm Declaration), 1972.

assistance, etc., are examples of the new trend of international environmental law in the field of compensation for environmental damage. On the other hand, according to customary international law, governments must cooperate internationally in the field of environmental protection, and due to the problems facing international responsibility, governments must protect their environment with a precautionary approach. In this context, the need to apply the principles of cooperation, prevention, and precaution in international environmental law is doubled. Hence, along with the classical legal systems based on subjective and objective responsibility, the tendency towards pure responsibility is also progressing and developing. Increasing the conclusion of international treaties and conventions on environmental compensation in various issues such as marine pollution such as the Civil Liability Convention on Oil Pollution at Sea 1972, as well as nuclear issues, air and ... and the establishment of various mechanisms for environmental compensation through The establishment of funds and the promotion of "insurance" contracts indicate the development of the theory of pure liability in international environmental law[1].<sup>1</sup>

Can it be concluded that just as soft resources (statements, declarations, and agendas, etc.) and soft actors (international non-governmental organizations) are recognized in international environmental law, so is "soft responsibility" as the foundations of the regime? Recognize the international responsibility of governments for environmental damage?<sup>2</sup>

### **Similarities and Interactions Between International Energy and Environmental law**

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<sup>1</sup> One of the most successful records in this field is the 1969 Convention on Civil Liability for Damage from Oil Pollution. The convention seeks to protect victims of oil pollution incidents by establishing a uniform international legal regime, assuming that the owner of the polluting ship is held liable. However, the convention provided for a ceiling on the liability of the shipowner. In 1971, the International Convention provided for the establishment of an International Fund for the Compensation of Oil Pollution to supplement the amount and manner of compensation in cases where the ceiling set forth in the Civil Liability Convention is not sufficient. A few years after the ratification

Despite the conflicts between energy law and environmental law mentioned earlier, there are similarities and interactions between energy law and environmental law. First, both are subject to international law. Accordingly, one of the main obstacles to integrating international energy and environmental law is the reluctance of governments to delegate or limit sovereignty to the benefit of environmental organizations at the international level. The political structure of government always tends to focus and has no interest in delegating it to other centers of power and decision-making. On the other hand, the conflict of interests between the main actors of international law (states) regarding environmental protection, which arises from the national sovereignty of states, challenges the development and expansion of international energy and environmental law. This conflict of interests includes political interests, Economic, commercial, etc. The conflict between the two is often seen[5]. So that energy law focuses on two main goals; Maximizing economic benefits from resources and limiting the monopoly power to ensure competitive pricing, and in the field of international law, whenever energy law is discussed, it mainly examines the legal aspects of production, transfer, sale, rights, and obligations of investors and consumers. In the field of energy, energy security is considered. However, one of the most important principles since the Stockholm Declaration of 1972, so far in international environmental declarations, is the principle of sovereignty, which redefines the sovereignty of states and redefines the concept of sovereignty in law The International Environmentalists rely on the concept of "rational use" of land. Still, the shadow of absolute sovereignty continues to weigh on international environmental rights and energy

and implementation of these conventions, the need arose to revise and amend the provisions of these conventions, and finally in 1992, through a diplomatic conference, two protocols were adopted to amend these conventions. One of the important points in the 1992 protocols was that states that did not accede to the 1969 Civil Liability Conventions and the 1971 Fund would actually accede to the 1969 Civil Liability Convention and the 1971 Fund by acceding to the 1992 Protocols.

<sup>2</sup> Seyed Abbas Pourhashemi, Bahareh Arghand, International Environmental Law, Dadgostar Publishing, 1993.

rights, and governments continue to seek to increase their monopoly power over energy and the environment[4].<sup>1</sup>

Second, energy law and environmental law were developed as two separate issues with separate goals, and there is a less systematic connection between the two disciplines. Environmental rules, regulations, and laws often provide an urgent response to environmental problems or take immediate action depending on what happened. Finally, energy law and environmental law focus on short-term planning. Hence, their response is short-lived. Therefore, energy and environmental laws, regulations, and policies must be on a long-term horizon and in a more comprehensive framework. Energy law and environmental law both have their complexity due to their different components. For example, energy law is different energy levels from exploration and extraction, transfer and finally consumption, each of which has its legal regime. The environment also includes all aspects of human life such as water, air and soil, and everything on earth and beyond the atmosphere. Because environmental issues are very broad and several conventions have been developed for each. However, less attention has been paid to developing a comprehensive and integrated convention on energy and the environment[5].<sup>2</sup>

Also, the right to energy, the right to a healthy environment, environmental human rights, the common heritage of humanity, the rights of future generations, energy security, economic and trade issues, and ultimately the sustainable development of commonalities between energy law and environmental law in the world. And numerous UN statements have emphasized the recognition of sustainable development.

The final document of the Rio + 20 conference, "The Future We Want," encourages governments to use the provisions of this document to achieve the three dimensions of

sustainable development (economic, social, and environmental).

Achieving these goals depends on the will of governments so that in their domestic law to provide a suitable basis for achieving sustainable development. It should be noted that with the end of the Millennium Development Goals in 2015, sustainable development goals will replace those goals, and in formulating New international instruments in this field, environmental protection will be introduced as part of the process of sustainable development. The relationship between the environment and other areas of human life and international relations such as trade and investment will also be considered[7].

Therefore, the principle of sustainable development is a new field that simultaneously considers both politics and culture and emphasizes the prosperity of the economy, trade, and industry, supports the environment and coexistence with nature and the common heritage of humanity, and Considers the rights of future generations. Sustainable development is also expected to have a major application in international environmental law, and ultimately, as the United Nations promises, the world will soon see the transformation of international environmental law into international sustainable development law[5].<sup>3</sup> In terms of regional agreements, the EU strategy to reconcile the conflict between energy rights and the right to the environment is significant. The union has proposed solutions that the member states of the union should use.<sup>4</sup> One of these strategies is energy efficiency and reducing energy consumption. Energy efficiency includes the cycle of production, transmission, distribution, and consumption of energy, the use of which can greatly help reduce greenhouse gas emissions, air pollution, destructive effects on water and land, habitat destruction, and biodiversity. Measures to increase the share of sustainable renewable

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<sup>2</sup> C.Nouzha, *Réflexion sur la contribution de la Cour internationale de justice à la protection des ressources naturelles*, op.cit., P.391-420. M. Perrin de Blichambaut, *Les avis consultatifs de la CIJ sur la licéité des armes nucléaires*, op.cit., P. 315.

<sup>3</sup> Rio+20, 2012.

<sup>4</sup> Ali Asghar Hedayati, Sadegh Zeinali, 2010, *Health: The Axis of Sustainable Development*, *Monitoring Quarterly*, pp. 75-73.

energy sources in the energy mix can also reduce environmental and climatic pressures compared to other forms of energy.<sup>1</sup> These measures can also lead to the efficiency of other energy sources. Today, the importance and necessity of using renewable energy are clear to everyone. The European Union considers the use of renewable energy as important in the face of climate change and global warming and sees its use as crucial in securing energy resources and their diversity. Therefore, renewable energy has become one of the most important issues in political issues and legal development over the past few years. According to the EU, renewable energy sources are sources of energy that, unlike conventional sources such as oil, natural gas, coal, and uranium, are constantly being rebuilt due to their natural forces. Renewable energy sources are widely available in large areas of the EU, from the sunny south to water-rich north, from vast forests to windswept coasts to western Europe. This is an obvious difference compared to conventional energy sources, most of which must enter the EU from insecure areas. Today, renewable energy sources play an important role in the security of the EU's energy supply[8], and renewable energy can reduce the EU's dependence on energy imports. In addition, unlike fossil fuels that exploit climate damage - carbon monoxide - renewables can be converted to electricity, heating/cooling and fuel, without the effects of environmental damage[9, 10].<sup>2</sup>

#### 4. Conclusion

Because of the above, the gradual development of international environmental law owes more than anything to the quantitative and qualitative expansion of international treaties, international judgments and procedures, and the expansion of soft law. International energy law is also largely based on bilateral or multilateral agreements, contracts, and

instruments such as the Energy Charter Treaty. However, the growing risks, threats, and widespread environmental degradation due to fossil fuels are a cause for concern. There have been calls for international energy and environmental law to be ineffective in addressing these challenges. In this context, a fundamental review of treaty law, the attitude of judges of the International Court of Justice, reform of the structure of the UN program for the environment, identification of facilitating mechanisms to achieve sustainable development, recognition of the role of non-governmental actors can be solutions. Legal and international executive energy and environmental law.

To fill the legal and enforcement gaps in international energy and environmental law in the face of new and emerging environmental challenges, the "principle of effectiveness" should be pursued with comprehensive regulations that can define a link between Established sustainable development, environmental human rights, energy rights, and the economic system. Also, "comprehensiveness and integration" in the formulation, adoption, and implementation of international rules and regulations are important perspectives for the future of international energy and environmental law. In this approach, in addition to the three mentioned relationships, in all plans, programs, policies, and political, economic, cultural, and social decisions in the domestic and international realm of environmental protection as the axis of development. Therefore, the reconstruction and modernization of international energy and environmental law to provide a favorable legal framework for sustainable development concerning countries' geographical, economic, and social characteristics seem necessary.

In regional agreements, the legal model used in the EU regarding the interaction of energy law and environmental law can be a model to be

<sup>1</sup> Seyed Abbas Pourhashemi, Bahareh Arghand, International Environmental Law, Dadgostar Publishing, 1993.

<sup>2</sup> Pourhashemi, Seyed Abbas, Taghavi, Game and Absolute Bird, Azam, "Exploitation of Renewable Energy Sources in the EU Legal

System", Quarterly Journal of Man and the Environment, Volume 12, Number 3 (31-41), Fall 1994, Page 39-44

studied in this field. This model is based on energy efficiency, including the cycle of production, transmission, distribution, and energy consumption, and reduction of energy consumption. On the other hand, it is based on increasing the share of sustainable renewable energy sources in the energy mix. It can reduce the destructive effects of the environment. Accordingly, the use of renewable energy is important in the face of climate change and global warming, but also its utilization is important in ensuring the security of energy resources and their vital diversity.

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