Survey of environmental approaches in the view of international trade law and international investment law

Alireza NaqhiZadeh1, Mostafa Noori2, Sahar Zarei3, Yalda Khalatbari4

Abstract—Generally, trade and investment law are new concepts and in this respect it is similar to the Environmental Law, hence, it is not too far-fetched while these two young category have been somehow diverging and There has been no Comprehensive, coordinated and convergent look in these two areas. It seems that reinforcement of interaction and collaboration between the fields of environment and natural resource with economics, trade and investment activities can help foster mutual understanding, facilitate the attainment of business strategies according to the needs of the environment and provide conditions for sustainable development. This paper has attempted to review the most important international agreements, as well as investigating the attitude of a number of international organizations, to analyze these documents and global environmental issues.

Keywords—Environment, Environmental law, International trade law, International investment law, Investment, Trade.

I. INTRODUCTION

Economists have highlighted the role of the economic ladder in achieving sustainable development and environmental specialists by relying on the fact that Environment is the common heritage of humanity trying to make the role of the economic aspects of sustainable development more obvious. Thus, countries tend to facilitate this desire to pave way for economic growth. One means of achieving this objective is enactment of the applicable and appropriate rules, strict enforcement and monitoring proper implementation of economic rules. For this purpose relevant international organizations with enactment of the regulation, and articulating frame try to make the business interactions between countries systematic. close

relationship of Economic strength of a country with the international engagements As well as the country struggled to survive in the global community and increase bargaining power in international relations always led the countries to consider the economic growth and development as the focus of their programs. It seems that reinforcement of interaction and cooperation between the fields of environment and natural resources with economic and trade activities and investment, can help foster mutual understanding, facilitate the attainment of business strategies according to the needs of the environment and provide conditions for sustainable development. Obviously the industrial activities that underlie economic growth and development in each location, has always been associated with the consumption of natural resources. Accordingly, the environmental rules and in particular the creation of efficient administrative system and proper implementation of laws in adoption of these techniques are highly important. Therefore, the environmental approach will focus on trade and investment law.

II. APPROACHES TO INTERNATIONAL TRADE LAW AND INTERNATIONAL INVESTMENT LAW TOWARDS ENVIRONMENTAL ISSUES

Environmental issues are more ancient than Trade and investment. So environmental law and environmental protection background is less than trade. However, the new system of global trade, with little history of environmental law, is a new system that its history goes back to the World War II. Obviously, environmental conservation and protection arrangements on trade and investment cycles can be effective and can play an important role in the international standing of the track. In any aspect of the economic and industrial development, there are Environmental considerations that need to be done. Went on to describe the subject, we investigate the environmental issues from the perspective of International trade law and international investment law.

A. Approaches to International Trade law

In most of the twentieth century, trade and the environment have been developed regardless of each other but by raising
the issue of globalization, these two issues were simultaneously raised and woven together quickly so that the interaction of these two categories together, were on the agenda of both domains. In general business environment interactions can be described in three stages:

1 - In most of the twentieth century, there was no evidence of interaction between these two areas.
2 - Trade and environmental conflicts were observed from 1991, especially, GATT (General Agreement on Tariffs and Trade) jury verdict in the case of "Tuna - Dolphin" made clear that the U.S. Environmental measures are inconsistent with GATT. Thus, widespread criticism from the environmental community was raised. The motivation of this criticism were Concerns of this issue that Transactions are moving to a direction where Environmental benefits can lead to a serious loss, Another major feature of this stage was Dividing the country into North and South[1].
3- From 1995 to the present legitimate trade and environmental advocates are increasingly drawn towards each other. In order to engage in collaboration and resolve disputes through technical methods and mutually beneficial. This has led to the World Trade Organization efforts for greater transparency in the business world and the environment.

The core of the World Trade Organization is General Agreement on Tariffs and Trade (GATT). Member States of GATT approved Document of Uruguay Round negotiations and structured the foundation of the legal system of multilateral trade. Simultaneously with the entry into force of the final document of Uruguay Round, The World Trade Organization was established as the linchpin of the monitoring of international trade and was replaced the GATT. The main objectives of The World Trade Organization was to reduce trade barriers and facilitate and expansion of production and exchange of goods and services between Member States [2]. In addition to the above agreements, several other agreements were also adopted that some of them implies implicit hints about the environment. Although there is no certain document on trade and environment issues within the current regime of World Trade Organization, But the Uruguay Round agreements implies provisions relating to the environment, that some of which are as follows [3]:

1) World Trade Organization Agreement
   This agreement provides, Objectives, functions, structure and legal status of the World Trade Organization and predicts a secretariat for it. By joining the World Trade Organization, Governments agreed to accept all trade agreements negotiated in the Uruguay Round multilateral. In other words, Members cannot separate some of these agreements of their choice but must accept all of this set. Governments have announced in the introduction of the agreement that In relation to business and economics should attempt to improve the standards of living, ensuring full independence and continuous growth of real income and effective demand, and expanding production and trade of goods and services. When it is allowed to optimal use of global resources that be In accordance with objectives of sustainable development and in supporting and protecting of the environment and modification of tools for the implementation of this method must be compatible with the needs of the different levels of economic development. The World Trade Organization has established specific committees such as the Committee on Trade and Development and the Committee on Trade and Environment, which was created pursuant to a vote of the General Assembly [4].

2) Agreement on Agriculture
   These agreements seek to develop a comparative market agricultural trading system and transform its process for the protection and conservation agriculture. The major issues concerning environmental agreements are subsidies and other financial support, especially in the developed countries. The uncontrolled cultivation, Causes the process of soil erosion and loss of biodiversity and soil chemical and the conversion of natural ecosystems in farmland under cultivation[5].

3) Agreement on Health and plant health policies
   Health and plant health policies are policies that aim to protect human, animal or plant life or health against the risks arising from the entry or spread of pests and diseases or contaminants in foods or drinks. Including fundamental rights and duties of members which are defined in Article 2 as follow:
   - The right to take policies to protect human health and plant health and animal life and health.
   - Health and plant health policies don’t allow use of discretionary So that custom conditions to overcome and should not be used in such a way that would cause restrictions on trade.
   - Health and plant health policies in compliance with this agreement undoubtedly corresponded with the GATT 1994.
   - Agreement on Sanitary and plant supports of international standards [6].

4) Agreement on Technical Barriers to Trade
   This agreement has predicted provisions for the implementation of standards to reduce global problems. If the relevant international standards exist Members shall use them as a basis for their technical regulations and standards. Otherwise, these standards would be inappropriate means for the implementation of Legal targets. Article 2 (2) of this Agreement explicitly recognize the protection of human health or safety, animal and plant or the environment health as legitimate targets [7].

Since the entry into force of this Agreement by 1995, more than 2,300 Announcements about Regulations and Standards has received that about 11 percent of them are related to the environment. these Announcements Have been issued to reduce pollution, waste management, energy protection, Standards, labeling, transportation regulation, economic instruments and measures to protect natural resources and the policies taken for the implementation of multilateral environmental agreements. In spite of agreements that involve environmental issues in the realm of international trade, there is no specific mention of multilateral environmental...
agreements in the GATT or World Trade Organization rules. Despite the emphasis on commitment to environmental protection and sustainable development that it is stated in the Introduction of establishing World Trade Organization. Promoting the sustainable development of the GATT or the World Trade Organization has not yet actually show up. Another important issue in international trade is the issue of public participation. That is the most important component of environmental issues and policies, and has been proposed in environmental documents at all levels of public, governmental and non-governmental organizations. This situation was different in the GATT and has been modified in the World Trade Organization to a considerable extent. Unlike environmental Law, GATT is unique traditionally. All official meetings of the GATT have been confidential, most documents prepared by the Secretariat have been classified by Member states and has been kept out of the public domain. At a meeting of the Uruguay Round this situation was changed somewhat. Except for a few exceptions, World Trade Organization agreement did not explicitly require confidential of these documents. Article 2/5 of World Trade Organization Agreement predicts the possibility of designing suitable arrangements for consultation and cooperation with non-governmental organizations relevant to World Trade Organization. In 1996, the UN General Assembly adopted a resolution that targeted increasing of the speed of the contract and no restrictions on the World Trade Organization documents. The World Trade Organization Secretariat already has countless documents on the website. And annually collects opinions of Grassroots organizations on Environment and Sustainable Development. Committee on Trade and Environment allow public observers to attend its meetings. And often will grant legal validity to attend meetings of the Committee on Trade and Environment to Secretariat of the multilateral environmental agreements as observers [8].

**B. Approaches to International Investment Law**

When you submit your final version, after your paper has been accepted, prepare it in two-column format, including figures and tables. Investment law is affected by the political and social changes in the world, relations between Investment laws and environmental laws a relationship that is conflicting in objectives but coinciding in practice. The objective of one of them is personal economic interests and of another goal is a collective human interest. Foreign investment to the extent that benefits state economy, does not benefit citizens and local people. While international trade is overseeing the entry of foreign goods, International investors monitor the physical presence of foreign capital in the country. Transnational companies are willing to invest in territories that have easier Environmental regulations because easier Rules reduce the economic costs. It is important to be seen how much of this investment has been achieved at the cost of destroying the environment. International investment law has failed benefit from a binding international treaty Because of Various economic sides. Ratification of the Multilateral Agreement on Investment, which was prepared in 1998, requires more time. Currently the only instrument international investment multilateral agreement on investment business that has been prepared by the World Trade Organization. The most important source of international investment law is currently investing bilateral agreements and customary international law. However international environmental law has a relative consensus and has adopted several documents in this regard.

By Holding conferences on Trade and Development And establishment of the United Nations Environment Program Has institutionalized these two branches of international law in the organization and These two rights are inevitably find a relations with each other. Although bilateral agreements on investment, usually have no direct reference to environmental issues, but the commitment to environmental protection laws on one hand and the obligation to observe the laws of on the other are foreign investors Sources of international law are detectable. In general, there are two approaches to the different branches of international law. Some people believe in the separation of each of these branches that are not affected by the interpretation of other branches of international law and some believe in the integration between the branches of international law. Dominant approach is based on unity. As the International Court of Justice in the case of nuclear weapons is a link between the use of force, and Environmental Law, required Human rights and humanitarian law simultaneously. Or in the case Gabcikovo - Nagymaros (Slovakia and Hungary dispute, 1997) which is considered as the initial encounter between international investment law and international environmental law at the International Court of Justice[9]. The relationship between international investment law and international environmental law can be observed in the conduct and documents including behavior of international corporations, international organizations and some governments through commitment to enforceable rules that are performed by volunteers. Codes of conduct are often regulated by international corporations often to gain reputation and public opinion, their purpose is mainly to protect the economic interests of the Company through retention of human resources, materials, and compensation costs related to accidents. Investment agreements are other international instruments that allow some states to take measures to protect the environment from investing activities. But rarely is observed that start of the investment is subject to environmental laws. Some of the Multilateral Agreement on Investment Have paid attention to the environmental impact of investments. North American Agreement on Environmental Cooperation was signed to evaluate the environmental impacts of transnational trade and investment. The treaty commission was established to address the Environmental Assessment of NAFTA. The Commission has enabled citizens to present their complaints against a Member State in the case of its violation of environmental law, but this mechanism is not
sufficient because the impact of the commission's recommendations are not binding, and Convicted country Can deny environmental principles violation and continue his behavior.

Some international organizations are also taking steps in relation to the creation of effective interaction between international investment law and international environmental law, such as International Labor organization and Economic Cooperation and Development organization. One of the branches of the World Bank Group is Multi-lateral Investment Guarantee Agency (miga). Miga is an institution that Offers investors insurance against the risks of investment in non-financial and financial assistance and tries to mediate in disputes. Miga has set conditions for its sponsored investments that, environmental assessment of investment projects is one of those conditions that are considered as part of the technical regulations of the institutions. International Finance Corporation is other branch of the World Bank Group that Has a duty to support sustainable economic growth in developing countries. The company has approved the environmental and social review procedures unlike the miga this organization enforces environmental conditions step by step. This procedure will cause investors to be able to keep pace with environmental rules. Investment in a region where the detrimental effects on a group of people is severe, Investors need the help of this organization In order to get the consent of indigenous people affected [10].

World Bank inspection panel monitors the Bank Performance. Affected groups can complain to the panel against the bank for violating the environmental assessment by investors. In addition to the World Bank Group, Regional institutions such as the Bank for Reconstruction and Development, Asian Development Bank And the Organization for Economic Cooperation and Development Also Have stipulations to protect the environment against foreign investment. And sometimes believe that the protection of the environment emanating from the principle of fair treatment in international investment law. The Convention on Environmental Impact Assessment in a transboundary Context is among the international instruments which can also be extended to foreign investors. The Draft of International Law Commission on preventing transboundary losses Due to Ultra-hazardous activities also Requires Member States to inform other about the risks of dangerous activities that have environmental aspects. Legislative process has an undeniable impact on the protection and conservation of the environment and especially on interaction of environment and other legal measures. If there are multiple binding international instruments in the field of trade and investment which reduce the probability of unfair practices

Against investors from governments, Usually do not get a guarantee from investors to guarantee the protection and conservation of the environment and to Prevent Damage to the environment and residents.

III. CONCLUSION

Finally, it should be noted that to achieve a more rational management of resources and improve the environment, Governments must choose a centralized and coordinated approach for its expansion plans In order to guarantee applicable development with the needs of Protecting and improving the human environment for the benefit of their citizens. Hence rational planning is an essential Solution to resolve any conflicts between the needs of development and the needs of Protecting and improving the environment. Due to the foregoing materials can be inferred that with effort to create a common language between the two fields of the environment and economic development can take steps to achieve the goals and promote both.

Correct understanding of environment and economy specialists of the goals and challenges of the economic and environmental respectively can lead to explain and facilitate the agreed principles on economic and the environment.

This practice has become more internationally over the last decade, Among them Can be pointed to the presence of environmental experts and government agencies on Assemblies and meetings of international economic institutions As well as Creating units with tasks of sustainable development in the institutions. It is essential to note that structures can not only guarantee the fulfillment of the objectives of Conservation and protection of the environment, but its efficiency and effectiveness that can reveal the nature of these structures. In order to avoid actions Based on unilateral vision And creating interaction between experts and decision makers in the areas of environment and economics and taking advantage of NGOs potentials In order to influence decision-makers to consider the following suggestions can be fruitful:

- Promoting the interactions between the environment and economic development in the field of economics and business by strengthening the role of the environmental domain in the field of economics and business in National and international levels.
- To promote knowledge and awareness of environmental experts in the field of trade and economic issues, and understanding the consequences and undesirable effects of underdevelopment on the status of environmental protection and exploitation of natural resources.
- Economic valuation of environmental blessings and economic valuation of environmental pollution and degradation, and calculate these values in calculations of economic Projects and activities such as the Projects for acquisition of capital assets.
- Implementing solutions and economic measures with the aim to restore the external costs of environmental damage in calculating Profit and loss of companies and Consumers Including pollution fines.
- The dynamic measurement systems with Incentive Approach to motivate managers of small and large Commercial and industrial companies, and payment facilities.
- Strengthening the role of nongovernmental organizations, and Nongovernmental scientific society and trade unions in the field of environmental protection.

REFERENCES


[8] Committee on Trade and Environment ('regular' CTE) www.wto.org › trade topics › environment
