An Introduction to Information Exchange in International Environmental Law

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Abstract: Generally, principles implying the bases for a legal rule play an important role in the establishment, development and application of law. Hence, these basic principles include some bases beyond common rules; for example, all legal procedural rules in all countries or international laws are based on the ‘equality of members’ principle. These general principles can lead to the advancement of legal rules. Environmental international laws include a variety of these principles. The author in this research does not try to study or analyze all dominant basic rules in environmental international law; rather, he tries to see whether environmental information exchange as an issue in environmental international law is accepted or recognized in environmental international law or it is regarded as an element of other principles in environmental international law. The author will be finally led to the results that environmental information exchange is one the basic prerequisites for environmental international cooperation principle and is one of its manifestations which should exit in two areas of ‘codifying and regulating international documents and commitments’ and ‘creating responsible environmental structures and institutions’ in order to make the operationally of environmental commitments possible in international arena.

Key words: principle, environmental, information exchange, cooperation principle, international law

INTRODUCTION

Information is the main prerequisite for management, protection and cooperation in environmental arena. The improvement of access level to the information of environmental status and activities including adverse or harmful effects are some of the admitted objectives in environmental international law. Environmental management, protection and cooperation at national or international level require information to a considerable extent. The presence of information and accessibility to them make conducting reductive or preventive measures possible and guarantees the participation of citizens in national decision making processes and can affect the behavior of individuals, consumers and companies. Information makes it possible for international society to determine how governments should obey their environmental commitments. There are various ways to obtain environmental information in international law. Studying international documents, we find out that ‘information exchange’ is one of the main ways of providing and distributing information which this articles tries to study its basics and concepts.

The Concept of Information Exchange in International Environmental Law:

Giving and taking information is what strikes the mind first when one hears ‘information exchange’ without being bound to any commitment (Banisar, 2006). From Sands’ viewpoint, a general commitment to information exchange can be almost found in different forms in all environmental international agreements. He believes that information exchange can be defined as the general commitment of a government to another one to provide general information on one or some specific issues especially scientific or technical information in cases. Accordingly, Sands defines two main features for ‘general commitment to information exchange’: first, concerning the providing form and time which is … and irregularly and the other concerns the nature of this information which has a general content. Later, he infers that other forms of providing information such as reporting and warning which lack the mentioned features are, therefore, out of the definition circle of general commitment to information exchange (Sands, 2003).

However in somewhere else, Sands himself categorizes commitment to information exchange into general and indistinctive topics on one hand and into specialized and distinctive ones on the other and mentions some instances of the commitments of the latter category (such as commitment to information exchange due to different conventions concerning plant diseases and pests, catch and immigrating moves of tuna fish, protecting wild and plant species etc). Also according to him, not only more precise regulations for information exchange are codified in many international conventions which includes data exchange in agreed-upon periods (which should be perhaps regular), but also he writes that the widespread concern over the limited efficiency in the
traditional literature of information exchange caused a more précised language to be used with regard to information exchange in some conventions. Accordingly, Sands even believes that not only commitment to information exchange is not limited to general issues, but also it is not essentially case. On the other hand, some other documents including UNIP decision of 2001 that were adopted by the board of governors of United Nation Environment Program in order to follow MEA (multilateral environmental agreement) talks explicitly over the regular exchange of environmental information between governments.(Dannenmimai, 2009)

Information exchange in its broad meaning is in mind in this research i.e. it can be considered for any kind of information exchange and circulation among different players such as governments, international and intergovernmental organizations and their organs, institutions of multilateral environmental agreements including conferences by the members of different temporary or permanent committees, national or international non-governmental organizations, civil society entities and even real or ordinary persons(Wasserman, 2009). This approach is manifested in the first sentence of the last chapter of agenda 21: “in sustainable development, each person is a user or provider of information in its broad sense. This issue includes data, information, knowledge and experience categorized in a suitable way. Information is a need at all levels from high decision makers in national and international level to ordinary persons.” Information in not necessarily exchanged between two sides; rather, it is circulated in a wider horizon where each of the aforementioned players can be an information entrance entry or an information receiver by whom is most probably imported into the system. Information exchange in this sense takes place in broader arena which can be called ‘information shield’. For instance, Sirs (systems for implementation review) are examples of broad approaches to information exchange. Sir in Montreal Protocol is a good example in which there is information exchange and interaction among the committee, secretariat, and multilateral fund of Montreal Protocol, world environmental facilities, the assembly of economic and technological evaluation of the protocol and ancillary committees and work groups (Weiss, 1998).

Information Exchange as a Dependant Principle:

A study of different sources does not totally confirm the idea that information exchange is regarded as an independent principle among reviewed principles. For example, in credible texts such as ‘the principles of environmental international law’ by Philip Sands, ‘international law and environment by Allen Boyle and P. Bernie, ‘an instruction guide to environmental international law’ by Dina Shelton et al and ‘international law’ by Malkom Shaw, information exchanges in not mentioned as an independent principle. The only source in which the author could find a trace of information exchange principle was the book entitled ‘environmental change and international law: new challenges and dimensions’ which was published by the UN in 1992. However, some information-related principles are posed in ‘environmental laws’ by Alexander Kiss and Peter H. Sands which does not contain the title ‘information exchange’ directly. Rather, they are mentioned under the title of informing and aiding principle in environmental emergency cases’ and ‘informing and counseling principle concerning overseas influences’. These two are the same as warning and counseling respectively which are put in a different category of information exchange by Sands(Kiss,2007). Despite this concept, information exchange is cared about in some of the most important non-bounding and a number of bounding documents of environmental international law(Agarwal, 1991).

The 9th principle of Rio announcement is the only principle among the two Stockholm and Rio manifestos which explicitly mentions free information exchange but has limited it to the area of scientific and technical knowledge. Information exchange in this sense is mentioned in many binding documents of environmental international law. Also, the statement No. 37.7 of UN general assembly about a charter for nature, ratified in October 28, 1982 as known as Global Nature Charter, has also obliged governments in the first paragraph of its 27th article to cooperate in protecting nature through information exchange and counseling.

In his book, International Law Principles, Sands writes: information exchange in its generic form is regarded in the 20th principle of Stockholm statement and in the 9th principle of Rio statement. Moreover, the 7th principle of behavioral principles draft of UNEP 1978 which mentions information exchange as based on cooperation principle and contiguity advantage spirit, and the 5th article of Legal Principles of the Legal Experts Group of the world committee on environment and development which recommends information exchange among governments on the basis of punctual request in relation to cross-boundary natural resources, and the 12th article of the draft of international law committee on beyond-boundary damage prevention and world summit on sustainable development 2002(WSSD) are some other documents which have carried out information exchange.

Some binding documents have mentioned information exchange next to other principles in a section entitles general principles. For example, air far-distance cross-boundary pollution convention enacted on November 13, 1979 has mentioned information exchange in its third and fourth articles along counseling, research, scientific activities and technical measures in basic principles section. Also, the protocol about water and health in 1992 convention on the protection and utilization of cross-boundary waterways and international lakes (enacted on June 17, 1999) which has talked about the access-to-information principle next to different principles of environmental international law.
Information Exchange: A Cooperation Principle-Related Concept:
Although the behavior of each government in foreign relation is based on free will and compatible to its own, international law has imposed a necessity for cooperation with others to remove problems related to the international society. Cooperation principle is one of the basic ones in environmental international law (Silard, 2007). Although information exchange cannot be regarded as an dependent principle, it can be supposed as a basic prerequisite for international cooperation as a principle that has an old history in international law and which has held a special significance and position in the texts about environmental international law. Information exchange is a prerequisite for cooperation principle for cooperation principle in the field in the field of environmental law and is one of its main manifestations in a way that the instances of such relation can be detected in lots of different documents and agreements (Birinie, 2002). For example, the 9th principle of Rio principle obliges governments to cooperate in providing necessary basis for sustainable development by improving scientific understanding through exchanging scientific knowledge and technology and through development, compatibility, distribution and technology transference including its new and modern types (Holder, 2007).

Conclusion:
Undoubtedly exchanging environmental information is one of the highly important formative commitments in the realization of environmental protection and optimization at international level. Commitment to exchange environmental information is a norm that can be detected in any temporal law and in different forms in almost all important documents of environmental international law. Without information exchange among players and followers of environmental international law who are simultaneously makers of decisions, laws and international rules and regulations mandating international environmental commitments, necessary unanimity to create harmony in this area is not reachable at all. Information exchange is not only necessary in processing the codification and regulation of documents and establishing environmental commitments, but it should be also present among responsible structures and institutions in environmental affairs in order to finally operationally the environmental commitments of governments at international level i.e. information exchange is a tool for cooperation and coordination at environmental protection and optimization players and agents’ disposal.

REFERENCES