

INTERNATIONAL ENVIRONMENTAL LAW - INTRODUCTION

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IEL DEVELOPMENT

1969 report „**Man and his environment**“:

- the mankind is in a very deep global crisis
- if the process of environmental devastation will last, it would endanger the life on the Earth in the future
- the industrial production has led to emissions of polluting substances into all environmental media

1969 „**Man and his environment**“:

- the growth of population was demanding more and more land for industrial and agricultural purposes,
- pollution and development has led to the permanent loss of many species of plants and animals,
- the environmental pollution started to threaten the health of people

ENVIRONMENTAL PROBLEMS

- Genetic loss (diminishing and extinction of populations of different species of plants and animals, loss of their habitats)
- Deforestation and desertification (loss of vegetation)
- Strong growth of human population (diminishing natural resources)
- Global warming, climate change, increase of the sea level
- Ozone layer depletion (destruction)
- Pollution of all environmental compounds (air, water, soil)
- Loss of cultural heritage
- Impairment of bonds (relations) enabling regeneration of biosphere.

TODAY  BETTER? or WORSE?

DEVELOPMENT OF THE TREATY LAW

- One of the earliest conventions was dealing with regulation of fishing in Rhine river in 1886.
- 1902 Convention for the protection of birds useful to agriculture.
- 1931 Convention for the regulation of whaling
- 1933 London Convention relative to preservation of fauna and flora in their natural state
- 1937 International agreement for the regulation of whaling
- 1940 the Convention on nature protection and wild-life preservation on Western Hemisphere
- and others

DEVELOPMENT OF THE TREATY LAW

- 1954 London convention protecting sea against crude oil pollution
- The work on the Law of the Sea was launched in 1958.
- 1960s - the effort to regulate the use of nuclear energy

STOCKHOLM CONFERENCE 1972

The **Conference on the Human Environment** adopted three non-binding instruments:

- Resolution on institutional and financial arrangements
- Declaration containing 26 principles
- Action Plan containing 109 recommendations.

The environmental protection was declared as the universal interest of all nations of the world!

STOCKHOLM CONFERENCE 1972

- Principle 21 affirmed the responsibility of states to ensure that activities within their jurisdiction or control do not cause damage in another state or beyond national jurisdiction
- Principle 22 required states to cooperate in developing international environmental law.
- Principle 6 requires states to stop activities resulting in excessive environmental pollution, to halt the discharge of toxic and other substances which cause serious or irreversible damage to the ecosystems and prevent pollution of the seas.
- Other principles declared the right to adequate conditions of life and the right of future generations to natural resources and etc.

DEVELOPMENT AFTER STOCKHOLM CONFERENCE

- **UNEP – United Nations Environment Programme**
- 1982 - The International Whaling Commission put the Moratorium on commercial whaling
- 1982, after 10 years of work the UNCLOS (UN Convention on the Law of the sea) was passed.
- 1970s - Treaties on the nature protection
- 1979 - Geneva Convention addressing the long-range transport of air pollution followed by Vienna Convention on the protection of Ozone Layer and its Montreal Protocol
- 1989 - Basel Convention on the movement of hazardous waste
- 1991 – Convention on the Environmental Impact Assessment

1992 UNCED (RIO DE JANEIRO) + 20 (2012)

UN Conference on Environment and development:

- Rio Declaration on Environment and Development (27 principles, reaffirmed 21st p.)
- Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forest
- Agenda 21 – action plan for a global partnership for sustainable development

1992 + 20 UNCED

UN Commission for sustainable development

1992

- the balance between environmental protection and economic development
- compromises between developed and developing countries

2012

- Sustainable development
- Sustainable consumption and production patterns

DEVELOPMENT AFTER RIO DE JANEIRO

- Convention on Biological Diversity
- Convention on Climate Change
- 1990s - rules regulating use of inland waters and hazardous substances and dangerous activities.

WORLD SUMMIT IN JOHANNESBURG

- Johannesburg Declaration on sustainable development (2002)
- Johannesburg Plan of Implementation
- new type of agreements - so called partner's initiatives (international agreements between governmental organizations, non-governmental organizations and entrepreneurs)

DEVELOPMENT AFTER JOHANNESBURG

- Climate change after Kyoto Protocol
- Criminal Liability Convention
- Others.

IEL

Public international law – the body of rules which are legally binding on states in their intercourse with each other.

Hard law
Soft law

SOURCES OF IEL

- treaties
- international custom
- general principles of law
- subsidiary sources (decisions of courts and tribunals)

IEL

Treaty - an international agreement concluded between states in written form and governed by international law

1969 Vienna Convention → general rules

TREATY

- can be adopted
 - bilaterally
 - regionally
 - globally
- may be oriented to
 - specific activity
 - specific result that is to be achieved

TREATY

Treaties are intended to protect:

- national natural objects (flora, fauna, air, inland water) are subject to exclusive territorial sovereignty of the state

- international natural objects (high sea, Antarctica, open space)

SPECIFIC FEATURES OF ENVIRONMENTAL TREATIES

1. Lowest commonly acceptable values - exemptions in the text for certain participants
 - club in club
 - reservations
2. Slow procedure - scientific definition and description of the problem, its causes and consequences
 - presentation of the problem in the international community and its recognition as an international problem
 - draft
 - signature
 - ratification or other expression of the consent to be obliged with the treaty
3. implementation of obligations, enforcement, dispute settlement (conciliation, good offices and mediation, arbitration, adjudication)

DISPUTE SETTLEMENT

Dispute settlement - procedure that can be used only as a result of a breach of international law, and is bilateral and confrontational in nature, where a judicial or quasi-judicial body external to the agreement makes a decision, allocating blame for past action without providing a positive remedy.

- Diplomatic means – conciliation, good offices, mediation.
- Adjudicative means – arbitration, adjudication.
- Rules for dispute settlement in the treaty (settlement clause).

DISPUTE SETTLEMENT

- **Conciliation** – is one of the first means for the settlement of disputes. A formal conciliation procedure involves the establishment of a Conciliation Commission.
- **Good offices and mediation** – a country or an international organization may offer their good offices or offer to mediate the dispute; good offices proposition assumes a non-negotiating role of the party that offers good offices. In mediation, the intervening party takes part in the negotiations.
- **Arbitration** – leads to a binding settlement. The arbitral body is composed of judges who are normally appointed by the parties but who are not subject to their instructions.
- **Adjudication** - the dispute is submitted to the ICJ for resolution; states are bound by the outcome

ENVIRONMENTAL LAW PRINCIPLES

Principles:

- embody a common ground in international environmental law;
- reflect the past growth of environmental law and affect its future evolution;
- provide guidance in interpreting legal norms;
- fill in gaps in positive law.

PRINCIPLES OF IEL

- 1972 Conference on the Human Environment (“Stockholm Conference”)
- 1992 United Nations Conference on Environment and Development (“UNCED”) in Rio de Janeiro



declarations of principles

SUSTAINABLE DEVELOPMENT

1987 Report „Our Common Future“:

- sustainable development is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Principle 4 of the Rio Declaration:

- „In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”

RESPONSIBILITY FOR TRANSBOUNDARY HARM

1972 Stockholm Declaration - Principle 21:

- “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

1992 Rio Declaration - Principle 2

COMMON BUT DIFFERENTIATED RESPONSIBILITIES

• 1992 Rio Declaration - Principle 7:

“States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”

PUBLIC PARTICIPATION AND ACCESS TO INFORMATION AND REMEDIES

• 1992 Rio Declaration - Principle 10

"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

PRECAUTION

• 1992 Rio Declaration - Principle 15:

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

PREVENTION

• An obligation of prevention emerges from the international responsibility not to cause significant damage to the environment extraterritorially, but the preventive approach seeks to avoid harm irrespective of whether or not there is transboundary impact or international responsibility.

POLLUTER PAYS PRINCIPLE

- **1992 Rio Declaration - Principle 16:**
“National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”
