



**10. Međunarodna konferencija o obnovljivim
izvorima električne energije**

**10th International Conference on Renewable
Electrical Power Sources**

Beograd, 17. i 18. oktobar 2022 | Belgrade, October 17 & 18, 2022

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**pisanih za 10. Međunarodnu konferenciju o
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MEĐUNARODNA REGULATIVA ZAŠTITE ŽIVOTNE SREDINE

ENVIRONMENT PROTECTION – INTERNATIONAL REGULATION

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U radu autori analiziraju faze razvoja međunarodnog prava zaštite životne sredine, navodeći glavna obeležja svake od faza i relevantne međunarodne instrumente donete u ovoj oblasti. Poseban osvrt učinjen je na značaj Deklaracije konferencije Ujedinjenih nacija o čovekovoj sredini (Štokholm 1972), kao i na principe koje formuliše, sa svrhom da posluže kao osnov regulative ove oblasti u nacionalnim zakonodavstvima država koje su deklaraciju prihvatile. Štokholmska deklaracija podstakla je i osnivanje specijalizovanih institucija za zaštitu okoline i konstituisanje regionalnih sistema zaštite. Dalje, autori analiziraju Deklaraciju donetu na Konferenciji UN o okolini i razvoju 1992. u Rio de Ženeiru. Principima Deklaracije istaknuta je ideja uspostavljanja ravnoteže između zaštite okoline i prava na razvoj. Razvoj i upotreba resursa u cilju razvoja dobili su isti značaj kao i zaštita životne sredine. U radu je dat prikaz, po svom domašaju fragmentarnih i sektorskih, pravnih pravila koja se tiču sledećih oblasti: očuvanje žive prirode i kulturne baštine; atmosfere ozonskog omotača i klime; morske i okeanske sredine; opasan otpad. Nizom akata donetih pod okriljem UN ostvarena je politička saglasnost o nužnosti zaštite životne sredine, ali izgradnja korpusa obavezujućih pravnih pravila i dalje je u početnoj fazi.

Ključne reči: životna sredina; deklaracija; principi; zakonodavstvo; institucije

In this article, the authors analyze phases of the development of international environmental law, stating the main features of each, and the relevant international instruments adopted in this area. Special emphasis is put on the importance of the United Nations Conference on the Human Environment (Stockholm 1972), and its formulated principles which serve as the foundation of regulative of this area in the national legislatures of the states that supported the Declaration. The Stockholm Declaration prompted the establishment of special institutions for environmental protection and the constitution of the Regional Environmental Systems. The authors also analyze The Rio Declaration on Environment and Development, which took place in Rio De Janeiro in June 1992. The principles of the Declaration emphasize the idea of establishing a balance between environmental protection and the right to the development. The development and use of resources for the purpose of development have gained the same significance as the protection of the environment. The paper presents an overview of fragmentary and sectoral legal rules concerning the following areas: conservation of living nature and cultural heritage; ozone layer atmospheres and climate; marine and ocean environments; hazardous waste. A series of acts passed under the auspices of the UN achieved political agreement on the need to protect the environment, but the construction of a corpus of binding legal rules is still in its initial phase.

Key words: environment; declaration; principles; legislation; institutions;

1 Introduction

International environmental law is a nascent branch of international law, which began to develop intensively only in the 1970s. Scientific-technological development, along with all the advantages and positive aspects it has provided to man, has also created a number of problems, opened up numerous issues and imposed the need to solve negative effects, primarily concerning the destruction and endangerment of the environment. Interests and concerns in this matter have created environmental awareness of the necessity of solving the problem of pollution of nature and the environment and preserving it for future generations. Undeniably, a healthy environment is one of the most

important prerequisites for the survival of humanity on planet Earth. Environmental protection means a set of different procedures and measures that prevent the environment from being endangered in order to preserve the biological balance. Environment, as defined by the UN Environment Programme (UNEP) expert group, includes bioethical and non-bioethical components including air, water, soil, flora and ecosystem created by their interaction and may also include cultural heritage, landscape features and comfortable environment [1]. In certain stages of the development of this branch of law, one can notice the establishment of legal institutional mechanisms and the constitution of the system of legal norms in this area.

2 Stages of development of international protection law

It is possible to distinguish four phases of the development of this branch of law: the first period until the establishment of the United Nations, the second period from the establishment of the UN to the adoption of the Stockholm Declaration, the third period of two decades, from the Stockholm Declaration to the adoption of the Declaration in Rio de Janeiro, and the fourth period after the declaration in Rio de Janeiro [2].

The first period from a historical point of view is characterized by the existence and formulation of legal rules that regulated the protection of certain environmental values that then, at the current level of social development in a certain community, represented a special public interest. Numerous cultures regulated and sanctioned behaviors characterized as illegal and harmful, such as: throwing out waste water from households, and later from factories, into rivers, then throwing waste into nature, uncontrolled cutting of forests, hunting of certain animal species, behavior that affected not only nature and the environment but also the quality of life and health of people [3]. Conventions adopted in the 19th and early 20th centuries aimed at rational use of resources (Convention on the Protection of Birds Useful in Agriculture, Treaty on the Protection of Seal Skins, Convention on the Protection of Fish Species in the North Pacific).

Of particular importance are the principles formulated in the arbitral award in the Trail smelter case [4]: 1. responsibility of the territorial state for damage caused to another state by activities on its territory and 2. prohibition of activities that significantly pollute the environment outside the borders of national jurisdiction.

The second period begins with the establishment of the United Nations. In San Francisco, from April 25 to June 25, 1945, a multilateral negotiation process took place on the establishment of a new organization for the preservation of international peace and security, named as the UN Conference on International Organization. The result of the negotiations was the drafting and adoption of the text of the Charter of the UN Organization, which came into force in 1945 [5]. Already in 1949, a conference devoted to environmental protection was convened. Two aspects were mentioned as important for this period. First, environmental protection was transferred to the institutional framework of the UN. Second, acts were enforced that have as their goal the immediate protection of certain parts of the environment, or the protection of the environment from specific pollution. The following legal instruments can be mentioned: the Convention on the Prevention of Oil and Petroleum at Sea, and the Convention on the Prevention of Pollution from Ships. The Geneva Conventions on the High Seas and the Continental Shelf prohibit the pollution of seas and oceans with radioactive waste.

The third period of development of international environmental protection law begins with the adoption of the Stockholm Declaration [6] in 1972. The significance of the declaration is that it brings to the global level the right to protect the environment, which belongs to the body of rights of the so-called third generation. This was a document in which the right to a healthy environment is emphasized for the first time. Karel Vasak is considered the author who divided human rights into three generations: civil and political rights ("negative rights" require state restraint), economic, social and cultural rights ("positive rights" require state activity) and the third generation "rights of solidarity". The author includes among the rights of the third generation: the right to development, the right to a healthy and ecologically balanced environment, the right to peace and the right to property over the common heritage of humanity [7]. The right to a healthy environment is defined as a right to adequate living conditions in an environment of such quality that enables a dignified life and well-being. The

principles of the declaration recognize the elements of sustainable development, emphasize the responsibility of citizens and communities at all levels in order to protect and improve the environment for current and future generations. The Declaration contains principles summarizing the rights of obligations and principles of protection that have been reached during the development of this branch of law. It is proclaimed by declaration [8]:

- Man has the basic right to freedom, equality and adequate living conditions in an environment whose quality enables a dignified life and well-being;
- Protection and improvement of the environment is an important issue, it affects both people's well-being and economic development. Natural resources must be protected through careful and systematic planning for the benefit of present and future generations.

Following the recommendations adopted at the Conference in Stockholm, the UN General Assembly established the UN Environment Program (UNEP) with Resolution 2997, which began operating in 1973. According to the medium-term work strategy, the main goals of the program in the period 2018-2021 relate to strengthening the capacity of the state, primarily developing countries, to prepare measures to protect against climate change and their implementation through national legislation, achieving efficient use of resources, reducing the threat to human health from environmental incidents and natural disasters, reducing the impact of hazardous waste and hazardous chemicals on the environment and human health and achieving the implementation of the idea of comprehensive environmental protection. The main task of UNEP is the coordination of environmental protection activities within the UN system, as well as collecting information on global pollution and encouraging international cooperation in the field of environmental protection. UNEP has developed programs for the protection of regional seas that have led to the conclusion of a significant number of regional agreements on the protection of the marine environment [3].

With the adoption of the declaration in Rio de Janeiro, the fourth period in the development of international environmental protection law begins. The World Commission for the Environment (Brundtland Commission) prepared a report called "Our Common Future" (Our Common Future) [9], which indicated that economic growth, if it is not coordinated with the possibilities of regeneration of the planet Earth, can endanger the life and health of people and the environment. The Commission defines sustainable development as development that fulfills the needs of the present, without denying future generations the opportunity to meet their needs. The recommendations of the Brundtland Commission were adopted at the United Nations Conference in June 1992 in Rio de Janeiro. The Conference adopted the Rio Declaration on Environment and Development, the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, as well as Agenda 21.

The declaration emphasizes the principle of sustainable development as the primary, supreme and most important principle of the right to environmental protection. The significance, content and goal of the concept of sustainable development can be understood through the following formulations of the Rio Declaration:

- The right to development must be fulfilled so that it equally meets the needs of development and environmental protection of current and future generations;

- In order to achieve sustainable development, environmental protection will be constituted as an integral part of the development process and cannot be viewed separately from it;

The construction principles of the concept of sustainable development (which express the inner essence of the concept) and operational principles, necessary for the implementation of the concept itself, can be specifically stated. The first group, so called construction principles, are:

- Reduction and elimination of unsustainable consumption and production;
- Protection of the environment and natural resources of people who are oppressed, under foreign occupation or domination;

- Necessity of respecting the right to environmental protection by states in the period of various actions;

- Peace, development and environmental protection are indivisible and interdependent.

Furthermore, the second group of principles, operational principles are:

– The principle of precaution and damage prevention – which implies taking measures, regardless of their costs and price, that are effective in order to prevent damage. States have a responsibility to ensure that activities within their jurisdiction do not cause damage to the environment of other states;

– The principle of assessing the potential impact on the environment – above all, it refers to activities that could have a significant negative impact on the environment;

– The principle that the polluter bears the costs of the consequences of pollution (polluter pays principle)

– Obligation of states to mutually exchange information about natural disasters on their territory [2].

Principle 10 of the Rio Declaration on Environment and Development focused on the issue of access to environmental information and citizens' participation in decision-making, for the first time within the framework of the United Nations. All interested citizens should be enabled to actively participate in solving environmental problems, as well as active participation in the appropriate level, in making relevant decisions in this area. It is necessary to give them access to and availability of information about the environment, hazardous waste and hazardous activities, which are also held by state authorities. The principles of the declaration foresee an obligation for the states to encourage the active participation of the public in the aforementioned sense. The question of what the participation of citizens "at the appropriate level" entails, given that states have different approaches to realizing this right, remains somewhat unclear [10]. This principle is elaborated in detail by the Aarhus Convention. The full name is the Convention on access to information, public participation in decision making and access to justice in environmental matters (Aarhus, Holland, 1998).

The Rio Declaration regulates the issue of the transfer of hazardous waste from countries where the handling of hazardous waste is regulated in accordance with high standards (e.g. EU member states) to countries where the handling of hazardous waste is regulated only in general or in accordance with standards that are far lower than the standards in other countries (eg countries in Africa and Asia). In order to prevent such transfer of hazardous waste and substances that cause environmental degradation, Principle 14 of the declaration calls on member states to connect and establish international cooperation. A series of international conventions on the cross-border movement of hazardous waste was created in order to specify and regulate this issue in detail [11]. The following can be mentioned:

– Basel Convention on the Control of Transboundary Transport of Hazardous Waste and its Disposal (1992);

– Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, December 10, 1999.

Agenda 21, adopted at the conference in Rio de Janeiro, represents an action plan of 40 parts and several hundred programs, which are intended for the local and global community. Agenda 21 indicates that the role of each country is to develop strategies, policies, plans and programs through which the elements of sustainable development are introduced. The importance of non-governmental organizations is emphasized, primarily in terms of decision-making, from initiative, policy creation to their implementation. The contribution of Agenda 21 is special in that it emphasizes and encourages the involvement of local self-governments in making environmental decisions and their connection at the regional level.

In 2015, the UN General Assembly adopted the sustainable development agenda from 2015 to 2030, which contains 17 sustainable development goals. The 2030 Agenda indicates that the implementation of environmental law in each UN member country has a key role in overcoming the contemporary challenges of sustainable development, which should be viewed not only by analyzing the traditional pillars of sustainable development (economic growth, social inclusion, environmental protection), but also by analyzing the political security dimension sustainable development as the fourth pillar of this concept [3].

3 Legal protection of certain segments of the environment

Special attention was paid to certain areas, on the international level, of environmental protection in the sense of adopting a series of conventions that deal with the regulation of all issues of specific protection objects [2]. A more detailed elaboration and review of the content of the conventions would require an analysis that would greatly exceed the planned number of pages of the work, therefore the authors list the names and most significant conventions in the following areas, in three segments, presentation of living nature, and cultural heritage as first, atmosphere, ozone layer and climate as second, and hazardous waste and radioactive substances as third.

- Preservation of living nature and cultural heritage:
 - Convention on International Trade in Endangered Species of Wild Flora and Fauna (1973) Washington;
 - Convention on the Conservation of Migratory Species of Wild Animals (1979) Rio de Janeiro;
 - Convention on Biological Diversity (1992) Bonn;
- Atmosphere, ozone layer and climate:
 - Convention on long-range transboundary pollution (1979) Geneva;
 - Convention on the protection of the ozone layer (1985) Vienna;
 - Framework Convention on Climate Change (1992) New York;
 - Kyoto Protocol (1997).
- Hazardous waste and radioactive substances:
 - Convention on the control of transboundary movement of hazardous waste and their disposal (1989), Basel;
 - Convention on Persistent Organic Pollutants (2001) Stockholm.

4 Conclusion

Pollution and endangerment of the environment are caused by humans, the consequences of pollution and endangerment affect humans, and we must address the questions of what humanity can and must do in order to avoid dark scenarios of complete destruction of nature, what attitude the state should have towards environmental protection, and the individual has right to live in a healthy living environment.

In this area of law, contracts and conventions are of a framework nature. This means that they do not foresee concrete procedures, mechanisms, means, ways, etc. which contracting parties should necessarily apply in the specific area. They define the basic rules and principles and allow the contracting parties to specify, also specifying mutual relations through unilateral declarations of will or bilateral agreements. In order to become part of the national legal order, these rules and principles must be accepted and implemented in the system through the process of ratification.

Reservations that the contracting states place on certain conventions are also common. This means that the contracting states exclude the application of some provisions of the contract to themselves, or determine in advance the way in which they will interpret some contractual provisions. A corpus of binding rules in this area has not yet been built, although there is political agreement on the necessity of it. The rules contained in the aforementioned instruments are of a declarative nature. Only a small number of provisions in the field of environmental protection have the characteristic of "self-enforceability", i.e., their implementation does not require the adoption of internal regulations.

International environmental protection law penetrates into various areas of the political, economic and social life of each country, because the application of its norms often implies radical interventions in the internal legal system. That is why there is a certain reluctance of states to be actively involved in international environmental protection, because it means in a way that they "relinquish a part" of their sovereignty.

With a range of international legal instruments, a significant step has been taken to approach environmental protection from a legal perspective, predicting the obligations, rights and responsibilities of the key subjects of this process (protection and preservation of the environment), which

continues and whose outcome is uncertain. Time will tell if the rapid progress of mankind and the achievements of civilization are a curse or a blessing for the mankind and a living nature around us.

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