Environmental Protection In The Framework Of International Law: Development And Perspectives

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Abstract

The paper concerns the international environmental law, and its main topics delineate: why an international dimension of environmental protection; the lack of direct referring on environmental protection in international law and the use of the state's responsibility principle; a short view on the development of international environmental law; the latest developments and perspectives of environmental protection legislation; a short overview on the Albanian environmental normative regulation.

Introduction

Environmental protection is a matter of domestic interest for almost every country, and it also represents no less interest in the international dimension. That is mainly because of two reasons: a) first, it should be noted that activities, that pollute or harm environment in a certain state, generally tend to backfire also on other states, or on areas which are not subject to the sovereignty of any state: just say the supposed "acid rains" that occur as a result of emissions due to industrial pollution in the atmosphere, which in contact with sunlight and water, are converted into acid and together with the rain fall into lands far away from the place where the pollutants were produced; b) the second point concerns the fact that the most serious environmental problems can not be solved or administrated only by a state unilaterally, but they require an international collaboration between states, more often a joint effort of states. This applies without exception on issues such as global warming, biodiversity, land,

safeguarding the quality of air, water, earth and oceans, deforestation and desertification of the planet, administration of the trash and other hazardous waste, also thinning of the ozone layer (S. Bariatti, S.M. Carbone, M. Condinanzi, L. Fumagalli, G. Gasparro, P. Invalidi R. Luzzatto, F. Munari, B.Nascimbene, I. Queirolo, A. Santa Maria, p.407).

As for human community problems on the environment that came out during the first half of 20th Century, they were originally solved on local or national scale. Technology development was poor and human damages on the environment were such that the damage caused by a state could not strongly affect on neighbor states (A. Kiss, D. Shelton, p.8). Because of the development of communications and knowledge and to technological change over the years, environmental measures have evolved from responding almost exclusively to addressing a large and an increasing number of local and global issues. Initial measures of what today would be recognized as environmental management aimed to protect human health and safety through combating urban pollution of basic community resources such as drinking water and air. In addition, private law concepts of nuisance and other property torts were expanded to protect owners from property damaged caused by their neighbor polluting activities. Later, more comprehensive regulations were enacted to protect commercially harvested living resources, such as forests and fish from over-exploitation. In recent decades, scientists and the public increasingly have recognized the interdependence of all elements of biosphere. As a result, immediate interests in physical and economic health and safety have become incorporated in a more general awareness of the need for measures to ensure environmental sustainability, thus aiming at what can be called a “common concern”.

The development of the environmental protection and respective laws.

The first phase of environmental regulation aimed at protecting the health and safety of communities from the consequences of urbanization. One of the earliest known environmental measures in an ordinance adopted by Edward I in 1306 to prohibit the use of coal in open furnaces in London. Also in the 14th

century, Charles IV forbade in Paris "bad-smelling and disgusting smoke". Environmental protection measures became more widespread with the Industrial Revolution, and public law measures to combat local pollution were supplemented by the development of private law concepts of acceptable use of property and private nuisance (A. Kiss, D. Shelton, p.8-9). Although the importance of environmental protection in international level appears early in time, it should also be mentioned that environmental protection in the past did not present a value to be protected separately, and it was an object of attention for the state only by protection of diverse and additional interests: for example, protection of property or the use of economic activities by, or in the other states. Besides, the low number of international law dispositions relating to environmental issues had mostly bilateral or, at most, regional effects; the only general "principles" that were difficultly elaborated concern only the hypothesis of trans boundary pollution, in which it was emphasized the state's responsibility.

Also because of the above reason, environmental protection itself and issues related to it were originally included in the context of the discipline of state's responsibility, distinguishing between liability arising from the performance of unlawful acts and forms of liability by legal acts. The later developments of environmental problems, raised for solution in international level, made considered further inappropriate such an approach, the inclusion of environmental protection under the state's responsibility. The first international treaties became necessary when extraterritorial effects rose out. Next to the hypothesis of international responsibility in issues of trans-boundary pollution "accidentally" caused, it was, thus created – and took bigger responsibility – a normative characterized by another solution, based on two fundamental principles: international collaboration and sustainable development, defined as a model of development of human activities "such as to satisfy the actual needs of mankind without harming the possibilities of future generations to satisfy theirs" (Principle 3 of Rio Declaration: "*The right to development must be pursued so as to equitably meet developmental and environmental needs of current and future generations*"). Both these principles

became dispositions of international customary law, which remain the basis of further juridical dispositions adopted in international level (S. Bariatti, S.M. Carbone, M. Condinanzi, L. Fumagalli, G. Gasparro, P. Invalidi R. Luzzatto, F. Munari, B.Nascimbene, I. Queirolo, A. Santa Maria, p.408).

Passing from the customary level on treaty law, the discussion becomes also entirely different. Following, environmental international law is developed in two main directions. On one hand, bilateral rules determine the obligations of states to refrain from causing damages to the environment out of its territory, to cooperate with and to inform the other states in every kind of pollution and every kind of risks. These duties are specified in the Declaration of Stockholm of 1972 concerning the subject of trans-boundary pollution. Bilateral customary practice among states has been integrated in a progressive way in multilateral agreements. On the other hand, multilateral cooperation on facing sector problems of environmental protection, initially with effects on the local level, had to do with matters of protecting the sea, continental waters and atmosphere, and wild flora and fauna conservation.

As for harmful uses of territory, the agreements, bilateral and multilateral ones, have been increasing during last years. They rarely impose explicit prohibitions with object determined polluting activities (an example of such an agreement is given by the Bonn Convention of 3.12.1976 On Protection of Rhine from pollution, which previews, among others, two lists of substances capable to pollute the river waters, imposing to eliminate pollution deriving by substances of the first list and to reduce the ones deriving by substances of the second list). Generally conventions only set obligations of cooperation (especially with preventing function), of information and of consultancy between contracting parties. As examples can be mentioned:
- in the framework of Economic Commission of UN for Europe, the Convention of 1979 on atmospheric pollution in long distance, which previews a general obligation "to exchange information, consultancy, research and monitoring" to fight pollution (art.3), and a specific obligation of consultancy between related contractual Parties, when one or more Parties are affected or severely threatened by atmospheric pollution sourced from the

territory of another Party (art.5);
- in the framework of IAEA (International Atomic Energy Agency), the two Conventions of 26.9.1986 respectively on Early Notification of Nuclear Incidents (with an obligation of information and consultancy through IAEA), and on Assistance in Case of Nuclear Incidents (assistance for which the asked state decides whether is able to give it or not);
- Rio Convention on Biodiversity of 5.6.1992.

There should also be mentioned the Conventions on Responsibility for Pollution, which do not concern international responsibility, but, being inspired by the principle “polluter pays”, care of imposing to contracting states their liability of an appropriate system of civil responsibility within their intern regulations (B. Conforti, p.248-249).

Summarizing the development of international environmental law there are two significative stages: 1) the first Conference of UN on Environment held in Stockholm in 1992 on sustainable development; 2) Rio Conference in 1992 on sustainable development.

The Conference of Stockholm was concluded with the adoption of 3 documents: a Resolution related to institutional and financial agreements, a Plan of Action and a Declaration of Principles, which constitute not only the most significant result of the conference, but perhaps also the bases of international environmental law. In fact, they constitute the first attempt to define in international level lots of principles in the field of environmental protection (S. Bariatti, S.M. Carbone, M. Condinanzi, L. Fumagalli, G. Gasparro, P. Invalidi R. Luzzatto, F. Munari, B.Nascimbene, I. Queirolo, A. Santa Maria, p.408), of the right for a qualitative environment in the same level with human rights. It presents in 26 principles the limits of the exploitation of the environment. Most part of the countries presented some reserves regarding this content: some of the developing countries consider pollution as a consequence of the industrial activities and call themselves less connected to this phenomenon; others fear that financing environmental protection will impair the development.

On the other side, in the context of an international crisis the requirement of collaboration among industrialized countries gives some negotiating possibilities to the developing countries (Mondializimi dhe zhvillimi durable – Fashikulli 3B, p.4). By this way, international environmental law is becoming further more open to developing matters.

At the end of eighties, the International Union on the Conservation of Nature undertook the role to work on a pact concerning the environment and development, which was further achieved in 1994 and will serve as a basis for the systematic codification of customary rules in the framework of UN.

Rio Conference consolidated further the principles proclaimed in Stockholm, which became customary rules, particularly the duty of evaluating the consequences of activities that could harm environment (environmental impact studies) and the principle of responsibility for environmental hazard (regimes that allow victims of ecological problems to be compensated for the caused damage.

Among others, in Rio Conference were adopted 3 documents: a Declaration on Environment and Sustainable Development following the principles of Stockholm; some non-binding rules on Use and Protection of Forests; also Agenda 21, a non-binding programmatic document that aims to establish programs, priorities and initiatives on environment protection for the 21st century. Other significant findings of Rio's Conference was the start of procedures for the signing of some main international conventions, such as the Convention on Biodiversity and the Framework Convention on Climate Change (S. Bariatti, S.M. Carbone, M. Condinanzi, L. Fumagalli, G. Gasparro, P. Invalidi R. Luzzatto, F. Munari, B.Nascimbene, I. Queirolo, A. Santa Maria, p.409). Although the principles of the Declarations of Stockholm and Rio constitute non-binding instruments adopted by the international community, they play a crucial role in the development of international environmental law. Besides the contribution that gave momentum to reaching significant number of multilateral environmental agreements in subsequent years, the general principles proclaimed in these non-binding instruments appear in the relevant international agreements. One of the most fundamental principles in the text processed in Rio is the „prevention principle", which was defined as the state

obligation to notify other states for all situations of risk (natural disasters or other emergency situations, which threaten to affect immediate negative effects on the environment) and inform about the activities that may affect their environment. The principle of prevention was introduced at the beginning in many treaties, whether on specific environmental issues or on a general level, such as the two conventions signed in the framework of Rio's Conference and the Maastricht Treaty of European Union in 1992.

A multilateral agreement on the environment creates a public authority, which takes over the role of "world government" to solve a specific environmental problem. It also allows the development of an environmental policy at international level. As a result, international environmental law is more thought as harmonization of national regulations rather than applying appropriate instruments for protecting common interests of all mankind. It is progressively adapted to different environmental issues, which go beyond the simple framework of interstate responsibility simply by creating instruments of management on a global scale, especially economic ones.

However, this dual development of environmental quality and quantity still suffers from application difficulties, especially as recently is noted a "dangerous" slowdown of initiatives to protect the global environment: it is sufficient to mention the difficulties that characterized the entry into force the Kyoto Protocol's, essential mechanism for implementing the Framework Convention on Climate Change or the fair results of World Summit on Sustainable Development held in Johannesburg in 2002, which was not extended further than a reaffirmation of the foregoing principles and fixing "tepid" interim objectives for resolving fundamental issues of environmental or closely related to the environment, such as the right to drinking water and primary health services, eliminating the use of chemical substances that harm environment or sustainable management of primary resources (S. Bariatti, S.M. Carbone, M. Condinanzi, L. Fumagalli, G. Gasparro, P. Invalidi R. Luzzatto, F. Munari, B.Nascimbene, I. Queirolo, A. Santa Maria, p.410). The first drafting of TUE did not provide any reference on the environment, furthermore, for a decade the attention of European legislator reserved to the environmental protection ran into implications

of economic character (Diritto del'Unione Europea. Aspetti istituzionali e politiche dell'Unione, p.422). Among the latest developments is Lisboan Treaty (this treaty entered into force on December 1st, 2009), which confirms the actual situation for the sharing of the competences between member states and UE on environmental policies. For the first time, to the climacteric changes refers Lisboan Treaty directly. The environmental politics must contribute for the achievement of several objectives, one of which is the inciting of measures in international level to strive against climacteric changes. Related to climacteric changes is also the article on energy, that previews undertaking the measures to incite efficient energies, to safeguard energy and to develop alternative energies. The article 222 of TFUE provides a "solidarity clause„ according to which UE and member states must commonly act in case of massive disasters. Lisboan Treaty provides some changes in the decision-making procedure on the high sensitive national measures in the environmental area, such a: territorial planning, water management, land use, expect waste management (Fjalorth per integrimin European Institucionet dhe politikat e BE-se, p.89).

What about the perspectives of the environmental policies?

Resulting also by the historical development of environmental law and policies we can conclude that it is rather difficult to preview the future in this area, because it is an area of highly political influence. However, the essential priorities concern: rigorous application of the principle "polluter pays„, and strengthening of remedies over each polluter of environmental components; prioritary regulation of economic activities that pollute urban areas, marine and lake water lands, and that compromise touristic potentials, forests and land erosion; incitement of initiatives for friendly behavior with the environment, of economic and human activities that, at the same time, respect the principals of free market; sustainable development, and public information on the real situation of the environment. The environmental policies should be oriented to: drafting of laws and policies to give solution of the environmental problems through the prevention of damages; the incitement of the role of all the actors that can affect on the environmental protection: governments, producers and consummators.

A short overview on Albanian legislation related to the environmental protection.

Environmental legislation of recent years in Albania is generally aligned with European Union standards - a process that is still evolving. It relies on the same principles that support European environmental legislation, is drafted with the assistance of external experts, and broadly meet the requirements of the conventions to which Albania is party. The right to information about the situation of the environment and its protection is garanteed by the article 56 of the Albanian Constitution of 1998. “Social objectives“ of the Albanian state and government are provided by the article 59 of the constitution, which, among others, directly refers to sustainable development, as one of the essential principles of the environmental regulation, determining that "*State within the constitutional powers and resources at its disposal, to increase private initiative and responsibility aims:... d) a healthy and ecologically adequate environment for the present and future generations; f) rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development*".

It should also be noted that, under the second paragraph of Article 59, the fulfillment of social objectives cannot be claimed directly in court. However, it should be noted that the same constitutional provision also contains a legal reserve, under which *conditions and measures, which may require implementation of these objectives, set by law*“.

In order to achieve the constitutional requirement towards the citizens that have the right to a healthy and ecological environment, the steady development of Albania through the rational use of natural resources, their preservation from pollution and degradation, and the promotion of environmental values for turning them into significant assets to further economic development of the country, in November 2007 the Albanian Council of Ministers approved the *Cross-cutting Environment Strategy* (hereinafter CES), which is part of the National Strategy for Development and Integration, and as such should be seen in the context of national policy. Many of the policies and measures supported by

CES's programs and activities defined in crosscutting strategies, such as tourism, energy, agriculture, etc. It is supported by more detailed action programs that address specific issues such as: *Strategy and Action Plan for Biodiversity, Strategy for the Development of Forestry and Pastures*, *Fisheries Strategy*, and *National Plan of Waste Management*. In this topic CES unites the most essential elements of these actions in a separate and contemporary integrity, and provides the steps for aligning the approximation and implementation with the European legislation. Current conditions in the environmental area are evaluated through a comprehensive monitoring system that works throughout the country. In the environmental monitoring are engaged a number of institutions which monitor different environmental indicators such as water, air, waste, chemicals, biodiversity, etc. On the basis of monitoring data is published every two years the national report on the environmental condition that serves as a database to undertake further legislative initiatives aimed at improving the environmental situation. The monitoring system continues to improve in terms of infrastructure, resources and the amount of measurements of environmental indicators. However, public awareness levels are low, and dissemination of environmental issues is relatively low (Strategjia ndersektoriale mjedisore, p.5-18).

Part of Albanian legislation are also the international agreements ratified by the Albanian Parliament, which are directly applicable in the domestic law. Such international agreements in the field of environmental protection are: Convention on banning the production of bacteriological and toxic substances, and their disposal (accession - 1975), Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution (accession - 1990), Convention ESPOO on the declaration of environmental impacts in a trans boundary context (signature of ratification - 1991), Convention on the Protection and Use of Trans boundary flows and international rivers (signature - 1992, ratification - 1994), United Nations Framework Convention on Climate Change (accession - 1994), Convention on Biological Diversity (accession - 1994), Convention on the Trans boundary Effects of Industrial Accidents (signed - 1992, ratification - 1994), Convention on the Prohibition of the Development, Production, collection and use

of chemical weapons and on their Destruction (signed - 1993, ratification - 1994), Berne Convention for the protection of wild flora and fauna and natural environment of Europe (signature - 1995, ratification - 1999), Aarhus Convention on public access to information, to participate in decision making and access to justice in environmental matters (signature - 1998, ratification - 2000), Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer (accession - 1999), International Convention for the protection of plants (accession - 1999), Convention for the protection of the marine environment and marine zone of the Mediterranean Sea, as well as 6 accompanying protocols (accession - 2000), Bonn Convention on the protection of species of migratory birds (accession - 2000), Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and their disposal (accession - 1999), CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora (accession - 2003), ICCAT Convention for the Protection of Atlantic Tuna (accession - 2007).

Conclusion

International environmental law is part of the regulations of *soft law*, not obligatory and simply declarative. Generally, there is no prevision of an explicit right for pure environment. Resulting by the development of environmental law and policies, it is rather difficult to preview the future in this area, because it is an area of highly political influence, however, the essential priorities concern rigorous application of the principle “polluter pays„, and strengthening of remedies over each polluter of environmental components. There is a need for the incitement of the role of all the actors that can affect on the environmental protection: governments, producers and consummators.

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