

**THE STOCKHOLM COMMITMENTS:
PROGRESSIVE DEVELOPMENT OF INTERNATIONAL
ENVIRONMENTAL LAW**

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ÖZET: Bu çalışmanın amacı Stockholm Bildirgesi ile öngörülen çevre prensiplerinin uluslararası hukukta ne derece yaşama geçirilebildiğini incelemektir. Bu amaçla ilk bölümde Stockholm Bildirgesi, Dünya Doğa Sözleşmesi, Brudtland Raporu ve Rio Bildirgesi gibi küresel ancak hukuksal bağlayıcılığı olmayan belgeler ana hatlarıyla açıklanacak ve Stockholm Bildirgesi ile bunların benzeşen yönleri ortaya konacaktır. İkinci bölümde Stockholm sonrası uluslararası çevre anlaşmaları üzerinde Stockholm Bildirgesi'nin izleri incelenecektir. Rio Bildirgesi tamamen farklı bir evreyi simgelediğinden Rio sonrası gelişmeler bu çalışmanın kapsam alanına girmemektedir.

I. INTRODUCTION

The Stockholm Declaration is generally considered as the foundation of modern international environmental law and its implications characterise the subsequent development of international environmental law¹. However, the Stockholm Conference adopted a non-binding declaration of principles, reflecting a political and moral commitment rather than a legal one².

The aim of this paper is to examine its implications on the development of international environmental law entailing an exploration of the documents of environmental law; their provisions and omissions. The present work consists of two main parts. In the first one, the basic global environmental documents, namely the Stockholm Declaration, the World Charter for Nature, the Brundtland Report and the Rio Declaration will be focused on. Instead of examining them word by word, they will be summarised and their relation to the Stockholm Declaration will be examined. In the second part, implications of the Stockholm Conference on the evolution of environmental treaty law, especially in the post-Stockholm and pre-Rio period, will be considered, bearing in mind that on this issue volumes of books have been written and it is impossible to cover all aspects of the issue in detail in such a limited work.

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KISS, A. and SHELTON, D. (1991) *International Environmental Law*, London, Graham and Trotman Ltd, p. 42.

PALLEMAERTS, M., "International Environmental Law from Stockholm to Rio: Back to the Future?", *RECTEL*, 1,3, p.255.

II. GLOBAL ENVIRONMENTAL DOCUMENTS

A. THE STOCKHOLM DECLARATION

Between June 5-16 of 1972, the United Nations Conference on the Human Environment was held in Stockholm. As a result of "Stockholm Conference", 109 recommendations forming an Action Plan and the Stockholm Declaration were almost unanimously adopted³. The Stockholm Declaration consists of 26 principles and a seven paragraph preamble with introduction.

Koester sums up the provisions and principles of the Declaration under the heading below:

- Fundamental human rights (principle 1)
- Management of natural resources and pollution threats (principles 2-7)
- The correlation between development and environment (principles 8-12)
- Planning and environment and demographic policy (principles 13-17)
- Science, technology, including the transfer of technology to developing countries, and education (principles 18-20)
- Obligations on states to prevent environmental damage in other countries or in areas outside national jurisdiction, and to cooperate on development for such environmental damage (principles 21-22)
- Respect for national environmental standards and particularly through international and values and an obligation on states to cooperate, particularly through international institutions (principles 23-25)
- The threat of nuclear weapons to environment and the necessity to eliminate such weapons completely (principle 26).⁴

The aim of these principles is "to inspire and guide the peoples of the world in the preservation and enhancement of the human environment"⁵. The principle 1 links environmental protection and human rights⁶, including "the right to environment", by stating that "man has the fundamental right to liberty, equality and adequate conditions of life in an environment which has a quality that permits a life of dignity and well-being". It also puts the responsibility to

³ UN Doc. A/CONF. 48/14 (1972), reprinted in 11 *ILL.M.* 1416.

⁴ KOESTER, V. „From Stockholm to Btrudtland” (1990) *Environmental Policy and Law*, 20, 1, p. 14.

⁵ The Stockholm Declaration, introduction to preamble.

⁶ KISS, *op. cit.* p. 39.

protect and improve environment for present and next generations on the signatories.

Principles 2 to 7, which are regarded as "the heart of the Declaration"⁷, announce natural resources of the earth must be preserved for the interest of present and future generations by means of appropriate planning and management. Above mentioned natural resources include not only air, water, land, flora and fauna but also, especially, representative samples of natural ecosystems. Man has a responsibility in particular to preserve the heritage of wild life and its habitat. The capacity of the earth to produce renewable resources must be ensured. The non-renewable resources must not be used unnecessarily and benefits from them must be shared by all mankind. The production of toxic wastes and similar material must not exceed the level which is not harmful upon ecosystems. Marine pollution must be prevented.

Principles 8 to 12 address the correlation between development and environment. Article 8 recognises that economic and social development is indispensable for the improvement of the quality of life. The following principles demonstrate the way to cope with underdevelopment as "the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required". Stability of prices and sufficient income for primary commodities and raw materials are necessary to environmental management in developing countries. The present and future development potential of developing countries must not be adversely affected by the environmental policies of all states. Moreover, states and international organisations must take the appropriate steps to remedy economic consequences of the application of environmental measures.

Principles 13 to 15 talk about planning. States must adopt an integrated and coordinated development planning approach in order to ensure that development is compatible with environment. Any conflict between the development and environment must be reconciled. Urban planning is also essential to avoid adverse effects on environment.

Principle 16 underlines the necessity of demographic policies when the population growth or overpopulation may have adverse effects on the environment. According to principle 15 public awareness of the environment must be broadened through education and media.

Principle 18 recommends that science and technology must be used to avoid and solve environmental problems.

Principle 20 is another principle which is in favour of developing countries. This states that scientific information and environmental technologies

Ibid. p. 39.

must be made available to developing countries "without constituting an economic burden on the developing countries".

Principles 21 to 26 are of significant importance for the development of international law⁸. Principle 21 proclaims that states have the right to exploit their own resources provided that this does not cause damage to the environment of other states. This principle is regarded today as a basic norm of customary international law. Subsequent articles state that cooperation among states to develop international law regarding liability and compensation should be provided. The system of values prevailing in each country especially in developing countries must be taken into consideration when criteria and norms of environmental matter are agreed upon. Cooperation is essential to cope with international environmental matters. An efficient and effective role must be played by international organisations to protect and improve environment. Nuclear weapons and their destructive effect must be eliminated.

B. THE WORLD CHARTER FOR NATURE

The World Charter for Nature was proclaimed by the United Nations General Assembly on October 29, 1982⁹.

It was adopted to proclaim "the ... principles of conservation by which all human conduct affecting nature is to be guided and judged"¹⁰. The most important elements of the Stockholm Declaration were repeated by the Charter¹¹. However, its scope is limited to the conservation and use of living natural resources¹². The principles in the Charter are divided into three categories:

- Principles 1 to 5 (General principles)
- Principles 6 to 13 (Functions)
- Principles 14 to 24 (Implementation)

The basic concepts are stated in the preamble. Mankind as a part of nature in which civilisation is rooted must maintain the stability and quality of nature and conserve natural resources. The survival of civilisation depends upon the ecological conservation. To this end, international cooperation must be promoted and natural resources must be used in a manner which does not jeopardise the preservation of the species and ecosystems.

8 Ibid. p. 40.

9 UN. Doc. A/37/51 (1982).

10 Preamble.

11 KOESTER, *op. cit.* p. 15.

12 PALLEMAERTS, *op. cit.* p. 255.

“General principles” affirm that nature shall be respected, the genetic viability on the earth shall not be compromised. All areas of the earth must be conserved, in particular unique areas. Ecosystems, organisms and resources must be used in optimum sustainable productivity. It is also added that nature must be saved from degradation caused by warfare or other kinds of hostilities.

“Functions” consisting of eight principles state that in the planning of social and economic development, the conservation of nature must be taken into consideration as an integral part of it. The prevention of wasting of natural resources is also required. The Charter calls for the control of activities which might have an adverse impact on nature. Discharge of pollutants into natural systems shall be avoided. It is also emphasised in the Charter that special precautions must be taken to prevent the discharge of radioactive or toxic wastes.

The implementation section requires states to reflect the principles of the Charter in the law and practice of each state, as well as on the international level.

Education and an increasing awareness of nature are also important according to the Charter. Early detection of degradation of threat must be ensured through monitoring. Principle 21 encourages cooperation, information exchange, consultative agreement on the methodologies for environmental assessment as well as requirements to implement international legal provisions regarding the environment. It also underlines that, like principle 21 of the Stockholm Declaration, activities within a state must not cause damage to the natural systems located within other states or in the areas beyond their jurisdiction.

The ensuring principles foresee participation of individuals in the formulation of decisions of concern to their environment and access to the means of redress when their environment is damaged or degraded. It can be concluded from this principle that nationals of the country in question and aliens can equally exercise the right of access to administrative procedures and judicial tribunals¹³.

C. THE BRUNDTLAND REPORT

The report of the World Commission on environment and development was published in 1987. This report is known as “the Brundtland Report”¹⁴. The fundamental concept of the Brundtland report is sustainable development which can be described as a development which meets the needs of the present generation without compromising the ability of the future generations to meet

¹³ KISS, op. cit. p. 48.

¹⁴ WCED was headed by Gro Harlem Brundtland who was the Minister of Environment, National Forests and Nature Agency of Denmark.

their own needs¹⁵. There are also twenty- two legal principles which are annexed to the report, for environmental protection and sustainable development, adopted by the WCED expert group on environmental law¹⁶. Legal principles are divided as :

- General principles, rights and responsibilities (principles 1-8)
- Principles, rights, and obligations concerning transboundary natural resources and environmental interferences (principles 9-20)
- State responsibility (principle 21)
- Peaceful settlement of disputes (principle 22)

Principle one proclaims that all human beings have the fundamental right to environment adequate for their health and well being. Other principles provide for the use and conservation of the environment for the benefit of present and future generations, universal environmental standards must be established and changes must be monitored, environmental assessment of activities must be made, everybody must have equal access to administrative and legal proceedings , conservation is the integral part of the planning and implementation of development activities, co-operation is essential in implementing the proceeding rights and obligations.

Part II requires states, by principle 9, to use transboundary natural resources in a reasonable and equitable manner , and by principle 20 , to give equal treatment to all persons who are effected by use in an environmentally adverse way.

Part III consisting of principle 21 puts on states a responsibility to cease and provide compensation for activities in breach of international environmental obligations.

Last part, by principle 22, comprises rules on peaceful settlement on environmental disputes.

D. THE RIO DECLARATION

In 1992 , after two decades since the Stockholm conference, the Rio Declaration¹⁷ on environment and development was adopted in the capital city of Brazil at the end of "the Earth Summit." Delegates from one hundred and eighty-two nations almost unanimously adopted another major international document:

15 WCED (1987) **Our Common Future**, Oxford, Oxford University Press, p.8 and see also KOESTER, op. cit. p. 15-16.

16 For the summary of the legal principles see WCED , op. cit. , annex 1 p. 348-351.

17 UN. Doc. A/CONF. 151/5/1992.

Agenda twenty-one which is an action plan to promote a global transition to sustainable development¹⁸.

The Rio Declaration consists of a preamble and twenty-seven principles. The preamble is quite short and reaffirms the Stockholm Declaration¹⁹. The main goal of the Rio Declaration is to establish a new and equitable global partnership through the creation of new levels of co-operation amongst states. Principle 1 puts human beings at the centre of concerns for sustainable development and recognises the right to a healthy and productive environment in harmony with nature for all. Second principle is the counter part of principle 21 of the Stockholm Declaration. However it states that states have sovereign right to exploit their own resources in pursuing not only their environmental policies but also their development policies. Following principles talk about the right to development, integrity of development, and environmental protection, the necessity of co-operation to cope with poverty, the special situations and need of developing countries. Principle 7 requires that states must co-operate in a spirit of global partnership to conserve, protect and restore the environment as they have "common but differentiated responsibilities", meaning that the developed countries recognise that they will take a special role in the common partnership in the light of their higher per capita consumption and pollution levels and their greater technological and financial resources²⁰. The principle 8 requires developed countries to change their production and consumption patterns and developing countries to curb their population growth to address effectively environmental degradation and poverty²¹. Principles 9 to 12 call for co-operation through the exchange of scientific and technological knowledge and the transfer of technologies, access to environmental information and judicial and administrative proceedings, the increasing of public awareness, enacting of environmental legislation and standards and the promotion of an open international economic system. Principle 13 completes principle 2 requiring that law regarding liability and compensation for the victims of an environmental disease must be developed both on the national and international level. Principles 22 onwards affirm these general principles; ban on the transfer of environmentally harmful activities and substances, precautionary approach, pollutant pay principle, environmental impact assessment prior and timely notification to natural diseases. The vital role of women, youth, and local people in environmental matters and the development was mentioned in principles 20 to 22. Principle 23 extends the protection of the environment and natural resources

18 UN Chronicle, Sept. 1992, p.59.

19 Preamble paragraph 3.

20 GETCHS, D. H., "Foreword: The Challenge of Rio", *Colorado Journal of International Environmental Law and Policy*, (1993) 4,1, p.128.

21 Ibid. p.129.

of people under oppression, domination and occupation. Principle 24 condemns the warfare while followed by principle 25 which states that peace, development and environment are interdependent and indivisible. The importance of a peaceful settlement of environmental disputes were noted in Principle 26. Lastly, principle 27 calls for co-operation for the fulfilment of the above mentioned principles and for further development of international law in this field.

II. ENVIRONMENTAL CONVENTIONS IN THE POST-STOCKHOLM PERIOD

Since the Stockholm Declaration international environmental law has developed by addressing following areas in the international treaties²².

- Protection of marine environment: 1973 International Convention for the Prevention of Pollution from Ships(MARPOL)²³, 1982 The United Nations Convention of the Law of the Sea(UNCLOS),

- Prevention of air pollution: 1979 the Convention on long-range Transboundary Air Pollution(LRTAP), 1985 Ozone Layer Convention,

- Protection of species of fauna and flora and ecosystems: 1972 Convention for the Protection of the World Cultural and Natural Heritage²⁴, 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora(CITES)²⁵, 1979 The Treaty on the Conservation of Wild Migratory Species²⁶,

- Protection of river and lakes: 1976 Convention for the Protection of Rhine against Chemical Pollution²⁷ and 1976 Convention for the Protection of Rhine from Pollution by Chlorides²⁸,

- Protection of the environments from nuclear emergencies or from hazardous wastes: 1986 Convention on Early Notification of a Nuclear

²² ADEDE, A. O., "International Environmental Law from Stockholm to Rio- An Overview of Past Lessons and Future Challenges", *Environmental Policy and Law* (1992) 22,2, p.90-95.

²³ See 121 I.L.M. 1319.

²⁴ See 11 I.L.M. 1358.

²⁵ See 12 I.L.M. 1085.

²⁶ See 19 I.L.M. 15.

²⁷ See 16 I.L.M. 242.

²⁸ See 16 I.L.M. 265.

Accident²⁹ and the Convention on Assistance in case of a Nuclear Accident or Radiological Emergency³⁰.

It can be suggested that it is very possible to find echoes of the Stockholm Declaration in the treaties which address the above mentioned areas and issues. The reflection of the Stockholm principles will be examined in this part of the paper.

Principle 1 of the Stockholm Declaration about the right to environment. As the starting point, Principle 1 of the Stockholm Declaration establishes the link between human rights and environmental protection³¹. It reads :

Man has the fundamental **right** to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn **responsibility** to protect and improve the environment for present and future generations... (Emphasis added)

This formulation stops short of proclaiming a direct right to environment. This suggestion is in accordance with the subsequent development of international treaty law.

General obligation to protect and to conserve the environment (Principle 1,2 and 4) has become an almost indivisible part of each treaty since the Stockholm Declaration. For instance, the preamble of CITES recognises that wild flora and fauna must be protected, Article 2 of the Wild Migratory Species Treaty states that "the parties acknowledge the importance of migratory species being conserved...", under Article 4 of the World Heritage Convention each party recognises the duty of ensuring the conservation and the transmission to the future generations of cultural and natural heritage.

Principle 6 of the Stockholm Declaration provides that the discharge of toxic substances or of other hazardous substances and the release of heat in quantities or concentrations which exceed the capacity of the earth to render them harmless must be halted in order to ensure that serious damage is not inflicted upon ecosystems. Principle 7 addresses marine pollution and declares that state shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea. Article 192 of UNCLOS proclaims that states have a general obligation to protect and preserve marine environment. Article 194 (1) states that

29 See 25 I.L.M. 1369.

30 Ibid.

31 KISS, op. cit. p. 77.

states take all measures consistent with the convention that are necessary to prevent, reduce and control pollution of marine environment from any source.

Importance of cooperation, scientific research, collection of data, public awareness through education and media are other aspects of environmental issues which were promoted by the Stockholm Declaration and today they are standard clauses of environmental treaties³².

Principle 21 of the Stockholm Declaration which states that every state has the duty to conduct activities under their jurisdiction or control in such a manner as not to cause environmental damage to other states or to areas beyond their national jurisdiction is customary international law. Preambles of LRTAP and Ozone Layer Convention, for instance, reaffirm this principle. Furthermore, this principle became a treaty law. Articles 193 and 194 of the UNCLOS recognise that "States have the sovereign right to exploit their natural resources pursuant to their environment policies and in accordance with their duty to protect and preserve the marine environment" and the obligation to "take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other states and their environment and that pollution arising from incident or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with convention"³³.

On the other hand, as noted by Pallamaerts³⁴, principle 22 of Stockholm Declaration, which requires states to cooperate to develop further international law regarding liability and compensation, has never been addressed by environmental law. Moreover, Principle 13 of the Rio Declaration provides that "states shall develop national law regarding liability and compensation", instead of international law. It seems that principle 22 of the Stockholm Declaration has not achieved its aim of promoting the development of international law regarding liability and compensation and this point is one of the most important factors in the failure of the Stockholm Declaration.

The Stockholm Declaration recognises the special needs of developing countries in various principles and calls for technical and financial assistance for them³⁵. For example, a fund created by Biodiversity Convention which is fed by the contributions of the developed countries for the use of the developing countries and according to Article 20 (4) "[t]he extent to which developing country parties will effectively implement their commitments under the

³² For more examples see Articles 7 and 9 of LRTAP, Article 27 of the World Heritage Convention.

³³ Quoted by ADEDE, *op. cit.* p. 95.

³⁴ Pallemmaerts, *op. cit.* p.258.

³⁵ Principle 12.

convention will depend on the effective implementation by developed country Parties of their commitments under this convention relate to financial resources and transfer of technology" and "economic and social development" and "eradication of poverty" are recognised as "first and overriding priorities" of the developing countries.

IV. CONCLUSION

This paper has examined the implications of the Stockholm Declaration on the further development of international environmental law. The Stockholm Declaration is the cornerstone of international environmental law, opening a new era in the history of general international law. However, it contained such commitments that demonstrates the good will of the states to adopt and further develop the law of environment rather than establishing binding standards and norms. Therefore, the environmental community that expected all the promises were to be met disappointed. The examination of the Rio Declaration on post-Rio treaties would definitely be subject of another paper.