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Unit 12. The international environmental protection

CONTENT

1. General aspects.
2. Historical development.
3. Characteristic features of International Environmental Law.
4. The fundamental principles of International Environmental Law.

1.- General aspects

A) The world's environment

Despite the fact that there is not a legal definition about the concept of “environment”, the ICJ in its advisory opinion about the legality of the threats or use of nuclear weapons dated on July 6, 1996, stated that:

“The environment is not an abstraction but the space in which human beings live and on which the quality of their life and health depends, including that of future generations”

Elements to be taken into account in the concept of environment given by ICJ 1996
legality of the threat or use of nuclear weapons:

1. "space where human beings live";
2. new perspective: cares about its "quality" to sustain human life with dignity.
3. relationship between the protection of the environment within the framework of human rights.

1. A unique but fragmented world

The first law of ecology states that "everything is interconnected"

- Impacts on the environment can manifest their effects at great distances and are communicated from one sector to another (land, sea, atmosphere, nature).
- This ecologically unique world is segmented into numerous state spaces, subject to the independent action of each of its political holders, while other spaces on the planet are not subject to state sovereignty and are therefore "ownerless" territories (high seas, seabed and ocean floor areas, atmosphere, Antarctica, outer space)

2. Cross-border and global problems

- International environmental problems have been manifested themselves at an early stage in relation to "transboundary pollution" = when the pollution emerges in one State and its effects are projected beyond that State to other States.
 - E.g. = Trail Smelter Case 1941; Torrey Canyon...
- Global pollution. Different phenomenon that involves the IL because
 - Everyone pollutes, although to a different extent
 - We are all potentially victims

Examples: acid rain, ozone depletion, loss of biological diversity, climate change...

3. Conditioning factors of international cooperation

- Scientific knowledge required for action
 - - Rio Declaration: Precautionary principle (NOT ACCEPTED AS A CONSUETUDINARY STANDARD)
- Economic cost of measures to be taken
- Rio Dec.: p. of common but differentiated responsibilities
- National policies of the States

2. Historical evolution

- IEL has developed extremely rapidly. Several periods can be distinguished
 - **“Prehistory” of international environmental action** (beginning of the 20th century): marked by utilitarianism and oriented essentially towards the protection of those elements of the ecosystem that were useful for production or had an economic value because they were subject to commercial use.
 - **Era of virgin nature (1930s)**, aimed at protecting the impressive natural spaces and biological riches of virgin territories subjected to colonization, especially in Africa.
 - **Start of ecological era (end of the 1970s)**, international regulations, in parallel with national legislation, were aimed at protecting the major sectors of the environment: seas, inland waters, air and wildlife. Sectoral period.
 - **Period focus on regulating substances that can have a negative impact on the environment:** chemical products, waste and radioactive materials.
 - **1990s:** comprehensive protection of the environment, considering development and the global economic context

A. Stockholm Conference on the Human Environment (1972)

- During its 23rd session and in view of the progressive destruction of the environment due to high rates of pollution, the effects of "biocides", erosion and soil deterioration, the UN General Assembly (GA) decided to convene the UNCHE at the proposal of the Economic and Social Council (ECOSOC).
- The UNCHE left as a legacy: (i) the adoption of the **1972 Stockholm Declaration**, which contained a preamble with **seven introductory proclamations and 26 principles**, non-binding but aimed at the protection and conservation of the environment; (ii) an **Environmental Action Plan**, which grouped 109 recommendations aimed primarily at the assessment and management of the environment, through procedures for assessment, review, research, monitoring and information exchange as well as the setting of objectives, consultations and international agreements; and (iii) the establishment of national and international action and financing measures.
- Institutional level: establishment of the United Nations Environment Program (UNEP), GA Resolution 2997 (XXVII) 15/12/1972 to provide policy guidance and act as a catalytic instrument for the development of international environmental cooperation programs.

The post-UNCHR period: the road to the 1992 Rio Summit

- During the period 1972 to 1992, the world witnessed the adoption of several multilateral Treaties aimed at changing the existing approach to the protection of the environment, biodiversity, marine areas and pollution.
- Among the main agreements adopted during this period were:
 - the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter;
 - the 1972 Convention on World Cultural and Natural Heritage;
 - the 1973 International Convention for the Prevention of Pollution from Ships and its additional protocols of 1978 and 1997;
 - the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora;
 - the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol);
 - the 1982 United Nations Convention on the Law of the Sea (UNCLOS);
 - the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention).

The 1987 Brundtland Report "*Our common future*"

- The **Brundtland report** was responsible for **delineating the definitions of "environment" and "development"**, conceiving them unequivocally as inherent rights and stressing the need to adopt social and sustainable means of economic growth, through the creation of policies aimed at developing action plans that promote the changes necessary for the conservation of ecosystems.
- **Sustainable development** is understood as development that "meets the needs and aspirations of the present generation without compromising the ability of future generations to meet their own needs".
- A key factor also mentioned in the Brundtland report is **population density**, which is **continually increasing** at an unprecedented rate, making it increasingly difficult to meet the needs of the world's population, i.e. the cause-effect relationship is direct: **the more the world's population grows, the greater the demand for food and the greater the consumption of resources to meet its needs.**

B. The Rio de Janeiro Conference on Environment and Development - Earth Summit 1992

- **GA Resolution 44/228 of 22/12/1989:** United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro from 1 to 15 June 1992.
- Three groups of States:
 - The developed countries (DCs): main concern was to preserve the environment without neglecting its economic and commercial dimensions;
 - The developing countries (dCs): main concern was to ensure that environmental protection did not hinder their future development possibilities and a better distribution of the planet's wealth;
 - Countries in transition to a market economy (CITES): main objective was to obtain special and more favorable treatment.

RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT

- Central instrument: the 1992 Rio Declaration on Environment and Development: 27 (criteria for reconciling the requirements of development with those of environmental protection, in the context of the new concept of "sustainable development“):
 - "sustainable development" is oriented toward guaranteeing human beings the right to a healthy and productive life in harmony with nature (**Principle 1**).
 - environmental protection should be an integral part of the development process and cannot be considered in isolation (**Principle 4**).
 - DCs recognize their (primary) responsibility in the international pursuit of sustainable development (**Principle 7**).
 - States should reduce and eliminate unsustainable production and consumption systems and promote appropriate population policies (**Principle 8**).
 - States should cooperate by increasing scientific knowledge through the exchange of scientific and technological know-how, and by intensifying the development, adaptation, diffusion and transfer of technologies, including new or innovative technologies (**Principle 9**).
 - Promotion of an open international economic and trading system as one of the elements for achieving sustainable development (**Principle 12**).

- Guiding **principles for international environmental action:**
 - development of legislation on liability and compensation for victims of environmental damage (**Principle 13**)
 - precautionary principle (**Principle 15**)
 - polluter pays principle (**Principle 16**)
 - principle of environmental impact assessment (**Principle 17**)
 - duty of notification and information on natural disasters, emergency situations and transboundary environmental risks (**Principles 18 and 19**),
 - fundamental role of women, youth, indigenous peoples and local communities in environmental management and development (**Principles 20 to 23**).
- Duty of States to settle environmental disputes by peaceful means, to provide environmental protection in times of armed conflict (**Principles 24 to 26**) and to cooperate in the development of international law in the field of sustainable development (**Principle 27**).

Other instruments within the framework of the Earth Summit

- Declaration of "non-legally binding" principles on forests (S^a of states over forests resources).
- United Nations Framework Convention on Climate Change (UNFCCC) (Unit 5)
- Convention on Biological Diversity (CBD) (Unit 8).

Other results of the Earth Summit

- To try to ensure the implementation: **Agenda 21**
- At the institutional level: Commission on Sustainable Development (CSD) composed of 53 States elected on the basis of geographic and equitable representation. Main tasks:
 - to monitor progress in the implementation of Agenda 21 and the integration of sustainable development into the various United Nations agencies;
 - to examine the national information submitted by Member States to the Organization on the state of the environment;
 - to submit, through ECOSOC, to the General Assembly appropriate recommendations on the implementation of Agenda 21.
- **Fundamental merits of the Earth Summit:**
 - international recognition that environmental conservation is the responsibility of all humankind.
 - consecration of the indissoluble link between the environment and development
 - instruments adopted have inspired the further development of IEL.
 - it inaugurated a process that has been developing since then and which involves the whole of world civil society, in the global task of preserving the environment.

C. World Summit on Sustainable Development - Johannesburg 2002

- **Its overall objectives were:**
 - To eradicate poverty
 - Achieving sustainable patterns of production and consumption
 - Protect the natural resources on which the economic and social development of future generations is based.
- **The main outcomes:**
 - **The Johannesburg Declaration on Sustainable Development:** political declaration that reaffirms the commitment to sustainable development in order to build a caring, equitable and generous global society, mindful of the need to respect the dignity of all human beings.
 - **The Johannesburg Plan of Implementation:** programme of action setting out time-bound targets to implement Agenda 21.
- Quite expectation —> general disappointment.

D. United Nations Conference on Sustainable Development - 2012 Río de Janeiro (Río+20)

- **The delegations renewed past commitments and agreed to face new challenges, but did not give final shape to the instruments that should help overcome them:**
 - Green economy
 - Changes in the institutional framework
 - Climate change
- **The main outcomes:**
 - **Political outcome document** (The Future that we want) which contains clear and practical measures for implementing sustainable development;
 - **process to develop a set of Sustainable Development Goals (SDGs)**, which will build upon the Millennium Development Goals and converge with the post 2015 development agenda.

3. The new environmental paradigm: sustainable development

- The notion of sustainable development is an idea that advocates the reconciliation of environment and development, aspiring to preside over the economic, social and environmental activities of states and the international community.
- Origins in the field of economic science, is considered to pursue **three essential objectives**:
 - a purely **economic objective, efficiency in the use of resources** and quantitative growth;
 - a **social and cultural objective**, the limitation of poverty, the maintenance of diverse social and cultural systems and social equity;
 - and an **ecological objective**, the preservation of the physical and biological systems (natural resources) that support human life.

A. The establishment of the paradigm of sustainable development

- The idea of sustainable development meets its background in the *1987 Brundtland Report*.
- It must be a:
 - process of solidarity
 - enlightened process
 - equitable process
- Today: **2030 Agenda for Sustainable Development**

SUSTAINABLE DEVELOPMENT GOALS

- **Background:** Millennium Declaration of 8 September 2000. Comprises: values and principles to lay the foundations for a more peaceful, prosperous and just world.
- The United Nations General Assembly adopted **Resolution A/RES/70/1** on 25 September 2015 entitled "Transforming our world: the 2030 Agenda for Sustainable Development" which aims to:
(i) **update the Millennium Development Goals;**
(ii) **to chart a roadmap for sustaining peace, prosperity and justice.**



- **Key features of the Sustainable Development Goals (SDGs):**
 - **experience-based** → MDGs
 - **participatory** → open consultation through online survey; communication channels with NGOs, business...
 - **comprehensive and multidimensional** → based on sustainable development; integrates social, economic and environmental issues; cross-cutting approach to sustainability; issues of democracy and governance
 - **global** → address all the challenges facing the planet and global society
 - **universal** → promotion of sustainable development in all nations of the world. Engagement between states, citizens, businesses and all social actors.

- **Guiding principles of the SDGs. Comprises:**

- mainstreaming → "leave no one behind".
- interrelatedness → inclusiveness and indivisibility
- shared responsibility → common but differentiated
- localisation → "think globally, act locally".
- evaluation and accountability → measure results and learnings

3. Characteristic features of IEL

A) The formation of international environmental law

1. Environmental treaties

The environmental treaties constitute the main element of the international normative in the matter.

The treaties constitute today the central piece of the international normative corpus on environmental matters because, as Paolillo has written:

"The treaties are shown, then, as the legal instrument that offers the best response to the need to develop environmental law, especially after having shown a considerable degree of flexibility, which makes them capable of adapting to the changing needs and perceptions of the environmental crisis".

International environmental agreements have some common features or characteristics that give them a certain originality.

- The **first element** is its configuration as a "treaty law", that is, as an agreement that establishes a common regulation for the achievement of a collective objective of the Parties, and not as a "treaty-contract" that establishes conflicting obligations of a synallagmatic nature between Parties that pursue different objectives.

- A **second feature** of environmental treaties is the trend towards institutionalization, that is, the implementation of institutional mechanisms for their enforcement. The vast majority of environmental conventions have established institutionalized enforcement bodies, most notably the "Conference of the Parties" (COP), a plenary body that meets periodically to adopt the necessary enforcement measures. This is generally accompanied by the existence of a Secretariat and, in some cases, the establishment of other institutional bodies responsible for functions of a diverse nature, generally of a scientific, legal or supervisory nature.

- The **third characteristic** feature of the environmental conventions is their tendency to divide the text into two separate blocks or bodies;

1. On the one hand, the **substantive provisions** intended to maintain a certain permanence;
2. On the other hand, the technical provisions generally called "annexes", which are usually subject to easier amendment or modification procedures.

In any case, it should be noted that the provisions of each convention and its annexes are also part of the text of the treaty and are **equally binding** for the Parties.

- A **fourth characteristic** element of environmental agreements is what can be called the continuity of the normative process, that is, **the technique consisting** in the elaboration of a **framework agreement** that will be completed by successive agreements that develop it, usually called "**protocols**".

- The last characteristic of environmental agreements is the **relativization of established commitments**, which are **not** formulated in **absolute** terms but by reference to differentiated implementation schedules.

2. Customs and general principles

- Absence of specific customary rules.

The main reason that explains this situation derives, precisely, from the novelty of this sector of the system. The emergence of a customary rule requires the **existence of a continuous practice** over time; and, although it is true that this time can be relativized and shortened extraordinarily, when it is compensated by a powerful "conviction of obligatoriness", it **must be recognized that the youth of international environmental law** has reduced the possibilities of gestation of a well-formed cast of specific customary rules

3. Other regulatory procedures

Along with the traditional normative sources (treaties, customs, general principles) other innovative normative procedures have appeared that have acquired a great projection in international environmental law.

All these procedures have given rise to a great diversity of legal acts such as “action programs”, “codes of conduct”, “strategies”, “guidelines”, “programs and measures”... which are widely used in this sector of the international system.

For example: Rio Declaration 1992 —> Agenda 21 —> Eco-labelling, sustainability labelling...

B) Environmental enforcement and dispute resolution

1. Conventional application mechanisms

Most of the international conventions concerning environmental protection leave it to the Conference of the Parties to verify compliance with the commitments and to adopt the necessary measures for their facilitation, thus avoiding the emergence of disputes in this regard.

2. Environmental Dispute Resolution

The resolution of environmental disputes necessarily involves the application of the general principles of international law that govern this field: namely, the obligation of States to resolve their disputes exclusively by peaceful means and the freedom to choose the means of solution determined by common agreement.

4. Fundamental principles of IEL

- Principles:
 - International cooperation for the protection of the environment.
 - Prevention of transboundary environmental damage
 - Liability and reparation for environmental damage
 - Environmental impact assessment
 - Precautionary principle
 - “Polluter pays” principle (PPP)
 - Public participation