
IMPACT OF INTERNATIONAL LEGAL INSTRUMENTS ON FORESTS' PROTECTION

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Annotation. The world's forests are one of the most important ecosystems sustaining the whole global environment. Their biological diversity distinguishes as the most heterogeneous and versatile. As the World Bank notices, nearly 90 percent of terrestrial biodiversity is found in the world's forests, with a disproportionate share in the forests of developing countries. From one hand, forests are important in many different areas – they provide climate regulation, protection of soil, ensure the recovery of water resources, their ecosystems create a living surrounding for billions of species, forest products are essential to existence of more than billion people. Forest resources directly contribute to the livelihoods of 90 percent of the 1.2 billion people living in extreme poverty and indirectly support the natural environment that nourishes agriculture and the food supplies of nearly half the population of the developing world. On the other hand, the world's forests are also under enormous pressure: from conversation to agricultural and other uses, from illegal and unsustainable harvesting of forest products and from climate change. It could seem unbelievable, but the world-wide problem of degradation of the world's forest has become a focus of international environmental law only a few decades ago. The deforestation began to attract the attention of international society only after the first intimidated studies reflecting the situation were presented. They disclosed tremendous facts about rising problems in the field of forests' protection, as many factors may be presumed as a threat to forest ecosystems; those threats are diverse and include different aspects of human activity (population growth, measures for poverty reduction, industrial activities, road construction, consumption, agriculture, usage of forest products, etc.) and environmental situation (climate change, acid rain, ozone depletion, toxic chemicals, water reduction) of the world in general. The protection of forests is a very precise example of conflicting interests between environmental issues and economic, industrial, political, social ones. Global environmental forest policies most clearly disclose the tension between the needs of developed countries and developing ones, between environment protection and development processes, between need to preserve and sustain nature and degradation of poverty. Understanding of those phenomenons may explain the present situation in the legislation of international legal documents regarding forest protection. Although the twentieth century has brought the tremendous development of multilateral or global agreements regarding global environmental challenges, and the growth of the number of multilateral environmental agreements, as well as the scope of covered by them issues, is dramatic, however there is no binding global agreement on forest protection, conservation and management. The specific feature of international legal instruments in the field of forest protection is their non – binding nature, and this circumstance is worth of a deep and more precise analysis. The object of the research is the system of international legal instruments that have impact in international environmental law of forest protection. The objective of this research therefore is to disclose the system of international legal instruments that have impact in international environmental law of forest protection, to analyze the most important reasons that influenced the formation of this system, and to reveal the peculiarities of the system.

Keywords: international public law, environmental law, “soft law”, forest law.

INTRODUCTION

Relevance of the Topic. The world's forests are one of the most important ecosystems sustaining the whole global environment. Their biological diversity distinguishes as the most heterogeneous and versatile. Forests still cover more than 31 per cent of the world's land surface¹, notwithstanding the fact that there has been an unprecedented tendency of destruction in this field during past decades all over the world. As the World Bank notices, nearly 90 percent of terrestrial biodiversity is found in the world's forests, with a disproportionate share in the forests of developing countries. From one hand, forests are important in many different areas – they provide climate regulation, protection of soil, ensure the recovery of water resources, their ecosystems create a living surrounding for billions of species, forest products are essential to existence of more than billion people. Forest resources directly contribute to the livelihoods of 90 percent of the 1.2 billion people living in extreme poverty and indirectly support the natural environment that nourishes agriculture and the food supplies of nearly half the population of the developing world. Forests also are central to growth in many developing countries through trade and industrial development². On the other hand, “the world's forests are also under enormous pressure: from conversion to agricultural and other uses, from illegal and unsustainable harvesting of forest products and from climate change. Some of these pressures reflect increasing human population and resource consumption; some reflect conscious societal choices about land use and development strategies; some reflect poor forest policies and governance”³.

It could seem unbelievable, but the world-wide problem of degradation of the world's forest has become a focus of international environmental law only a few decades ago. The deforestation began to attract the attention of international society only after the first intimidated studies reflecting the situation were presented. They disclosed tremendous facts about rising problems in the field of forests' protection, as many factors may be presumed as a threat to forest ecosystems; those threats are diverse and include different aspects of human activity (population growth, measures for poverty reduction, industrial activities, road construction, consumption, agriculture, usage of forest products, etc.) and environmental situation (climate change, acid rain, ozone depletion, toxic chemicals, water reduction) of the

¹ *World Bank statistics* [interactive] [accessed 2013-04-15] <<http://data.worldbank.org/topic/environment>>.

² *Sustaining Forests. A Development Strategy*. Washington: The International Bank for Reconstruction and Development/The World Bank, 2004, p. 1 [interactive] [accessed 2013-04-15] <<http://siteresources.worldbank.org/INTFORESTS/Resources/SustainingForests.pdf>> .

³ Mc Dermot, C.L., Cashore, B., Kanowski, P. *Global Environmental Forest policies. An International Comparison*. London, New York: Earthscan, 2010, p. 3.

world in general. Research works indicate that “only about 20 percent of Earth's original forests remain in a wild, unmanaged state, and these areas are decreasing⁴. The degradation of the forest is particularly perceptible in tropics, which are usually called “the lungs of the planet” and are home for almost two-thirds of all plant and animal species. Deforestation is not dangerous only as a tendency itself, it also contributes to biodiversity loss, climate change, desertification.

The protection of forests is a very precise example of conflicting interests between environmental issues and economic, industrial, political, social ones. Global environmental forest policies most clearly disclose the tension between the needs of developed countries and developing ones, between environment protection and development processes, between need to preserve and sustain nature and degradation of poverty. Understanding of those phenomena may explain the present situation in the legislation of international legal documents regarding forest protection. Although the twentieth century has brought the tremendous development of multilateral or global agreements regarding global environmental challenges, and the growth of the number of multilateral environmental agreements, as well as the scope of covered by them issues, is dramatic, however there is no binding global agreement on forest protection, conservation and management. This situation describes the phenomena of international environmental law – despite concerns and efforts of international community, there still exist “black holes”, and, as A. Cassesse aptly notices, “it seems difficult to envisage that they could be eliminated in the short term: international norms remain uncertain and full of holes, and especially, they are not supported by efficient institutional guarantees”⁵. The specific feature of international legal instruments in the field of forest protection is their non – binding nature, and this circumstance is worth of a deep and more precise analysis.

The Object of the Research is the system of international legal instruments that have impact in international environmental law of forest protection.

The Objective of this Research therefore is to disclose the system of international legal instruments that have impact in international environmental law of forest protection, to analyze the most important reasons that influenced the formation of this system, and to reveal the peculiarities of the system. To achieve the aim further **tasks** are settled:

⁴ Speth, J.G., Haas, P.M. *Global Environmental Governance*. Washington: Island Press, 2006, p. 29.

⁵ Cassesse, A. *Violence et droit dans un monde divisé*. Paris: PUF, 1990, p. 68.

1. To describe and to analyze legal documents of international environmental law in the field of forest protection;
2. To reveal the features of the global legal instruments adopted regarding forest protection issues;
3. To discuss the impact of soft – law and other legal instruments on development and implementation of international environmental law in the field of forest protection.

Methodology of the Research. In the course of reaching the objective of the research both theoretical and empirical methods of scientific research were employed—the methods of comparative, systemic, analytical-critical analysis. In addition, the methods of documentary analysis and generalization were used.

INTERNATIONAL LAW IN PROTECTION OF FORESTS: DEVELOPMENT AND TENDENCIES

Environmental issues pose significant challenges for the traditional international legal order: legislative, administrative and adjudicative functions of international law are re-estimated; the manner in which international legal arrangements are currently organized also must be reviewed; the role of various actors who are considered to be members of international community and participants in various processes and practices of the international legal order must be reconsidered⁶. Though international treaties are the most effective force in promoting environmental ideas, however it must be stated, that until 1970's only occasional and fragmentary legal provisions regarding environmental issues in general have been passed in international level, and only a few specialized institutions were designated to solve environmental problems. The major impetus for development in international environmental law arose from the United Nations Conference on the Human Environment, which took place in Stockholm in 1972; therefore the origins of the modern international environmental law and policy are dated as far back as the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)⁷, later complemented by Rio Declaration on Environment and Development (Rio Declaration⁸).

⁶ Pūraitė, A. *Impact of Activity of International Organizations on Environmental Law*. Public security and public order: scientific articles (8). Kaunas: Mykolas Romeris universiteto Viešojo saugumo fakultetas. 2012, [t.] 8, p. 192-209.

⁷ Stockholm Declaration of the United Nations Conference on the Human Environment, adopted 16 June 1972 [interactive] [accessed 2012-11-05]

<<http://www.unep.org/Documents/Multilingual/Default.asp?documentid=97&articleid=1503>>.

⁸ Rio Declaration on Environment and Development, adopted 14 June 1992 [interactive] [accessed 2012-11-05] <<http://www.unep.org/Documents/Multilingual/Default.asp?documentid=78&articleid=1163>>.

Those international treaties had the biggest impact on further development of international environmental law. Later on many of the conventions have been promoted by United Nations or its organizations (such as United Nations Environment Programme (UNEP), the Organization for Economic Cooperation and Development (OECD), etc.).

It is worthwhile to mention, that there is no one clear standard regarding validity, enforcement level or obligatory powers of different international environmental conventions; whilst some may be limited in their application by different parameters⁹, others may extend to cover the whole international community or very important issues¹⁰. Some authors point out that although the subjects matter and geographical scope of environmental treaties varies, such treaties have some common characteristics, use similar legal techniques, and often are interrelated. The main characteristics which these treaties share are as follows¹¹: 1) an absence of reciprocity of obligations; 2) interrelated or cross-referenced provisions from one instrument to another; 3) framework agreements; 4) frequent interim application; 5) the creation of new institutions or the utilization of already existing ones to promote continuous cooperation; 6) innovative compliance and non-compliance procedures; 7) simplified means of modification or amendment. Bearing in mind different kind of environmental issues, covered by international conventions (multilateral treaties), it could be stated, that the most explicate regulation of international law has been established for the four “traditional sectors” of the environment: water, soil, atmosphere, and biological diversity¹².

However it should be noted, that forests' protection area is almost uncovered by international legal regulation instruments. No global convention has yet been adopted addressing world forests of deforestation; while forests fall within the scope of certain global and regional legally binding instruments (mostly in the field of protection of biodiversity), there has been no global legal instrument up until to Rio Earth Summit in 1992. The main documents adopted in the field of forest protection are non-binding declarations or principles (more detailed analysis of those documents will be presented further in this article). The documents adopted at the Rio Earth Summit in 1992 were the first ones dedicated directly to forests' protection issues, though discussion at the international level were difficult and the

⁹ For example, Paris Convention for the Protection of Environment of the North-East Atlantic (1992). [interactive] [accessed 2012-03-17]

<http://www.ospar.org/html_documents/ospar/html/OSPAR_Convention_e_updated_text_2007.pdf>.

¹⁰ For example, United Nations Convention on the Law of the Sea (UNCLOS) (1982, entered into force November 16, 1994). [interactive] [accessed 2012-03-17]

<http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>.

¹¹ Kiss, A.C., Shelton, D. *International Law*. Third edition. Transnational Publishers Inc., 2004, p. 70.

¹² Burnet-Hall, R., Jones, B. *Burnet-Hall on Environmental Law*. Second edition. London: Thomson Reuters, 2009, p. 2.

states could only agree upon non-binding statement of forest principles - Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests¹³. This set of principles, though important as the first general international legal instrument dedicated to forests' protection, wholly inadequate to deal with growing threats to forests. It is foreseen, that the guiding objective of these principles is to contribute to the management, conservation and sustainable development of forests and to provide for their multiple and complementary functions and uses (Preamble). These principles reflect a first global consensus on forests. In committing themselves to the prompt implementation of these principles, countries also decided to keep them under assessment for their adequacy with regard to further international cooperation on forest issues. The principles indicate, that States have the sovereign right to exploit their own resources pursuant to their own environmental policies (Principle 1), States have the sovereign and inalienable right to utilize, manage and develop their forests in accordance with their development needs and level of socio-economic development (Principle 2), forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations (Principle 2), national forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers (Principle 5), national policies and programmes should take into account the relationship, where it exists, between the conservation, management and sustainable development of forests and all aspects related to the production, consumption, recycling and/or final disposal of forest products (Principle 6), efforts should be undertaken towards the greening of the world, all countries, notably developed countries, should take positive and transparent action towards reforestation, afforestation and forest conservation, as appropriate (Principle 8), national and, where appropriate, regional and international institutional capabilities in education, training, science, technology, economics, anthropology and social aspects of forests and forest management are essential to the conservation and sustainable development of forests and should be strengthened (Principle 12). The principles apply to all types of forests, in total there are 15 principles presented, though they have no titles, are difficult to

¹³ *Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests*, Rio de Janeiro, 3-14 June 1992, A/CONF.151/26/Rev.1 (Vol. 1) [interactive] [accessed 2013-05-04]
<<http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm>>.

classify in any way, and therefore it could be stated, that this document has not much impact on further development of international forest protection.

Another non-binding document, adopted in Rio, Agenda 21¹⁴, is a political action programme for the implementation of the Rio Declaration, and its Chapter 11 is dedicated to the deforestation issues. This Chapter obliges states to develop national forest strategies and appropriate plans, also expresses the necessity to formulate the criteria and guidelines to help sustainably manage, conserve and utilise forests. The objectives indicated in the Chapter 11 of the Agenda 21 is “to maintain existing forests through conservation and management, and sustain and expand areas under forest and tree cover, in appropriate areas of both developed and developing countries, through the conservation of natural forests, protection, forest rehabilitation, regeneration, afforestation, reforestation and tree planting, with a view to maintaining or restoring the ecological balance and expanding the contribution of forests to human needs and welfare; to prepare and implement, as appropriate, national forestry action programmes and/or plans for the management, conservation and sustainable development of forests” (Chapter 11.12). Chapter 11 creates four programme areas for the protection of forests: sustaining the multiple roles and functions of forests; enhancing the conservation and sustainable management of forests and the greening of degraded forest areas through rehabilitative means; promoting efficient resource utilisation and assessment; and strengthening capacities for the planning and assessment of forests and respective areas.

Documents, adopted in Rio, were followed by international efforts to promote the legal, administrative, financial and political measures protecting forests, “there has also been a substantial increase in development assistance and NGO (non-governmental organizations) activity to protect tropical forests”¹⁵, however no particular and significant impact to deforestation has been seen yet.

Although agreements reached at Rio Earth Summit were the first global legal documents in the field of forest protection, there were some specific regional documents adopted before. Those documents mainly focus on tropical forests and their protection. The first International Tropical Timber¹⁶ Agreement (ITTA) was adopted in 1983¹⁷, and the International tropical Timber Organization (ITTO) was established in 1986. The first ITTA

¹⁴ Agenda 21, Rio de Janeiro, 3-14 June 1992, A/CONF.151/26/Rev.1 (Vol. 1) [interactive] [accessed 2013-05-04] <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N92/836/55/PDF/N9283655.pdf?OpenElement>>.

¹⁵ Speth, J.G., Haas, P.M. *Global Environmental Governance*. Washington: Island Press, 2006, p. 98.

¹⁶ Timber – timber concessions – the right to take trees, granted usually by governments.

¹⁷ *International Tropical Timber Agreement* (ITTA), November 25, 1983, U.N. Doc. TD/TIMBER/11/Rev.1 (1984).

was later superseded by the second International Tropical Timber Agreement¹⁸, adopted in 1994. This agreement “seeks to balance concerns about deforestation in tropical countries with recognition of the fact that trade in tropical timber is highly relevant for economic development of these countries”¹⁹.

The ITTA 1994 remained in force until the International Tropical Timber Agreement 2006 was adopted²⁰. Though ITTA 2006 is substantially similar to ITTA 1994, it though contains significant provisions regarding sustainable forest management, the objectives of the International Tropical Timber Agreement (2006) are to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and to promote the sustainable management of tropical timber producing forests (Article 1 of ITTA, 2006). The Agreement also refers to promoting better understanding of the contribution of non-timber forest products and environmental services to the sustainable management of tropical forests with the aim of enhancing the capacity of members to develop strategies to strengthen such contributions in the context of sustainable forest management, and cooperating with relevant institutions and processes to this end; and encouraging members to recognize the role of forest - dependent indigenous and local communities in achieving sustainable forest management and develop strategies to enhance the capacity of these communities to sustainably manage tropical timber producing forests (Article 1).

Another sound legal instrument in the field of forest protection (notably, also not binding) was adopted by United Nations Forum on Forests (UNFF)²¹ at its seventh session in April 2007 - the Non – Legally Binding Instrument on All Types of Forests²². The instrument is adopted bearing in mind sustainable forest management, as a dynamic and evolving

¹⁸ *International Tropical Timber Agreement* (ITTA), January 26, 1994, 33 ILM 1014 [interactive] [accessed 2013-05-04] <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XIX-39&chapter=19&lang=en>.

¹⁹ Beyerlin, U., Marauhn, T. *International Environmental Law*. Oxford: Hart Publishing, 2011, p. 201.

²⁰ *International Tropical Timber Agreement*, January 27, 2006, entered into force on December 7, 2011 [interactive] [accessed 2013-05-04] <<http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XIX/XIX-46.en.pdf>>.

²¹ In October 2000, the Economic and Social Council of the United Nations (ECOSOC), in its Resolution [2000/35](#) established the United Nations Forum on Forests (UNFF), a subsidiary body with the main objective to promote “... the management, conservation and sustainable development of all types of forests and to strengthen long-term political commitment to this end...” based on the Rio Declaration, the Forest Principles, Chapter 11 of Agenda 21 and other key milestones of international forest policy. The Forum has universal membership, and is composed of all Member States of the United Nations and specialized agencies. [interactive] [accessed 2013-05-04] <<http://www.un.org/esa/forests/about.html>>.

²² *Non – Legally Binding Instrument on All Types of Forests*, A/RES/62/98, 31 January 2008 [interactive] [accessed 2013-05-04] <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/349/31/PDF/N0734931.pdf?OpenElement>>.

concept, and aims to maintain and enhance the economic, social and environmental values of all types of forests, for the benefit of present and future generations. In the preamble of the document the concern about continued deforestation and forest degradation, as well as the slow rate of afforestation and forest cover recovery and reforestation, and the resulting adverse impact on economies, the environment, including biological diversity, and the livelihoods of at least a billion people and their cultural heritage, is expressed, and emphasis on the need for more effective implementation of sustainable forest management at all levels to address these critical challenges is pointed. The purpose of this instrument is to strengthen political commitment and action at all levels to implement effectively sustainable management of all types of forests and to achieve the shared global objectives on forests; to enhance the contribution of forests to the achievement of the internationally agreed development goals, in particular with respect to poverty eradication and environmental sustainability; to provide a framework for national action and international cooperation (Article 1). Member States are obliged to consider the seven thematic elements of sustainable forest management ((a) Extent of forest resources, (b) Forest biological diversity, (c) Forest health and vitality, (d) Productive functions of forest resources, (e) Protective functions of forest resources, (f) Socio-economic functions of forests, (g) Legal, policy and institutional framework), which are drawn from the criteria identified by existing criteria and indicators processes, as a reference framework for sustainable forest management and, in this context, identify, as appropriate, specific environmental and other forest-related aspects within those elements for consideration as criteria and indicators for sustainable forest management (Article 5). The Instrument, like the 1992 Forest Principles, is non-binding.

International legal efforts to address forest issues have taken place in the context of the historical loss of the forests of developed countries, and mostly because of that developed countries try to ensure that the remaining forests in developing countries are preserved for their contribution to ecological cycles, particularly in relation to biodiversity and climate issues, however attempts to “internationalize” forest issues have so far been largely unsuccessful²³. It is obvious that loss of world's forests could have impact on more broaden ecosystems, the clear example is the situation of tropical forests in general²⁴ and particularly

²³ Sands, P., Peel, J., Fabra, A., MacKenzie, R. *Principles of International Environmental Law*. Cambridge University Press, 2012, p. 495.

²⁴ Brazil, Indonesia, and the democratic Republic of Congo alone contain half of the world's tropical forests, and the rest are scattered throughout Latin America, Africa, and Asia. In recent decades, the rate of tropical forest loss has been about an acre a second. Central governments own about 80 % of the remaining intact forests in developing countries. It sometimes resulted in mismanagement, heavy political and economic pressures to allow

those of Amazon²⁵. However it could be noted, that the most often documents adopted in the field of international forest protection are non-binding ones. Therefore the question regarding their impact and influence may arise.

IMPACT OF “SOFT LAW” ON INTERNATIONAL FORESTS' PROTECTION LAW

As it was already discussed, almost all documents adopted in the field of forest protection in international level are non-legally binding instruments. The theory of international law derive sources of international law, in accordance with Article 38(1) of the Statute of the International Court of Justice²⁶, from four sources: treaties, international custom, general principles of law, and subsidiary sources (decisions of courts and tribunals, works of scientist, etc.). Treaties usually presume legally binding documents, which establish legally binding obligations, those sources of law is called “hard law”. Beyond those sources, there are also so-called rules of “soft law”, which in general are not binding *per se*, but may play a very important role in the field of international law, and particularly in international environmental law. “Soft law” is an important innovation in international legislation, it helps states to develop and “test” new legal norms before they become binding. Legislation process of “soft law” is more liberal, as it usually allows to take part in adopting norms not only to states as the main subjects of international law, but embrace a broader range of actors (NGOs, scientific organizations, academics, etc.) to take part in creation of legal norms. Those norms of “soft law” point to the likely future direction of formally binding obligations, by formally

cutting and immigration, and widespread corruption. Many countries with high deforestation rates rank high in the international corruption index. Timber concession- the right to take trees- have been granted at below market rates and without safeguards or requirements for good management. In Speth, J.G., Haas, P.M. *Global Environmental Governance*. Washington: Island Press, 2006, p. 29-30.

²⁵ The Amazon rainforest is present in eight South American countries, it constitutes only 7 % of the Earth's land surface, but account for 35 % of its tropical forests. 60 % of the rainforest is in Brazil. Biodiversity loss in the Amazon region is caused primarily by agricultural and development activities, in addition to direct harvesting of natural resources. Additional related threats to biodiversity are the overharvesting of wild species, the introduction of non-native species, habitat destruction, pollution by toxins, changing nutrient balances, and local or global climatic changes. In DeSombre, E.R., *The Global Environment and World Politics*. New York: Continuum, 2007, p. 179-185. The Amazon forest, due to the interaction of deforestation, fire and climate change, could undergo a widespread dieback, with parts of the forest moving into a self-perpetuating cycle of more frequent fires and intense droughts leading to a shift to savanna-like vegetation. While there are large uncertainties associated with these scenarios, it is known that such dieback becomes much more likely to occur if deforestation exceeds 20-30 % (it is currently above 17 % in the Brazilian Amazon). It would lead to regional rainfall reductions, compromising agricultural production. There would also be global impacts through increased carbon emissions, and massive loss of biodiversity. In Hunter, D., Salzman, J., Zaelke, D. *International Environmental Law and Policy*. New York: Foundation Press, 2011, p. 992.

²⁶ *Statute of the International Court of Justice*. [interactive] [accessed 2013-05-07] <<http://www.icj-cij.org/documents/?p1=4&p2=2&p3=0>>.

establishing acceptable norms of behavior, and by “codifying” or possibly reflecting rules of customary law²⁷.

Documents, adopted in the field of protection of world's forests, usually are called as principles. Principles are more abstract general norms from which specific rules or standards are derived; they embody reasons that argue for moving in a particular direction, rather than arriving at a specific result. Principles are the foundations upon which rules incorporating obligations of result are built²⁸. Principles, adopted in conferences, summits, etc., may not be understood as customary international law, although these instruments of “soft law” play an important role in the development of international environmental law. As some scholars indicate, “soft law” is either “not yet law or not only law”²⁹.

The development of “soft law” norms in international environmental law began immediately after the Stockholm Conference, one of the consequences of which was the creation of United Nations Environmental Program (UNEP)³⁰, the organization which evolved into drafting resolutions, that further on may become new binding international legal norms. The actions of NGO's has also contributed to the enunciation of “soft law” principles regarding environment. Much of “soft law” is incorporated within “soft” (i.e. non-binding) instruments such as recommendations, resolutions, declarations, principles, etc.

Although accepted as non-binding instruments formally, “soft law” norms are usually accepted with no less extreme care and caution than norms of treaties. Such behavior shows that States do not view “soft law” recommendations or principles as absolutely insignificant, as usually later on those norms become “hard” law, i.e. they are potentially binding norms. The question could arise about the purpose of such norms. The rising importance and frequency of adoption of “soft law” norms indicate the difficulties with which States have been confronted in trying to reach an agreement, especially in the field of forests' protection (because of the reasons discussed above). The law-making process in international environmental law is a long process, thus “soft law” helps to reach at least some agreements or to highlight the future development perspectives of legal norms in specific field. It should be noted, that in many environmental field, as well as in forests' protection, the choice is not

²⁷ Chinkin, M., The Challenge of Soft Law: Development and Change in International Law. *International and Comparative Law Quarterly*. Volume. 38. Issue 04. October 1989, p 850-866. [interactive] [accessed 2013-05-07] <<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=1513152>>.

²⁸ Guruswamy, L., D. *International Environmental Law in a Nutshell*. 4th Edition. West Publishing, 2012, p.18-19.

²⁹ Hunter, D., Salzman, J., Zaelke, D. *International Environmental Law and Policy*. New York: Foundation Press, 2011, p. 344.

³⁰ [United Nations Environment programme](http://www.unep.org/) (UNEP)[interactive] [accessed 2012-03-17]< <http://www.unep.org/>>.

between a treaty and a “soft law” norms, but between “soft law“ norms and no norms at all. Non-binding norms are often the precursor to treaty negotiations and sometimes stimulate state practice to the formation of customary international law³¹. “Soft law“ instruments are also useful in addressing new topics of regulation, as it was in the field of forests' protection.

“The growing complexity of the international legal system is reflected in the increasing variety of forms of commitment adopted to regulate state and non-state behavior in regard to an ever-growing number of transnational problems”³². As we discussed before, most of the major global environmental threats in the field of forest protection have not been met efficiently, and in most areas there is no support by international legal instruments. Scholars (D.L. Downie, R.C. Paehlke, J. Clapp) separate a few obstacles for proper protection of environmental surrounding: system obstacles (not enough effective cooperation between states; the application of general principle of international law – sovereignty of states, which may impede to solve global environmental problems); procedural obstacles (not all important legal documents are signed by corresponding involved countries, long-term process of reaching an international treaty); lack of public concern; characteristics of international environmental issues (those issues usually are complex, full of uncertainties, environmental interest often conflict with economic and political ones, solutions to global environmental problems have unequal distributions of costs and benefits among nations)³³. All those characteristic obstacles may be applied in the international protection of forests' area. Therefore it could be presumed, that the biggest challenges in the field of international forests' protection are still in the future.

CONCLUSIONS

Different areas of environmental surrounding are not equally protected by international law, and forests' protection in that sense is one of the less regulated areas. This could be explained by some reasons: it is clear that different fields of international environmental protection have different regulatory approaches, with range from legal documents adopted in respect with economical issues (which usually emphasizes either sustainable development or the needs of developing countries, trade and benefits), others focusing on protection of specific species, conservation, up to non-binding principles regulating areas where it is difficult to reach common solutions. It is obvious that in this sense international protection of

³¹ Kerbat, Y., Maljean-Dubios, S. *The Transformation of International Environmental Law*. Oxford-Paris: A. Pedone&Hart Publishing, 2011, p. 61.

³² *Ibid.*, p. 71.

³³ Speth, J.G., Haas, P.M. p. 102-103.

forests is still insufficient, forests' protection area is almost uncovered by international legal regulation instruments, although recently at least first steps adopting binding legal instruments where made. No global convention has yet been adopted addressing world forests of deforestation; while forests fall within the scope of certain global and regional legally binding instruments (mostly in the field of protection of biodiversity), there has been no global legal instrument up until to Rio Earth Summit in 1992. The main documents adopted in the field of forest protection are non-binding declarations or principles. It is notable that the major qualitative change regarding international forests' protection is in the systematic approach of the international community to these issues. It also should be noted that forests' protection usually is presumed as being regulated by different instruments sustaining biodiversity. Anyhow, forests' protection is still regulated by indirect legal instruments, mainly instruments addressing habitat and biodiversity protection, and although those instruments pursue an integrated approach and could be helpful in promoting forests' conservation and protection issues, however lack of direct, legally binding and stressing the most severe problems instruments in this field still exists.

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TARPTAUTINIŲ TEISINIŲ INSTRUMENTŲ ĮTAKA MIŠKŲ APSAUGAI

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Santrauka

Pasaulio miškai yra viena svarbiausių globalių aplinkos ekosistemų. Miškų biologinė įvairovė yra itin gausi. Pagal Pasaulio banko duomenis, apie 90 procentų pasaulio bioįvairovės yra randama miškų zonose, kurių dauguma yra besivystančių šalių teritorijose. Viena vertus, miškai yra reikšmingi daugeliu aspektų – jie prisideda prie pasaulio klimato reguliavimo, dirvožemio apsaugos, užtikrina vandens šaltinių atsinaujinimą, miškų ekosistemos sukuria gyvenamąją terpę milijonams rūšių, miško

produktai yra pagrindinis pragyvenimo šaltinis daugiau nei milijardui žmonių. Miškų ištekliai tiesiogiai prisideda prie bene 90 procentų iš 1,2 milijardo didžiausiame skurde gyvenančių žmonių gerovės, jie taip pat netiesiogiai prisideda prie natūralios gamtinės aplinkos vystymosi žemdirbystės, maisto tiekimo srityse, nuo miškų produkcijos yra priklausomi bene pusė besivystančio pasaulio gyventojų. Kita vertus, pasaulio miškai patiria ir ypatingą poveikį: nuo apsaugos iki naudojimo žemdirbystės tikslais, nuo neteisėtų ir netausojančių miško išteklių naudojimo iki griežtos valstybinės miškų naudojimo kontrolės. Gali atrodyti neįtikėtina, tačiau pasauliniu lygmeniu miškų nykimo problema tapo prioritete tik pastaraisiais dešimtmečiais. Miškų nykimas tapo dėmesio objektu kuomet pasirodė pirmosios studijos, atskleidusios neįtikėtinus faktus apie miškų apsaugos problemas. Daugybė veiksnių gali būti laikomi darančiais įtaką miškų apsaugai – žmogaus veikla (populiacijos didėjimas, skurdo mažinimo priemonės, industrinė veikla, kelių konstrukcija, žemdirbystė, miško produktų naudojimas) ir bendra pasaulio aplinkos situacija (klimato kaita, rūgštūs lietūs, ozono sluoksnio plonėjimas, toksinių medžiagų emisija, ir t.t.). Miškų apsauga yra itin puikus konfliktuojančių aplinkosauginių, politinių, ekonominių, industrinių interesų pavyzdys. Globalinės miškų aplinkosaugos politikos atskleidžia esančią įtampą tarp besivystančių šalių poreikių užtikrinimo ir išsivysčiusių šalių siekių, tarp aplinkos apsaugos ir vystymosi procesų, tarp būtinybės saugoti gamtą ir skurdo mažinimo. Suprantant šiuo probleminius aspektus, galima paaiškinti situaciją tarptautinėje aplinkosaugos teisėje priimant miškų apsaugos sričiai reguliuoti reikalingus dokumentus. Nors dvidešimtame amžiuje buvo priimtas milžiniškas skaičius įvairius aplinkosauginius klausimus reguliuojančių tarptautinių teisinių instrumentų, tačiau vis dar nesama globalinio teisiškai įpareigojančio tarptautinio dokumento, kuris užtikrintų miškų apsaugą, valdymą ir tvarųjį naudojimą. Specifinė tarptautinių teisinių instrumentų, priimtų miškų apsaugos srityje, ypatybė yra jų neįpareigojantis, neprivalomas pobūdis. Ši aplinkybė yra verta atskiros mokslinės analizės. Šio tyrimo objektas yra tarptautinių teisinių instrumentų, turinčių įtakos miškų apsaugai, sistema. Šio tyrimo tikslas yra atskleisti tarptautinių teisinių instrumentų, priimtų miškų apsaugos srityje, sistemą, išanalizuoti svarbiausias priežastis, nulėmusias tokios sistemos formavimąsi, ir atskleisti šios sistemos ypatybes.

Pagrindinės sąvokos: tarptautinė viešoji teisė, aplikosaugos teisė, „soft law“, miško teisė.

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