

International Customs Law and Environment Protection

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ABSTRACT

One of the current global challenges is protection of the environment. Due to increased deterioration in overall global ecological safety and the environment's sharp deterioration in certain countries and regions, the global consequences for outstanding environmental problems indicate that states must unite their efforts to prevent threats to mankind. This study is devoted to some ecological aspects of international customs law. Biodiversity loss, environmental pollution, resource degradation and climate change are among the most serious environmental challenges. The primary objective of this study was to analyze specific examples of international customs law instruments that include relevant prohibitions and restrictions to address such challenges.

Key words: International customs law, international environmental law, wild flora and fauna, pollution of the environment

INTRODUCTION

In the current climate, international law has become more important as a system of international treaties and customary rules that govern international relations. This increased importance is motivated by nations' desire to promote peace and security, foster international cooperation and strengthen integration. As a result, the system of international law has become more complicated, encompassing relationships that previously were not internationally regulated or did not previously exist. The system of international law is characterized by processes of differentiation and integration of its norms and principles. New areas of cooperation and consequently, new branches of international law continue to arise. Conversely, the various branches are closely linked to the overall system. From this perspective, the relationship between international customs law and international environmental law as well as environmental aspects of international customs law are considered.

International customs law is a system of rules and principles that governs relationships between states and intergovernmental organizations through their cooperation in customs affairs. Without an in-depth discussion on international environmental law (Bodansky, 2010), we define this area as a set of international legal principles and norms governing international environmental relationships between parties involved in international law and concerning environmental protection. International customs law is a relatively independent and complex branch of international law. International customs law is complex because it includes rules that may also apply to other branches of public international law including sea, air and nuclear etc. The relative autonomy of international customs law gives additional weight in matter of regulation, with its own principles and a considerable number of international-legal acts, reflecting the interest of the international community in the regulation of customs relations. International environmental law includes similar characteristics.

International customs law and international environmental law functionally overlap. There are different approaches to the functions of international law. Coplin (1966), among the functions of international law, distinguishes avoiding possible interstate clashes, limit international violence, cope with international welfare problems and communicating function. According to opinion of Yasuaki (2003), there are binding function, communicative function, function of embodying shared understandings of international society and justifying and legitimating function. For the study herein, it is of interest in the division of functions of international law on coordination, regulatory, protective and guarantee functions (Kolosov and Krivchikova, 2009). The protective function defends the vital interests of the international community generally and each state as well as society and individuals and it maintains international legal order. Among the specific areas of protective functions of international customs law depending on the object of protection (Ovchinnikov, 2013), it is possible to highlight protection of the environment. The environmental aspects of international customs law are manifested in the prohibitions and restrictions of movement of objects which threatens the environment.

The World Customs Organization Secretary General Kunio Mikuriya selected environmental protection as the theme for International Customs Day in 2009 and has stated that 'protection of the environment is often regarded as a policy matter of other ministries but the customs community has the effective means to contribute to this increasingly important policy objective' (Mikuriya, 2009). Environmental focus of international customs law is demonstrated through international conventions and agreements that include relevant prohibitions and restrictions. Two objects are prohibited and restricted, wild fauna and flora and hazardous wastes and harmful substances.

INTERNATIONAL CUSTOMS LAW IN PROTECTION WILD FLORA AND FAUNA

If we consider the international legal acts in their historical sequence taking into account the customs and legal means of protection of nature, then, first of all, the London Convention of 1900 for the preservation of wild animals, birds and fish in Africa should be examined. This Convention provides for the establishment of export duties on animal skins, tusks and horns. Although, this convention was not ratified and not entered into force, it is one of the first instruments to protect nature (Sands and Pee, 2012). The next document is the Washington Convention Respecting Measures for the Preservation and Protection of the Fur Seals in the North Pacific Ocean which was signed by the United States, Britain, Russia and Japan in 1911 and prohibits illegal import of furs and fur seals skin in the territory of Convention parties (Department of Foreign Affairs and Trade, 1911). The London Convention Relative to the Preservation of Fauna and Flora in their Natural State (London Convention, 1933) established that each party contribute to the convention control and regulate import and export for trophies and products from protected species in its territory. The import of trophies which have been exported from any territory to the Convention is applicable in full, whether a territory of another contracting government are not. It shall be prohibited except on production of a certificate or lawful export, failing which the trophy shall be confiscated. Trophy import and export was prohibited, except through a customs station. The Washington Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Washington Convention, 1940) included similar terms; control of export, import and transit of protected species of fauna and flora, issuance of special export certificates and prohibition of imports without such certificate. Under the International Convention for the Protection of Birds (International Convention, 1950), the import, export, transport, sale, offer for sale, giving or

possession of any live or dead bird or any part of a bird killed or captured in contravention of the provisions of this Convention, during the season in which the species concerned is protected, shall be prohibited. The Interim Convention on Conservation of North Pacific Fur Seals (Interim Convention, 1957) reinstated the ban on importing fur seal skins which was established in 1911 through the Washington Convention. The 1973 Convention for the Protection of Migratory Birds and Birds under the threat of extinction and on the means of protecting them was signed by Japan and the USSR. Its primary aim was to cooperatively implement measures that control, protect and prevent extinction of certain bird species; it was also aimed at monitoring and protecting their environment. The Convention stipulates that each contracting party will control export and import for certain bird species or subspecies and products thereof. In addition, the parties pledged to study toward adopting the necessary measures to control import for animals and plants that are recognized as detrimental to conservation of such birds (Convention, 1973). Similar agreements have been signed by the USSR with the USA in 1976, India in 1984; North Korea in 1987 and Russia and the Republic of Korea in 1994. The agreement on the Conservation of Polar Bears was signed by Canada, Denmark, Norway, the USSR and the USA in 1973. The contracting parties prohibit the exportation from the importation and delivery into and traffic within, its territory of polar bears or any part or product thereof taken in violation of this agreement (Government of America, 1973).

Examined conventions and agreements have a limited territorial scope, protect certain fauna and flora species and do not include a real mechanism for coordinated monitoring and control of protected species' transboundary movement. Currently, the most effective instrument for protecting wild fauna and flora was signed in 1973, the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter, CITES). CITES protects wild fauna and flora which are divided into three groups as described in the convention appendices. Appendix 1 of the Convention (Washington Convention, 1973) includes the species threatened with extinction that are or may be affected by trade. Trade involving such species must be strictly regulated to avoid further endangering their survival and such trade must only be authorized in exceptional circumstances. Export and import of such objects requires a prior export grant and permission to export and import issued by the administrative authority using an opinion from competent scientific authorities for the exporting and importing states. Appendix II of the Convention (Washington Convention, 1973) includes the species that are not necessarily threatened with extinction but may become threatened unless trade involving such species is strictly regulated to avoid uses incompatible with their survival. The procedure for exporting such objects is the same as for the species in Annex I of the Convention (Washington Convention, 1973) but a preliminary import permit is not required. Annex III of the Convention (Washington Convention, 1973) includes species whose export is restricted under the convention parties' national environmental legislation. Export objects listed in Annex III of the Convention (Washington Convention, 1973), of any state, which has included that species in Appendix III of the Convention (Washington Convention, 1973), requires the prior grant and presentation of an export permit issued by the administrative authorities of the exporting state, provided that the object was produced legally (Washington Convention, 1973). For example, in December 2009, Russia notified the CITES Secretariat on inclusion Korean pine in Appendix III of CITES (Rosprirodnadzor, 2010). Therefore, exporting this type of timber from Russia requires a permit from the CITES Management Authority in Russia. Importing any specimen listed in Annex III of the Convention (Washington Convention, 1973), requires the prior granting of a certificate of origin and an export

permit if the import is from a state which has included that species in Appendix III of the Convention (Washington Convention, 1973). The CITES Secretariat, that is defined in CITES Article XII, organizes implementation of the Convention. The state parties to the Convention are required to provide periodic reports on its implementation to the CITES Secretariat. To date, 178 countries are CITES members and CITES accords varying degrees of protection to more than 35,000 species of animals and plants, whether they are traded as live specimens or as raw or finished products. Although, the Convention operations reveal many shortcomings (Phelps *et al.*, 2010), it is the most effective international legal tool for protecting wild fauna and flora.

INTERNATIONAL CUSTOMS LAW AGAINST HAZARDOUS WASTES AND HARMFUL SUBSTANCES

Chemicals and hazardous substances management is one of top trends in international environmental law (Yang, 2013). In accordance with the Rio Declaration on Environment and Development, 'states should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health' (United Nations, 1992).

The universal document that established international traffic regulations for hazardous waste is the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention, 1989). Central to the Basel Convention is that each state has the sovereign right to ban entry or disposal of hazardous and other wastes in its territory. The Basel Convention defines "wastes" as 'substances or objects which are disposed of or are intended to be disposed off or are required to be disposed off by the provisions of national law'. Wastes with properties that may represent a significant real danger to human health or living organisms are considered dangerous. The Appendix III of the Convention (Rotterdam Convention, 1998) refers to dangerous waste properties; the ability to explode, flammability and toxicity. Hazardous wastes are listed in the Annex I of the Convention (Rotterdam Convention, 1998) and are divided into groups based on their source (medical or pharmaceutical) or composition. As hazardous waste is also considered waste, it is recognized as such by internal laws for the state of export, import or transit.

Participating states in the Basel Convention adopt the following general obligations; exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other parties of their decision prohibit or not permit the export of hazardous wastes and other wastes to the parties which have prohibited the import of such wastes not allow the export of hazardous wastes or other wastes if there is reason to believe that the wastes in question will not be managed in an environmentally sound manner, not permit hazardous wastes or other wastes to be exported to a non-party or to be imported from a non-party require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labeled and transported in conformity with generally accepted and recognized international rules and standards, require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal; consider that illegal traffic in hazardous wastes or other wastes is criminal.

The Basel Convention establishes a procedure for hazardous wastes transboundary movement. The state of export shall notify or require the generator or exporter to notify in writing through the channel of the competent authority of the state of export. The competent authority of the states concerned of any proposed transboundary movement of hazardous wastes or other wastes. The state of import shall respond to the notifier in writing, consenting to the movement with or

without conditions, denying permission for the movement or requesting additional information. The state of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that notifier has received the written consent of the state of import and has received from the state of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

The Basel Convention provides a definition for illegal traffic involving hazardous waste. Any transboundary movement of hazardous wastes or other wastes without notification pursuant to the provisions of Convention to all states concerned or without the consent pursuant to the provisions of Convention of a state concerned or with consent obtained from states concerned through falsification, misrepresentation or fraud or that does not conform in a material way with the documents or that results in deliberate disposal (e.g., dumping) of hazardous wastes or other wastes in contravention of Convention and of general principles of international law, is deemed illegal traffic.

Over 1,000 distinct international environmental agreements currently operate around the globe and the Basel Convention restriction on international waste shipments significantly and meaningfully reduced in waste export (Kellenberg and Levinson, 2013).

The dramatic growth in chemical production and trade over the past three decades has raised both public and official concern over the potential risks posed by hazardous chemicals and pesticides. Countries without adequate infrastructure to monitor import and use such chemicals are particularly vulnerable. In response to these concerns, the United Nations Environment Programme (UNEP) and Food and Agriculture Organization of the United Nations (FAO) began developing and promoting voluntary information-exchange programmes in the mid 1980's. FAO launched its International Code of Conduct on the distribution and use of pesticides in 1985 and UNEP constructed the London Guidelines for Exchange of Information on Chemicals in International Trade in 1987. Soon thereafter, the two organizations jointly introduced the 1989 Prior Informed Consent procedure. Jointly implemented by FAO and UNEP, this programme has helped to ensure that governments have the necessary information on hazardous chemicals to assess risks and make informed decisions on chemical imports (Secretariat of the Rotterdam Convention, 2011). However, a mandatory international control mechanism was required which was constructed by the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade in 1998.

The Rotterdam Convention objective is to promote shared responsibility and cooperative efforts among parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use by facilitating information exchange about their characteristics and providing for a national decision-making process on their import and export (Rotterdam Convention, 1998).

The Rotterdam Convention applies to two types of chemicals. The first type includes banned or severely restricted chemicals, such as industrial chemicals or pesticides that have been banned by national law or have severely limited application to protect human health or the environment. The second type includes severely hazardous pesticide formulations, such pesticide formulations are used a manner that has serious consequences for human health or the environment.

The Stockholm Convention on Persistent Organic Pollutants was created because 'persistent organic pollutants possess toxic properties, resist degradation, bioaccumulate and are transported through air, water and migratory species across international boundaries and deposited far from

their place of release, where they accumulate in terrestrial and aquatic ecosystems (Stockholm Convention, 2001). Therefore, it is necessary to protect human health and the environment from the harmful impact of persistent organic pollutants. The state parties to the Stockholm Convention pledged to prohibit or take the necessary legal and administrative measures to eliminate production, use, import and export of the chemicals listed in the Convention Annexes. Import and export of such chemicals may be allowed for environmentally sound disposal or authorized use.

Customs' legal means are used to protect the ozone layer because a change in its condition can adversely affect human health and the environment (Ireland, 2010). To protect human health and the environment from adverse effects due to changes in the ozone layer, the Vienna Convention on Ozone Layer Protection was adopted in 1985. Among other commitments, parties to this convention were committed for exchanging information on export and import for chemicals that can modify the ozone layer chemical and physical properties (Vienna Convention, 1985). Using this Convention, the Montreal Protocol on Substances that deplete the ozone layer was adopted in 1987 which restricted or prohibited ozone-depleting substance export and import (Montreal Protocol, 1987).

The Minamata Convention on Mercury provides controls and reductions across a range of products, processes and industries where mercury is used, released or emitted. The treaty was adopted by more than 140 governments in January 2013 and was opened for signature at a special meeting in Japan in October 2013. The Convention restricts export and import of mercury because of its significant negative effects on human health and the environment (Minamata Convention, 2013).

CONCLUSION

Prohibitions and restrictions established by international customs law are not the only means to protect the environment, however, they contribute to its conservation. The effective monitoring and control of the trans-boundary movement of the environmentally sensitive goods, based on multi-lateral environmental agreements and other treaties, is a key component of environmental protection. The effectiveness of such legal means differs, customs control detects wild flora and fauna species that have been withdrawn from their natural environment, while the movement of hazardous wastes and harmful substances, it is able to stop. In this study, we presented a brief overview that supports a stronger environmental focus in international customs law.

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