

INTERNATIONAL LEGAL INSTRUMENTS AND MECHANISMS ON THE ENVIRONMENT: A RUSSIAN PERSPECTIVE

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Contents

1. Constitutional Provisions
 2. The Principle of International Law Priority
 3. Russia's Participation in International Cooperation on Environmental Issues
 4. Declarations of the UN Conferences
 5. The UN Framework Convention on Climate Change
 6. Conventions for the Protection of the Ozone Layer (Vienna 1985 and Montreal 1987)
 7. The Geneva Convention on Long-Range Transboundary Air Pollution
 8. The Convention on Biological Diversity
 9. The Convention Concerning the Protection of World Cultural and Natural Heritage
 10. Russia's Participation in International Conferences
 11. Russia's Participation in International Environmental Organizations
 12. The International Covenant on Environment and Development
- Glossary
Bibliography
Biographical Sketch

Summary

The basic provisions for the development, study and implementation (enforcement) of international legal instruments and mechanisms relating to ensuring the environmental well-being of society are contained in the Constitution of the RF Art. 15.4, 42, 58, 71, and 72. The legislation is based on the principle of international law priority. Russia actively participates both in international law-making and in its implementation, and supports the principles of international environmental law expressed in the Stockholm and Rio declarations, and the decisions of the Council for Security and Economic Development in Europe. The global environmental conventions cover climate protection, ozone layer depletion, the High Seas, desertification, biodiversity and forest protection, protection of species and ecosystems, wastes and hazardous substances, and radioactive substances. Regional environmental conventions have been enacted on air pollution, international watercourses, transboundary impacts, environmental impact assessments, accidents, access to information, and environmental protection within the CIS.

1. Constitutional Provisions

The basic legal provisions that determine state and public activities in the protection of

the environment and the regulation of natural resources use in Russia are contained in the Constitution of the RF, which was adopted on December 12, 1993, by public voting. Russia is proclaimed as a democratic federal state, where an individual, and his rights and freedoms, are of the highest value. The state is mandated to recognize, observe, and protect the rights and freedoms of an individual and citizen. Russia consists of the 89 member units of the RF: 21 republics, six krais, 49 oblasts, two federal cities, one autonomous oblast, and 10 autonomous districts. Pursuant to Art. 42 of the Constitution, each individual has the right to a favorable environment, true information on environmental conditions, and compensation for damage caused to health and property by environmental change or degradation.

The criteria for determining favorable environmental conditions include international and national environmental quality standards, pollution/emission limitations, and limitations on other environmental impacts. These include limitations on noise, radiation, and electromagnetic impacts, requirements for waste storage, standards for land zoning, limitations on the maximum allowable extraction of raw materials, and natural resources and products, as well as recommendations for balancing the components and state of the natural environment (availability and spatial distribution of forests, water availability, biodiversity, etc.).

The right to have access to true information proclaimed in the Constitution, is regulated in legislative acts and regulations, and is protected by the judiciary. The right to compensation for damage caused to an individual's health and property by an environmental change or degradation is established and regulated by administrative, civil, and criminal law, and is protected by the judiciary. In addition to these rights, the Constitution proclaims the obligations of citizens to treat natural resources with care, and to protect the natural environment. The Constitution also determines the obligations of the state to protect the environment. It is envisaged that state agencies (federal, member units, and local) are obliged within their mandates to ensure proper exercise of the ecological rights and obligations of individuals, to regulate the use of natural resources and environmental protection, to determine and control the legal status of natural objects and areas, to direct human activities that impact the environment, to conduct ecological monitoring, to take measures for preventing accidents, catastrophes and natural calamities and to eliminate their consequences, and to participate in international cooperation on ecological issues.

2. The Principle of International Law Priority

International law has the priority over the national legislation in Russia. The Constitution (Art. 15) reads that “commonly recognized principles and rules of international law and international agreements of the Russian Federation form a constituent part of its legal system. If an international agreement of the Russian Federation establishes rules other than those provided for by the law, the rules of the international agreement are complied with.” Similar legal provisions are contained in the basic federal laws that regulate natural resource use and protection of the environment: “On Environmental Protection” (1991), “On Subsoil” (1995), “On Wildlife” (1995), the Water Code of the RF (1995), and the Forestry Code of the RF (1997).

Because of the principle of international law priority, the World Declaration of Human Rights (1948), the international covenants on human rights (International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, 1966), the European Convention on Protection of Human Rights and Fundamental Freedoms (1953), the European Social Charter (1965), and many other special international legal instruments relating to environmental protection and natural resource use, to which Russian is party, are directly applicable in Russia.

3. Russia's Participation in International Cooperation on Environmental Issues

Russia traditionally takes part in international cooperation on environmental issues. The First Conference on International Conservation of Nature (Bern) was held on November 17–19, 1913. Delegations from 17 countries (Switzerland, France, Germany, Austria, Sweden, Norway, Belgium, the Netherlands, Spain, Portugal, Denmark, Italy, Great Britain, Argentina, Australia, the US and Russia) attended the conference. It was decided to set up an advisory commission for international conservation of nature. However, owing to complex international political circumstances, the Commission has not actually started work.

Full-scale international cooperation on environmental protection gradually developed after the Second World War under the support of the UN, UNESCO, FAO, and other organizations. The then Soviet Union became a Party to many environmentally oriented international legal instruments: the International Convention for the Regulation of Whaling (1946), the International Convention for the Prevention of Pollution of the Sea by Oil (1954), the Convention on the Continental Shelf (1958), the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971), and others. The number and significance of international legal instruments aiming to solve environmental problems grew considerably after the UN Stockholm Conference on the Human Environment (1972). These instruments embraced practically all components and spheres of the global environment, as well as diverse human activities connected with impact on the environment.

In the present millennium, Russia is a party to over 80 multilateral global and regional conventions and other acts relating to environmental protection and natural resource use. In addition, Russia has concluded many general and specific agreements on cooperation in environmental protection and in determining the regime of natural resource use on a bilateral basis, including agreements on the protection and use of transboundary watercourses and international lakes, and on the protection of migratory birds (among others). Russia uses widely such forms of cooperation as international conferences and organizations. It participates as a member in the work of over two dozen governmental and non-governmental organizations of environmental character.

4. Declarations of the UN Conferences

International legal instruments relating to environmental protection and sustainable development include those which have no mandatory legal force, but enjoy high political respect. They accumulate the latest knowledge on the interaction of humankind with the natural environment, and enrich international environmental law with

fundamental provisions concerning methods and tools for governing human behavior in the interests of sustainable development. Such acts are named soft law, as they have the legal force of recommendations (unlike mandatory rules inscribed into agreements, conventions, international customs, and generally recognized principles and rules). However, such soft law acts strongly influence the environmental policy of states and serve as a reserve of legal wordings, which little by little, are included in the texts of agreements and conventions, and are thereby transformed into mandatory legal rules. Two of the most important instruments of this kind are the Stockholm Declaration on the Human Environment (1972) and the Rio Declaration on Environment and Development (1992).

4.1. The Stockholm Declaration on the Human Environment (1972)

The Stockholm declaration consists of the Preamble and 26 Principles, and was unanimously adopted on June 16, 1972 at the final meeting of the UN Conference on the Human Environment, together with the long-term Action Plan and resolutions of an organizational and financial character. The Stockholm Declaration emphasizes first of all, the historical mission and responsibility of humankind to protect and to transfer the Earth to future generations in a good state, appropriate for life. The Declaration also proclaims for the first time, the right of an individual to life under favorable environmental conditions. It is stated that “man has the fundamental right to freedom, equality and adequate conditions of life, in the environment of the 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.” This right is linked to the economic and social development which is necessary for creating favorable environmental conditions for the life and work of humankind, and for creating such conditions on the Earth as are necessary for increasing the quality of human life.

The principle that was envisaged by the Declaration proclaiming that the environment should be used and protected not only for the sake of living people but also for future generations, has marked noticeable progress in international environmental law. It is emphasized that to attain this objective, scientifically well-grounded planning of natural resource use is needed. It is further stressed that rational planning constitutes an essential tool for reconciling any conflict between the need for development and the need to protect and improve the environment (Principle 14). Essentially, this provision expressed the ideology of sustainable development, which at that time was understood in principle, but twenty years later received a wider interpretation at the UN Conference on Environment and Development in Rio de Janeiro.

The Stockholm declaration for the first time touched upon the principle of justice in environmental law, which means that the benefits obtained as a result of environmental protection should be fairly distributed between peoples and social groups. At that time (in 1972), it was pointed out that 2/3 of the population of the Earth continue to live in poverty, are underfed, and in suffering, and that humankind faces an urgent task to solve these priority and especially difficult problems. Until the gap between the poor and the rich countries is reduced considerably, it will be difficult to expect great success in improvement of the environment. In this connection, much attention in the Declaration is attached to the developing countries, towards increasing their capabilities to

participate actively in environmental protection and in ensuring rational use of natural resources.

Another important achievement of the Declaration is that of including the principle of the sovereignty of countries over national natural resources and the responsibility for their use without causing harm to other states and peoples. As per Principle 21 of the Declaration, the States have, in accordance with the Charter for the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of other areas beyond the limits of national jurisdiction.

The Declaration is finalized with a requirement to spare man and the environment the effects of nuclear weapons and all other means of mass destruction.

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Biographical Sketch

Oleg Stepanovich Kolbasov, born April 11, 1927, in Cheboksary, Russia, died on January 30, 2000.

Academic Achievements: Graduate of the All-Union Institute of Law, Vilnius, Lithuania (1946-1952); Ph.D. Equivalent (1955), Candidate of Juridical Science; SJD Equivalent (1968)-Doctor of Juridical Science; Honorary Doctor of Law Degree, Pace University, NY, USA (1990); Corresponding member of the Russian Academy of Sciences (1991); Academician of the International Academy of Informatization, Russia (1994); Academician of the Russian Academy of Water Economy, (1994); Academician of the Russian Academy of Natural Sciences, (1996).

Governmental positions: Vice-Minister, Ministry of the Environment and Natural Resources (1991-1994); Deputy Director, Institute of State Law, Russian Academy of Sciences (1987-1991); Head, Department of Environmental Law, Institute of State and Law, Russian Academy of Sciences (1965-1987); Chief Research Expert Institute of State and Law (1995-2000).

Other positions: Vice-Chairman, All Russian Nature Conservation Society (1962-2000); Member for the USSR Commission for UNEP (1975-1977); President, Russian Society of Animal Protection (1988-2000); Member, Vice-Chairman of the Commission on Environmental Law, IUCN (1966-2000).

Publications: over 300.